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No Majority Rationale in Crime Lab Testimony Ruling

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WASHINGTON — In a badly fractured 5-to-4 decision in which no rationale commanded a majority, the Supreme Court on Monday seemed to retreat from a groundbreaking decision in 2009 that said crime lab reports may not be used in criminal trials unless the analysts responsible for creating them provide live testimony.

That decision, Melendez-Diaz v. Massachusetts, was reaffirmed last year in a second decision, Bullcoming v. New Mexico, which ruled that only the analyst who did the work, rather than a colleague or supervisor, would do.

Those decisions, both decided by 5-to-4 votes, were based on the Sixth Amendment's confrontation clause, which gives a criminal defendant the right "to be confronted with the witnesses against him." In a series of decisions starting with Crawford v. Washington in 2004, an odd-bedfellows coalition of justices from the court's conservative and liberal wings have breathed new but fragile and halting life into the clause.

The coalition had included the two justices most closely associated with a commitment to following the original meaning of the Constitution, Justices Antonin Scalia and Clarence Thomas. In Monday's decision, Justice Thomas switched sides, though provisionally and on a ground that no other justice endorsed.

The question in the new case, Williams v. Illinois, No. 10-8505, was whether expert witnesses could offer testimony linking defendants to crimes based on lab reports that had not been admitted into evidence.

The case arose from a sexual assault in Chicago. The defendant, Sandy Williams, was arrested on an unrelated charge and provided a DNA sample to the state police laboratory. A forensic scientist there analyzed it and testified about Mr. Williams's DNA profile at his trial on the sexual assault charges.

So far, so good, all concerned agreed.

The controversy in the case concerned the material recovered from the assault. That material was analyzed by Cellmark Diagnostics Laboratory in Maryland. The lab's report was not entered into evidence at trial, and no one from that lab testified, but an expert witness for the prosecution, Sandra Lambatos, was allowed to offer her opinion that the two profiles matched.

Justice Samuel A. Alito Jr., in an opinion joined by Chief Justice John G. Roberts Jr. and Justices Anthony M. Kennedy and Stephen G. Breyer, said allowing the expert testimony did not violate the confrontation

clause, for two reasons.

Ms. Lambatos's discussion of the Cellmark report was not offered to prove that what was in it was true, Justice Alito wrote. In any event, he added, the report itself was not the sort of evidence to which the confrontation clause applies because it was made "for the purpose of finding a rapist who was on the loose."

In addition, the trial was conducted before a judge rather than a jury, a fact Justice Alito in places seemed to suggest was significant. The trial judge appeared impressed by Ms. Lambatos, calling her "the best DNA witness I have ever heard."

Justice Thomas voted with the majority but disavowed the rationales advanced by Justice Alito. That meant, Justice Elena Kagan wrote in dissent, that "five justices specifically reject every aspect of" Justice Alito's "reasoning and every paragraph of its explication."

"That creates five votes to approve the admission of the Cellmark report," she said, "but not a single good explanation."

Justice Thomas proposed adopting "a reading of the confrontation clause that respects its historically limited application to a narrow class of statements bearing indicia of solemnity." The Cellmark report, he said, was not within that class.

In her dissent, Justice Kagan said this approach "would turn the confrontation clause into a constitutional geegaw — nice for show, but of little value." All prosecutors would need to do to smuggle suggestive evidence into trials, she said, would be to use "the right kind of forms with the right kind of language."

In an opinion concurring in Justice Alito's plurality opinion, Justice Breyer said he continued to believe that the Melendez-Diaz and Bullcoming decisions were wrong and that requiring testimony from lab analysts could create enormous logistical problems.

Justice Kagan began her dissent with a description of another case, one in which a Cellmark analyst took the stand, only to realize after cross-examination that she had made a "mortifying error" in wrongly concluding that DNA from a bloody sweatshirt matched that of the defendant.

The confrontation clause, Justice Kagan wrote, is "a mechanism for catching such errors," demonstrating "the genius of an 18th-century device as applied to 21st-century evidence." Justices Scalia, Ruth Bader Ginsburg and Sonia Sotomayor joined the dissent.

"Under our confrontation clause precedents," Justice Kagan added, "this is an open-and-shut case." But the decision issued on Monday, she said, had turned a clear rule into a murky one. She urged lower courts to continue to follow the recent rulings on crime lab evidence "until a majority of this court reverses or confines those decisions."

By the end of next week, the justices are expected to deliver several major decisions, including ones on Arizona's tough immigration law and President Obama's health care overhaul law.

Justice Kagan alluded to the national sense of anticipation over those cases in her summary of the first of four decisions announced on Monday, this one concerning Indian tribes.

“This is a case about sovereign immunity and prudential standing,” she said, addressing the crowded courtroom. “Maybe not the one you all have come for today.”