



POST-MELENDEZ-DIAZ CASE LAW DECISIONS **APPLICABLE TO FORENSIC SCIENCE**

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OPINIONS AFFIRMING CONVICTION AFTER MELENDEZ-DIAZ **(Current as of April 1, 2011)**

I. Rule 703 or Common Law 703 Analysis: Non-testimonial Use of Testimonial Statements

State Courts:

Arizona v. Gomez, 2010 WL 5173627 (Ariz. 2010)

Vann v. Alaska, 229 P.3d 197 (Alaska Ct. App. 2010)

People v. Jones, 2010 WL 5264006 (Cal. Ct. App. 4th Dist, Div. 2, 2010)

People v. Rudderschmidt, 2009 WL 1506333 (Cal. Ct. App. 2d Dist, Div. 5, 2009)

California v. Vasquez, 2011 WL 228045 (Cal. Ct. App. 2011) (703 as 1 basis for admissibility)

Rector v. Georgia, 681 S.E.2d 157 (Ga. 2009)

Reddick v. Georgia, 679 S.E.2d 380 (Ga. Ct. App. 2009)

Carter v. Georgia, 677 S.E.2d 792 (Ga. Ct. App. 2009)

Carolina v. Georgia, 690 S.E.2d 435 (Ga. Ct. App. 2010)

Illinois v. Lovejoy, 919 N.E.2d 843 (Ill. 2009)

Illinois v. Johnson, 2010 WL 5175506 (Ill. Ct. App. 2010)

Illinois v. Williams, 2010 WL 2780344 (Ill. 2010)

Illinois v. Johnson, 2010 WL 5113922 (Ill. Ct. App. 2010)

Indiana v. Pendergrass, 913 N.E.2d 703 (Ind. 2009)

Massachusetts v. Barbosa, 933 N.E.2d 93 (Mass. 2010)

New Hampshire v. Dilboy, 999 A.2d 1092 (N.H. 2010)

North Carolina v. Starling, 699 S.E.2d 141 (N.C. Ct. App. 2010)

North Carolina v. Hough, 690 S.E.2d 285 (N.C. Ct. App. 2010)

North Carolina v. Patton, 2010 WL 5421432 (N.C. Ct. App. 2010)

Tenn. v. Wiggins, 2010 WL 2516871 (Tenn. Ct. Crim. App. 2010)

Wood v. Texas, 299 S.W.3d 200 (Tex. Ct. App. 2009)

Gilstrap v. Texas, 2011 WL 192688 (Tex. Ct. App. 2011)

Washington v. Lui, 221 P.3d 948 (Wash. Ct. App. 2009)

Washington v. Inouye, 2010 WL 3312387 (Wash. Ct. App. 2010)

Wisconsin v. Jackson, 2010 WL 1658476 (Wis. Ct. App. 2010)

Federal Appellate Courts:

U.S. v. McGhee, 2010 WL 4943108 (1st Cir. 2010)

U.S. v. Johnson, 587 F.3d 625 (4th Cir. 2009)

U.S. v. Turner, 591 F.3d 928 (7th Cir. 2010)

U.S. v. Pablo, 2010 WL 4609188 (10th Cir. 2010)

U.S. v. Lusk, 2010 WL 4068922 (U.S.A.F. Ct. Crim. App. 2010)

Federal District Courts:

U.S. v. Williams, 2010 WL 4071538 (D.C. 2010)

U.S. v. Alexander, 2010 WL 404072 (N.D. Ind. 2010)

U.S. v. Mirabal, 2010 WL 3834072 (D. N.M. 2010)

Morris v. U.S., 2010 WL 1752030 (D. S.D. 2010)

Nardi v. Pepe, 2011 WL 576601 (D. Mass. 2011)

II. “Raw Data” is Non-Testimonial

State Courts:

Kansas v. Appleby, 221 P.3d 525 (Kan. 2009)

People v. Chikosi, 110 Cal.Rptr.3d 464 (Cal. Ct. App. 4th Dist, Div. 3, 2010)

People v. Mckiernan, 2010 WL 3609173 (Cal. Ct. App. 4th Dist, Div. 1, 2010)

Michigan v. Dinardo, 2010 WL 3984545 (Mich. Ct. App. 2010)

Oliver v. State of Texas, 2010 WL 3307391 (Tex. Ct. App. 2010)

Federal Appellate Courts:

United States v. Nutt, 2010 WL 2265272 (A.F. Ct. Crim. App. 2010)

Federal District Courts:

U.S. v. Darden, 656 F.Supp.2d 560 (D. Md. 2009)

III. “Raw Data” is Testimonial, Live Witness Testified

State Courts:

New Mexico v. Bullcoming, (N.M. 2010)

New Mexico v. Marez, 2010 WL 4924749 (N.M. Ct. App. 2010)

IV. Implicit Rule 703 Analysis + Raw Data is Testimonial

State Courts:

Smith v. Florida, 28 So.3d 838 (Fla. 2009)

Ohio v. Middlebrooks, 2010 WL 2161796 (Ohio Ct. App. 2010)

North Carolina v. Mobley, 684 S.E.2d 508 (N.C. Ct. App. 2009)

North Carolina v. Witherspoon, 694 S.E.2d 521 (N.C. Ct. App. 2010)

Federal District Courts:

Galiana v. McNeil, 2010 WL 3219316 (S.D. Fla. 2010)

V. No “Basis Facts” Hearsay Allowable

State Courts:

Massachusetts - Massachusetts v. Durand, 931 N.E.2d 950 (Mass. 2010)

Texas - Wood v. Texas, 299 S.W.3d 200 (Tex. Ct. App. 2009)

Gilstrap v. Texas, 2011 WL 192688 (Tex. Ct. App. 2011)

Oklahoma - Marshall v. Oklahoma, 232 P.3d 467 (Okla. Ct. App. 2010)

VI. Laboratory Reports are Non-Testimonial

State Courts:

Ware v. Alabama, 2011 WL 1088724 (Ala. Ct. App. 2011)

Quezada v. People, 2009 WL 2277157 (Cal. Ct. App. 2d Dist, Div. 2, 2009)

People v. Gutierrez, 99 Cal.Rptr.3d 369 (Cal. Ct. App. 2d Dist, Div. 1, 2009)

People v. Wise, 2010 WL 2794998 (Cal. Ct. App. 2d Dist, Div. 1, 2010)

In re T.F. v. T.F., 2010 WL 926069 (Cal. Ct. App. 2d Dist, Div. 8, 2010)

People v. Dunn, 2010 WL 5130625 (Cal. Ct. App. 2d Dist, Div. 1, 2010)

People v. Jones, 2010 WL 797605 (Cal. Ct. App. 2d Dist, Div. 8, 2010)

People v. Blueford, 2010 WL 3932799 (Cal. Ct. App. 2d Dist, Div. 2, 2010)

People v. Bradley, 2010 WL 2473250 (Cal. Ct. App. 2d Dist, Div. 2, 2010)

People v. Bojorques, 2010 WL 3751775 (Cal. Ct. App. 2d Dist, Div. 1, 2010)

People v. Talamantes, 2010 WL 3212465 (Cal. Ct. App. 2d Dist, Div. 6, 2010)

People v. Dunn, 2010 WL 5130625 (Cal. Ct. App. 2d Dist. 2010)

People v. Green, 2010 WL 822583 (Cal. Ct. App. 2d Dist, Div. 2, 2010)

People v. Moscoe, 2011 WL 227915 (Cal. Ct. App. 2d Dist, Div. 4 2011)

People v. Vasquez, 2011 WL 228045 (Cal. Ct. App. 2d Dist. 2011)

People v. Graham, 2009 WL 2623331 (Cal. Ct. App. 3d Dist. 2010)

People v. Thompson, 2010 WL 4493478 (Cal. Ct. App. 3rd Dist, 2010)
People v. Hull, 2010 WL 3231500 (Cal. Ct. App. 3rd Dist, 2010)
People v. Johnson, 2011 WL 135826 (Cal. Ct. App. 3rd Dist, 2011)

People v. Zayas, 2010 WL 3530426 (Cal. Ct. App. 4th Dist, Div. 2, 2010)
People v. Miller, 114 Cal.Rptr.3d 629 (Cal. Ct. App. 4th Dist, Div. 2, 2010)
People v. Mendel 2010 WL 4102303 (Cal. Ct. App. 4th Dist, Div. 2, 2010)
People v. Valadez, 2011 WL 135809 (Cal. Ct. App. 4th Dist, Div. 2, 2011)
People v. Sisolak, 2011 WL 1134665 (Cal. Ct. App. 4th Dist, Div. 3, 2011)

People v. Bowman, 107 Cal.Rptr.3d 156 (Cal. Ct. App. 5th Dist. 2010)
People v. Hernandez, 2010 WL 3506888 (Cal. Ct. App. 5th Dist, 2010)
People v. Colon, 2010 WL 612245 (Cal. Ct. App. 5th Dist, 2010)

People v. Cortez, 2010 WL 2521011 (Ill. Ct. App. 2010)

Maine v. Mitchell, 2010 WL 3034607 (Maine 2010) (report not admitted but contents not testimonial)

People v. Brown, 918 N.E.2d 927 (N.Y. 2009)
People v. Dail, 894 N.Y.S.2d 78 (N.Y. Ct. App. 2010)
U.S. v. Boyd, 686 F.Supp.2d 382 (S.D.N.Y. 2010)

Ohio v. Tolbert, 2010 WL 2512584 (Ohio Ct. App. 2010)
Ohio v. Hardin, 2010 WL 5401438 (Ohio Ct. App. 2010)

VII. Laboratory Reports are Non-Testimonial + Rule 703 Rationale

Ohio v. Lopez, 927 N.E.2d 1147 (Ohio Ct. App. 2010)

Federal District Courts:

U.S. v. Manzano, 2010 WL 3000185 (C.D. Cal. 2010)
Larkin v. Yates, 2009 WL 2049991 (C.D. Cal. 2009)

VIII. Not All Personnel in Chain of Custody Must Testify

State Courts:

People v. Milner, 2010 WL 2025944 (Cal. Ct. App. 2d Dist, Div. 5, 2009)
People v. Quezada, 2010 WL 2203769 (Cal. Ct. App. 2d Dist, Div. 8, 2010)
People v. Vasquez, 2010 WL 4227843 (Cal. Ct. App. 2d Dist, Div. 2, 2010)
People v. Bergman, 2011 WL 635565 (Cal Ct. App. 2d Dist, Div. 2, 2011)
People v. Kwon, 2011 WL 1143026 (Cal. Ct. App. 2d Dist, 2011)

State Courts:

Iuli v. State, 910 N.E.2d 272 at *2 (Ind. Ct. App. 2009)

Bond v. Indiana, 925 N.E.2d 773 (Ind. Ct. App. 2010)

Deeds v. Mississippi, 27 So.3d 1135 (Miss. 2009)

North Dakota v. Gietzen, 2010 WL 301960 (N.D. 2010)

State v. Bergin, 217 P.3d 1087, 1089-90 (Or. Ct. App. 2009)

Hamilton v. State, 300 S.W.3d 14, 21-22 (Tex. Crim. App. 2009)

Dreyer v. Texas, 2011 WL 193494 (Tex. Ct. App. 2011)

Hennessey v. Texas, 2010 WL 4925016 (Tex. Ct. App. 2010)

Aguilar v. Virginia, 699 S.E.2d 215 (Va. 2010)

Federal Appellate Courts:

U.S. v. Bradford, 2009 WL 4250093 (A.F. Ct. Crim. App. 2009)

Brooks v. U.S., 2010 WL 1704022 (D.C. Cir. 2010)

U.S. v. Mejia, 597 F.3d 1329 (D.C. Cir. 2010)

Federal District Courts:

U.S. v. Forstell, 656 F.Supp.2d 578, 580-81 (E.D. Va. 2009)

U.S. v. Bacas, 662 F.Supp.2d 481 (E.D. Va. 2009)

Blackmon v. Johnson, 2009 WL 4927147, at *4 (E.D. Va. 2009)

U.S. v. Griffin, No. 2009 WL 3064757, at *2-3 (E.D. Va. 2009)



OPINIONS FINDING ERROR OR REVERSING CONVICTIONS AFTER *MELENDEZ-DIAZ* **Current as of April 1, 2011**

I. Rule 703/Statutory or Common Law Equivalent Can't Trump Confrontation Clause

State Courts:

People v. Dungo, 98 Cal.Rptr.3d 702 (Cal. Ct. App. 3rd Dist, 2009)

People v. Lopez-Garcia, 2010 WL 3529775 (Cal. Ct. App. 2d Dist, Div 7, 2010)

People v. Davis, 2010 WL 3555825 (Cal. Ct. App. 1st Dist, Div 2, 2010)

Cuesta-Rodriguez v. Oklahoma, 241 P.3d 214 (Okla. Ct. App. 2010)

II. Expert's Testimony "Parroted" Non-Testifying Expert's Findings

State Courts:

Michigan v. Anderson, 2010 WL 3984801 (Mich. Ct. App. 2010)

Michigan v. Dendel, 2010 WL 3385552 (Mich. Ct. App. 2010)

Vega v. Nevada, 2010 WL 3184312 (Nev. 2010)

Nevada v. Polk, 233 P.3d 357 (Nev. 2010)

North Carolina v. Locklear, 681 S.E.2d 293 (N.C. 2009) (harmless error)

North Carolina v. Galindo, 683 S.E.2d 785 (N.C. Ct. App. 2009) (harmless error)

North Carolina v. Davis, 2010 WL 3001951 (N.C. Ct. App. 2010)

North Carolina v. Hurt, 2010 WL 4608708 (N.C. Ct. App. 2010)

North Carolina v. Conley, 2010 WL 157554 (N.C. Ct. App. 2010)

North Carolina v. Brennan, 692 S.E.2d 427 (N.C. Ct. App. 2010)

North Carolina v. Brewington, 693 S.E.2d 182 (N.C. Ct. App. 2010)

North Carolina v. Williams, 698 S.E.2d 556 (N.C. Ct. App. 2010)

North Carolina v. Grady, 696 S.E.2d 885 (N.C. Ct. App. 2010) (harmless error)

North Carolina v. Garnett, 2011 WL 505203 (N.C. Ct. App. 2011) (harmless error)

III. Laboratory Report was Erroneously Admitted Into Evidence

State Courts:

People v. Lopez, 98 Cal.Rptr.3d 825 (Cal. Ct. App. 4th Dist, Div 1, 2009)

People v. Benitez, 106 Cal.Rptr.3d 39 (Cal. Ct. App. 4th Dist, Div 3, 2010)

Massachusetts v. Depina, 922 N.E.2d 778 (Mass. 2010)

People v. Payne, 774 N.W.2d 714 (Mich. Ct. App. 2009)

North Carolina v. Locklear, 681 S.E.2d 293 (N.C. 2009)
North Carolina v. Jones, 703 S.E.2d 772 (N.C. Ct. App. 2010)

Marshall v. Oklahoma, 232 P.3d 467 (Okla. Ct. App. 2010)

Cuadros-Fernandez v. State, 2009 WL 2647890 (Tex. Ct. App. 2009)
Johnson v. Texas, 2011 WL 135897 (Tex. Ct. App. 2011)

Federal Appellate Courts:

United States v. Trotman, 2011 WL 13476 (4th Cir. 2011)

IV. Confrontation Strictly Tied to “Testing” and Not Analysis

State Courts:

North Carolina v. Williams, 2010 WL 5094256 (N.C. Ct. App. 2010)
North Carolina v. Craven, 2010 WL 2814417 (N.C. Ct. App. 2010)

Court of Common Pleas, Bucks County v. Dagutis, 2010 WL 2510966 (Pa. Com. Pl. 2010)

V. Testifying Witness Did Not Testify Based on “First-Hand Knowledge”

State Courts:

Ohio v. Syx, 2010 WL 4923487 (Ohio Ct. App. 2010)

VI. Expert Cannot Recite ANY Hearsay As Basis for Opinion (But Can Base Opinion on Laboratory Reports Prepared by Others Without Reciting Facts Upon Which Expert Relied)

State Courts:

Massachusetts v. Durand, 931 N.E.2d 950 (Mass. 2010)
Marshall v. Oklahoma, 232 P.3d 467 (Okla. Ct. App. 2010)