

Evidence

Crawford Issues

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

(<http://www.supremecourt.gov/opinions/10pdf/09-10876.pdf>). In a straightforward application of *Melendez-Diaz v. Massachusetts*, 557 U.S. ___, 129 S. Ct. 2527 (June 25, 2009) (holding that forensic laboratory reports are testimonial and thus subject to *Crawford*), the Court held that substitute analyst testimony in an impaired driving case violated *Crawford*. The defendant was arrested on charges of driving while intoxicated (DWI). Evidence against him included a forensic laboratory report certifying that his blood-alcohol concentration was well above the threshold for aggravated DWI. At trial, the prosecution did not call the analyst who signed the certification. Instead, the State called another analyst who was familiar with the laboratory's testing procedures, but had neither participated in nor observed the test on the defendant's blood sample. The New Mexico Supreme Court determined that, although the blood-alcohol analysis was "testimonial," the Confrontation Clause did not require the certifying analyst's in-court testimony. Instead, New Mexico's high court held, live testimony of another analyst satisfied the constitutional requirements. The Court reversed, holding that "surrogate testimony of that order does not meet the constitutional requirement."