

Crafford's Next Impact - the Lab

By: Lance M. Hester; 2011

The confrontation clause became a little more meaningful when the Supreme Court handed down its recent opinion in *Bullcoming v. New Mexico*, 131 S. Ct. 2705 (2011).

During a blood-draw DUI case in New Mexico, the state did not call the lab analyst (who was unavailable and out on unpaid leave) who signed the certificate related to the blood-alcohol analysis. Instead, the state used a different analyst and the blood test was admitted as a business record.

The New Mexico Supreme Court held the Confrontation Clause did not require the actual analyst's testimony in court and found that live testimony coming from another analyst was satisfactory.

En route to its holding, the court found that the gas chromatograph machine requires specialized knowledge and training, is vulnerable to human error at each step, and testimony about such testimony can not be satisfied by a surrogate based on a claim that test results are a mere transcription from the results reported on the machine to the certificate.

Because the certificate was prepared in anticipation of prosecuting the defendant, the court found that the report and certificate were "testimonial."

The court also pointed to New Mexico law requiring additional samples be preserved for additional testing. Therefore, it noted the available analyst could have conducted additional testing for trial. Whether blood, DNA, drug reports, or perhaps any medical reports, it appears the confrontation clause requires the actual analyst, and not a surrogate, testify as to the methods and processes.

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