ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 2011-0122
Plaintiff-Appellee,	:	On Appeal from the Pike County Court of Appeals Fourth Appellate District Case No. 10CA803
v.	:	
JEFFREY HARDIN,	:	
Defendant-Appellant.	:	

APPELLANT JEFFREY HARDIN'S MERIT BRIEF

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FILED
MAR 21 2013
CLERK OF COURT
SUPREME COURT OF OHIO

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INTRODUCTION

Autopsies performed in suspected homicides are indispensable to law enforcement efforts. And conclusions in such autopsy reports often carry grave legal significance. Thus, the notion that all autopsies are performed solely due to public-health concerns is incorrect.

An autopsy report with a "homicide" manner-of-death finding is incontrovertibly a solemn declaration made for the purpose of establishing some fact. *See* Section II, below. And such reports are written under circumstances that would lead an objective witness to believe that the statement would be available for use at a later trial. *Id.* Thus, such a report has a primary purpose of establishing or proving past events potentially relevant to later criminal prosecution. *Id.* For those reports, any business-record status is irrelevant to a Confrontation-Clause challenge, and defendants must have the opportunity to confront the person who prepared the report when it is used in a criminal prosecution. *Id.*

Ohio's General Assembly has codified rules and procedures that, as a whole, prove those points:

- An autopsy must be performed—without exception—when a death involves "aggravated murder, suspected aggravated murder, murder, suspected murder, manslaughter offenses, or suspected manslaughter offenses," or any child under two years of age who "die[d] suddenly when in apparent good health." R.C. 313.131(F); R.C. 313.121.

- Autopsies serve two "compelling public necessit[ies]." R.C. 313.131(C)(1).

    - First, an autopsy can be "necessary to the conduct of an investigation by law enforcement officials of a homicide or suspected homicide, or any other criminal investigation." *Id.*

- Next, an autopsy can also be "necessary to establish the cause of the deceased person's death for the purpose of protecting against an immediate and substantial threat to the public health." *Id.*

- All criminal, violent, suspicious, unusual, or sudden deaths must be immediately reported to the coroner. R.C. 313.12.

  - That reporting must be made by law enforcement and must include the "known facts concerning the time, place, manner, and circumstances of the death." *Id.*

- Similarly, the death of any child under two years of age who "dies suddenly when in apparent good health," must be reported by law enforcement to the coroner. R.C. 313.121.

- A coroner must hold all dead bodies until the coroner can, "after consultation with the prosecuting attorney" or "police department" or "sheriff," "decide on a diagnosis giving a reasonable and true cause of death, or to decide that such body is no longer necessary to assist any such official in his duties." R.C. 313.15.

- A coroner has subpoena, investigation, and jailing power. R.C. 313.17; R.C. 313.20.

- A coroner's cause-of-death and manner-of-death conclusions are legally binding. R.C. 313.19.

- A coroner must promptly inform the prosecuting attorney of every death that the coroner believes is worthy of further investigation, and the coroner can request further investigation by law enforcement. R.C. 313.09.

Two sister high courts, the Supreme Courts of New Mexico and West Virginia, and a federal court of appeals, the Eleventh Circuit Court of Appeals, have recently held that an autopsy report with a "homicide" manner-of-death finding is primarily for an evidentiary purpose, and is, therefore, testimonial. *State v. Navarette*, ___ P.3d ___, N.M. No. 32,898, 2013 WL 399142, ¶ 1 (Jan. 17, 2013); *State v. Kennedy*, 735 S.E.2d 905, 916-917 (W.Va.2012); *United States v. Ignasiak*, 667 F.3d 1217, 1229-1235 (11th Cir.2012); *but see People v. Leach*, 980 N.E.2d 570 (Ill.2012) (holding autopsy reports to be

nontestimonial); *People v. Dungo*, 286 P.3d 442 (Cal.2012) (same). Those courts also held that upon the prosecution's use of such an autopsy report at trial, the Confrontation Clause requires that the defendant have the opportunity to confront the preparer of the report, irrespective of its business-record status, because that status is irrelevant to a Confrontation-Clause challenge. *Navarette* at ¶ 8-23; *Kennedy* at 916-917; *Ignasiak* at 1229-1235.

History and practice also serve to emphasize the forensic role of coroners and medical examiners when a death is suspected to be a homicide. The chief objective of coroner and medical examiner offices, when presented with a suspected-homicide case, is to "serve the criminal justice system as medical detectives by identifying and documenting pathologic findings in suspicious or violent deaths and testifying in courts as expert medical witnesses." Natl. Research Council Commt. on Identifying the Needs of the Forensic Sciences Community, *Strengthening Forensic Science in the United States: A Path Forward* 244 (2009).

In this case, one forensic pathologist performed the autopsy, determined the manner of death to be a homicide, and authored the report that included that "homicide" manner-of-death finding. *See* Section III, below. But that pathologist did not testify at trial. *Id.* Instead, a substitute witness did—one who did not perform or observe the autopsy. *Id.* And the autopsy report, including the non-testifying author's "homicide" manner-of-death finding, was admitted at trial. *Id.* That report provided the basis for the substitute witness's testimony that the manner of death was homicide. *Id.* But formal, solemn statements—such as those in the autopsy report in this case—that

have an evidentiary primary purpose, are testimonial. As such, they cannot be admitted through a substitute witness.

STATEMENT OF THE CASE AND FACTS

Jeffrey Hardin, Sr. ("Mr. Hardin") was suspected of killing his five-month-old son, Jeffrey Hardin, Jr. ("Jr."). Tr. at 259. On the day of Jr.'s tragic death, Mr. Hardin was alone with Jr. when he started crying and struggled to fall asleep for a nap. *Id.* at 25-26, 259. Although Jr. ultimately fell asleep, he started gasping for breath. *Id.* at 260. Paramedics were called. *Id.* at 27. When they arrived, Jr. was cold, pale, and had no pulse. *Id.* at 53. Medical treatment ensued: first at the scene by EMT personnel, then at Piketon Community Hospital—where doctors were able to get Jr.'s heart to start beating—and finally, at Nationwide Children's Hospital in Columbus. *Id.* at 29-31, 52-57. But Jr. could not be saved and he died in his mother's arms. *Id.* at 31.

As emergency personnel arrived, Mr. Hardin was hysterical, inconsolable, and couldn't speak. *Id.* at 27. Eventually, he said that he needed to die. *Id.* Once composed enough to speak with police, he told them that he shook the couch cushions around Jr. in an attempt to help him fall asleep. *Id.* at 270-272. Later, in a letter that he wrote from jail to Jr.'s mother, Mr. Hardin explained that although he shook Jr. a couple of times on the day that Jr. died—because Jr. was crying and could not fall asleep—he "love[d] [Jr.] with all [his] heart and would not do anything to hurt anyone on purpose." *Id.* at 33-34, 36.

Because Jr. was less than two years old, an autopsy was performed. R.C. 313.121. The autopsy was performed by Dr. Steven Sohn, who also prepared the report. *Id.* at

75; *see also* State's Exhibit 20. In the report, Dr. Sohn identified Jr.'s cause of death as "acute bilateral subdural hemorrhage," and the manner of death as "homicide." State's Exhibit 20. Another diagnosis included in Dr. Sohn's report was cerebral edema. *Id.*

At Mr. Hardin's bench trial for felony murder and child endangerment, a substitute witness—Franklin County Coroner Jan Gorniak—testified about the contents of Dr. Sohn's autopsy report. *Id.* at 2, 72-134. Dr. Gorniak agreed with Dr. Sohn's conclusions. Tr. at 127. The report was admitted into evidence over the defense's Confrontation-Clause objection. *Id.* at 414. And, Dr. Gorniak's testimony, which referenced, relied, and depended upon Dr. Sohn's work and report, was also admitted over a continuing-Confrontation-Clause objection. *Id.* at 76, 85.

Mr. Hardin was convicted by the court of both counts and sentenced to a 15-year-to-life prison term for felony murder, and a six-year prison term for child endangering. *Id.* at 434-435. The sentences were ordered to run concurrently. *Id.* Mr. Hardin timely appealed. *State v. Hardin*, 193 Ohio App.3d 666, 2010-Ohio-6304, 953 N.E.2d 847, ¶ 1 (4th Dist.).

On appeal, Mr. Hardin challenged Dr. Gorniak's surrogate testimony under the Confrontation Clause. *Id.* Relying on this Court's decision in *State v. Craig*, 110 Ohio St.3d 306, 2006-Ohio-4571, 853 N.E.2d 621 ("*Craig I*"), *cert. denied*, 549 U.S. 1255 (2007), the court of appeals affirmed the trial court. *Hardin* at ¶ 20-21. This Court accepted Mr. Hardin's appeal, stayed briefing, and held the case for its decision in *State v. Craig*, Case No. 2006-1806 ("*Craig II*"). (April 20, 2011 Entry). *Craig II* was expected to answer the question presented in this case. *Id.* But that case was dismissed due to Mr. Craig's

death. (December 28, 2012 Motion to Dismiss, *Craig II*); (January 11, 2013 Entry, *Craig II*). Accordingly, this Court reinstated briefing in this case. (January 25, 2013 Entry).

ARGUMENT

PROPOSITION OF LAW

The Confrontation Clause prohibits the State from introducing testimonial statements of a nontestifying coroner through the in-court testimony of a third party who did not perform or observe the autopsy on which the statements are based. Sixth and Fourteenth Amendments, United States Constitution; Section 10, Article I, Ohio Constitution.

Dr. Sohn wrote Jr.'s autopsy report under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial. Accordingly, the primary purpose of Dr. Sohn's autopsy report, which included a "homicide" manner-of-death finding, was its use at a later criminal proceeding. And the report was generated through a formalized process bearing sufficient indicia of solemnity. In combination, those facts made the report testimonial.

Being testimonial, the report could not be offered through a substitute witness. But it was. Thus, Mr. Hardin's right to confront the witnesses against him was violated.

I. THE CURRENT CONFRONTATION-CLAUSE FRAMEWORK.

Confrontation-Clause challenges are no longer decided through a reliability-focused inquiry, but rather by a testimonial-based query. *See* Part B(1), below. The crux of the testimonial determination has evolved through many decisions from the Supreme Court of the United States. Put simply, the Confrontation Clause requires courts to initially determine the primary purpose of an autopsy report. If a report's primary

purpose was evidentiary, courts would then analyze the report's formality and indicia of solemnity to determine if it was testimonial. *See* Part B(6), below.

An alternative approach, under this Court's precedent, would be to analyze specific statements contained within the report, in which courts would have to determine the primary purpose of the specific "homicide" manner-of-death finding. *See* Part B(7), below. If that finding's primary purpose was forensic, courts would then analyze the finding's formality and indicia of solemnity to determine if it was testimonial. *See* Part B(6), below.

A. The Sixth Amendment Right to Confrontation.

"The Sixth Amendment's Confrontation Clause provides that, '[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.' . . . [T]his bedrock procedural guarantee applies to both federal and state prosecutions." *Crawford v. Washington*, 541 U.S. 36, 42, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), quoting *Pointer v. Texas*, 380 U.S. 400, 406, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965). Section 10, Article I of the Ohio Constitution provides the same right of confrontation as the Sixth Amendment. *State v. Self*, 56 Ohio St.3d 73, 79, 564 N.E.2d 446 (1990).

B. The governing precedent.

1. *Crawford.*

In *Crawford v. Washington*, the Supreme Court of the United States re-established the right to confrontation that was substantially impaired by the indicia-of-reliability approach formerly sanctioned by *Ohio v. Roberts*, 448 U.S. 56, 100 S.Ct. 2531, 65 L.Ed.2d 597 (1980). Under *Crawford*, the Confrontation Clause prohibits the prosecution from

introducing "testimonial" hearsay against a criminal defendant unless the declarant is unavailable and the defendant has—or had—an opportunity for cross-examination. *Crawford* at 68. Although the Court did not comprehensively define "testimonial," the Court instructed that the right to confrontation is designed to assess reliability "in a particular manner: by testing in the crucible of cross-examination." *Id.* at 61, 68.

2. *Davis.*

Two years later, in *Davis v. Washington*, 547 U.S. 813, 821, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006), the Court considered whether a caller's responses to a dispatcher's questioning during a 9-1-1 telephone conversation were testimonial when the caller did not testify at trial. The Court concluded that the circumstances surrounding the questioning "objectively indicate its primary purpose was to enable police assistance to meet an ongoing emergency. [The caller] simply was not acting as a *witness*; she was not *testifying*." (Emphasis sic.) *Davis* at 828. Accordingly, the caller's out-of-court statements were not testimonial and were not barred by the Sixth Amendment. *Id.* at 829.

In *Davis*, the Court also considered a companion case, in which a domestic-violence complainant did not testify at trial. *Id.* at 819-820. The police officer who interviewed the victim at the scene of the incident, and witnessed her complete and sign an affidavit concerning the abuse that she had suffered, testified at trial in order to authenticate the affidavit. *Id.* at 820. The Court concluded that "[i]t is entirely clear from the circumstances that the interrogation was part of an investigation into possibly criminal past conduct—as, indeed, the testifying officer expressly acknowledged."

(Citation omitted.) *Id.* at 829. Accordingly, the hearsay evidence was testimonial and was barred by the Sixth Amendment. *Id.* at 834. The Court held that statements are nontestimonial "when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency." *Id.* at 822. And they are testimonial "when the circumstances objectively indicate that there is no such ongoing emergency," but rather demonstrate that "the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Id.*

3. *Bryant.*

Two years ago, in *Michigan v. Bryant*, 562 U.S. ___, 131 S.Ct. 1143, 179 L.Ed.2d 93 (2011), the Court further explained that when determining whether the Confrontation Clause bars the admission of a statement at trial, courts should ascertain "the 'primary purpose of the interrogation' by objectively evaluating the statements and actions of the parties to the encounter, in light of the circumstances in which the interrogation occurs." *Bryant* at 1162. The Court also instructed that "the existence and duration of an emergency depend on the type and scope of danger posed to the victim, the police, and the public." *Id.*

4. *Melendez-Diaz.*

The Court first evaluated whether forensic laboratory reports were testimonial in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009). In that case, a notarized lab report, detailing the results of chemical tests that were performed on drugs, was admitted into evidence under state law as "prima facie

evidence of the composition, quality, and the net weight of the narcotic . . . analyzed." *Id.* at 309. And the report was "'made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.'" *Id.* at 311, quoting *Crawford* at 52.

Accordingly, the Court held that forensic laboratory reports were testimonial evidence, and that the prosecution violates a defendant's right to confrontation when it introduces a nontestifying analyst's report through the testimony of a third party. *Melendez-Diaz* at 311, 329. Consequently, notarized scientific reports cannot be used as substantive evidence against a defendant unless the analyst who prepared and certified the report was subject to confrontation. *Id.*

5. *Bullcoming.*

In *Bullcoming v. New Mexico*, 564 U.S. ___, 131 S.Ct. 2705, 180 L.Ed.2d 610 (2011), a forensic report showed that the defendant's blood-alcohol concentration exceeded the legal limit for drivers. *Bullcoming* at 2709. The report was not notarized, but there was a certification regarding its accuracy. *Id.* at 2710-2711. The State tried to introduce that finding through the testimony of a person who worked at the laboratory, but who had not performed or observed the blood test or certified its results. *Id.* at 2712.

The Court held that *Melendez-Diaz* foreclosed that tactic. *Id.* at 2716. The Court explained that the report resembled the certificates in *Melendez-Diaz* in "all material respects." *Id.* at 2717. Both were signed documents providing the results of forensic testing designed to "'prov[e] some fact' in a criminal proceeding." *Id.* at 2716, quoting *Melendez-Diaz* at 310.

Further, the Court found that the State's resort to a substitute witness, in place of the analyst who authored the report, did not satisfy the Confrontation Clause. *Id.* at 2710. Only the presence of "that particular scientist" would enable Mr. Bullcoming's counsel to ask "questions designed to reveal whether incompetence . . . or dishonesty" had tainted the results. *Bullcoming* at 2715. Repeating the refrain of *Melendez-Diaz*, the Court held that "[t]he accused's right is to be confronted with" the actual analyst, unless he is unavailable and the accused "had an opportunity, pretrial, to cross-examine" him. *Id.* at 2710.

6. *Williams.*

Williams v. Illinois, ___ U.S. ___, 132 S.Ct. 2221, 183 L.Ed.2d 89 (2012), is the latest Confrontation-Clause decision from the Court. The decision is a plurality opinion, and although Justice Thomas concurred in the judgment, he did not sign onto that opinion, which makes his analysis controlling. *See Marks v. United States*, 430 U.S. 188, 193, 97 S.Ct. 990, 51 L.Ed.2d 260 (1977) (explaining that when a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court is the position taken by those members who concurred in the judgment on the narrowest grounds).

Consequently, determining *Williams's* full precedential value requires a close examination of three opinions—the plurality, authored by Justice Alito and joined by Chief Justice Roberts and Justices Kennedy and Breyer; the dissent, authored by Justice Kagan and joined by Justices Scalia, Ginsburg, and Sotomayor; and Justice Thomas's opinion concurring in the judgment only. Notably, none of the rationales detailed in

the plurality opinion received five votes. *Williams* at 2255 (Thomas, J., concurring in judgment). Accordingly, none of those rationales constitute the law. *Id.*

But three rationales received five votes from the four dissenters and Justice Thomas. *Id.* First, the statements in the private DNA lab's report, which established that a male DNA profile came from the victim's swabs and was successfully derived, and were referenced at trial by a State analyst, were offered for their truth and were hearsay. *Id.* at 2257-2259 (Thomas, J., concurring in judgment); *Id.* at 2268-2270 (Kagan, J., dissenting). As such, they could not be admitted as basis testimony for the State analyst's expert opinion. *Id.*

Second, the reformulated primary-purpose test of the plurality, asking whether an out-of-court statement has the primary purpose of accusing a targeted individual of engaging in criminal conduct, is not consistent with the Confrontation Clause, *Melendez-Diaz*, and *Bullcoming*. *Id.* at 2261-2263 (Thomas, J., concurring in judgment); *Id.* at 2273-2274 (Kagan, J., dissenting). Therefore, it is not the law. *Id.*

Third, the fact that Mr. Williams was convicted after a bench trial, as opposed to a jury trial, was inconsequential to his Confrontation-Clause challenge. *Id.* at 2257, fn. 1 (Thomas, J., concurring in judgment); *Id.* at 2270 (Kagan, J., dissenting). The statements in the private-DNA laboratory report could not be admitted as basis testimony for the State analyst's expert opinion. *Id.* at 2257-2259 (Thomas, J., concurring in judgment); *Id.* at 2268-2270 (Kagan, J., dissenting). Thus, the identity of the factfinder was irrelevant to the question of whether there was a Confrontation-Clause violation. *Id.* at 2257, fn. 1 (Thomas, J., concurring in judgment); *Id.* at 2270 (Kagan, J., dissenting).

Other than those three aspects endorsed by five justices, the controlling law from *Williams* is Justice Thomas's opinion. Accordingly, there is a two-part test from *Williams* that lower courts must apply to determine if an out-of-court statement is testimonial: does the statement have a primary purpose to establish or prove past events potentially relevant to later criminal prosecution; and, does the statement originate from a formalized process bearing sufficient indicia of solemnity. *Id.* at 2259-2261 (Thomas, J., concurring in judgment).

7. *Arnold.*

This Court has added to the framework in Ohio. Addressing one category of public-servant professionals who are sometimes involved in criminal investigations, this Court explained that child advocates often have a dual capacity which can lead to both testimonial and nontestimonial statements depending on the primary purpose of the specific statement. *State v. Arnold*, 126 Ohio St.3d 290, 2010-Ohio-2742, 933 N.E.2d 775, ¶ 41. That dual capacity can constitute "both a forensic interviewer collecting information for use by the police and a medical interviewer eliciting information necessary for diagnosis and treatment." *Id.* at ¶ 44. Statements by child victims to child advocates that describe past events of abuse, were made in formal interviews with no medical emergency afoot, and which convey no medical-diagnostic information, are forensic. *Id.* at ¶ 35. Such statements are, therefore, testimonial. *Id.*

C. Applying the current Confrontation-Clause framework to this case.

In this case, the out-of-court statement is Dr. Sohn's autopsy report. This Court must first apply the test from *Davis*, which is whether the out-of-court statement has a

primary purpose "to establish or prove past events potentially relevant to later criminal prosecution." *Davis* at 822; *Melendez-Diaz* at 310; *Bullcoming* at 2716; *Williams* at 2261 (Thomas, J., concurring in judgment). That process consists of "objectively evaluating the statements and actions of the parties to the encounter, in light of the circumstances in which" the out-of-court statement was made. *Bryant* at 1162. And determining whether the statement was "'made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.'" *Melendez-Diaz* at 311, quoting *Crawford* at 52. Second, if the autopsy report had a primary evidentiary purpose for Mr. Hardin's trial, this Court must determine whether the report is a formal, solemn statement. *Williams* at 2259-2261 (Thomas, J., concurring in judgment).

Alternatively, if this Court finds that the whole autopsy report was not testimonial, this Court must first decide whether the specific "homicide" manner-of-death finding was testimonial under *Arnold*. If it was, this Court would then have to decide whether the specific "homicide" manner-of-death finding was a formal, solemn statement. *Williams* at 2259-2261 (Thomas, J., concurring in judgment).

II. APPLYING THE CONFRONTATION-CLAUSE FRAMEWORK TO THE USE OF AUTOPSY REPORTS AT TRIAL.

Even as business records, autopsy reports with a "homicide" manner-of-death finding are testimonial, because that business-record status is irrelevant to a Confrontation-Clause challenge. *See Melendez-Diaz* at 321-324 (explaining that a business record can fall within the protection of the Confrontation Clause). Such

reports serve as an out-of-court substitute for trial testimony. *See Davis* at 822; *Melendez-Diaz* at 310; *Bullcoming* at 2716; *Williams* at 2261 (Thomas, J., concurring in judgment). They are "'made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.'" *Melendez-Diaz* at 311, quoting *Crawford* at 52. And they are formal, solemn statements. *Williams* at 2259-2261 (Thomas, J., concurring in judgment). Accordingly, as held by the Supreme Courts of New Mexico and West Virginia, they are testimonial. *See Navarette* at ¶ 8-23; *Kennedy* at 916-917. This Court should rule the same way.

A. The primary purpose of an autopsy report that includes a "homicide" manner-of-death finding is to establish or prove past events potentially relevant to later criminal prosecution.

1. The objective factors surrounding an autopsy report.

a. Ohio's coroner-enabling statutes.

i. The duties and powers of a coroner.

An autopsy must be performed—without exception—when a death involves "aggravated murder, suspected aggravated murder, murder, suspected murder, manslaughter offenses, or suspected manslaughter offenses," or any child under two years of age who "die[d] suddenly when in apparent good health." R.C. 313.131(F); R.C. 313.121. And an autopsy serves a compelling public necessity when it is "necessary to the conduct of an investigation by law enforcement officials of a homicide or suspected homicide, or any other criminal investigation." R.C. 313.131(C)(1).

Moreover, all criminal, violent, suspicious, unusual, or sudden deaths must be immediately reported to the coroner. R.C. 313.12. And coroners have subpoena,

investigation, and jailing power, and a coroner's cause-of-death and manner-of-death conclusions are legally binding. R.C. 313.17; R.C. 313.20; R.C. 313.19.

ii. The mandated cooperation between coroners, law enforcement, and prosecutors.

The sanctioned reporting of all criminal, violent, suspicious, unusual, or sudden deaths to the coroner must be made by law enforcement and must include the "known facts concerning the time, place, manner, and circumstances of the death." R.C. 313.12. Similarly, the death of any child under two years of age who "dies suddenly when in apparent good health," must be reported by law enforcement to the coroner. R.C. 313.121.

And a coroner must hold all dead bodies until the coroner can, "after consultation with the prosecuting attorney" or "police department" or "sheriff," "decide on a diagnosis giving a reasonable and true cause of death, or to decide that such body is no longer necessary to assist any such official in his duties." R.C. 313.15. Finally, a coroner must promptly inform the prosecuting attorney of every death that the coroner believes is worthy of further investigation, and the coroner can request further investigation by law enforcement. R.C. 313.09.

b. Forensic pathology is inherently investigative, and findings made by forensic pathologists bear testimony that steers prosecutorial decisions in violent deaths.

"Forensic pathology is the subspecialty of medicine devoted to the investigation and physical examination of persons who die a sudden, unexpected, suspicious, or violent death." *Strengthening Forensic Science in the United States* at 256. The term

specifically encompasses "deaths that are of interest to the legal 'forum.'" *Id.* Forensic autopsies are by definition prepared for the legal system in order to determine the cause and manner of death in "sudden," "unexpected," and "violent" deaths. David Dolinak et al., *Forensic Pathology: Principles and Practice* 66 (2005). Because "medical evidence" is required to "prove beyond a reasonable doubt that violence caused or contributed to death," it is "essential in any prosecution for homicide." Lester Adelson, *The Pathology of Homicide* 919-920 (1974).

Therefore, in such prosecutions, the medical evidence supporting cause-of-death and manner-of-death findings, and those findings themselves, bear testimony against the accused. *See Crawford* at 51. In fact, forensic pathologists operate under the premise that "every case should be approached as if the case is to eventually go to trial." Dolinak et al. at 669. And throughout the autopsy, "the forensic pathologist must recognize, collect, and preserve medical evidence" to be included in the report "for possible future testimony." *Id.*

And, while "all homicides are violent deaths . . . [not] all violent deaths are . . . homicides." Adelson at 17. "Until the pathologist has demonstrated that death was produced directly or indirectly by some kind of violence or culpable negligence, there is no homicide to investigate." *Id.* at 19. Accordingly, in many violent deaths, the medical evidence derived from a forensic pathologist's death investigation is instrumental in prosecutorial decisions.

c. Autopsy findings are reached before the report is generated, and those findings are meaningfully dependent upon information provided by law enforcement.

"An ideal autopsy report is goal oriented and based on awareness of the needs of investigators who must depend upon the report." Dolinak et al. at 2. "The pathologist should know what occurred prior to the autopsy and should present data in a clear and logical order specific to case investigative needs." *Id.* at 2-3.

Thus, before an autopsy is interpreted and reduced to a report, "circumstances prior to death must be considered." *Id.* at 4. Those circumstances consist of historical data that has two parts: "demographic data pertaining to the victim profile plus circumstances leading up to death." *Id.*

The scene of death "is pertinent in every death investigation, and is essential for the determination of the cause and manner of death for certain scenarios." *Id.* at 9. Consequently, forensic pathologists often go to crime scenes, at which they "advise [law enforcement] about the nature of the death." *Id.* And they work with "law enforcement cooperatively in a team environment." *Id.* at 10. In that process, information travels both directions, which is invaluable to both the pathologist and to law enforcement. *Id.* at 9. Autopsy findings are dependent upon "circumstantial information from the death scene and witnesses of the event," as well as information "from family members, law enforcement, and others," and the value of that circumstantial information cannot be "overemphasized." *Id.* at 66.

d. The history of coroners and medical examiners.

Coroners and medical examiners have a deep-rooted historical connection with law enforcement and prosecutors. *Strengthening Forensic Science in the United States* at 241-243. That connection started in England and has remained to this day. *Id.* It is so intertwined that model laws have been drafted "to provide a means whereby greater competence can be assured in determining causes of death where criminal liability may be involved." (Citation omitted.) *Id.* And, in practice, law enforcement personnel frequently attend or observe autopsies while they are performed. Julian L. Burton et al., *The Hospital Autopsy 3d Edition: A Manual of Fundamental Autopsy Practice* 67 (2010).

B. Autopsy reports are formalized, solemn statements.

A coroner must keep a complete record of all autopsies performed, those records must be indexed, and the records are the property of the county. R.C. 313.09. The records are public records, certified by the coroner, and shall be received as evidence in a civil or criminal proceeding as to the facts contained in those records. R.C. 313.10. Procedurally, as certified public records, they are self-authenticating. *Id.*; Evid.R. 902(4). And, in function, autopsy reports innately attest their own authenticity and accuracy. *See* Dolinak et al. at 2-4. The procedures used are exhaustively documented and described. *Id.* The date, time, and pathologist performing the autopsy are included. Most notably, reports of forensic autopsies are prepared in anticipation of litigation. *Id.* at 4.

Thus, they are incontrovertibly "a solemn declaration or affirmation made for the purpose of establishing or proving some fact." *Crawford* at 51, quoting 2 N. Webster, An

American Dictionary of the English Language (1828). Accordingly, autopsy reports are certified declarations of fact that are "similar in solemnity to the Marian examination practices that the Confrontation Clause was designed to prevent." *See Williams* at 2260-2261 (Thomas, J., concurring in judgment), citing *Davis* at 835-836 (Thomas, J., concurring in the judgment in part); *see also Navarette* at ¶ 8-23; *Kennedy* at 916-917.

C. An autopsy report with a "homicide" manner-of-death finding is offered for its truth even if it forms the basis for an expert's opinion.

Like the statements describing the DNA profile that was attained and documented by the private lab in *Williams*, the statements in an autopsy report with a "homicide" manner-of-death finding are offered for their truth. *See Williams* at 2257-2259 (Thomas, J., concurring in judgment); *Id.* at 2268-2270 (Kagan, J., dissenting). The statements have no purpose, and no relevance to the criminal proceeding, separate from their truth. *Id.* at 2269 (Kagan, J., dissenting). And only the Confrontation Clause, which tests reliability in the "crucible of cross-examination," is a sufficient limit on such statements from a witness who does not testify at trial. *Id.* at 2259 (Thomas, J., concurring in judgment), citing *Crawford* at 61.

D. The opportunity to cross-examine a substitute witness does not satisfy the Confrontation Clause.

Irrespective of the presumed reliability of autopsy reports, "[d]ispensing with confrontation because testimony is obviously reliable is akin to dispensing with jury trial because a defendant is obviously guilty. This is not what the Sixth Amendment prescribes." *Crawford* at 62. And "analysts who write reports that the prosecution introduces must be made available for confrontation even if they possess 'the scientific

acumen of Mme. Curie and the veracity of Mother Teresa.'" *Bullcoming* at 2715, quoting *Melendez-Diaz* at 327, fn. 6. Cross-examination of the person who performed the autopsy is the only way to determine whether incompetence, bias, or dishonesty tainted the results. *See Bullcoming* at 2709, 2715.

E. Alternatively, the primary purpose of a specific "homicide" manner-of-death finding within an autopsy report is to establish or prove past events potentially relevant to later criminal prosecution.

1. The dual-purpose concept of *State v. Arnold.*

This Court has recognized that public-servant professionals can become involved in criminal investigations and serve a dual purpose. *Arnold* at ¶ 41. Coroners and medical examiners serve dual purposes. *Strengthening Forensic Science in the United States* at 244. "They serve the criminal justice system as medical detectives by identifying and documenting pathologic findings in suspicious or violent deaths and testifying in courts as expert medical witnesses." *Id.* And, "as public health officers, they surveil for index cases of infection or toxicity that may herald biological or chemical terrorism, identify diseases with epidemic potential, and document injury trends." *Id.*

2. Under *Arnold*, a "homicide" manner-of-death finding is solely forensic.

Identifying a death as a homicide typically has no public-health implications. And any value such a finding brings to the public's necessity for thorough and accurate records pales in comparison to its value to the public's demand for justice. Thus, as the child victim statements made to child advocates describing past events of abuse were solely intended for use at a later criminal prosecution, so too are "homicide" manner-of-

death findings. *See Armold* at ¶ 35. As such, manner-of-death findings are testimonial. *Id.*

III. DR. SOHN'S AUTOPSY REPORT, ANALYZED UNDER THE CONFRONTATION-CLAUSE FRAMEWORK.

Dr. Sohn's autopsy report is testimonial. *See Navarette* at ¶ 8-23; *Kennedy* at 916-917. And Dr. Gorniak's surrogate testimony did not satisfy the Confrontation Clause. *Bullcoming* at 2710. Accordingly, the report was not admissible without testimony from Dr. Sohn. Alternatively, the "homicide" manner-of-death finding was not admissible without testimony from Dr. Sohn. *Arnold* at ¶ 35.

A. The primary purpose of Dr. Sohn's autopsy report was to establish and prove its facts at Mr. Hardin's trial.

Ohio Revised Code Sections 313.121 and 313.09 mandated that an autopsy be performed on Jr., that the results of that autopsy be reduced to a report, and that the report be provided to law enforcement. And police reports detailing the investigation into Jr.'s death were subpoenaed and were crucial to the "homicide" manner-of-death finding. Tr. at 104, 116, 126-127. In fact, a manner-of-death finding was not possible without law enforcement input. *Id.* at 117, 119-122, 124. Dr. Gorniak specifically read from police reports during her testimony to explain how the manner-of-death finding incorporated the facts and circumstances known about Jr.'s death. *Id.* at 117. And she explained that the police report was integral to the manner-of-death finding. *Id.* at 119.

Moreover, the autopsy report documents medical knowledge and applies it to the field of law. *Id.* at 73. Finally, the autopsy report is legally binding. R.C. 313.19. Accordingly, Dr. Sohn's report was "'made under circumstances which would lead an

objective witness reasonably to believe that the statement would be available for use at a later trial.'" *Melendez-Diaz* at 311, quoting *Crawford* at 52. And the primary purpose of Dr. Sohn's autopsy report was to prove its findings at Mr. Hardin's trial. *See Navarette* at ¶ 8-23; *Kennedy* at 916-917.

B. Dr. Sohn's autopsy report was a formal, solemn statement.

Dr. Sohn performed the mandatory autopsy and documented the results in his report. State's Exhibit 20. Dr. Sohn signed his report. *Id.* His statements in that report innately endorse the accuracy of his autopsy. *Id.* The statements carry statutorily-mandated legal significance. R.C. 313.09; R.C. 313.19. His report was generated in anticipation of a later criminal prosecution. *Id.*; Tr. at 73. As a certified public record, the report was a self-authenticating document. Evid.R. 902(4). And, again, statutes mandated that an autopsy be performed on Jr., and that the results of that autopsy be provided to law enforcement. R.C. 313.121. Therefore, the report was "similar in solemnity to the Marian examination practices that the Confrontation Clause was designed to prevent." *See Williams* at 2260-2261 (Thomas, J., concurring in judgment), citing *Davis* at 835-836 (Thomas, J., concurring in the judgment in part); *see also Navarette* at ¶ 8-23; *Kennedy* at 916-917. It was a formal, solemn statement that must be tested in the crucible of cross-examination. *See Williams* at 2259-2261 (Thomas, J., concurring in judgment); *see also id.* at 2276-2277 (Kagan, J., dissenting).

C. The autopsy report was offered for its truth even if it formed the basis for Dr. Gorniak's opinion.

Dr. Gorniak testified that she could not have reached her own conclusions without Dr. Sohn's autopsy report. Tr. at 122, 125, 127. The report was admitted into evidence. *Id.* at 414. And the report had no value or relevance to Mr. Hardin's trial if its statements were not true. *Williams* at 2257-2259 (Thomas, J., concurring in judgment); *Id.* at 2268-2270 (Kagan, J., dissenting). Accordingly, the report was offered for its truth and it could not be admitted even if it provided the basis for Dr. Gorniak's expert opinion. *Id.*

D. The opportunity to cross-examine Dr. Gorniak did not satisfy the Confrontation Clause.

Dr. Sohn had to "be made available for confrontation even if [he] possess[ed] 'the scientific acumen of Mme. Curie and the veracity of Mother Teresa.'" *Bullcoming* at 2715, quoting *Melendez-Diaz* at 327, fn. 6. Cross-examination of Dr. Sohn was the only way to determine whether incompetence, bias, or dishonesty tainted his results. *Bullcoming* at 2709, 2715. Therefore, the opportunity to cross-examine Dr. Gorniak was insufficient under the Confrontation Clause. *Bullcoming* at 2710.

E. Alternatively, the primary purpose of Dr. Sohn's specific "homicide" manner-of-death finding was to prove that fact at Mr. Hardin's trial.

Dr. Sohn's "homicide" manner-of-death finding had no relevance to public-health considerations. It was solely intended for use by law enforcement and at trial. *Arnold* at ¶ 35, 41. And it was part of a formal, solemn report. *See* Section III, Part B, above; *see also* State's Exhibit 20; R.C. 313.09; R.C. 313.121; R.C. 313.19; Evid.R. 902(4).

Thus, it was testimonial. *Arnold* at ¶ 35, 41; *Williams* at 2259-2261 (Thomas, J., concurring in judgment).

IV. THE CONFRONTATION-CLAUSE VIOLATION WAS NOT HARMLESS BEYOND A REASONABLE DOUBT.

Whether a constitutional error was harmless beyond a reasonable doubt depends upon "whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction." *Chapman v. California*, 386 U.S. 18, 23-24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967), quoting *Fahy v. Connecticut*, 375 U.S. 85, 86-87, 84 S.Ct. 229, 11 L.Ed.2d 171 (1963). The Confrontation-Clause violation in this case patently contributed to Mr. Hardin's conviction for felony murder. Dr. Gorniak's surrogate testimony was the only proof establishing that Jr.'s death was "a proximate result" of Mr. Hardin's commission of second-degree felony child endangering. "Causing the death as a proximate result" of the child-endangering offense is an element of felony murder under the facts of this case. R.C. 2903.02(B).

Mr. Hardin's limited admissions, both to law enforcement and to Jr.'s mother, only prove elements of his child-endangerment conviction. They do not establish that Jr. died as a proximate result of Mr. Hardin's actions. Similarly, the other medical expert's testimony—Nationwide Children's Hospital Dr. Scribano, who never treated Jr. but reviewed numerous documents including the autopsy report—only established the extent and cause of Jr.'s injuries, not the cause and manner of death. Tr. at 373; *Hardin* at ¶ 32. Notably, Dr. Scribano described the autopsy report as the "gold standard" for determining cause and manner of death. Tr. at 359. And he partially based his

conclusion on the autopsy report. *Hardin* at ¶ 32. To the extent that Dr. Scribano's testimony relied on the autopsy report, it too violated the Confrontation Clause. *See* Sections II and III. Accordingly, Mr. Hardin could not have been convicted of felony murder without Dr. Gorniak's surrogate testimony. *Chapman* at 23-24, quoting *Fahy* at 86-87.

Moreover, the State did not argue harmless error beyond a reasonable doubt on appeal. *Hardin* at ¶ 11-21. And the court of appeals did not make a harmless-error-beyond-a-reasonable-doubt finding. *Id.* The Confrontation-Clause violation "contributed to [Mr. Hardin's] conviction," and reversal is required. *Chapman* at 23-24, quoting *Fahy* at 86-87.

V. THE SHAKEN-BABY-SYNDROME CONTROVERSY.

This was a shaken-baby-syndrome case. For decades, shaken-baby syndrome was an accepted medical and legal diagnosis. Keith A. Findley et al., *Shaken Baby Syndrome, Abusive Head Trauma, and Actual Innocence: Getting It Right*, 12 Hous. J. Health L. & Pol'y 209, 212 (2012). The traditional diagnosis rested entirely on three internal findings: subdural hemorrhaging (bleeding between the membranes that surround the brain), retinal hemorrhaging (bleeding inside the surface of the back of the eye), and cerebral edema (brain swelling). Rachel Burg, Note, *Un-Convicting the Innocent: The Case for Shaken Baby Syndrome Review Panels*, 45 U. Mich. J.L. Reform 657, 663 (2012). The constellation of those three findings is known as the triad of symptoms, and for years it's presence meant that—if the child had not been in a high-speed car accident, or had

not fallen from a multistory building—the injuries could have only been caused by abuse. *Id.*; Findley et al. at 214.

But there is now widespread, if not universal, agreement that the presence of the triad alone—or its individual components—is not enough to diagnose abuse. Findley et al. at 213. In fact, even a leading proponent of shaken-baby syndrome has testified in court that "[w]e have enormous gaps in our knowledge. Anything anyone says [about shaken-baby syndrome] is informed speculation, not scientifically proven fact, including what I say in [my] reports." *Id.* at 262.

The criticism and controversy is complex, nuanced, and spreads across multiple disciplines including neuropathology, neuroradiology, neurology, biomechanics, and neurosurgery. *Id.* at 212-306; Burg at 663-677. But, in short, shaken-baby syndrome is now scientifically questionable. Burg at 660. And many people have been wrongly accused of and criminally charged with abuse due to those shortcomings. *Id.* at 657-660, 674-677; *see also* Denise Grollmus, Cleveland Scene Magazine, *Guilty Until Proven Innocent: Two Families Suffer From a Doctor's Best Intentions* (April 18, 2007), available at http://www.clevescene.com/cleveland/guilty-until-proven-innocent/Content?oid=1498292 (accessed March 10, 2013).

When a shaken-baby syndrome case involves a death, the autopsy report is the "gold standard" for diagnosing abuse as the cause of death. Tr. at 359. Thus, given the challenged—if not flawed—status of shaken-baby syndrome as a medical and legal diagnosis, the value of confrontation is magnified. *See generally Melendez-Diaz* at 318-

321 (explaining that confrontation is necessary even when the science appears to be innately neutral and reliable).

VI. SOLVING THE UNAVAILABLE-WITNESS DILEMMA.

Without question, many situations could arise to make the person who performed the autopsy and authored the report genuinely unavailable. In such situations, there is an easy, practical solution. *See generally*, George M. Tsiatis, Note, *Putting Melendez-Diaz on Ice: How Autopsy Reports Can Survive the Supreme Court's Confrontation Clause Jurisprudence?*, 85 St. John's L. Rev. 355, 389-394 (2011).

The cause-of-death and manner-of-death findings could be redacted and the remainder of the autopsy report could be offered to the substitute witness as a hypothetical. The substitute witness could then offer their own, independent cause-of-death and manner-of-death findings based upon the hypothetical information provided. Although the hypothetical presentation would not explicitly connect the independent finding by the substitute witness to the specific victim of the case, and would not prove the underlying facts for that independent conclusion through direct evidence, the connection could be sufficiently made, and those facts sufficiently proven, with circumstantial evidence provided by the substitute witness. That could be accomplished through two, simple follow-up questions: "Based upon what you have learned about this case, is the hypothetical information provided to you consistent with the facts of this case?" and "Based upon the totality of the circumstances that you know about this case, do you believe to a reasonable degree of medical certainty, that the

proposed hypothetical information is an accurate representation of the facts established during the autopsy?"

Direct and circumstantial evidence inherently possess the same probative value. *State v. Treesh*, 90 Ohio St.3d 460, 485, 739 N.E.2d 749 (2001), citing *State v. Jenks*, 61 Ohio St.3d 259, 272, 574 N.E.2d 492 (1991). And, generally, the law presumes jurors are sophisticated enough to follow curative instructions demanding that they exclude improper information from their deliberations. *See State v. Franklin*, 62 Ohio St.3d 118, 127, 580 N.E.2d 1 (1991), citing *Parker v. Randolph*, 442 U.S. 62, 74-75, 99 S.Ct. 2132, 60 L.Ed.2d 713 (1979). This is no different. Jurors would understand the testimony, know what it meant, and be free to find that the substitute witness's testimony established proof beyond a reasonable doubt. And, importantly, the defendant would get what the Confrontation Clause demands: to test his accuser "in the crucible of cross-examination." *Crawford* at 61.

CONCLUSION

Mr. Hardin was suspected of killing his son. The autopsy report identified the cause of death as an acute bilateral subdural hemorrhage, and the manner of death as homicide. The pathologist who performed the autopsy and authored the report did not testify. A substitute pathologist did testify, and during her testimony she explicitly relied on the report and its findings. Further, the report was admitted into evidence. But the report was testimonial. Accordingly, its admission and the substitute witness's testimony about the report violated Mr. Hardin's constitutional right to confrontation.

The autopsy report was testimonial for two reasons. Its primary purpose was to prove the facts within it at Mr. Hardin's trial. And it was a formal, solemn document. As such, it could not be presented and admitted at trial through a substitute witness. Alternatively, the "homicide" manner-of-death finding was solely forensic and it was part of a formal, solemn document. It was, therefore, testimonial. Accordingly, it could not be presented and admitted at trial through a substitute witness.

Further, the Confrontation-Clause violation was not harmless beyond a reasonable doubt. The testimony providing the autopsy-report information was the only evidence that established the proximate-cause element of the felony-murder conviction. Without the autopsy-report information, Mr. Hardin could not have been convicted of felony murder.

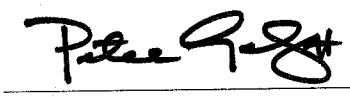
Two other considerations bolster those conclusions. First, shaken-baby-syndrome diagnoses can be controversial and tenuous. When a death is involved, the autopsy report and its conclusions are the gold standard. Thus, testing the source of those conclusions in the crucible of cross-examination is paramount under the Confrontation Clause.

Second, there is an easy, practical solution to ensure that the source of the conclusions presented at trial is the witness who is present on the stand, thereby ensuring that the conclusions are tested in the crucible of cross-examination as demanded by the Confrontation Clause.

Accordingly, because the trial court prevented Mr. Hardin from confronting his accuser through cross-examination, his convictions should be reversed and his case remanded for a new trial.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



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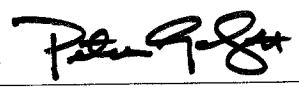
CERTIFICATE OF SERVICE

A copy of the foregoing **Appellant Jeffrey Hardin's Merit Brief** was sent via regular U.S. mail, postage prepaid to the office of Robert Junk, Pike County Prosecuting Attorney, 100 East Second Street, 1st Floor, Waverly, Ohio 45690, on this 21st day of March, 2013.



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IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2011-0122
Plaintiff-Appellee,	:	
	:	On Appeal from the Pike
v.	:	County Court of Appeals
	:	Fourth Appellate District
JEFFREY HARDIN,	:	Case No. 10CA803
	:	
Defendant-Appellant.	:	

APPENDIX TO

APPELLANT JEFFREY HARDIN'S MERIT BRIEF

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 11-0122
Plaintiff-Appellee,	:	On Appeal from the Pike County Court of Appeals Fourth Appellate District
v.	:	
JEFFREY HARDIN,	:	Court of Appeals Case No. 10CA803
Defendant-Appellant.	:	

NOTICE OF APPEAL OF JEFFREY HARDIN

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FILED
JAN 21 2011
CLERK OF COURT
SUPREME COURT OF OHIO

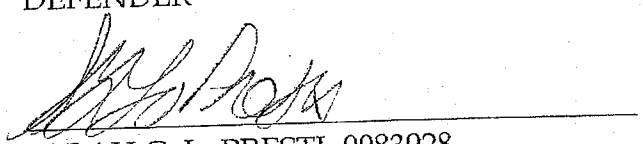
Notice of Appeal of Appellant Jeffrey Hardin

Appellant Jeffrey Hardin hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Pike County Court of Appeals, Fourth Appellate District, entered in Court of Appeals Case No. 10CA803, on December 10, 2010.

This case raises a substantial constitutional question, involves a felony, and is of public or great general interest.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



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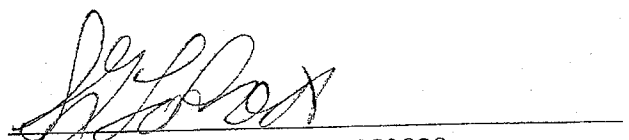
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Appeal of Jeffrey Hardin was sent by regular U.S. mail, postage prepaid to the office of Robert Junk, Pike County Prosecuting Attorney, 100 East Second Street, 1st Floor, Waverly, Ohio 45690, on this 21st day of January, 2011.



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IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PIKE COUNTY

STATE OF OHIO, Plaintiff-Appellee, v. JEFFREY HARDIN, Defendant-Appellant.	Case No: 10CA803 DECISION AND JUDGMENT ENTRY

APPEARANCES:

Timothy Young, Ohio Public Defender, and Spencer J. Cahoon, Assistant Ohio Public Defender, Columbus, Ohio, for Appellant.

Robert Junk, Pike County Prosecutor, Waverly, Ohio, for Appellee.

Kline, J.:

{¶1} Jeffrey Hardin ("Hardin") appeals his felony murder and endangering children convictions. Hardin contends that the trial court erred and admitted evidence contrary to his right to confront the witnesses against him under the Sixth Amendment of the United States Constitution. Hardin maintains that the testimony of the Franklin County Coroner violated his right to confrontation because the coroner was not present during the actual autopsy and relied on the observations and conclusions of a deputy coroner who actually conducted the autopsy. Because the Supreme Court of Ohio has previously ruled that coroner's reports are nontestimonial business records, we disagree.

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{¶2} Hardin next contends that the admission of the coroner's opinion and the opinion of another medical doctor, Dr. Scribano, violated the Ohio Rules of Evidence. Because we find that the underlying coroner's report was admissible as a self-authenticated public record, we disagree. And we further find that any error in the admission of the notes and records relied on by Dr. Scribano was harmless. Accordingly, we affirm the judgment of the trial court.

I.

{¶3} The events in this case concern the death of Jeffrey Hardin Junior ("Junior"). Junior was the son of Sasha Starkey and Hardin. On May 11, 2009, Starkey called 911 because Junior had stopped breathing.

{¶4} An emergency response was dispatched, consisting of both police and paramedics. By the time the paramedics arrived, Junior was pale, cool, and had no pulse. The paramedics attempted to resuscitate Junior while they transported him to the Pike Community Hospital. All attempts to resuscitate Junior were initially unsuccessful. Eventually, the emergency room personnel were able to reestablish Junior's heartbeat. Junior was then transferred to Nationwide Children's Hospital in Columbus. The doctors reestablished a pulse but were unable to reestablish Junior's respiration. And eventually, doctors at Nationwide Children's Hospital had little choice but to terminate Junior's life support.

{¶5} Along with paramedics, Corporal Rick Jenkins of the Piketon Police Department responded to the 911 call. Jenkins testified that, when he arrived, Hardin was extremely distraught. Hardin admitted that he tried to get the baby to sleep by

placing the child on a sofa and pressing up and down on the cushions causing the baby to gently shake.

{¶6} Jenkins also took a statement from Hardin, which stated, "I, Jeff Hardin, was having trouble with my son of 5 months. I had shake ... I had shuck [sic] him a couple of times. After that he started crying and fell asleep. He quit breathing." Hardin would later make a similar statement to a criminal investigator of the Pike County Prosecutor's Office. At trial, Hardin contended that he meant shake in a manner similar to that described in the preceding paragraph.

{¶7} After the child's death, the body was eventually taken to the Franklin County Coroner's Office for an autopsy. The autopsy was conducted by Dr. Steven S. Sohn, a deputy coroner, but, by the time of trial, Dr. Sohn no longer worked at the Franklin County Coroner's Office. Therefore, his supervisor, Dr. Jan Gorniak, testified as to her opinion of the cause of death. Dr. Gorniak testified that Junior's death was caused by a subdural hematoma due to non-accidental head trauma. Dr. Gorniak also testified that the death was a homicide and concluded that the injuries were caused by either blunt trauma or a shaking mechanism.

{¶8} Dr. Phillip Scribano is the medical director of the Center for Child and Family Advocacy at Nationwide Children's Hospital. Dr. Scribano testified that the particular injuries Junior suffered could not have been caused through the manipulation of sofa cushions as Hardin described. Rather, Dr. Scribano testified that the injuries could have only been caused by significantly more force. Hardin's counsel objected to the admission of both Dr. Gorniak's and Dr. Scribano's opinions.

{¶9} After a bench trial, the trial court found Hardin guilty of the offenses of felony murder, in violation of R.C. 2903.02(B), and endangering children, in violation of R.C. 2919.22(B)(1). The trial court sentenced Hardin to fifteen years to life on the felony murder conviction as well as six years on the endangering children conviction, sentences to be served concurrently.

{¶10} Hardin appeals and asserts the following two assignments of error: I. "When the court admitted the reports of multiple attending physicians and medical technicians without their testimony, Mr. Hardin's right to confront his accusers was violated." And, II. "The trial court erred by allowing expert testimony when the experts had neither directly perceived the facts leading to their opinions nor was the information underlying their opinions otherwise admissible."

II.

{¶11} Hardin first claims that the admission of the autopsy report violated his right "to be confronted with the witnesses against him" under the Sixth Amendment to the United States Constitution. The parties largely agree on the underlying facts of the argument. At trial, Dr. Gorniak, the Franklin County Coroner, testified as to her opinion as to what could and could not have caused the death of Junior. Dr. Gorniak did not perform the autopsy of Junior. Dr. Sohn instead performed the autopsy and reached a conclusion regarding the cause of death. Dr. Gorniak testified that she reached her conclusions independently of Dr. Sohn, but had to rely on the facts underlying Dr. Sohn's autopsy report. Dr. Boesel, a toxicologist, also attached a toxicology report to the autopsy report. Dr. Gorniak testified that, while Dr. Boesel's report was important, she could reach her conclusions independently of that report.

{¶12} Because Hardin's right to confront the witnesses against him involves a constitutional issue, our review is de novo. See, e.g., *Ohio Univ. Bd. of Trustees v. Smith*, 132 Ohio App.3d 211, 223.

{¶13} The United States Supreme Court has recently altered the law with respect to the Confrontation Clause, starting with *Crawford v. Washington* (2004), 541 U.S. 36. The *Crawford* Court held that statements elicited through police interrogation were within the "core class" of testimonial evidence, and "[w]here testimonial evidence is at issue * * * the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination." Id. at 51-52, 68.

{¶14} In *Crawford*, the Supreme Court declined to offer a comprehensive definition of what statements were or were not testimonial. Id at 68. Unsurprisingly, the question of whether a particular statement was a testimonial statement became a much litigated issue. Subsequently, the Supreme Court considered the question of testimonial statements again in *Davis v. Washington* (2006), 547 U.S. 813.

{¶15} *Davis* actually consisted of two separate cases. In the first, the relevant statements were made to a 911 emergency operator. Id. at 817-18. In the second, the police responded to a reported domestic disturbance. Id at 819. And, in the second case, the relevant statements were given after the wife had been separately questioned on the scene by the police officers. Id. at 819-20.

{¶16} The Supreme Court concluded that "[s]tatements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate

that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." Id. at 822. Accordingly, the Supreme Court found that the statements given to the 911 operator were not testimonial, while the statements elicited during the police interrogation were testimonial. Id. at 828-29, 830.

{¶17} After *Crawford*, the Supreme Court of Ohio considered a confrontation clause challenge with remarkably similar facts to the present case. See *State v. Craig*, 110 Ohio St.3d 306, 2006-Ohio-4571, at ¶88. The Supreme Court of Ohio held that a coroner's report was admissible notwithstanding *Crawford* because it was a nontestimonial business record. Id.

{¶18} The United States Supreme Court again revisited the question of testimonial hearsay in *Melendez-Diaz v. Massachusetts* (2009), --- U.S. ---, 129 S.Ct. 2527. In that case, the question was whether the admission of "certificates" for the purpose of establishing whether a particular substance consisted of cocaine violated the defendant's confrontation clause rights. Id. at 2531. The Supreme Court answered that question in the affirmative in a narrowly divided opinion. See id. at 2532.

{¶19} Among other arguments, the *Melendez-Diaz* Court rejected the state's argument that the certificates were business records. The Court stated: "Business and public records are generally admissible absent confrontation not because they qualify under an exception to the hearsay rules, but because--*having been created for the administration of an entity's affairs and not for the purpose of establishing or proving some fact at trial--they are not testimonial.* Whether or not they qualify as business or official records, the analysts' statements here--prepared specifically for use at

petitioner's trial--were testimony against petitioner, and the analysts were subject to confrontation under the Sixth Amendment." *Melendez-Diaz* at 2539-40 (emphasis added). The *Melendez-Diaz* Court specifically noted that the reason that the business record exception did not serve to render the certificates nontestimonial was because those certificates had been prepared expressly for trial. Id. at 2538. The implication is that if a document was prepared for an entity's internal needs, then that document is still nontestimonial. Therefore, notwithstanding the rejection of the majority in *Melendez-Diaz* of the business records justification, the coroner's report in this case may still be admissible without infringing on Hardin's constitutional rights so long as it was not prepared for the purpose of litigation.

{¶20} After consideration, Hardin provides no sound basis to distinguish this case from *Craig*, and we can discern none from the record. And the *Craig* Court, after consideration, determined that the coroner's report in that case was not prepared for the purposes of litigation and so was nontestimonial. See *Craig* at ¶82-88. A close reading of *Melendez-Diaz* demonstrates that the basis of *Craig*'s ruling remains good law under current United States Supreme Court precedent, and we are bound to apply *Craig*.

{¶21} Accordingly, we overrule Hardin's first assignment of error.

III.

{¶22} Hardin next contends that the admissions of Dr. Gorniak's and Dr. Scribano's opinions were contrary to the Ohio Rules of Evidence.

{¶23} "The admission or exclusion of relevant evidence rests within the sound discretion of the trial court." *State v. Sage* (1987), 31 Ohio St.3d 173, paragraph two of the syllabus. "An abuse of discretion involves more than an error of judgment or law; it

implies an attitude on the part of the trial court that is unreasonable, arbitrary, or unconscionable." *State v. Voycik*, Washington App. Nos. 08CA33 & 08CA34, 2009-Ohio-3669, at ¶13, citing *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. "In applying the abuse of discretion standard, we are not free to substitute our judgment for that of the trial court." *State v. Burkhart*, Washington App. No. 08CA22, 2009-Ohio-1847, at ¶19 (citations omitted).

{¶24} Specifically, Hardin contends that the admission of Dr. Gorniak's opinion violated Evid.R. 703. "The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by the expert or admitted in evidence at the hearing." Evid.R. 703. Here, there is no question but that the basis for Gorniak's opinion was the report prepared by Dr. Sohn (among others). Hardin contends that the trial court erred in the admission of Dr. Gorniak's opinion as well as the opinion of Dr. Scribano.

{¶25} Hardin cites a case where the Second District Court of Appeals held that the trial court erred in the admission of a coroner's opinion where the opinion "was based entirely on facts perceived by others and evidence that was not admitted at trial." *State v. Fouty* (1996), 110 Ohio App.3d 130, 135.

{¶26} In the present case, however, the trial court admitted the coroner's report into evidence. And we find that the trial court properly admitted the coroner's report as a public record. See Evid.R. 803(8); see, also, *State v. Sampsill* (Jun. 29, 1998), Pickaway App. No. 97CA17, citing *Goldsby v. Gerber* (1987), 31 Ohio App.3d 268, 269, abrogated on different grounds by *State ex rel. Blair v. Balraj*, 69 Ohio St.3d 310, 313-14, 1994-Ohio-40. We note that the *Sampsill* court listed several limitations of this rule,

but none of those limitations are present in this case. In addition, we note that the report was embossed with a seal and was a self-authenticating document. Evid.R. 902(1). Therefore, Dr Sohn's report was properly admitted into evidence and could be relied upon by Dr. Gorniak in reaching her own independent conclusions under Evid.R. 703.[1]

{¶27} Hardin next claims that the admission of Dr. Scribano's opinion also violated Evid.R. 703. Dr. Scribano testified as follows: "within a reasonable degree of medical certainty, my diagnosis when I received the call and reviewed the x-rays and medical record uh, was abusive head trauma. That was confirmed by additional review of the photographs by our staff in the hospital, as well as the photos from the Coroner's Office. And uh, abusive head trauma that has evidence of uh, impact that is visible on physical examination, uh, but also shaking and the retinal hemorrhages uh, that are identified on autopsy that are uh, further confirmation of a shaking mechanism."

{¶28} "Q. * * * In your opinion, are these injuries consistent with a baby being bounced on a couch cushion?

{¶29} "A. No.

{¶30} "Q. Given your years of experience and training, what kind of force would be needed to exert or to cause these kinds of injuries?

{¶31} "A. The degree of force is severe. The degree of force is such that no reasonable caregiver would ever come close to exhibiting in normal care of an infant. Uh, to ascribe a number in terms of force, in terms of [joules] as a measure of force, uh,

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[1] We note that this finding does not conflict with the rule in *Craig*. There was no custodian of records to lay a foundation for the admissibility of the report, but, as *Melendez-Diaz* made clear, the issue under the Confrontation Clause is not whether the report satisfies a particular hearsay exception. Rather, the question is whether the evidence was prepared for the purposes of litigation.

there are biomechanic studies that look at injury thresholds and they're not adequate in answering the question. Uh we know that these forces are uh, generating injuries as severe, and worse than, severe motor vehicle crashes that require immediate life support. Uh, so that gives a context to the degree of force. But I could not provide you with an actual number or equation of force uh, right now." Trial Transcript at 373-74.

{¶32} From Dr. Scribano's testimony, it is apparent that he relied upon more than just the autopsy report. Generally, the record indicates that these materials were other medical reports related to the care that Junior received. Based on the record we see no particular reason that these materials could not have been admitted as business records. But, no such foundation was made in regards to these reports. Regardless, Dr. Scribano's testimony is largely duplicative of Dr. Gorniak's. Dr. Gorniak testified that the "immediate cause of death was subdural hematoma due to non-accidental head trauma." Trial Transcript at 101. She also testified that the death was a homicide and that the injuries were caused by either blunt force trauma or a shaking mechanism. Trial Transcript at 104.

{¶33} Some of the materials Dr. Scribano relied upon were neither admitted into evidence nor matters that he personally perceived. This renders the admission of his opinion error, but we find that error harmless. Under Crim.R. 52(A), "[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded." Ohio Courts have often found that the wrongful admission of cumulative evidence constituted harmless error. See, e.g., *State v. Davis*, Summit App. No. 22724, 2005-Ohio-6224, at ¶15; *State v. Jones*, Scioto App. No. 06CA3116, 2008-Ohio-968, at ¶23;

State v. Kingery, Fayette App. No. CA2009-08-014, 2010-Ohio-1813, at ¶35, citing *State v. Fears*, 86 Ohio St.3d 329, 339, 1999-Ohio-111 (other citations omitted).

{¶34} Accordingly, we overrule Hardin's second assignment of error.

IV.

{¶35} Having overruled both of Hardin's assignments of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and appellant pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pike County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

McFarland, P.J. and Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: Roger L. Kline

Roger L. Kline, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

1-11-10

Ex A.

IN THE COURT OF COMMON PLEAS, PIKE COUNTY, OHIO

STATE OF OHIO,
PLAINTIFF

CASE NO. 2009CR000129

-VS-

JEFFREY HARDIN,
DEFENDANT

JUDGMENT ENTRY OF SENTENCE
(IMPOSING TERM OF IMPRISONMENT)

This matter came on for a Trial to the Judge of the Court, sitting without a jury, on the 7th and 8th days of December, 2009, upon the Indictment in this action, charging the Defendant in Count One with the offense of "Murder," in violation of Section 2903.02(B) R.C., a Felony Offense, and also charging the Defendant in Count Two of the Indictment with "Endangering Children," in violation of Section 2919.22(B)(1) R.C., a Felony of the Second Degree. The Court finds that the Defendant has waived his right to trial by jury in writing and in open court. The State of Ohio was represented at the trial by the Prosecuting Attorney, ROBERT JUNK, and by Assistant Ohio Attorney General, Emily Pelphrey. The Defendant was present at the trial and was represented by his attorney, JAMES T. BOULGER.

After having heard Opening Statements of counsel, and having heard and considered all of the evidence presented, consisting of the testimony of witnesses and exhibits admitted into evidence at trial, and having heard the Closing Arguments of counsel, the Court finds and determines beyond a reasonable doubt that the Defendant is *"Guilty"* of the offense of *"Murder"*, in violation of Section 2903.02(B) of the Ohio Revised Code, a Felony Offense, as stated in Count One of the Indictment; and the Court further finds and determines beyond a reasonable doubt that the Defendant is *"Guilty"* of the offense of *"Endangering Children"*, in violation of Section 2919.22(B)(1) of the Ohio Revised Code, a Felony of the Second Degree, as stated in Count Two of the Indictment.

Both the State of Ohio and the Defendant, through his counsel, indicated to the Court that neither such party desired to request a pre-sentencing investigation, and that each such party consented to Court's conducting a sentencing hearing and imposing sentence on December 8, 2009, following upon the Court's pronouncing the decision of the Court finding the Defendant guilty of "Murder" and guilty of "Endangering

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Children." The Court then proceeded with sentencing hearing and to pronounce sentence on December 8, 2009. Thereafter, another sentencing hearing was held on December 14, 2009, in order to afford the Defendant the opportunity to allocate, as provided in Crim.R. 32(A)(1), and the Defendant was re-sentenced on such day.

Prior to imposing sentence the Court afforded the Defendant and the Prosecuting Attorney an opportunity to present information relevant to the imposition of sentence in this action.

Before imposing sentence, the Court considered the record, testimony presented at the Trial relevant to sentence, including any oral statements of the Prosecuting Attorney, the Defendant and Counsel for the Defendant. Before imposing sentence, the Court has also considered the purposes and principles of sentencing under Section 2929.11 R.C., including, without limitation, those *"overriding purposes"* set out in the statute, that is, to protect the public from future crime by the offender and others, and to punish the offender. Prior to imposing sentencing, the Court has also considered and weighed the seriousness and recidivism factors relevant to the offense and to the offender pursuant to Section 2929.12 R.C., and the Court has also considered the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victims of the offense, the public, or both.

Before imposing sentence, the Court has also considered that the sentence to be imposed should be reasonably calculated to achieve the two overriding purposes of felony sentencing commensurate with and not demeaning the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders, and that the sentence to be imposed should not place an unnecessary burden on government resources.

The Court has considered and complied with any the applicable provisions of Section 2929.14 R.C.

The Court further finds that a prison term is mandatory as part of the sentence for the offense of "Murder," in violation of Section 2903.02(B) R.C., as stated in Count One of the Indictment, and that a prison term is not mandatory as part of the sentence for the offense of "Endangering Children," in violation of Section 2919.22(B)(1) R.C., as stated in Count Two of the Indictment. The Court finds that the Defendant is NOT amenable to an available to community control sanction or to a combination of available community control sanctions.

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The Court then indicated that it had considered the record, oral statements, the purposes and principles of sentencing under R.C. 2929.11, the seriousness and recidivism factors, relevant to the offense and offender pursuant to R.C. 2929.12, and the need for deterrence, incapacitation, rehabilitation, and restitution.

The Court then addressed the Defendant personally and asked the Defendant whether there was any reason that the Defendant wanted to state as to why sentence should not be pronounced and imposed immediately, and the Defendant indicated that there was no such reason that the Defendant wanted to state.

The Court then further addressed the Defendant personally and asked the Defendant whether the Defendant wished to make a statement in the Defendant's own behalf or to present any information in mitigation of punishment, and the Defendant indicated that there was nothing that he wished to say.

It is, therefore, the JUDGMENT and SENTENCE of this Court that the Defendant shall serve a mandatory indefinite prison term of fifteen (15) years to life for the offense of *"Murder,"* in violation of Section 2903.02(B) of the Ohio Revised Code, as stated in Count One of the Indictment. Further, it is the JUDGMENT and SENTENCE of this Court that the Defendant shall serve a prison term of six (6) years for the offense of *"Child Endangering,"* in violation of Section 2919.22(B)(1) of the Ohio Revised Code, a Felony of the Second Degree, as stated in Count Two of the Indictment. It is further ORDERED that the prison term imposed as part of the sentence upon Count One and the prison term imposed as part of the sentence upon Count Two shall run concurrently with each other, for an aggregate prison term of fifteen (15) years to life.

The Court further informed the Defendant at the time of sentencing that the Defendant would become eligible for parole after the Defendant had served fifteen (15) years of imprisonment upon the term of fifteen (15) years to life.

It is further ordered, as a part of the sentence imposed upon Count Two that the Defendant will be supervised on post-release control after the Defendant leaves prison for a mandatory period of three (3) years; and that if the Defendant violates any of the terms and conditions of post-release control, then the Parole Board may return the Defendant to prison for up to nine (9) months for each violation, provided, however, that the maximum cumulative period for which the Parole Board can return the Defendant to prison for all violations of post-release control imposed as a part of the sentence upon Count Two cannot exceed one-half of the stated prison term originally imposed by the Court upon Count Two. It is further ordered that if the Defendant

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commits a new felony while on post-release control imposed as part of the sentence upon Count Two, then, in addition to any prison term that the Court which sentences the Defendant upon the new felony may impose for such new felony, that sentencing court may impose a prison term for the violation of post-release control, and the maximum prison term for the violation of post-release control would be the greater of one (1) year or the time remaining on post-release control.

The Court further informed the Defendant at the time of sentencing that the Defendant would become eligible for parole after the Defendant had served fifteen (15) years of imprisonment upon the prison term of fifteen years to life imposed for Murder in regard to Count One of the indictment; and that, if the Defendant were released from prison on parole, and the Defendant then violated any of the terms or conditions of parole, the Defendant could be required to serve the remainder of the prison term of fifteen years to life imprisonment.

The Court further informed the Defendant that, by virtue of the conviction in this action, the Defendant is prohibited from acquiring, having, carrying or using any firearm or dangerous ordnance, that such disability will continue until the Defendant's death, unless the Defendant is relieved of such disability by a Court of competent jurisdiction, and that violation of this prohibition constitutes the crime of *"Having Weapons Under Disability"* a violation of Section 2923.13 (A)(3) of the Ohio Revised Code, a Felony of the Third Degree.

The Court indicated to the Defendant that he had the right to appeal any maximum sentence, and if the charge were a serious offense, to appeal or seek leave to appeal the sentence imposed. The Court further indicated to the Defendant that if the Defendant were unable to pay the cost of such appeal, the Defendant had the right to appeal without payment; that if the Defendant were unable to obtain counsel for such appeal, counsel would be appointed without cost; that if the Defendant were unable to pay the costs of documents necessary to appeal, the documents would be provided without cost; and that the Defendant had a right to have a notice of appeal timely filed on the Defendant's behalf.

The Defendant is granted credit for 210 days previously served as of the date of the sentencing (December 8, 2009), and shall receive credit for any additional days served while awaiting transportation to the appropriate state institution to begin serving his sentence of imprisonment.

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Any motions that are outstanding are hereby withdrawn by the party who filed them. The Defendant is **ORDERED** to pay the costs of this action and any bond previously posted is hereby **DISCHARGED** and any outstanding warrants are recalled.

There being no further matters before the Court, said Court was adjourned.

JUDGE, RANDY D. DEERING 01-06-2010

SUBMITTED:

ROBERT JUNK (0056250)
PROSECUTING ATTORNEY
100 E. Second Street
Waverly, Ohio 45690

APPROVED:

[See attached]

JAMES T. BOULGER (0033873)
ATTORNEY FOR DEFENDANT
2 West Fourth Street
Chillicothe, Ohio 45601
(740) 775-5312

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ROBERT JUNK (0056250)
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APPROVED:

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AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim or the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I: BILL OF RIGHTS

§ 10 [Trial of accused persons and their rights; depositions by state and comment on failure to testify in criminal cases.]

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense. (As amended September 3, 1912.)

Page's Ohio Revised Code Annotated:
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Current through Legislation passed by the 129th Ohio General Assembly
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TITLE 3. COUNTIES
CHAPTER 313. CORONER

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ORC Ann. 313.09 (2013)

§ 313.09. Records

The coroner shall keep a complete record of and shall fill in the cause of death on the death certificate, in all cases coming under his jurisdiction. All records shall be kept in the office of the coroner, but, if no such office is maintained, then such records shall be kept in the office of the clerk of the court of common pleas. Such records shall be properly indexed, and shall state the name, if known, of every deceased person as described in *section 313.12 of the Revised Code*, the place where the body was found, date of death, cause of death, and all other available information. The report of the coroner and the detailed findings of the autopsy shall be attached to the report of each case. The coroner shall promptly deliver, to the prosecuting attorney of the county in which such death occurred, copies of all necessary records relating to every death in which, in the judgment of the coroner or prosecuting attorney, further investigation is advisable. The sheriff of the county, the police of the city, the constable of the township, or marshal of the village in which the death occurred may be requested to furnish more information or make further investigation when requested by the coroner or his deputy. The prosecuting attorney may obtain copies of records and such other information as is necessary from the office of the coroner. All records of the coroner are the property of the county.

HISTORY:

GC § 2855-10; 121 v 591; Bureau of Code Revision, 10-1-53; 136 v H 750. Eff 8-26-75.

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ORC Ann. 313.10 (2013)

§ 313.10. Records to be public; certified copies as evidence; exceptions; request by next of kin of decedent, journalist, or insurer

(A) (1) Except as otherwise provided in this section, the records of the coroner who has jurisdiction over the case, including, but not limited to, the detailed descriptions of the observations written during the progress of an autopsy and the conclusions drawn from those observations filed in the office of the coroner under division (A) of *section 313.13 of the Revised Code*, made personally by the coroner or by anyone acting under the coroner's direction or supervision, are public records. Those records, or transcripts or photostatic copies of them, certified by the coroner shall be received as evidence in any criminal or civil action or proceeding in a court in this state, as to the facts contained in those records. The coroner of the county where the death was pronounced shall be responsible for the release of all public records relating to that death.

(2) Except as otherwise provided in division (D) or (E) of this section, the following records in a coroner's office are not public records:

(a) Preliminary autopsy and investigative notes and findings made by the coroner or by anyone acting under the coroner's direction or supervision;

(b) Photographs of a decedent made by the coroner or by anyone acting under the coroner's direction or supervision;

(c) Suicide notes;

(d) Medical and psychiatric records provided to the coroner, a deputy coroner, or a representative of the coroner or a deputy coroner under *section 313.091 of the Revised Code*;

(e) Records of a deceased individual that are confidential law enforcement investigatory records as defined in *section 149.43 of the Revised Code*;

(f) Laboratory reports generated from the analysis of physical evidence by the coroner's laboratory that is discoverable under *Criminal Rule 16*.

(3) In the coroner's discretion, photographs of a decedent may be used for medical, legal, or educational purposes.

(B) All records in the coroner's office that are public records are open to inspection by the public, and any person may receive a copy of any such record or part of it upon demand in writing, accompanied by payment of a record retrieval and copying fee, at the rate of twenty-five cents per page or a minimum fee of one dollar.

(C) (1) The coroner shall provide a copy of the full and complete records of the coroner with respect to a decedent to a person who makes a written request as the next of kin of the decedent. The following persons may make a request pursuant to this division as the next of kin of a decedent:

(a) The surviving spouse of the decedent;

(b) If there is no surviving spouse, or if the surviving spouse has died without having made a request pursuant to this division, any child of the decedent over eighteen years of age, with each child over eighteen years of age having an independent right to make a request pursuant to this division;

(c) If there is no surviving spouse or child over eighteen years of age, or if the surviving spouse and all children over eighteen years of age have died without having made a request pursuant to this division, the parents of the decedent, with each parent having an independent right to make a request pursuant to this division;

(d) If there is no surviving spouse, child over eighteen years of age, or parents of the decedent, or if all have died without having made a request pursuant to this division, the brothers and sisters of the decedent, whether of the whole or the half blood, with each having an independent right to make a request pursuant to this division.

(2) If there is no surviving person who may make a written request as next of kin for a copy of the full and complete records of the coroner pursuant to division (C)(1) of this section, or if all next of kin of the decedent have died without having made a request pursuant to that division, the coroner shall provide a copy of the full and complete records of the coroner with respect to a decedent to the representative of the estate of the decedent who is the subject of the records upon written request made by the representative.

(D) A journalist may submit to the coroner a written request to view preliminary autopsy and investigative notes and findings, suicide notes, or photographs of the decedent made by the coroner or by anyone acting under the coroner's discretion or supervision. The request shall include the journalist's name and title and the name and address of the journalist's employer and state that the granting of the request would be in the best interest of the public. If a journalist submits a written request to the coroner to view the records described in this division, the coroner shall grant the journalist's request. The journalist shall not copy the preliminary autopsy and investigative notes and findings, suicide notes, or photographs of the decedent.

(E) (1) An insurer may submit to the coroner a written request to obtain a copy of the full and complete records of the coroner with respect to a deceased person. The request shall include the name of the deceased person, the type of policy to which the written request relates, and the name and address of the insurer.

(2) If an insurer submits a written request to the coroner to obtain a copy of records pursuant to division (E)(1) of this section, the coroner shall grant that request.

(3) Upon the granting of a written request to obtain a copy of records by the coroner, the insurer may utilize the records for the following purposes:

(a) To investigate any first party claim or third party claim asserted under a policy of insurance issued by the insurer that arises from the death of the deceased person;

(b) To determine coverage for any first party claim or third party claim asserted under a policy of insurance issued by the insurer that arises from the death of the deceased person;

(c) To determine the insurer's liability for any first party claim or third party claim asserted under a policy of insurance issued by the insurer that arises from the death of the deceased person.

(4) Prior to the delivery of records that are the subject of a request made pursuant to division (E)(1) of this section, the coroner may require the insurer who submitted the written request for the records to provide a payment to the coroner of a record retrieval and copying fee at the rate of twenty-five cents per page or a minimum fee of one dollar.

(5) Any records produced by the coroner in response to a written request under division (E)(1) of this section shall remain in the care, custody, and control of the insurer and its employees or representatives at all times. The insurer may not release or disclose the records to any other person unless any of the following apply:

(a) The release of the records is reasonably necessary to further a purpose described in division (E)(3) of this section.

(b) A court of competent jurisdiction orders the insurer to produce the records.

(c) The insurer is required to produce the records in response to a civil or criminal subpoena.

(d) The insurer is responding to a request for the records from a law enforcement agency, the department of insurance or a department of insurance from another state, or another governmental authority.

(F) The coroner may contact the decedent's next of kin to inform the next of kin that a journalist or an insurer has submitted a written request pursuant to division (D) or (E) of this section and whether the coroner has granted the journalist's or the insurer's request.

(G) As used in this section:

(1) "Full and complete records of the coroner" includes, but is not limited to, the following:

(a) The detailed descriptions of the observations written by the coroner or by anyone acting under the coroner's direction or supervision during the progress of an autopsy and the conclusions drawn from those observations that are filed in the office of the coroner under division (A) of *section 313.13 of the Revised Code*;

(b) Preliminary autopsy and investigative notes and findings made by the coroner or by anyone acting under the coroner's direction or supervision;

(c) Photographs of a decedent made by the coroner or by anyone acting under the coroner's direction or supervision;

(d) Suicide notes;

(e) Medical and psychiatric records provided to the coroner, a deputy coroner, or a representative of the coroner or a deputy coroner under *section 313.091 of the Revised Code*;

(f) Records of a deceased individual that are confidential law enforcement investigatory records as defined in *section 149.43 of the Revised Code*;

(g) Laboratory reports generated from the analysis of physical evidence by the coroner's laboratory that is discoverable under *Criminal Rule 16*.

(2) "Insurer" has the same meaning as in *section 3901.07 of the Revised Code*.

(3) "Journalist" has the same meaning as in *section 149.43 of the Revised Code*.

HISTORY:

GC § 2855-11; 121 v 591; Bureau of Code Revision, 10-1-53; 148 v H 499. Eff 2-13-2001; 151 v H 235, § 1, eff. 8-17-06; 152 v H 471, § 1, eff. 4-7-09.

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TITLE 3. COUNTIES
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ORC Ann. 313.12 (2013)

§ 313.12. Notice to coroner of violent, suspicious, unusual or sudden death or any death of a mentally retarded or developmentally disabled person

(A) When any person dies as a result of criminal or other violent means, by casualty, by suicide, or in any suspicious or unusual manner, when any person, including a child under two years of age, dies suddenly when in apparent good health, or when any mentally retarded person or developmentally disabled person dies regardless of the circumstances, the physician called in attendance, or any member of an ambulance service, emergency squad, or law enforcement agency who obtains knowledge thereof arising from the person's duties, shall immediately notify the office of the coroner of the known facts concerning the time, place, manner, and circumstances of the death, and any other information that is required pursuant to *sections 313.01* to *313.22 of the Revised Code*. In such cases, if a request is made for cremation, the funeral director called in attendance shall immediately notify the coroner.

(B) As used in this section, "mentally retarded person" and "developmentally disabled person" have the same meanings as in *section 5123.01 of the Revised Code*.

HISTORY:

GC § 2855-5; 121 v 591; Bureau of Code Revision, 10-1-53; 136 v H 750 (Eff 8-26-75); 144 v H 244. Eff 11-1-92; 150 v S 178, § 1, eff. 1-30-04.

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ORC Ann. 313.121 (2013)

§ 313.121. Death of apparently healthy child under age of two to be reported; autopsy; supportive services for parents; information on sudden infant death syndrome

(A) As used in this section, "parent" means either parent, except that if one parent has been designated the residential parent and legal custodian of the child, "parent" means the designated residential parent and legal custodian, and if a person other than a parent is the child's legal guardian, "parent" means the legal guardian.

(B) If a child under two years of age dies suddenly when in apparent good health, the death shall be reported immediately to the coroner of the county in which the death occurred, as required by *section 313.12 of the Revised Code*. Except as provided in division (C) of this section, the coroner or deputy coroner shall perform an autopsy on the child. The autopsy shall be performed in accordance with rules adopted by the director of health under *section 313.122 of the Revised Code*. The coroner or deputy coroner may perform research procedures and tests when performing the autopsy.

(C) A coroner or deputy coroner is not required to perform an autopsy if the coroner of the county in which the death occurred or a court with jurisdiction over the deceased body determines under *section 313.131 of the Revised Code* that an autopsy is contrary to the religious beliefs of the child. If the coroner or the court makes such a determination, the coroner shall notify the health district or department of health with jurisdiction in the area in which the child's parent resides. For purposes of this division, the religious beliefs of the parents of a child shall be considered to be the religious beliefs of the child.

(D) If the child's parent makes a written or verbal request for the preliminary results of the autopsy after the results are available, the coroner, or a person designated by the coroner, shall give the parent an oral statement of the preliminary results.

The coroner, within a reasonable time after the final results of the autopsy are reported, shall send written notice of the results to the state department of health, the health district or department

with jurisdiction in the area in which the child's parent resides, and, upon the request of a parent of the child, to the child's attending physician. Upon the written request of a parent of the child and the payment of the transcript fee required by *section 313.10 of the Revised Code*, the coroner shall send written notice of the final results to that parent. The notice sent to the state department of health shall include all of the information specified in rules adopted under *section 313.122 of the Revised Code*.

(E) On the occurrence of any of the following, the health district or department with jurisdiction in the area in which the child's parent resides shall offer the parent any counseling or other supportive services it has available:

(1) When it learns through any source that an autopsy is being performed on a child under two years of age who died suddenly when in apparent good health;

(2) When it receives notice that the final result of an autopsy performed pursuant to this section concluded that the child died of sudden infant death syndrome;

(3) When it is notified by the coroner that, pursuant to division (C) of this section, an autopsy was not performed.

(F) When a health district or department receives notice that the final result of an autopsy performed pursuant to this section concluded that the child died of sudden infant death syndrome or that, pursuant to division (C) of this section, an autopsy was not performed but sudden infant death syndrome may have been the cause of death, it shall offer the child's parent information about sudden infant death syndrome. The state department of health shall ensure that current information on sudden infant death syndrome is available for distribution by health districts and departments.

HISTORY:

144 v H 244. Eff 11-1-92; 2012 HB 487, § 101.01, eff. Sept. 10, 2012.

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ORC Ann. 313.131 (2013)

§ 313.131. Procedure when autopsy is contrary to decedent's religious belief

(A) As used in this section:

(1) "Friend" means any person who maintained regular contact with the deceased person, and who was familiar with the deceased person's activities, health, and religious beliefs at the time of the deceased person's death, any person who assumes custody of the body for burial, and any person authorized by written instrument, executed by the deceased person to make burial arrangements.

(2) "Relative" means any of the following persons: the deceased person's surviving spouse, children, parents, or siblings.

(B) The coroner, deputy coroner, or pathologist shall perform an autopsy if, in the opinion of the coroner, or, in his absence, in the opinion of the deputy coroner, an autopsy is necessary, except for certain circumstances provided for in this section where a relative or friend of the deceased person informs the coroner that an autopsy is contrary to the deceased person's religious beliefs, or the coroner otherwise has reason to believe that an autopsy is contrary to the deceased person's religious beliefs. The coroner has such reason to believe an autopsy is contrary to the deceased person's religious beliefs if a document signed by the deceased and stating an objection to an autopsy is found on the deceased's person or in his effects. For the purposes of this division, a person is a relative or friend of the deceased person if the person presents an affidavit stating that he is a relative or friend as defined in division (A) of this section.

(C) (1) Except as provided in division (F) of this section, if a relative or friend of the deceased person informs the coroner that an autopsy is contrary to the deceased person's religious beliefs, or the coroner otherwise has reason to believe that an autopsy is contrary to the deceased person's religious beliefs, and the coroner concludes the autopsy is a compelling public necessity, no autopsy shall be performed for forty-eight hours after the coroner takes charge of the deceased person. An autopsy is a compelling public necessity if it is necessary to the conduct of an investigation by law

enforcement officials of a homicide or suspected homicide, or any other criminal investigation, or is necessary to establish the cause of the deceased person's death for the purpose of protecting against an immediate and substantial threat to the public health. During the forty-eight hour period, the objecting relative or friend may file suit to enjoin the autopsy, and shall give notice of any such filing to the coroner. The coroner may seek an order waiving the forty-eight hour waiting period. If the coroner seeks such an order, the court shall give notice of the coroner's motion, by telephone if necessary, to the objecting relative or friend, or, if none objected, to all of the deceased person's relatives whose addresses or telephone numbers can be obtained through the exercise of reasonable diligence. The court may grant the coroner's motion if the court determines that no friend or relative of the deceased person objects to the autopsy or if the court is satisfied that any objections of a friend or relative have been heard, and if it also determines that the delay may prejudice the accuracy of the autopsy, or if law enforcement officials are investigating the deceased person's death as a homicide and suspect the objecting party committed the homicide or aided or abetted in the homicide. If no friend or relative files suit within the forty-eight hour period, the coroner may proceed with the autopsy.

(2) The court shall hear a petition to enjoin an autopsy within forty-eight hours after the filing of the petition. The Rules of Civil Procedure shall govern all aspects of the proceedings, except as otherwise provided in division (C)(2) of this section. The court is not bound by the Rules of Evidence in the conduct of the hearing. The court shall order the autopsy if the court finds that under the circumstances the coroner has demonstrated a need for the autopsy. If the court enjoins the autopsy, the coroner shall immediately proceed under *section 313.14 of the Revised Code*.

(D) (1) If a relative or friend of the decedent informs the coroner that an autopsy is contrary to the deceased person's religious beliefs, or the coroner otherwise has reason to believe that an autopsy is contrary to the deceased person's religious beliefs, and the coroner concludes the autopsy is necessary, but not a compelling public necessity, the coroner may file a petition in a court of common pleas seeking a declaratory judgment authorizing the autopsy. Upon the filing of the petition, the court shall schedule a hearing on the petition, and shall issue a summons to the objecting relative or friend, or, if none objected, to all of the deceased person's relatives whose addresses can be obtained through the exercise of reasonable diligence. The court shall hold the hearing no later than forty-eight hours after the filing of the petition. The court shall conduct the hearing in the manner provided in division (C)(2) of this section.

(2) Each person claiming to be a relative or friend of the deceased person shall immediately upon receipt of the summons file an affidavit with the court stating the facts upon which the claim is based. If the court finds that any person is falsely representing himself as a relative or friend of the deceased person, the court shall dismiss the person from the action. If after dismissal no objecting party remains, and the coroner does not have reason to believe that an autopsy is contrary to the deceased person's religious beliefs, the court shall dismiss the action and the coroner may proceed with the autopsy. The court shall order the autopsy after hearing the petition if the court finds that under the circumstances the coroner has demonstrated a need for the autopsy. The court shall waive the payment of all court costs in the action. If the petition is denied, the coroner shall immediately proceed under *section 313.14 of the Revised Code*.

Any autopsy performed pursuant to a court order granting an autopsy shall be performed using the least intrusive procedure.

(E) For purposes of divisions (B), (C)(1), and (D)(1) of this section, any time the friends or relatives of a deceased person disagree about whether an autopsy is contrary to the deceased person's religious beliefs, the coroner shall consider only the information provided to him by the person of highest priority, as determined by which is listed first among the following:

(1) The deceased person's surviving spouse;

(2) An adult son or daughter of the deceased person;

(3) Either parent of the deceased person;

(4) An adult brother or sister of the deceased person;

(5) The guardian of the person of the deceased person at the time of death;

(6) A person other than those listed in divisions (E)(1) to (5) of this section who is a friend as defined in division (A)[(1)] of this section.

If two or more persons of equal priority disagree about whether an autopsy is contrary to the deceased person's religious beliefs, and those persons are also of the highest priority among those who provide the coroner with information the coroner has reason to believe that an autopsy is contrary to the deceased person's religious beliefs.

(F) (1) Divisions (C)(1) and (2) of this section do not apply in any case involving aggravated murder, suspected aggravated murder, murder, suspected murder, manslaughter offenses, or suspected manslaughter offenses.

(2) This section does not prohibit the coroner, deputy coroner, or pathologist from administering a chemical test to the blood of a deceased person to determine the alcohol, drug, or alcohol and drug content of the blood, when required by division (B) of *section 313.13 of the Revised Code*, and does not limit the coroner, deputy coroner, or pathologist in the performance of his duties in administering a chemical test under that division.

HISTORY:

141 v S 283 (Eff 3-25-87); 143 v S 131. Eff 7-25-90.

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ORC Ann. 313.15 (2013)

§ 313.15. Determination of responsibility for death

All dead bodies in the custody of the coroner shall be held until such time as the coroner, after consultation with the prosecuting attorney, or with the police department of a municipal corporation, if the death occurred in a municipal corporation, or with the sheriff, has decided that it is no longer necessary to hold such body to enable him to decide on a diagnosis giving a reasonable and true cause of death, or to decide that such body is no longer necessary to assist any of such officials in his duties.

HISTORY:

GC § 2855-14; 121 v 591; Bureau of Code Revision. Eff 10-1-53.

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ORC Ann. 313.17 (2013)

§ 313.17. Subpoenas; oath and testimony of witnesses

The coroner or deputy coroner may issue subpoenas for such witnesses as are necessary, administer to such witnesses the usual oath, and proceed to inquire how the deceased came to his death, whether by violence to self or from any other persons, by whom, whether as principals or accessories before or after the fact, and all circumstances relating thereto. The testimony of such witnesses shall be reduced to writing and subscribed to by them, and with the findings and recognizances mentioned in this section, shall be kept on file in the coroner's office, unless the county fails to provide such an office, in which event all such records, findings and recognizances shall be kept on file in the office of the clerk of the court of common pleas. The coroner may cause such witnesses to enter into recognizance, in such sum as is proper, for their appearance to give testimony concerning the matter. He may require any such witnesses to give security for their attendance, and, if any of them fails to comply with his requirements he shall commit such person to the county jail until discharged by due course of law. In case of the failure of any person to comply with such subpoena, or on the refusal of a witness to testify to any matter regarding which he may lawfully be interrogated, the probate judge, or a judge of the court of common pleas, on application of the coroner, shall compel obedience to such subpoena by attachment proceedings as for contempt. A report shall be made from the personal observation by the coroner or his deputy of the corpse, from the statements of relatives or other persons having any knowledge of the facts, and from such other sources of information as are available, or from the autopsy.

HISTORY:

GC § 2855-7; 121 v 591; 123 v 769; Bureau of Code Revision, 10-1-53; 136 v H 390. Eff 8-6-76.

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ORC Ann. 313.19 (2013)

§ 313.19. Coroner's verdict the legally accepted cause of death

The cause of death and the manner and mode in which the death occurred, as delivered by the coroner and incorporated in the coroner's verdict and in the death certificate filed with the division of vital statistics, shall be the legally accepted manner and mode in which such death occurred, and the legally accepted cause of death, unless the court of common pleas of the county in which the death occurred, after a hearing, directs the coroner to change his decision as to such cause and manner and mode of death.

HISTORY:

GC § 2855-16; 121 v 591; Bureau of Code Revision. Eff 10-1-53.

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ORC Ann. 313.20 (2013)

§ 313.20. Coroner's writs

The coroner may issue any writ required by *sections 313.01* to *313.22, of the Revised Code*, to any constable of the county in which a body is found as described in *section 313.12 of the Revised Code*, or if the emergency so requires, to any discreet person of the county, and such person is entitled to receive for the services rendered the same fees as elected constables. Every constable, or other person so appointed, who fails to execute any warrant directed to him, shall forfeit and pay twenty-five dollars, which amount shall be recovered upon the complaint of the coroner, before any court having jurisdiction thereof. All such forfeitures shall be for the use of the county.

HISTORY:

RS § 1223; 75 v 570, § 11; GC § 2858; 106 v 448; Bureau of Code Revision, 10-1-53; 136 v H 750. Eff 8-26-75.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2903. HOMICIDE AND ASSAULT
HOMICIDE

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ORC Ann. 2903.02 (2013)

§ 2903.02. Murder

(A) No person shall purposely cause the death of another or the unlawful termination of another's pregnancy.

(B) No person shall cause the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree and that is not a violation of *section 2903.03* or *2903.04 of the Revised Code*.

(C) Division (B) of this section does not apply to an offense that becomes a felony of the first or second degree only if the offender previously has been convicted of that offense or another specified offense.

(D) Whoever violates this section is guilty of murder, and shall be punished as provided in *section 2929.02 of the Revised Code*.

HISTORY:

134 v H 511 (Eff 1-1-74); 146 v S 239 (Eff 9-6-96); 147 v H 5. Eff 6-30-98.

OHIO RULES OF COURT SERVICE
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*** Rules current through rule amendments received through January 10, 2013 ***
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Ohio Rules Of Evidence
Article IX. Authentication and identification

Ohio Evid. R. 902 (2013)

Review Court Orders which may amend this Rule.

Rule 902. Self-authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) Domestic public documents not under seal. A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Foreign public documents. A document purporting to be executed or attested in the official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (a) of the executing or attesting person, or (b) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any law of a jurisdiction, state or federal, or rule prescribed by the Supreme Court of Ohio.

(5) Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.

(6) Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals, including notices and advertisements contained therein.

(7) Trade inscriptions and the like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) Acknowledged documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) Presumptions created by law. Any signature, document, or other matter declared by any law of a jurisdiction, state or federal, to be presumptively or prima facie genuine or authentic.

HISTORY: Amended, eff 7-1-07.