



## **SHERIFF DWYANE WENNINGER'S POST-HEARING BRIEF**

Brown County Sheriff Dwayne Wenninger, by and through counsel, respectfully submits this Post-Hearing Brief on the issue of whether Brown County Coroner Judith Varnau was within her statutory authority when she issued subpoenas twelve months after she had determined Zachary Goldson's cause of death and days after a Grand Jury returned no indictment involving Goldson's death. The testimony presented at the March 7<sup>th</sup> hearing confirms that it is Coroner Varnau's own understanding that a coroner's authority is limited to determining cause, manner and mode of death; that she had already determined the cause, manner and mode of Goldson's death; and that in making that determination she exercised her investigatory power without interference from any party. For the reasons set forth in this brief, Sheriff Wenninger asks this Court to find that Coroner Varnau's authority to hold inquest regarding Goldson's death expired on December 2<sup>nd</sup>, 2013 when she filed a Supplementary Medical Certification with the Ohio Department of Health Division of Vital Statistics, concluding his manner of death was "homicide" and that the immediate cause was "strangulation." Since Coroner Varnau had completed her statutory obligation, and there is no pending case or investigation on Goldson's death, her subsequent attempt to hold another inquest should be set aside.

### **PROPOSED FINDINGS OF FACT**

The key facts of this case, necessary to decide in Sheriff Wenninger's favor, are not in dispute.

On October 5<sup>th</sup>, 2013, Coroner Varnau was informed that jail inmate Zachary Goldson was found dead in his cell at the Brown County jail. She visited and studied the death scene, was permitted access to Goldson's body, ordered an autopsy be performed on his body, and interviewed investigators and Goldson's family members. Coroner Varnau initially filed

Goldson's certificate of death with the Ohio Department of Health Division of Vital Statistics on October 16<sup>th</sup>, 2013, indicating the manner of death as "pending investigation." She then filed a Supplementary Medical Certification with the Ohio Department of Health Division of Vital Statistics on December 2<sup>nd</sup>, 2013, concluding that his manner of death was "homicide," and immediate cause was "strangulation."

A Brown County grand jury investigated Goldson's death, listened to Coroner Varnau's testimony, and returned no indictment involving his death on December 10<sup>th</sup>, 2014. Coroner Varnau, knowing that her duty is solely limited to determine the manner, mode and medical cause of death, issued the subpoenas in question to Brown County Sheriff's Office on December

That very (tampered) grand jury was told by BCI/Breyer that some of the foundational premises of the Coroner's DETERMINATION were faulty, e.g. your crony Breyer presented and the GJ accepted the premise that it was easy for the inmate to reach and attach the sheet to the sprinklerhead. Hence you have caused the NEED FOR A RE-EVALUATION of the MODE AND MANNER OF DEATH... tough luck sheriff!

#### ARGUMENT

### **I. Ohio law sets forth a 6-month deadline for a coroner to determine the cause, manner and mode of death.**

Ohio Administrative Code 3701-5-07 provides that when a coroner fails to determine a cause of death within five days from the date of death, he or she must enter "cause of death pending" in the medical portion of the certificate of death. Ohio Adm. Code 3701-5-07. If so, when the cause of death is determined, the coroner must file a supplementary medical report form with the local registrar or sub-registrar documenting his or her determination, and the coroner must file that report no later than six months after the date of death. *Id.* The code does not grant a coroner investigative authority beyond these six months to clarify or bolster her findings.

To ensure that a coroner determines the cause, manner and mode of death ~~within the statutory deadline~~, Ohio law gives a coroner broad investigative authority before such determination is made. A coroner may take charge of the dead body, perform an autopsy, have control over the

made up 'reason' not stated in the law

The code's goal is expediting the process NOT TO LIMIT THE QUALITY so a target time does not limit future action if the earlier filed determination is found in NEED of revision as YOU RECOGNIZED WHEN YOU THREATENED TO FORCE the change of 'homicide' to 'suicide' in court when the grand jury was suitably induced to no-bill YOUR EMPLOYEES.

The crime has no statute of limitations so BETTER EVIDENCE IS NEEDED SOMETIMES -- as you may agree, since investigators and newly elected sheriffs do such.....

area near the body, issue subpoenas for witness testimony and production of record, and apply for judicial order compelling obedience to his or her subpoenas. R.C. 313.13, R.C. 313.17. filing limit is not = authority

An imposition of a six-month deadline on a coroner's ~~authority~~ is both reasonable and logical. For one, determining medical reasons for death does not take as long as assigning criminal responsibility or non-responsibility of any human agency involved in the causal chain of death. Additionally, because an initiation of a criminal proceeding follows a coroner's verdict on cause of death, requiring a coroner to make determination in a timely manner will prevent unnecessary delays in the criminal justice system. clearly a FAILURE of the criminal proceeding to match the need specified in the autopsy re-opens the need to check the verdict

The evidence established that Mr. Goldson died on October 5<sup>th</sup>, 2013. Coroner Varnau had an autopsy performed, observed and took photos of the death scene, measured the jail cell, and interviewed deputies and Goldson's family members. She determined Goldson's cause, manner and mode of death within two months, and then filed the Supplementary Medical Certification with the Ohio Department of Health of Vital Statistics on December 2<sup>nd</sup>, 2013. At that point Coroner Varnau's statutory obligation was fulfilled. Coroner Varnau fails to point to any statutory authority that allows her to hold another inquest after she had filed a for filing supplementary medical certificate. Instead, she tried to justify her second inquest by stating that she did not put any witnesses under oath when she interviewed them, and that she did not have all the information necessary to make a determination. Whether Coroner Varnau had exercised her investigatory power under R.C. 313.17 to the fullest is irrelevant. She had her opportunity to do so for six months. As soon as she filed her verdict with the division of Ohio Department of Health of Vital Statistics, she is refrained from revisiting her finding by holding another inquest.

by what statute on "revisiting" -- cite it if you speak truth... you have no law to cite

**II. Ohio law only provides a county coroner with investigatory powers to determine the cause, manner and mode of death.**

Sheriff Wenninger reiterates that Ohio law only provides a county coroner with investigatory powers to determine the cause, manner and mode of death. R.C. 313.19. Since Coroner Varnau had already determined the cause, manner and mode of Goldson's death on December 2<sup>nd</sup>, 2013, her investigatory powers expired by then. Allowing a coroner to continue an investigation following a Grand Jury's decision not to indict undermines the justice system.

state the 'expiration' of powers statute -- none

Coroner Varnau agrees with Ohio law on the extent of her authority to hold inquest. She admits that a coroner is not a law enforcement officer; rather that a coroner's duty is solely limited to determine cause, manner, and mode of death; and that a coroner has no authority on who committed crime. In her pleadings, Coroner Varnau argued that *State v. Cousin*, 5 Ohio App.3d 32, 449 N.E.2d 3 (3<sup>rd</sup> Dist. 1982) was rejected by *State ex rel Blair v. Balraj*, 69 Ohio St. 3d 310, 631 N.E. 2d 1044 (1994). A close reading of the opinion shows that *Blair* did not reject *Cousin*'s holding that a coroner's function is to determine the physical and psychological cause of death. *Blair* only holds that a coroner could include in her verdict the phrase "during legal intervention," a term derived from the World Health Organization's Manual of the International Statistical Classification of Diseases, Injuries and Cause of death.

OTC, Justice wants facts found and the GJ accepted different facts than in the coroner's verdict so the next of kin deserve the resolution of the foundational facts

## CONCLUSION

For the foregoing reasons, Sheriff Wenninger respectfully asks this court to quash Coroner Varnau's subpoenas in question, as she did not have statutory authority to hold another inquest after she had already determined the cause, manner and mode of Goldson's death.

The sheriff is the one UNDERMINING JUSTICE when he is satisfied that the cause of death is HOMICIDE while in his custody BUT HE AND HIS PROSECUTORS AND LAW ENFORCEMENT HAVE NO CULPRIT...  
THE PUBLIC WANTS AND DESERVES A RESOLUTION ON HIS SIDE AS WELL

Respectfully submitted,



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***CERTIFICATE OF SERVICE***

I hereby certify that a true copy of the foregoing was sent this 16th day of March, 2015, to Brown County Coroner Judith Varnau and all other counsel of record by email.

*David Kelley*

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