

Third District Court of Appeal

State of Florida

Opinion filed September 23, 2026.
Not final until disposition of timely filed motion for rehearing.

No. 3D25-0850
Lower Tribunal No. F20-14339

Silverio Fonte,
Appellant,

vs.

State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Milton Hirsch, Judge.

Carlos J. Martinez, Public Defender, and Manuel Alvarez, Assistant Public Defender, for appellant.

James Uthmeier, Attorney General, and Katryna Santa Cruz, Assistant Attorney General, for appellee.

Before SCALES, C.J., and LINDSEY and LOBREE, JJ.

SCALES, C.J.

Appellant Silverio Fonte appeals his second-degree murder conviction, arguing that his rights under the Sixth Amendment Confrontation Clause were violated. Specifically, Fonte asserts that, under the relatively new United States Supreme Court case of Smith v. Arizona, 602 U.S. 779 (2024), the trial court erred by allowing, over Fonte’s objection, Miami-Dade County’s chief medical examiner to testify regarding the contents of a routine toxicology report prepared by a non-testifying analyst as part of the victim’s autopsy.

Smith addressed whether a substitute witness may testify at trial about a forensic report prepared by a non-testifying analyst as support for the testifying witness’s own independent opinion. Id. at 783. Smith recognized that, to implicate the Confrontation Clause, the out-of-court statement must be both (i) hearsay introduced to prove the truth of the matter asserted, and (ii) testimonial in nature. Id. at 800.¹

A Confrontation Clause violation did not occur in this case because the routine toxicology report – about which the chief medical examiner testified

¹ Smith proceeds from Crawford v. Washington, 541 U.S. 36, 53-54 (2004), which held that the Confrontation Clause bars the admission of a testimonial statement of a witness who did not appear at trial “unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.” A statement is testimonial when its “primary purpose” is to establish evidence relevant to a later criminal prosecution. Davis v. Washington, 547 U.S. 813, 822 (2006).

– was prepared as part of the autopsy’s standard protocol, and the autopsy was performed as part of the chief medical examiner’s statutory duty, a duty that arises when a person dies of criminal violence. See § 406.11(1)(a)1. & (2)(a), Fla. Stat. (2020).

In Banmah v. State, 87 So. 3d 101 (Fla. 3d DCA 2012), this Court ruled that a substitute witness could introduce an autopsy report prepared by a medical examiner without violating the Confrontation Clause because the autopsy report was not testimonial. Id. at 103; but see Rosario v. State, 175 So. 3d 843, 857 (Fla. 5th DCA 2015). Here, the medical examiner testified to her autopsy report; her introduction of the underlying toxicology screen had an even more attenuated connection to a testimonial statement.

The primary purpose of an autopsy is to shed light on the cause of the victim’s death, an issue not present in this case because Fonte admitted to stabbing the victim. While the toxicology report may have contravened the statement Fonte gave to the police, its primary purpose was not to advance Fonte’s criminal prosecution. Therefore, it was not testimonial in nature.

Affirmed.