No. 3--07--0538

Order filed March 25, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois
Plaintiff-Appellee,	)	
v.	)	No. 05--CF--595
ANDREW J. CRAWFORD,	)	
Defendant-Appellant.	)	Honorable Michael Brandt, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court. Justices Lytton and Wright concurred in the judgment.

ORDER

Held: Any error that may have been committed by the trial court in admitting the autopsy report of the non-testifying pathologist was harmless beyond a reasonable doubt. Affirmed.

Defendant, Andrew J. Crawford, was convicted of first

degree murder by a jury in Peoria County, and thereafter sentenced to 52 years in prison. Defendant appealed this conviction, arguing that his sixth amendment right to confront the witness against him were violated. This court affirmed the trial court in an unpublished order. Defendant filed a *pro se* petition for leave to appeal. In response, the Illinois Supreme Court issued a supervisory order directing us to vacate our previous order and to reconsider in light of *People v. Williams*, 238 Ill. 2d 125 (2010). We vacated our previous order and directed the parties to submit briefs concerning the impact of *Williams* on this appeal. Having reconsidered in light of *Williams*, we find that while defendant raises serious constitutional challenges, we need not reach them because any error committed by the trial court was harmless beyond a reasonable doubt. We affirm.

FACTS

A grand jury returned an indictment charging the defendant with two counts of first degree murder. The first count charged that he intentionally killed Tomeka Ramsey by

striking her with a hammer. The second count charged that defendant struck her with a hammer and placed her in a bathtub with running water, knowing that his act created a strong probability of death or great bodily harm. See 720 ILCS 5/9-1)A)(1), 9-1(A)(2) (West 2004).

Shortly before jury selection was scheduled to begin, one of the prosecutors informed the trial court that the forensic pathologist who had conducted the autopsy on the victim had traveled out of state for a family emergency and would be unable to testify. The prosecutor argued that, under 725 ILCS 5/115-5/1 (West 2006), the autopsy report was admissible "without any further testimony needed." The prosecutor requested that the trial court rule on the admissibility of that autopsy report, and they discussed case law purportedly supporting her position. Defense counsel objected to the admission of the doctor's report in lieu of the witness.

The trial court concluded that, "[T]he court sees nothing by way of authority or otherwise that would prevent the admission of records given a proper foundation under

115--5.1 as evidence in this case, noting that there must be a proper foundation for the admission of these records, and noting the records are limited as stated in the statute to records of the results of post mortem examinations of the findings of autopsy and toxicological (*sic*) laboratory examinations." The trial court further concluded that there was no confrontation clause violation and allowed the records to come in as stated.

Several police witnesses and the defendant testified during a pretrial hearing on his motion to suppress evidence, and again during the jury trial. Jim Weitkamp, a process server for the Peoria County sheriff's office, testified that the defendant flagged him down in the parking lot of the Cityscape Apartments on the afternoon of June 7, 2005. Weitkamp's car had sheriff's license plates, but was otherwise unmarked. Weitkamp was wearing a badge and carrying a sidearm. The defendant walked up to the driver's window of Weitkamp's car, stated he "had done his girlfriend bad," and asked to be taken to jail. Weitkamp replied that it doesn't work that way and that you can not go to jail

just because you want to.

Weitkamp asked defendant his name and date of birth and called dispatch to find out if there were any outstanding warrants on him. Dispatch informed Weitkamp there were none and he relayed that information to defendant. However, while defendant was leaning against the window of Weitkamp's car, he noticed a cut on defendant's finger. Weitkamp asked him to back away from the car and then noticed stains on defendant's pants. Weitkamp then asked defendant what he meant by "doing his girlfriend bad." Defendant stated that he had taken her car to take her mother to work, but delayed getting back, and she got upset. He explained that he had fought with the woman and threw her in the bathtub.

Weitkamp called dispatch and requested police check on the welfare of a person at the address on Howett Street which defendant provided to him. Weitkamp told defendant to have a seat on a nearby area of grass. He got out of his car and stood next to defendant on the grass until officers arrived and arrested him. According to Weitkamp, defendant was very emotional and appeared to be "high" on drugs.

Shortly after Weitkamp's call requesting that someone check on the welfare of the person at the Howett Street address, police, firefighters, and an ambulance arrived there. They found the doors to the house locked. Firefighters managed to enter the home through a window and unlocked the front door for the police. Police officers entered, proceeded upstairs to the bathroom, and found the body of the victim floating in the bathtub. The water was still running. It had spilled over onto the floor, and the water damage had caused part of the downstairs ceiling to collapse. Paramedics determined the victim was dead.

Witnesses for the State testified that the defendant made various statements when he was taken into custody. As he was transported to the police station, defendant allegedly stated, "Man I shouldn't have done this. I'm going to get 25 years." The police witnesses testified that they provided *Miranda* admonitions to defendant and that defendant agreed to speak with them.

Defendant told police that he had borrowed Tomeka Ramsey's car early on the morning of June 7, 2005, to take

Erlene Ramsey (Tomeka's mother and the defendant's girlfriend) to work. He was supposed to return in time for Tomeka to take the car to her own job. Instead, defendant drove somewhere to buy crack cocaine and smoked it before he returned home. By this time, Tomeka was late for work. Tomeka and defendant engaged in a heated argument. At some point, Tomeka bit his finger. Defendant became enraged and retreated to his bedroom. After he calmed down, defendant retrieved a hammer, intending to fix a screen window downstairs. When defendant walked out of his bedroom, Tomeka continued to berate him. He hit Tomeka once in the head with the hammer. She fell and struggled to get away. Defendant struck her two or three times in the head with the hammer. Defendant was high on crack cocaine and did not remember exactly what happened, but he remembered placing his hands over her throat and choking her, then placing her body in a bathtub full of water. He threw the hammer in the corner of his bedroom.

Defendant left the house again in Tomeka's car, drove to the area of Widenham Street, bought more crack cocaine

and smoked for a couple of hours. Defendant walked to a friend's home at Cityscape, and eventually flagged down Jim Wietkamp, informing Weitkamp that someone at the Howett Street address was hurt.

Defendant testified that he did not kill Tomeka Ramsey and that he did not tell his interrogators that he had killed her. On June 7, 2005, he lived in the same home with his girlfriend, Erlene Ramsey, and her daughter, Tomeka Ramsey, on Howett Street. At about 7 a.m., he used Tomeka's car to drive Erlene to work. After dropping off Erlene, he drove around awhile, then returned to the house. He was there about 40 minutes, then left again, approximately at 8:40 a.m. Defendant assumed that Tomeka was still in her bedroom in the house. When defendant left the house, the doors were unlocked. Defendant explained that both doors are always unlocked and that anyone can walk into either door unless you are inside and close them. He stated that someone could lock the door from the inside, but not from the outside.

Defendant drove around to buy more crack cocaine. He

stopped at a few different places to smoke it. He reached the point where he realized he was doing too much crack and stopped the car. Defendant did not want to wreck the car while he was high on crack cocaine, so he got out of the car and walked around. He ended up at a friend's home in the Cityscape complex and smoked more crack. Defendant lost track of time. He remembered he was suppose to pick up Erlene from work, so he flagged down Jim Weitkamp to get a ride back to his car. Defendant insisted that he did not know, initially, that Weitkamp was connected with the sheriff's office. Once defendant realized Weitkamp was wearing a badge, he became very wary and tried to remain calm because he did not want Weitkamp to perceive that he had been using drugs.

Defendant testified that he observed Weitkamp speaking on his cell phone, and then Weitkamp informed defendant that there were no pending warrants on him. Defendant wondered why Wietkamp had done a warrant check on him. Weitkamp's demeanor became serious, and he ordered defendant to back away from his car and go over and sit down on the grass.

Weitkamp got out of his car, stood over defendant, and informed him that he had a side arm.

Defendant testified that he was transported to the police station and placed in a room. After about 10 or 15 minutes, some police officers came into the room. Defendant testified that he repeatedly asked why he was arrested and why the police were holding him. He insisted that he repeatedly asked to speak to an attorney and that the police never read *Miranda* warnings to him. Defendant estimated that he was in the interrogation room for about two or three hours. He was still high and had difficulty understanding what was going on.

A hammer was recovered from the house on Howett Street. The denim jeans defendant was wearing on the day of his arrest were confiscated and stains from the hammer and the jeans were tested in the state police laboratory. The stains were determined to be blood consistent with the DNA profile from Tomeka Ramsey, and inconsistent with the DNA profile from defendant.

The Peoria County coroner identified the State's

exhibit No. 34 as Dr. Violette Hnilica's final forensic pathology report and autopsy report concerning the death of Tomeka Ramsey. The coroner testified that she recognized Hnilica's signature on the document and that she had asked Hnilica to perform the autopsy. The State moved for admission of the exhibit. Defense counsel objected, stating, "In addition to other objections I object to the foundation and to the--and that this report contains opinions and conclusions, hearsay on hearsay, and is not a business record." The trial court allowed admission of the exhibit over defense counsel's objection.

When the prosecutor asked the coroner to read the conclusions in the report to the jury, defense counsel objected again, "If the record is in the record is in, it speaks for itself." The trial court overruled this objection, and pursuant to section 115-5.1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-5.1 (West 2006)) allowed the witness to read the report's written conclusions to the jury.

The narrative read to the jury indicated that decedent

suffered head and neck injuries; there were lacerations present "in the left side of the head, behind the ear, and in the right head above the ear with an underlying skull fracture and contusional injury in the brain." The narrative further stated, "There were multiple contusions on her right and left face, and on left neck and left side of the head. She had some hemorrhage in muscle and soft tissues around the thyroid gland and larynx most prominent on the right side of neck with fine petechiae on the face and conjunctiva and oral mucosa. She had no drugs or alcohol in her body at the time of death." Dr. Hnilica's report listed the official cause of death as "blunt force injuries of head and neck."

The jury found defendant guilty of first degree murder. The defendant filed a motion for a new trial alleging, *inter alia*, "The trial court erred in admitting the autopsy report and its conclusions over defendant's objections as a business record and without proper foundation or authentication as such, contained hearsay and denied defendant his right to confrontation." The trial court

denied defendant's posttrial motion, and defendant was subsequently sentenced to 52 years' imprisonment.

Defendant appealed raising sixth amendment confrontation issues. This court stated that while *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004), did raise some questions about the constitutionality of section 115-5.1, we did not reach that question because we held that any error that the trial court may have committed was harmless error beyond a reasonable doubt.

Defendant filed a *pro se* petition for leave to appeal with the Illinois Supreme Court. It denied his petition for leave to appeal, but issued a supervisory order. The order directed this court to vacate its judgment in this matter and to reconsider in light of *Williams* to determine if a different result is required.

ANALYSIS

Defendant contends that his sixth amendment right to confront the witness against him was violated. He argues that the trial judge improperly admitted Dr. Hnilica's autopsy report in lieu of her testimony at trial and,

therefore, he was not given the opportunity to address her possible biases. The State responds, arguing that the autopsy report was not testimonial hearsay, and the trial judge properly admitted the report under the business record exception to the hearsay rule. Alternatively, the State contends that the admission of the autopsy report was harmless beyond a reasonable doubt.

Generally, a trial court's ruling on the admissibility of evidence is reviewed for an abuse of discretion. However, determining whether a hearsay statement violates the confrontation clause triggers *de novo* review. *Lilly v. Virginia*, 527 U.S. 116, 136, 119 S. Ct. 1887, 1900 (1999); *People v. Edwards*, 309 Ill. App.3d 447, 451 (1999).

The confrontation clause provides the defendant with a right to be confronted by the witnesses against him. U.S. Const., amend. VI; *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004). *Crawford* prohibits the admission of out-of-court "testimonial" statements against a criminal defendant, unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine the

declarant. *Crawford,* 541 U.S. at 68. While *Crawford* did not explicitly define "testimonial," it provided the following concrete examples of testimonial statements: (1) ex-parte in-court testimony; (2) extrajudicial statements such as affidavits, depositions, prior testimony, and confessions; (3) statements made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial; and (4) police interrogations. *Crawford*, 541 U.S. at 51-52, 68; *People v. So Young Kim*, 368 Ill. App. 3d 717, 719 (2006).

In *Davis v. Washington*, 547 U.S. 813, 822, 126 S. Ct. 2266, 2273-74 (2006), the Supreme Court confirmed that a key variable in determining whether a statement is testimonial is to examine whether its use in a later prosecution was anticipated. The court held that in the context of a police interrogation, statements are not testimonial when the "primary purpose of the interrogation is to enable police *** to meet an ongoing emergency," but are testimonial when the interrogation is designed to "establish or prove past

events potentially relevant to later criminal prosecution." *Davis*, 547 U.S. at 822. Thus, *Davis* confirmed *Crawford's* suggestion that statements made with an "eye toward trial" fall within the definition of testimonial evidence. *Crawford*, 541 U.S. at 56.

It is at this point that a discussion of *Williams* is pertinent. The Illinois Supreme Court in *Williams* applied the United States Supreme Court decision in *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (2009), to testimony by an expert witness concerning the facts underlying their expert opinion. *Williams* held that no confrontation right existed under *Crawford* and *Melendez-Diaz* that prevented an expert from testifying to the work of other experts that form the basis of the testifying experts opinion. *Williams*, 238 Ill. 2d at 149-50. This is so because the statements are not introduced for the truth of the matter but to show what material the testifying witness relied upon. *Id.* at 150. It is the opinion of the testifying expert witness that is introduced for truth of the matter asserted. *Id.*

Here, we are not dealing with the testimony of an

expert, so the holding in *Williams* is not applicable to our case. However, our supreme court did discuss *Melendez-Diaz* in *Williams*.

Melendez-Diaz was charged with distributing cocaine and with trafficking in cocaine in an amount between 14 and 28 grams. *Melendez-Diaz*, 129 S. Ct. at 2530. The State's evidence at trial included bags of a substance seized from Melendez-Diaz. *Id.* The State provided three certificates sworn to before a notary public by the analysts at a lab. *Id.* at 2530-31. The certificates claimed the substance contained cocaine. *Id.* According to Massachusetts state law, the certificates were "prima facie evidence of the composition, quality, and the net weight of the analyzed substance." (Internal quotation marks omitted.) *Id. at 2532*. Melendez-Diaz objected to the introduction of the certificates on confrontation clause grounds. *Id.* at 2531. The trial court overruled the objection and he was convicted. *Id.* The Supreme Court held that the introduction of the certificates did violate Melendez-Diaz's sixth amendment rights. *Id.* at 2532.

Defendant contends that the autopsy findings of a medical examiner fit squarely within the definition of testimonial hearsay under *Crawford*, *Davis*, and *Melendez-Diaz*. *Crawford*, 541 U.S. at 51-52; *Davis*, 547 U.S. at 822; *Melendez-Diaz*, 129 S. Ct. at 2531-32, 2538. Defendant argues that the medical examiner's duty entails working closely with the police and State's Attorney in performing autopsies to aid in criminal investigation, in anticipation of criminal prosecution. See 55 ILCS 5/3-3013 (West 2006). Specifically, in the case at bar, there was testimony that the medical examiner "always has copies" of the police reports when she starts the autopsy.

In response, the State argues that the trial court did not err in admitting the autopsy report because it is a nontestimonial business record. In contrast to the concrete examples of testimonial statements provided by *Crawford*, the Supreme Court stated, "Most of the hearsay exceptions covered statements that by their nature were not testimonial--for example, business records ***." *Crawford*, 541 U.S. at 56.

Moreover, an Illinois appellate court found no *Crawford* violation where an autopsy report was admitted as a business record in lieu of the medical examiner's testimony. *People v. Moore*, 378 Ill. App.3d 41, 50-51 (2007). The court in *Moore* explained that, "A plain reading of the statute governing the admissibility of medical examiner's report as evidence leads us to conclude that an autopsy report should be treated as a business record." *Moore*, 378 Ill. App. 3d at 50.

In the case at bar, the State informed the trial court, prior to selecting a jury, that Dr. Violet Hnilica, the forensic pathologist who they planned to call as a witness, left the state that morning due to a family emergency. The defendant objected, averring that regardless of the business record exception, the report presented confrontation clause problems. After hearing argument, the trial court concluded there was no confrontation clause violation. The court admitted the autopsy report as a business record under section 115-5.1. 725 ILCS 5/115-5.1 (West 2006). Section 5/115-5.1 provides that:

"In any civil or criminal action the records of the coroner's medical or laboratory examiner summarizing and detailing the performance of his or her official duties in performing medical examinations upon deceased persons or autopsies, or both, and kept in the ordinary course of business of the coroner's office, duly certified by the county coroner or chief supervisory coroner's pathologist or medical examiner, shall be received as competent evidence in any court of this State, to the extent permitted by this Section. These reports, specifically including but not limited to the pathologist's protocol, autopsy reports and toxicological reports, shall be public documents and thereby may be admissible as prima facie evidence of the facts, findings, opinions, diagnoses and conditions stated therein.

A duly certified coroner's protocol or autopsy report, or both, complying with the

> requirements of this Section may be duly admitted into evidence as an exception to the hearsay rule as prima facie proof of the cause of death of the person whom it relates. The records referred to in this Section shall be limited to the records of the results of post-mortem examinations of the findings of autopsy and toxicological laboratory examinations." 725 ILCS 5/115-5.1 (West 2005).

Although the pathology and autopsy reports were hearsay, the Peoria County coroner established that they were kept in the regular course of business of the coroner's office and duly certified the reports. Therefore, the State contends that because the autopsy report is a business record pursuant to section 115-5.1, it neither implicated *Crawford*, nor denied the defendant his right to confrontation. *Moore*, 378 Ill. App. 3d at 50-51.

The State further argues that this case is similar to *People v. Russell*, 385 Ill. App. 3d 468 (2008). In *Russell*, this court adopted the Second District's *Crawford* analysis

in *So Young Kim*. *People v. So Young Kim*, 368 Ill. App. 3d 717 (2006). There, the Second District reasoned that the Breathalyzer logs were nontestimonial because they were nonaccusatory and specifically recognized as a traditional hearsay exception. *So Young Kim*, 368 Ill. App. 3d at 719. Similarly, in the case at bar, the State argues, and the defendant concedes, that the autopsy report did not indicate who committed the homicide, nor did it accuse the defendant.

The United States Supreme Court addressed the possibility of business record and nonaccusatory evidence exceptions to Crawford in *Melendez-Diaz*. *Melendez-Diaz*, 129 S. Ct. at 2533, 2538. "Documents kept in the regular course of business may ordinarily be admitted at trial despite their hearsay status. [Citation.] But that is not the case if the regularly conducted business activity is the production of evidence for use at trial." *Id.* at 2538. The court went on to say that coroner's reports are "not accorded any special status in American practice." *Id.* The court also rejected an argument that nonaccusatory statements should not be subject to confrontation clause

analysis. It said: "Respondent's claim that the analysts are not subject to confrontation because they are not 'accusatory' witnesses finds no support in the Sixth Amendment's text or in this Court's case law." *Id. at 2529.*

Finally, the State contends that any error by the admission of the report was harmless. We agree. Error is harmless if it is proven beyond a reasonable doubt that it did not contribute to the defendant's conviction. *People v. Patterson*, 217 Ill. 2d 407, 427-28 (2005). The State contends that even without the autopsy report, the evidence of the defendant's guilt was overwhelming.

Along with the testimony of the witnesses provided above regarding the admissions of defendant, the stains on the hammer and stains on the defendant's blue jeans were identified as blood to a reasonable degree of scientific certainty. Furthermore, Illinois State Police Forensic Scientist Kevin Zeeb analyzed the DNA evidence from the victim and the defendant. On both the hammer swab and the defendants jeans, Zeeb identified human female DNA that matched the victim's DNA. Zeeb also concluded that the

defendant could not be the source of the DNA identified on the items.

Moreover, there was no doubt that a homicide occurred in this case. The State did not need the autopsy report to establish that a murder occurred. Although a certified autopsy report is *prima facie* evidence of the findings in the report, the *corpus delecti* also can be proven by circumstantial evidence. *People v. Kennedy*, 150 Ill. App. 3d 319, 322 (1986). The jury had before it photographs of the victim taken at the crime scene and during the autopsy. Two photographs showed the victim floating in a bathtub of water; two photographs displayed injuries to the victim's head. The photographer, a police officer, testified at trial.

Additionally, Detective Hauk, who previously had served as a deputy coroner, testified as to the injuries he observed during the autopsy. He noted that there was blunt force trauma to the victim's head, a foam cone around her nose and mouth, a skull fracture, and bruising around her neck and chin. Thus, the State submits that because the

exhibits and Hauk's observations provided sufficient circumstantial evidence of an obvious homicide, any error in admitting the report was harmless. *Kamp*, 131 Ill. App. 3d at 991-92. The autopsy report was not necessary to prove a homicide in this case.

Again, the trial court admitted the autopsy report into evidence pursuant to section 115-5.1. 725 ILCS 5/115-5.1 (West 2006). There is no doubt that *Crawford*, *Davis*, and *Melendez-Diaz* raise serious doubt about the constitutionality of the statute. However, as directed by our supreme court, we sidestep the issue; it is not necessary to decide the constitutionality of the statute in light of our harmless error analysis. *In re E.H.*, 224 Ill. 2d 172, 181.

In response to the State's harmless error argument, defendant cites to *People v. Johnson*, 208 Ill. 2d 53 (2003), and *People v. Blue*, 189 Ill. 2d 99 (2000). *Johnson* and *Blue* addressed the situation of when a reviewing court is confronted with trial error of constitutional significance under circumstances where the evidence establishing the

offense is strong. The court in *Blue* held, "when an error arises at trial that is of such gravity that it threatens the very integrity of the judicial process, the court must act to correct the error, so that the fairness and reputation of the process may be preserved and protected." *Blue,* 189 Ill. 2d at 138.

Although the State acknowledges the relevance of the supreme court's finding in *Blue* and *Johnson*, it submits that the instant case is distinguishable. We agree. Both *Blue* and *Johnson* addressed a pervasive pattern of prosecutorial misconduct and determined that cumulative error necessitated reversal. *Johnson*, 208 Ill. 2d at 87-88; *Blue*, 189 Ill.2d at 139. In contrast, in the case at bar, the defendant raises but one claim of error.

The Supreme Court of Illinois has held that even constitutional errors can be harmless. Specifically, the court found that *Crawford* violations are subject to harmless error analysis. *Patterson*, 217 Ill. 2d at 423-28. Accordingly, we find that any error in the admission of the autopsy report was harmless. The autopsy report provided

evidence that the victim was murdered. Other evidence made this obvious. The evidence pointing to the occurrence of a homicide was overwhelming; the autopsy report did not contribute to the defendant's conviction. See *Patterson*, 217 Ill. 2d at 428.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

Affirmed.