



E17 How Many Expert Witnesses Does the Prosecution Need to Admit a Lab Report?

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After attending this presentation, attendees will better understand the facts and holdings of the four Supreme Court cases which prescribe the manner in which the prosecution can admit lab reports into evidence and the number (and role) of the expert witnesses they must call to the witness stand. Expert witnesses who attend will learn “the rules” created by the four cases and will have an understanding of those rules. This understanding will enable forensic expert witnesses to know what to expect to hear about taking the stand from the prosecutor or defense attorney. The attendees will leave the session with an understanding of how the rules fit their discipline as, for example, sometimes DNA is different.

This presentation will impact the forensic science community by giving the necessary tools to prepare for the likelihood – or know there is little likelihood – that they will have to testify about the results reported in their lab report. This presentation bridges a gap in knowledge about what the U.S. Supreme Court has said in all of the opinions that address expert witness testimony that have been issued in 2004, 2009, 2011, and 2012.

Four cases which seemingly address the same Constitutional issue cannot be assimilated without looking at them as a whole. The Sixth Amendment Confrontation Clause guarantees the accused’s right to confront the witnesses used against him. In 2004, the Supreme Court held, in *Crawford v. Washington*,¹ that the clause prohibits the Government from introducing out of court statements without putting the declarant on the witness stand. In 2009, in *Melendez-Diaz v. Massachusetts*,² the Court reaffirmed the decision, holding that forensic reports that certify results are testimonial statements. In *Bullcoming v. New Mexico*,³ the Court held that when the prosecution introduces a forensic report, it must call the actual author of the report to the stand, not a supervisor or surrogate witness. *Bullcoming* left open the question of whether prosecutors can introduce an analyst’s testimonial forensic report through a testifying expert witness. When can one testifying expert witness be used to admit another’s forensic reports? Did *Williams v. Illinois*,⁴ issued on June 18, 2012, answer the question?

Williams was issued as a plurality opinion: Judge Alito and three Justices wrote for the plurality, Judge Kagan and three Justices wrote for the dissent and one Justice seemingly ruled for both sides. Ultimately, Judge Thomas, writing alone, affirmed Sandy William’s conviction for rape. How will the lower courts interpret *Williams* – narrowly or expansively? The answer is most likely they will do both. Does it depend upon whether it is a jury trial or a judge hearing the case alone? Does it depend upon the discipline the forensic science and author belong to? The final, integrated rule is that reports that are the internal work product leading up to a formal report are not testimonial and therefore not subject to confrontation. Will forensic scientists respond by re-categorizing the procedures that culminate in a final opinion? The *Williams* decision, combined with others, came with several warnings to prosecutors and forensic scientists regarding the number (and role) of expert witnesses that need to be called to the stand to introduce one report.

All four Supreme Court cases which address the issue of the Confrontation Clause as it applies to forensic expert witnesses will be discussed. There will be discussion about the application of the rules to different disciplines and different circumstances. Both forensic scientists and attorneys can, and should, tailor their expectations along the lines of these Supreme Court rules.

References:

- ¹ *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004)
- ² *Melendez-Diaz v. Massachusetts*, 557 U.S. ____, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009)
- ³ *Bullcoming v. New Mexico*, 564 ____, 131 S.Ct. 2705, 180 L.Ed.2d 610 (2011)
- ⁴ *Williams v. Illinois*, 567 U.S. ____. Op 10-8505 (June 18, 2012)

Expert Witness, Laboratory Reports, Constitutional Law