



E14 How Do Confrontation Clause Requirements Apply to Crime Laboratory Reports? Effective Direct and Cross- Examination of Forensic Scientists Following *Williams vs. Illinois*, 567 U.S. ____, 132 S.Ct 2221 (2012)

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After attending this presentation, attendees will understand the current developments regarding presentation of expert witness testimony, where the witness bases his or her opinion on the reports of a non-testifying expert.

This presentation will impact the forensic science community by facilitating improvement of communication of scientific evidence by prosecutors and defense attorneys to the courts in keeping with the requirements of the Constitution. This will help lawyers communicate to judges and jurors both the capabilities and the limitations of forensic science issues to fully present and challenge the methods used to arrive at expert opinions.

Judges, lawyers, and laymen have come a long way in understanding and entering into the world of forensic science. However, there is a need for additional research and education in order to avoid the common misconceptions of forensic science infallibility and absolute certainty and to ensure that the constitutional protections of criminal defendants including the right of confrontation and the prosecution's burden of proof are not diminished or given short shrift. Numerous publications have addressed the misconception that DNA evidence has a special aura of certainty and mystic infallibility.

Despite these misconceptions, prosecutors have a duty and a responsibility to safeguard the constitutional rights of all citizens including the defendant and their preeminent goal is not victory, but justice.¹ Defense attorneys have a duty to engage evidentiary rules to shield their client from a decision based on unreliable evidence and to appreciate and understand the legal principles applicable to the case.²

Several recent United States Supreme Court decisions have addressed the application of the constitutional duties imposed on the prosecution and defense in the area of forensic science testimony. The decision in *Williams v. Illinois* is a 5-4 plurality decision in which a majority of the Court agrees with the result, but not the rationale of the opinion. The decision, concurrences and dissent present several different approaches to the issue of what the Constitution requires when expert witness testimony is at issue in a criminal trial.

Which approach should be followed in court proceedings involving the use of expert witness testimony following the Court's decision in *Williams v. Illinois*? The four main perspectives provided by the Court will be discussed. The main approaches proposed by the decision and dissent include: (1) the reports of non-testifying experts relied on by testifying experts are not offered for the truth of matter asserted and are not subject to the confrontation clause; (2) the lab report is not testimonial and is therefore presumptively admissible; however the defense may call the lab witnesses if they are available. Moreover, should the defense show good cause to doubt the competence of the laboratory producing the report or the validity of its accreditation, then the accused would be entitled to confrontation clause protection; (3) the report is offered for the truth of the matter asserted therein, however it is not testimonial and thus does not violate the confrontation clause; and, (4) prior Supreme Court decisions should govern, find that lab reports of non- testifying experts relied on by expert witnesses are indeed testimonial and should not be admitted in evidence without allowing cross-examination of the persons who performed the testing and prepared the reports.

Although the discussion and litigation of these issues is not settled; judges, prosecutors and defense attorneys must determine how to proceed in keeping with their respective constitutional duties and responsibilities. This presentation will focus on which witnesses should be called to testify regarding a specific DNA report and why.

References:

¹ *People v. Weilmuenster*, 283 Ill. App. 3d 613, 626; 670 N.E.2d 802, 810 (2nd Dist. 1996).

² *People v. Watson*, 2012 Ill. App. (2d) 91328 par 22; 965 N.E. 2d 474, 481; 358 Ill. Dec. 403.

Expert Testimony, Confrontation Clause, Forensic Science