

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI,**

**v.**

**JEFFREY SCOTT SAUERBRY,**

**Respondent,**

**Appellant.**

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DOCKET NUMBER WD75597

**Date: November 12, 2014**

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Appeal from:  
Jackson County Circuit Court  
The Honorable Roger M. Prokes, Judge

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Appellate Judges:  
Division Two: Gary D. Witt, P.J., Lisa White Hardwick and Alok Ahuja, JJ.

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Attorneys:  
Daniel N. McPherson, Jefferson City, MO, for appellant.  
Frederick Ernst, Kansas City, Mo, for respondent.

# MISSOURI APPELLATE COURT OPINION SUMMARY

## COURT OF APPEALS -- WESTERN DISTRICT

STATE OF MISSOURI

v.

JEFFREY SCOTT SAUERBRY,

Respondent,

Appellant.

WD75597

Jackson County

Following a jury trial, Jeffery S. Sauerbry was convicted of first-degree murder in the Circuit Court of Jackson County, based on the killing of William Kellett at an Independence used-car lot in 1998.

Sauerbry appeals. He claims that his constitutional right to confront the witnesses against him was violated when the court permitted a pathologist to testify to her opinions concerning the nature and cause of the victim's wounds, even though the testifying pathologist had not conducted the victim's autopsy. Sauerbry also challenges the trial court's refusal to permit him to impeach one of the State's principal witnesses with allegedly false testimony she had provided in a separate criminal proceeding involving her son, and with the amount of money the witness had spent in connection with her son's defense.

**AFFIRMED.**

Division Two holds:

Sauerbry first argues that the circuit court violated his rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution, by permitting a pathologist to testify to her conclusions regarding the nature and cause of the injuries Kellett suffered, when her opinions were based on the observations made by another pathologist who actually conducted Kellett's autopsy.

Missouri courts have repeatedly held that the Confrontation Clause is not violated where a medical examiner testifies to his or her own conclusions as to a victim's cause of death and injuries, even if that testimony is based on the observations of another medical examiner who performed an autopsy, so long as the absent examiner's opinions and autopsy report are not themselves introduced into evidence. That is precisely what happened here. Sauerbry argues that the prior Missouri decisions can no longer be followed in light of the Supreme Court of the United States' later decisions in *Bullcoming v. New Mexico*, 131 S. Ct. 2705 (2011), and

*Williams v. Illinois*, 132 S. Ct. 2221 (2012). We disagree. *Bullcoming* did not involve a witness who testified to their own independent opinions; instead, it involved admission of a forensic laboratory report to prove a material fact. And *Williams* was decided by a sharply divided Supreme Court, and announces no governing principle of law. Cases in multiple jurisdictions agree, post-*Bullcoming* and post-*Williams*, that an expert witness in a criminal trial can testify to their own opinions, even if those opinions are based on the hearsay statements of others.

We also reject Sauerbry's argument that he should have been permitted to impeach one of the State's key witnesses with her allegedly false testimony in a prior trial of her son for an unrelated murder, and the amounts she had spent on her son's defense. Sauerbry failed to establish that the witness had in fact testified falsely in her son's trial, and the trial court therefore did not plainly err in refusing to allow impeachment with this previous testimony. As to the amounts spent to fund her son's defense, the witness had already testified that she hoped her cooperation in Sauerbry's prosecution would assist her son, and the additional evidence would have added nothing of probative value.

Before: Division Two: Gary D. Witt, P.J., Lisa White Hardwick and Alok Ahuja, JJ.

Opinion by: Alok Ahuja, Judge

**November 12, 2014**

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