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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR THE PETITIONER

If the three years hard time he did in New Jersey State Prison was not enough, the Petitioner is now met with further offense. Given the chance at a *mea culpa*, Respondent failed to acknowledge that forensic "scientist," Donald Brown, who was assigned to test the alleged specimen(s) obtained from Mr. Barker's car, had not completed his training at the time he performed the testing. As a consequence, therefore, he could not testify regarding the New Jersey State Police Office of Forensic Sciences Laboratory Report Drug Analysis that the State ultimately proffered at trial through the State's Forensic Scientist Michele Agosta's testimony. According to Ms. Agosta, because he was not "fully trained," Mr. Brown could not sign the report which concluded that the sample tested was heroin. So, Mr. Brown was not qualified/certified to sign the report which stated at the bottom: "(t)he test procedures used are accurate, reliable, objective in nature and performed on a routine basis from the laboratory," and confirmed the specimen testing which ultimately convicted Petitioner.

Only Ms. Agosta was qualified/certified to sign the report which contained that quoted affirmation, but she admittedly had no independent recollection of actually observing Mr. Brown test the specimen that was the subject of the report. Respondent also does not offer that Ms. Agosta went further at trial and ultimately admitted that she did not even know if Mr. Brown performed the testing correctly over the span of the three (3) days the specimen was tested. Therefore, Ms. Agosta's signature on the report was not only disingenuous in light of the report's conclusion, it was an affront to the Confrontation Clause, and quite plainly, a lie.

Finally, under cross-examination, Ms. Agosta admitted that despite the fact that she signed what she testified to at trial to be the "final" report on April 17, 2018, it was not actually final and essentially in "draft" form until "peer reviewed" on April 27, 2018. Of particular note, the peer-reviewer was not called by the State to testify at trial, and Ms. Agosta admitted that nowhere in the report does it indicate that it would be "final" after ten days. Under the weight of these many revelations, Respondent's opposition collapses.

The distinctions between the case-specific fact patterns that Respondent chose to present and this case are obvious, and the Confrontation Clause issue remains glaring. This case does not present a factual circumstance as Respondent relates where a surrogate supervisor/reviewer's testimony is admitted because she is knowledgeable about the testing process, reviews the 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, as in *State v. Michaels*, 219 N.J. 1, 29-32 (2014).

Now, certainly as we have previously admitted Ms. Agosta was knowledgeable about the testing process. However, despite her signature on the report, she admittedly did not remember if she actually observed Mr. Brown's testing of the specimen, and further she did not even know if Mr. Brown performed the testing correctly. All of this against the backdrop that Mr. Brown was not even qualified to sign the report, nor was he even qualified to certify to the findings of the testing allegedly performed because he was "not fully trained," as Ms. Agosta confirmed. Ms. Agosta simply should not have

served as a surrogate for the findings that corroborated the allegations against the Petitioner regarding his alleged illegal drug possession, because indeed she could never have been afforded the opportunity to offer surrogate testimony in the first place!

The *Williams v. Illinois*, 567 U.S. 50 (2012) decision of this Honorable Court is certainly distinct from the instant matter in that here we are dealing with findings that are being offered to confirm that the specimen in question obtained from the Petitioner's car was heroin—the matter asserted, and, the findings in that report were promulgated and presented via testimony to inculpate the Petitioner. It would appear, though, at least with regard to the confusion of the New Jersey Supreme Court that Respondent presents vis-à-vis *Williams*, that this issue needs to be fully and finally clarified despite having been succinctly addressed in *Bullcoming* by Justice Ginsburg confirming that in so far as surrogate scientific testimonial certification is concerned "made for the purpose of proving a particular fact . . . (t)he accused's right is to be confronted with the analyst who made the certification . . . " *Bullcoming v. New Mexico*, 564 U.S. 647 (2011). Here, Petitioner's Confrontation Clause rights were clearly violated and this warrants the Court's review—the violation cost Mr. Barker his life and liberty, and for that he should be afforded the opportunity to correct this injustice.

CONCLUSION

For the foregoing reasons, Mr. Barker respectfully requests that this Court issue a writ of certiorari to review the judgment of the New Jersey Appellate Division.

DATED this 29th day of May, 2024

Respectfully submitted,

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