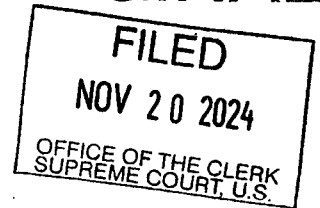


No. 24-6084

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

ORIGINAL



Christopher Roalson — PETITIONER  
(Your Name)

vs.

The State of Wisconsin — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals for the Seventh Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher Roalson (pro se)  
(Your Name)

#393216 Kettle Moraine Corr. Inst. PO Box 282  
(Address)

Plymouth, WI 53073  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

## Questions Presented

1. Whether "allowing an expert witness to discuss others' Testimonial Statements if the Testimonial Statements were not themselves admitted as evidence" is consistent with the Confrontation Clause.  
Bullcoming v. New Mexico, 564 U.S. \_\_\_, 131 S.Ct. 2705, 2722 (2011)  
(conc. opn. per Sotomayor, J.)

2. Whether allowing a surrogate DNA expert to act as a conduit for the actual DNA analyst's conclusions where the lab report itself is never admitted in evidence at trial is consistent with the Confrontation Clause.

## LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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United States Constitution Amendment VI  
Confrontation Clause

28 U.S.C. 2254



IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 28, 2024.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## STATEMENT OF THE CASE

ON May 22, 2009, The DISTRICT ATTORNEY for Sawyer County, Wisconsin, Filed a complaint against the Defendant Christopher Roalson. MR. Roalson was charged with Two counts. These counts were, one count of First Degree Intentional Homicide, and one count of burglary of a building or dwelling while armed.

The complaint alleges that on May 03, 2009, Roalson and another individual, Austin Davis, PUT on all black clothes, Socks over their shoes, armed themselves with knives, and entered the residence of Irena Roszak by breaking a window. Per Davis' statement to investigators, Roalson reportedly stated he wanted to kill an individual that he had previous altercation with. Davis claimed after they gained entrance, Roalson told him to look for items to take. Davis then stated that Roalson entered the victim's bedroom, stabbed her several times with a knife, came back out of the room and grabbed Davis' knife and a chair and went back in the room and continued attacking Roszak.

The subsequent investigation led police to the Post office in Sarona, WI, where Roalson surrendered without incident. Roalson was taken into custody and transported to Sawyer County Jail.

The case ultimately went to trial in front of Honorable Kenneth Kutz. On September 21, 2012, the jury returned with a verdict of guilty on both counts.

The central issue at trial focused on whether Roalson was the stabber. The State's case in that regard rested on the testimony of Jackie Walczak, Austin Davis, Dr. Kelly Mills, and that of the surrogate DNA analysis technical reviewer, Carly Leider.

On March 04, 2013, the court, Honorable Kenneth Kutz, presiding, sentenced Roalson to life imprisonment without the possibility of extended supervision.

After exhausting all his state remedies, on November 20, 2018, the petitioner, who is incarcerated at Kettle Moraine Correctional Institution and is representing himself, filed a petition for a writ of Habeas Corpus under 28 U.S.C. 2254, challenging his 2013 conviction in Sawyer County Circuit Court for first degree intentional homicide and armed burglary. Dkt. No. 1. On December 17, 2018, Magistrate Judge William E. Duffin screened the petition and ordered the respondent to answer or otherwise respond Dkt. No. 8.

ON February 15, 2019, the Respondent answered the Petition. DKT. No. 12. On September 30, 2022, Chief United States District Judge, Pamela Pepper dismissed Roalson's 28.U.S.C. 2254 Petition.

On August 28, 2024, the United States Court of Appeals For The Seventh Circuit denied Roalson's Petition. Appendix

## Reasons For Granting the Writ

I. The case provides the opportunity to resolve the issues a majority could not agree on in *Williams v. Illinois*, 567 U.S. 132, S.Ct. 2221, 189 L.Ed.2d 89 (2012).

A. The confusion sown by *Williams*, *supra*, has prompted the lower courts to ignore it or confine it to its facts.

In *Bullcoming v. New Mexico*, 564 U.S. 131 S.Ct. 2705, 2722 (2011) Justice Sotomayor succinctly identified the question *Williams* sought to resolve, i.e., "the constitutionality of allowing an expert witness to discuss other's testimonial statements if the testimonial statements were not themselves admitted as evidence."

But a majority of the Court could not agree on an answer to the Justice's question.

Since the Supreme Court issued the fractured holdings in *Williams*, many other courts have recognized *Williams* as a case of questionable value. See *United States v. Katso*, 73 M.J. 630, 638 (A.F. Ct. Crim. App. 2014) (finding "*Williams* does not provide a definitive test for determining when a statement is to be deemed testimonial" and accordingly, applying pre-*Williams* Confrontation Clause Law); *State v. Dotson*, 450 S.W. 3d 1 (Tenn. 2014) (finding *Williams*

Provides little guidance and is of uncertain precedential value); State v. Michaels, 95 A.3d 648, 666 (N.J. 2014) (Finding Williams' Force as precedent at best unclear" and, accordingly, applying Pre-Williams Confrontation Clause Law; Jenkins v. United States, 75 A.3d 174, 184 (D.C. 2013) (Noting that Williams "has not provided any clarity" to Confrontation clause Jurisprudence); United States v. Tearman, 72 M.J. 54, 58 (C.A.A.F. 2013) (Recognizing that current state of the law for determining when a particular statement is classified as testimonial is unclear and far from fixed"); State v. Ortiz-Zafre, 743 S.E.2d 156, 161 (N.C. 2013) (Noting "Lack of definitive guidance" provided by Williams; United States v. James, 712 F.3d 79, 95 (2d Cir. 2013) (Finding Williams does not provide a controlling rule); United States v. Doron-Caldes, 737 F.3d, 988, 994 n.4 (5th Cir. 2013) (Finding plurality's test in Williams, not "controlling"); State v. Kennedy, 735 S.E.2d 905, 916 (W. Va. 2012) (Viewing Williams, a fractured plurality opinion, "with caution" as "Williams cannot be fairly read to supplant the "primary purpose" test previously endorsed by the Court")

People v. Barnes, 2015 IL 116949, paragraph 84, ILL.2d, N.E.  
3d (dis. opn. per Kilbride, J.). Wisconsin confines Williams to its facts, State v. Deadwiller, 2013 WI 75, paragraphs 32 and 36, 350 Wis. 2d 138, 834 N.W.2d 362 as does the Second Circuit. James, *Supra*, *id.*

## B. The Post-Williams decision Conflict

Doubtless the Court already knows several of the Post-Williams decisions conflict. (Cf., e.g., *Jenkins*, *supra*, 75 A.3d at 189-191 (Surrogate DNA experts testimony unconstitutional); *State v. Navarette*, 2013-NM-003, — N.M. —, 294 P.3d 435 (Surrogate pathologist's testimony unconstitutional); *Martin v. State*, 60 A.3d 1100 (Del. 2013) (Surrogate blood analysts testimony unconstitutional) with *State v. Lopez*, 45 A.3d 1 (R.I. 2012) (Surrogate DNA analyst testimony permissible); *Michaels*, *supra*, 45 A.3d 669-678 (Surrogate blood analyst testimony permissible) and *Dotson*, *supra*, 450 S.W.2d 62-72 (Surrogate pathologist's testimony not plain error.) Since it was the Williams decision that prompted this conflict only this Court can resolve it if it is of a mind to do so.

## C. The Facts here give the case the potential to begin to resolve the conflict

Justice Brandeis is remembered, *inter alia*, for his steadfast insistence judgments of this Court must be guided by facts. "The judgment should be based upon a consideration of relevant facts, actual or possible - *Ex Fact Jus Oritur*. That ancient rule must prevail in order that we may have a system of living law." *Adams v. Tanner*, 244 U.S. 590, 600, 37 S. Ct. 662, 666 (1916) (*dis. opn.* Brandeis, J.) and



Stephen G. Breyer, Jr., Justice Brandeis as Legal Sec'y, 41 Brandeis L.J. 711, 717-719 (2004) (Finding Brandeis, Jr.'s use of facts essential to Proper Constitutional Interpretation).

The Facts Making This Case Attractive as a Vehicle to begin to resolve the Post-Williams Conflict are:

1. The Surrogate expert was Not the actual analyst's Supervisor DKT 12-34:221 So the Court Need Not decide whether Supervisor Status has Constitutional Significance.

2. The actual analyst worked for the Wisconsin State Crime Laboratory and his report was certified by the Wisconsin Attorney General's designee to be True. See State v. Luther Williams, 2002 WI 58, Paragraph 48, 257 Wis.2d 99, 644 N.W.2d 919 (State Crime Lab Reports are prepared to secure convictions.) So there is No issue here as to the Testimonial character of the report. Cf. U.S. v. Turner, 709 F.3d 1187, 1193 (7<sup>th</sup> Cir. 2013) (Noting "If the report in Williams had been certified Justice Thomas would have voted with the dissenting Justices to reverse the conviction.")

3. Although the actual analysis Report was Not admitted at Trial, it was admitted at the Preliminary hearing and so appears in the Record

With The Report in The Record, The Court can make The Same Comparison Realson's Counsel for direct appeal did in The State Court of Appeals Showing the Surrogate Parroting The language OF The Report, Thereby belying any claim The Surrogate made her own Independent Conclusions.

If The Court Compares DKT. 12-2 ("Conclusions page of Analyst's Report") with DKT. 12-34:206-9, Leader's Testimony of her Conclusions, to which MS. Leader testified identically to the conclusions in the report, but also her testimony parrots the phrases in the report. DKT. 12-34:206 "The Probability of Selecting an Individual That could have contributed to this Mixture Profile is approximately one in 516" and also DKT. 12-34:28, lines 3-8 with DKT. 12-2:29, Fifth Paragraph, identical language but for one or two words. Compare also DKT. 12-34:209, Lines 4-9, with DKT. 12-2:29 Sixth paragraph (Nearly identical language)

During Cross-examination, MS. Leader testified that there can really be no other conclusions because the materials are destroyed during testing, other than what the original analyst came to. DKT. 12-34:230-1, Lines 16-17.

These Last Facts are most Relevant to the "Conduit" rule discussed next

II. A beginning to resolve the Post-Williams Conflict might be a discussion of the "Conduit" Rule and its application Here.

A general rule of Evidence provides a Testifying experts "Testimony cannot be used as a conduit for the views of Non-Testifying experts." David H. Kaye, et al., *The New Wigmore: Expert Evidence*, 4.7.1 b (1) (2d ed. 2010) (discussing proper application of F.R.E. 703). And see, e.g. *Linz v. Fossum*, 946 So.2d 1032 (Fla. 2006) (Testifying doctors could not act as conduit for Non-Testifying ones); *State v. Towne*, 142 Vt. 241, 246, 453 A.2d 1133 (1982) (same). Violation of this "Conduit" rule has Constitutional implications. "Where an expert acts merely as a well-credentialed conduit for testimonial Hearsay, however, the cases hold that her testimony violates a criminal defendant's right to confrontation." *U.S. v. Ramos-Gonzalez*, 664 F.3d 1, 5 (1st Cir. 2011) (drug expert reciting conclusion of actual analyst's report not admitted in evidence violated confrontation right); *Towne*, *supra*, id (same, in sanity doctor).

Wisconsin follows the conduit rule, *Luther Williams*, *supra*, 2002 WI 58 Paragraphs 19-23 and the burning question in Wisconsin Post-(Sandy) Williams was whether *Luther Williams* survived (*Tawford*). In *State v. Grief*, 2015 WI 40, 361 Wis.2d 657, 863 N.W.2d 567, The Wisconsin Supreme Court held that it did. That is, *Grief*, *supra*, finds that where a surrogate expert makes an independent

Analysis of data generated by the actual analyst, the Confrontation Clause is satisfied as long as the Surrogate is not acting as a Conduit by presenting "merely a recitation of another's conclusions." Paragraph 55.

Petitioner Roalson submits a consideration of the "conduit" rule by the Court, making whatever adjustments to it the Constitution may require. See the New Wigmores, *Supra*, 4.10.3 (Outlining considerations as to how much involvement in testing process the Surrogate should have), May be a way to begin to resolve and reconcile the current conflict over constitutionality of use of forensic evidence in court. Certainly, Roalson is entitled to relief under whatever version of the "Conduit" rule the Court may find constitutional because, as shown above in I.C., the Surrogate Expert here simply recited the actual analyst's conclusions in the identical language of his report.

## Conclusion

No one expects the Court could resolve all the issues involved in the constitutionality of use of forensic evidence in court with one decision in one case. The lower courts are only just now beginning to realize it may be appropriate to have different rules for different kinds of experts. See *U.S. v. Boyd*,

686 F. Supp. 2d 382, 384 (S.D.N.Y. 2010) Summary Aff'd 401 Fed Appx. 565 (2d Cir. 2010) (Noting difference between technicians who exercise judgment and those doing only "Mechanical or Ministerial" Tasks). And See Marc D. Ginsberg, The Confrontation Clause and Forensic Autopsy Reports, etc., 74 La. L. Rev. 117, 168-170 (2013) (Pointing out Medical Judgment Used to Make autopsy reports is Categorically different than work of Experts who simply record objective data.)

Petitioner Roalson submits that this case provides the opportunity the Court has been looking for to begin to resolve the current controversy with an opinion which would guide the lower courts through the growing mass of contradictory decisions. It is respectfully submitted the foregoing demonstrates the Court should review Petitioner Roalson's case.

Dated November 18, 2024

Respectfully Submitted,

Christopher Roalson

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