COA Opinion: Autopsy report does not violate the confrontation clause

7. March 2010

On March 4, 2010, the Michigan Court of Appeals approved its opinion in *People v. Lewis*, No. 274508, for publication. The court held that the trial court properly admitted the autopsy report prepared by two nontestifying medical examiners through the testimony of a third medical examiner. The report's admittance did not violate the Sixth Amendment confrontation clause. The court's opinion may be found here.

Defendant was convicted of first-degree premeditated murder under MCL § 750.316. The trial court admitted an autopsy report of the victim prepared by two nontestifying medical examiners through the testimony of a third medical examiner. Defendant failed to object to this at trial based on the confrontation clause. The Court of Appeals thus reviewed the admittance of the autopsy report for plain error affecting the defendant's substantial rights.

The court held that the admittance of the autopsy report did not violate the confrontation clause because it was nontestimonial. The autopsy report was not prepared primarily for use in a later criminal prosecution. The medical examiners were required to prepare the autopsy report by MCL § 52.202(1)(a). Further, the court held that the autopsy report was not outcome determinative, and so did not affect the defendant's substantial rights.

The defendant also argued that his attorney provided ineffective assistance of counsel because the attorney failed to object to the autopsy report. The court disagreed because the autopsy report was properly admitted, among other reasons. Lastly, the defendant argued that the prosecutor failed to present sufficient evidence to convict him. However, the court found the evidence substantial and sufficient.

The court issued this opinion following a remand from the Michigan Supreme Court directing the court to reconsider its original opinion in light of *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (2009). The court's original opinion reached the same result.