

FILED

STATE OF SOUTH CAROLINA

2025 MAY 27

AM 10:10

COUNTY OF BERKELEY

LEAH GUERRY DUPREE

CLERK OF COURT

STATE OF SOUTH CAROLINA

BERKELEY COUNTY, SC

IN THE COURT OF GENERAL SESSIONS

FOR THE NINTH JUDICIAL CIRCUIT

INDICTMENT NO.: 2016-GS-08-2603

vs.

MICHAEL COLUCCI.

Defendant

MOTION TO PROHIBIT TESTIMONY

OF STATE'S WITNESS

DR. WILLIAM ("BILL") SMOCK

The defendant, by and through undersigned counsel, moves this court to not allow one of the State's anticipated witnesses to testify as an expert under Rule 702, SCRE, unless and until he testifies under oath subject to cross-examination regarding his qualifications and experience. As stated in State v. White, 382 S.C. 265, 270 (2009) and its progeny, Rule 702, SCRE imposes on the trial court an affirmative and meaningful gatekeeping duty to ensure proposed expert testimony meets a reliability threshold for the jury's ultimate consideration.

Upon information and belief, Smock will try to render an opinion regarding the manner of death for which he is unqualified. He is not a forensic pathologist nor a coroner nor a medical examiner, and therefore, lacks the knowledge, skill, experience, training, or education to render an opinion regarding the same. He is a police surgeon practicing clinical medicine which deals with assessing and diagnosing injuries to living alleged victim and should not be allowed to render an opinion as if he were a coroner, medical examiner, or forensic pathologist.

Previously, Smock offered sworn testimony in a prior hearing for this case that he had "performed" autopsies, participated in "thousands" and was previously a "medical examiner." Under Kentucky law, and according to information on the home page of the Kentucky Medical Examiner's website and their public information pamphlet, only a "forensic pathologist" may perform a "coroner-ordered autopsy" or a "post-mortem examination" (See Kentucky Revised Statutes, §72.405(3) and (6)). Furthermore, information directly from the Kentucky Medical Examiner Office, which is statutorily responsible for coroner-ordered autopsies in the state of Kentucky, say, "The Kentucky Medical Examiners are licensed physicians trained in the specialty of **forensic pathology**. ... Kentucky Medical Examiners are highly trained, experienced individuals who perform death investigations by documenting and interpreting medical findings, thus ensuring that death investigations are unbiased, thorough and accurate."

COURTESY OF AN ANONYMOUS
AROUND AND FIND OUT SPONS

GS
s 521-2025 8w
C. M. H.
E/M

(emphasis added) (See “Kentucky Medical Examiner, Information for Families pamphlet; and “Team Kentucky” Office of the Medical Examiner webpage (<https://justice.kv.gov/Departments-Agencies/me/pages/default.aspx>) (printouts included herein).

As previously stated, Smock is not a forensic pathologist and does not have the extensive training and experience of a forensic pathologist, and therefore, should not be allowed to render an opinion on the cause or manner of death. Additionally, his false and misleading testimony in a prior hearing in this case proves he clearly lacks the competency to testify as a witness in this case, and pursuant to Rule 601(b)(2), SCRE he should not be allowed to testify in the upcoming retrial of this case. A copy of the relevant pages of the transcript of his testimony is included herein (See lines 15-16, 21-25, pg. 82 and lines 1-15, pg. 83).

Furthermore, according to a forensic pathologist in Kentucky who has known Smock for decades, Smock’s credentials are insufficient to opine on cause and manner of death and he has no authority to sign off on an autopsy report or death certificate regarding these important medicolegal findings – both of which are central issues in Michael Colucci’s case considering as of the filing of this Motion, not one single forensic pathologist or coroner in South Carolina has ruled Sara Colucci’s death a homicide. The only way to ensure Michael Colucci’s constitutional rights mentioned here are protected in the upcoming trial should the State present Smock as a witness is for defense counsel to depose Smock prior to any testimony. Therefore, Michael Colucci, by and through undersigned counsel, respectfully requests the Court Order the State to have William Smock available for deposition in Louisville, Kentucky on May 31, 2025, so he can answer questions relevant to his competency, qualifications, and training.

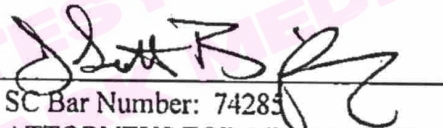
These requests are made pursuant to the South Carolina Rules of Evidence, the rights of Michael Colucci guaranteed by the 6th Amendment: the right of confrontation, the right to present a full and complete defense, and the right of a criminal defendant to have full and competent counsel assist him in trial; the 5th and 14th Amendment right to due process under the United States Constitution; and the rights of a criminal defendant discussed in Davis v. Alaska, 415 U.S. 308 (1974) (the 6th Amendment right of a criminal defendant to impeach a testifying witness with evidence of bias and prejudice).

COURTESY OF AN ANONYMOUS FOIA
AROUND AND FIND OUT SPONSOR

Respectfully submitted,

J. SCOTT BISCHOFF, II
WILLIAM S. MCGUIRE
ADAMS & BISCHOFF, LLC
171 Church Street, Suite 360
Charleston, SC 29401
Telephone: (843) 277-0090
E-mail: scott@adamsbischoff.com

ANDREW J. SAVAGE, III
SAVAGE LAW FIRM
15 Prioleau Street
Charleston, SC 29401
Telephone: (843) 720-7470
E-mail: andy@savlaw.com

BY: 

SC Bar Number: 74283

ATTORNEYS FOR MICHAEL COLUCCI

Charleston, South Carolina

May 27, 2025

COURTESY OF AN ANONYMOUS FOIA
AROUND AND FIND OUT SPONSOR

KRS § 72.405

This document is current through Chapter 5 of the 2024 session.

Michie's™ Kentucky Revised Statutes > TITLE IX Counties, Cities, and Other Local Units (Chs. 65 — 109) > CHAPTER 72 Coroners, Inquests, and Medical Examinations (§§ 72.010 — 72.992) > Kentucky Coroner's Act of 1978 (§§ 72.400 — 72.480)

72.405. Definitions for chapter.

As used in this chapter, unless the context clearly indicates otherwise:

- (1) "Certified coroner" or "certified deputy coroner" means a coroner or deputy coroner who has been certified by the Justice and Public Safety Cabinet to have successfully completed both the basic training course and annual in-service training course required by KRS 72.415, except that a deputy coroner shall be certified without completion of training courses required by KRS 72.415 if he or she is a licensed physician;
- (2) "Coroner's case" means a case in which the coroner has reasonable cause for believing that the death of a human being within his or her county was caused by any of the conditions set forth in KRS 72.025;
- (3) "Coroner-ordered autopsy" means an autopsy ordered by the coroner having jurisdiction and performed by a pathologist pursuant to such authorization in order to ascertain the cause and manner of death in a coroner's case. In the event the pathologist deems it necessary, he or she may submit the appropriate specimen to a qualified chemist or toxicologist for analysis to assist him or her in ascertaining the cause of death in a coroner's case;
- (4) "Genetic tests" means testing for genetic markers for cardiac arrhythmogenic syndromes;
- (5) "Inquest" means an examination ordered by the coroner, or in his or her absence, ordered by a deputy coroner, into the causes and circumstances of any death which is a coroner's case by a jury of six (6) residents of the county impaneled and selected by the coroner to assist him or her in ascertaining the cause and manner of death; and
- (6) "Post-mortem examination" means a physical examination of the body by a medical examiner or by a coroner or deputy coroner who has been certified by the Justice and Public Safety Cabinet and may include an autopsy performed by a pathologist; other appropriate scientific tests administered to determine cause of death, including but not limited to genetic tests; or collection of tissue samples collected pursuant to KRS 213.161(3);

History

COURTESY OF AN ANONYMOUS FOIA
AROUND AND FIND OUT SPONSOR

Enact. Acts 1978, ch. 93, § 3, effective June 17, 1978; 1982, ch. 195, § 10, effective July 15, 1982; 2007, ch. 85, § 151, effective June 26, 2007; 2020 ch. 126, § 2, effective July 15, 2020; 2023 ch. 162, § 1, effective June 29, 2023.

Annotations

Commentary

Legislative Research Commission Notes

(6/29/2023). 2023 Ky. Acts ch. 162, sec. 4, provides that the amendments to this statute and the creation of KRS 72.222 in 2023 Ky. Acts ch. 162, secs. 1 and 2, may be cited as the Micah Shantell Fletcher Law.

(6/29/2023). Under the authority of KRS 7.136(1), the Reviser of Statutes has renumbered certain subsections in this statute during codification to place the terms in alphabetical order. The words in the text were not changed.

Opinion Notes

Opinions of Attorney General.

Even though a body is not positively identified, the coroner must sign the certificate of death, inasmuch as absolute accuracy, while certainly attained; furthermore the death certificate will represent honest opinions and conclusions based upon the best available evidence from the various sources at the coroner's disposal. OAG 79-74.

Kentucky follows the English rule requiring the coroner in whose jurisdiction the corpse is found to hold the inquest, rather than the common law which placed the duty upon the coroner in the county in which the injury causing death occurred. OAG 79-392.

The coroner is required to sign the death certificate in coroner's cases. OAG 79-392.

Where a man who had a car accident was taken by ambulance to a hospital then transferred to another hospital at which he had earlier undergone both surgery and treatment for drinking, died the next day and was listed as having died from cardio pulmonary arrest due to chronic liver disease from alcohol abuse, with no mention of the injuries, it was up to the coroner to determine whether conditions existed authorizing the holding of an inquest and the question of whether or not the coroner abused his discretion in refusing to conduct an inquest is for the courts to determine. OAG 79-392.

Where a corpse was found floating in the Ohio River adjacent to Greenup County, the question whether the Greenup County coroner or an Ohio coroner would have jurisdiction would hinge on whether there was reason to believe that the death occurred in Greenup County, and the state line is, for this purpose, also the county line; but, although that line is the "low water mark" on the northerly side of the Ohio River, there is presently a dispute over whether that is the low water

line as of 1792, or the low water line as it exists from time to time, which point is unsettled. OAG 79-430.

Under the broad term "reasonable cause," the coroner may hold an inquest upon the request of any responsible citizen, provided that such citizen furnishes the coroner with sufficient information to place the case under the "reasonable - cause - for - believing - in - unnatural - death" concept; however, the mere request of a responsible citizen, standing alone, would not be sufficient to make a coroner's case under subsection (2) of this section. Thus, if a responsible citizen, who furnishes some indication of belief that death was other than a natural one, and that it occurred in the subject coroner's county, requests and inquest, the request involves a "coroner's case" and should be honored. OAG 82-120.

A deputy coroner, where authorized by the coroner or in the coroner's absence, may collect medical specimens or articles which may, in his opinion, be helpful in establishing the cause of death, since although the phrase "or his deputy" was deleted from KRS 72.020(2) by the 1982 amendment, subsection (3) of this section as amended in 1982, remains intact as it read before the amendment, and provides that an "inquest" is an examination ordered by the coroner, or in his absence, ordered by a deputy coroner, into the causes and circumstances of any death which is a coroner's case. It would seem absurd that a deputy, filling in for a coroner, can order an inquest, but could not collect medical specimens relating to the death case. OAG 82-376.

The legislature intended, as a means of properly enforcing the clear implications of KRS 72.020 relating to the 12 grounds for a post-mortem, to enlarge the jurisdiction of the court in KRS 72.445 to offer a court the alternatives of either ordering a post-mortem exam, to be conducted by a medical examiner or by a certified coroner or deputy, or of ordering an autopsy to be conducted by a pathologist. OAG 82-376.

Under KRS 72.020(4), where the law enforcement officer at the scene has probable cause to believe that one of the 12 (now 19) conditions mentioned in KRS 72.025 exists and the coroner refuses to require a post-mortem, the officer should notify the county or commonwealth's attorney who can petition the district or circuit court of jurisdiction to order a post-mortem examination of the body (to be conducted by a medical examiner or by a certified coroner or deputy coroner) or the court may order an autopsy to be conducted by a pathologist. OAG 82-376.

There is no statute giving the coroner the authority to control the giving out of information relating to human deaths generally; the occasion for the coroner's exercise of discretion as to the giving out of information relating to such deaths would only arise in connection with information obtained through the coroner's exercise of jurisdiction by way of a coroner ordered autopsy, a coroner's case, or inquest. OAG 83-223.

Where a coroner begins to investigate a death defined by this section as a "coroner's case," his work and jurisdiction should not be interfered with by other peace officers; however, the coroner's investigation of possible crime does not rule out criminal investigation by other peace officers, provided the work and jurisdiction of the coroner in a coroner's case is not interfered with or inhibited in any substantial way. OAG 83-229.

KRS § 72.405

A coroner cannot order the county ambulance service to transport the remains to a facility for the purpose of having an autopsy performed. OAG 83-434.

Section 100 of the Kentucky Constitution provides certain qualifications for coroners, and the rule is well established that the legislature cannot impose additional qualifications where the Constitution enumerates certain qualifications for a constitutional office; thus, where a coroner meets the qualifications stated in Ky. Const., § 100, he is eligible to serve in that office. In view of the fact, however, that the certification requirements of subsection (5) of this section and KRS 72.415 narrowly relate to the coroner's personally conducting a postmortem examination and do not extend to the coroner's eligibility to hold his office, the certification requirements for coroners are constitutional. OAG 84-355.

Since the subjects contained in the basic training course for coroners and their deputies are designed to enable coroners and deputy coroners to better carry out their function of conducting post-mortem examinations, under the clear language of subsections (4) and (5) of this section, no coroner can personally conduct a postmortem, as required by KRS 72.025, where such coroner has not been certified by the Department of Justice. OAG 84-355.

Michie's™ Kentucky Revised Statutes
Copyright © 2024 All rights reserved.

End of Document

Donate to the Team Kentucky Storm Relief Fund at [TeamKYStormReliefFund.ky.gov](https://secure.kentucky.gov/formservices/Finance/stormrelief/)
(<https://secure.kentucky.gov/formservices/Finance/stormrelief/>)

TEAM KENTUCKY®

JUSTICE AND PUBLIC SAFETY CABINET

(<https://twitter.com/justicekentucky>)

<https://www.facebook.com/JusticeKentucky/>)

Department of Corrections
(/Departments-
Agencies/Pages/doc.aspx)

Department of Criminal
Justice Training
(/Departments-
Agencies/Pages/docjt.aspx)

Department of Juvenile
Justice (/Departments-
Agencies/Pages/djj.aspx)

Department of Public
Advocacy (/Departments-
Agencies/Pages/dpa.aspx)

Grants Management Division
▼ (/Departments-
Agencies/GMD/Pages/default.aspx)

Internal Investigation Branch
▼ (/Departments-
Agencies/lib/Pages/default.aspx)

Kentucky State Police
(/Departments-
Agencies/Pages/ksp.aspx)

Office of Drug Control Policy
(/Departments-
Agencies/Pages/odcp.aspx)

Office of Legal Services ▼
(/Departments-

Office of the State Medical Examiner

Office of the Medical Examiner



Recognized as
national leaders in
their respective fields,
the scientific staff
members of the
Kentucky Office of the
Medical Examiner

assist Kentucky coroners and law enforcement
agencies in all aspects of death investigation.
Central to the role of the office is the
performance of the forensic autopsy, to aid in
the determination of cause and manner of death
of individuals, and identification of the
deceased.

Forensic pathologists annually conduct around
2,500 forensic autopsy examinations at the three
regional offices, located in Louisville, Frankfort,
and Madisonville.

Forensic pathologists are medical doctors who
have undertaken at least 5 years of post-
graduate training to become proficient in the
subspecialty of forensic pathology.

A forensic pathologist is available to coroners
for consultation 24 hours a day, every day of the
year. Post-mortem examinations are conducted
around the state 365 days a year. The mission



(/Departments-
Agencies/me/p
ages/chiefme.
aspx)

Bill Ralston
Chief Medical
Examiner

(/Departments-
Agencies/me/p
ages/chiefme.
aspx)

Office of the
State Medical
Examiner
(/Departments-
Agencies/me/Pages/default.aspx)

Regional
Medical
Offices

[Agencies/ols/Pages/default.aspx](#)

Office of the State Medical
Examiner ▾ ([/Departments-
Agencies/me/Pages/default.aspx](#))

statement of the Kentucky Medical Examiners
Office is to serve the public by:

- providing accurate, thorough, and efficient medicolegal investigations of death, thereby
- ensuring justice, and
- providing solace, comfort, and protection to the living.

More information about forensic pathology and death investigation may be found at www.aafs.org (<http://www.aafs.org/>) and www.thename.org (<http://www.thename.org/>).

Information regarding Kentucky Coroners and the Kentucky Coroners Association may be found on their Facebook (<https://www.facebook.com/KYCoroners>) page.

Commonwealth of Kentucky Kentucky Justice & Public Safety Cabinet
Contact ([/About/justicelistens/Pages/contactjl.aspx](#)) Site Map ([/Pages/sitemap.aspx](#))

Policies (<https://kentucky.gov/policies/Pages/default.aspx>)

Security (<https://kentucky.gov/policies/Pages/security.aspx>)

Disclaimer (<https://kentucky.gov/policies/Pages/disclaimer.aspx>)

Accessibility (<https://kentucky.gov/policies/Pages/accessibility.aspx>)

([/Departments-
Agencies/me/Pages/offices.aspx](#))

More
Information
([/Departments-
Agencies/me/Pages/info.aspx](#))

© 2022 Commonwealth of Kentucky. All rights reserved.

Kentucky.gov (<http://www.kentucky.gov>)

COURTESY OF
LUNASHARK MEDIA

COURTESY OF AN ANONYMOUS FOIA
AROUND AND FIND OUT SPONSOR

What do I do next when a loved one dies?

The first thing you need to do is to take care of yourself. You will need to make several decisions. Here are a few suggestions to help guide you and your loved ones through the process.

- 1) Involve your family, friends and clergy for support and comfort. They will assist you in making sense of this tragic and sometimes sudden news.
- 2) Select a funeral home to help you make funeral arrangements and coordinate final disposition of your loved one's remains. If you don't know where to turn, you can call a variety of funeral homes, ask questions and obtain pricing. Any funeral home can assist with cremation.
- 3) Once you have chosen a funeral home, the funeral director will make arrangements to pick up and transport your loved one's remains back to the funeral home following the autopsy.
- 4) Keep track of all business cards given to you by law enforcement, county coroner, ambulance, and funeral home personnel.
- 5) Start a file or folder to correlate all paperwork and information that will be shared with you as a result of your loved one's death.
- 6) Finally—remember to check in on yourself. Stress can come into one's life quickly and unexpectedly. Don't be afraid to use resources available to you in your community.

We hope the information in this brochure is helpful for you and your family. If we can be of any assistance, please contact us at the phone number on the back of this brochure. The Louisville Office hours are 7:30 a.m. to 4:00 p.m. Monday through Friday.

Tracey Corry, M.D.
Kentucky Chief Medical Examiner

Kentucky Office of the Chief Medical Examiner
810 Barrett Avenue
Louisville, KY 40204



Kentucky Medical Examiner

INFORMATION FOR FAMILIES

The death of a loved one can cause tremendous stress and sorrow. We hope this brochure will assist you during the grieving process and help answer questions about the autopsy process and the role of the Medical Examiner.

What does the Kentucky Medical Examiner do?

The Kentucky Medical Examiner provides death investigation services and forensic autopsy services for deaths that occur in Kentucky when authorized by County Coroners or the Court. All deaths that are sudden or unexpected or occur from other than natural causes must be reported to the County Coroner, who then may authorize a postmortem examination by the Kentucky Medical Examiner's Office.

Our goal is to assist county coroners, families, law enforcement agencies and the legal system by determining a scientifically unbiased and logical cause and manner of death. The information gathered during a forensic death investigation and autopsy can be critical in civil or criminal court cases. Even in straightforward natural deaths, information from the death investigation or autopsy may help surviving family members protect their own health. This brochure will provide answers to guide you when a loved one dies.

What is a Medical Examiner (and a Medical Examiner Investigation)?

The Kentucky Medical Examiners are licensed physicians trained in the specialty of forensic pathology. The Kentucky Medical Examiner is an independent entity and does not work for the Commonwealth Attorney, Coroner's Office, or any law enforcement agency.

Kentucky Medical Examiners are highly trained, experienced individuals who perform death investigations by documenting and interpreting medical findings, thus ensuring that death investigations are unbiased, thorough and accurate. Kentucky County Coroners and law enforcement investigators may ask you many questions that will help to find answers about how and why your loved one died.

COURTESY OF AN ANONYMOUS FOIA
AROUND AND FIND OUT SPONSOR

1 A. In Kentucky and Indiana.

2 Q. Are you a member of any professional
3 groups or association?

4 A. Yes, sir, I am.

5 Q. Have you been published?

6 A. Yes, sir.

7 Q. And textbooks?

8 A. I have edited three textbooks on
9 forensic medicine and published more than 40
10 articles and chapters on forensic and emergency
11 medicine.

12 Q. Were these in peer-reviewed
13 publications?

14 A. Yes, sir, they are.

15 Q. Have you performed any autopsies?

16 A. Yes, sir.

17 Q. Let me rewire for a second. Have you
18 published protocols for physicians on how to care
19 and treat victims of strangulation?

20 A. Yes, sir, I have.

21 Q. Now. Let's go back. Have you ever
22 perform any autopsies?

23 A. Yes, sir. During medical school I was
24 diener for the Kentucky Medical Examiners. The
25 diener is the individual who actually makes the

COURTESY OF AN ANONYMOUS FOIA
AROUND AND FIND OUT SPONSOR

1 incisions, performs the autopsy, and takes the
2 organs out, and gives them to the forensic
3 pathologist for the additional dissection.

4 Q. How many autopsies have you
5 participated in?

6 A. Thousands.

7 Q. Were you ever a medical examiner?

8 A. Yes, sir. The Kentucky Medical
9 Examiners Office from 1990 on, there was the first
10 program of applying that clinical forensic
11 medicine. We had a staff of forensic nurses who at
12 the request of law enforcement would do living
13 forensic exams. I was employed by the Kentucky
14 Medical Examiners Office as a medical examiner from
15 2000 -- from 2000 -- or 1991 through '97.

16 Q. As part of your training have you
17 studied strangulation in living and nonliving
18 victims?

19 A. Yes, sir, I have.

20 Q. How many years?

21 A. Since 1984. So that's more than 30
22 years.

23 Q. Do you currently teach the
24 investigation and prosecution of felony
25 strangulations?