

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or the law of the case.



ATTORNEYS FOR APPELLANT

Valerie K. Boots
Katelyn Bacon
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Evan Matthew Comer
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Maurice Lee Lillie, Jr.,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

May 26, 2023

Court of Appeals Case No.
22A-CR-1564

Appeal from the Marion Superior
Court

The Honorable Jennifer Prinz
Harrison, Judge

Trial Court Cause No.
49D20-2006-MR-19112

Memorandum Decision by Judge Pyle

Chief Judge Altice and Judge Riley concur.

Pyle, Judge.

Statement of the Case

[1] Maurice Lillie, Jr., (“Lillie”) appeals his conviction by jury of murder.¹ He argues that a certain witness’ testimony violated his rights under the Confrontation Clause of the United States Constitution. Concluding that the witness’ testimony did not violate Lillie’s confrontation rights, we affirm the trial court’s judgment.

[2] We affirm.

Issue

Whether a certain witness’ testimony violated Lillie’s rights under the Confrontation Clause of the United States Constitution.

Facts

[3] At approximately 9:30 p.m. on May 26, 2020, Roy West (“West”) delivered a truckload of fuel to a gas station located on East 38th Street in Indianapolis. While he was filling the underground fuel tanks, West noticed twenty-year-old Lillie and Mykeil Young (“Young”) “sword fighting” with a golf club and a sheathed knife. (Tr. Vol. 2 at 103).

[4] Although West and Lillie did not know each other, Lillie approached West and fist-bumped him. Lillie told West that “somebody had disrespected his . . .

¹ IND. CODE § 35-42-1-1.

girlfriend” and asked West if West was going to say anything. (Tr. Vol. 2 at 105). West responded that he was not.

[5] Apparently without reason, Lillie then approached twenty-four-year-old Dustin McClennon (“McClennon”) from behind and struck him in the back of the head with the golf club. Lillie hit McClennon with enough force to shatter the plate that had been placed in McClennon’s head the previous year for a traumatic brain injury. When McClennon fell to the ground, Lillie hit him three or four more times in the head with the golf club. Lillie then grabbed McClennon by his ankles and dragged him behind the gas station. West noticed Young and a young woman join Lillie behind the gas station.

[6] When Lillie reemerged, he approached West, gave him another fist-bump, and asked West if he wanted to help Lillie hide a body. West responded, “no, I’m good.” (Tr. Vol. 2 at 109). As soon as Lillie, Young, and the young woman had left the gas station, West called 911. Law enforcement officers arrived at the scene and discovered a deceased McClennon behind the gas station. McClennon had stab wounds as well as head trauma. Forensic pathologist Dr. Kent Harshbarger (“Dr. Harshbarger”) performed McClennon’s autopsy and wrote the autopsy report.

[7] In June 2020, the State charged Lillie with murder. At the two-day May 2022 trial, the jury heard the facts set forth above. At the beginning of the second day of the trial, Lillie made an oral motion to exclude the testimony of forensic pathologist Dr. Christopher Poulos (“Dr. Poulos”), who was listed as one of the

State's witnesses. The State planned to have Dr. Poulos testify in place of Dr. Harshbarger because Dr. Harshbarger had moved to another state. Lillie argued that "[a]llowing [Dr.] Poulos to testify would be a violation of Mr. Lillie's Sixth Amendment right to . . . confrontation[]" because Dr. Poulos had not been present at McClennon's autopsy and had not written the autopsy report. (Tr. Vol. 3 at 6).

[8] The State responded that "this issue ha[d] been dealt with directly by the Indiana Supreme Court in *Ackerman v. State*, 51 N.E.3d 171 [(Ind. 2016),][*cert. denied.*]" (Tr. Vol. 3 at 10). The State specifically explained that in *Ackerman*, the Indiana Supreme Court had held that a pathologist who had not been present at an autopsy could testify "to his own independent opinion based on his review of the autopsy report per Indiana Rules of Evidence 703, given that it [was] common for pathologists to rely on reports made by other pathologists, in which Dr. Poulos in this case did do that." (Tr. Vol. 3 at 11). The State further explained that Dr. Poulos would "be testifying to his own independent opinion in this particular case." (Tr. Vol. 3 at 11).

[9] The trial court read *Ackerman* and determined that "it [was not] a violation of the confrontation [clause] to allow Dr. Poulos to testify as to his own independent findings from the autopsy report[.]" (Tr. Vol. 3 at 16). Accordingly, the trial court stated that it would allow Dr. Poulos "to testify as to his own opinions that he formed independently from his review of the autopsy report." (Tr. Vol. 3 at 15). In addition, the trial court asked Lillie if he

had “anything to argue that Dr. Poulos was not an expert under Indiana Evidence Rule 703.” (Tr. Vol. 3 at 14). Lillie responded that he did not.

[10] Dr. Poulos then testified that he was the chief forensic pathologist at the Marion County Coroner’s Office and that he had previously testified in cases where another physician had performed the autopsy. Dr. Poulos explained that in such cases, he reviewed: (1) the autopsy report; (2) the autopsy photographs and diagrams; (3) a summary of the crime scene findings; and (4) the crime scene photographs. Dr. Poulos further explained that following his review of these documents, he “c[a]me up with [his] own findings.” (Tr. Vol. 3 at 23). Dr. Poulos testified that he had reviewed these documents in this case and had concluded that McClennon had received “at least two separate impacts to the head, and at least one of them . . . [was] consistent with a blow to the head rather than a fall.” (Tr. Vol. 3 at 32). Dr. Poulos further testified that, in his opinion, the blow to McClennon’s head had been potentially life-threatening. Dr. Poulos also testified about the stab wounds to McClennon’s body, including his head, neck, and abdomen. Based on his review of the documents, Dr. Poulos concluded that the cause of McClennon’s death was blunt force injury of the head and multiple stab wounds and that the manner of death was homicide. Lillie did not challenge Dr. Poulos’ qualification as an expert under Indiana Evidence Rule 703.

[11] The jury convicted Lillie of murder, and the trial court sentenced him to fifty-five (55) years in the Department of Correction. Lillie now appeals.

Decision

- [12] Lillie argues that “[t]he trial court violated [his] Sixth Amendment right to confrontation when it allowed Dr. Poulos to testify to an autopsy he did not perform or witness.” (Lillie’s Br. 10). The Confrontation Clause of the Sixth Amendment provides 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. The United States Supreme Court has explained that the Confrontation Clause prohibits the “admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had a prior opportunity for cross-examination.” *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004). We review constitutional challenges de novo. *Ackerman*, 51 N.E.3d at 177.
- [13] Turning to Lillie’s argument, we find that *Ackerman* is dispositive. Therein, our Indiana Supreme Court determined that an autopsy report that had been prepared nearly forty years before Ackerman’s trial by a forensic pathologist who had since passed away was not testimonial because it had not been created solely for an evidentiary purpose made in the aid of a police investigation. *Id.* at 188-89. Accordingly, the Court held that the trial court had not violated Ackerman’s confrontation rights when it had admitted the autopsy report into evidence. *Id.* at 189.
- [14] Relevant to this appeal, the Indiana Supreme Court further recognized that even if the autopsy report had not been admissible, the State’s witness, forensic

pathologist Dr. Dean Hawley (“Dr. Hawley”), “could have still testified to his own independent opinion based upon his review of the autopsy report.” *Id.* Our supreme court further explained that “[u]nder Indiana Evidence Rule 703, an expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. Experts may testify to opinions based on inadmissible evidence, provided that it is of the type reasonably relied upon by experts in the field.” *Id.* (cleaned up). The Indiana Supreme Court observed that Dr. Hawley had testified that it was common for pathologists to rely upon the autopsy reports of other pathologists and to testify based on their own review of those reports. *Id.* In addition, our supreme court observed that although this rule would not have allowed Dr. Hawley to “merely recite facts and conclusions that were stated in the autopsy report,” Dr. Hawley was allowed to testify that his review of the autopsy reports and photographs had led him to the conclusion that the manner of the victim’s death had been homicide, among other opinions he had formed independently. *Id.* The Indiana Supreme Court held that such testimony did not violate Ackerman’s confrontation rights. *Id.*

[15] Here, Dr. Poulos, the chief forensic pathologist at the Marion County Coroner’s Office, testified that he had previously testified in cases where another physician had performed the autopsy. He further testified that he had reviewed Dr. Harshbarger’s report on McClennon’s autopsy, the autopsy photographs, a summary of the crime scene findings, and the crime scene photographs. According to Dr. Poulos, his review of these documents had led

him to his own independent opinions that McClennon's cause of death was blunt force injury of the head and multiple stab wounds and that McClennon's manner of death was homicide. Dr. Poulos' testimony did not violate Lillie's confrontation rights, and we find no error.² *See id.* Accordingly, we affirm the trial court's judgment.

[16] Affirmed.

Altice, C.J., and Riley, J., concur.

² We further note that Lillie's attempt to distinguish the facts of his case from those in the *Ackerman* case is unavailing.