Admission Of Autopsy Reports Violated Confrontation Clause

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Eleventh Circuit reverses health care fraud conviction based on the introduction of autopsy report prepared by non-testifying witnesses and the testimony of a medical examiner who had not performed the autopsy; the chief medical examiner could not provide surrogate testimony for non-testifying examiners who prepared autopsy reports, in *United States v. Ignasiak*, _ F.3d _ (11th Cir. Jan. 19, 2012) (Nos. 09-10596, 09-160)

One question that courts have confronted is whether autopsy reports are admissible under the Confrontation Clause. The First Circuit has held that autopsy reports may be admitted without the testimony of the report author consistent with the Confrontation Clause. *See United States v. Feliz*, 467 F.3d 227, 237 (2d Cir. 2006) (autopsy reports as public reports were "not subject to the strictures of the Confrontation Clause"); *United States v. De La Cruz*, 514 F.3d 121, 133-34 (1st Cir. 2008) ("An autopsy report is made in the ordinary course of business by a medical examiner who is required by law to memorialize what he or she saw and did during an autopsy. An autopsy report thus involves, in principal part, a careful and contemporaneous reporting of a series of steps taken and facts found by a medical examiner during an autopsy. Such a report is, we conclude, in the nature of a business record, and business records are expressly excluded from the reach of *Crawford*."), *cert. denied*, 129 S.Ct. 2858 (2009); *see also* **First Circuit Identifies And Discusses *Crawford* Confrontation Clause Open Issues**. The Eleventh Circuit recently confronted this issue and concluded the admission of autopsy reports violated the Confrontation Clause.

In the case, defendant Ignasiak, a licensed medical doctor, was prosecuted dispensing controlled substances and for committing health care fraud based on "prescribe[ing] unnecessary or excessive quantities of controlled substances without a legitimate medical purpose and 'outside the usual course of professional practice.'" At trial the government introduced the autopsy reports of five "former patients in which the cause of death was determined to be, at least in part, intoxication from controlled substances." A chief medical examiner and records custodian, who had not performed the autopsies, testified about the contents and conclusion that "each patient's death having been caused by controlled substances." The reports were admitted as business records, under FRE 803(6). *Ignasiak*, _ F.3d at _. The jury convicted the defendant on forty-three of fifty-four charged counts. The court sentenced him to serve 292 months in prison. On appeal, he challenged the admission of the autopsy reports and testimony about the reports since the medical examiners who performed the autopsies did not testify at trial.

The Eleventh Circuit agreed that the Confrontation Clause was violated and reversed the convictions and remanded the case for a new trial:

> Applying the reasoning of ***Crawford [v. Washington***, 541 U.S. 36 (2004)], ***Melendez-Diaz [v. Massachusetts***, 557 U.S. __, 129 S. Ct. 2527 (2009)], and ***Bullcoming [v. New Mexico***, _ U.S. _, 131 S. Ct. 2705 (June 23, 2011)], we conclude that the five autopsy reports admitted into evidence in conjunction with [chief medical examiner] Dr. Minyard's testimony, where she did not personally observe or participate in those autopsies (and where no evidence was presented to show that the coroners who performed the autopsies were unavailable and the accused had a prior opportunity to cross examine them), violated the Confrontation Clause.

Ignasiak, _ F.3d at _ (footnote omitted). The chief medical examiner could not provide surrogate testimony concerning the testimonial statements of the examiners who had conducted the autopsies and prepared their reports.

The circuit further noted that the autopsy reports were prepared for trial under state law as "the Medical Examiners Commission was created and exists within the Department of Law

Enforcement" and there is a general duty that the medical examiner "determine the cause of death" and perform an autopsy "as he or she shall deem necessary or as shall be requested by the state attorney." *Ignasiak*, _ F.3d at _ (citations omitted). State law also imposes a duty to report a death to the medical examiner. Additionally, medical examiners "are not mere scriveners reporting machine generated raw-data" and their reports are "the product of the skill, methodology, and judgment of the highly trained examiners who actually performed the autopsy." *Ignasiak*, _ F.3d at _ (citations and footnotes omitted). The chief medical examiner could not provide surrogate testimony.

The Eleventh Circuit found "little persuasive value" in the prior First Circuit decision in *United States v. Feliz*, 467 F.3d 227, 236-37 (1st Cir. 2006) (admitting an autopsy report as a business record), as decided before *Melendez-Diaz* which had rejected the admission of a forensic report as a business record. *Ignasiak*, _ F.3d at _ n.15.

The Eleventh Circuit also noted that the pending Confrontation Clause case before the Supreme Court in ***People v. Williams***, 939 N.E. 2d 268 (Ill. 2010), *cert. granted*, *Williams v. Illinois*, _ U.S. _, 131 S. Ct. 3090 (June 28, 2011) (No. 10-8505), was "materially different" since the autopsy reports were introduced at trial and the chief medical examiner "essentially read the contents of these reports into evidence" and the chief medical examiner's conclusions were not "truly independent expert opinion." *Ignasiak*, _ F.3d at _ n.21.

The Confrontation Clause violation was not harmless beyond a reasonable doubt. The jury was permitted to consider the testimonial statements in the five autopsy reports which were introduced without the testimony of the examiners. The government's theory, evidence and closing argument connected the autopsy reports with other evidence at trial. While the Ignasiak decision reflects more recent Supreme Court case law, it also creates a split of the Eleventh Circuit with the First Circuit.

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