

STATE OF LOUISIANA

DOCKET NO. 99,657

VERSUS

39TH JUDICIAL DISTRICT COURT

RYAN D. RUSSELL, SR.

RED RIVER PARISH, LOUISIANA

MEMORANDUM IN OPPOSITION
TO MOTION IN LIMINE TO EXCLUDE AUTOPSY REPORT

NOW INTO COURT, comes the State of Louisiana, appearing herein through undersigned counsel, who respectfully represents:

FACTS

Ryan D. Russell, Sr. is charged with second-degree murder of John Shoebroek. The murder occurred on August 12, 2004. At the request of Wyche T. Coleman, Jr., Coroner for Red River Parish, an autopsy of the body of John Shoebroek was performed by Dr. George M. McCormick, II. This autopsy was performed on September 2, 2004. Dr. McCormick died on September 20, 2005.

LAW AND ARGUMENT

The defendant is attempting, through its Motion in Limine, to exclude the autopsy report based on *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed. 2d 177 (2004). The *Crawford* case excluded some out-of-court statements where the witness is unavailable and the defendant did not have the prior opportunity to cross-examine the witness. *Crawford* excludes such statements if they are considered testimonial hearsay. *Crawford* failed to give a definition of "testimonial". However, it did state that at a minimum, it applies to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations. All out-of-court statements and hearsay exceptions were not excluded by *Crawford*. This was specifically pointed out where *Crawford* held:

"Most of the hearsay exceptions covered statements that by their nature were not testimonial-- for example, business records or statements in furtherance of a conspiracy. We do not infer from these that the Framers thought exceptions would apply even to prior testimony."

Crawford is a new decision and there have been few cases rendered by State courts interpreting how its ruling affects State court precedents or laws. One case has been rendered in the State of Louisiana entitled *State of Louisiana v. Leonard*, 2005 WL 1039635 (La.App. 1 Cir.), 2004-1609 (La.App. 1 Cir. 4/27/05). The *Leonard* case has not been released for publication. *Leonard*

dealt with the issue of testimony from a coroner's report by someone who did not perform the autopsy or prepare the record. The *Leonard* court noted:

"The correct order of inquiry is: first, whether the coroner's report was 'testimonial hearsay' prohibited by Crawford; second, whether Dr. Cooper is merely reading the report or testifying as an expert based upon the report; finally, if he is testifying as an expert based upon hearsay, whether he is properly qualified as an expert in the field upon which he is testifying."

The *Leonard* court also held:

"Because Louisiana Code of Criminal Procedure art. 105 is narrowly drawn, it only allows the coroner's report for non-testimonial hearsay:

A coroner's report and a proces verbal of an autopsy shall be competent evidence of death and the cause thereof, but not of any other fact.

The coroner's report was therefore admissible to prove the cause of death.

The second inquiry is whether Dr. Cooper was simply reading the report or testifying as an expert. Dr. Cooper testified that as the Coroner of East Baton Rouge Parish, he was the legal custodian of all records made and kept by his office. Dr. Cooper was qualified and accepted as an expert in the field of medicine with a specialization in forensic pathology. He reviewed the autopsy report prepared by Dr. Cramer and the autopsy photographs that were taken in this case. Dr. Cooper indicated he was able to testify regarding the autopsy findings and protocol completed by Dr. Cramer."

In regard to testimony from the coroner's report, *Leonard* held:

"[2] The coroner or a coroner's deputy may testify as to the victim's death or the cause thereof, even where the testifying witness did not perform the autopsy or prepare the report. See State v. Ducre, 596 So. 2d 1372, 1381 (La.App. 1st Cir. 1992).

We need not reach the third inquiry because we conclude that the coroner's report was not 'testimonial hearsay' and that Dr. Cooper's testimony was limited to the contents of the autopsy report."

As pointed out in the *Leonard* court, the coroner's report is admissible under La. C. Cr. P. art. 105 as competent evidence of the death and cause thereof. The coroner may use expert assistants in performance of an autopsy. La. C. Cr. P. art. 104. A coroner has the discretion to perform or cause to be performed by a competent physician an autopsy. La. R.S. 33:1563.

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R U L I N G

This matter comes before the Court on a Motion in Limine to Exclude Autopsy Report based on *Crawford v Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed. 2d 177 (2004).

The defendant, through counsel, set forth a very eloquent argument that under *Crawford*, Louisiana Code of Criminal Procedure Article 105 is unconstitutional and this motion should be granted. This Court uses the rationale in *State of Louisiana v Leonard*, 2005 WL 1039635 (La.App.1 Cir.), 2004-1609 (La.App.1 Cir.4/27/05), to determine that the autopsy report is not "testimonial hearsay".

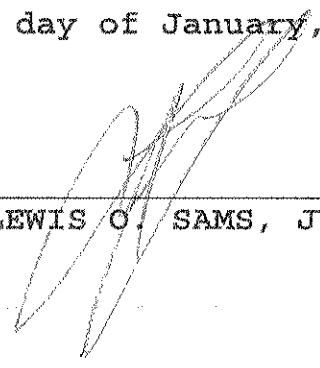
Based on *Leonard*, the request for the Motion in Limine on this issue is denied.

Coushatta, Louisiana, this 24th day of January, 2006.

FILED
STUART SHAW

JAN 24 2006

CLERK OF COURT
RED RIVER PARISH


LEWIS O. SAMS, JUDGE

ATTEST A TRUE COPY
STUART SHAW
Clerk of Court


Deputy Clerk 39th District Court
Red River Parish, Louisiana