
**In the
Supreme Court of the State of Wisota**

Docket No. 358

Duncan Bloom
Petitioner,

v.

State of Wisota
Respondent.

On Writ of Certiorari to the Court of Appeals of the State of Wisota

Brief for the Respondent

**Team No. 12
Counsel for the Respondent**

Questions Presented

- I. Is an event permit request, submitted electronically to a police department, a testimonial statement for purposes of Sixth Amendment's Confrontation Clause?
- II. Does the admission of a non-testifying laboratory analyst's scientific findings through the in-court testimony of another laboratory analyst who did not perform the scientific tests violate the Sixth Amendment's Confrontation Clause?

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STATEMENT OF THE CASE

Facts

This case involves the conviction of Petitioner Duncan Bloom for the felony possession of marijuana found during the Mayday event on the Wisconsin State University (“WSU”) campus. WSU allows its large public space to be used to host events, but the University requires organizations to submit an event permit request to the Wisconsin State University Police Department (“WSU PD”). One of the large events is “Mayday,” an unofficial campus peace rally held annually on May 1. (R. 2.) The event is organized by PeaceWorks, a nonprofit organization. (R. 7.) This event is associated with rampant drug use and the police have struggled for decades to curb the illegal activity that takes place at this event. (R. 2.) On average, the WSU PD arrests between fifteen and twenty people for drug offenses during Mayday. *Id.* Petitioner was part of the group that created the event in 1968. (R. 4).

After an unknown crowd member threw a smoke bomb toward the podium, Officer Leah Santos approached the podium to locate the perpetrator. (R. 2.) When she stepped onto the stage, she identified a large Ziploc bag behind the podium, which tests later confirmed to contain 350 grams of marijuana. (R. 3.) Although the smoke bomb cleared people from the area, Officer Santos spotted Petitioner standing near the opposite end of the stage. *Id.* As Officer Santos approached the Petitioner, she detected the odor of marijuana. *Id.* She then asked Petitioner to identify himself, and he responded with his name, age and explained that he was scheduled to give a speech at 1 p.m. *Id.*

Officer Santos was suspicious because she recalled from the event permit that Petitioner was scheduled to give his speech at 12:30 p.m. *Id.* Petitioner was also acting as if he did not witness the smoke bomb. *Id.* Officer Santos asked the Petitioner if he smoked marijuana earlier

in the day and he said no. Based on her suspicions, she asked if she could search Petitioner's jacket, Petitioner consented to the search. *Id.*

While searching his jacket, Officer Santos found a substance that a field test confirmed to be marijuana. *Id.* Officer Santos arrested Petitioner and read him his Miranda rights. Petitioner said he understood and waived these rights. (R. 4.) Officer Santos then questioned Petitioner about the marijuana she found near the stage. *Id.* He denied any knowledge, but admitted that he used marijuana in the past. *Id.* Petitioner has two misdemeanor convictions for marijuana possession on his record. *Id.* Petitioner, a philosophy professor, has always been "very outspoken" about his unconventional political and philosophical beliefs. *Id.* One of his "favorite 'causes' is the legalization of marijuana" and he devotes many blog posts to the topic. *Id.*

Following Petitioner's arrest, Officer Santos and a WSU PD detective compiled witness statements from the scene. *Id.* Based on the statements taken directly after the smoke bomb incident, none of the witnesses ever saw the Ziploc bag of marijuana or anyone around the stage at that time. (R. 5.) Additionally, Officer Santos was aware of rumors that a faculty member was dealing marijuana to students. *Id.* When Officer Santos questioned Petitioner after his arrest, he denied he was selling marijuana. *Id.* The case against Petitioner moved forward based on the marijuana found in Petitioner's jacket and in the Ziploc bag. *Id.*

Officer Santos took Petitioner's jacket and large Ziploc bag of marijuana to the State Crime Lab for processing and scientific testing. The lab received both items and they were properly documented. (R. 4.) State Crime Lab Analyst Gavin O'Dell performed several scientific tests on the two samples of marijuana. (R. 5.) Both samples were positively identified as marijuana through the gas chromatography/mass spectrometry ("GC/MS") analysis. (R. 5.)

The sample from Petitioner's jacket was 1.5 grams, the marijuana in the plastic bag weighed 350 grams. (R 5.)

O'Dell also performed a DNA test to compare the samples of marijuana. (R. 5.) He used the Randomly Amplified Polymorphic DNA ("RAPD") test to link one sample of marijuana to the other. The RAPD and GC/MS are fully accepted by Wisconsin courts. (R. 5.) Based on the results of this test, the analyst concluded that the two samples of marijuana came from the same marijuana plant – most likely a local plant. (R. 6.) Both samples also contained trace amounts of wool fibers.

Due to state budget cuts, five state crime lab analysts were laid off, including O'Dell. Hazel Peters, another State Crime Lab chemical analyst provided in-court testimony to the results of the tests because Mr. O'Dell had been laid off. (R. 6.) During her testimony, Ms. Peters detailed the crime lab's general procedures and protocols. (R. 8.) Ms. Peters also described the specific process for each piece of equipment used to identify and compare chemical substances. (R. 8.) She testified that all the equipment was in working order on the day Mr. O'Dell conducted his analyses. (R. 9.) Ms. Peters testified that she and Mr. O'Dell had the same basic training. *Id.* Ms. Peters testified that she could have "performed the chemical tests and done the basic analysis." (R. 10.) She testified that "pretty much the machine does the work" for the GC/MS test, whereas the DNA analysis requires more independent analysis. (R. 10.) Ms. Peters testified as to her conclusions based on the raw data from the GC/MS and RAPD tests as well as Mr. O'Dell's report. (R. 9.) Defense objected to Ms. Peters' testimony as a violation of the Sixth Amendment, Judge Gallagher denied the motion. (R. 6.)

At trial, over defense counsel's objection, the prosecution introduced the electronic event permit submitted by PeaceWorks to the WSU PD. (R. 7.) The court rejected the argument that

the permit was a testimonial statement that violated Petitioner's Sixth Amendment confrontation rights. PeaceWorks submitted the request along with a map of the area and a general schedule of events. *Id.* Officer Santos testified that it was the normal practice of the WSU PD to require all organizations to submit event permit requests. *Id.* She stated the WSU PD uses the permits to determine how many officers to have on duty for crowd control at the event and to verify that events are complying with noise control ordinances. *Id.* The WSU PD does not require a full schedule of events from organizations.

Procedural Background

This matter comes before this Court on grant of certiorari to the Wisota Court of Appeals. The Badger County District Court admitted into evidence the Mayday event permit and the testimony using another laboratory analyst's findings. The Wisota Court of Appeals affirmed the district court's decision.

SUMMARY OF THE ARGUMENT

Sir Walter Raleigh's 1603 trial was unfair and a mockery of the English judicial system. The testimony of his accomplice before the trial, without going through the crucible of cross-examination, led to the court sentencing Raleigh to death. Petitioner's confrontation rights were not so unjustly abridged in the present case. The State of Wisota Court of Appeals correctly affirmed the district court's decision to admit into evidence the Mayday event permit and the scientific findings of the non-testifying crime lab analyst. The appellate court appropriately ruled that the non-adversarial event permit was not a testimonial statement for purposes of the Confrontation Clause. The court also appropriately concluded that the testimony of the second analyst was sufficient to satisfy Sixth Amendment rights.

The Sixth Amendment to the United States Constitution guarantees, “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. amend. VI. In *Crawford v. United States*, 541 U.S. 36, 54 (2004), the Supreme Court divided the clause into two important principles. First, only statements that are testimonial in nature will implicate the Confrontation Clause. Second, testimonial statements are admissible only when the declarant is unavailable and the defendant has had a prior opportunity to cross-examine the witness.

The United States Supreme Court has not expressly defined “testimonial” for the purposes of the Confrontation Clause, but has provided some guidelines to determine whether a statement is testimonial. The U.S. Supreme Court held that ex parte in-court statements or extrajudicial statements made in affidavits or depositions are testimonial. The Court also held that a statement is testimonial when the circumstances lead an objective witness to reasonably believe the statement would be used later at trial. Additionally, while statements made during police interrogations are testimonial, such statements are testimonial only when used to establish facts about past events that would be used in later criminal proceedings.

Petitioner claimed that the introduction of the event permit violated his confrontation rights, but failed to show that the permit was testimonial. PeaceWorks submitted the event permit to the WSU PD as a requirement for using the large area on campus for Mayday. Under the circumstances, PeaceWorks had no reason to believe that the permit request would be used at a future trial. Though PeaceWorks submitted the event permit request to police, it is not testimonial because it did not establish any elements of a past crime. Therefore, the event permit request was not a testimonial statement made during police interrogations or as a formal

extrajudicial or ex parte in court statement. The request is more akin to a public or business record, which is exempted from the hearsay exclusions because of its non-testimonial nature.

In *Crawford*, the U.S. Supreme Court held that a witness's testimony against a defendant is inadmissible unless the witness appears at trial, or if the witness is unavailable, the defendant had prior opportunity for cross-examination. This overruled the previous standard for admitting out-of-court testimonial statements, which was that the evidence had the indication of reliability. In one of *Crawford*'s progeny, *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527, 2532 (2009), the U.S. Supreme Court decided sworn affidavits concerning the results of scientific testing were not admissible without providing an opportunity to cross-examine the analyst who performed the tests. The Supreme Court claimed this was a "straightforward" application of its conclusions in *Crawford*. *Id.* at 2533.

However, Petitioner's case raises an issue that the majority in *Melendez-Diaz* left unaddressed: Whether a second analyst, an expert, can testify to the scientific findings of another analyst using both raw data and conclusory reports. *Melendez-Diaz* was a close 5-4 decision, only eliciting a majority with Justice Thomas concurring on the ruling. Several federal and state courts distinguished *Melendez-Diaz*, on the grounds that if there is an expert for the defendant to cross-examine, then the Confrontation Clause is satisfied.

The U.S. Supreme Court stated the ultimate purpose of the Confrontation Clause is to ensure the veracity of testimonial statements through the process of cross-examination. Therefore, an event permit, which is non-adversarial and not testimonial does not implicate the Confrontation Clause. In addition, the right of confrontation is satisfied when a witness, who has adequate knowledge and experience, is available for cross-examination regarding the adversarial testimonial evidence. Petitioner claimed that the introduction of the Mayday event permit and

the crime lab employee's testimony violated his Sixth Amendment confrontation rights, however, the lower courts correctly found that neither piece of evidence violated his rights under the Confrontation Clause. Respondent respectfully urges this Court to uphold the decision of the State of Wisconsin Court of Appeals allowing the evidence to remain.

ARGUMENT

The admission of the event permit and the testimony of Hazel Peters did not violate petitioner's Sixth Amendment confrontation clause rights. The issues in this case are two-fold. The first issue is whether the electronically submitted event permit is testimonial in nature. An electronically submitted event permit containing only unambiguous factual information and generally describing a future event is not a testimonial statement subject to the Confrontation Clause of the Sixth Amendment. The second issue is whether the admission of a crime lab analyst's testimony involving the reports of another crime lab analyst violated Petitioner's Confrontation Clause rights. Analyst Peters testified using informal reports and as an expert witness. Her testimony allowed the defendant to confront the witness presenting testimony against him. This Court reviews alleged Confrontation Clause violations de novo.

I. AN EVENT PERMIT SUBMITTED ELECTRONICALLY TO A UNIVERSITY POLICE DEPARTMENT IS NOT A TESTIMONIAL STATEMENT UNDER THE CONFRONTATION CLAUSE.

The Confrontation Clause bars the admission of accusatory testimonial statements made against a defendant, without giving the defendant an opportunity to cross-examine the witnesses against him or her. *Crawford*, 541 U.S. at 50. Thus, the Confrontation Clause is only concerned with testimonial statements made against the accused that generally consist of "[a] solemn declaration or affirmation made for the purpose of establishing or proving some fact." *Id.* at 51. Concerns often arise when witnesses make accusatory statements to government officials outside

of court, and the witnesses do not appear at trial for cross-examination. *See id.* In these situations, the testimonial nature of these out-of-court hearsay statements makes them inadmissible under the Confrontation Clause. *See id.* at 67.

In *Crawford*, the Supreme Court identified three categories of testimonial statements. The categories are: 1) ex parte in court testimonial statements or pretrial statements reasonably expected to be used during criminal proceedings; 2) formalized extrajudicial statements; and 3) statements which, under the circumstances, would objectively and reasonably be expected to be used in a future criminal proceeding. 541 U.S. at 52. Additionally, the court noted that statements given to law enforcement officers during interrogations might also be testimonial. *Id.*

Petitioner argues that the event permit is a testimonial statement and its admission into evidence violates his rights under the Confrontation Clause. For the purposes of this analysis, the event permit is clearly not an ex parte in court statement or a formalized extrajudicial statement. This analysis will show that under the circumstances, PeaceWorks did not reasonably believe its submission of the event permit would result in it being used in a future criminal trial. Moreover, although PeaceWorks submitted the permit to the WSU PD, the permit is similar to a non-testimonial public record, admissible under the Federal Rules of Evidence because of its routine and non-adversarial nature.

A. PeaceWorks did not submit the event permit under circumstances that would lead it to reasonably believe the permit would be used later at trial.

A variety of circumstances can indicate whether a statement is testimonial. Courts will often look at the context in which a statement is made to determine whether it is testimonial and thus, whether it implicates the Confrontation Clause. In *Crawford*, the Supreme Court held that statements are testimonial when they are “made under circumstances which would lead an objective witness reasonably to believe that the statement would be . . . use[d] at a later trial.”

541 U.S. at 52. Illustratively, when a witness makes a statement during an investigation of a crime or in anticipation of litigation, that situation indicates the statement is testimonial. *See Davis v. Washington*, 547 U.S. 813, 822 (2006); *see also United States v. Bahena-Cardenas*, 411 F.3d 1067, 1075 (9th Cir. 2005).

The submission of the event permit occurred under completely neutral circumstances, unassociated with any criminal investigation. The permit was submitted before any crime or even, the event, had occurred. Under the rationale in *Davis*, the permit could not have described any past events making it testimonial. *See Davis*, 547 U.S. at 822. Therefore, based on the following analysis, the circumstances do not indicate that the permit would reasonably be used at trial.

1. PeaceWorks submitted the permit request in an informal manner to coordinate a future event and obtain the WSU PD's assistance at that event.

The U.S. Supreme Court held that statements made to law enforcement are non-testimonial when the circumstances show that the primary purpose of those statements is to elicit police assistance. *Davis*, 547 U.S. at 822. In *Davis*, the Court focused primarily on the circumstances surrounding a 911 call to find that the statements made in the context of that police interrogation were not testimonial. *See id.* at 823 (finding that 911 operators are law enforcement agents for the purposes of its analysis). Previously, the Supreme Court stated that most statements made in response to law enforcement interrogations are testimonial. *Crawford*, 541 U.S. at 53. In *Crawford*, a wife's formal, tape-recorded statement incriminating her husband during a police interrogation after a stabbing was clearly testimonial. *Id.* at 38, 68.

Unlike the taped interrogation by police officers in *Crawford*, the questioning during the 911 call in *Davis* was made under circumstances which required the assistance of police. *See Davis*, 547 U.S. at 826. As a result, it was necessary for the *Davis* Court to distinguish the

testimonial nature of interrogative statements based on specific circumstances. *See id.* at 822-23. In the context of a 911 call, the Supreme Court held that the statements were not testimonial because the “primary purpose of the interrogation was to enable police assistance [and not] establish or prove past events potentially relevant to later criminal prosecution.” *Id.* at 822.

While the Supreme Court in *Crawford* described statements made to police as primarily investigative and prosecutorial in nature, the Court reasoned that some statements, similar to the event permit at issue here, do not implicate the Confrontation Clause. *Cf. Crawford*, 541 U.S. at 53. PeaceWorks submitted the event permit to the WSU PD long before the Mayday event where Petitioner’s crime took place. Under the rationale articulated in *Davis*, it was impossible for the WSU PD to obtain any information or facts about a past crime. Thus, it is inconceivable that the permit was prepared in anticipation of litigation.

Additionally, Officer Santos used the permit request primarily to enable the WSU PD’s assistance and to determine the number of officers to have on duty for crowd control. The permit request was similar to the 911 call in *Davis*, and although the permit request did not concern an emergency, its primary purpose was to enable the assistance of the WSU PD for the event. The permit is not the type of document produced in an investigatory or prosecutorial setting that would reasonably lead to testimonial evidence. Therefore, PeaceWorks could not reasonably believe that the permit request would be used in a later criminal proceeding.

2. The permit is similar to a warrant of deportation because the WSU PD used it for non-adversarial purposes and not as part of a criminal investigation.

Warrants of deportation offer another set of statements that law enforcement officers record, but are not considered testimonial. The court considers these documents when the government charges a deportee with illegal reentry into the country. The government introduces routinely kept records indicating the date, location, and method in which deportees leave the

country. *See United States v. Cantellano*, 430 F.3d 1142, 1145 (11th Cir. 2005). The Eighth Circuit extended the Supreme Court’s rationale in *Davis* to hold that warrants of deportation are not testimonial because they are produced under objective circumstances for the specific purpose of maintaining routine records concerning deportation. *See United States v. Torres-Villalobos*, 487 F.3d 607, 613 (10th Cir. 2007). In *Torres-Villalobos*, the defendant objected to the government’s introduction of the warrant and argued it was a testimonial statement, which violated his Sixth Amendment right to confrontation. *See id.* at 612.

Several other circuits have found these records to be non-testimonial, because they consist of “a routine, objective, cataloguing of an unambiguous factual matter.” *Bahena-Cardenas*, 411 F.3d at 1075 (9th Cir. 2005). The Eleventh Circuit in *Cantellano* distinguished warrants of deportation from testimonial statements, which are inherently adversarial, accusatory, and “prepared in the shadow of criminal proceedings.” 430 F.3d at 1145. Accordingly, because warrants of deportation are objective documents prepared long before any alleged offense, they lack the adversarial nature of testimonial statements. *Id.* Additionally, courts find these warrants are inherently reliable because their purpose is to meet a legitimate governmental need to accurately document alien activity. *See Bahena-Cardenas*, 411 F.3d at 1075.

PeaceWork’s primary reason for submitting the event permit was to reserve the popular main area on WSU’s campus for the annual Mayday festivities. As stated by Officer Santos, the WSU PD routinely requires every organization that wishes to host an event to submit an event permit request. The factual statements in the permit request were inherently neutral, and included a map of the area, a general schedule, and the planned stage setup. PeaceWorks submitted the information as part of a routine process by which organizations reserve campus

areas for events. There is no accusatory or adversarial character to the permit, and neither PeaceWorks, nor Officer Santos, could anticipate using the permit in a later criminal trial.

The circumstances surrounding the permit's submission closely resemble the routine recording of a warrant of deportation. Indeed, the permit request is less adversarial, because a warrant of deportation is usually the result of an extrajudicial order mandating that an individual leave the country. However, the PeaceWorks created the request under objective circumstances using the standard process the university requires. As a result, the routine and mechanical method in which PeaceWorks submitted the permit shows that it was not testimonial.

3. The permit request was a non-testimonial statement that provided context about the event for the jury.

When evidence only provides context for the jury, there is no “witness against the accused,” and therefore, no Confrontation Clause concerns. *United States v. Tolliver*, 454 F.3d 660, 666 (7th Cir. 2006). The reasoning behind this is that statements only providing background context are not offered to prove the truth of any assertions. *United States v. Spencer*, 592 F.3d 866, 879 (8th Cir. 2010). Instead, such statements are only used to make other evidence more intelligible for the jury and as a result, are not testimonial. *Id.* Both *Tolliver* and *Spencer* address the admissibility of tape-recorded conversations by confidential informants or co-conspirators, and both courts hold that those taped conversations did nothing more than provide background context. *See Tolliver*, 454 F.3d at 666; *see also Spencer*, 592 F.3d at 879. Moreover, in *Spencer*, the court held that surveillance officers could properly testify about the tapes.

Courts admit these recorded statements in an effort to provide context to the jury despite their adversarial character. Based on the testimony offered by Officer Santos, PeaceWorks provided a map and general schedule of events. The included material gave the jury a good

understanding of the circumstances in which the Mayday festival took place. Additionally, the officer in *Spencer* served as an appropriate witness regarding the recordings. 592 F.3d at 879. Therefore, Officer Santos could also comment about the nature and context of the permit. Accordingly, PeaceWorks' event permit under these circumstances served to provide context to the jury about the annual event and thus, was not testimonial.

B. The event permit is better characterized as a business or public record and is not a testimonial statement subject to the Confrontation Clause under Crawford.

The State of Wisconsin Court of Appeals properly found that the event permit was a routine official record similar to the non-testimonial warrant of deportation in *Cantellano*. (R. 13). The Supreme Court in *Crawford* found that most statements covered by the hearsay exceptions such as business or public records are naturally non-testimonial, and therefore, do not implicate the Confrontation Clause. *Crawford*, 541 U.S. at 56. Under Federal Rule of Evidence 803(6), business records are admissible under a hearsay exception if produced in the regular course of a business activity. Fed. R. Evid. 803(6). Similarly, Rule 803(8) provides that public records and reports are admissible if they indicate a public agency's activities or if they show "matters observed pursuant to a duty imposed by law." Fed. R. Evid. 803(8)(A)-(B). While the public records exception excludes matters observed by law enforcement officers in criminal cases, this exclusion only applies when officers create records specifically for use in criminal cases. *See United States v. Mendez*, 514 F.3d 1035, 1044 (10th Cir. 2008).

The Supreme Court has extrapolated on the relationship between business and public records and the Confrontation Clause stating, "[b]usiness and public records are generally admissible absent confrontation . . . because [they are] created for the administration of an entity's affairs and not for . . . proving some fact at trial." *Melendez-Diaz*, 129 S.Ct. at 2540. In determining whether a statement fits the public records exception, courts will often look for the

same characteristics that show whether a statement is testimonial. *See Mendez*, 514 F.3d at 1044 (citing *Crawford*, 541 U.S. at 56 n.7).

1. The event permit is similar to a warrant of deportation, which several courts have held is a non-testimonial public record.

The court in *Mendez* reasoned that the main concerns the Confrontation Clause and *Crawford* protect against do not arise because public records are not prepared in anticipation of litigation. *See Mendez*, 514 F.3d at 1045. Contrary to these findings, the Supreme Court in *Melendez-Diaz* rejected an argument that lab analyst certificates indicating a substance as cocaine were official records. 129 S.Ct. at 2531. Unlike an immigration agent who documents a deportation long before a crime is committed, the evidence in *Melendez-Diaz* consisted of forensic certificates and the analysis of the drugs found after the defendant's arrest. *See id.* Finding instead that the certificates were testimonial, the Court emphasized that analysts prepared the certificates primarily for use against the petitioner at trial, and not as a part of routine administrative process. *See id.* at 2540.

One context in which courts consistently admit public records when law enforcement agents are involved is immigration records. *Torres-Villalobos*, 487 F.3d at 612-13 (noting other circuits that have addressed this issue). In *Mendez*, the Tenth Circuit applied the Supreme Court's reasoning from *Melendez-Diaz* and rejected an objection to the government's introduction of testimony by an Immigration and Customs Enforcement ("ICE") agent about computer database records. *Mendez*, 514 F.3d at 1045. The court found that the ICE database, which consisted of requests by deportees to reenter the country and other immigration records, fell squarely within the public records exception. *See id.* at 1044. Specifically, because the records served primarily administrative and regulatory functions, and were not prepared for

criminal litigation, they fit the public records exception as “matters observed pursuant to a duty imposed by law.” *See id.*; see also Fed. R. Evid. 803(8)(B).

The event permit request was not prepared or submitted in anticipation of litigation. PeaceWorks submitted the request prior to the event and prior to arrest of Petitioner. Accordingly, the only reasonable conclusion is that the event permit was a part of facilitating the WSU PD’s assistance in approving the permit and later patrolling the event. For the same reasons, the public records exclusion does not apply because the permit had nothing to do with future litigation.

Additionally, the submitted event permit closely resembles the computer database immigration records in *Mendez*. Because the permit was an electronically submitted request to reserve the main area on campus, it is similar to an individual’s electronically-documented request to reenter the country after deportation. To fall under the public record exception, it is irrelevant that PeaceWorks made the request, so long as the request was a routine part of the WSU PD’s activities or was observed by the WSU PD pursuant to their duties. The requests serve an administrative function of the WSU PD, as Officer Santos testified that it is normal practice for every organization to submit a permit request.

This Court can also liken the permit in the present case to a warrant of deportation, which several circuits agree is a non-testimonial public records. In *Bahena-Cardenas*, the appellant argued that the government’s use of a warrant of deportation violated his confrontation rights under *Crawford*. 411 F.3d at 1074. The court determined that the warrant was a public record amounting to a “routine, objective cataloging of an unambiguous factual matter.” *Id.* at 1075; *see also Cantellano*, 430 F.3d at 1142 (where the Eleventh Circuit characterized a warrant of deportation as an admissible public record because it is routinely and regularly recorded).

Moreover, the court in *Bahenas-Cardenas* concluded that such documents are inherently reliable because the objective observations recorded by immigration officials serve a legitimate government need in keeping accurate deportation records. *See* 411 F.3d at 1074. Further, the Eighth Circuit held that because warrants of deportation are prepared independent of criminal prosecution, they are non-testimonial public records. *See Torres-Villalobos*, 487 F.3d at 607.

In likening the permit to a warrant of deportation, the Wisota Court of Appeals properly found that the permit lacked the adversarial nature of a testimonial statement because it was prepared long before the petitioner's arrest. (R. 13). Similarly, because the WSU PD clearly had a legitimate government need in obtaining and recording event permit requests, the permit is inherently reliable because it serves the legitimate need of effectively scheduling events.

Without the permit requests, the WSU PD could not safely patrol the events that took place on campus. Moreover, the online forms in which the requests are submitted largely consist of the "routine, objective cataloguing of unambiguous factual matter." *Cf. Bahenas-Cardenas*, 411 F.3d at 1075. Officer Santos testified that the organizations were asked to include as much information as possible, including a general schedule of events, and the use of sound equipment. Because the permit was comprised of these general routine facts, including a map of the event area, it is similar to a public records. Nothing in the record indicates that the permit was adversarial because it was not created with the intention of being used in future litigation. It was clearly informational rather than testimonial.

2. The permit is similar to a non-testimonial business record because it is regularly kept in the WSU PD's regular course of business.

On appeal, the Wisota Court of Appeals compared the event permit to a non-testimonial business record. Under Federal Rule of Evidence 803(6), a document is admissible under this exception if produced in the regular course of an entity's business. Fed. R. Evid. 803(6) This

exception also applies to computer data. *See United States v. Fuji*, 301 F.3d 535, 539 (7th Cir. 2002). To determine whether this exception applies, a record must satisfy four factors. *See United States v. Zapata*, 871 F.2d 616, 625 (7th Cir. 1989). First, the record must be made pursuant to a regularly conducted business activity. *See id.* Second, a source with knowledge about the activity must prepare the record. *See id.* Third, the recording process must be contemporaneous to the event it describes. Fourth, a witness with knowledge about the recording process must provide testimony about the record, unless the witness appears untrustworthy. *See id.*

The event permit meets the first requirement for the same reasons articulated under the public records analysis. The permit meets the second factor because PeaceWorks submitted it prior to the event. Therefore, many of the same adversarial concerns about describing the facts of past crimes for prosecutorial purposes do not apply. The main issues regarding whether the permit was a business record are whether a source with knowledge recorded the permit and whether Officer Santos was a witness who could testify about the permit.

In *Zapata*, the appellant challenged a hotel registration book under the business records exception because guests filled out the registration book and not the hotel employees. *Zapata*, 871 F.2d at 625. The court reasoned that as long as an employee was able to verify the information, the registration book was admissible as a business record. *Id.*; (citing *United States v. Saint Prix*, 672 F.2d 1077, 1084 (2d Cir. 1984) (holding that hotel registration cards completed by guests were admissible if there was corroborating evidence)). The Seventh Circuit also addressed the issue of business records compiled by third parties in *Fuji* when an appellant challenged the admissibility of airline check-in reservation records. 301 F.3d at 539. The appellant in *Fuji* argued that because travel or airline agents recorded the reservations, a manager

with the airline could not properly testify about them at trial. *Id.* at 538-39. The court rejected his argument, found that the manager was a sufficient witness to testify about the records, and thus, the manager did not raise concerns of untrustworthiness. *Id.* at 539.

Under the reasoning in *Zapata* and *Fuji*, Officer Santos could properly testify about the permit's submission. The permit request was an ordinary function of the WSU PD's course of business. Officer Santos had a legitimate interest in making sure the events had proper crowd control, and there would be no logical reason why she would not be a trustworthy witness to question about the permits. Moreover, the fact that PeaceWorks as a third party submitted the request is irrelevant, just as the guest filling out the hotel reservation book in *Zapata* was. As a result, the permit properly falls within the business records exception.

II. AN ANALYST'S TESTIMONY REGARDING ANOTHER ANALYST'S FINDINGS DOES NOT VIOLATE THE CONFRONTATION CLAUSE.

This Court should affirm the decisions of the Badger County District Court and State of Wisconsin Court of Appeals allowing the admission of Hazel Peters' testimony regarding the test results of both substances found at Mayday. The informal documents were not testimonial and thus, did not implicate the Confrontation Clause. Even if the documents were testimonial, Peters' use of them in forming her opinion is permitted. Therefore, Petitioner's Sixth Amendment rights were not violated.

The present case raises at least two issues that were left unaddressed by the majority in *Melendez-Diaz*. The first issue is what definition of testimonial applies to this form of scientific reports. Under the current unsettled state of Supreme Court jurisprudence on this issue, it seems that informal reports should not be considered testimonial. A second analyst is able to testify using the report in addition to the raw data in coming to her own conclusions. The reports prepared by O'Dell were not testimonial. However, even if this court finds they were

testimonial, and thus required a witness to confront, the testimony of Ms. Peters met that requirement.

The second issue is whether a different analyst can testify to the scientific findings of another analyst. The United States Supreme Court granted certiorari on this issue after the New Mexico Supreme Court decided *Bullcoming v. New Mexico*, 147 N.M. 487 (N.M. 2010), *cert. granted*, 79 U.S.L.W. 3194 (U.S. Sept. 28, 2010) (No. 09-10876). In *Bullcoming*, the Court found that because a qualified analyst gave live, in-court testimony, the defendant's right to confrontation was fulfilled. 147 N.M. at 495. Other federal and state courts dealing with these circumstances distinguished *Melendez-Diaz* on grounds that if there is a qualified witness for the defendant to cross-examine, then the confrontation clause is satisfied. *See e.g. New Hampshire v. Dilboy*, 160 N.H. 135, 150-51 (N.H. 2010).

A. The informal reports and raw data were not testimonial.

The initial inquiry for a court addressing this matter is whether the evidence is testimonial. In the instant case, the statements at issue are the reports created by an analyst different from the one who testified in court. Only testimonial statements make a declarant a 'witness' under the Confrontation Clause and requires them to be presented for cross-examination. *See United States v. Turner*, 591 F.3d 928, 932 (7th Cir. 2010). The Supreme Court in *Melendez-Diaz* found that the certificates in the case were testimonial because they were affidavits, which the court defined as "declarations of facts written down and sworn to by the declarant before an officer authorized to administer oaths." 129 S. Ct. at 2532 (quoting Black's Law Dictionary 62 (8th ed. 2004)). The certificates were "incontrovertibly a 'solemn declaration or affirmation made for the purpose of establishing or proving some fact.'" *Melendez* 129 S. Ct. at 2532 (quoting *Crawford*, 541 U.S. at 51).

However, in the case at hand, there is nothing in the record to denote there was the degree of formality in Mr. O’Dell’s report that was present in the *Melendez-Diaz* certificates. There is nothing in the record to indicate that the report was sworn to, or had any features of being akin to an affidavit. Therefore, the report is not testimonial and its use does not implicate Petitioner’s Sixth Amendment rights. Additionally, the physical report was not entered as evidence. The Court in *Bullcoming* found an informal report was testimonial, but the *Bullcoming* report was entered into evidence as Exhibit 1 against the defendant. 147 N.M. at 491.

The reports Ms. Peters used in forming her testimony were not testimonial. The other information she used, the raw data from the machines, is not testimonial because it did not come from an actual person – the machine is making the “statement,” not the person running the tests.

1. The informal reports should not be considered testimonial under current United States Supreme Court jurisprudence.

The reports in Petitioner’s case are not testimonial because there is no evidence to indicate that neither state law nor laboratory protocol required Mr. O’Dell to swear to the contents of the report. There is also nothing in the record to indicate he was aware that the reports might be used as prima facie evidence of the composition of the substance. *See Melendez-Diaz*, 129 S. Ct. at 2532 (pointing out that the affidavits’ evidentiary purpose was reprinted on the affidavits themselves). A Kansas state court found similarly to *Melendez-Diaz* because the report in question was accompanied by a certificate, pursuant to relevant Kansas statutes, that included a sworn statement. *Kansas v. Laturner*, 289 Kan. 727, 733-4 (2006). The court held the certificate was testimonial and consequently gave rise to the rights guaranteed under the Confrontation Clause. *Id.* at 735. However, in that case, no one from the Kansas Bureau of Investigation laboratory provided in-court testimony – the prosecution only offered the report into evidence. *Id.* at 729. Therefore, the situation in *Laturner* is markedly distinguishable

from Petitioner's because the record does not indicate that the formal certificates accompanied Mr. O'Dell's report and an analyst was available to testify.

The plurality in *Melendez-Diaz* was only able to gain five votes for a majority over the dissenters with the concurrence's caveat. Justice Thomas wrote in the concurrence that he adhered to his position that "the confrontation clause is implicated by extra judicial statements only insofar as they are contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions" *Melendez-Diaz*, 129 S. Ct. at 2543 (Thomas, J. concurring) (quoting *White v. Illinois*, 502 U.S. 346, 365 (1992)). Justice Thomas wrote he joined the Court's opinion because the documents at issue in *Melendez* were "quite plainly affidavits." *Melendez*, 129 S. Ct. at 2543 (Thomas, J. concurring).

There is a lack of clarity on the issue of whether informal, extra judicial statements implicate the Confrontation Clause. A California district court noted, "[i]mportantly, Justice Thomas was the fifth vote in the five-to-four decision, meaning that there would be no clear majority if, as in petitioner's case, the offending testimony did not consist of formalized testimonial material." *Larkin v. Yates*, No. CV 09-2034-DSF, 2009 U.S. Dist LEXIS 60106, at *5 (C.D. Cal. July 9, 2009). The *Larkin* court cited *Marks v. United States*, 430 U.S. 188, 193 (1977) which explains that "when a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgment on the narrowest grounds." The narrowest grounds in *Melendez-Diaz* dictate that testimonial statements are those that are contained in formalized materials. The document in question in Petitioner's case is not formal and not "quite plainly an affidavit."

The First Circuit concluded that it was unclear whether Justice Thomas would regard the second analyst's testimony, relying only in part on the first analyst's work, "as amounting to a forbidden introduction of [the first analyst's] own report, even assuming that he regarded the latter as a 'testimonial statement' subject to *Crawford*." *United States v. McGhee*, 627 F.3d 454, 460 (1st Cir. 2010); *see also Dilboy*, 160 N.H. 135 at 151 (holding that Justice Thomas' concurrence underscored the "limited reach" of *Melendez-Diaz*).

The scientific report in *Bullcoming* was not sworn to, but the physical report was admitted into evidence as a means to prove that the defendant had an elevated blood alcohol concentration. 147 N.M. at 494. The court held that the report was functionally identical to live, in-court testimony, but the informal report in Petitioner's case was not entered into evidence and therefore, could not be functionally identical to live, in-court testimony.

There is nothing in the record that indicates that Mr. O'Dell's reports were anything more than mere routine, analytical reports about the data the GC/MS machine produced. There is no indication in the record that Mr. O'Dell swore to them or that there were any indicia of formal testimony. Also, because they were not used as prima facie evidence that connected Petitioner to the larger bag of marijuana, they should not be considered in the same category of material that the *Melendez-Diaz* court disallowed.

2. The raw data Peters used to support her testimony is not testimonial.

The data produced by the machines should not be considered a testimonial statement of the analyst who tested it, but rather not a statement at all. *See United States v. Moon*, 512 F.3d 359, 362 (7th Cir. 2008). In *United States v. Washington*, the defendant argued that the reports of raw data were testimonial statements and thus, the defendant should be able to cross-examine the technicians who processed the samples. 498 F.3d 225, 229 (4th Cir. 2007). The Fourth

Circuit Court of Appeals rejected this argument and held, “the raw data generated by the diagnostic machines are the ‘statements’ of the machines themselves, not their operators. *Id.* at 230. But ‘statements’ made by machines are not out-of-court statements made by declarants that are subject to the confrontation clause.” *Id.* at 230, *see also, Moon*, 512 F.3d at 365.

Additionally, the opinion in *Melendez-Diaz* opinion answered one of the dissent’s arguments regarding calling everyone who might have “laid hands on the evidence.” *Melendez-Diaz*, 129 S. Ct. at 2532 n. 1. The opinion said that it was not necessary to do that, in order to maintain efficiency and in an attempt to clarify the rule handed down in *Melendez*. *Infra, id.* at 2543.

There is little to support the argument that Mr. O’Dell’s report implicates the Confrontation Clause at all because it was not a formal declaration and nothing in the record indicates that the report would have been used as prima facie evidence. Indeed, a majority of the Supreme Court adopted the formalized testimonial materials definition in *Melendez-Diaz*, and because Mr. O’Dell’s report was merely a public record, not an affidavit, it is not testimonial. Also, the results from the laboratory machines, which Peters also used, are not testimonial. However, even if the court considers Mr. O’Dell’s report to be testimonial, the Confrontation Clause is satisfied through the in-court testimony of Ms. Peters.

B. The Confrontation Clause is met with the in-court testimony of an expert.

Assuming, arguendo, that the reports are testimonial, the U.S. Supreme Court held that testimonial statements are admissible only when the declarant is unavailable and the defendant has had a prior opportunity to cross-examine the witness. *See Crawford*, 541 U.S. at 68. However, state and federal courts dealing with cases similar to Petitioner’s are consistent in their application of the rules handed down in *Crawford* and *Melendez-Diaz*. The courts clearly

distinguish the situation in *Melendez-Diaz* from the Petitioner's case to ultimately find the testimony of another analyst is admissible because there is someone, usually an expert, for the defendant to cross-examine. In *Melendez*, the documents were certificates signed and sworn to by the analysts who performed the tests. 129 S. Ct. at 2531. The Supreme Court found these to be "quite plainly affidavits" *Id.* at 2532. The prosecution in *Melendez* did not present any witnesses to testify to the contents of the documents and entered the certificates into evidence to prove the composition of the substance. *Id.* at 2531. However, Peters likely testified as an expert witness, she had knowledge and expertise of the laboratory as well as the machines. Therefore, her use of Mr. O'Dell's report was acceptable in forming her testimony.

One of the concerns of the *Melendez-Diaz* affidavits was that the statements were bare bones. *Id.* at 2537 The defendant did not know what tests were performed, "whether those tests were routine, and whether interpreting their results required the exercise of judgment or the use of skills that the analysts may not have possessed." *Id.* However, in this case, through Peters' live, in-court testimony, the defendant did know what tests were used, that they were fairly routine, and that the machines were working properly when the Mr. O'Dell tested the substances. (R. 9.) The defendant was also able to cross-examine the witness who testified against him with regard to the testing procedure of both substances and in regard to her training and judgment. Peters was the real witness testifying against Petitioner, it was neither the raw data from the machine nor the reports Mr. O'Dell produced.

1. Ms. Peters' use of Mr. O'Dell's report as part of the foundation for her expert testimony is acceptable.

In cases where scientific data is entered into the record with the testimony of an expert witness, as in Petitioner's case, federal and state courts distinguish *Melendez* consistently. The courts find that because there is an expert witness who is using the reports as a basis for the

expert opinion, there is no violation of the Confrontation Clause. Federal Rule of Evidence 703, which the State of Wisconsin has adopted, states that the materials that form the basis of an expert opinion do not need to be admissible, so long as they are reasonably relied upon by experts in the particular field. Fed. R. Evid. 703. The GC/MS and RAPD tests are both accepted by the Wisconsin Courts and are used by crime forensics experts to draw conclusions. One United States district court explained, “while the Supreme Court in *Crawford* and *Melendez-Diaz* altered Confrontation Clause precedent, it said nothing about the Clause’s relation to Federal Rule of Evidence 703.” *United States v. Williams*, No. 09-0026 (PLF), 2010 U.S. Dist LEXIS 110464, at *11 (D.D.C. Oct. 18, 2010) (quoting *United States v. Henry*, 472 F.3d 910, 914 (D.C. Cir. 2007)).

The admissibility of the testimony of an expert who uses testimonial materials as part of the basis of their testimony is determined on a case-by-case basis. *Davis v. Washington*, 547 U.S. 813, 827-30 (2006). An expert witness is a witness qualified as an expert by knowledge, skill, experience, training or education. Fed. R. Evid. 702. Indeed, much of Ms. Peters’ testimony revolved around her expertise and her own conclusions regarding the data she reviewed, it was not akin to the “affidavit-like” certificates of analysis in *Melendez-Diaz*. See *Larkin*, 2009 U.S. Dist LEXIS 60106, at *3. In the *Larkin* case, because the test results “at best, served as a partial basis for the opinion of a testifying expert,” *Melendez-Diaz* was not applicable. *Id.* at *4.

In *United States v. Turner*, a second chemist testified to the results of another chemist’s tests. 591 F.3d at 930. The Seventh Circuit Court of Appeals held that there was not a problem with the testimony that used both raw data and reports produced by another chemist because Federal Rule of Evidence 703 allows experts to rely on facts or data that would otherwise be

inadmissible and the raw data from the machines were not statements and thus, not testimonial. *Id.* at 932. This holding was consistent with the conclusion from a similar case, *United States v. Moon*, 512 F.3d 359, 632 (7th Cir. 2008). In both *Turner* and *Moon*, the court held that the “Sixth Amendment does not demand that a chemist or other testifying expert [do] the lab work himself.” *Turner*, 591 F.3d at 933 (quoting *Moon*, 512 F.3d at 362). The witness in *Turner* referenced the other chemist’s tests and agreed with her conclusions, but the court held this was acceptable not only because he peer reviewed her results in the laboratory, but also because his “testimony unequivocally establishes that his opinion about Exhibits 1, 2, and 3 was his own.” 591 F.3d at 933.

Similarly, Ms. Peters’ testimony referenced Mr. O’Dell’s report, but established that she reached her own conclusions about both tests. (R. 9.) O’Dell’s report served as only a partial basis for Peters’ testimony. Therefore, Petitioner had ample opportunity to cross-examine the witness who was actually testifying against him. The Tenth Circuit held that if an expert discloses inadmissible testimonial statements “on which she based her opinion, the admission of those testimonial statements under Rule 703 typically will not implicate a defendant’s confrontation rights because the statements are not admitted for their substantive truth” *United States v. Pablo*, 625 F.3d 1285, 1292 (10th Cir. 2010).

The Illinois Supreme Court also held that an expert can disclose the facts and data underlying their testimony for the purpose of explaining the basis of his or her opinion. *Illinois v. Williams*, 238 Ill. 2d 125, 143 (2010). The Court continued to say that it is “well established that an expert may testify about the findings and conclusions of a non-testifying expert that he used in forming his opinions.” *Williams*, 238 Ill. 2d at 143. Similarly, the Supreme Judicial Court of Maine held the testimony of a medical expert, rather than the medical expert who

performed the autopsy, to establish the cause of death, the case was distinguishable from *Melendez* and did not violate the Confrontation Clause. *Maine v. Mitchell*, 4 A.3d 478, 490 (Me. 2010).

The First Circuit falls in line with the Fourth and Seventh Circuits. In *McGhee*, 627 F.3d at 459, a second chemist rendered an opinion based on the first chemist's case file and the data contained therein. The court's decision hinged on the fact that the second analyst's testimony did not rest on the first analyst's conclusions alone. *Id.* at 460. The testifying expert worked in the same lab and understood the testing methodologies and protocols used by the first analyst. *Id.* The Eighth Circuit decided a similar case before *Melendez*, but the rationale for admitting the evidence is the same as the courts who decided the issue after *Melendez*. The Eighth Circuit held that a second DNA analyst could testify using the results produced by another analyst because her testimony "concerned her independent conclusion derived from another scientist's test results and did not violate the Confrontation Clause." *United States v. Richardson*, 537 F.3d 951, 960 (8th Cir. 2008).

Even though Ms. Peters mentioned Mr. O'Dell's report, she clearly made her own conclusions as far as the results of both tests. The courts that allow this same kind of testimony mention whether the person giving the testimony is a supervisor or performs a peer review. However, this fact is not the real justification for the court's holding. The actual justification is that the expert did their own independent analysis and was not just a conduit; a backdoor way to get otherwise inadmissible testimony on the record. Ms. Peters made her conclusions and was available for testimony. The factually similar situations in the aforementioned cases and in Petitioner's case are "a far cry from the one in *Melendez-Diaz* where the expert was nowhere to be found" *United States v. Johnson* 587 F.3d 625, 636 (4th Cir. 2009).

2. Peters was not merely a conduit for an out-of-court statement.

Peters' testimony is admissible as an expert provided she is not simply a conduit or parrot for otherwise inadmissible evidence. She was knowledgeable about the testing procedures and had the same basic training as O'Dell and could conduct and analyze both tests. (R. at 9-10).

In *Johnson*, the Fourth Circuit Court of Appeals held an expert's reliance on otherwise inadmissible evidence becomes a problem "where the witness is used as little more than a conduit or transmitter for testimonial hearsay, rather than as a true expert." 587 F.3d at 635. The question is whether the expert is testifying to an independent judgment or merely acting as a transmitter. *Id.* As long as an expert "is applying his training and experience to the sources before him and reaching an independent judgment, there will typically be no *Crawford* problem." *Id.* The court concluded that the resulting opinion from the expert will be an "original product that can be tested through cross-examination." *Id.*

The Tenth Circuit explained, that if an expert "simply parrots" testimonial hearsay, "rather than conveying her own independent judgment that *only incidentally discloses testimonial hearsay* to assist the jury in evaluating her opinion" then the expert is disclosing testimonial hearsay for the fact asserted and is little more than a "backdoor conduit" for testimonial hearsay. *Pablo*, 625 F.3d at 1292 (emphasis added). Even if the testifying witness referenced the documents she used in forming her opinion, her reliance on another scientist's report "went to the weight of her opinion and not its admissibility." *Illinois v. Williams*, 238 Ill. 2d at 143.

The Petitioner was presented with the same kind of opportunity. The record indicates when Ms. Peters testified, she mentioned the report to explain the basis of her opinion that not only was the substance in Petitioner's pocket marijuana, but also that the small amount found in

his pocket matched the larger amount found by the stage. Ms. Peters' expert testimony did not violate Petitioner's Sixth Amendment rights because she testified using her own expertise and the raw data. However, a variety of courts warn several times that the testifying expert cannot "parrot" the opinions of the analyst who actually performed the tests and produced a report. *See e.g., United States v. Mirabal*, No. CR 09-3207 JB, 2010 U.S. Dist LEXIS 91595, at *12 (D.N.M. Aug. 7, 2010); *United States v. Morris*, Civ 02-4175, CR 97-40010, 2010 U.S. Dist LEXIS 53583, at *10 (S.D.S.D Apr. 29, 2010); *Marshall v. Oklahoma*, 232 P.3d 467, 476 (Okla. Crim. App. 2010) (holding that defendant's Confrontation Clause rights were violated when witness repeatedly read from another analyst's report and did not offer his own opinions concerning the findings). The United States District Court for the District of Columbia held that photographs, microscopic slides of bodily tissue in combination with a previous medical examiner's report "might well provide an adequate basis for the formation of an expert opinion." *United States v. Williams*, 2010 at *14.

An Alaska appellate court called the secondary scientist the "real" witness. *Vann v. Alaska*, 229 P.3d 197, 199 (Alaska Ct. App. 2010). The second analyst testified that she interpreted the data read-outs produced by the machine and the conclusions she reached about the significance of the test results were her own. *Id.* at 199. Even though the second analyst said that she concurred with the information in the first analyst's report, the court still held that the in-court testimony did not run afoul of the defendant's Confrontation Clause rights. *Id.* at 210.

Ms. Peters independently analyzed the information and was not merely a conduit for O'Dell's findings and was subjected to cross-examination for trial. Therefore, Ms. Peters' testimony does not violate the Confrontation Clause. The only indication of Mr. O'Dell's testimony was as part of the basis of her expert testimony.

The material Ms. Peters used to support her testimony is not testimonial by itself. The reports produced by Mr. O'Dell were not entered in the record as prima facie evidence of Petitioner's connection to the large bag of marijuana. Ms. Peters only referenced them as part of the basis for her testimony. Additionally, the data from the machines should not be considered testimonial statements. However, even if this Court does consider the reports and data testimonial, Ms. Peters testified using her expertise, using the reports and data as foundations for her testimony. She clearly specified that she came to her own conclusions. Therefore, the admission of Ms. Peters' testimony did not violate Petitioner's confrontation rights.

CONCLUSION

For the foregoing reasons, the State of Wisconsin Court of Appeals did not err in admitting the event permit and Ms. Peters testimony. Accordingly, this Court should affirm the decision to admit both pieces of evidence.

Respectfully Submitted,

/s/ Team 26
Counsel for the Respondent

Appendix A

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury 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 defense.