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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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BULLCOMING *v.* NEW MEXICO

CERTIORARI TO THE SUPREME COURT OF NEW MEXICO

No. 09–10876. Argued March 2, 2011—Decided June 23, 2011

The Sixth Amendment's Confrontation Clause gives the accused "[i]n all criminal prosecutions, . . . the right . . . to be confronted with the witnesses against him." In *Crawford* v. *Washington*, 541 U. S. 36, 59, this Court held that the Clause permits admission of "[t]estimonial statements of witnesses absent from trial . . . only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine." Later, in *Melendez-Diaz* v. *Massachusetts*, 557 U. S. ___, the Court declined to create a "forensic evidence" exception to *Crawford*, holding that a forensic laboratory report, created specifically to serve as evidence in a criminal proceeding, ranked as "testimonial" for Confrontation Clause purposes. Absent stipulation, the Court ruled, the prosecution may not introduce such a report without offering a live witness competent to testify to the truth of the report's statements. 557 U. S., at ___.

Petitioner Bullcoming's jury trial on charges of driving while intoxicated (DWI) occurred after *Crawford,* but before *Melendez-Diaz*. Principal evidence against him was a forensic laboratory report certifying that his blood-alcohol concentration was well above the threshold for aggravated DWI. Bullcoming's blood sample had been tested at the New Mexico Department of Health, Scientific Laboratory Division (SLD), by a forensic analyst named Caylor, who completed, signed, and certified the report. However, the prosecution neither called Caylor to testify nor asserted he was unavailable; the record showed only that Caylor was placed on unpaid leave for an undisclosed reason. In lieu of Caylor, the State called another analyst, Razatos, to validate the report. Razatos was familiar with the testing device used to analyze Bullcoming's blood and with the laboratory's testing procedures, but had neither participated in nor observed the test on Bullcoming's blood sample. Bullcoming's counsel objected, as-

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serting that introduction of Caylor's report without his testimony would violate the Confrontation Clause, but the trial court overruled the objection, admitted the SLD report as a business record, and permitted Razatos to testify. Bullcoming was convicted, and, while his appeal was pending before the New Mexico Supreme Court, this Court decided *Melendez-Diaz*. The state high court acknowledged that the SLD report qualified as testimonial evidence under *Melendez-Diaz*, but held that the report's admission did not violate the Confrontation Clause because: (1) certifying analyst Caylor was a mere scrivener who simply transcribed machine-generated test results, and (2) SLD analyst Razatos, although he did not participate in testing Bullcoming's blood, qualified as an expert witness with respect to the testing machine and SLD procedures. The court affirmed Bullcoming's conviction.

Held: The judgment is reversed, and the case is remanded.

147 N. M. 487, 226 P. 3d 1, reversed and remanded.

JUSTICE GINSBURG delivered the opinion of the Court with respect to all but Part IV and footnote 6. The Confrontation Clause, the opinion concludes, does not permit the prosecution to introduce a forensic laboratory report containing a testimonial certification, made in order to prove a fact at a criminal trial, through the in-court testimony of an analyst who did not sign the certification or personally perform or observe the performance of the test reported in the certification. The accused's right is to be confronted with the analyst who made the certification, unless that analyst is unavailable at trial, and the accused had an opportunity, pretrial, to cross-examine that particular scientist. Pp. 8–16.

(a) If an out-of-court statement is testimonial, it may not be introduced against the accused at trial unless the witness who made the statement is unavailable and the accused has had a prior opportunity to confront that witness. Pp. 8–14.

(i) Caylor's certification reported more than a machine-generated number: It represented that he received Bullcoming's blood sample intact with the seal unbroken; that he checked to make sure that the forensic report number and the sample number corresponded; that he performed a particular test on Bullcoming's sample, adhering to a precise protocol; and that he left the report's remarks section blank, indicating that no circumstance or condition affected the sample's integrity or the analysis' validity. These representations, relating to past events and human actions not revealed in raw, machine-produced data, are meet for cross-examination. The potential ramifications of the state court's reasoning, therefore, raise red flags. Most witnesses testify to their observations of factual conditions or events. Where, for example, a police officer's report recorded an objective fact

such as the read-out of a radar gun, the state court's reasoning would permit another officer to introduce the information, so long as he or she was equipped to testify about the technology the observing officer deployed and the police department's standard operating procedures. As, *e.g., Davis* v. *Washington*, 547 U. S. 813, 826, makes plain, however, such testimony would violate the Confrontation Clause. The comparative reliability of an analyst's testimonial report does not dispense with the Clause. *Crawford,* 541 U. S., at 62. The analysts who write reports introduced as evidence must be made available for confrontation even if they have "the scientific acumen of Mme. Curie and the veracity of Mother Teresa." *Melendez-Diaz*, 557 U. S., at ___, n. 6. Pp. 10–11.

(ii) Nor was Razatos an adequate substitute witness simply because he qualified as an expert with respect to the testing machine and the SLD's laboratory procedures. Surrogate testimony of the kind Razatos was equipped to give could not convey what Caylor knew or observed about the events he certified, nor expose any lapses or lies on Caylor's part. Significantly, Razatos did not know why Caylor had been placed on unpaid leave. With Caylor on the stand, Bullcoming's counsel could have asked Caylor questions designed to reveal whether Caylor's incompetence, evasiveness, or dishonesty accounted for his removal from work. And the State did not assert that Razatos had any independent opinion concerning Bullcoming's blood alcohol content. More fundamentally, the Confrontation Clause does not tolerate dispensing with confrontation simply because the court believes that questioning one witness about another's testimonial statements provides a fair enough opportunity for cross-examination. Although the purpose of Sixth Amendment rights is to ensure a fair trial, it does not follow that such rights can be disregarded because, on the whole, the trial is fair. *United States* v. *Gonzalez-Lopez,* 548 U. S. 140, 145. If a "particular guarantee" is violated, no substitute procedure can cure the violation. *Id.,* at 146. Pp. 11–14.

(b) *Melendez-Diaz* precluded the State's argument that introduction of the SLD report did not implicate the Confrontation Clause because the report is nontestimonial. Like the certificates in *Melendez-Diaz*, the SLD report is undoubtedly an "affirmation made for the purpose of establishing or proving some fact" in a criminal proceeding. 557 U. S., at ___. Created solely for an "evidentiary purpose," *id.,* at ___, the report ranks as testimonial. In all material respects, the SLD report resembles the certificates in *Melendez-Diaz*. Here, as there, an officer provided seized evidence to a state laboratory required by law to assist in police investigations. Like the *Melendez-Diaz* analysts, Caylor tested the evidence and prepared a certificate concerning the result of his analysis. And like the *Melendez-Diaz*

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certificates, Caylor's report here is "formalized" in a signed document, *Davis*, 547 U. S., at 837, n. 2. Also noteworthy, the SLD report form contains a legend referring to municipal and magistrate courts' rules that provide for the admission of certified blood-alcohol analyses. Thus, although the SLD report was not notarized, the formalities attending the report were more than adequate to qualify Caylor's assertions as testimonial. Pp. 14–16.

GINSBURG, J., delivered the opinion of the Court, except as to Part IV and footnote 6. SCALIA, J., joined that opinion in full, SOTOMAYOR and KAGAN, JJ., joined as to all but Part IV, and THOMAS, J., joined as to all but Part IV and footnote 6. SOTOMAYOR, J., filed an opinion concurring in part. KENNEDY, J., filed a dissenting opinion, in which ROBERTS, C. J., and BREYER and ALITO, JJ., joined.