

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Plaintiff, )  
 )  
 -versus- )  
 )  
 MICHAEL COLUCCI, )  
 )  
 Defendant. )

IN THE COURT OF GENERAL SESSIONS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 INDICTMENT NUMBER: 2016-GS-08-02603  
 WARRANT NUMBER: 2016A0810400692

**MOTION TO SUPPRESS**

MARY P. PETERSON  
 CLERK OF COURT  
 BERKELEY COUNTY, S.C.

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Michael Colucci seeks an Order of this Court to prevent any testimony that further explains or contradicts the autopsy protocol authored by Lee Marie Tormos, M.D. on or about June 24, 2015. He further seeks an Order of this Court to suppress any evidence that was not timely made known to him within the time limits sought in his July 20, 2018 Motion to Restrict Discovery Not Produced in Advance of Trial.

The following discovery motions have been filed by Mr. Colucci:

1. Motion for Discovery filed May 12, 2016;
2. First Supplemental Motion for the Production, Inspection and Copying of Documents filed April 2, 2018;
3. Second Supplemental Motion for the Production, Inspection and Copying of Documents filed August 2, 2018;
4. Third Supplemental Motion for the Production, Inspection and Copying of Documents filed August 15, 2018; and
5. Fourth Supplemental Motion for the Production, Inspection and Copying of Documents filed September 19, 2018.

Upon receipt of the State's notification of previously undisclosed potential evidence or

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testimony, Mr. Colucci filed a Motion to Restrict Discovery Not Produced in Advance of Trial on July 20, 2018.

On July 26, 2018, the only reports from expert witnesses in the possession of Mr. Colucci were the autopsy protocol prepared by Lee Marie Tormos, M.D. dated June 24, 2015 and the South Carolina Law Enforcement Division Laboratory Reports. No other names of a proposed expert, their *curriculum vitae* or report had been received.

On July 26, 2018, the State notified Mr. Colucci that they may present testimony in the following areas:

“The State intends to seek the admission of expert testimony relating to the manner and cause of death. We will also potentially seek to admit expert testimony related to the crime scene. The State’s Expert Testimony may cover areas including strangulation, homicide by asphyxia in general and in cases involving domestic violence or disturbance, staging of the crime scene, and use of the hose in question, the victim’s mental health including depression and suicide, analysis of any items of evidence which may involve DNA or toxicology, and any other areas of science specific to manner and cause of death and the condition of the victim’s body, as well as digital forensics of the cell phones for the defendant and victim.”

No names, *curriculum vitae*, reports, findings, or opinions were provided at that time.

On August 3, 2018, the State notified Mr. Colucci that even though FARO measurements were obtained, no production had been generated. The State said that they were asking for the production of a disk and would provide it upon receipt.

It was not until August 9, 2018, the State notified Mr. Colucci that they intended to seek the admission of expert testimony to include the following:

Dr. Lee Marie Tormos as to manner and cause of death

SA Paul LaRosa as to staging and suicidology

SA Haley Ann Quam as to crime scene reconstruction (possibly another agent on FARO)

Det. Kevin Murphy (BCSO), digital/computer/cell phone forensics

Dr. William Smock as to strangulation and asphyxia

Brian Bennett as to strangulation and asphyxia

Stephanie Stanley (SLED) as to DNA

Courtney Thompson (SLED) as to Serology

Megan Fletcher (SLED) as to Trace Evidence.

The State further explained that they were still evaluating potential experts in the field of homicide by asphyxia with intimate partners or related domestic violence.

On September 5, 2018, the State notified Mr. Colucci that there were no reports available and that they would be sending *curriculum vitae*. The State further stated the following:

“We will seek to qualify the following experts:

Dr. Lee Marie Tormos - original protocol;

Dr. William Smock (Strangulation and asphyxia) - No *curriculum vitae* or report;

The SLED Analysts: Stephanie Stanley (DNA), Courtney Thompson (Serology) and Megan Fletcher (Trace)

We do not expect to qualify as experts:

Kevin Murphy (he will testify as to cell forensics, but we are not seeking to qualify as an expert)

Haley Quam (she will testify as to crime scene, but we are not seeking to qualify as an expert)

The State further stated they did not intend to call as witnesses SA Paul Larosa or Brian Bennet, but they would call Dr. James Jenkins as a fact witness and may seek to have him qualified

as an expert in mental health disorders including depression. No *curriculum vitae* for Dr. Jenkins has been provided.

Lastly, the State said that they had received the FARO production at the end of the day on September 4, 2018, would provide it, and were still determining if they would need to qualify an expert on FARO.

On September 10, 2018, the defense received the *curriculum vitae* for Dr. William Smock. No other *curriculum vitae* have been received nor has Mr. Colucci received any reports from experts nor a summary of their proposed testimony. On September 11, 2018, the defense received a disk from the State which contained the raw FARO data.

Mr. Colucci previously asked the Court to intervene by putting the State on notice that in keeping with its authority under Rule 5, SCRCrimP, it would not allow evidence or testimony that had been requested by Mr. Colucci in previously filed Discovery Motions which was without just cause produced sixty (60) days in advance of jury selection nor would the Court allow the testimony of any expert witness which was without just cause produced ninety (90) days in advance of jury selection for whom Mr. Colucci had not received the expert's curriculum vitae and any report prepared by said expert or a summary of the expert's proposed testimony including opinions based on their expertise and the basis therefore in accordance with Rule 5, SCRCrimP and the instructions given by the Court in a conference call on April 23, 2018.

Mr. Colucci reasserts his request to bar any such evidence.

In the event the Court denies this request to suppress "evidence", Mr. Colucci seeks a reasonable delay in his trial to allow him an opportunity to engage potential witnesses whose expertise will allow a competent review of the newly disclosed evidence. Mr. Colucci requests a

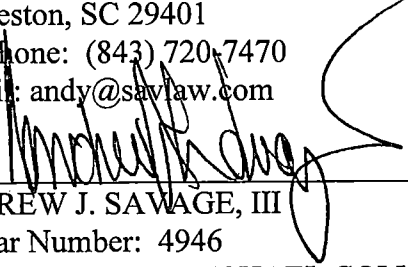
reasonable amount of time to interpret this evidence for the benefit of Mr. Colucci's understanding and to offer testimony for the benefit of the juror's understanding.

Upon learning of the State's intent to provide previously undisclosed testimony, Mr. Colucci contacted Kimberly A. Collins, M.D. to seek her evaluation of the proposed State testimony. Dr. Collins has provided such interpretation and Mr. Colucci wishes to call her as his witness to give expert testimony and her opinion about essential forensic indicators. He has subpoenaed Dr. Collins. Attached hereto is the Affidavit of Dr. Collins (Attachment A) stating that she will be unavailable to testify in this case before October 19, 2018.

Mr. Colucci has also contacted Eugene Liscio, P. Eng., to evaluate and interpret the State's recent submission by SLED crime scene that included FARO data. Mr. Liscio is a noted, well-experienced expert in the field and has been declared an expert by both Federal and State judges in South Carolina. Although Mr. Liscio will not be available on October 8<sup>th</sup>, he has provided Mr. Colucci with sufficient information to likely have the State's use of FARO data suppressed.

Therefore, we respectfully request the trial of Mr. Colucci be continued until Monday, October 22, 2018.

Respectfully submitted,  
SAVAGE LAW FIRM  
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Charleston, SC 29401  
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E-mail: andy@savlaw.com

BY:   
ANDREW J. SAVAGE, III  
SC Bar Number: 4946  
ATTORNEY FOR MICHAEL COLUCCI

Charleston, S.C.  
October 1, 2018.

**ATTACHMENT A**

**COURTESY OF  
LUNA SHARK MEDIA**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )  
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IN THE COURT OF GENERAL SESSIONS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 INDICTMENT NUMBER: 2016-GS-08-02603  
 WARRANT NUMBER: 20160810400692

STATE OF SOUTH CAROLINA, )  
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 vs. )  
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 MICHAEL COLUCCI, )  
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AFFIDAVIT OF KIMBERLY A. COLLINS, MD

**FILED**

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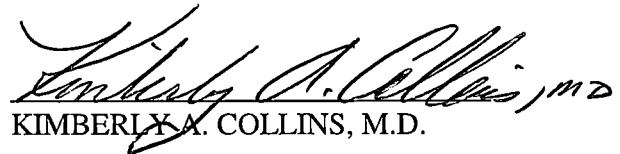
CASE \_\_\_\_\_ NO \_\_\_\_\_  
 MARY P. BROWN CLERK OF COURT  
 BERKELEY COUNTY, SC

PERSONALLY APPEARED before me, Kimberly A. Collins, MD, who deposes and states  
 as follows:

1. THAT I received my Board Certification in the field of Forensic Pathology in 1996 by the American Board of Pathology.
2. THAT I currently hold valid medical licenses in South Carolina (SC Medical License Number 17218), North Carolina (NC Medical License Number 93-00066) and Georgia (GA Medical License Number 061222).
3. THAT I have received academic training and practical experience sufficient for me to be qualified as an expert in Forensic Pathology in various Federal Courts, numerous State Courts, and military court.
4. THAT I have been subpoenaed to testify in the case of *The State v. Michael Colucci*, Indictment Number 2016-GS-08-02603, by both the State of South Carolina and by the Defendant, Michael Colucci.
5. THAT I have been informed that Mr. Colucci's trial is scheduled to commence on October 8, 2018, and that it is expected to continue for two weeks.

6. THAT I am the 2018 President of the National Association of Medical Examiners.
7. THAT more than one year ago, I committed to attend the Annual Meeting of the National Association of Medical Examiners in West Palm Beach, Florida, and it is mandatory as President of the Association that I attend. I am committed to preside over the meeting and be present at the Board meeting.
8. THAT at the Annual Meeting, I am committed to personally host international attendees from China, Sri Lanka, Germany, Russia, Australia, France, Israel, Jamaica and Canada.
9. THAT at the Annual Meeting, I am scheduled to present forensic pathology research, preside over the business meeting, and to present national and international awards.
10. THAT I am scheduled to be in West Palm Beach, Florida, from October 10<sup>th</sup> to October 18<sup>th</sup>, 2018.
11. THAT I am unable to be present to testify in the trial of The State v. Michael Colucci before October 19, 2018.

FURTHER THE AFFIANT SAYETH NOT!

  
KIMBERLY A. COLLINS, M.D.

SWORN TO and SUBSCRIBED BEFORE me

this 28<sup>th</sup> day of September, 2018.

Elizabeth G. Richberg (L.S.)  
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: March 28, 2028