IN THE SUPREME COURT OF IOWA

No. 13-0588

STATE OF IOWA,

Plaintiff-Appellee,

v.

HILLARY TYLER,

Defendant-Appellant.

On Appeal from the District Court for Webster County
The Honorable Thomas J. Bice

Amended Brief of Amicus Curiae Iowa Association of County Medical Examiners

Randall D. Armentrout, AT0000543
Ryan G. Koopmans, AT0009366
NYEMASTER GOODE, P.C.
700 Walnut Street, Suite 1600
Des Moines, Iowa 50309-3899
Telephone: (515) 283-3100
Facsimile: (515) 283-8045
E-mail: rkoopmans@nyemaster.com

Attorney for Amicus Curiae Iowa Association of County Medical Examiners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Other

Rules

IDENTITY AND INTEREST OF AMICI CURIAE

The Iowa Association of County Medical Examiners is the state professional organization for county medical examiners, medical examiner investigators, and others involved in death investigations in Iowa. The Association, which was founded in 1992 by the Iowa Medical Society's Committee on Forensic Medicine, is the primary source of information and education for anyone involved in death investigation in Iowa.

The Court of Appeals' decision in this case reflects a misunderstanding of who medical examiners are and what they do. The Association has an interest in correcting that misunderstanding.

INTRODUCTION

Medical examiners are not law-enforcement officers; nor are they merely a cog in the criminal justice system. They're physicians who, as required by law, independently investigate every death, as a matter of public health, to determine whether it was the result of accident, suicide, or homicide. *See* Iowa Code §§ 331.801, .802. And they apply their specialized knowledge and

experience and reach an ultimate conclusion before, and regardless of whether, there is criminal or civil litigation.

Those facts are as important as any in understanding what medical examiners do, and whether (and under what circumstances) their findings and opinions "will assist the trier of fact to understand the evidence or to determine a fact in issue." *See* Iowa R. Evid. 5.702 (defining admissible expert testimony). And that, of course, is the lodestar when it comes to admissible expert testimony.

In this case, the Court of Appeals ruled that the medical examiner's opinion—that Baby Tyler's death was a homicidal drowning—should not have been admitted into evidence, because the opinion was based *in part* on Hillary Tyler's statements to police about the circumstances of Baby Tyler's birth (statements which she has now recanted.) That ruling appears to be based on a mistaken premise: that unless a medical examiner can opine on the cause and manner of death without reliance on witness statements, the medical examiner's opinion is "not an expert

medical opinion" and amounts to nothing more than a bare determination of the witness's credibility. Slip Op. 11.

As explained below, that conflicts with how medical examiners are trained and what the law requires of them.

Because the practice of forensic pathology necessarily requires that a medical examiner consider witness statements when determining the cause of death, a medical examiner's expert opinion is not rendered inadmissible if it is based in part on a criminal defendant's statement.

Despite popular belief, medical examiners are not "socially isolated basement dwellers" who do nothing more than "perform autopsies in their dimly lit morgues." Dolink, Matshes, & Lew, *Forensic Pathology: Principles and Practice*, Preface xxiii (1st ed. 2005). They're physicians who specialize in forensic pathology—meaning that they've obtained either a Doctor of Medicine (M.D.) or a Doctor of Osteopathy (D.O.), spent four more years in a residency program, and spent another year in a forensic pathology fellowship. Iowa Code §§ 331.801, 802.; *see also Forensic Pathology: Principles and Practice* at xxiii; Supp. App. 9-11.

That medical training "is fundamental to the practice of forensic pathology." *Forensic Pathology: Principles and Practice* at

xxiii. In order to properly diagnose a patient, a physician takes, and relies on, the patient's medical history: How did this happen? Where does it hurt? What makes the pain worse? What makes it better?[1] There are cases, of course, where that history isn't accurate—either because the patient's memory is foggy, they misunderstand what's happening to their body, or they're not telling the truth. But that's where the physician's medical training kicks in: A history is never considered in isolation; it's contrasted with and viewed in light of the physical exam and testing. Together, those three factors lead to a diagnosis.

The practice of forensic pathology is no different. Medical examiners gather the history of the deceased "from witnesses, relatives of the deceased, police agencies, [and] treating physicians,"[2] they examine the body (through an autopsy), and

---

[1] See Bates & Hoekelman, *Bates' Guide to Physical Examination*, 1 (4th ed. 1997) ("Talking with patients and obtaining their health histories are usually the first and often the most important parts of the healthcare process.")

[2] DiMaio & Dana, *Handbook of Forensic Pathology*, 16 (2d ed. 2006) (discussing the importance of taking a history). Several leading forensic pathology textbooks echo that sentiment. *See* Shkram, *The Forensic Pathology of Trauma,* 2 (1st ed. 2007) (explaining that a "pathologist does not work in isolation,"

they perform laboratory tests.[3] Each of those three steps—history, examination, and testing—is a necessary component of the medical examiner's opinion as to the cause and manner of death; if the medical examiner skips the history, then his opinion will be as reliable as the treating physician who refuses to talk to his patients. Indeed, "[t]he forensic pathologist [who] rel[ies] solely on postmortem morphological or laboratory observations to properly assign manner and occasionally even cause of death will err at an unacceptably high rate." Robert M. Reece, *Child Abuse: Medical Diagnosis and Management*, 638 (3d ed. 2009).

That's what makes the Court of Appeals' opinion so troubling: It requires medical examiners to do what they ought not do: form their opinion while sitting in a lab without talking to anyone with knowledge of what might have happened.

---

meaning that "[a] complete autopsy requires integration of information from various investigative sources"); Robert M. Reece, *Child Abuse: Medical Diagnosis and Management*, 638 (3d ed. 2009) ("The death investigation is to the forensic pathologist what the history is to the clinician.").

[3] Vincent J. DiMaio & Dominick DiMaio, *Forensic Pathology*, 16 (2d ed. 2001) (describing the three steps of a death investigation (1) history, including witness statements; (2) examination of the body; (3) laboratory tests).

The medical examiner in this case, Dr. Jonathan Thompson, followed the proper procedure to a T: he gathered a history of Baby Tyler's death by reviewing photographs and reports of the crime scene and reviewing Hillary Tyler's taped statements, he performed an extensive autopsy, and he conducted and reviewed laboratory testing of Baby Tyler's vital organs. Supp. App. 14-17, 73, 81-82. It was only through a combination of those three steps that Dr. Thompson was able to conclude, within a reasonable degree of medical certainty, that Baby Tyler drowned.

Dr. Thompson was very upfront about that with the jury. He told them, for instance, that but for the history that Hillary Tyler provided—that Baby Tyler cried and moved when he was born, and that Hillary put him in the bathtub—he could not have opined on the cause or manner of death. Supp. App. 64. But the same is true for the other two steps: If Dr. Thompson had not completed an autopsy or had Baby Tyler's organs tested, he would not have been able to offer an opinion. *See* Supp. App. 64, 72-73. In other words, if any step were removed, the results of Dr. Thompson's investigation would have been inconclusive.

That's what the Court of Appeals missed. Because Dr. Thompson "admitted he could not medically or scientifically opine whether the baby died in utero, immediately after its birth, or later via drowning" without relying on Tyler's statements, the Court of Appeals panel leaped to the conclusion that Dr. Thompson based his opinion *solely* on those statements. Slip Op. 11. That was an error in logic. It's one thing for a witness's statement to be an essential part of a medical examiner's opinion; it's quite another thing for that statement to be the *sole* basis for that opinion. Dr. Thompson's reliance on Tyler's confession falls into the former category.

It was crucial to Dr. Thompson's opinion that Tyler's statement about the baby crying (and thus taking a breath) was not inconsistent with the state of the baby's lungs. And it was crucial that the autopsy and laboratory testing gave no indication that Baby Tyler died before or during birth, or that he died after birth from any cause other than drowning. There was no presence of congenital defects (Supp. App. 36-37), natural disease (*id.*), or bone abnormalities (*id.* at 41-42). And while Dr. Thompson

admitted on cross-examination that there are other *possible* causes of a baby's death under these circumstances, that admission of "possibility" was in the vein that almost anything is possible. *See e.g.,* Supp. App. 69.

That application of Tyler's statements to the objective medical evidence is exactly what a medical examiner is supposed to do, and it's why Dr. Thompson's medical training assisted "the trier of fact to understand the evidence or to determine a fact in issue." Iowa R. Evid. 5.702. Dr. Thompson did not comment on Tyler's credibility—at least not any more than any expert in any case who credits a witness's statements—and under no reading of the trial transcript can Dr. Thompson be said to have relied *solely* on Tyler's confession.

Medical examiners are not in the business of providing opinions based on scientific certainty; they have to use the resources and information available and come to a reasoned conclusion, if they can. Often, as explained above, the history is necessary to inform the objective autopsy and laboratory findings, which, by themselves are inconclusive. Pekka Saukko & Bernard

Knight, *Knight's Forensic Pathology*, 10 (3d ed. 2004). Indeed, that's almost always true in the case of a drowning. *Id.* In that scenario, forensic pathologists are instructed "to give the most likely and reasonable cause of death, but make it clear in [their] discussion in the autopsy report that [their] opinion is based on a consideration of the circumstances and is not a dogmatic statement of the kind that could be offered if the victim was shot through the brain." *Id.*

Dr. Thompson's explanation of his opinion was textbook: He explained that his opinion was formed based "on history, physical exam, and the supplemental lab testing" (Supp. App. 73), and he admitted that Tyler's statements were an integral part of his diagnosis—that without them, he could not have come to an ultimate conclusion.[4] But he did not rely on that history alone.

---

[4] Dr. Thompson also properly described how a medical examiner puts that history in context:

> Q: In your role as a medical examiner, how do these witness statements and your knowledge of the scene, how important is that in determining a diagnoses of a manner and cause of death?
>
> A: Uh, it's vital.
>
> Q: And explain that please.

He considered it in light of the autopsy and lab tests; used his medical and forensic pathology training and experience to "give the most likely and reasonable cause of death." *Id.*

The Court of Appeals opinion would preclude that. It would force medical examiners on the sidelines, unless they can make a dogmatic opinion based strictly on what happened in the laboratory. If that were the law in Iowa, Iowa would be the lone outlier,[5] and the public would suffer as a result.

> A: Um, so I'm a physician first. Um, as I've been saying, my diagnosis, which we call cause of death, is based on a history, physical exam, and then supplemental lab testing. Um, if you just did the physical exam, I would miss a significant number of cause and manner of death. It would be similar to you going to your primary care physician, sitting down on his exam table and just having—have him start listening to your lungs, looking in your ears, checking your eyes without him asking you what's wrong. I can't obviously ask my patients what's wrong with them, so I have to ask other people what's wrong. I have to ask police what's wrong. Sometimes witnesses will come forward and say what's wrong or what happened. So that part of my diagnosis of cause of death, the history, is absolutely essential.

Supp. App. 82.

[5] *See Pet. for Further Review*, 15-18 (surveying cases addressing the use of contested history in forming an opinion on the cause and manner of death).

/s/ Ryan G. Koopmans
Randall D. Armentrout, AT0000543
Ryan G. Koopmans, AT0009366
NYEMASTER GOODE, P.C.
700 Walnut Street, Suite 1600
Des Moines, Iowa 50309-3899
Telephone: (515) 283-3100
Facsimile: (515) 283-8045
E-mail: rkoopmans@nyemaster.com

Attorney for Amicus Curiae Iowa Association of County Medical Examiners

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g) and 6.903(3) because it contains 1,978 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa. R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in Century Schoolbook 14 point font.

/s/ Ryan G. Koopmans
Ryan G. Koopmans AT0009366

PROOF OF SERVICE AND CERTIFICATE OF FILING

I hereby certify that on September 22, 2014, I electronically filed the foregoing with the Clerk of the Supreme Court of Iowa using the Iowa Electronic Document Management System, which will send notification of such filing to the counsel below:

Tyler J. Buller
Laura Roan
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
tyler.buller@iowa.gov

Maria Ruhtenberg
State Appellate Defender's Office
Fourth Floor Lucas Building
Des Moines, Iowa 50319
(515) 281-8841
MRuhtenberg@spd.state.ia.us

/s/ Ryan G. Koopmans