Supreme Court Pulls Back on the Crawford Line of Cases

This past week, a splintered Supreme Court authorized the use of laboratory reports during a trial without allowing the defendant an opportunity to cross-examine the technicians who created the reports, straying from recent rulings that broadly interpreted the Sixth Amendment "right of confrontation" in favor of Defendants in similar cases.

Justice Samuel Alito, writing for a four-justice plurality, affirmed that the testimony of an expert witness based upon a test the expert did not personally perform is admissible and does not violate the defendant's Sixth Amendment rights. The Court held that because the evidence of the third-party test was not offered to prove the truth of the matter asserted (but merely to provide a basis for the conclusions that the expert reached) that the prosecution had not infringed on the defendant's Sixth Amendment right to confront and cross examine witnesses. The Court's ruling hinged on the following: First, the government witness simply testified and concluded that the DNA report in question matched a profile report the state lab had previously made using a sample of Williams' blood. Secondly, the government witness was available to the defendant for cross-examination. Consequently, the Court held that the testimony offered did not fall within the bounds of a Confrontation Clause violation because the results were considered for the limited purpose of seeing whether it matched something else, i.e. the profile from the state lab. The DNA report was not offered to prove the guilt of the defendant, as Williams was not a suspect at the time the test was conducted.

The defendant, Sandy Williams, was convicted of two counts of aggravated criminal sexual assault and one count each of aggravated kidnapping and aggravated robbery in state court. At the defendant's bench trial, Sandra Lambatos, a forensic specialist at the Illinois State Police lab, testified that she matched a DNA profile produced by an outside laboratory, Cellmark,

to a profile the state lab produced using a sample of defendant's blood. Lambatos testified that Cellmark was an accredited laboratory and that business records showed that the evidence was taken from the victim, sent to Cellmark, and returned. That was the extent of her testimony. The defense moved to exclude, on Confrontation Clause grounds, Lambatos' testimony as hearsay, insofar as it referenced the report from Cellmark. The prosecution countered that the defendant's Confrontation Clause rights were satisfied because he had the opportunity to cross-examine the expert who had testified as to the match. The trial court admitted the evidence and found Williams guilty. Both the Illinois Court of Appeals and the State Supreme Court affirmed the conviction, concluding that Lambatos' testimony did not violate Williams' confrontation rights because Cellmark's report was not offered into evidence to prove the truth of the matter asserted.

As noted above, the decision in Williams departs from recent Supreme Court rulings. The plurality felt that its decision consistent with both the Bullcoming and Melendez-Diaz opinions (where the forensic reports were introduced for the purpose of proving the truth of what they asserted). Here, Cellmark's report was considered and admitted for the limited purpose of seeing whether it matched something else, and that the relevance of that match was established by independent circumstantial evidence which showed that the report was based on a sample from the crime scene. Furthermore, the Court noted in Williams that "the forensic reports in Melendez-Diaz and Bullcoming ran afoul of the Confrontation Clause because they were the equivalent of affidavits made for the purpose of proving a particular criminal defendant's guilt. In contrast, the Court went on to note that in the case at bar the primary purpose of the Cellmark report was to catch a dangerous rapist who was still at large, and not to obtain evidence for use against the defendant. Accordingly, there was no "prospect of fabrication" in the Court's eyes, and that was a distinguishing factor as compared to the trilogy of cases discussed below.

The trilogy of opinions authored by the United States Supreme Court in the last ten (10) years dealing with a defendant's Sixth Amendment right to confront the witnesses against him started with the seminal opinion of Crawford v Washington. Briefly, the facts of the Crawford case are as follows: Michael Crawford stabbed a man that he claimed was trying to rape his wife. During Crawford's trial in state court prosecutors played his wife's tape recorded statement given to the police which described the stabbing for the jury. The statement contradicted Crawford's claim that he stabbed the man in defense of his wife. Crawford argued that allowing the jury to hear his wife's prerecorded statement violated his Sixth Amendment right of confrontation because he was not allowed any chance of cross-examining the recording. Citing Ohio v Roberts, the state Supreme Court upheld Crawford's conviction. In a 9-0 opinion, written by Justice Scalia, the court reversed Crawford's conviction and ruled that his Sixth Amendment right to confront and cross-examine witnesses against him had been violated. Defendants have the constitutional right to confront witnesses and cross-examine their testimony. This holding directly overruled the previous Roberts opinion. In summary fashion, the Court held that the framers of the Constitution designed the Confrontation Clause to strictly prohibit out of court testimony as evidence against a defendant; again, without the benefit of the defendant being allowed to cross-examine the testimony. In Crawford, Justice Scalia recited a detailed history of the Confrontation Clause. He went on to describe the context in which the framers of the Constitution drafted the clause and gave numerous examples of how American courts have interpreted the clause over the years. Justice Scalia concluded that the Confrontation Clause of the Sixth Amendment applies to any "witnesses" against the defendant, meaning any person, statement or document whose purpose was to "bear testimony". The Crawford opinion has been consistently viewed as a bell weather case for defendant's rights. It had an immediate and far

reaching effect in criminal courts nationwide. Previously, prosecutors had been enjoying a fair amount of leeway involving the use of affidavits and lab reports where they gained admission through various exceptions to the hearsay rule. In Crawford, a 9-0 opinion, the Court expressly held that any out of court statement that was "testimonial in nature" was not admissible unless the defendant has the right of cross-examination.

In Melendez-Diaz v Massachusetts, the Court applied the standard as set forth in Crawford to a state forensic laboratory report. Briefly, in the prosecution of a drug case against Melendez-Diaz, the trial court allowed lab reports identifying the substance as cocaine without any testimony from the analyst. In a 5-4 decision, the Supreme Court held that because the lab report was prepared for use in a criminal prosecution the Sixth Amendment Confrontation Clause demanded that the defendant be given the right to cross-examine the author of the lab report. As set forth in Crawford , the Supreme Court held that the laboratory report prepared and used in a criminal prosecution was "testimonial in nature" and that the defendant had a fundamental Sixth Amendment right to confront and cross-examine the analyst who prepared the report prior to it being admissible.

In 2010, the Court revisited the Crawford and Melendez-Diaz opinions in a case involving a laboratory report of a blood alcohol reading in a DUI case. Once again, in a 5-4 decision, the Court held a line that it created in Crawford. In Bullcoming v New Mexico, the Supreme Court held that the admission of the blood alcohol report without the actual testimony of the person who prepared the report violated Bullcoming's Sixth Amendment rights. Specifically, Justice Ginsburg stated, "The Confrontation Clause (of the Sixth Amendment) does not permit the prosecution to introduce a forensic laboratory report containing a testimonial certification (as to its accuracy), made in order to prove a fact at a criminal trial, through the in-

court testimony of an analyst who did not sign the certification or personally perform the test…."

The three cases prior to the Williams decision had a huge impact in helping defendants accused of DUI obtain a fair trial. Any breath alcohol test, blood alcohol test or forensic drug examination must be accompanied by the officer or technician who performed the test before it can be admissible. Critically, this allows a defendant the right to vigorously confront and cross-examine the handling and testing of the sample. However, in Williams, the Court pares a defendant's right to confront lab test evidence prepared by an unavailable witness. The Williams decision does provide limited circumstances where "affidavit" type testimony can be received by the Court without the defendant having the right to confront and cross-examine the witness who prepared the report.

*South Carolina DUI Lawyer Steve Sumner exclusively handles misdemeanor and felony DUI defense. He is a member the National College for DUI Defense, holds an AV-preeminent rating from Martindale-Hubbell and a "Superb" ranking with Avvo. He represents clients in Greenville, Spartanburg and Anderson counties, South Carolina. You can contact him at upstatedui.com or 864-235-3834. His office is located at 1088 N. Church Street, Greenville, SC 29601.*