

11-06: Forensic Reports Subject to Confrontation Clause

Case: Bullcoming v. New Mexico, 564 U.S. ____ (June 23, 2011)

Date: July 14, 2011

Subject: ****FORENSIC INTEREST**** United States Supreme Court reaffirms that admission of a lab report at trial must satisfy the Confrontation Clause, and, in most circumstances, such reports cannot be admitted without the testimony of a live witness who is legally competent to testify as to the truth of the report's contents

FACTS: Bullcoming was arrested for DUI, and the principle evidence against him was a forensic lab report certifying that his blood alcohol was well above the legal limit. The forensic analyst who conducted the analysis and prepared the report was not called to testify at trial, nor did the state establish that he was legally unavailable to testify; rather, the state simply stated that the analyst had been placed on unpaid leave for an undisclosed reason. The state instead called another analyst, Razatos, to validate the report. Razatos was familiar with the testing procedures and devices used to test Bullcoming's blood, but had neither participated in nor observed the actual analysis of Bullcoming's sample. The defense objected and contended that the introduction of the report without the testimony of an analyst who actually participated in the analysis violated the Confrontation Clause of the Sixth Amendment. The trial court overruled the objection and allowed the report into evidence. Bullcoming was convicted, and appealed to the New Mexico Supreme Court. That court affirmed the trial court, acknowledging that the report constituted testimonial evidence, but holding that the Confrontation Clause was not violated since the original analyst was only a "scrivener" who transcribed the results generated by the testing machine, and the testimony of Razatos, who was a qualified expert, was sufficient to certify the report. Bullcoming again appealed, and review was granted by the U. S. Supreme Court.

RULING: The Supreme Court reversed the New Mexico court, holding, consistent with earlier cases, that a forensic report which is testimonial in nature cannot be admitted at trial unless the witness who made the report is legally unavailable, and the accused has had a prior opportunity to confront the witness.

DISCUSSION: In its analysis, the Court relied upon its previous holding in Melendez-Diaz v. Massachusetts, 557 U.S. ____ (2009), where it decided that a forensic lab report stating that a submitted substance was in fact cocaine constituted testimonial evidence under the Confrontation Clause, as the report had been created specifically to serve as evidence in a criminal proceeding. As such, absent stipulation by the defense, the prosecution cannot introduce such a report without offering a live witness competent to testify to the truth of the statements made in the report. In the Bullcoming, decision, the court explained that the original analyst's certification reported more than a number from a machine; it essentially certified that he received the sample with the seal unbroken, that submission documents and chain of custody were correct, that his testing procedures were consistent with accepted scientific protocols, and that no circumstances existed which would negatively affect the sample's integrity or the analyst's validity. These issues are all proper matters for cross-examination by the defense, which is denied if the report is admitted without the testimony of the analyst who is competent to speak on all of these elements. Testimony of a

surrogate witness such as Razatos was inadequate when he was unable to convey what the original analyst actually knew or observed, nor could he expose any lapses or errors which might have occurred during the analysis.

COMMENTS: The Florida Supreme Court has ruled similarly; see State v. Johnson, 982 So.2d 672 (Fla. 2008) (FDLE Lab report was testimonial hearsay - report could not be admitted via testimony of lab supervisor who did not prepare the report or participate in the analysis.)

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.