

The Court subsequently concluded that “little more than the application of our holding in *Crawford v. Washington*” was needed to find that “affidavits reporting the results of forensic analysis which showed that material seized by the police and connected to the defendant was cocaine” were subject to the right of confrontation. The Court found that the analysts were required to testify in person even though state law declared their affidavits “prima facie evidence of the composition, quality, and the net weight of the narcotic . . . analyzed.”²²⁹ Further, where such testimony is required, the prosecution may not use a “surrogate” witness who, although familiar with the mechanics of forensic testing, had not signed the certification or personally performed or observed the performance of the test. Such a surrogate could not speak to concerns about the integrity of testing procedures or to questions about the performance of the certifying analyst.²³⁰ A year after this apparently straightforward holding in *Bullcoming v. New Mexico*, however, the Court’s guidance on trial consideration of forensic reports was clouded by *Williams v. Illinois*.²³¹ In *Williams*, an expert witness (not a surrogate witness from the testing lab) testified that a DNA profile she had prepared from the defendant’s blood matched a DNA profile reported by an outside lab from a swab of a rape victim. A four-Justice plurality held that the expert incorporated the lab’s report in her testimony in a way not intended to prove that the outside lab had in fact tested a swab from a particular rape victim and come up with the defendant’s DNA profile, but rather in a way solely intended to establish a basis for the expert’s opinion that two DNA profiles matched. Four dissenters vigorously asserted the contrary, finding that the outside lab’s report served the purpose of incriminating the defendant directly because it identified the rape victim as the source of the material the lab profiled. The expert’s testimony effectively was used to connect the defendant with a named individual and not just his DNA profile with a DNA sample obtained from some unnamed source. Accordingly, the dissent asserted the Confrontation Clause required that the defendant have an opportunity to examine the lab technicians responsible for the report. The ninth Justice in the case, Justice Thomas, agreed the report was directly incriminating because the expert expressly used it to link her profile of the defendant’s DNA to the rape victim. Nevertheless, Justice Thomas concurred in judgment of the plurality,

²²⁹ *Melendez-Diaz v. Massachusetts*, 557 U.S. ___, No. 07–591, slip op. at 23, 1, 2 (2009).

²³⁰ *Bullcoming v. New Mexico*, 564 U.S. ___, No. 09–10876, slip op. at 12 (2011).

²³¹ 567 U.S. ___, No. 10–8505, slip op. (2012).