

Melendez-Diaz, the Confrontation Clause and Forensic Analysis

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an imjury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence. – Sixth Amendment - Right to Speedy Trial, Confrontation of Witnesses. Ratified 12/15/1791.

In Melendez-Diaz v. Massachusetts, the Supreme Court of the United States held that certificates of analysis showing the results of forensic analysis performed on seized narcotics were testimonial affidavits and their admission at trial violated the Confrontation Clause of the Sixth Amendment.

In 2004, the Supreme Court of the United States reversed and remanded the Washington Supreme Court in *Crawford v. Washington*, holding that “where testimonial evidence is at issue...the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination.”¹ The Court further stated that the class of testimonial statements covered by the Confrontation Clause included, “. . .*ex parte* in-court testimony or its functional equivalent - that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially.”²

In 2001, the Boston Police Department received a tip that a K-Mart employee was engaging in suspicious behavior: the employee would receive a telephone call then proceed outside where he was picked up in a vehicle, driven away and then dropped off back at the store a short time later.³ The police set up surveillance and observed the employee exit the store following a phone call and enter a waiting vehicle with two men inside.⁴ The car drove off and then returned shortly thereafter. When the car returned, the employee exited the vehicle and the police detained him. A search of the employee discovered four clear, plastic bags containing a substance that appeared to be cocaine. The police then arrested two men in the car, one of whom was Luis Melendez-Diaz. The three men were then placed in the back of a police car and transported to the police station. The police then searched the police car and discovered a plastic bag containing nineteen smaller bags each containing a substance that appeared to be cocaine in the partition between the front and back seats. Melendez-Diaz was charged with distributing and with trafficking cocaine.

At trial, the prosecution placed into evidence the bags seized from the cruiser and, over the objection of Melendez-Diaz, three “certificates of analysis” showing the results of the chemical analysis performed on the substance inside the bags.⁵ The certificates stated the weight of the bags and that the substance inside the bags was “. . .examined with the following results: The substance was found to contain: Cocaine.”⁶ The certificates were sworn to before a notary by analysts at the State Laboratory Institute of the Massachusetts Department of Public Health and admitted into evidence pursuant to state law as “prima

facie evidence of the composition, quality, and the net weight of the narcotic...analyzed.”⁷

Melendez-Diaz was convicted and he appealed. The Appeals Court of Massachusetts rejected the appeal citing the Massachusetts Supreme Judicial Court’s decision in *Commonwealth v. Verde* which held that the authors of certificates of forensic analysis are not subject to confrontation under the Sixth Amendment.⁸ The Supreme Judicial Court denied review.⁹

On June 25, 2009, the Supreme Court of the United States addressed whether the certificates of analysis were testimonial; if testimonial, the authors would be witnesses subject to the defendant’s right of confrontation making the authors witnesses subject to the defendant’s right of confrontation under the Sixth Amendment pursuant to the Court’s holding in *Crawford*.

In *Crawford*, the Court held that a witness’ testimony against a defendant was inadmissible unless the witness appeared at trial or, if the witness was unavailable, the defendant had a prior opportunity for cross-examination.¹⁰ In its analysis in *Melendez-Diaz*, the Court stated that there “is little doubt that the documents at issue in this case fall within the ‘core class of testimonial statements’” described in *Crawford*.¹¹ The Court ruled that the certificates of analysis were really affidavits because they were “a solemn declaration or affirmation made for the purpose of establishing or proving some fact.”¹² The Court added that the certificates of analysis were “functionally identical to live, in-court testimony, doing precisely what a witness does on direct examination.”¹³ In the opinion reversing the state court, Justice Scalia concluded that under the Court’s decision in *Crawford*, the affidavits were testimonial statements and that absent a showing that the analysts who authored the affidavits were unavailable to testify at trial and the defendant had a prior opportunity to cross-examine them, the defendant “was entitled to be confronted with the analysts at trial.”¹⁴

The Supreme Court rejected the State’s and dissent’s arguments that the analysts were not “accusatory” witnesses and as such not subject to confrontation, ruling that the analysts, in fact, provided testimony against Melendez-Diaz proving a necessary element of the crime that the substance in his possession was cocaine.¹⁵

The Court also determined that the analysts’ affidavits did not qualify as traditional business records admissible under the hearsay exception (Fed. Rule Evid. 803(6)) because they were created specifically for use at the defendant’s trial.¹⁶

Finally, the Court rejected the argument that no Confrontation Clause violation occurred because the defendant had the ability to subpoena the forensic analysts finding that the Confrontation Clause “imposes a burden on the prosecution to present its witnesses, not on the defendant to bring those adverse witnesses to court.”¹⁷

¹ *Crawford v. Washington*, 541 U.S. 36 at 67 (2004).

² *Id.* at 51.

³ *Melendez-Diaz v. Massachusetts*, 557 U.S. ____ (2009); 2009 U.S. Lexis 4734 (June 25, 2009).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Mass. Gen. Laws Ch. 111, § 13 (2009).

⁸ Commonwealth v. Verde, 827 N.E. 2d 701, 705-706 (Mass. 2005).

⁹ 874 N.E. 2d 407 (2007).

¹⁰ *Crawford* at 54.

¹¹ *Melendez-Diaz* at *8

¹² *Id.* at *9 citing *Crawford* at 51.

¹³ *Id.* citing *Davis v. Washington*, 547 U.S. 813, 830 (2006).

¹⁴ *Id.* at *10 citing *Crawford* at 54.

¹⁵ *Id.* at *13

¹⁶ *Id.* at *27-*28

¹⁷ *Id.* at *33.