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Case Number 520,2018

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAKAI CHAVIS,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 520, 2018
	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

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NATURE AND STAGE OF THE PROCEEDINGS

On January 4, 2017, Dakai Chavis ("Chavis") was arrested in this case, and a New Castle County grand jury subsequently indicted him for trespassing with intent to peer or peep into a window or door of another (four counts), attempted burglary second degree (three counts), burglary second degree (three counts), and theft of a firearm. D.I. 1, 6;[1] A12-17. On February 12, 2018, the State filed a motion *in limine* to admit the results of the DNA report from Bode Cellmark Forensics ("Bode") through the testimony of Sarah Siddons ("Siddons"), a DNA analyst with the lab. D.I. 44. In the motion, the State argued that the report was relevant; the State did not need to call everyone who had touched the DNA samples to meet D.R.E. 901's lenient burden for authentication; Siddons was qualified to provide her expert opinion about the results; and Chavis's rights under the Sixth Amendment's Confrontation Clause would not be violated. A18-38. Chavis responded in opposition to the motion on March 14, 2018, (D.I. 46), and the State filed a reply on March 20, 2018. D.I. 47. On April 13, 2018, the Superior Court granted the motion after a hearing. D.I. 50.

Chavis proceeded to a jury trial in the Superior Court on June 19, 2018. D.I. 66. The State moved to amend one of the indictment's burglary second degree

[1] "D.I.__" refers to item numbers on the Delaware Superior Court Criminal Docket in *State v. Dakai Chavis*, I.D. No. 1701001697. A1-10. This case was consolidated with I.D. Nos. 1701002608 and 1701004379.

counts to charge Chavis with attempted burglary second degree, which the Superior Court granted. B-4a. At the end of the State's case, Chavis moved for a judgment of acquittal on all charges. D.I. 66. The Superior Court denied Chavis's motion, but granted his request for lesser-included-offense instructions of attempted criminal trespass first degree on his attempted burglary second degree charges, and criminal trespass first degree on his burglary second degree charges. D.I. 66; B54-66. On June 22, 2018, the jury found Chavis guilty of one count of burglary second degree and acquitted him of the remaining charges. B67-68. The Superior Court ordered a pre-sentence investigation. D.I. 66. On October 5, 2018, the Superior Court sentenced Chavis to eight years at Level V, suspended after four years for four years at Level IV, suspended, in turn, after six months for two years of probation. Ex. C. to Op. Brf.

On October 9, 2018, Chavis timely filed a Notice of Appeal. Chavis filed his opening brief on February 26, 2019. This is the State's answering brief.

SUMMARY OF THE ARGUMENT

I. Chavis's argument is denied. The Superior Court did not violate the Confrontation Clause or Delaware's chain of custody laws by admitting the DNA test results at trial. Siddons authored the report with the test results, and her statements were largely testimonial. However, the non-testifying technicians involved in preparing the samples during the preliminary testing stages did not make testimonial statements because their work was not accusatory and did not produce data on which Siddons relied. Moreover, many of the lab's processes for generating DNA profiles are automated. Even if this Court concludes that the non-testifying technicians' assistance in generating the DNA profiles was testimonial, there was no violation of the Confrontation Clause. Siddons was not merely a surrogate or conduit for the other technicians because she was intimately involved in generating the DNA profiles. Siddons testified at trial, and the defense extensively cross-examined her. Moreover, the State adequately established the DNA evidence's chain of custody under D.R.E. 901.

II. Chavis's argument is denied. Viewing the evidence in the light most favorable to the State, a rational trier of fact could have found Chavis guilty of burglary second degree.

STATEMENT OF FACTS

Evidence presented at trial established that, in the fall of 2016, New Castle County Police received multiple complaints from tenants at the Harbor Club and Hunter's Crossing apartment complexes in Newark about a "Peeping Tom" and burglaries of ground-floor apartments. A84. An AR15 rifle was stolen during one of the burglaries on October 21, 2016. B-33. Because these crimes occurred late at night, the police installed several trail cameras along the complexes' tree lines to photograph the perpetrator. B5-6. The cameras were positioned to monitor certain apartment buildings in each complex. B6. The cameras could sense motion and would take a photo each second for ten seconds when triggered. A85. New Castle County Police Detective Kevin Mackie, the chief investigating officer, reviewed approximately 40,000 images from the cameras and noticed that a black male with facial hair, camouflage pants, shoes, and a pilot-style jacket appeared in images taken during October 2016 and December 2016. B7-8. The images showed the man peeping into a ground-floor apartment at Hunters Crossing, and the images were taken temporally close to when the police had received complaints of burglaries in the complexes. (B-15, B-16).

Sherette Taylor ("Taylor") was a victim of one of the burglaries.[2] Taylor lived

[2] For brevity, the State only provides further detail about the burglary related to Chavis's conviction.

in a two-bedroom apartment with her children on the ground floor of 61 Fairway Road in Hunter's Crossing. B-22. On the evening of November 11, 2016, Taylor fell asleep in her apartment, but she had trouble sleeping through the night. B-22, B-26a. Around 3 to 4 a.m. the next day, Taylor noticed light shining underneath her ten-year-old daughter's bedroom door, and she assumed that her daughter had fallen asleep while watching television. B-25. When her daughter awoke around 9 to 10 a.m., she told Taylor that someone had raised the blinds in her bedroom window (B-22), which was next to air conditioning units and faced a sidewalk and parking lot. B24-25. Taylor normally kept the apartment's windows closed and its blinds lowered, but when she went to her daughter's bedroom, she saw that the blinds had been raised, the window was open, and the window screen was missing. B22-24. Taylor noticed that items had been knocked over or off the windowsill. B-22. Although Taylor normally left her purse hanging by the front door, she found the purse on the floor. B-23. Nothing had been stolen from the purse. B-26. Taylor called the police. B-23.

Around 10:40 a.m., New Castle County Police Officer Robert Windle responded to Taylor's apartment to investigate the burglary. B-31. Officer Windle spoke to Taylor and called the police's evidence detection unit to process the apartment for physical evidence. B-32. Officer Windle noticed Taylor's purse on the floor and items outside her daughter's bedroom window. B-32. Officer Windle

determined that the window was the burglar's point of entry. B-32. Officer Sweeney-Jones from the evidence detection unit swabbed the exterior of the window for DNA evidence (B-28), and he dusted the window for fingerprints, but did not find any prints. B-29. Police took photos of the apartment (B-28), which showed Taylor's daughter's compact mirror, a back scratcher, and lip balm on the ground outside the window. B-24. Officer Sweeney-Jones obtained fingerprints from some of the items, but the prints were unreadable. B-29.

Detective Mackie developed Chavis as a suspect in the crimes, and he obtained search warrants from the JP Court for Chavis's Newark residence, his vehicle, and a DNA sample from him. B-17. Police executed the search warrants and seized a cell phone and two different styles of camouflage pants from the residence's master bedroom. B-18. In a living room closet, police found a pair of Nike sneakers that appeared to be similar to the ones worn by the perpetrator in the images. B-18. In Chavis's vehicle, police seized gloves and a pilot-style jacket similar to the ones depicted in images from the trail cameras. B-18. Detective Mackie swabbed Chavis's mouth for a DNA sample, which was logged into evidence. B-20. Sergeant Orzechowski mailed the DNA samples to Bode for testing. B36-37. Detective Mackie also obtained a search warrant for the cell phone's contents. B-40. During a forensic examination of the cell phone, police found that someone had watched YouTube videos about AR15 rifles on the same

day that the AR15 rifle was stolen in Hunter's Crossing. B-39. Someone had also viewed a Wikipedia page about AR15 rifles on the cell phone in December 2016. B-39. An analysis of cell tower data showed that the cell phone was temporally and geographically close to the burglaries in Hunter's Crossing on October 21, 2016. B50-52.

At trial, Siddons testified about the results from DNA testing in this case. B41-42. Testing revealed that Chavis's DNA was on the bedroom window of Taylor's apartment (probability of selecting another matching DNA profile from the African-American population was 1 in 26 quintillion). B44-45.

I. ADMISSION OF THE DNA TEST RESULTS DID NOT VIOLATE CHAVIS'S RIGHTS UNDER THE SIXTH AMENDMENT'S CONFRONTATION CLAUSE OR DELAWARE'S CHAIN OF CUSTODY LAWS.

Question Presented

Whether the Superior Court abused its discretion by admitting the DNA test results at trial over Chavis's objections that (1) admission of the test results violated Chavis's rights under the Confrontation Clause of the Sixth Amendment of the United States Constitution, and (2) the State had failed to adequately establish the DNA evidence's chain of custody.

Standard and Scope of Review

This Court reviews a trial court's evidentiary rulings for abuse of discretion.[3] Alleged constitutional violations relating to a trial court's evidentiary rulings are reviewed *de novo*.[4]

Merits

Chavis claims that the Superior Court erred by admitting the DNA test results showing that his DNA matched a sample that the police had found on the bedroom window of Taylor's apartment at 61 Fairway Road. Op. Brf. at 7. Chavis argues that his right under the United States Constitution's Sixth Amendment "to confront

[3] *Fuller v. State*, 860 A.2d 324, 329 (Del. 2004).

[4] *Smith v. State*, 913 A.2d 1197, 1234 (Del. 2006).

witnesses against him required that all the forensic analysts involved in testing the DNA samples in this case testify at Chavis's trial." *Id.* at 8.[5] According to Chavis, the non-testifying technicians "performed more than just administrative or ministerial duties." *Id.* at 13. Rather, they "were required to follow protocols and add chemicals as part of the process" and thus could only testify "as to whether he/she adhered to 'precise protocols.'" *Id.* at 13. Citing D.R.E. 901 and 10 *Del. C.* § 4331, Chavis also alleges that "under Delaware law, [the State] was required to present at trial each 'person who actually touched the substance[.]'" *Id.* at 8. Chavis is incorrect.

Prior to Chavis's trial, the State filed a motion *in limine* to admit the DNA test results through the testimony of Siddons, a DNA analyst with Bode. D.I. 44. The State claimed that the results were relevant; the State did not need to call everyone who had touched the DNA evidence to meet D.R.E. 901's lenient burden for authentication; Siddons was qualified to provide her expert opinion about the results; and Chavis's confrontation rights under the Sixth Amendment would not be violated. A18-38.

[5] To the extent Chavis asserts a violation of the Delaware Constitution, he fails to distinguish how its protections differ from those under the Sixth Amendment under the facts of this case, and thus the claim is waived. *See Ortiz v. State*, 869 A.2d 285, 290 (Del. 2005).

In support of the State's motion, Siddons provided an affidavit, which described the following processes having taken place with the DNA samples sent to Bode for testing: evidence examination, extraction, quantification, amplification, electrophoresis, and the report. A41-46. According to the affidavit, for evidence examination, Alyssa Morris ("Morris"), a Bode employee, received a FedEx package from New Castle County Police on November 22, 2016 that contained the evidence samples collected from Taylor's apartment, which Morris secured in an evidence room that day. A40-41. Thereafter, Joseph Hufnagel provided the samples to Rachel Aponte ("Aponte"), a sampling technician, who took them to one of Bode's labs. A41. In the lab, Aponte cut the swabs lengthwise, placed the pieces into test tubes, and secured the evidence in a room inside the lab. A41. Next, Kelsey Powell ("Powell") and Douglas Ryan ("Ryan") performed the extraction process. A41. Powell retrieved the samples from the evidence room and added chemical reagents to the test tubes to release any DNA, which incubated for an hour. A41, A46. After placing the test tubes onto a centrifuge to separate the liquid from the swabs, Powell discarded the swabs and placed the test tubes into the lab's refrigerator. A42. Ryan retrieved the test tubes and placed them onto a robot that added reagents "to separate the DNA from everything else that was in the tube[s]," and the robot placed the test tubes in a tray that went into a freezer. A42. Subsequently, Siddons retrieved the tray and performed the quantification process

by adding chemicals to the samples, and then placing the tray onto a machine that measured the amount of DNA in each sample; Siddons found that only one sample had sufficient DNA for further testing. A42. Ryan placed the tray on a machine that, in turn, placed any samples back into test tubes. A42. Siddons determined that the sample suitable for further testing required concentration, and she performed this task. A42. Siddons ran the liquid through a filter, which collected the DNA, and the sample was returned to the freezer. A42. Thereafter, Siddons performed the highly automated amplification process by placing the sample into a machine that created millions of copies of the DNA by changing the sample's temperature. A42, A46. Siddons performed electrophoresis, a mostly automated process, on the sample by placing it onto Bode's genetic analyzer machine, which created a DNA profile by exposing the DNA to an electrical field that separated and displayed each DNA's locus. A43, A46. The material resembled a line graph showing the lengths of DNA strands at specific loci. A46. Siddons used software to create the DNA profile, which measured the length of the DNA fragments and determined the corresponding alleles. A46. Siddons recorded the allele values at each loci and completed the report process by entering the DNA profile into a local database. A43.

Siddons' affidavit detailed a similar process for generating the DNA profile from Chavis's reference sample. A43-44. Jesus Aponte, a Bode employee, received a FedEx package from New Castle County Police with the reference sample on

January 16, 2017, and he delivered the package to Morris, who secured the sample in an evidence room. A40, A43. Feng Chen ("Chen"), a sampling technician, retrieved the sample from the evidence room, cut the swabs, and placed the pieces on a tray, which was secured in an evidence room in the lab. A43. Subsequently, Vanessa Sufrin performed the extraction process by adding reagents to the tray, which incubated for an hour. A43. The tray's liquid was transferred to a new tray and placed into a machine to separate the DNA. A43. After quantification, Siddons performed the amplification and electrophoresis processes on the sample, and she entered Chavis's DNA profile into a local database, which produced a match. A43-44. Siddons then reviewed each case file to ensure that standard operating procedures were followed and wrote the DNA report with her conclusions. A44.

After receiving Chavis's response opposing the State's motion *in limine* and the State's reply, the Superior Court held a hearing and granted the State's motion. The Superior Court concluded that "on balance, the testimony of Siddons is the testimony that is testimonial in nature." A82. However, the court did not find that "the functions of the functionaries that prepared the sample were testimonial statements, so [the court does not] think that the right of confrontation is abused by their not giving testimony in this case." A82. The court determined that Chavis's "right to confront and cross-examine is safeguarded by the testimony of his accuser, which is Siddons." A82. Regarding the DNA's chain of custody, the Superior Court

concluded that "[i]t is enough if the State can establish within a reasonable certainty that the evidence is connected to the crime scene and the defendant." A82. The court found that "[f]rom what [the court has] seen, assuming that those officers that first took the evidence testify, the chain is not really a problem here." A82. The court did "not believe that the testimony of the person who separated the DNA from the swab or otherwise acted inside the lab is essential to the chain, on the assumption that ... Siddons testifies pursuant to the proffer made in her affidavit that she is familiar with these processes and procedures, and she can testify and identify who did what." A82.

At trial, Officer Sweeney-Jones testified that he used Bode's DNA collection kit to process the apartment's window for DNA evidence. B-29. Officer Sweeney-Jones removed two cotton swabs from a sealed envelope and used the distilled water from the kit to wet one of the swabs. B28-29. Officer Sweeney-Jones swabbed most of the window's exterior with the wet and dry swabs and placed them into an envelope, which could not be sealed. B-29, B-30. In turn, he placed this envelope into another one that could be sealed. B-29. He wrote on the sealed envelope the time and location of the collection and where he had swabbed for DNA evidence. B-29. Officer Sweeney-Jones transported the envelope to New Castle County Police's headquarters (B-29), where he obtained a log number, wrote the number on the envelope, and deposited the envelope into the police's evidence and supply unit's

mail slot. B-29.

Sergeant Thomas Orzechowski testified that he supervises the New Castle County Police's evidence detection unit and is the police's DNA administrator. B-34. According to Sergeant Orzechowski, the evidence and supply unit normally logs an envelope with DNA evidence into the police's evidence database. B-35. Subsequently, the envelope is given to him, and he decides where to send the evidence for DNA testing. B-35. Sergeant Orzechowski said that he also reviews the police reports to ensure that the sample was obtained correctly. B-37. Sergeant Orzechowski said that he only opens an envelope if the evidence requires processing using a rapid DNA instrument, which did not occur in Chavis's case. B-35. Sergeant Orzechowski confirmed that he received the DNA samples from the burglary and Chavis's reference sample, which he mailed to Bode for testing. B36-37. Sergeant Orzechowski verified that the DNA evidence had been collected correctly. *See* B-37.

Siddons testified consistently with her affidavit and stated that Bode had implemented all standard operating procedures for every technique at the lab. B-42. Siddons stated that Bode is a secure facility where badges must be used to access the building and its various labs. B-42. Siddons said that Bode received two swabs as evidence samples on November 22, 2016 (B-44), which the police had described as "handprint window POE." B-44, B-47. Siddons also confirmed that Bode received

Chavis's reference sample on January 16, 2017. B-44. Bode placed the samples in a secure, temperature-controlled room that few individuals could access. B-44. Siddons testified that a portion of each swab was cut and placed into a test tube, and chemicals were added to release any DNA. B-44. After extraction, Siddons said that millions of copies of the DNA were produced. B-44. Siddons stated that she could only obtain a genetic profile from one of the swabs provided as evidence samples. B-44. Siddons explained that "[s]amples can degrade over time as well if they've been an old sample or if they'd been in a heated room or before the sample was even taken it was out in the rain for a long time." B-44. Siddons said that she could tell if DNA had degraded. B-44. Siddons confirmed that, on December 6, 2016, Aponte received the evidence samples and, on December 12, 2016, cut half of the evidence sample's swab, added a chemical, and placed the piece into a test tube. B47-48. Siddons stated that, on January 27, 2017, Chen received the reference sample and, on January 31, 2017, performed a similar process with the sample. B-48. Siddons said that neither Aponte nor Chen still worked for Bode. B-47. Siddons represented that Aponte and Chen would have worn gloves and face masks while processing the samples and would have used scissors or tweezers to cut the swab, and not their hands. B-48. When asked about potential contamination of the samples, Siddons stated that Bode is "a very ethical lab," and "if something were to have happened where [Aponte and Chen] thought that contamination could have

occurred, they would have reported that event." B-48. Siddons also testified that Bode has "controls at every step of the way to test the reagents that we use to make sure that they are clean." B-48. Siddons said that every procedure at Bode has a negative control, "[s]o we know if there was contamination in that procedure, that we would have a profile in a negative control." B-48. Siddons said that, if contamination had occurred, "[y]ou would [have] expect[ed] to have at least another person, their DNA showing up in the sample." B-49.

Siddons testified about the results from the DNA testing and stated that she obtained "a full single source male profile" from both the evidence sample and Chavis's reference sample. B-45. In concluding that the DNA found on the apartment window matched Chavis's DNA at all 15 genetic locations, Siddons said that she "manually looked at the samples myself to make sure that they were, in fact, a match." B-46. Siddons confirmed that she wrote the DNA report, which was admitted into evidence. B-45. Consistent with Siddons' testimony, the report, dated July 31, 2017, concluded that the DNA profile generated from the handprint on the window matched Chavis's sample (probability of selecting another matching DNA profile from the African-American population was 1 in 26 quintillion). B1-3, B-45. The report recited that "[t]esting performed for this case is in compliance with accredited procedures," and the report included a table with the numerical identifiers of the allele found at corresponding loci of the DNA collected from the window and

Chavis's sample, which showed an exact match. B1-2.

A. Admission of the DNA Test Results Did Not Violate the Confrontation Clause.

Admission of the DNA test results without requiring testimony from each person who had touched the DNA samples and actively participated in the testing did not violate the Sixth Amendment's Confrontation Clause as interpreted by the United States Supreme Court in *Crawford v. Washington*[6] and its progeny. The Sixth Amendment provides a defendant with the constitutional right to confront witnesses against him at trial.[7] In *Crawford*, the United States Supreme Court held that a defendant's confrontation rights are violated where the prosecution introduces evidence of a prior-out-of-court testimonial statement of a witness unless the witness is unavailable and the defendant had a previous opportunity to cross-examine the witness about the statement.[8] The Court also defined "testimony" as "[a] solemn declaration or affirmation made for the purpose of establishing or proving some fact" and identified "[v]arious formulations of this core class of 'testimonial' statements," including:

> [E]x 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

[6] 541 U.S. 36 (2004).

[7] U.S. Const. amend VI.

[8] *Crawford*, 541 U.S. at 38, 50-51.

> prosecutorially, extrajudicial statements … contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions, statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.[9]

Subsequently, the United States Supreme Court clarified the meaning of "testimony" in *Davis v. Washington*.[10] The Court held that "a statement is testimonial if: (1) the circumstances objectively indicate there is no ongoing emergency, and (2) the statement is made in response to an interrogation which has the primary purpose of establishing or proving events relevant to later criminal prosecution."[11]

Since *Crawford*, the United States Supreme Court has examined the scope of the Confrontation Clause in the context of scientific reports. In *Melendez-Diaz v. Massachusetts*, the United States Supreme Court determined that the trial court erred when it admitted into evidence three notarized "certificates of analysis" from the state's forensic lab confirming that the substances tested were cocaine without *any* testimony from the lab's analysts.[12] Relying on *Crawford*, the Court found that the affidavits were testimonial because "[t]he fact in question is that the substance found

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[9] *Id.* at 51-52 (internal citations omitted).

[10] 547 U.S. 813 (2006).

[11] *Milligan v. State*, 116 A.3d at 1237 n.17 (citing *Davis*, 547 U.S. at 822).

[12] *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 307, 311 (2009).

in the possession of Melendez-Diaz and his codefendants was, as the prosecution claimed, cocaine—the precise testimony the analysts would be expected to provide if called at trial."[13] Under applicable state law, "the *sole purpose* of the affidavits was to provide prima facie evidence of the composition, quality, and the net weight of the analyzed substance."[14] The affiants were therefore subject to the defendant's right of confrontation.[15]

In *Milligan v. State*, this Court considered the *Melendez-Diaz* decision and noted that the United States Supreme Court "was also careful, however, to reject the notion that the prosecution must call everyone whose testimony is relevant to establishing the chain of custody, the authenticity of the sample, or the accuracy of the testing device used to perform the analysis."[16] Thus, this Court recognizes, like *Melendez-Diaz*, that, while it is the prosecution's obligation to establish the chain of custody, "this does not mean that everyone who laid hands on the evidence must be called…. [G]aps in the chain [of custody] normally go to the weight of the evidence, rather than its admissibility."[17] "It is up to the prosecution to decide what steps in the chain of custody are so crucial as to require evidence; but what testimony is

[13] *Id.* at 310.

[14] *Id.* at 311 (internal quotation and citation omitted).

[15] *Id.*

[16] *Milligan*, 116 A.3d at 1237.

[17] *Id.* at 1238 (citing *Melendez-Diaz*, 557 U.S. at 311 n.1).

introduced must (if the defendant objects) be introduced live."[18]

In *Bullcoming v. New Mexico*, the United States Supreme Court held that the Confrontation Clause was violated in admitting "a forensic laboratory report containing a testimonial certification—made for the purpose of proving a particular fact—through the in-court testimony of a scientist who did not sign the certification or perform or observe the test reported in the certification."[19] *Bullcoming* involved a driving while intoxicated charge where the prosecution sought to introduce a blood-alcohol concentration ("BAC") report at trial showing that Bullcoming's BAC was above the legal limit.[20] Because the analyst who had signed the report was unavailable to testify, the state called a different analyst from the lab as a witness.[21] The Court held that the analyst's "surrogate testimony" did not satisfy the Confrontation Clause, and, with limited exception, the "accused's right is to be confronted with the analyst who made the certification."[22] In her concurring opinion, Justice Sotomayor noted that the Court's ruling was narrow and reiterated that not everyone listed on the BAC report must testify.[23]

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[18] *Melendez-Diaz*, 557 U.S. at 311 n.1.

[19] *Bullcoming v. New Mexico*, 564 U.S. 647, 652 (2011).

[20] *Id.* at 653, 655.

[21] *Id.* at 655.

[22] *Id.* at 652.

[23] *Id.* at 668, 670 n.2.

Subsequently, in *Williams v. Illinois*,[24] the United States Supreme Court, in a "less than clear"[25] decision, examined the scope of the Confrontation Clause in the context of DNA testing. In a plurality opinion, the *Williams* Court affirmed the defendant's convictions.[26] Williams was convicted of rape following a bench trial.[27] The victim identified Williams as her rapist in court.[28] At trial, the prosecution called an expert from the state police's crime lab who testified that the DNA profile generated by Cellmark from the victim's vaginal swab matched Williams' DNA profile produced by the state police's crime lab from an earlier arrest.[29] Because the DNA report was not admitted into evidence, the report's notation that the DNA profile came from the victim's vaginal swab was not a fact admitted into evidence.[30] The Court determined that Williams' Sixth Amendment right of confrontation had not been violated by admitting the expert's testimony.[31] The Court's plurality opinion noted that Williams' case was a bench trial; the Cellmark report about the victim's DNA profile had not been admitted into evidence; and Williams was not a

[24] 567 U.S. 50 (2012).

[25] *Martin v. State*, 60 A.3d 1100, 1104 (Del. 2013).

[26] *Williams*, 567 U.S. at 86.

[27] *Id.* at 56.

[28] *Id.* at 60.

[29] *Id.* at 59, 62-63.

[30] *Id.* at 72.

[31] *Id.* at 79.

suspect at the time of the report.[32] The plurality concluded that the Confrontation Clause would not have been violated even if the Cellmark report had been admitted into evidence.[33] The plurality noted that "[w]hen lab technicians are asked to work on the production of a DNA profile, they often have no idea what the consequences of their work will be," and "[t]he technicians who prepare a DNA profile generally have no way of knowing whether it will turn out to be incriminating or exonerating—or both."[34] The plurality found it commonplace for labs to use multiple technicians to work on a DNA profile, and "it is likely that the sole purpose of each technician is simply to perform his or her task in accordance with accepted procedures."[35] The plurality concluded that "the knowledge that defects in a DNA profile may often be detected from the profile itself provides a further safeguard."[36] The plurality determined that "[i]f DNA profiles could not be introduced without calling the technicians who participated in the preparation of the profile, economic pressures would encourage prosecutors to forgo DNA testing and rely instead on older forms of evidence, such as eyewitness identification, that are less reliable."[37]

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[32] *Id.* at 71-73, 77.

[33] *Id.* at 81-82.

[34] *Id.* at 85.

[35] *Id.*

[36] *Id.*

[37] *Id.* at 58.

In *Williams*, Justice Breyer wrote separately and concluded that he "would consider reports such as the DNA report before us presumptively to lie outside the perimeter of the [Confrontation] Clause as established by the Court's precedents."[38] Specifically, Justice Breyer stated:

> Cellmark's DNA report embodies technical or professional data, observations, and judgments; the employees who contributed to the report's findings were professional analysts working on technical matters at a certified laboratory; and the employees operated behind a veil of ignorance that likely prevented them from knowing the identity of the defendant in this case. Statements of this kind fall within a hearsay exception that has constituted an important part of the law of evidence for decades. And for somewhat similar reasons, I believe that such statements also presumptively fall outside the category of 'testimonial' statements that the Confrontation Clause makes inadmissible.[39]

While this Court has not directly addressed Chavis's specific claim, the Court has regularly addressed the issues of a defendant's Sixth Amendment confrontation rights. In *Martin v. State*, the Court held that the Superior Court erred in admitting a BAC report through the testimony of the lab's supervisor who had certified the report but had not performed or observed the actual testing.[40] Based on *Bullcoming*'s holding that "[a] document created solely for an 'evidentiary purpose' … made in aid of a police investigation" is testimonial, the Court determined that the laboratory

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[38] *Id.* at 99.

[39] *Id.* at 93-94 (internal citations omitted).

[40] *Martin*, 60 A.3d at 1101-02.

supervisor's representations and conclusions in the report were testimonial.[41] The supervisor's "report and testimony essentially conclude[d] that [the testing analyst's] test proved Martin's blood contained [drugs]."[42] Similar to *Bullcoming*, the supervisor had only reviewed the data, and "the defendant had a right guaranteed by the Sixth Amendment to confront the analyst who performed the test in order to determine her proficiency, care, and veracity."[43]

Subsequently, in *Milligan*, the Court held that admission of the Delaware State Police Crime Lab's blood test results at Milligan's DUI trial did not violate the Confrontation Clause.[44] The Court rejected Milligan's claim that everyone who had "'laid hands' on the evidence need[ed to] testify to satisfy the Confrontation Clause."[45] Relying on *Melendez-Diaz*, the Court noted that "not every individual who may have relevant testimony for the purpose of establishing chain of custody must appear in person."[46] Because the testing and certifying analyst had testified and was subject to cross-examination, Milligan's right of confrontation was

[41] *Id.* at 1107-08 (citing *Bullcoming*, 564 U.S. at 664).

[42] *Id.* at 1108.

[43] *Id.* at 1109.

[44] *Milligan*, 116 A.3d 1232, 1239-41 (Del. 2015).

[45] *Id.* at 1240.

[46] *Id.* at 1239 (citing *Melendez-Diaz*, 557 U.S. at 311 n.1).

protected.[47]

In addition, other jurisdictions have concluded that introduction of computer-generated data used to create a DNA profile is non-testimonial and does not violate the Confrontation Clause.[48] In *Summers*, the Fourth Circuit analyzed United States Supreme Court precedent in ruling that the Confrontation Clause was not violated when the trial court allowed an expert to testify about his conclusions from DNA testing where the expert, in turn, had relied on results from subordinate analysts who had not testified.[49] In this decision, the police had recovered a jacket worn by Summers, which was sent to the FBI's lab for DNA testing.[50] At trial, the government called the FBI's unit analyst who had supervised the subordinate analysts in conducting the DNA testing.[51] The analyst compared the DNA profiles obtained from the jacket and Summers' sample, and he wrote a report concluding

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[47] *Id.* at 1241.

[48] *See United States v. Summers*, 666 F.3d 192, 202 (4th Cir. 2011), *cert. denied*, 568 U.S. 851 (2012); *Parades v. State*, 462 S.W.3d 510, 519 (Tex. Ct. Crim. App. 2015) (analyst "used non-testimonial information—computer-generated DNA data—to form an independent, testimonial opinion"); *Derr v. State*, 73 A.3d 254, 272-73 (Md. 2013) (DNA test results not sufficiently formalized and non-testimonial where "results of the biological material … admitted as evidence display a series of numbers and lines" and "[n]o statements, however, appear anywhere on the results attesting to their accuracy or that the analysts who prepared them followed any prescribed procedures").

[49] *Summers*, 666 F.3d at 202-04.

[50] *Id.* at 195-96.

[51] *Id.* at 196.

that Summers was the major contributor of the DNA on the jacket.[52] The report also contained "a table juxtaposing the numerical identifiers of the allele found at corresponding loci of the DNA extracted from the jacket and the buccal swabs, revealing an exact match."[53] The jury convicted Summers of drug trafficking and firearms offenses, and Summers appealed.[54] "Against the backdrop of *Crawford* and the subsequent authorities applying it," the Fourth Circuit determined whether the Confrontation Clause required testimony from the subordinate analysts at trial.[55] In determining that the Confrontation Clause did not require their testimony, the Fourth Circuit concluded that "[t]he numerical identifiers of the DNA allele here, insofar as they are nothing more than raw data produced by a machine," are non-testimonial.[56] The court determined that "[t]he Supreme Court's decisions in *Melendez–Diaz* and *Bullcoming* [did] not compel a different result" because the certificates of analysis in *Melendez-Diaz* had "considerably more than raw data," and *Bullcoming* was "patently not … a case contesting the Sixth Amendment implications of machine-generated results."[57] The Fourth Circuit concluded that the unit analyst's statement

[52] *Id.*

[53] *Id.*

[54] *Id.* at 196-97.

[55] *Id.* at 197-204.

[56] *Id.* at 202.

[57] *Id.* at 202-03.

on the ultimate issue that Summers was the DNA's major contributor was her statement alone, "not that of the analysts, and was in any event merely duplicative of his permissible trial testimony."[58] Although the Fourth Circuit recognized the value of cross-examining technicians about following lab protocols, the court concluded that "we must temper our agreement with the practical observation that a serious challenge to processing defects is likely to arise only infrequently."[59]

Here, as the Superior Court properly determined, Siddons' work was largely testimonial, but the assistance provided by the non-testifying technicians in preparing the samples during the preliminary testing stages was not. Chavis had been arrested by the time Siddons authored her July 2017 lab report. Siddons' report documented her comparison of DNA profiles in a pending criminal case and linked Chavis to the burglary by concluding that Chavis's DNA was present at the scene of the crime, a fact at issue. Besides the report process, Siddons solely performed the amplification and electrophoresis processes to obtain the DNA profiles from the samples. The non-testifying technicians' work was not accusatory and did not produce data on which Siddons relied. Moreover, many of Bode's processes for generating DNA profiles are automated.

Even if this Court determines that the assistance provided by the non-

[58] *Id.* at 203.

[59] *Id.* at 203-04.

testifying technicians was testimonial, the Superior Court did not violate Chavis's right of confrontation.[60] Other jurisdictions have concluded that not every person involved in testing DNA must testify to satisfy the Confrontation Clause. For instance, in *State v. Lopez*, the Rhode Island Supreme Court found that the Confrontation Clause was not violated where a supervisor from Cellmark testified about the results from DNA testing that he had directed subordinate analysts to perform on DNA evidence from a kitchen knife at a homicide scene, clothing, the victim's blood sample, and the defendant's DNA sample.[61] The supervisor said that "he did not personally observe the analysts who conducted the cutting, extraction, or quantification, nor did he perform those steps."[62] The supervisor admitted that he had "never physically touched the evidence in this case."[63] After reviewing the processes used to generate the allele table from the DNA, the Court could not "say that the allele table in this case was not the result of an individual's specialized and calculated interpretation and analysis" and therefore concluded that "the numerical identifiers in the allele table constituted testimonial statements that are subject to the

[60] This Court may affirm the Superior Court's judgment on alternative reasoning. *See Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995).

[61] *State v. Lopez*, 45 A.3d 1, 8, 11, 13, 20 (R.I. 2012).

[62] *Id.* at 10.

[63] *Id.*

dictates of the Confrontation Clause."[64] Because the "the numerical identifiers in the allele table were the product solely of [the supervisor's] expertise and independent analysis of the graphical raw data," the Court concluded that "the requirements of the Confrontation Clause were satisfied by defendant's ample opportunity to cross-examine [the supervisor]."[65]

Here, Siddons' testimony adequately protected Chavis's rights under the Confrontation Clause. Siddons was not merely a surrogate or conduit for other

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[64] *Id.* at 19.

[65] *Id.* at 20. *See also People v. John*, 52 N.E.3d 1114, 1127-28 (N.Y. Ct. App. 2016) (although finding the defendant's right of confrontation violated, rejecting the "need for a horde of analysts" to testify where generating a DNA profile is testimonial and, instead, determining that "an analyst who witnessed, performed or supervised the generation of defendant's DNA profile, or who used his or her independent analysis on the raw data, as opposed to a testifying analyst functioning as a conduit for the conclusions of others, must be available to testify") (citing *State v. Roach*, 95 A.3d 683, 695-99 (N.J. 2014) (no violation of Confrontation Clause where independent reviewer "who is trained in the testing and is knowledgeable about the laboratory's processes and protocols, testifies based on his or her independent review of raw data"); *Speers v. State*, 999 N.E.2d 850, 852-53, 855 (Ind. 2013) (right of confrontation not violated where technician who removed the sample for later testing did not testify but analyst who conducted the DNA testing and wrote the report did testify); *State v. Medicine Eagle*, 835 N.W.2d 886, 898-99 (S.D. 2013) (no Confrontation Clause violation where each technician involved in the lab's team approach to DNA testing did not testify, as the testifying analyst was involved in the testing's various steps and "only testified about *her own conclusions* from … testing and the statistical calculations *she performed*"); *State v. Gomez*, 244 P.3d 1163, 1167-68 (Ariz. 2010) (finding compelling the conclusions from "other jurisdictions … that DNA profiles may be admitted at trial when the laboratory technicians who handled the samples and obtained the machine-generated data do not testify, as long as someone familiar with the profiles and laboratory procedures is subject to cross-examination").

analysts. Siddons was intimately involved in generating the DNA profiles, and she testified about the methods she used to reach the conclusions in her report. Siddons also demonstrated extensive knowledge about the precautions the other technicians took to prevent the samples from being contaminated, and the defense extensively cross-examined her. The DNA profiles would have reflected any errors committed during the DNA testing's preliminary stages, and nothing in the record demonstrates that this occurred. Therefore, the Superior Court did not violate Chavis's rights under the Confrontation Clause by admitting the DNA test results through Siddons' testimony.

B. The State Adequately Established the DNA Evidence's Chain of Custody.

Chavis also argues that the State did not properly authenticate the DNA evidence in his case because it did not present testimony from the analysts who had touched and actively participated in testing the DNA samples as required under D.R.E. 901 and 10 *Del. C.* § 4331. Chavis's claims have no merit.

This Court has explained that the "decision of whether to admit evidence, in particular circumstances, is within the trial judge's discretion," and "[t]he exercise of judicial discretion in making evidentiary rulings often centers around authentication or identification."[66] Under D.R.E. 901(a), the party offering an item

[66] *Tricoche v. State*, 525 A.2d 151, 152 (Del. 1987).

for evidence at trial is required to present other "evidence sufficient to support a finding that the item is what the proponent claims." The State may authenticate an item that it claims was involved with a crime in two ways. "It may have witnesses visually identify the item as that which was actually involved with the crime, or it may establish a 'chain of custody,' which indirectly establishes the identity and integrity of the evidence by tracing its continuous whereabouts."[67] This Court has also explained that, "[i]n *Whitfield* [*v. State*], we held that the relevant factors in a chain of custody analysis included 'the nature of the article, the circumstances surrounding its preservation in custody, and the likelihood of intermeddlers having tampered with it' ... The State was required to eliminate possibilities of misidentification and adulteration, not absolutely, but as a matter of reasonable probability."[68] This Court has never required "the State to produce evidence as to every link in the chain of custody."[69] "Rather, the State must simply demonstrate an orderly process from which the trier of fact can conclude that it is improbable that the original item had been tampered with or exchanged."[70] By way of illustration, D.R.E. 901 provides that "[t]estimony of a witness with knowledge" that "an item is

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[67] *Id.* (citing *United States v. Zink*, 612 F.2d 511, 514 (10th Cir. 1980) (additional citations omitted)).

[68] *Id.* at 153 (quoting *Whitfield v. State*, 524 A.2d 13, 16 (Del. 1987)).

[69] *Demby v. State*, 695 A.2d 1127, 1131 (Del. 1997).

[70] *Id.*

what it is claimed to be" is sufficient.[71] The illustrations also provide that "appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances" provides sufficient authentication.[72]

Here, the State authenticated the DNA evidence through testimony demonstrating that the DNA profile developed from Taylor's apartment's window matched Chavis's profile. The State established the authenticity of the profiles through testimony from Officer Sweeney-Jones, Sergeant Orzechowski, Detective Mackie, and Siddons. Officer Sweeney Jones processed the window for DNA evidence and provided the envelope with the DNA samples to the police's evidence and supply unit. B28-29. After the evidence and supply unit logged the samples into evidence, Sergeant Orzechowski received the samples and verified that Officer Sweeney-Jones had collected them correctly. B-37. Detective Mackie collected the DNA sample from Chavis and placed the sample into evidence. B-20. Siddons had first-hand knowledge of Bode's procedures for receiving, storing, maintaining, and testing the DNA samples, and she manually verified the local database's conclusion of a match. B-46. Siddons' testimony about the probabilities of finding another matching DNA profile also demonstrated DNA's distinctive characteristics, and

[71] D.R.E. 901(b)(1).

[72] D.R.E. 901(b)(4).

Siddons testified about the unique identification numbers assigned to the samples. B-44, B46-48). The State sufficiently established the identities of those who had handled the DNA evidence, and nothing in the record suggested tampering. Any minor discrepancies in the chain of custody went to the weight, not admissibility of the evidence, which Chavis could have explored on cross-examination.[73] Testimony from the other Bode technicians was not necessary to establish the DNA evidence's chain of custody.

Chavis's reliance on 10 *Del. C.* §4331, *McNally v. State*,[74] and *Milligan* is misplaced. Section 4331 specifically addresses the chain of custody "[i]n the context of controlled dangerous substances,"[75] and Chavis provides no authority that truly supports expanding this statute to DNA testing. *McNally* does not aid Chavis because it is factually inapposite as involving the defense's request for the lab employee who had handled gunshot residue samples to testify at trial.[76] In any case, *McNally* concluded that the employee's testimony was not necessary to establish the chain of custody for admitting the gunshot residue test results.[77] Nor does *Milligan* lend support to Chavis because it involved 21 *Del. C.* § 4177(h)—a statute specific

[73] *Demby*, 695 A.2d at 1134.

[74] 980 A.2d 364 (Del. 2009).

[75] 10 *Del. C.* § 4331.

[76] *McNally*, 980 A.2d at 371.

[77] *See id.* at 371-72.

to the charge of DUI and that expressly incorporates § 4331's chain of custody requirements.[78] Accordingly, the Superior Court did not abuse its discretion in admitting the DNA test results in Chavis's case.

[78] *See Milligan*, 116 A.3d at 1235-36, 1239-41.

II. THERE WAS SUFFICIENT EVIDENCE TO CONVICT CHAVIS OF BURGLARY SECOND DEGREE.

Question Presented

Whether the State presented sufficient evidence for a rational trier of fact, viewing the evidence in the light most favorable to the State, to convict Chavis of burglary second degree.

Standard and Scope of Review

This Court reviews *de novo* a trial judge's denial of a motion for judgment of acquittal to determine whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt of all the elements of the crime.[79] This Court does not distinguish between direct and circumstantial evidence in this inquiry.[80]

Merits

At the close of the State's case, Chavis moved for a judgment of acquittal,[81] arguing that the evidence was insufficient to convict him of burglary second degree related to Taylor's apartment at 61 Fairway Road. A112. Citing *Monroe v. State*,[82] Chavis argued that "nothing was taken" and "the only thing we really have is some

[79] *Lum v. State*, 101 A.3d 970, 971 (Del. 2014).

[80] *Id*.

[81] *See* Super. Ct. Crim. R. 29(a).

[82] 652 A.2d 560 (Del. 1995).

DNA on the exterior of the window." A112. The Superior Court determined that the State had met its burden and denied the motion. A113.

On appeal, Chavis contends that the evidence was insufficient to convict him because "[t]he State presented no evidence that Chavis ever entered the apartment at 61 Fairway Road" or that "Chavis was even present when the burglary at issue was committed." Op. Brf. at 20. Chavis claims that the Superior Court "refused to follow the principle in *Monroe* that when the State relies solely on forensic evidence (such as fingerprints or DNA) to establish identification, the State must also demonstrate that the evidence could have only been left at the time the crime occurred." *Id.* According to Chavis, the apartment's bedroom window was "relatively accessible to the public as it faced the sidewalk and parking lot." *Id.* at 23. Chavis complains that the "police did not dust the screen for prints or swab it for DNA;" "there was no evidence that the DNA sample was found where it would be expected to be left by someone who had opened the window;" "no fingerprints or DNA were found inside the apartment;" and nothing had been taken from Taylor's purse in the apartment. *Id.* at 23-24. Chavis's claims are meritless.

This Court's inquiry is whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have concluded that the charges of burglary second degree were proven beyond a reasonable doubt.[83] This Court

[83] *Lum*, 101 A.3d at 971.

defers to the factfinder's determinations of witness credibility, the resolution of any conflicting testimony, and rational inferences drawn from proven facts.[84] As such, this Court "will not substitute [its] judgment for the fact finder's assessments in these areas."[85] "Direct evidence is not necessary to establish guilt; circumstantial evidence is sufficient."[86]

To convict Chavis of burglary second degree, the State had to prove "beyond a reasonable doubt that [he] knowingly entered or remained unlawfully in a dwelling 'with intent to commit a crime therein.'"[87] The State presented sufficient evidence for a rational trier of fact to infer that Chavis had knowingly entered Taylor's apartment intending to steal from her.[88] Testimony from Officer Sweeney-Jones, who processed the apartment's window, and Siddons, who analyzed the DNA profiles, showed that Chavis left his DNA from his handprint on the window. Based

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[84] *Newman v. State*, 942 A.2d 588, 595 (Del. 2008); *Poon v. State*, 880 A.2d 236, 238 (Del. 2005).

[85] *Poon*, 880 A.2d at 238.

[86] *Wright v. State*, 2001 WL 433456, at *3 (Del. Apr. 25, 2001) (citing *Seward v. State*, 723 A.2d 365, 370 (Del. 1999)) (holding evidence that defendant committed burglaries or attempted burglaries sufficient despite absence of his fingerprints inside burglarized homes); *Booker v. State*, 2017 WL 3014360, at *4 (Del. Jul. 14, 2017) (holding circumstantial evidence sufficient to prove defendant committed burglary).

[87] *Brown v. State*, 2014 WL 7010810, at *3 (Del. Dec. 1, 2014) (quoting 11 *Del. C.* § 825(a)(1)).

[88] 11 *Del. C.* § 307(a)-(b).

on Taylor's testimony, a rational juror could have concluded that Chavis had removed the screen in the window, opened the window, and raised the blinds to enter the apartment. A juror could have also reasonably inferred that Chavis entered the apartment based on the items found outside the window, and Taylor's purse having been removed from the hook and left on the floor; these facts also evidenced Chavis's intent to steal from Taylor.[89]

A rational juror could have also concluded that Chavis left his DNA on the window while committing the burglary. Taylor testified that she normally kept the apartment's windows closed and its blinds lowered but, around the time of the burglary, noticed that her daughter's bedroom window was open and the blinds had been raised. B-22, B-24. Taylor also saw that the window screen was missing. B-22, B-24. A rational juror could have also inferred that the burglary was in progress when Taylor saw light underneath her daughter's bedroom door. *See* B-25. While the window faced a sidewalk and parking lot (B-25), the window was next to air conditioning units. B-24. A rational juror could have inferred that the DNA was left in an area where individuals would not normally congregate. *See* B-24. Siddons also testified that DNA can degrade due to age, heat, or rain (*see* B-44), but she did

[89] *See Warren v. State*, 774 A.2d 246, 257 (Del. 2001) (although no direct evidence that burglar had removed property from an apartment, the Court found that the jury could infer that a garbage bag found near electronic equipment and the fact that the equipment had been disturbed provided circumstantial evidence that Warren intended to steal from the apartment).

not indicate that the DNA evidence had degraded in this case. Based on Siddons' testimony, a juror could have rationally concluded that the DNA on the window was left during the burglary. When viewed in the light most favorable to the State, the evidence was sufficient for the Superior Court jury to have found the essential elements of burglary second degree proved beyond a reasonable doubt.

Chavis's reliance on *Monroe* is misplaced. In *Monroe*, the Court found that the evidence was insufficient to convict Monroe of burglary third degree where the only evidence linking Monroe to the crimes consisted of his fingerprints on plexiglass from the appliance store's shattered front door.[90] None of the State's witnesses could confirm whether any shards with Monroe's fingerprints were from inside the store.[91] The Court also found that the plexiglass pieces came from a door that the public could generally access, and "[t]here was no evidence that Monroe's prints were placed on the glass at the time the door was shattered to gain entry."[92]

Monroe does not aid Chavis. As opposed to a commercial facility, Chavis's DNA was found on a residence. A rational juror could have inferred that the DNA was in an unusual location that the public would not normally access. In *State v. Bell*, the Superior Court noted that "[t]he *Monroe* Court specifically limited its

[90] *Monroe*, 652 A.2d at 562, 566-67.

[91] *Id.* at 566.

[92] *Id.*

holding to the facts before it."[93] In *Bell*, the Superior Court denied the defendant's renewed motion for a judgment of acquittal on burglary and related charges.[94] The Superior Court distinguished *Monroe* by noting that Bell's fingerprints were found on the exterior screen of a damaged window at a private residence;[95] this Court affirmed the Superior Court's judgment on appeal.[96] Unlike *Monroe*, there is not a "range of abundant, innocent explanations for the presence of [Chavis's DNA] … too vast for 'any rational trier of fact' to have found beyond a reasonable doubt" that Chavis was the burglar.[97] Therefore, the Superior Court did not err because the evidence sufficiently sustains Chavis's convictions.

[93] *State v. Bell*, 1997 WL 524058, at *4 (Del. Super. Ct. May 8, 1997).

[94] *Id.* at *1.

[95] *Id.* at *4.

[96] *Bell v. State*, 1997 WL 788735, at *1 (Del. Dec. 18, 1997).

[97] *Monroe*, 652 A.2d at 567.

CONCLUSION

The State respectfully requests that this Court affirm the judgment below for the foregoing reasons.

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Dated: April 4, 2019

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAKAI CHAVIS,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 520, 2018
	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word 2016.

2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 8,931 words, which were counted by Microsoft Word 2016.

Dated: April 4, 2019 /s/ *Brian L. Arban*