



E15 Forensic Expert Testimony Meets the Confrontation Clause

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After attending this presentation, attendees will understand how recent U.S. Supreme Court decisions have impacted forensic expert testimony.

This presentation will impact the forensic science community by explaining how recent U.S. Supreme Court decisions concerning forensic experts and the confrontation clause directly affect participation in the criminal justice system.

There is no setting where credible and reliable testimony is more essential than that of the forensic expert in a criminal case. *Williams v. Illinois*, is the latest U.S. Supreme Court decision involving the application of the confrontation clause to forensic evidence.¹ It involved a forensic analyst testifying, in part on a DNA profile performed by someone else, that DNA found inside a rape victim matched DNA taken from the defendant. To understand the issue this fact-pattern presented, it is necessary to give a brief background.

The confrontation clause guarantees the accused the right "to be confronted with the witnesses against him." Because "witnesses" are people to give testimony, a broad coalition of Justices held in *Crawford v. Washington*, that the confrontation clause prohibits the prosecution from introducing out-of-court "testimonial" statements without putting the declarants on the stand.²

In *Melendez-Diaz v. Massachusetts*, the Court held that forensic reports that certify incriminating test results are testimonial.³ The case, however, was a closely fought five-to-four decision and last term, in *Bullcoming v. New Mexico*, a five Justice majority reaffirmed *Melendez-Diaz* and made clear that when a prosecution wishes to introduce a certified forensic report, it does not suffice to call a supervisor or other "surrogate" witness to the stand in the place of the actual author of the report.⁴

The *Bullcoming* decision nonetheless left open whether the prosecution could introduce an analyst's testimonial forensic report (or transmit its substance) through an expert witness. The Court granted certiorari in *Williams* to answer that question, electing to review the Illinois Supreme Court's holding that the prosecution may introduce testimonial statements in the forensic reports through expert witnesses because statements introduced to show the basis for an expert opinion are not introduced for the truth of the matter (Hearsay Rule).

This conclusion is the most important aspect of *Williams*. Before the Court's decision, numerous state and federal courts had held that the prosecution could introduce testimonial statements not only through forensic experts, but also through mental health experts, "gang experts," and other experts.

So where, in practical terms, does this leave us? In the realm of forensic evidence, the Confrontation Clause continues to deem *formal* forensic reports testimonial. That means that drug, blood, alcohol, fingerprint, ballistics, autopsies, and related reports that typically involve testing by one person and that are incriminating on their face will continue to be inadmissible without the testimony of their authors (or some other method of satisfying the Confrontation Clause). Don't be tempted to get "tricky" with the rule. Justice Thomas in a footnote stated that "informal statements" are also testimonial when made to "evade the formalize process" previously used to generate such statements. It is time for the forensic expert to get an education in courtroom survival.

References:

- ¹ *Williams v. Illinois*, 132 S.Ct. 610 (2012)
- ² *Crawford v. Washington*, 124 S.Ct. 1354 (2004)
- ³ *Melendez – Diaz v. Massachusetts*, 129 S.Ct. 2527 (2009)
- ⁴ *Bullcoming v. New Mexico*, 131 S.Ct. 2705 (2011)

Forensic Testimony, Expert Testimony, Forensic Expert