No. 23-582

In The
Supreme Court of the United States

ROLLO A. BARKER, AKA ROLLO NARKER,

Petitioner,

v.

NEW JERSEY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION

BRIEF IN OPPOSITION

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Question Presented

The question presented by petitioner Rollo A. Barker, aka Rollo Narker, in his petition for certiorari is:

Does testimony from a lab analyst who *did not perform* the actual testing on defendant's seized (alleged) contraband that was analyzed by a State Police Laboratory, and further *cannot remember* whether or not she supervised the non-certified analyst who performed the actual testing on said contraband, violate the United States Constitution's 6th Amendment Confrontation Clause, and therefore also *contra* to the tenets of *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009) and its well-settled progeny.

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Cases:

Opinions Below

The opinion of the trial court that initially ruled on the issue prior to the conclusion of the case is unreported. (Pet. 17a to 22a).

The opinion of the Superior Court of New Jersey – Appellate Division is unreported. (Pet. 2a to 16a).

The denial of petitioner's petition for certification before the New Jersey Supreme Court is unreported. (Pet. 1a).

Statement of the Case[1]

On January 19, 2018, at approximately 1:54 p.m., Officer Douglas Large of the Denville Police Department was on routine patrol in a marked police vehicle with mobile vehicle recording (*hereinafter* MVR) on Route 46 westbound in the area of Firestone Tire in Denville, Morris County, New Jersey. He observed petitioner's vehicle speeding in the left lane towards his location. Based on his observation, Officer Large attempted to immediately pull out behind petitioner's vehicle to try to ascertain petitioner's speed with his radar but was unable to do so due to traffic. Officer Large pulled out at the safest point and moved into the left lane to follow the vehicle.

Once Officer Large was able to get behind petitioner's vehicle, he observed petitioner move into the right lane. Petitioner attempted to change lanes but was unsuccessful. Petitioner then turned off his

[1] Akin to petitioner, respondent has not included transcript citations for the Statement of the Case and same can be furnished if necessary.

blinker and began traveling straight on Route 46 westbound. Officer Large continued to follow petitioner's vehicle and observed him fail to signal a lane change. Officer Large testified that this prompted him to turn on his emergency lights and sirens to conduct a motor vehicle stop.

Once the vehicle was pulled over, Officer Large approached the vehicle from the passenger side to speak with petitioner and his passenger. The driver identified himself as Rollo Barker. Upon speaking with petitioner, Officer Large observed signs of CDS usage, including droopy eyelids, pinpoint pupils, and a low, slow, raspy voice. As petitioner handed him his documents, Officer Large observed a fresh injection mark on the inner crook of his right elbow. Officer Large ordered petitioner to produce his credentials. Upon checking the status of petitioner's license with dispatch, Officer Large learned that petitioner's license was suspended.

Officer Large testified that he returned to the vehicle to speak with petitioner regarding his suspended license. As Officer Large approached the vehicle, he overheard petitioner and his passenger speaking about the status of his passenger's license. Officer Large asked petitioner why his driver's license was suspended. Petitioner indicated that his license was suspended due to a driving while intoxicated (*hereinafter* DWI) charge. Officer Large asked petitioner to exit the vehicle to speak with him on the side of the roadway. Officer Large advised petitioner of his *Miranda*[2] rights before he continued to speak with petitioner.

Officer Large testified that he attempted to conduct standard field sobriety tests with petitioner

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[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

due to his signs of impairment, however, petitioner was unable to perform any of the tests except for the horizontal gaze nystagmus (*hereinafter* HGN) test.

Officer Large testified that additional units arrived on the scene and he began to speak with petitioner about conducting a consent search of the vehicle. Petitioner did not initially consent. Officer Large then called for an on-duty narcotics K-9 to assist in the investigation. While the officers were waiting for the K-9 to arrive, petitioner indicated that he wanted to "speed up the process" and inquired how he could do so. Officer Large informed petitioner that it was his choice and his choice alone to reinitiate consent. Petitioner stated that he wanted to do so. Based on petitioner's assertion, Officer Large obtained a consent to search form and began to explain it to petitioner. After completing the consent form, Officer Large explained to petitioner that he was able to be present for the consent search and he could withdraw consent at any time. Petitioner indicated that Officer Large could search the vehicle.

Once the K-9 arrived, Officer Large stopped searching the vehicle and spoke with the K-9 handler, which he testified was common practice.[3] The handler then walked the K-9 around the vehicle. The K-9 sat at the driver's side door. Based upon this information, the handler continued his search. The handler opened the door and the K-9 entered the vehicle to begin an interior search based on the positive indication of narcotics inside the vehicle. The K-9 expressed interest in the driver's side seat and center console. Officer Large testified that the

[3] The K-9 arrived less than 10 minutes after Officer Large began the consent search.

driver mentioned that he observed that the K-9 had expressed interest in the center console area. The handler had the K-9 exit the vehicle and the officers began a hand search of the vehicle at this point.

The officers began their search in the front seat area. Officer Large testified that as he entered the vehicle, he located one small rubber band which is consistent with the packaging of heroin. He also observed numerous pieces of Chore Boy[4] strewn on the passenger floor. While searching the vehicle, the K-9 indicated that there were narcotics in the center console, so the officers removed the cup holder. This yielded two bundles of heroin with a similar rubber band to the one that was located on the floor, two hypodermic needles, one spoon with residue on it, a cotton ball with residue on it, and a crack pipe. Officer Large testified that one of the syringes appeared used and the other appeared to be loaded with a liquid inside.

Officer Large testified that there were additional rubber bands underneath the seat between the center console and the driver's side seat where the driver would sit. However, he was unable to retrieve them due to the bar that goes in the bottom of the seat.

Petitioner was then placed under arrest and secured in the rear seat of Officer Large's patrol vehicle. The officers spoke with the passenger on the

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[4] Officer Large testified that Chore Boy is small pieces of woven metal with a Brillo Pad-like appearance, commonly used in kitchens. It is also used for narcotics, mainly with crack pipes. A person can remove small portions of metal from it and shove it inside of a crack pipe so that the crack does not come back and slide into their mouth as they smoke the crack. Officer Large testified that it gets the impurities out of the crack.

scene and transported petitioner to headquarters for processing.

Officer Large testified that he issued motor vehicle tickets to petitioner for failure to signal a lane change, driving while suspended, failure to install an interlock device, operation of a motor vehicle while in possession of a controlled dangerous substance (*hereinafter* CDS), and failure to surrender driver's license. Officer Large indicated that petitioner was not issued a motor vehicle ticket for DWI and that a drug recognition expert (*hereinafter* DRE) was not called in this case because the officers used their discretion to focus on the criminal aspect of the investigation.

On cross-examination, Officer Large clarified a discrepancy regarding the consent form. He testified that the bottom portion of the form was filled out while back at headquarters.

Forensic Scientist Michele Agosta next testified for the State and was qualified as an expert witness. Agosta had been employed by the New Jersey State Police Office of Forensic Sciences since 2003. She testified that she was employed as a Forensic Scientist II, which meant that in addition to doing case work, she also supervised other scientists and reviewed reports issued by other scientists. Agosta testified that she has chemically analyzed substances to determine whether the substance is or contains a narcotic or narcotic type drug.

Agosta testified that she recognized what was marked as S-3 to be the New Jersey State Police Office of Forensic Sciences Laboratory Report Drug Analysis and it had her signature at the bottom with the results in the middle. She testified that the results in this case regarding Sample 1-1 contained heroin. She explained that when the evidence comes

into the laboratory, it comes in as a case number. In this case, the sample size was taken from item number 1 and within item number 1 there were 13 glassines. The remaining glassines were not analyzed because "by analyzing the one glassine and having a positive result, to analyze more glassines would give no more information to this case."

Agora explained that there are various tests that are conducted and listed within the signed report. One of the tests included the color test, which is a preliminary, screening test. A small amount of the sample is added to a test tube and a reagent is added to the powder. With that result, it narrows down the field. It does not give the scientists a final result, but rather narrows down the course of action to take to do a confirmatory test. Thus, with the result of the color test, the scientists can determine what confirmatory tests to do. Here the appropriate confirmatory test was the gas chromatography mass spectrometry (*hereinafter* GCMS).

Agora explained that the GCMS is a tandem instrument. A small amount of sample is taken out of the first sample and it is put in a test tube with a small amount of solvent that is injected into the "GC" portion. The GC portion separates multiple compounds. So, if there is more than one thing in that sample, it will separate them and then the peak of interest will be identified and that moves onto the "MS" portion. Agora explained it creates "kind of like a fingerprint" that can be compared to a known standard and as long as the standards match up to the sample according to the criteria, the case can be put out as a compound of interest. Here, the result was heroin.

Agora testified that prior to any analysis being done, the color test and the confirmatory GCMS, a

weight is taken before anything is actually sampled. Thus, a net weight means the actual contents of the powder itself. She explained the other term is a gross weight which would have been the container as well.

Agosta testified that there were two sets of initials near her signature, which indicated that this case was peer reviewed and administratively reviewed. She explained that after any report is issued, it moves onto a peer review process in which a different analyst reviews all the information in the packet to make sure that the manual is followed correctly and all the information is present to be able to issue the report correctly. At that point, the reviewer will initial off on it and then will pass the report on to administrative review. She explained that normally administrative review is grammatical, but it is treated like another peer review and there will be a thorough review of the case as if it was a secondary peer review.

Agosta testified that she recognized what was marked as S-4 to be an evidence receipt, which is generated every time evidence comes into the laboratory and it has all of the identifying information that can correspond to the actual evidence itself.

Agosta testified that she recognized what was marked as S-5 to be a Drug Unit Worksheet, which is used to record all the information; the results of the test; the weight that is taken; the balance that the weight is taken on; the date that the case was started and completed; all the results for the various tests; and any other pertinent notes that need to be taken.

Agosta testified that on the top of the form, the analyst was noted as Donald Brown. She testified

that Donald Brown was her trainee at the time and was currently a certified analyst in the lab.

She explained:

> So, during the training process, since the analyst, the trainee, is not certified in the discipline there is a point in time where they have enough knowledge to be able to work on actual cases but I still observe them very closely to make sure that they are following our procedures properly and at this point, this is the point in time where he was still training, Donald Brown was still training, and if you'll notice here it has his initials on it but it also has my initials right next to his everywhere. So, when I said earlier that there is a peer and administrative review, there was actually a third reviewer in this situation and that was me. After he did all the analysis I thoroughly reviewed this case, as well, before it was submitted to the peer reviewer and the admin reviewer.

Agosta explained that she signed off on the reports and based on her review of the information that she conducted herself and that Brown might have conducted under her tutelage, she concluded that the sample contained heroin.

On cross-examination, Agora testified that though she did not perform the testing, she observed Brown "or else [she] would not have put her initials on those labels." She explained:

> [...] [W]hat happens is [...] during the training process he takes out the case and he says to me, this is what I have. I check over it to make sure that what is given on the evidence receipt corresponds to what's in the actual evidence and then I will initial off on the labels that are presented, the actual sample that he analyzed I also initial and then also all the seals that are present there, as well.

Agora explained that it is not part of the protocol for the scientist who is being trained to sign the report, but rather it was for the person who is doing the training to sign off. She further testified that she did not remember whether she watched him perform the tests, but at that point even if she did not watch him, Brown had already proven to her that he had done everything correctly in previous cases. She indicated that the case fell into one of two categories: she either watched him actually do every single step or she was comfortable enough that he was doing everything correctly and that he was able to do a little bit more on his own independently.

Detective Mohammad Thomas, of the Morris County Prosecutor's Office (*hereinafter* MCPO), next testified for the State. He testified that at the time of trial, he had been employed by the MCPO for approximately two years and had previously worked as a patrolman in East Orange for 13 years. Detective Thomas's duties in this case were to obtain additional discovery documentation. Specifically, he obtained petitioner's certified driver's abstract through the Department of Motor Vehicles.

Detective Thomas testified that petitioner previously was convicted of DWI on three separate occasions, including one that occurred in Florida. Detective Thomas explained that he was aware of a municipal appeal regarding petitioner's October 14, 2016 DWI. The municipal appeal order, signed by the Honorable James M. DeMarzo, J.S.C., dated April 6, 2017, was moved into evidence. In pertinent part, the order stated that petitioner was to surrender his driver's license to the court immediately if he had not already done so.

Detective Thomas testified that the order of certification was signed by Judge DeMarzo and the second signature appeared to be petitioner's. In pertinent part, this order stated:

> I understand the consequences of my failure to meet the requirements of the above referenced IDRC program and any other conditions contained in this Order. I certify that the Defendant Information is correct and acknowledge receipt of the copy of this Order.

Detective Thomas testified that there was a signature beneath that line which was petitioner's name, dated June 16, 2017.

Detective Thomas also recognized the notification of penalties for subsequent DWI document from the court. He again observed the signature of both Judge DeMarzo and petitioner on this document.

Petitioner did not testify at trial nor did he call any witnesses.

Reasons Why This Court Must Deny Certiorari

The State Court reasonably applied this Court's governing precedents and rejected petitioner's claim that the lab report was improperly admitted. No basis exists for this Court to intervene.

Petitioner argues that the underlying trial court should not have admitted Agosta's testimony, warranting a reversal of his conviction. (Pet. 9). Both state courts that reviewed this claim, the New Jersey Appellate Division and the New Jersey Supreme Court, found this claim to be without merit. This Court must deny the writ.

The Sixth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, provides an accused the right "to be confronted with the witnesses against him." U.S. Const. Amend. VI. The New Jersey Constitution provides a cognate guarantee to an accused in a criminal trial. N.J. Const., Art. I, para. 10. New Jersey state confrontation case law traditionally has relied on federal case law to ensure that the two provisions provide equivalent protection. *State v. Miller*, 170 N.J. 417, 425-26 (2002); *State v. Cabbell*, 207 N.J. 311, 328, n.11 (2011).

As modern United States Supreme Court confrontation law has explicated, the right to confront witnesses guaranteed to an accused applies to all out-of-court statements that are "testimonial." *Crawford v. Washington*, 541 U.S. 36, 68 (2004). New Jersey state confrontation jurisprudence has followed the federal approach, focusing on whether a statement is testimonial. *State v. Michaels*, 219 N.J.

1, 30-32 (2014) (citing our adoption and adherence to federal "primary purpose" test for determining whether statement is testimonial). If a statement is testimonial, then *Crawford* holds that "the Sixth amendment demands what the common law required: unavailability and a prior opportunity for cross-examination." 541 U.S. at 68. New Jersey State decisions have followed that analysis in confrontation cases arising post-*Crawford*. See*, e.g., Cabbell*, 207 N.J. at 328-30; *State ex rel. J.A.*, 195 N.J. 324, 348-51 (2008) (finding that, because non-appearing eyewitness' statements to police about robbers and robbers' flight was testimonial, statement's admission violated petitioner's confrontation rights); *State v. Buda*, 195 N.J. 278, 304-08 (2008) (holding battered child's statement to mother and separate statement during hospital admission to child services worker were not testimonial and therefore admission of statements did not violate petitioner's confrontation rights).

Since 2004, this Court has considered how to apply *Crawford*'s holding the context of forensic reports*: Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009); *Bullcoming v. New Mexico*, 564 U.S. 647 (2011); and *Williams v. Illinois*, 567 U.S. 50 (2012).

In *Williams*, Justice Alito, in his four-justice plurality opinion, found that there was not a Confrontation Clause violation because (1) the expert witness' reference to the laboratory report in question was not an assertion that the information in the report was true and (2) the report was not testimonial because it was not produced for the primary purpose of accusing a specific, known defendant. 567 U.S. at 78-79.

The New Jersey Supreme Court acknowledged this Court's guidance on how to apply *Crawford* in

the context of forensic reports, namely *Melendez-Diaz, Bullcoming, and Williams*. *State v. Michaels*, 219 N.J. 1, 29-32 (2014); *State v. Roach*, 219 N.J. 58, 75 (2014). In particular, it concluded that the three opinions in *Williams* took "such differing approaches to determining whether the use of forensic evidence violates the Confrontation Clause that we could not identify a narrow rule that would have the support of a majority of the Supreme Court." *Michaels,* 219 N.J. 1 at 30-31; *Roach*, 219 N.J. at 75. The New Jersey Supreme Court therefore found that *Williams* was viewed as an "unreliable guide for determining whether, in respect of forensic evidence, a defendant's confrontation rights were violated" and therefore applied the pre-*Williams* Confrontation Clause holdings on forensic evidence to its analysis in both *Michaels* and *Roach*. *Michaels*, 219 N.J. at 29-32; *Roach*, 219 N.J. at 75-80.

Thus, the New Jersey Supreme Court applied this Court's precedents of *Melendez-Diaz* and *Bullcoming* in its analysis of forensic reports in *Michaels* and *Roach*.

In *Melendez-Diaz*, no witness was offered to support and be cross-examined in respect to the statements contained in the forensic document that was admitted into evidence without live testimony. 557 U.S. at 308-09.

In *Bullcoming*, a forensic report was admitted into evidence through the testimony of a co-worker who did not observe the work of the analyst who performed the testing, serve as the analyst's supervisor, or certify the results obtained by the analyst whose work was contained in the report as a second independent reviewer. 564 U.S. at 650.

The New Jersey Supreme Court noted that the holdings in *Melendez-Diaz* and *Bullcoming* can be

understood based on the peculiar and stark facts in each. It found that it was far from clear that either case compels a broad new obligation requiring testimony by multiple analysists involved in every kind of forensic testing that produces a report used in a criminal case against a defendant.

The New Jersey Supreme Court first found that neither the holding in *Bullcoming* nor *Melendez-Diaz* requires that every analyst involved in a testing process must testify in order to admit a forensic report into evidence and satisfy confrontation rights. *Michaels*, 219 N.J. at 33. That conclusion was underscored in Justice Sotomayor's observations on *Melendez-Diaz* in *Bullcoming*. *Melendez-Diaz*, 564 U.S. at 670, n.2. Justice Kagan's dissent in *Williams* makes the same point. *Williams*, 567 U.S. at 133-34, n.4. The fact that no other member of this Court except Justice Scalia joined Section IV of *Bullcoming* further suggests that this Court harbors some level of disquiet over the necessity and practicality of rigidly interpreting the Confrontation Clause to compel the testimony of all persons who handled or were involved in the forensic testing of a sample. *Michaels*, 219 N.J. at 33.

The New Jersey Supreme Court further found that neither *Melendez-Diaz* nor *Bullcoming* lead to the conclusion that in every case, no matter the type of testing involved or the type of review conducted by the person who does testify, the primary analyst involved in the original testing must testify to avoid a Confrontation Clause violation. *Michaels*, 219 N.J. at 33.

In *Melendez-Diaz*, no analyst testified. In *Bullcoming*, the surrogate analyst who testified was found to lack sufficient direct knowledge about the blood alcohol testing and the conclusions in the blood

alcohol report that the surrogate neither certified nor separately reviewed. *Id.*

Thus, the New Jersey Supreme Court did not find that either *Melendez-Diaz or Bullcoming* stands for the proposition that in all cases the primary analyst who performed the test must testify when a different, sufficiently knowledgeable expert is called to testify at trial. The New Jersey Supreme Court found that it would take those holdings to a "new level," which it declined to do when this Court has not done so. *Id.*

The New Jersey Supreme Court further noted that it would take the confrontation clause "to a level that is not only impractical, but equally important, is inconsistent with our prior law addressing the admissibility of an expert's testimony in respect of the substance of the underlying information that he or she used in forming his or her opinion." *Id.* at 33-34.

In *Michaels*, the New Jersey Supreme Court ultimately held that the admission of laboratory reports did not violate the defendant's confrontation rights because the laboratory supervisor – who testified and was available for cross-examination – was knowledgeable about the testing process that he was responsible for supervising. He had reviewed the machine-generated data from the testing, had determined that the results demonstrated that the defendant had certain drugs present in her system, and had certified the results in a report that he had prepared and signed. *Id.*

The New Jersey Supreme Court recognized that the forensic report that was in issue is "testimonial" and that it is the type of document subject to the Confrontation Clause. *Id.*; see *Bullcoming*, 564 U.S. at 664 (determining that

signed and certified laboratory report was formalized sufficiently to be characterized as testimonial); *cf. State v. Sweet*, 195 N.J 357, 373-74 (2008) (noting testimonial nature of signed and certified New Jersey State Laboratory certificates prepared for use in State prosecution). However, the New Jersey Supreme Court joined the many courts that have concluded that a defendant's confrontation rights are not violated if a forensic report is admitted at trial and only the supervisor/reviewer testifies and is available for cross-examination, when the supervisor is knowledgeable about the testing process, reviews scientific testing data produced, concludes that the data indicates the presence of drugs, and prepares, certifies, and signs a report setting forth the results of the testing. *Michaels*, 219 N.J. at 6-7, 24. (emphasis added). In examining the testimony and documentary evidence challenged in *Michaels*, the New Jersey Supreme Court did not find it to be the equivalent to the "surrogate testimony" that the United States Supreme Court found problematic in *Bullcoming*, 564 U.S. at 652.

The New Jersey Supreme Court reached a similar conclusion in the companion case of *Roach*, concluding that "a defendant's federal and state confrontation rights are satisfied so long as the testifying witness is qualified to perform, and did in fact perform, an independent review of testing data and processes, rather than merely read from or vouch for another analyst's report or conclusions." *Roach*, 219 at 60-61.

The defendant in *Roach*, like petitioner here, had the opportunity to confront the analyst who personally reviewed and verified the accuracy of the report. Petitioner's confrontation rights were not sacrificed here because he had the opportunity to

confront Agosta on her conclusions and the facts she independently reviewed, verified, and relied on in reaching those conclusions. See *Michaels*, 219 N.J. at 6-7, 24; *Roach*, 219 N.J. at 82-83.

Moreover, business records are not testimonial. *Crawford*, 541 U.S. at 56. To qualify as a business record,

> First, the writing must be made in the regular course of business. Second, it must be prepared within a short time of the act, condition or event being described. Finally, the source of the information and the method and circumstances of the preparation of the writing must justify allowing it into evidence.
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> [*State v. Matulewicz*, 101 N.J. 27, 29 (1985).]

At trial, the State sought to introduce the CDS (heroin) (S-2A), the CDS paraphernalia (S-2), and the lab report (S-3), into evidence. Defense counsel objected, arguing that Agosta did not conduct the testing. The trial court properly characterized the issue as whether or not the report was a business record and therefore an exception to the hearsay rule under N.J.R.E. 803(c)(6). The trial court then gave the State an opportunity to lay a foundation and to satisfy the requirements of the business record exception.

The trial court found that the factors had not been established. The trial court then gave the State the opportunity to establish the factors for a proper foundation and also gave the parties an opportunity

to make arguments at a N.J.R.E. 104 hearing outside the presence of the jury.

During the N.J.R.E. 104 hearing, Agosta testified that the lab report (S-3) was a writing that is held in the normal course of business for the New Jersey State Police Lab. She testified that the opinions and diagnoses and the conclusions that she drew in regard to that report were accurately and fairly represented in the document. She further testified that she had actual knowledge of the testing procedures and the information in this particular case that was used to generate the report. Agosta explained that the report was made in the regular course of business and was how one would typically create reports of this nature to her knowledge. She testified that she had no reason to believe that the way this document was authored was not accurate and did not fairly depict the tests, results, and her conclusions drawn.

Agosta also testified that she was aware that these documents were made in the normal course of business in which they're held because she had been working at the New Jersey State Police Lab since 2011 and she was trained and certified as an analyst and forensic scientist. When she was promoted to training others, she trained them according to the manual and procedures, and that these documents were the results of that.

Following arguments made by the parties, the trial court properly found that, for purposes of preparation, the methods used did not indicate that it was untrustworthy and found that the elements of the business record exception had been satisfied. Thus, the documents were appropriately admitted into evidence.

Thus, the New Jersey Appellate Division appropriately found that petitioner's confrontation rights were not violated simply because Brown did not testify. Although the State did not call Brown to testify at trial, it presented Agosta, who testified about the conclusions drawn in Brown's report. Agosta was responsible for overseeing and directly supervising other scientists in addition to her own case work. She had extensive familiarity with the drug testing process, recognized Brown's report as one she had reviewed, and opined the sample at issue contained heroin. Moreover, Agosta testified and was subjected to cross-examination. (Pet. 10a to 12a).

This Court's controlling precedent in *Melendez-Diaz* and *Bullcoming* requires the same outcome.

Conclusion

This Court must deny the petition for a writ of certiorari.

Respectfully submitted,

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