

No. 25-689

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IN THE  
**Supreme Court of the United States**

GEORGE SHARROD JOHNS

*Petitioner,*

v.

THE STATE OF GEORGIA

*Respondent.*

**On Petition for Writ of Certiorari to the  
Supreme Court of Georgia**

**BRIEF OF SOUTHERN CENTER FOR HUMAN  
RIGHTS AS *AMICUS CURIAE* IN SUPPORT OF  
PETITIONER**

JO-ANN TAMILA SAGAR

DANIELLE DESAULNIERS

STEMPEL

*Counsel of Record*

ETHAN WESLEY BROWN

CLAIRE HOUSLEY

HOGAN LOVELLS US LLP

555 Thirteenth Street, N.W.

Washington, D.C. 20004

(202) 637-5600

danielle.stempel@hoganlovells.com

*Counsel for Southern Center for Human Rights*

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## INTERESTS OF AMICUS CURIAE

The Southern Center for Human Rights (SCHR) submits this brief as *amicus curiae* in support of Petitioner.<sup>1</sup>

SCHR is a nonprofit law office based in Atlanta, Georgia. For the past fifty years, SCHR has represented people affected by the criminal legal system in the southern United States, advocating against the death penalty, the criminalization of poverty, and mass incarceration. The widespread use of forensic evidence in criminal trials contributes to these barriers to justice, particularly as many forms of forensic evidence have been discredited as unreliable and are prone to human error.

SCHR has a particularized interest in ensuring that individuals throughout the southern United States retain their Sixth Amendment rights. SCHR has experience representing clients whose Sixth Amendment rights to confrontation and cross-examination have been crucial in exposing flaws in forensic evidence. To the extent that lower courts have denied defendants these rights—and failed to heed this Court’s unequivocal mandates to preserve and protect their constitutional entitlement to confrontation—SCHR is dedicated to the correction of those errors.

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no entity or person other than amici made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to this Court’s Rule 37.2(a), counsel of record for all parties received timely notice of amicus’s intent to file this brief at least 10 days prior to its due date.

## INTRODUCTION AND SUMMARY OF ARGUMENT

The Confrontation Clause entitles a criminal defendant to confront the witnesses testifying against him. U.S. Const. amend. VI. The Clause “commands[] not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination.” *Crawford v. Washington*, 541 U.S. 36, 61 (2004).

The confrontation right is especially important when it comes to expert testimony concerning forensic evidence. Forensic evidence is a vast field that includes interpretation of physical evidence left behind at the crime scene, samples of bodily fluid and DNA analyzed using advanced chemical and biological techniques, and digital evidence such as text files and surveillance footage—the likes of which are increasingly at risk of being distorted by artificial intelligence. Juries often give the experts who present that seemingly scientific evidence in court significant, outsized deference in rendering their verdict.

But forensic evidence can be flawed and the experts who analyze it can make mistakes. Today, several traditional forms of forensic evidence are criticized as unreliable and only tenuously connected to objective scientific methodology. And even those forms that are considered scientifically valid are still susceptible to human bias and misconduct that, when uncovered, cast long shadows on the veracity of criminal convictions across the country.

Properly applied, the Sixth Amendment’s Confrontation Clause gives defendants the opportunity to expose these underlying flaws. For that right to

have any meaning, however, the defendant must have the ability to question the analyst who actually performed the forensic tests. As such, this Court has repeatedly held that surrogate expert testimony—the practice of putting one expert on the stand to testify to another expert’s analysis or report—violates the confrontation right. *See, e.g., Smith v. Arizona*, 602 U.S. 779, 799 (2024). By its very nature, cross-examining a surrogate cannot expose any flaws, mistakes, or biases underlying the original expert’s work. That is particularly true when it comes to forensic autopsies, which are complex processes rife with judgment calls.

Despite this Court’s clear instruction, some State courts continue to apply rules that would render the Confrontation Clause and this Court’s precedents interpreting it a “dead letter.” *Id.* at 798. The Supreme Court of Georgia’s decision here is case in point: The court held that a defendant’s confrontation right is not violated when “the State does not seek to admit an autopsy report itself, but rather asks a second expert his independent, expert opinion regarding the facts contained in that report and associated documents.” Pet. App. 11a (brackets omitted) (quoting *Naji v. State*, 797 S.E.2d 916, 920 (Ga. 2017)). Under that view, “no defendant would have a right to cross-examine the testing analyst about what she did and how she did it and whether her results should be trusted.” *Smith*, 602 U.S. at 799. This Court’s decisions and the role of modern forensic evidence in criminal trials demand otherwise.

This Court should grant certiorari and reverse to ensure that forensic evidence undergoes the scrutiny the Constitution demands.

## ARGUMENT

### I. FORENSIC EVIDENCE IS EXTREMELY INFLUENTIAL IN CRIMINAL TRIALS DESPITE POTENTIAL DEFICIENCIES.

The field of forensic science underlying expert testimony is vast and varied. Its impact in criminal trials cannot be overstated; juries consistently give forensic evidence and its accompanying expert testimony outsized significance. But there is a growing legal and scientific consensus that forensic evidence—and thus its corresponding expert testimony—rest on shaky foundations. In addition to the inherent shortcomings of many forensic fields, the risk of mistake, bias, or misconduct exacerbates the unreliability of forensic conclusions.

#### A. Forensic Science Is Varied And Complex.

Forensic evidence is “evidence derived from the use of a field of science or the scientific method in order to investigate and prove crimes.” Erin Murphy, *Forensic Evidence*, 3 *Reforming Criminal Justice* 171, 171 (2017). Traditional forensic evidence includes physical evidence derived from analysis of ballistics, hair follicles, and fiber samples, as well as pattern analysis evidence, like bitemark, toolmark, and fingerprint identification. Erin Murphy, *The New Forensics: Criminal Justice, False Certainty, and the Second Generation of Scientific Evidence*, 95 *Calif. L. Rev.* 721, 726 (2007). Newer forms of forensic evidence include digital evidence gathered through electronic and digital media—like cell phone data, surveillance video footage, and computer logs—as well as DNA evidence analyzed by

advanced scientific techniques and computer software programs. *See id.*; Lars Daniel, *Digital Forensics—What Exactly is Digital Evidence?*, Forbes (Nov. 17, 2024).

One of the earliest uses of forensic evidence in an American trial occurred in 1911, during the murder prosecution of Thomas Jennings. Carrie Leonetti, *The History of Forensic-Science Evidence in Criminal Trials and the Role of Early “Success” in Establishing Its Putative Reliability*, 54 St. Mary’s L.J. 1061, 1065 (2023). The State of Illinois introduced testimony that a fingerprint lifted from a windowsill matched Jennings’s. *Id.* The fingerprint “expert” arrived at this conclusion “through a process of analysis that the Illinois Supreme Court described as ‘peculiar and specialized experience.’” *Id.*

In the century since Jennings’s trial, the use of forensic science has metastasized. Today, it takes dozens of forms and makes up a billion-dollar industry in the United States. *See* Bureau of Just. Stats., U.S. Dep’t of Just., *Publicly Funded Forensic Crime Laboratories: Resources and Services, 2014* (2016).

Forensic evidence pervades modern criminal proceedings. It can be used to establish a defendant’s prior contact with a victim or physical presence at a crime scene. *See* Jennifer L. Mnookin, *The Need for a Research Culture in the Forensic Sciences*, 58 UCLA L. Rev. 725, 727 (2011). It can link a defendant to a weapon. Brandon Garrett et al., *Judging Firearms Evidence and the Rule 702 Amendments*, 107 Judicature 41 (2023). It can track a defendant’s movements, meetings, and internet searches. National Inst. of Just., U.S. Dep’t of Just., *Digital & Multimedia Evidence*, <https://perma.cc/J3YR-Y24F>.

And forensic evidence is not just limited to the guilt phase; it can also be used at sentencing to establish aggravating factors, like the level of violence or harm inflicted. *See* Maneka Sinha, *Junk Science at Sentencing*, 89 *Geo. Wash. L. Rev.* 52, 78-80 (2021).

**B. Expert Testimony On Forensic Evidence Has Disproportionate Significance To Juries In Criminal Trials.**

The use of forensic evidence in criminal trials goes hand-in-hand with the use of expert witnesses, whose testimony is essential to explain and contextualize that evidence to the jury. Expert witnesses testify as to their qualifications and background, their methodology, and their testing process. They also explain why their analysis in the *specific* case is reliable and probative of the conclusion the party is asking the jury to draw. If forensic evidence is admitted, the expert testifies to its results and significance, and the expert's conclusions. *See generally* National Comm'n on Forensic Sci., *Presentation of Expert Testimony Policy Recommendations* (Oct. 20, 2014), <https://perma.cc/X4GF-Y4D5>.

In jurors' eyes, expert witness testimony commands an "aura of special reliability and trust." *United States v. Anderson*, 851 F.2d 384, 393 (D.C. Cir. 1988). Juries tend to assign experts near "talismanic significance," *United States v. Frazier*, 387 F.3d 1244, 1263 (11th Cir. 2004) (en banc), accepting as truth what the Federal Rules of Evidence label an opinion, *see* Fed. R. Evid. 702 (allowing qualified experts to testify "in the form of an opinion"). Juries' deference to experts can thus "create[] a unique risk of prejudice" that, if left unchallenged, allows the

expert's opinion to effectively dictate the jury's decision. *United States v. Williams*, 865 F.3d 1328, 1341 (11th Cir. 2017); see *United States v. Doe*, 903 F.2d 16, 20 (D.C. Cir. 1990) (acknowledging this "potentially harmful" effect).

That is doubly so when it comes to forensic experts. Jurors largely disregard the limitations of forensic science when assessing expert testimony, even when they are informed of its weaknesses beforehand. See Devon E. LaBat et al., *Improving Juror Assessments of Forensic Testimony and Its Effects on Decision-Making and Evidence Evaluation*, 47 *Law & Hum. Behav.* 566, 567 (2023). Moreover, jurors frequently conflate scientific statements about forensic evidence and opinions of guilt, interpreting nonprobative statements as inculpatory. See Richard Underwood, *Evaluating Scientific and Forensic Evidence*, 24 *Am. J. Trial Advoc.* 149, 167 (2000) ("[J]urors often confuse issues, assuming that statistical percentages reported by forensic experts are statements about the probability of guilt."); see also LaBat, *supra*, at 567 (studies on jury comprehension of forensic expert testimony "paint[] a concerning picture of jurors' ability not only to understand complex testimony but also to accurately interpret and evaluate that testimony").

### **C. Though Jurors May Not Recognize It, The Forensic Evidence Underlying Expert Testimony Is Often Flawed.**

Despite juries' significant deference to forensic experts, expert witnesses are human and therefore imperfect. Sometimes, their testimony unintentionally misrepresents forensic data to the jury, even if the

underlying scientific output itself is valid. See Brandon Garrett & Peter Neufeld, *Invalid Forensic Science Testimony and Wrongful Convictions*, 95 Va. L. Rev. 1 (2009). Even more troubling is the reality that the underlying scientific output is often *not* valid. Instead, it is often the product of mistake or misconduct that—if accepted uncritically and without vigorous cross-examination—threatens the criminal justice system’s legitimacy. The recent rise in the use of artificial intelligence adds yet another reason to question the reliability of forensic evidence.

### 1. Unreliability

Traditional forensic disciplines, like firearms toolmark, bitemark, and hair analyses, lack rigorous scientific standards. For these types of forensic evidence, there is a high likelihood that analysts make incorrect interpretations, misunderstand statistical weight or probability, or work without objective criteria when comparing forensic samples, ultimately requiring them to use their own subjective analysis. See Erin Murphy, *The New Forensics*, *supra* at 774-775 (identifying traditional forensic evidence as far less credible than newer forms); Garrett & Neufeld, *supra*, at 68 (discussing bite-mark study with 63.5% false positive rate). But subjective analysis, by definition, means that the analysis varies from one analyst to another. As a result, the evidence is inherently unreliable—whether because the discipline is scientifically flawed or because the analyst’s subjective interpretation of the evidence was error. Indeed, one recent study analyzed 732 cases involving evidence from “34 forensic disciplines” and found that a shocking 86% had errors. See National Inst.

of Just., U.S. Dep't of Just., *The Impact of False or Misleading Forensic Evidence on Wrongful Convictions* (2023), <https://perma.cc/6NZ4-X9PN>.

Despite these known shortcomings, traditional forensic evidence remains common in criminal proceedings. As Judge Jed S. Rakoff of the U.S. District Court for the Southern District of New York and Judge Goodwin Liu of the California Supreme Court highlighted, many courts have been reluctant to entirely eschew unreliable forms of forensic science. See Jed S. Rakoff & Goodwin Liu, *Forensic Science: A Judicial Perspective*, 120 Proc. Nat'l Acad. Sci. 1 (2023). Instead of scrutinizing the validity of forensic analyses, courts sometimes approve the admission of forensic evidence by summarily concluding that its reliability has been “long established,” despite new and abundant evidence to the contrary. *Id.*

The unreliability of traditional forensic evidence has not escaped the scientific community's attention. In 2009, the National Academy of Sciences issued a report concluding that, aside from nuclear DNA analysis, “no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source.” National Rsch. Council, *Strengthening Forensic Science in the United States: A Path Forward* 7 (2009). More recent assessments reflect little progress, reporting that forensic science writ large is still wanting for “statistically rigorous measures of accuracy and reliability.” National Inst. of Standards & Tech., U.S. Dep't of Com., *Strategic Opportunities to Advance Forensic Science in the*

*United States* 11 (2024). Far from applauding it with “talismanic significance,” *Frazier*, 387 F.3d at 1263, the growing consensus is that forensic evidence and the analysts who present it need *greater* scrutiny—not less.

## 2. *Bias*

Forensic evidence is also particularly susceptible to human bias. Forensic analysts—especially those engaged in subjective disciplines like pattern matching and autopsies—necessarily filter the information presented to them through their own biases, beliefs, and unique case experiences. For example, forensic analysts may interpret evidence based on how it was initially characterized by a prosecutor or law enforcement official. John Rafael Peña Perez, *Confronting the Forensic Confirmation Bias*, 33 *Yale L. & Pol’y Rev.* 457, 459 (2015); *see also* D. Michael Risinger et al., *The Daubert/Kumho Implications of Observer Effects in Forensic Science: Hidden Problems of Expectation and Suggestion*, 90 *Calif. L. Rev.* 1, 9 (2002) (describing the danger that “an examiner’s observations and conclusions will be influenced by extraneous, potentially biasing information”). Analysts in several States may also favor inculpatory findings and conclusions because those States—including Alabama, Mississippi, and Kentucky, in which SCHR works—pay crime labs per conviction, incentivizing analysts to reach particular results even if the evidence is inconclusive. *See* Roger Koppl & Meghan Sacks, *The Criminal Justice System Creates Incentives for False Convictions*, 32 *Crim. Just. Ethics* 126, 147-148 (2013); *see also* Roger Koppl, *Letter to the Editor—Do Court-assessed Fees Induce Laboratory Contingency Bias in*

*Crime Laboratories?*, 65 J. Forensic Sci. 1793, 1793-1794 (2020).

### 3. *Misconduct*

Perhaps most troubling, forensic evidence is sometimes erroneous not because of unconscious bias or inadvertent error, but because of intentional misconduct. In the past several years, multiple forensic analysts across the country have come under scrutiny for misreporting test results and “dry labbing,” a practice where analysts do not complete forensic tests at all and instead report plausible but wholly fabricated results.

When analyst misconduct occurs, the effects are profoundly disruptive. For example, Yvonne Woods, a forensic lab analyst in Colorado, was charged with 102 felonies last year based on allegations that she deleted or intentionally altered forensic lab findings used in over a thousand criminal cases. *See* Jenny Deam, *A Year of Developments in the CBI Forensic Lab Scandal*, Denver Gazette (Dec. 30, 2025), <https://perma.cc/SE5Y-2P3Z>. Although the full scope of Woods’ misconduct is yet to be determined, it has thrown convictions across Colorado into doubt and forced prosecutors to weigh whether to retry those released because of the corrupted forensic evidence. Austen Erblat & Gabriela Vidal, *Colorado Man Released from Prison After DNA Evidence Casts Doubt on Suspect in 1994 Murder*, CBS News (Apr. 15, 2025), <https://perma.cc/VWD2-GH92>. Meanwhile, in Massachusetts, two chemists—Sonja Farak and Annie Dookhan—separately falsified forensic test results for more than a decade, resulting in thousands of drug-related cases being dismissed with prejudice. Massachusetts Court System, *Drug*

*Lab Cases Information* (2019), <https://perma.cc/3FPQ-MF3M>.

Forensic pathology—the science focused on determining cause and circumstances of death by performing an autopsy—offers additional examples of misconduct. One pathologist, Steven Hayne, performed 80% of Mississippi’s State autopsies from the 1990s until 2008, when it came to light that he routinely lied about his credentials and qualifications under oath. Lee Rawles, *Dark Tale of ‘The Cadaver King and the Country Dentist’ Brings False Convictions to Light*, Am. Bar Ass’n (Mar. 7, 2018), <https://perma.cc/V93A-FNQP>. A review of his cases revealed “incorrect and misleading” testimony in several convictions, with thousands more yet to be reviewed. The Innocence Project, *More Misconduct in Mississippi: Pathologist Lied About His Credentials* (Apr. 28, 2008), <https://perma.cc/686L-3R2S>. Another pathologist conducted thousands of autopsies and served as an expert witness in multiple States despite a consistent pattern of misconduct and “serious errors.” State Bar of Cal., Hearing Dep’t, *In re Brooke P. Halsey, Jr.*, 3 (Aug. 1, 2006). He was fired or barred from conducting autopsies on multiple occasions because of his incompetence and alcohol abuse. See ProPublica, *Second Chances Underscore Flaws in Death Investigations* (Feb. 1, 2011), <https://perma.cc/MA83-BYEW>. But due to “[a] chronic shortage of qualified forensic pathologists,” he was repeatedly hired by new employers to continue performing autopsies and providing expert testimony. See *id.* Yet another pathologist was employed for almost a decade before pleading no contest to seven felony counts for

falsifying numerous autopsies. See Barry Scheck et al., *Actual Innocence*, 151-152 (Berkley 2003). An evaluation of his work revealed that multiple bodies he supposedly examined showed no incisions at all, contrary to his reports—and unknown to any reviewing analyst relying on those reports. See *id.*

Justice for those whose convictions were based on corrupted evidence is often long delayed. In the case of Annie Dookhan, it took fourteen years after she began falsifying results and dry labbing for the Supreme Judicial Court of Massachusetts to dismiss cases involving her forensic analysis. *Drug Lab Cases Information, supra.* As just one more example, Levon Brooks served 16 years in prison for a crime he did not commit as a result of Steven Hayne’s flawed autopsy and resulting testimony. The Innocence Project, *Levon Brooks*, <https://perma.cc/2HFD-UK8M>. Because of the time and resources it takes for misconduct to be discovered and eventually addressed, the odds are high that other instances of analyst misconduct remain unreported, underscoring the need to ensure the reliability of the forensic evidence presented to the jury in the first instance.

#### 4. Artificial Intelligence

The rise of artificial intelligence (AI) threatens to make some forms of forensic evidence—and expert testimony—even less reliable. Digital forensic evidence is especially susceptible to deepfakes, a form of AI-generated synthetic media that alters “a genuine account of the speech, conduct, image, or likeness of an individual or an event” and replaces it with a “fake reality” capable of convincing a reasonable observer. Taurus Myhand, *Once the Jury Sees It, the*

*Jury Can't Unsee It: The Challenge Trial Judges Face When Authenticating Video Evidence in the Age of Deepfakes*, 29 Widener L. Rev. 171, 173 (2023). As technology has improved, it has become increasingly challenging to recognize deepfakes as such, potentially undermining the ability of experts to confidently and accurately testify about digital forensic evidence.

Even setting aside the risk of falsified evidence, the rise of AI poses other serious problems. Forensic analysts have started to introduce AI technologies to assist them in their work. See Khalid Lodhi & Moulay Abdelmajid Kassem, *Revolutionizing Forensic Science: The Role of Artificial Intelligence and Machine Learning*, J. AI, ML, & Bioinformatics 7 (2024). Although this sometimes promotes efficiency and reliability, it also carries an increased risk that experts will rely on AI-generated content without independently verifying it.

In the last year, there have been several documented cases of expert witnesses citing nonexistent sources in AI-generated portions of their affidavits and reports. See Kevin J. Quilty, *Expert Testimony in the Age of Generative AI*, GreenbergTraurig (Dec. 5, 2025), <https://perma.cc/X3TT-BKZD>. When one expert was confronted about this “[o]n the stand,” he admitted that he had used AI in forming his opinions and conclusions but could not “recall his prompts, explain the chatbot’s sources, or clarify its methods.” *Id.* (citing *In re Weber*, 220 N.Y.S.3d 620 (N.Y. Sur. 2024)). As AI becomes a more common tool in the criminal legal system, the risk that testimony about forensic evidence is a product of faulty and unsubstantiated AI is cause for concern.

## II. THE CONFRONTATION CLAUSE PROVIDES NECESSARY PROTECTION AGAINST FLAWED FORENSIC EVIDENCE AND UNJUST CONVICTIONS.

1. The Sixth Amendment’s Confrontation Clause is a core constitutional guarantee. *Crawford*, 541 U.S. at 42. It derives from the Founding-era principle “that no man shall be prejudiced by evidence which he had not the liberty to cross examine.” *Id.* at 49 (citation omitted). The Clause “commands[] not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination.” *Id.* at 61.

Surrogate testimony—that is, the practice of putting someone on the stand who did not personally perform the relevant forensic analysis or produce the resulting report—violates that foundational precept. *Bullcoming v. New Mexico*, 564 U.S. 657, 662 (2011). The Court first confronted surrogate expert testimony in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009). Massachusetts had introduced drug analyses into evidence, without requiring the analyst who performed them to testify at trial. *Id.* at 308. Melendez-Diaz argued he had a Sixth Amendment right to cross-examine the testing analyst and expose any “lack of proper training or deficiency in judgment” that could have compromised those results. *Id.* at 320. The Court agreed, holding the State must “call as witnesses the analysts who had conducted the tests and signed the certificates.” *Smith*, 602 U.S. at 785 (discussing *Melendez-Diaz*, 557 U.S. at 308-311).

The Court applied that rule in *Bullcoming* “to hold that a State could not introduce one lab analyst’s written findings through the testimony of another.” *Id.* at 786 (discussing *Bullcoming*, 564 U.S. at 663). Because the testifying analyst “had neither participated in nor observed” the testing process, his surrogate testimony “could not convey” the certifying analyst’s knowledge or observations. *Bullcoming*, 564 U.S. at 651, 661. Defendants must have “the right to confront” the analyst who signed the certificate or authored the report. *Id.* at 663.

Then, in *Williams*, the Court considered whether a surrogate could testify to their “own conclusion” based on “what another had found.” *Smith*, 602 U.S. at 785 (discussing *Williams v. Illinois*, 567 U.S. 50, 108 (2012)). Although the Court “failed to produce a majority opinion,” five Justices agreed that if surrogate analyst’s testimony “ultimately turned on the truth of the [testing analyst’s] statements,” but that testing analyst does not testify, that violates the Confrontation Clause. *Id.* at 788-789.

Next came *Smith*. At Smith’s trial, the State presented the testimony of a toxicologist who had not participated in the testing, but instead “prepared for trial by reviewing [the testing analyst’s] reports and notes.” 602 U.S. at 791. This time, the Court unanimously rejected that attempted Sixth Amendment workaround. When a surrogate testifies to the underlying forensic analysis—whether by testifying to the contents of the report itself, *Bullcoming*, 654 U.S. at 662, or because the underlying report formed “the basis of [the surrogate’s] expert opinions,” *Smith*, 602 U.S. at 798—that violates the Confrontation Clause.

2. The autopsy process provides a prime example of the wisdom of *Smith's* rule. Forensic autopsies are complicated examinations, infused with context-dependent decision-making that is often absent from the resulting report stating the examiner's ultimate findings. Only cross-examining the performing and reporting pathologist can "expose any lapses or lies" in that process. *Bullcoming*, 564 U.S. at 662.

To begin, the forensic pathologist obtains background information, usually from law enforcement officers, to determine whether they have jurisdiction for the autopsy. *See* National Ass'n of Med. Exam'rs, *Forensic Autopsy Performance Standards* 8 (2025), <https://perma.cc/7NKB-UBTE>. Next, the pathologist selects a method to identify the body—ranging from viewing the remains to testing a DNA sample—based on their judgment of the sufficiency of presumptive identification. *See id.* at 11.

Only then does the external examination begin. The pathologist measures and weighs the body before choosing which parts, if any, to photograph. *See id.* at 12-13. The pathologist surveys the body's physical characteristics, deciding which features are sufficiently unique to warrant description. *See id.* If there are observed external injuries, the pathologist determines whether and how to document them. *See id.* at 14. As the pathologist moves onto the internal examination, she removes, weighs, and measures the organs. *Id.* at 18. She may or may not take photographs to supplement her written descriptions. If the pathologist judges certain fluids to be "abnormal," she documents that observation. *See id.*

Throughout the process, a forensic pathologist calibrates the examination to focus on the background

information received and her subjective findings thus far. Pathologists determine which samples to take from the body and how to package them, which tissues are worthy of cutting into blocks and staining for microscopic examination, which tests to run in determining cause of death; all the while, the pathologist also assesses which details merit documentation. Only at the end of this long process does the pathologist prepare their report of findings. *See generally id.* at 24.

As this description makes clear, forensic autopsies are built on a series of judgment calls. Given the sheer number of subjective decisions required during an autopsy, pathologists inevitably insert their own judgment into the report, often influenced by undocumented factors. And autopsies, unlike drug tests and many other kinds of forensic evidence, cannot be replicated. *Melendez-Diaz*, 557 U.S. at 318 n. 5. It is little wonder, then, that the field is so ripe for mistakes and abuses. *See supra* pp.12-13.

Cross-examining the forensic pathologist who made those judgment calls and prepared the resulting report is indispensable to testing and exposing these built-in assumptions and any underlying errors. Calling a surrogate is no substitute. For example, a surrogate pathologist cannot opine on why the examining pathologist chose to take certain tissue samples for further analysis but not others, or the process used to make that decision. A surrogate will be unable to relay the performing pathologist's thought process in ruling in or ruling out potential causes of death as the autopsy proceeded. A surrogate may be unable to answer whether, and to what extent, law enforcement informed the performing

pathologist of their suspected cause of death and theory of the case. And without at least observing the autopsy, the surrogate lacks the personal knowledge necessary to determine whether the resulting report is “invalid or unreliable because of the examiner’s errors, omissions, mistakes, or bias.” *United States v. Ignasiak*, 667 F.3d 1217, 1233 (11th Cir. 2012). As a result, the right to cross-examine a surrogate expert falls far short of vindicating the essential Sixth Amendment confrontation right to “flesh out the truth.” *Crawford*, 541 U.S. at 74 (Rehnquist, J., concurring in judgment).

3. Two case studies demonstrate why cross-examination of a forensic pathologist can, quite literally, be the difference between life and death.

Start with Gregory Hall. Hall was charged with murder, and Dr. Beaver performed the victim’s autopsy. *People v. Hall*, 23 Cal. App. 5th 576, 579 (2018). Autopsies are often critical in murder cases because they link injuries to weapons, which can then be linked to a defendant through other evidence. So too here: the defense’s theory was that another person had killed the victim, and Hall had merely discovered the body. *Id.* at 580-585. DNA on an electrical cord located near the victim’s body was found to be consistent with Hall’s DNA, and the defense’s explanation was that Hall had been carrying the cord and dropped it when he encountered the body. *Id.* at 581, 584.

One of Beaver’s key autopsy findings was that the mark on the victim’s neck was consistent with that cord. *Id.* at 581. That meant that Beaver’s preservation of the body and analysis of the ligature mark were of central importance. But at Hall’s trial, the

court permitted a substitute pathologist to testify. *Id.* at 579. The testifying pathologist had not personally conducted or observed any portion of the autopsy. *Id.* He instead testified “[b]ased on *Dr. Beaver’s* observations,” as documented in Beaver’s written report. *Id.* (emphasis added).

It later came to light that “problems” with Beaver “ha[d] been piling up for years.” Brian Entin & Daniel Cohen, *Outgoing Monroe County Medical Examiner Responds to Allegations of “Butchered” Bodies, Questionable Purchases*, WSVN News (May 30, 2017), <https://perma.cc/5X78-53HL>. For example, Beaver transported a body by covering it in a body bag and tying it down in the back of his truck, *id.*—something that does not comport with any professional recommendations or norms, R.L. Ellen & M.J. Lynch, *Body Recovery*, Encyclopedia of Forensic and Legal Medicine 293, 294 (2005). Beaver has also been accused of “butcher[ing]” several other autopsies. Entin, *supra*. As a result of these and other serious issues, a Medical Examiners Commission unanimously recommended that his contract as medical examiner not be renewed. See Sara Matthis, *Keys to Beaver: Drop Dead*, Keys Weekly (May 11, 2017), <https://perma.cc/6TL8-UPNE>.

But because Beaver did not testify at Hall’s trial, Hall had no opportunity to confront him and “expose” these issues and potential “lie[s].” *Crawford*, 541 U.S. at 62. Hall could not question Beaver about the circumstances under which the autopsy was performed. He could not question whether Beaver adhered to professional norms when transporting the victim’s body. Nor could Hall cross-examine Beaver about the safeguards that Beaver employed to

prevent post-mortem physical injury or alteration—or anything else. Hall had no opportunity to question Beaver and he was convicted and sentenced to a prison term of 60 years to life. *Hall*, 23 Cal. App. 5th at 580.

Contrast Hall's case with that of Michael Morton, where cross-examination exposed fundamental issues in the performing analyst's work, leading to Morton's exoneration. Morton was originally found guilty for murdering his wife and sentenced to life in prison. *Morton v. State*, 761 S.W.2d 876, 876 (Tex. Crim. App. 1988). The jury's finding hinged, in significant part, on the victim's time of death. *Id.* at 880. The medical examiner who performed the autopsy and generated the autopsy report, Dr. Bayardo, testified to time of death based on his "analysis of the [victim's] stomach contents." *Id.* at 878.

After Morton pressed Bayardo on cross, Bayardo admitted that "he had *originally* assessed the time of death" to include a much larger window—such that the victim's death could have occurred when Morton had an alibi. *In re Morton*, 326 S.W.3d 634, 643 (Tex. Crim. App. 2010). After defense counsel presented "multiple books on forensic pathology \* \* \* during [Bayardo's] cross examination stating that stomach contents were a poor indicator of time of death," Bayardo was forced to admit that his time of death estimate was "not a scientific statement." *Id.* Those admissions proved crucial in postconviction proceedings, which ultimately led to Morton's exoneration. *See id.*; The Innocence Project, *Michael Morton*, <https://perma.cc/Q3VS-BXFJ>.

None of that would have been feasible without cross-examination. Without the opportunity to question Bayardo himself, Morton could not have exposed the scientifically unsound assumptions and methodology underlying Bayardo's report or that Bayardo had originally reached a different conclusion about time of death that could have exonerated Morton.

Of course, it is *possible* that a surrogate may be privy to some of these details in some cases, whether because they are included in a report or other documentation. But a constitutional guarantee must not rest on sheer chance. After all, even when a surrogate analyst purports to testify only to a "machine-generated number," they are inevitably often also testifying to "past events and human actions" that data does not "reveal[]." *Bullcoming*, 564 U.S. at 660. That is why the reporting analyst "must be made available for confrontation even if they possess 'the scientific acumen of Mme. Curie and the veracity of Mother Teresa.'" *Id.* at 661 (quoting *Mendez-Diaz*, 557 U.S. at 319 n.6). Only then is the Sixth Amendment satisfied.

### **III. LOWER COURTS HAVE NOT HEEDED SMITH, DEPRIVING DEFENDANTS OF THE USE OF CROSS-EXAMINATION TO EXPOSE UNRELIABLE FORENSIC EVIDENCE.**

*Smith* was clear: The Court could not—and would not—sanction States' efforts to render its precedents prohibiting surrogate testimony "a dead letter." 602 U.S. at 798. The Court accordingly cautioned States against allowing surrogate witnesses to serve as a

“mouthpiece” for an out-of-court declarant, testifying to precautions the out-of-court declarant said they took, standards they said they followed, tests they said they performed, and results they said they obtained. *Id.* at 800. To hold otherwise would permit an “end run [around] all” this Court has “held the Confrontation Clause to require.” *Id.* at 799.

In the wake of *Smith*, some States have heeded that guidance. But others have not. Certiorari is warranted to put a halt to those States’ recalcitrance and to clarify the scope of this important constitutional guarantee.

1. Even prior to *Smith*, many States took care to prohibit surrogate testimony. *See* Amicus Br. for Nat’l Ass’n of Crim. Def. Laws. 5-7, *Smith*, 602 U.S. 779 (2024) (No. 22-899). Anticipating *Smith*, several States had held that the confrontation right is violated when a testifying expert relies on the statements or testing of an absent analyst. *See id.* Many more required the prosecution to notify the defendant of its intent to use an analyst’s report at trial, after which the defendant could demand the analyst’s live testimony. *See id.* That has not stopped those States from successfully relying on forensic evidence to secure convictions. *See id.* at 8-10.

Following *Smith*, these and other States have continued to prohibit testimony from “reviewer” analysts without personal knowledge of the testing. Pet. 11-13; *see, e.g., Commonwealth v. Gordon*, 266 N.E.3d 369, 374 (Mass. 2025) (holding that admission of toxicology testimony by surrogate expert who merely “performed the technical and administrative reviews of the original analyst’s work” is barred by

the Confrontation Clause); *State v. Thomas*, 334 A.3d 686, 703-706 (Me. 2025) (same).

But despite this Court's repeated admonitions, the use of surrogate experts in violation of *Smith* and the Sixth Amendment remains common in other jurisdictions, including Georgia, Louisiana, and Mississippi, in which SCHR routinely represents clients. Pet. 8-11; see, e.g., *Busby v. State*, 422 So. 3d 974, 979 (Miss. 2025) (finding "no reason to abandon our clear precedent that a defendant's right of confrontation is satisfied by the testimony of an analyst who reviewed the report for accuracy and signed it as a technical reviewer") (quotation marks omitted); *Commonwealth v. Douglas*, 346 A.3d 825, 836 (Penn. Super. Ct. 2025) (holding that Confrontation Clause does not bar surrogate expert testimony based on another analyst's testing and notes).

2. Petitioner's case falls into the latter category. Fulton County contracted with Dr. Aiken, a forensic pathologist located more than 2,500 miles away, to perform the victim's autopsy and prepare her report. Pet. 4. Perhaps unsurprisingly, Aiken was unavailable to travel cross-country for the trial. *Id.* So the State instead produced Dr. Sullivan—the chief medical examiner for Fulton County. *Id.*

Sullivan could not and did not testify to her own personal observations and opinions. She did not see or examine the body, measure or assess the wounds, or determine which observations and details to document in the autopsy report. Sullivan instead reviewed *Aiken's* documentation and formed her testimony and expert opinions based on *Aiken's* work, and specifically, based on *Aiken's* conclusions and representations. Sullivan's testimony was therefore

relevant only to the extent the basis for it—Aiken’s statements—are true. But Aiken never took the stand, meaning that Petitioner could not question Aiken about her processes or her past, in violation of his Sixth Amendment right “to be confronted with the witnesses against him.” U.S. Const. amend. VI.

This Court should grant certiorari to clarify the full extent of that Constitutional guarantee, and to ensure that forensic evidence testimony undergoes the scrutiny it demands in all State criminal courts.

### CONCLUSION

For the foregoing reasons and those in the petition, this Court should grant certiorari and reverse the judgment of the Supreme Court of Georgia.

Respectfully submitted,

JO-ANN TAMILA SAGAR  
DANIELLE DESAULNIERS  
STEMPEL

*Counsel of Record*

ETHAN WESLEY BROWN  
CLAIRE HOUSLEY  
HOGAN LOVELLS US LLP  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004  
(202) 637-5600  
danielle.stempel@hoganlovells.com

*Counsel for Amicus Curiae*

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