No. _____

In the Supreme Court of the United States

BENNIE ADAMS,
Petitioner,

v.

STATE OF OHIO
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE OHIO SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Is an autopsy report testimonial evidence that demands confrontation under *Crawford v. Washington,* 541 U.S. 36 (2004), and the Sixth Amendment to the United States Constitution?

LIST OF PARTIES

Petitioner, Bennie Adams, an Ohio inmate housed at Trumbull Correctional Institution, was the appellant in the Ohio Supreme Court.

Respondent, the State of Ohio, was the appellee in the Ohio Supreme Court.

RELATED PROCEEDINGS

All proceedings directly related to this petition include:

1. Ohio Supreme Court Direct Appeal Opinion: *State v. Adams*, 144 Ohio St.3d 429, No. 2015-Ohio-3954.

2. Trial Court Post-Conviction Opinion: *State v. Adams*, Case No. 2007 CR 01261.

3. Court of Appeals Post-Conviction Opinion: *State v. Adams*, 7th Dist. 2018 MA 00116, 2019-Ohio-4090.

4. Ohio Supreme Court Denial of Jurisdiction of Post-Conviction: *State v. Adams*, Entry, Ohio Supreme Court Case No. 2019-1570.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Bennie Adams respectfully petitions for a writ of certiorari to review the judgment of the Ohio Supreme Court.

OPINIONS BELOW

The Journal Entry of the Supreme Court of Ohio, *State of Ohio v. Bennie Adams,* Ohio Supreme Court Case No. 2019-1570 (jurisdiction denied on January 21, 2020), is attached hereto at Appendix A-1. The decision of Ohio's Seventh District Court of Appeals is available at *State of Ohio v. Bennie Adams*, Case No. 18 MA 0116, Seventh District Court of Appeals, 2019-Ohio-4090 (September 30, 2019) , and is attached hereto at Appendix A-2. The Mahoning County Court of Common Pleas Journal Entry, *State of Ohio v. Bennie Adams*, Case No. 2007 CR 1261, Mahoning County Common Pleas Court, Journal Entry, Filed September 25, 2018, is attached hereto at Appendix A-20.

JURISDICTIONAL STATEMENT

The Seventh District Court of Appeals issued its opinion on the merits on September 30, 2019. *See* App. A-2. Adams filed a Memorandum in Support of Jurisdiction with the Ohio Supreme Court, which denied jurisdiction without opinion on January 21, 2020. *See* App. A-1. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

This case involves the following Amendments to the United States Constitution:

A. Sixth Amendment, which provides in pertinent part:

> 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…

B. Fourteenth Amendment, which provides in pertinent part:

> No State shall…deprive any person of life, liberty, or property, without due process of law….

STATEMENT OF THE CASE

On December 29, 1985, a runner discovered Gina Tenney's body in the Mahoning River, in Mahoning County, Ohio. Tr.[1] 184, 188. Tenney had seemingly been strangled and put in the river sometime in the preceding hours. For 22-years, the State was unable to indict anyone for the aggravated murder of Tenney. *See generally* Grand Jury Testimony 02/21/1986. In 2007, the State finally indicted Bennie Adams for the aggravated murder of Tenney when Adams' DNA was found to be consistent with the DNA found in Tenney's underwear. Tr. 235, 587; 7/18/08 pretrial, Tr. 167.

[1] The trial transcript shall be hereinafter cited as "Tr. __."

During pre-trial conferences, the trial court ruled that Dr. Germaniuk, a pathologist unconnected to the autopsy, would be allowed to testify to the findings and conclusions in the autopsy report. 9/19/08 pretrial, Tr. 118. The State contacted Dr. Rona, who had actually performed the autopsy. Dr Rona was alive and living nearby, but the State still chose not to call him. 8/13/08 pretrial, Tr. 12; 9/5/08 pretrial, Tr. 23.

The trial began on October 6, 2008. The jury found Adams guilty of aggravated murder and accompanying capital specifications. After a mitigation hearing, the jury recommended a sentence of death. The trial court adopted that recommendation and sentenced Adams to death.

On direct appeal, the Ohio Supreme Court found that "based on the evidence presented at trial, we hold that there was not sufficient evidence to establish that Adams committed aggravated burglary. . . ." *State v. Adams*, 2015-Ohio-3954, ¶¶ 280, 300 (2015). A finding by the jury that Adams committed aggravated burglary was necessary to sentence Adams to death, so, as a result, Adams was resentenced by the trial court on June 6, 2016 to a prison term of twenty years to life. The trial court's re-sentencing of Adams rendered moot Adams' timely filed post-conviction petition.

Following his resentencing, Adams timely re-filed his post-conviction petition on June 5, 2017. The trial court denied Adams' post-conviction petition on September 25, 2018. *See State of Ohio v. Bennie Adams*, Case No. 2007 CR 1261, Mahoning County Common Pleas Court, Journal Entry (Sept. 25, 2018) [hereinafter 9/25/18 JE]. Appendix at A-20. Adams filed a timely notice of appeal in the Court of Appeals on

October 25, 2018. After full briefing, on September 30, 2019, the Court of Appeals filed its Opinion and Judgment Entry affirming the decision of the trial court. *State of Ohio v. Bennie Adams*, Case No. 18 MA 0116, Seventh District Court of Appeals, 2019-Ohio-4090 (September 30, 2019) [hereinafter 9/30/19 CoA Op.]. Appendix at A-2. The Ohio Supreme Court declined to accept jurisdiction. *State of Ohio v. Bennie Adams*, Ohio Supreme Court Case No. 2019-1570 (jurisdiction denied on January 21, 2020). Appendix at A-1.

REASON FOR GRANTING THE WRIT

The State's use of an autopsy report as evidence at trial against a criminal defendant is testimonial evidence and demands confrontation under *Crawford v. Washington,* 541 U.S. 36 (2004) and the Sixth Amendment to the United States Constitution.

A. Introduction.

For over 100 years, this Court has protected criminal defendants' Sixth Amendment Constitutional Right to confront the witnesses against them. *Mattox v. United States*, 156 U.S. 237, 244 (1895). The Confrontation Clause guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. "Where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation." *Crawford v. Washington*, 541 U.S. 36, 68-69 (2004).

In this case, without first demanding that the State prove unavailability of the witness and without first allowing Adams his constitutional right to confront the

author of the autopsy report, the trial court allowed the State to admit the autopsy report of the victim as substantive evidence against Petitioner Adams during his trial. Admission of this autopsy report violated Adams' right to confront the witnesses against him. States are split on how to apply this Court's precedent in *Crawford* and its progeny to autopsy reports. This Court should grant the writ to make it clear to all courts that autopsy reports are testimonial evidence, and thus, criminal defendants are owed their Sixth Amendment Right to confront the author of the autopsy report before the autopsy report is allowed to be admitted as substantive evidence against them at trial.

B. This Court's governing precedent.

This Court's decision in *Crawford* illustrates that testimonial evidence is subject to the Confrontation Clause unless the witness is unavailable, and the defendant had a prior opportunity to cross examine that witness. *Id.* at 54. In *Crawford*, this Court described a class of what qualifies as testimonial evidence; this includes affidavits and "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," as well as other types of evidence. *Id.* at 51-52. Following *Crawford*, this Court reviewed several cases to determine if various types of evidence are considered testimonial for purposes of the Confrontation Clause. *See Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009); s*ee also Bullcoming v. New Mexico*, 564 U.S. 647 (2011).

Melendez-Diaz challenged whether "certificates of analysis" were considered testimonial evidence. 557 U.S. at 307. This Court ruled that certificates of analysis were, in fact, testimonial evidence for the purposes of the Confrontation Clause because they were a "'solemn declaration or affirmation made for the purpose of establishing or proving some fact.'" *Melendez-Diaz*, 577 U.S. at 310, *citing Crawford*, 541 U.S. at 51. *Bullcoming* added to the analysis in *Melendez-Diaz* by holding that a blood-alcohol report is also testimonial evidence and demands confrontation in a driving while intoxicated case. 564 U.S. at 663.

This Court indicated, through these two cases, that a document used as evidence, even if not explicitly an affidavit, is testimonial evidence triggering a defendant's right to confront the author when the document is "'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*, 577 U.S. at 311 *citing Crawford*, 541 U.S. at 52. The autopsy report qualifies as such a document.

The analysis in *Bullcoming* is instructive. At trial, the State of New Mexico offered the "certificate of analysis" of Bullcoming's blood as a business record but did not call the analyst who actually conducted the testing. Instead, the State called a substitute witness with similar qualifications. Bullcoming asserted a Confrontation Clause challenge. The trial court denied the Confrontation Clause challenge and the lower courts all affirmed. This Court granted certiorari.

In resolving Bullcoming's Confrontation Clause challenge, this Court drew an analogy between the Confrontation Clause and another Sixth Amendment right—the

right to counsel. In *United States v. Gonzalez-Lopez,* 548 U.S 140 (2006), this Court had rejected the Government's argument that illegitimately denying a defendant his right to counsel of choice did not violate the Sixth Amendment where "substitute counsel's performance did not demonstrably prejudice the defendant. *Bullcoming,* 564 U.S. at 662-663, citing and quoting *Gonzalez-Lopez*, 548 U.S. at 146. In rejecting the Government's argument in *Gonzalez-Lopez*, this Court noted, "If a 'particular guarantee' of the Sixth Amendment is violated, *no substitute procedure can cure the violation,* and '[n]o additional showing of prejudice is required to make the violation 'complete.'" *Gonzalez-Lopez*, 548 U.S. at 146 (emphasis added). This Court then applied that principle to the Confrontation Clause challenge Bullcoming asserted, and had no trouble finding a Sixth Amendment violation. "If representation by substitute counsel does not satisfy the Sixth Amendment, neither does the opportunity to confront a substitute witness." *Bullcoming*, 564 U.S. at 663. But that is exactly what happened to Bennie Adams. The trial court allowed the state to forego calling the pathologist who actually conducted the autopsy (and who was available to testify) and instead called a different pathologist as a substitute witness to testify to the findings and conclusions in the autopsy report. This violated the Confrontation Clause.

In *Williams v. Illinois*, 567 U.S. 50, 56 (2012), a plurality of this Court held that "[o]ut-of-court statements that are related by the expert solely for the purpose of explaining the assumptions on which the opinions rest [and] are not offered for their truth [] thus fall outside the scope of the Confrontation Clause." *Williams v. Illinois*,

567 U.S. 50, 56 (2012). The substitute pathologist in Adams' case did more than merely explain the scientific assumptions that supported a particular scientific procedure used during the autopsy. Dr. Germaniuk testified to the findings and conclusions of the autopsy report itself. Thus, *Williams* does not apply. 567 U.S. at 57-58.

C. State courts are split regarding their decisions as to whether autopsies are testimonial evidence.

Following this Court's decisions in *Crawford*, *Melendez-Diaz*, and *Bullcoming,* state courts across the country have struggled to determine whether autopsy reports are testimonial and subject to confrontation. Half of the states have not considered, or at least the highest court of the state has not finally ruled, on the issue. Within those states that have not ruled on the issue, at least three expressed reluctance to rule because of the unsettled state of the law. *See Flowers v. State*, 456 P.3d 1037, 1046 (Nev. 2020) ("This court has not decided 'whether autopsy reports constitute "testimonial evidence" as so to trigger the protections of the Confrontation Clause'… The unsettled state of the law prevents us from saying the error…was 'plain.'"); *State v. Campbell*, 180 A.3d 882, 926 (Conn. 2018); *see also*, *State v. Bass*, 224 N.J. 285, 312 (2016) (Although the Supreme Court of New Jersey did eventually rule that autopsy reports are testimonial, that court also recognized that the trilogy of opinions issued by this Court between 2009-2012 regarding *Crawford* has "left the law in this important area in an uncertain state.") .

Of the 25 states that have ruled on this issue, a split in opinions is evident. In 16 states, the highest court has determined whether an autopsy is testimonial

evidence: 5 states have ruled that autopsy reports are testimonial evidence, while 11 states, including Ohio, have ruled that autopsy reports are not testimonial.[2] In the remaining 9 states, the highest court rulings do not clearly establish whether an autopsy is testimonial or not.[3]

The above cited cases show a strong split amongst jurisdictions as to how they treat autopsy reports within this Court's Confrontation Clause jurisprudence. This split further demonstrates that states are, indeed, confused as to how to apply *Crawford* and its progeny to autopsy reports that are admitted as evidence at criminal trials.

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[2] **Testimonial States**: Mississippi, New Jersey, North Carolina, Pennsylvania, and West Virginia. *Gossett v. State*, 92-KA-00413-SCT (Miss. 1995); *State v. Bass*, 224 N.J. 285, 317 (2016); *State v. Locklear*, 681 S.E.2d 293, 304-05 (N.C. 2009); *Com. v. Brown,* 139 A.3d 208 (Pa. 2016); *State v. Kennedy*, 735 S.E.2d 905 (W. Va. 2010). **Non-Testimonial States:** Arizona, Arkansas, California, Illinois, Indiana, Kansas, Kentucky, Maine, New York, Ohio, and Tennessee. *See State v. Joseph,* 283 P.3d 27 (Ariz. 2012); *Sauerwin v. State,* 363 Ark. 324, 214 S.W.3d 266 (Ark. 2005); *People v. Dungo*, 286 P.3d 442 (Cal. 2012); *People v. Leach,* 2012 IL 111534; *Ackerman v. State*, 51 N.E.3d 171 (Ind. 2016); *State v. Lackey,* 120 P.3d 332 (Kan. 2005) (overruled on other grounds by *State v. Davis*, 158 P.3d 317 (Kan. 2006)); *Conley v. Commonwealth*, 2019 WL 3368648 (Ky. 2019); *State v. Mercier*, 2014 ME 28, 87 A.3d 700; *People v. Freycinent*, 11 N.Y.3d 38, 42 (N.Y. 2008); *State v. Craig*, 110 Ohio St.3d 306, 2006-Ohio-4571, 853 N.E.2d 621; *State v. Hutchison*, 482 S.W.3d 893 (Tenn. 2016).

[3] Alabama, Delaware, Florida, Georgia, Massachusetts, Michigan, Missouri, New Mexico, and Texas. *See Ex Parte Jefferson*, 283 So.3d 769 (Ala. 2019) (holding that whether an autopsy report is testimonial depends on the contents and information contained within the autopsy); *State v. Benson*, 2015 WL 3539995 (Del. 2015) (holding that the Defendant's Motion in Limine was denied to limit the admission of testimony for a substitute pathologist but made no explicit holding that autopsies are testimonial evidence.); *Calloway v. State*, 210 So.3d 1160 (Fla. 2017) (holding that admission of a substitute medical examiner was permissible. The medical examiner who authored the autopsy had left the area due to issues between the medical examiner and the prosecutor who was prosecuting the case at hand and, the autopsy was never admitted through the testimony of the substitute examiner.); *Naji v. State*, 797 S.E.2d 916 (Ga. 2017) (holding that the author of the autopsy report was unavailable.); *Commonwealth v. Avila*, 912 N.E.2d 1014 (Mass. 2009) (holding that the autopsy report itself was not admissible, therefore a substitute medical examiner could testify.); *People v. King*, 2010 WL 98693 (Mich. 2010) (holding that autopsy reports, exclusive of their "opinions and conclusions" can be used at trial without opportunity to cross-examine the medical examiner. A substitute pathologist may testify based on observations embodied in the report.); *Zink v. State*, 278 S.W.3d 170 (Mo. 2009) (The Supreme Court of Missouri has not ruled but seems to affirm in opinion with *Zink*.) *Wood v. State*, 299 S.W.3d 200, 215-16 (Tex. App. 2009) (holding that an autopsy report is testimonial and subject to confrontation, however, a denial of the right to confront the author is subject to harmless error review and does not warrant reversal.).

D. The Ohio Supreme Court's interpretation of this Court's Confrontation Clause jurisprudence is flawed.

As detailed above, Ohio is one of eleven states that has ruled that autopsy reports are non-testimonial. In *State v. Maxwell*, the Ohio Supreme Court relied on its previous precedent as well as this Court's decision in *Williams v. Illinois* to deny relief in that case. *See State v. Maxwell*, 139 Ohio St.3d 12, 2014-Ohio-1019 ¶¶ 52-54, *discussing Williams v. Illinois*, 567 U.S. 50 (2012). However, the Ohio Supreme Court's decision in *Maxwell* runs contrary to this Court's jurisprudence in *Melendez-Diaz* and *Bullcoming*.

In *Maxwell*, the Ohio Supreme Court held that despite this Court's recent opinions in *Melendez-Diaz* and *Bullcoming*, the court did not need to depart from its previous decision in *State v. Craig* which held that "an autopsy report was a nontestimonial business record," and was thus not subject to the Confrontation Clause. *Maxwell*, 139 Ohio St.3d at ¶ 54, *citing State v. Craig*, 110 Ohio St.3d 306, 2006-Ohio-4571, ¶¶ 81-88. The Ohio Supreme Court then analyzed this Court's *Williams* decision and the primary purpose test and further concluded that an autopsy is non-testimonial because the "primary purpose" of autopsies was not "a prosecutorial purpose." *Maxwell*, 139 Ohio St.3d at ¶¶ 55, 59.

The Ohio Supreme Court missed the rationale of the holdings in *Melendez-Diaz* and *Bullcoming*, which both clearly illustrate that a document used as evidence, even if not explicitly an affidavit, is testimonial evidence triggering a right to confront the author when the document is "'made under circumstance which would lead an objective witness reasonably to believe that the statement would be available for use

at a later trial.'" *See Melendez-Diaz*, 557 U.S. at 311 *citing Crawford*, 541 U.S. at 52; *see also Bullcoming*, 564 U.S. 663-64. Furthermore, the primary purpose of autopsies is, in fact, often for future prosecution—particularly when the result of the autopsy is a finding of homicide.

Moreover, this Court, in *Melendez-Diaz*, hinted that autopsy reports may be testimonial when it stated: "some forensic analyses, such as autopsies…cannot be repeated." *Melendez-Diaz,* 557 U.S. at 318, n. 5. The Ohio Supreme Court made the same observation in *Maxwell*: "unlike other forensic tests, a second autopsy may not be possible due to cremation of the victim's body or other loss of evidence with passage of time." *Maxwell*, 139 Ohio St.3d at ¶ 61. Nonetheless, the Ohio Supreme Court still found that an autopsy report is not testimonial evidence. *Id. at* ¶ 63.

E. Adams was denied his constitutional right to confront the author of the autopsy report used against him when that witness was available to testify.

The trial court ruled that Adam's First Ground for Relief in his Petition for Post-conviction Relief was barred by *res judicata*. 9/25/18 JE at A-32. This was unreasonable because Adams supported his claim with credible outside the record evidence. This included evidence that demonstrated Dr. Rona's availability as well as a report by Dr. Riddick, an expert forensic pathologist. *See* Exhibits. 1, 2 to post-conviction petition. The trial court alternately found that Adams did not warrant relief on the merits due to the Ohio Supreme Court's precedent, as explained above. *See, supra,* Section D. The Court of Appeals affirmed the trial court's decision on both grounds. 9/30/19 CoA Op. A-17-18. With these decisions, the Ohio state courts

violated Adams' constitutional right to confront the witnesses used against him. *See Melendez-Diaz*, 557 U.S. at 310; *Bullcoming*, 564 U.S. at 652.

On December 31, 1985, Dr. Rona performed the victim's autopsy. State's Ex. 63; Tr. 440; *see also* Exs. 1, 2. The State contacted Dr. Rona prior to trial, and Dr. Rona was alive and readily available. *See* 8/13/08 pretrial, Tr. 12; 9/5/08 pretrial, Tr. 23; Ex. 2. Yet, instead of calling the doctor who did the autopsy, the State chose to have Dr. Germaniuk, an adjoining county's elected coroner, testify as to the autopsy report and the cause of death. The State's reasoning appears to be two-fold: (1) the Mahoning County Corner, Dr. Belinky, had passed away in the interim and (2) Dr. Rona, the one who actually performed the autopsy, had no memory of the autopsy, so he could be of no use. *Id*. The State's reasoning, however, was flawed and was not the standard to be employed. Although Dr. Rona had no immediate independent memory of conducting the autopsy, he, not Dr. Belinky, was the one who, in fact, conducted the autopsy in this case. Absent Dr. Rona's unavailability and a previous opportunity to cross-examine Dr. Rona regarding this autopsy and his techniques utilized, the State could not fulfill Adams' constitutional right to confrontation. *See Crawford*, 541 U.S. at 68-69; *Bullcoming*, 564 U.S. at 652. Furthermore, had the State actually called Dr. Rona to the stand and shown him the report that he authored and/or the video taken of the autopsy that he conducted, this may have refreshed his recollection of the autopsy.

Like the reports at issue in *Melendez-Diaz* and *Bullcoming*, the autopsy report here was not prepared as a routine business record; rather it was prepared for use at

trial, was a certified record, and was admitted for the truth of the matter asserted. As this Court has stated, a report, even if not an affidavit, demands confrontation when it 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*, 557 U.S. at 311 *citing Crawford*, 541 U.S. at 52. Here, Dr. Rona performed the autopsy and indicated that the cause of death was "suffocation (sudden) due to Traumatic Asphyxiation (sudden)" and the death was by reason of "homicide." *See* State's Ex. 63 at 14. Realizing immediately that this was a homicide case, any reasonable person would have known that the autopsy would be used at a later trial to convict a person for murder. The facts of this case are further troubling. Adams was already a suspect and in custody at the time of the autopsy, so there was additional reason to believe that someone, i.e., Adams, would be prosecuted for this homicide.

Thus, confrontation was the best way to challenge or verify the autopsy results. *Melendez Diaz*, 557 U.S. at 317-18, fn.5. "[S]urrogate testimony … does not meet the constitutional requirement." *Bullcoming,* 564 U.S. at 652. Especially in a case like this—where the death penalty was initially sought and obtained—the trial court must protect a criminal defendant's opportunity to confront the conclusions contained in the autopsy report. Absent that protection, "it could be conceivable that the State could prove some offenses without the necessity of calling any witnesses at all;" that is constitutionally unacceptable. *State v. Smith*, 898 So. 2d 907, 917 (Ala. Crim. App. 2004).

In addition, this error is not harmless in this case—absent the admission into evidence of the autopsy report, it would have been practically impossible for the State to prove that Adams killed Tenney. As pointed out in post-conviction by Dr. Riddick, the cause and timing of the death were not certain. Adams' guilt was not pre-determined, the evidence was tenuous and circumstantial, and there were strong alternate suspects. The unconstitutional admission of the autopsy report as evidence against Adams is what made the difference here.

F. The Court should conclusively find that autopsy reports are testimonial.

As explained above, state courts—including Ohio's state courts—need guidance in this area of law. This Court should grant the writ in this case to conclusively rule that autopsy reports are testimonial, and that these reports do, in fact, demand confrontation under the Sixth Amendment to the United States Constitution. *Melendez-Diaz*, 557 U.S. at 318, n. 5.

Of the states that have held that autopsy reports are testimonial and demand confrontation, many have already utilized this Court's holding and footnote to come to that conclusion. The Idaho Supreme Court held: "The overriding principle that we glean from *Melendez-Diaz* and *Bullcoming* is that introduction of reports by non-testifying analysts violates the defendant's right of confrontation when they are 'for the purposes of establishing or proving some fact at trial.'" *State v. Stanfield*, 347 P.3d 175, 183 (Idaho 2015) (internal citations omitted)). In *State v. Locklear*, the North Carolina Supreme Court declined to adopt the State's argument that an autopsy report was not testimonial evidence because, "the United States Supreme Court

squarely rejected this argument in the recent case of *Melendez-Diaz*." 681 S.E.2d 293, 304 (N.C. 2009*) citing Melendez-Diaz,* 557 U.S. at 318, n. 5. Further that court held, "The [United States Supreme] Court specifically referenced autopsy examinations as one such kind of forensic analyses" that is testimonial evidence to which the Confrontation Clause applies. *Locklear,* 681 S.E.2d at 305, *citing Melendez-Diaz* 557 U.S. at 318, n. 5.

The *Locklear* Court's reasoning—and the ultimate holding that autopsy reports are testimonial evidence—makes sense in light of this Court's line of jurisprudence since *Crawford*. Because autopsy reports cannot be repeated, are prepared for use at trial (at least when the finding is probable homicide), are certified records, and are admitted for the truth of the matter asserted (that the victim was murdered and by what means), this Court should overturn the Ohio Supreme Court's decision on this issue, and declare that autopsy reports are testimonial for Sixth Amendment purposes and thus trigger a Confrontation Clause right.

CONCLUSION

For all the aforementioned reasons, Adams was denied his rights to a fair trial and to due process as guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, Sections 2, 5, 9, 10, and 16 of the Ohio Constitution. The evidence presented supports a conclusion that Adams was denied the right to confront the witnesses against him. The Court should grant the writ of certiorari, vacate the conviction, and remand the case to state court for a new trial.

Respectfully Submitted,

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