IN THE
COURT OF APPEALS OF MARYLAND

September Term, 2014

No. 67

STATE OF MARYLAND,

Petitioner,

v.

HAROLD ALBERT NORTON, JR.,

Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF OF *AMICUS CURIAE* THE INNOCENCE NETWORK IN SUPPORT OF RESPONDENT

Leonard R. Stamm
GOLDSTEIN & STAMM, P.A.
6301 Ivy Lane, Suite 504
Greenbelt, Maryland 20770
(301) 345-0122
Counsel for Amicus Curiae

Charles R. Koster (admission *pro hac vice* pending)
WHITE & CASE LLP
1155 Avenue of the Americas
New York, NY 10036
(212) 819-8200
Of Counsel, Pro Bono for Amicus Curiae

Seth Miller*
President
INNOCENCE NETWORK
1100 East Park Avenue
Tallahassee, FL 32301
(850) 561-6767

Dana M. Delger*
M. Chris Fabricant *
David Loftis*
40 Worth Street, Suite 701
New York, New York 10013
(212) 364-5964

**not admitted in Maryland*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

MISCELLANEOUS

National Academies, *Strengthening Forensic Science in the United States: A Path Forward* (National Academies Press 2009), *available at* http://books.nap.edu/catalog.php?record_id=12589 ..... 5, 8, 9, 10

Stephanie Hanes, *Chemist Quit Crime Lab Job After Hearing, Papers Show She Acknowledged Report Was Worthless In 1987*, BALTIMORE SUN, Mar. 19, 2003 12

Sally Jacobs, *Annie Dookhan Pursued Renown Along A Path of Lies*, BOSTON GLOBE, Feb. 3, 2013, *available at* http://www.bostonglobe.com/metro/2013/02/03/chasing-renown-path-paved-with-lies/Axw3AxwmD33lRwXatSvMCL/story.html 9

Roma Khanna & Steve McVicker, *Police Lab Tailored Tests to Theories, Report Says; Investigators Hope to Establish Whether Mistakes Were Deliberate* 6

Maurice Possley, Steve Mills & Flynn McRoberts, *Scandal Touches Even Elite Labs*, CHI. TRIB., October 21, 2004, *available at* http://www.chicagotribune.com/news/watchdog/chi-041021forensics 9

Tovia Smith, *Crime Lab Scandal Leaves Mass. Legal System in Turmoil,* NPR, March 14, 2013, *available at* http://www.npr.org/2013/03/14/174269211/mass-crime-lab-scandal-reverberates-across-state 9

Chris Swecker & Michael Wolf, An Independent Review of the SBI Forensic Laboratory (2010), *available at* http://www.ncids.com/forensic/sbi/Swecker_Report.pdf..... 10, 11

William C. Thompson, *Painting the target around the matching profile: The Texas sharpshooter fallacy in forensic DNA interpretation*, 8 LAW, PROBABILITY AND RISK 257(2009)..... 8

Jaxon Van Derbeken, *San Francisco Police Crime Lab Accused of Cover-up*, SAN FRAN. GATE, December 4, 2010, *available at http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/12/03/MN7I1GLK0L.DTL#ixzz17AuloZjh.*..... 7

INTEREST OF AMICUS CURIAE

The Innocence Network (the "Network") is an affiliation of organizations dedicated to providing pro bono legal and/or investigative services to prisoners for whom evidence discovered after conviction can provide conclusive proof of innocence. The 69 current member organizations of the Network represent hundreds of prisoners with innocence claims in all 50 states and the District of Columbia, as well as Argentina, Australia, Canada, France, Ireland, Israel, Italy, the Netherlands, New Zealand, South Africa, and the United Kingdom.

Over the past two decades, the Network has introduced DNA evidence into courtrooms in its successful exoneration of hundreds of individuals. Though DNA evidence has tremendous power to correct past wrongs, the process of collecting physical evidence, extracting DNA, and conducting appropriate testing is not always without flaws. Indeed, some of the Network's exonerations include defendants who were convicted by incomplete, incompetent, or faulty DNA evidence and testimony. These cases have revealed that DNA, like other forensic sciences, is susceptible to human error, incompetence, and misfeasance.

Given this experience, amicus curiae possesses a strong interest in ensuring that criminal convictions are premised upon valid and accurate scientific analysis—an interest directly implicated by Harold Albert Norton Jr.'s case. When the results of a forensic analysis are offered against a defendant—whether through a lab report or proxy analysis of that report—the author of that testimony must be subject to confrontation.

STATEMENT OF FACTS

Respondent Harold Albert Norton Jr. was convicted in the Circuit Court for Baltimore County of attempted first-degree murder, witness intimidation, assault, three counts of armed robbery, and four counts of use of a handgun. The convictions were based on two incidents: a July 7, 2006 robbery by a masked intruder at a hair salon and a July 9, 2007 shooting at a group home. According to the State, the police received a tip

from George Bennett, an employee at the group home, implicating Mr. Norton in the robbery. The police then recovered the stolen items and a ski mask from a storm drain near the group home. The State alleged that DNA testing of the saliva on the mask matched Mr. Norton. Approximately one year later, an unseen individual fired a shot through the glass door of the group home injuring Mr. Bennett. Mr. Norton was accused of being the shooter.

At trial, over the objection of defense counsel, the State presented the testimony of Michael Cariola, a supervisor at Bode Technology Group ("Bode"). (E. at 36). Mr. Cariola testified in lieu of Rachel Cline, the scientist who actually tested Mr. Norton's DNA and compared it to the recovered evidence. Ms. Cline prepared a formal report, which was admitted as an exhibit at trial, titled "Forensic DNA Case Report" on Bode letterhead (the "Cline Report"). (E. at 65-66). The Cline Report (i) was addressed to the Baltimore County Police Department Forensic Services, (ii) contained a list of evidence received, including a buccal swab from suspect Harold Norton and a cutting from the ski mask, (iii) stated that appropriate positive and negative controls were used concurrently throughout the analysis, (iv) concluded that the major component male DNA profile matched the DNA profile obtained from the reference item from Harold Norton, (v) determined within a reasonable degree of scientific certainty that Harold Norton was the major source of biological material obtained from the evidence item, and (vi) was signed by Rachel Cline and Susan Bach, neither of whom testified at trial. (*Id.*). The State admitted to knowing the whereabouts of Ms. Cline, who left Bode and took a job in an adjoining county in Maryland. (E. at 52). Mr. Cariola testified on cross-examination that Ms. Cline was the analyst who conducted the forensic analysis on Mr. Norton's DNA and that he merely reviewed her lab notes, raw data, paperwork, and final report. (*Id.*).

On appeal, the Court of Special Appeals reversed the convictions and remanded for a new trial, holding that Mr. Norton has been denied his Sixth Amendment right of confrontation of the lab analyst regarding the DNA profile. *Norton v. State*, No. 2382, September Term, 2008 (Nov. 2011), slip op. at 15 ("*Norton I*"). The State then filed a petition for writ of certiorari. Before this Court ruled on that petition, the U.S. Supreme

Court vacated and remanded this Court's decision in *Derr v. State*, 411 Md. 740 (2009) ("*Derr I*"), the opinion relied upon by the Court of Special Appeals in this case, for further consideration in light of *Williams v. Illinois*, 132 S.Ct. 2221 (2012). This Court subsequently issued an opinion in *Derr v. State*, 434 Md. 88 (2013) ("*Derr II*") further articulating when a forensic report is "testimonial" and thus implicates the Sixth Amendment right of confrontation. Thereafter, this Court vacated the reversal of Mr. Norton's convictions and remanded the case to the Court of Special Appeals for further consideration in light of *Derr II* and *Williams*. *Norton v. State*, 217 Md. App 388, 406 (2014) ("*Norton II*"). On remand, the Court of Special Appeals again held that Mr. Norton's right of confrontation was violated when the circuit court permitted Mr. Cariola to testify regarding the work of another DNA analyst, whose report was admitted into evidence. The State filed a second petition for writ of certiorari, which was granted.

SUMMARY OF ARGUMENT

The reliability of DNA evidence—particularly as it is relayed in forensic reports—is not guaranteed. It must be proven. The prevalence of wrongful convictions based on faulty forensic science, and the rash of crime lab scandals around the nation, have shown that the unchecked use of forensic evidence comes at a high cost.

An analyst's report and conclusions are more than just raw data. They certify that the analyst followed certain procedures, performed certain acts, and interpreted the results to arrive at the offered conclusions. Confrontation of the analyst who performed the DNA extraction and developed the genetic profile of the defendant is essential to permit proper adversarial testing of forensic evidence. The U.S. Supreme Court's decisions in *Crawford v. Washington,* 541 U.S. 36 (2004), *Melendez-Diaz v. Massachusetts,* 557 U.S. 305 (2009), and *Bullcoming v. New Mexico*, 131 S.Ct. 2705 (2011) make clear that such evidence is inherently testimonial and hence subject to confrontation.

The U.S. Supreme Court's recent plurality decision in *Williams* does not excuse confrontation in this case. As an initial matter, the splintered *Williams* decision failed to

produce a common view shared by at least five Justices and therefore does not create a new rule of law. *Williams* should thus be read no more broadly than the particular circumstances that led to the convergence of the five Justices in the plurality and concurring opinions. Those circumstances, however, are markedly different from this case, where the genetic testing was performed *after* Mr. Norton was identified as the assailant and targeted as the suspect and the Cline Report was admitted as evidence at trial.

To the extent this Court remains convinced that the common point of agreement between the plurality opinion and Justice Thomas's concurring opinion is that statements must be formalized or have "indicia of solemnity" to be testimonial, the Cline Report is sufficiently formal to implicate Mr. Norton's confrontation rights.

Here, the State set out to build a case against Mr. Norton based on Ms. Cline's lab analysis. Ms. Cline received crime scene evidence, extracted biological material and developed a genetic profile. The critical issue at trial was the accuracy of this profile's conclusion that Mr. Norton was the contributor of the DNA on the mask. Yet, despite the fact that she was available to testify, the State never presented Ms. Cline as a witness. The source of the genetic profile and how it was derived was thus never subject to cross-examination. Instead, the State presented the forensic evidence through Mr. Cariola, who did not observe the forensic testing or conduct any independent analysis. Plainly, Ms. Cline's report and her conclusions were testimonial and admitted for their truth.

As the U.S. Supreme Court and this Court have consistently recognized, confrontation of the actual testing analyst is a basic constitutional safeguard against faulty forensic science. Such a safeguard is only functional, however, when the witness confronted is the analyst who conducted the test and can attest to the results. Confrontation of a surrogate who merely reviewed the underlying conclusions is no confrontation at all.

ARGUMENT

I. CONFRONTATION IS NECESSARY TO EXPOSE ERRONEOUS DNA ANALYSIS

Forensic science is by no means flawless, and forensic testimony is, at its core, no different from any other testimony. It is the product of human beings, with the same potential prejudices and inconsistencies inherent in any human expression. When forensic testimony is produced for the purpose of a criminal prosecution and is offered against a defendant in a criminal trial, as it was in this case, the Confrontation Clause plainly requires the author of that testimony to present it personally and be subject to cross-examination to ensure its reliability. *Melendez-Diaz*, 557 U.S. at 318-19. As a practical matter, moreover, confrontation of the forensic analyst is necessary to help expose pervasive problems in forensic analyses.[1] In allowing a surrogate to vouch for Ms. Cline's results instead of requiring her to testify about her work, the court deprived Mr. Norton of any opportunity to determine whether she conducted an accurate analysis and, ultimately, whether her conclusions had meaningful evidentiary value.

A. Errors And Fraud Are Pervasive In Forensic Testing

False forensic data and conclusions result from a variety of problems, including negligence, incompetence, bias, fraud, incomplete reporting, and misleading terminology. These several problems are common in forensic analyses and, not surprisingly, have resulted in wrongful convictions of the innocent. *See* Brandon L. Garrett and Peter J. Neufeld, *Invalid Forensic Science Testimony and Wrongful Convictions*, 95 VA. L. REV. 1, 94-96 (2009) (arguing that more rigorous oversight and standards are necessary to fix

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[1] A systemic review in 2009 of forensic labs across the country noted problems throughout the analytical process, stemming from incompetence and negligence, bias, fraud and misrepresentation. *See* National Research Council of the National Academies, *Strengthening Forensic Science in the United States: A Path Forward* (National Academies Press 2009), *available at* http://books.nap.edu/catalog.php?record_id=12589 (the "NAS Report").

these problems and minimize wrongful convictions caused by improper and misleading forensic science in criminal cases).

Negligence and Incompetence: The problem of incompetence in forensic analysis is pervasive. Perhaps the most notorious example involved an audit of the Houston crime laboratory by the Texas Department of Public Safety in 2006. *See* Roma Khanna & Steve McVicker, *Police Lab Tailored Tests to Theories, Report Says; Investigators Hope to Establish Whether Mistakes Were Deliberate*, HOUS. CHRON., May 12, 2006, at A1. The audit revealed routine failure by the lab and its employees to run required scientific controls, follow procedures to minimize the risk of sample contamination, document work, and calculate statistics properly. Judge Harry Edwards, co-chair of the committee that produced the NAS Report, noted that the Houston case "highlights the sometimes blatant lack of proper education and training of forensic examiners." Harry T. Edwards, *Solving the Problems That Plague the Forensic Science Community*, 50 JURIMETRICS 5, 9 (2009). The rampant incompetence at the Houston crime laboratory led to numerous wrongful convictions, including the conviction of Josiah Sutton for a rape he did not commit. *See* The Innocence Project, Know the Cases, Josiah Sutton, *available at* http://www.innocenceproject.org/Content/Josiah_Sutton.php. Sutton and a friend, both teenage boys, were identified by the victim and consented to requests by the police for blood and saliva samples to compare with evidence collected from the victim and the crime scene. The Houston crime laboratory concluded that Sutton was the attacker, and a lab employee testified at trial that the samples taken from Sutton matched the evidence found on the victim. *Id.* After the audit and review of the laboratory, however, one expert described the forensic reports in the Sutton case as the worst he had ever seen, stating that they were not as sound as a decent junior high school science project. *Id.* The expert examined the original DNA test strips and concluded that the laboratory was completely wrong in its initial conclusions. *Id.* Sutton was ultimately exonerated by more conclusive DNA testing after serving more than four years in prison. *Id.*

Errors in DNA analysis often go unnoticed by peers or supervisors in the testing laboratory who do not play a role in the testing. In Virginia, Earl Washington, Jr. was

exonerated by DNA testing after 17 years in prison—9 of them on death row. Following his pardon, Governor Mark Warner ordered a review of the case and the DNA analyst who prepared the initial report. The review confirmed that the DNA analyst had made serious errors. ASCLD/LAB Limited Scope Interim Inspection Report 19, Apr. 9, 2005, *available at* http://www.dfs.virginia.gov/services/forensicBiology/externalReviewAuditReport.pdf (on file with authors). Notably, the review also concluded that the technical peer-review system in the lab had failed because the "technical reviewer *did not observe the errors in the processes* and the reported results . . . ." *Id.* at 17 (emphasis added).

Similar instances of incompetence and negligence are common. In 2008, Baltimore's crime lab director was fired after investigation revealed that employees had contaminated DNA samples. *See* Julie Bykowitz & Justin Fenton, *City Crime Lab Director Fired: Database Update Reveals Employees DNA Tainted Evidence, Throwing Lab's Reliability Into Question*, BALTIMORE SUN, Aug. 21, 2008, at A1. In 2010, the San Francisco crime lab was closed indefinitely following a review that uncovered, among other instances of negligent and intentional misconduct, lab personnel mixing evidentiary and control samples and destroying records in an apparent attempt to cover it up. Jaxon Van Derbeken, *San Francisco Police Crime Lab Accused of Cover-up*, SAN FRAN. GATE, December 4, 2010, *available at http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/12/03/MN7I1GLK0L.DTL#ixzz17AuloZjh.*

Ensuring that only valid and reliable science is used against defendants in criminal trials requires vigorous confrontation, which is "designed to weed out not only the fraudulent analyst, but the incompetent one as well." *Melendez-Diaz*, 557 U.S. at 319. These examples illustrate the critical importance of confronting the analyst who performed the test at issue, rather than a supervisor or colleague who is further removed from the test and who may have incentive to dispel negative impressions. Confrontation of the actual analyst is necessary to expose negligence and general incompetence in forensic testing.

Bias: Even in labs where analysts are well-trained and supported, analysts may still be susceptible to mistakes because of observer bias, a pervasive problem in crime labs and in clinical testing generally. Observer bias occurs when an individual unconsciously allows emotion and pre-conceived notions to influence the interpretation of data. *See* NAS Report at 4-9. In the criminal context, analysts sometimes receive extraneous information about forensic samples that can lead to observer bias and compromise the analyst's objectivity. *See* I.E. Dror, D. Charlton & A.E. Peron, *Contextual information renders experts vulnerable to making erroneous identifications*, 156 FORENSIC SCIENCE INT'L., 74-78 (2006). Extraneous information might include the sources of the samples they are testing, the theory of the case developed by law enforcement, or other evidence regarding the guilt of the suspect. This problem is exacerbated by the pressure an analyst may feel to produce findings favorable to the prosecution. As a result, human cognition and forensic specialists recommend the use of blind testing in criminal cases. I.E. Dror & J. Mnookin, *The use of technology in human expert domains: Challenges and risks arising from the use of automated fingerprint identification systems in forensics*, 9 LAW, PROBABILITY AND RISK 47, 67 (2010). Few crime labs, if any, however, use blind testing or any comparable safeguard in regular forensic testing to guard against bias. *See* NAS Report at 124, 207.

DNA analysis is uniquely susceptible to bias-based errors. In this regard, evidentiary samples from crime scenes often produce incomplete DNA profiles and may contain DNA from more than one person. William C. Thompson, *Painting the target around the matching profile: The Texas sharpshooter fallacy in forensic DNA interpretation*, 8 LAW, PROBABILITY AND RISK 257, 259 (2009). In some instances, the evidence yields no information about a genotype at a certain locus; in others, spurious results not associated with the sample are detected. *Id.* Analysts must make allowances for these phenomena when determining whether a suspect should be included as a potential contributor. *Id.* at 260. The standards for inclusion are ill-defined and subjective. *Id.* at 263. Moreover, the standards may shift to encompass the profile of known suspects without the analyst being aware of it. *Id.*

Given the real potential for bias, confrontation of the testing analyst is necessary. Confrontation is particularly important in this context, as bias may be subconscious and practically impossible to ascertain by questioning a surrogate witness.

Fabrication: Crime lab scandals have exposed not only errors in DNA testing, but also the alarming prevalence of "drylabbing"—the utter fabrication of scientific results. *See* NAS Report at 193. In drylabbing cases, the forensic analyst reports the results of testing that was never conducted. Like incompetence, drylabbing scandals are pervasive and often go unnoticed by peers and supervisors in the testing laboratory.

Several egregious drylabbing cases have been exposed in recent years. An investigation at the West Virginia police laboratory revealed that an employee, Fred Zain, repeatedly falsified evidence in criminal prosecutions. *Id.* at 44. At least ten people had their convictions overturned as a result, and subsequent reviews questioned whether Zain was ever qualified to perform scientific examinations. Likewise, in Massachusetts, a drug analyst, Annie Dookhan, fabricated results in as many as 34,000 cases. Tovia Smith, *Crime Lab Scandal Leaves Mass. Legal System in Turmoil,* NPR, March 14, 2013, *available at* http://www.npr.org/2013/03/14/174269211/mass-crime-lab-scandal-reverberates-across-state. Dookhan's fraud went undetected for years, as she was shielded by the pre-*Melendez-Diaz* jurisprudence that protected her from confrontation about her work. Sally Jacobs, *Annie Dookhan Pursued Renown Along A Path of Lies*, BOSTON GLOBE, Feb. 3, 2013, *available at* http://www.bostonglobe.com/metro/2013/02/03/chasing-renown-path-paved-with-lies/Axw3AxwmD33lRwXatSvMCL/story.html. An expert testifying to the substance of Annie Dookhan's reports would not know that the tests were not in fact performed, and the fraud would not be exposed.

Similar instances of fabrication have been uncovered in some of the country's pre-eminent crime labs. In May 2004, an FBI analyst, Jacqueline Blake, pled guilty to a misdemeanor of making false statements about following protocol in approximately 100 DNA analysis reports. *See* Maurice Possley, Steve Mills & Flynn McRoberts, *Scandal*

Touches Even Elite Labs, CHI. TRIB., October 21, 2004, *available at* http://www.chicagotribune.com/news/watchdog/chi-041021forensics,0,3075697.story.

The ability to confront an analyst who provides false results is crucial. As the U.S. Supreme Court noted in *Melendez-Diaz*, such analyst may reconsider his false testimony when under oath in open court. 557 U.S. at 318-19. Indeed, the prospect of confrontation will prophylactically deter forensic fraud in the first place. *Id.* at 319.

Incomplete and Misleading Forensic Reporting: Forensic reports generally do not capture the full spectrum of tasks an analyst performs on a case. *See* NAS Report at 186. The NAS Report recommended that forensic reports use standardized vocabulary and that reports describe, at a minimum, methods used, procedures, results, conclusions and sources of uncertainty. *Id.* at 185-86. Few labs, however, meet that reporting standard. *Id.* at 186.

In addition, analysts may report identical results in different ways, even within a single lab. *Id.* In such labs, it is virtually impossible for one analyst to review the work of a different analyst, especially when the reviewer did not participate in the analysis. It is not enough for a surrogate to state that he, too, is aware of the lab protocols, because the reviewer cannot know what steps were actually taken by the testing analyst in coming to a conclusion. Indeed, the reviewing analyst may not even know the full range of tests that the testing analyst performed.

The ability of confrontation to address incomplete and misleading forensic reporting is best illustrated by a scandal involving the North Carolina State Bureau of Investigation (SBI) Laboratory. In 1993, Gregory Taylor was convicted of homicide in North Carolina. Chris Swecker & Michael Wolf, An Independent Review of the SBI Forensic Laboratory at 5 (2010), *available at* http://www.ncids.com/forensic/sbi/Swecker_Report.pdf. A forensic report produced prior to Mr. Taylor's conviction stated that a test conducted on samples recovered from his vehicle demonstrated "chemical indications for the presence of blood." *Id.* at 5. The report omitted the critical fact, however, that the conclusion was based only on an initial, presumptive test, and that subsequent, more sensitive confirmatory tests reflected

"negative" or "inconclusive" results. *Id.* at 9. Notably, the analyst who produced the report did not testify at trial. Rather, his report was admitted through a local police detective who testified to its misleading contents. After the report was introduced, both the prosecution and defense attorneys referred to the evidence as "blood" for the duration of the trial, despite the fact its presence had not been confirmed. *Id.* at 6. Mr. Taylor was ultimately exonerated following a formal inquiry into the forensic science used at trial. *Id.* at 5.

Surrogate testimony can also be used to shield incompetent analysts, as in New York's Office of the Chief Medical Examiner ("OCME"), which was forced to re-examine hundreds of rape cases after a lab technician was discovered to have mishandled or overlooked critical DNA evidence in many cases. *See* State of New York Office of the Inspector General, *Investigation into the New York City Office of Chief Medical Examiner: Department of Forensic Biology*, Dec. 2013, *available at* http://ig.ny.gov/pdfs/OCMEFinalReport.pdf. The technician also "repeatedly failed . . . the portion of the training that ensures that an analyst can testify competently in a court of law." *Id.* at 2. Despite that, the analyst's incompetence was allowed to go unchecked for more than a decade, shielded in part by the OCME's (unconstitutional) practice of only allowing more senior analysts to testify, rather than the analysts who performed the testing. *Id.* at 2-3.

These cases illustrate the importance of confronting the analyst regarding his own report. Individual analysts may be subject to regulation and protocol, but it is not enough simply to present the jury with the protocols as they stand on paper. Instead, individual analysts must be called to relay their individual understandings of the processes and what steps they actually performed both in conducting the tests and drafting their reports.

In sum, problems in forensic analyses take different forms, but are all expressed through the work of the analyst who performed the test. Such work is not always reflected in the conclusory reports prepared by the analyst, and the full set of facts that can demonstrate whether any of these problems exists in a particular case is within the exclusive purview of the analyst himself. Functionally admitting the substance of a non-

testifying analyst's report through "expert" testimony is patently insufficient to guard against unreliable forensic science. When a defendant is forced to accept the sanitized conclusions of a professional witness in lieu of the analyst who actually conducted the tests against him, he is denied the right to mount a particular attack on the analyst and the process. Indeed, a strict confrontation requirement will prophylactically curtail errors in forensic science in the first instance.

B. Confrontation Of Testing Analysts Has Effectively Exposed Incompetence And Misconduct

A capable attorney, through confrontation of the analyst, can expose false forensic data or conclusions. In *Williams*, Justice Kagan presented a concrete example of the unique benefit of confronting the testing analyst. 132 S.Ct. at 2264 (Kagan, J. dissenting). In a rape case against John Kocak, "[t]he analyst extracted DNA from a bloody sweatshirt found at the crime scene and compared it to two control samples—one from Kocak and one from the victim." *Id.* The analyst concluded the blood on the sweatshirt matched Kocak. After undergoing cross-examination, however, she acknowledged that she had inadvertently switched the labels on the samples from the victim and defendant. As she testified, "the DNA on the sweatshirt matched not Kocak, but the victim herself." *Id.* If a colleague or supervisor were permitted to testify in lieu of the analyst who actually handled the evidence and conducted the tests, the error would not have been discovered.

The power of confrontation to reveal the truth is apparent. In *State v. Bedford*, for example, a forensic chemist in a pre-trial hearing acknowledged that she did not understand the science behind many of the tests she performed, and that she failed to perform some standard tests on blood samples. Stephanie Hanes, *Chemist Quit Crime Lab Job After Hearing, Papers Show She Acknowledged Report Was Worthless In 1987*, BALTIMORE SUN, Mar. 19, 2003, at B1. She stated that she did not record certain test results, and at the conclusion of cross-examination, admitted that her "entire analysis [wa]s absolutely worthless." Similarly, in *Ragland v. Kentucky*, a bullet-lead composition analyst conceded during cross-examination that she had lied in earlier statements. 191

S.W.3d 569, 581 (Ky. 2006). The analyst admitted afterward, "[i]t was only after the cross-examination at trial that I knew I had to address the consequences of my actions." Many more examples undoubtedly exist, but have gone unreported because there was no opportunity for meaningful cross-examination.

Mr. Norton was denied the opportunity to cross-examine Ms. Cline at trial. It is unknown what Ms. Cline would have testified to had she appeared in court, and we can only speculate as to whether the jury would have found her report more or less reliable had she been exposed to rigorous cross-examination.

II. THE SUPREME COURT'S PLURALITY DECISION IN WILLIAMS DOES NOT ALTER RESPONDENT'S CONFRONTATION RIGHTS IN THIS CASE

The Sixth Amendment to the United States Constitution provides in part that, "[i]n all criminal prosecution, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. CONST. amend. VI. The Confrontation Clause is applicable to the States by virtue of the Fourteenth Amendment. *See Pointer v. Texas*, 380 U.S. 400, 403 (1965). The Maryland Declaration of Rights provides for like protection to an accused. *See* Md. Dec. of Rights, Art. 21 (guaranteeing right of an accused "to be confronted with the witnesses against him"). This Court has noted that the two rights provide the same protection. *See, e.g.*, *Derr II*, 434 Md. at 104-05; *Grandison v. State*, 425 Md. 34, 64 (2012); *Lawson v. State*, 389 Md. 570, 587 n.7 (2005); *State v. Snowden*, 385 Md. 64, 74 n.9 (2005). Accordingly, this Court applies the U.S. Supreme Court's analysis of Sixth Amendment rights in appeals implicating confrontation rights under the federal and Maryland Constitutions. *See Cooper v. State*, 434 Md. 209, 228 (2013).

Under the framework established by the U.S. Supreme Court in *Crawford* and its progeny, the right of confrontation applies when a challenged out-of-court statement or evidence is presented for its truth and such statement or evidence is "testimonial." 541 U.S. at 53-54. To be testimonial, a statement must have been made primarily for an

evidentiary purpose.[2] If those conditions are satisfied, the declarant must be called as a witness to testify at trial, unless he is unavailable and the defendant had an opportunity to cross-examine him prior to trial. *Id.*; *Derr II*, 434 Md. at 107.

Forensic evidence, including DNA analysis, is not exempt from the holding in *Crawford*, and the U.S. Supreme Court has rejected arguments that the requirement of confrontation should be relaxed for testimony reporting the outcome of supposedly "neutral scientific testing." *Melendez-Diaz*, 557 U.S. at 317. Permitting a defendant to cross-examine a surrogate witness who did not personally perform or observe the forensic analysis at issue is not a constitutionally permissible substitute for cross-examination of the scientist who actually did the testing. *Bullcoming*, 131 S.Ct. at 2715-16.

The issue was most recently considered by the U.S. Supreme Court in *Williams*. There, the Court considered whether a defendant was denied his right of confrontation where an expert witness testified to an opinion, which assumed facts based on a report done by a non-testifying analyst. *Williams*, 132 S.Ct. at 2227. The expert testified to the statistical likelihood that a DNA profile produced by a private laboratory would be a random match to a profile produced by the state police laboratory using a sample of the defendant's blood. *Id.* at 2230, 2240. The expert made no other statements for the purpose of identifying the biological material used in deriving the profile or for the purpose of establishing how the laboratory handled or tested the sample. *Id.* at 2240. Nor did the expert vouch for the accuracy of the profile produced by the outside laboratory. *Id.* Importantly, the DNA analysis was conducted before the defendant was identified as a suspect, the report was neither admitted into evidence nor shown to the trial judge, and the analyst's report was not signed and did not certify that the procedures used and statements made were correct. *Id.* at 2228.

A four-Justice plurality concluded that the defendant was not denied his right of confrontation. *Id.* at 2244. According to the plurality, the report's conclusions were not

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[2] As discussed *infra*, the U.S. Supreme Court is divided on whether a statement must meet any additional requirements in order to be deemed testimonial.

admitted for their truth but rather to explain the basis of the testifying expert's statistical calculations on the probability of a random match. The plurality also determined that, in any event, the conclusions were not testimonial because they were not produced for the primary purpose of accusing a *targeted* individual of a crime. *Id.* at 2228 ("The report was produced before any suspect was identified. The report was sought not for the purpose of obtaining evidence to be used against petitioner, who was not even under suspicion at the time, but for the purpose of finding a rapist who was on the loose.").

Justice Thomas concurred in the judgment, but rejected the reasoning. According to Justice Thomas, the report was admitted for its truth, but did not implicate the defendant's confrontation rights because it was not sufficiently formal or solemn to rank as testimonial. *Id.* at 2256, 2260 (Thomas, J., concurring). He noted that though the "report [was] signed by two 'reviewers' . . . they neither purport[ed] to have performed the DNA testing nor certify the accuracy of those who did." *Id.* at 2260.

A four-Justice dissent disagreed with the definitions of testimonial set forth in the plurality and concurring opinions. Like Justice Thomas, the dissent found that the statements at issue were admitted for their truth. *Id. at* 2268 (Kagan, J., dissenting). Unlike Justice Thomas, however, the dissent concluded that the report was testimonial because it "was made for the primary purpose of establishing past events potentially relevant to later criminal prosecution—in other words, for the purpose of providing evidence." *Id.* at 2273 (internal quotation omitted). While some dispute exists about the outer contours of the right to confrontation, an undisturbed congruence remains: each of the opinions agrees that statements contained in reports that are admitted for their truth, were made when there was a known suspect, and contain sufficient indicia of solemnity underscore core confrontation concerns and require cross-examination.

Hence, the fractured decision in *Williams* should neither confuse nor affect the analysis in this case, because a plain reading of any opinion in that case with the U.S. Supreme Court's prior precedent results in a conclusion that the Cline Report was testimonial and admitted for its truth. To the extent this Court has adopted Justice Thomas's concurrence, moreover, *Williams* is not binding precedent and is

distinguishable on its facts. Even under this Court's interpretation of *Williams*, however, the Cline Report is testimonial. Mr. Cariola was therefore not an acceptable witness, given his complete lack of involvement with the forensic testing that allegedly inculpated Mr. Norton. Thus, as the Court of Special Appeals held on two occasions, Mr. Norton was denied his Sixth Amendment right of confrontation when the Cline Report was admitted through Mr. Cariola's testimony.

A. The Cline Report Was Testimonial Under Any Reading Of Williams Or The Supreme Court's Prior Precedent

This case involves a signed, formal report, admitted for the truth of the matter, through a surrogate witness with no direct knowledge of the testimonial statements he purported to bolster. Such facts place it squarely in the heart of what the Confrontation Clause is designed to protect. Under any reading of *Williams* and the Court's prior precedents, Mr. Norton's right to confrontation was violated by the admission of the Cline Report. *See Williams*, 132 S.Ct. at 2240, 2242 n.13 (plurality opinion) (*Bullcoming* and *Melendez-Diaz* "are to be deemed binding precedents" which are merely distinguished on the limited facts of the case).

Under the U.S. Supreme Court's clear case law, forensic analysis like the Cline Report is testimonial and subject to confrontation. *Bullcoming* is instructive on this point. In that case, the prosecution sought to introduce a signed and certified blood-alcohol analysis—"made for the purpose of establishing or proving some fact" *Crawford*, 541 U.S. at 51—through the surrogate testimony of a witness who stated that he was familiar with the type of procedure used. 131 S.Ct. at 2709. The witness neither participated in nor observed the analyst's work. The Court found that, although the scientific method used in the analysis was widely used, it was not inherently reliable and the analysis was testimonial and therefore subject to confrontation. *Id.* at 2711 n.1. There is no meaningful distinction to be drawn between this case and *Bullcoming*. Here, as in *Bullcoming*, confrontation requirements could not be satisfied by presenting the analysis through a witness who neither observed the testing nor assisted in the production of the forensic report.

No reading of *Williams* changes this conclusion. Indeed, all nine Justices would agree, if for different reasons, that the admission of the Cline Report through Mr. Cariola violated Mr. Norton's confrontation rights. As a threshold matter, the Cline Report was plainly offered for its truth—namely that it was, in fact, Mr. Norton's DNA on the mask. *See Williams*, 132 S.Ct. at 2233 (plurality opinion) (distinguishing the blood alcohol report in *Bullcoming* from the *Williams* DNA profile because the former "was introduced at trial for the substantive purpose of proving the truth of the matter asserted by its out-of-court author—namely, that the defendant had a blood-alcohol level of 0.21"); *id.* at 2256 (Thomas, J., concurring) ("In my view, however, there was no plausible reason for the introduction of Cellmark's statements other than to establish their truth."); *id.* at 2268 (Kagan, J, dissenting) (finding report admitted for its truth, noting that five justices concurred on this point). Indeed, unlike the absent analyst's report in *Williams,* the Cline Report was itself admitted as an exhibit at trial (E. at 50)—precisely so that it might prove the truth of its conclusion that Mr. Norton was the source of DNA on the mask.[3]

Further, to the extent the *Williams* plurality found the report in that case was not testimonial because the DNA testing was done before any suspect was identified and the report thus was not sought for the purpose of obtaining evidence to be used against a particular individual under suspicion at the time, *id.* at 2228, Mr. Norton had already been identified to police before the DNA testing was done. (E. at 46). Similarly, the plurality in *Williams* emphasized that the surrogate witness did not testify to anything that was done in the laboratory or vouch for the quality of the analyst's work. Here, by contrast, Mr. Cariola directly vouched for the quality of Ms. Cline's work, her procedures, and her lab. (E. at 37-47). Mr. Cariola claimed that her results were reliable. (E. at 47). Thus, the plurality, plus Justice Thomas in concurrence and the four dissenting Justices (who did

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[3] Even if it were not admitted for its truth, unlike the defendant in *Williams*, Mr. Norton was tried by a jury, which the *Williams* plurality affirmed might, unlike a judge, risk taking the witness's testimony as proof that the DNA profile was derived from the sample obtained from Mr. Norton. *Williams*, 132 S. Ct. at 2236.

not, in any event, find that these issues bore on the Confrontation question) would agree that the Cline Report was testimonial and offered for the truth of the matter.[4]

The Cline Report was plainly testimonial both under *Williams* and under *Bullcoming* and *Melendez-Diaz*, which remain good law post-*Williams*. Thus Mr. Norton had the right to confront Ms. Cline as the testing analyst.

B. Williams Does Not Create A New Rule Of Law That Must Be Applied In This Case

The admission of the Cline Report violated Mr. Norton's confrontation rights under any reading of *Williams* and the Court's prior precedent. It is also apparent that the splintered *Williams* decision failed to produce a common view shared by at least five Justices and therefore does not create a new rule of law, either in Justice Thomas's concurrence or elsewhere.[5] It is well-settled that "when a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as the position taken by those Members who concurred in the judgments on the narrowest grounds." *Marks v. United States*, 430 U.S. 188, 193 (1977) (internal quotation marks omitted).

Applying this principle, courts have determined that the plurality opinion and Justice Thomas's opinion lack the necessary common denominator. As the Court of Appeals for the District of Columbia Court explained:

> A statement could be made for the purpose of accusing a targeted individual and therefore be testimonial under Justice Alito's test without being formal enough to satisfy Justice Thomas's test. Conversely, a statement could be sufficiently formal to pass Justice Thomas's test without being accusatory or targeted at a particular person. Thus, the rationales of

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[4] As to the formality of the report, it bears repeating that no justice adopted Justice Thomas's formality test. But, even if Justice Thomas's approach indeed further constricts what makes a statement testimonial, it is plain that the Cline Report would meet his test. *See infra* section II.B & C.

[5] There is no common holding in *Williams*, but, as discussed in section II.C, *infra*, this Court has recognized a common narrowest definition of testimonial hearsay.

> Justice Alito's opinion and Justice Thomas's opinion are incommensurable—neither rationale is subsumed within the other or narrower than the other in any meaningful sense that we discern.

Young v. United States., 63 A.3d 1033, 1043 (D.C. 2013);[6] *see also Williams*, 132 S.Ct at 2265 ("I call Justice Alito's opinion 'the plurality,' because that is the conventional term for it. But in all except its disposition, his opinion is a dissent: Five Justices specifically reject every aspect of its reasoning and every paragraph of its explication."); *Derr II*, 434 Md. at 141-42 (Eldridge, J., dissenting) ("If Justice Thomas's opinion in *Williams* did represent the holding of the Court, it is difficult to understand why no member of the plurality joined the Thomas opinion, or why Justice Thomas did not join a portion of the plurality opinion."). As the Court of Appeals for the Third Circuit has noted, in cases where the rationales given in multiple opinions are not subsets of each other, "no particular standard constitutes the law of the land, because no single approach can be said to have the support of a majority of the Court." *Rappa v. New Castle County*, 18 F.3d 1043, 1058 (3d Cir. 1994); *see also State v. Deadwiller*, 834 N.W. 2d 362, 273, 350 Wis. 2d. 138, 161 (2013) ("If no theoretical overlap exists between the rationales employed by the plurality and the concurrence, 'the only binding aspect of the fragmented decision . . .

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[6] The court found it unnecessary to determine any precise holding in *Williams*, extracting instead an "intermediate position." *Young*, 63 A.3d at 1043. According to the court, it is logically coherent and faithful to the Justices' expressed views to understand *Williams* to require—at a minimum—a sufficient, if not necessary criterion: a statement is testimonial when it passes the basic evidentiary purpose test *plus* either the plurality's targeted accusation requirement or Justice Thomas's formality criterion. *Id.* at 1044. The Cline Report satisfies this criterion. *First*, the DNA profile was generated for the primary purpose of establishing or proving a fact relevant to the criminal prosecution of a known suspect, thus satisfying the plurality's targeted accusation test. *Second*, the DNA analysis had an evidentiary purpose. In this regard, the test results included the DNA profile derived from a sample taken from Mr. Norton, and the results were obtained for the primary purpose of linking Mr. Norton to the evidence from the storm drain. *Finally*, as discussed *infra*, the Cline Report is sufficiently formal to satisfy Justice Thomas's criterion.

is its specific result'") (quoting *Berwind Corp. v. Comm'r of Soc. Sec.*, 307 F.3d 222, 234 (3d Cir. 2002)).

Several state courts of appeal have found that the several opinions in *Williams* lack a common denominator and, accordingly, do not establish a governing standard for future cases. *See, e.g.*, *State v. Michaels*, 219 N.J. 1, 30-31, 95 A.3d 648, 666 (2014) (relying on pre-*Williams* Confrontation Clause law; stating "[i]n short, each of those three opinions in *Williams* embraces a different approach to determining whether the use of forensic evidence violates the Confrontation Clause, and there is no narrow rule that would have the support of a majority of the Supreme Court that we can discern from the opinions in *Williams*."); *State v. Roach*, 219 N.J. 58, 75, 95 A.3d 683, 693 (2014) (stating that *Williams*'s force as precedent is unclear due to the failure of a majority of the Court to accept the analytical approach of the plurality opinion author); *Jenkins v. United States*, 75 A.3d 174, 188-89 (D.C. 2013) ("*Williams* produces no new rule of law that we can apply in this case."); *State v. Ortiz-Zape*, 743 S.E.2d 156, 161 (N.C. 2013) (noting "lack of definitive guidance" provided by *Williams*).

As a result, these courts and others read *Williams* no more broadly than the particular circumstances that led to the convergence of the five Justices in the plurality and concurring opinions. *See, e.g.*, *United States v. James*, 712 F.3d 79, 95 (2d Cir. 2013) (concluding that *Williams* does not create a new rule of law and that the decision is "confined to the particular set of facts presented in that case"); *State v. Bolden*, 108 So.3d 119, 1161-62 (La. 2012) ("There was no agreement on any single rationale among the five Justices subscribing to the proposition that the DNA profile developed by the non-testifying technician who examined the biological samples from the from the victim was not a 'testimonial' statement for purposes of the Confrontation Clause and the decision may have uncertain compass. . . . We therefore read *Williams* no more broadly than the particular circumstances that led to the convergence of the votes of the five Justices . . . ."). As discussed in section II.A, *supra*, those circumstances are markedly different from this case, and a straightforward application of the Court's precedents up to and including *Williams* shows that Mr. Norton's Confrontation rights were violated.

C. The Cline Report Is Testimonial Under This Court's Interpretation Of Williams

Indeed under *Derr II*, which interpreted *Williams*, the Cline Report is plainly testimonial. This Court has read the common point of agreement between the plurality and concurring opinions in *Williams* as saying that statements must, at least, be formalized or have an "indicia of solemnity" to be testimonial. *See Derr II*, 434 Md. at 114-15. Thus, under this Court's interpretation of *Williams*, a statement, at a minimum, must be formalized to be testimonial. *Id.*

Formalized statements may include, but are not necessarily limited to affidavits, depositions, prior testimony, or statements made in formalized dialogue or confession. *Id.* at 116. Forensic evidence is testimonial when it is either "functionally identical to live, in-court testimony" and "made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial," *Melendez-Diaz*, 557 U.S at 310-11, or when it was "created solely for an evidentiary purpose . . . made in aid of a police investigation." *Bullcoming*, 131 S.Ct. at 2717.

This Court has further considered whether forensic evidence is testimonial in at least two cases post-*Williams*. In *Derr II*, this Court considered whether the results of a 1985 serological exam on biological material obtained from the victim, a 2002 DNA test on biological material obtained from the victim, and a 2004 DNA test on biological material obtained from the defendant were sufficiently formalized to be testimonial. 434 Md. at 118-19. The exhibit in the record pertaining to the serological examination only included notes from the bench work of the examiner. *Id.* at 119. This Court held that the notes lacked the solemnity of an affidavit or deposition because there were "no signed statements or any other indication that the results or the procedures used to reach those results were affirmed by any analyst, examiner, supervisor, or other party participating in its development." *Id.* Moreover, nothing on the notes attested that the "statements accurately reflect . . . the testing process used or the results obtained." *Id.* In sum, the notes were not the product of any formalized dialogue resembling custodial interrogation.

Id. Similarly, the results from the two DNA tests were not sufficiently formalized to be testimonial. *Id.* The results from the 2002 test displayed a series of numbers and lines and the initials of two parties, but did not contain any statement attesting to the accuracy of the results or use of any prescribed procedures. *Id.* The results from the 2004 test were identical in form, but lacked even the initials of any analyst, let alone a signature attesting to the accuracy of the results or procedures used. *Id.*

This Court reached a similar conclusion in *Cooper v. State*, 434 Md. 209 (2013). The report at issue was a two page document indicating, among other things, when the DNA report was created, what items were tested, what procedures were used to develop the results, and the DNA results developed from testing. *Id.* at 236. This Court applied Justice Thomas's reasoning and held that the report lacked the formality to be testimonial. *Id.* Specifically, there was no indication that the results were sworn to or certified or that any person attested to the accuracy of the results. *Id.*

The Court of Special Appeals has also considered whether forensic evidence is testimonial. In *Malaska v. State*, the court held that an autopsy report was sufficiently formalized to be testimonial. 216 Md. App. 492, 511 (2014). The report contained signatures of doctors who personally participated in the autopsy, including the Chief Medical Examiner for the State of Maryland. *Id.* at 509-10. Although the report did not contain the words "attest" or "certify," the court found that the signatures clearly implied that the signatories agreed with and approved the contents of the report. *Id.* at 510.

The Cline Report—like the report in *Malaska*—contains the requisite formality and solemnity to be testimonial for purposes of the Confrontation Clause. In this regard, the named authors of the report personally affirmed that the controls and procedures used to test the evidence against suspect Harold Norton had been validated according to scientific standards applicable to such a "Forensic DNA Case Report." (E. at 65-66). Moreover, unlike the reports at issue in *Derr* and *Cooper*, the Cline Report included language guaranteeing "within a reasonable degree of scientific certainty" that Mr. Norton "is the major source of the biological material obtained from" the ski mask. (*Id.*). The report's conclusions are located directly above the signatures of Rachel E. Cline and

Susan Bach. As the Court of Special Appeals stated, "[a] reading of the Cline report clearly reflects that it was intended to be an authoritative, accurate document prepared in conformity with specific federal standards and based upon specific, validated procedures." *Norton II*, 217 Md. App at 405. Accordingly, Mr. Norton was denied his right under the federal and Maryland Constitutions to confront witnesses against him.

D. Mr. Cariola's Testimony Violated Mr. Norton's Right to Confrontation

Mr. Norton's confrontation rights were not satisfied by his opportunity to confront Mr. Cariola on the DNA evidence used at trial. Mr. Cariola did not participate in the forensic testing, observe Ms. Cline's work, or independently analyze her data or conclusions. Neither his initial involvement nor his ex-post review qualify him to testify in lieu of Ms. Cline.

Courts in this jurisdiction have relied on a level of involvement well above Mr. Cariola's in permitting a surrogate to testify in lieu of the forensic analyst who actually performed the forensic test. For example, in *Malaska*, the testifying witness was a supervising medical examiner who had been present in the autopsy suite during the entire duration of the dissection, personally conducted certain chemical and other tests, condensed the information into a final report, reviewed and edited the autopsy report drafted by the examiner who conducted the dissection, made the ultimate determination of the cause of death and certified the contents of the autopsy report through his signature at the end of the report. 216 Md. App. at 515-16. The court held that the defendant was not denied his right of confrontation, as the testifying witness was not a mere conduit for testimony that could have been provided by the forensic analyst. As the court reasoned, the witness was able to verify the truth of the autopsy results at issue based on personal knowledge. *Id.* at 516.

Mr. Cariola, on the other hand, merely parroted the conclusions reached by Ms. Cline. His conclusions were not based on his own findings or personal knowledge. His title alone does not make him an adequate witness for confrontation purposes. Rather, his involvement is analogous to the surrogate witness in *Bullcoming*, where the U.S. Supreme Court held that the testimony of an analyst who had neither participated in nor

observed the test on the accused's blood sample in lieu of the examiner who performed the test violated the defendant's confrontation rights. 131. S.Ct. at 2705. There, the testifying witness was not in charge of supervising the scientific tests and had no personal knowledge of the actual tests completed and of the chemist's job performance. *Id.* at 2715. Similarly, Mr. Cariola's knowledge stems merely from his review of Ms. Cline's report and lab notes after the analysis was performed. Hence, his role as a witness was merely to speak on behalf of Ms. Cline. He could not have known whether Ms. Cline was negligent in any step of her complicated scientific analysis, biased, or even fabricated results—the very concerns confrontation is uniquely capable of preventing. He was a mere conduit for testimony that needed to come from Ms. Cline.

CONCLUSION

The U.S. Supreme Court made clear in *Melendez-Diaz* and *Bullcoming* that forensic reports are testimonial, and that their authors must be subject to confrontation. The decision in *Williams* does not undermine these holdings. In fact, under this Court's unambiguous interpretation of *Williams*, the Cline Report is testimonial. Because the State relied on the testimony of Mr. Cariola, a supervisor who merely reviewed the forensic analyst's notes and report, but did not observe the actual testing or conduct any independent analysis, Respondent was denied his right to confront witnesses against him under the U.S. Constitution and the Maryland Declaration of Rights. For all of the foregoing reasons, and those presented by Respondent, the judgment of the Court of Special Appeals should be affirmed.

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Respectfully submitted,

By: _____

Leonard R. Stamm
GOLDSTEIN & STAMM, P.A.
6301 Ivy Lane, Suite 504
Greenbelt, Maryland 20770
(301) 345-0122
Counsel for Amicus Curiae

_____

Charles R. Koster (admission *pro hac vice* pending)
WHITE & CASE LLP
1155 Avenue of the Americas
New York, NY 10036
(212) 819-8200
Of Counsel, Pro Bono for Amicus Curiae

Seth Miller*
President
INNOCENCE NETWORK
1100 East Park Avenue
Tallahassee, FL 32301
(850) 561-6767

Dana M. Delger*
M. Chris Fabricant *
David Loftis*
40 Worth Street, Suite 701
New York, New York 10013
(212) 364-5964

**not admitted in Maryland*