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**In The  
Supreme Court of the United States**

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SANDY WILLIAMS,

*Petitioner,*

v.

PEOPLE OF THE STATE OF ILLINOIS,

*Respondent.*

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**On Writ Of Certiorari To The  
Supreme Court Of Illinois**

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**JOINT APPENDIX**

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**Petition For Writ Of Certiorari Filed December 17, 2010  
Certiorari Granted June 28, 2011**

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**CHRONOLOGICAL LIST OF  
RELEVANT DOCKET ENTRIES**

**Docket Entries for *People v. Sandy Williams*,  
Circuit Court of Cook County, Illinois, No.  
01CR1078601**

May 1, 2001	Indictment filed in the Circuit Court of Cook County charging Sandy Williams with 12 counts of aggravated criminal sexual assault, four counts of aggravated kidnapping, and one count of aggravated robbery.
April 24, 2006	Bench trial commenced on two counts of aggravated criminal sexual assault, one count of aggravated kidnapping, and one count of aggravated robbery.
April 25, 2006	Bench trial continued.
April 26, 2006	Bench trial continued. Finding of guilt on all counts.
August 18, 2006	Motion for new trial denied. Williams sentenced to two terms of natural life on two counts of aggravated criminal sexual assault, 60 years on one count of aggravated kidnapping, and 15 years on one count of aggravated robbery.
September 12, 2006	Notice of appeal filed.

**Docket Entries for *People v. Sandy Williams*,  
Appellate Court of Illinois, First District, No.  
1-06-3463**

- August 27, 2008      Opinion of the Appellate Court of Illinois, affirming Williams's convictions and modifying his sentence, Cunningham, J., dissenting.
- October 14, 2008      Order of the Appellate Court of Illinois denying rehearing.

**Docket Entries for *People v. Sandy Williams*,  
Supreme Court of Illinois, No. 107550**

- January 28, 2009      Petition for leave to appeal to the Supreme Court of Illinois allowed.
- July 15, 2010      Opinion of the Supreme Court of Illinois, affirming in regard to convictions and reversing in regard to sentence, Freeman, J., specially concurring, Burke, J., concurring in part, dissenting in part.
- September 12, 2010      Order of the Supreme Court of Illinois denying rehearing.
-

STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF COOK )

IN THE CIRCUIT COURT OF  
COOK COUNTY, ILLINOIS

PEOPLE OF THE )  
STATE OF ILLINOIS, )  
Plaintiff, )  
v. ) NO. 01CR10786  
SANDY WILLIAMS, )  
Defendant. )

(Filed Aug. 14, 2007)

REPORT OF PROCEEDINGS had at the hearing of the above-entitled cause, before the Honorable KENNETH WADAS, Judge of said court, on the 26th day of April, A.D. 2006.

**PRESENT: HON. RICHARD A. DEVINE,**  
State's Attorney of Cook County, by  
**MR. ARUNAS BUNTINAS** and  
**MS. ANGELA PETRONE,**  
Assistant State's Attorneys,  
on behalf of the People;

Ms. Karen Moser, C.S.R.  
Official Court Reporter #084-004106  
Circuit Court of Cook County

[JJJ 2] MR. EDWIN A. BURNETTE,  
Public Defender of Cook County, by  
MS. SOPHIA ATCHERSON and  
MR. BRIAN WALSH,  
Assistant Public Defenders,  
on behalf of the Defendant.

\* \* \*

[JJJ 18] KAREN ABBINANTI,  
called herein as a witness on behalf of the People of  
the State of Illinois, having been first duly sworn,  
was examined and testified as follows:

# DIRECT EXAMINATION

BY

MS. PETRONE:

Q Can you please state your name and spell  
your last name.

A Karen A-b-b-i-n-a-n-t-i.

Q Is Abbinanti your married name?

A Yes.

Q What was your maiden name?

A Kooi, K-o-o-i.

Q By whom are you currently employed?

A By the Illinois State Police Forensic Science  
Center at Chicago.

Q Where is that located?

A It's located at 1941 West Roosevelt Road in Chicago.

Q How long have you worked for the Illinois state police in Chicago?

A Since August of 1996.

Q What is your title?

[JJJ 19] A I'm a forensic scientist in the biology section.

Q What are your duties?

A I perform analysis on evidence from criminal investigations looking for the presence of bodily fluids and conducting DNA analysis.

Q What type of bodily fluids do you look for?

A Typically we will look for blood, semen, saliva.

Q What type of DNA analysis do you perform?

A I perform STR, PCR type of analysis.

Q Do you then write reports and testify in court as needed?

A I do.

Q Can you tell us about your educational background?

A I have a Bachelor's of Science degree from the University of Illinois.

Q What was your major?



A Biology.

Q Have you had any specialized training in the field of forensic biology and forensic DNA, STR analysis?

A Yes, I have. I received that training [JJJ 20] through the Illinois state police. I went through two separate programs; one for forensic biology; one for forensic DNA and both encompassed written, oral, practical examinations and supervised case work.

Q Were you the quality review coordinator at the Illinois State's police crime lab in forensic DNA, STR analysis?

A Yes, I was.

Q When did you hold this position?

A I believe I held it in 2001, 2002, and 2004.

Q What were your duties in this capacity?

A I would look at cases from other laboratories within the state of Illinois under our system. I would review other analyst's work in DNA and perform random re-analysis on their cases.

Q Have you taught in your field?

A Yes, I was a facilitator for the Illinois state police forensic DNA, STR analysis group.

Q What does that mean?

A I would help facilitate training of new analysts to the DNA section.

Q Is your work at the Illinois state police crime lab in forensic biology and in the area of forensic DNA analysis subject to peer or supervisory [JJJ 21] review?

A Yes.

Q Can you tell us about that?

A First off all files that I generate, they go through a peer review where a fellow analyst would check my work and then a portion of that would be reviewed by a supervisor.

Q Was your work in this case reviewed?

A Yes, it was.

Q Are proficiency tests administered at the Illinois state police crime lab in the areas of forensic biology and forensic DNA analysis?

A Yes.

Q Can you explain that?

A Yes. As a DNA analyst and a biologist, I received three DNA proficiency tests a year, two external, one internal; and then two biology proficiency tests a year, one internal, one external.

Q Do you belong to any professional organizations?

A Yes. I'm a member of the American Academy of Forensic Science.

Q Can you tell us the approximate number of samples you've analyzed for the presence of bodily [JJJ 22] fluids?

A At least 2000.

Q Can you tell us the approximate number of samples you performed DNA analysis on?

A Also at least a couple thousand.

Q Have you previously testified in a court of law as an expert in forensic biology?

A Yes.

Q Have you previously testified in a court of law as an expert in forensic DNA analysis?

A I have.

MS. PETRONE: Judge, at this time I would tender this witness as an expert in both forensic biology and forensic DNA analysis.

MR. WALSH: No questions, no objection.

THE COURT: The witness is an expert in forensic biology, forensic DNA analysis. Go ahead.

## FURTHER DIRECT EXAMINATION

BY

MS. PETRONE:

Q Is the Illinois State police forensic science center in Chicago accredited?

A It is.

Q By whom?

[JJJ 23] A Since 1997 it's been accredited by ASCLD lab.

Q What does ASCLD lab, what does that stand for?

A It stands for the American Society of Crime Laboratory Directors Laboratory Accreditation Board.

Q Does your lab follow any nationally known guidelines?

A Yes, we do.

Q What are those?

A They're called DAB or DNA advisory board guidelines.

Q What is the purpose of DNA advisory board?

A This group sets forth standards for DNA analysis nationwide.

Q Is clean technique used at the Illinois State police crime lab in Chicago?

A Yes.

Q What is clean technique?

A Clean technique is what we do when we analyze evidence where we wear lab coats, protective equipment, masks, gloves. When we look at evidence, we clean our area with a ten percent bleach solution. We look at each piece of evidence one at a time, clean our tools with bleach in between each sample.

[JJJ 24] Q Are controls run in DNA analysis?

A Yes, they are.

Q Can you briefly explain that?

A Sure. When we extract a sample, we also extract what's called a manipulation blank which is a clean piece of cotton and it's processed last to show that, you know, the re-agents are not contaminated, or we didn't introduce any foreign DNA into the samples. We also run a positive and negative control during a part of our DNA analysis to show that, you know, the tests do work.

Q What do the letters DNA stand for?

A DNA stands for deoxyribonucleic acid.

Q Is that spelled d-e-o-x-y-r-i-b-o-n-u-c-l-e-i-c acid, a-c-i-d?

A It is.

Q What is DNA?

A DNA is basically a genetic blue print. It's found in all living things.

Q Where does DNA come from?

A You receive half your DNA from your mom and half from your dad.

Q Is DNA different from person to person?

A It is with the exception of identical [JJJ 25] siblings.

Q Is DNA the same throughout a person's body?

A It is.

Q Does our DNA change as we become older?

A No, it does not.

Q Can one person's DNA be changed into another person's DNA?

A No.

Q What are some examples of biological fluids where DNA maybe found?

A Some examples include blood, semen, saliva, bone, and hair roots.

Q What are some examples of DNA use?

A DNA is also used, PCR STR analysis also used in biomedical research for cancer, it's used in identifying unknown people in natural disasters. It's also used basically today service men and women are

required to give up DNA samples so that there would be no more unknown soldiers.

Q Is DNA also used in paternity testing?

A Yes, also paternity.

Q And it is used to identify the war deaths?

A That's correct.

Q What is forensic DNA analysis?

[JJJ 26] A The purpose of forensic DNA analysis is to generate a DNA profile from an unknown stain and to basically compare it to the DNA profiles from individuals potentially involved with the crime.

Q Is DNA testing to exclude as well as include a person as being a contributor to a sample?

A Right.

Q What do the letters STR stand for?

A STR stands for short tandem repeat.

Q Is this the type of DNA analysis that you perform?

A It is.

Q Is this type of DNA analysis generally accepted in the scientific community?

A It is.

Q Is this one of the most modern types of DNA analysis done?

A Yes, it is.

Q Can you briefly explain how STR analysis works?

A Yes. There are locations along the DNA that we look at that differ from person to person. These are STRs, and basically we inherit a different STR from each parent and so basically when I look at a location, I may [JJJ 27] inherit like a 12, 14 while you at that same location may inherit a 9, 10 so I basically look at up to 14 locations of the DNA to generate a DNA profile to do a comparison.

Q Is this also a profile for gender?

A Yes. There's also a location that identifies gender.

Q Directing your attention to the date of August 24th of 2000 to the Illinois State police forensic science center in Chicago receive evidence under inventory number 2391661?

A If I could refer to my notes.

THE COURT: Any objection?

MR. WALSH: No, Judge.

THE COURT: You can refer to your notes.

THE WITNESS: Thank you. Inventory 2391661.

MS. PETRONE: Q Was this marked as being a blood standard taken from Sandy Williams?



A Yes, it was.

Q From whom was this evidence received?

A It was received from the Chicago police department.

Q And what condition was it received?

A It was received in a sealed manilla envelope.

[JJJ 28] Q What did you do with this evidence after you received it?

A I went ahead and opened the envelope and observed a stain card which had blood stains on it from a Sandy Williams. I went ahead and cut a portion for DNA analysis.

Q Did this analysis include extracting a male DNA profile?

A It did.

Q Did you use the DNA methods of analysis which you just described to extract that profile?

A I did.

Q Was the male DNA profile consistent with having originated from Sandy Williams put into a data base at the Illinois State police crime lab?

A Yes, it was.

Q Is that data base used to compare DNA profiles to samples from unsolved cases?

A It is.

Q Did you record your findings in a lab report that is assessable by other analysts?

A Yes, I did.

MS. PETRONE: No further questions.

THE COURT: Cross?

[JJJ 29] CROSS-EXAMINATION

BY

MR. WALSH:

Q Now, you testified that you performed analysis on a blood stain, correct?

A That's correct.

Q That was the only analysis you did in this case?

A It was part –

Q With regard to the – strike that. Again, your testimony was with regard to a blood standard use of testing?

A That's correct.

Q And that was done in November of 2000?

A I started the DNA analysis of the blood standard from Sandy Williams on September 6, 2000.

Q And it was completed later on?

A Yes.

Q With regard to case number C007770, you did not perform any testing with regard to any vaginal swabs, correct?

A That's correct.

Q Or any rectal swabs?

A That's correct.

[JJJ 30] Q With regard to the testing and procedures that you do, you mentioned the clean technique, correct?

A Right.

Q And the purpose of that is to avoid contamination?

A That's correct.

Q Forms of contamination would be incidental contamination, say if a person were to place their own DNA onto a sample?

A Right.

Q Like sneezing or dropping or depositing sweat or any other type of bodily fluid onto a sample?

A Yes, that's one way.

Q Could also be cross contamination between samples; is that correct?

A That's correct.

Q And purposes of clean technique are to avoid those types of contamination, right?

A Exactly.

Q And you ran controls here with regard to the blood sample you ran?

A That's right.

Q And you do that for all the analysis you perform?

[JJJ 31] A Right.

Q That's required by the -- under your protocols?

A Right, standard operating procedures.

Q You also check calibration of the equipment that you use?

A Right. It is maintained and calibrated when needed.

Q And you checked that prior to running samples, correct?

A Could you be more specific.

Q Well, with regard to the DNA analysis on the blood standard that you testified to from Sandy Williams, you checked the calibration on the CE instrument for DNA analysis?

A Right.

Q And then you also performed other manipulations to that sample prior to running it, correct? You have to extract the sample from the filter?

A Right, exactly.

Q Now, the testing you performed uses a very small sample, correct?

A That's correct.

[JJJ 32] Q From the filter card you received had four separate areas of apparent blood?

A On the filter card there was about quarter sized 4 blood stains on that card.

Q Quarter size?

A About.

Q And with regards to DNA testing, that's a huge amount?

A That is.

Q For the testing performed you needed just a minute amount from one of those quarter sized circles, correct?

A Right. I believe I cut out only about an eighth of one circle.

Q And you processed that separately with hopes to avoid contamination and any other DNA from that blood card, correct?

A I don't quite understand that.

Q Well, we are talking about forms of contamination or cross contamination. One would be flaked off blood from a blood card which could be left on a lab bench or transferred to other items of evidence; is that correct?

A You are talking from another case?

[JJJ 33] Q Yes.

A Oh, yes, but the area, you know, using clean technique, we would bleach the areas used and butcher paper to process a new case.

Q But that is possible and that is a form of contamination?

A It could be.

Q Now, you handled the blood card yourself from the process of extracting genetic material from the card through the process of analysis, correct?

A That's correct.

Q Now, is it fair to say that the more often a sample is handled or manipulated, the greater the risk of contamination?

A I wouldn't say that because everyone in the lab also follows clean technique wears gloves, things of that nature.

Q Well, every time a sample's opened up there's a chance of contamination, correct?

MS. PETRONE: Objection to the form of that question.

THE COURT: If she understands it, she can answer it. Overruled.

THE WITNESS: Again, we would always use clean [JJJ 34] technique to minimize that.

MR. WALSH: Q To minimize it but that chance is still there?

A It maybe very slight but it is possible.

Q And the more times that occurs, the more that, albeit small chance, the greater that chance would be? Is that a fair statement?

A It maybe possible, but we do work in a clean environment.

Q Now, you said that DNA it is permanent to the individual, correct?

A Right.

Q And you said it cannot be changed?

A Right.

Q However, samples can degrade?

A That's true.

Q And that would be a change to potentially how much of a profile can be obtained?

A Right. You may observe more of a partial profile than a full profile.

Q And a sample can be degraded by – over time, right?

A Right.

Q Heat?

[JJJ 35] A Correct.

Q Moisture?

A Right.

Q Washing?

A Right.

Q Any other factors?

A UV sunlight could degrade the DNA.

Q With regard to the comparison process, there are 13 locations plus an additional location for gender that are examined, correct?

A That's correct.

Q And each is designated – well each of the 13 is designated by two numbers?

A Correct.

Q And as far as how you report your testing analysis, and one number is inherited from your mom, one number's inherited from your father?



A That's right.

Q And that's how you report out the test results?

A Right. That consists the DNA profile.

Q There are also some rare instances where a person could have three numbers at a location; is that correct?

[JJJ 36] A That's correct.

Q And for a comparison, you look at each of those locations and you compare those two numbers from an evidence sample to the two numbers at that location for a reference standard?

A That's right.

Q And if those two numbers are the same, you call that -- you say they're consistent or a match, right?

A Right.

Q If one of those numbers is not the same, that's an exclusion, correct?

A Correct, if you are talking about a single source profile.

Q And across the 13 locations, if any one of those numbers does not match, there will be an exclusion, correct?

A Right, right.

Q You did not perform any case comparisons in case number C007770, the victim indicated Latonya Jackson.

MR. BUNTINAS: Objection, asked and answered. She said, no, she didn't perform any test on that known case number.

[JJJ 37] THE COURT: Sustained.

MR. WALSH: Q You simply ran the profile for Sandy Williams?

A That's correct.

Q Just briefly with regard to the profile you generated from the blood stain from Sandy Williams, let me just run through this quickly. There are 13 locations, correct?

A Right, including one for gender.

Q Those locations have different designations?

A Right.

Q First one would be D3?

A Yes.

Q His profile was a 16, 19?

A Let me go to that page.

Q Page 54?

A Right. A D3, he's a 16, 19.

Q DWA is a 17, 17?

A Correct.

Q And people can share the same number, have the same number from their mom and dad?

A Right. You can inherit a 17 from your mom, 17 from your dad.

Q FGA is 18.2 and a 22?

[JJJ 38] A Yes.

Q The gender location indicates male an X and a Y?

A Correct.

Q D8 is a 14, 14?

A Yes.

Q D21 is 29, 30?

A Yes.

Q D18 is 13, 17?

A Correct.

Q D5 is 12, 13?

A Correct.

Q D13 is 11, 11?

A Correct.

Q D7 is 10, 12?

A Yes.

Q The D16 location is a 9, 11?

A Yes.

Q The THO1 is a 7,7?

A Correct.

Q The location T-POX, T-POX is 11, 11,?

A Correct.

Q The location CSF is 8, 10?

A Yes.

[JJJ 39] Q And the D7 – we already did D7, correct?

A Correct.

MR. WALSH: Thank you, nothing further.

THE COURT: Redirect?

# REDIRECT EXAMINATION

BY

MS. PETRONE:

Q Ms. Abbinanti, you did not sneeze on the work that you were doing, did you?

A No, I did not.

Q Did you drop your sweat into the work?

A No.

Q Did you drop any of your bodily fluids?

A No, we wear protective equipment which consists of a mask, lab coat, sneeze guards, disposable sleeve guards, gloves so that we are protecting the evidence from myself.

MS. PETRONE: Nothing further.

THE COURT: Re-cross.

MR. WALSH: No questions.

THE COURT: You can step down, ma'am, thank you. Please raise your right hand to be sworn in by the clerk.

(Witness sworn)

[JJJ 40] BRIAN HAPACK,  
called herein as a witness on behalf of the People of  
the State of Illinois, having been first duly sworn,  
was examined and testified as follows:

# DIRECT EXAMINATION

BY

MS. PETRONE:

Q Can you please state your name and spell your last name.

A Brian H-a-p-a-c-k.

Q What is your occupation?

A I'm a forensic biologist.

Q Where are you currently employed?

A I work for the Illinois state police metro east lab in Fairview Heights.

Q What are your duties at the metro east lab?

A I analyze items of evidence for the presence of biological stains and attempt to identify those stains.

Q What types of biological stains do you analyze evidence for?

A That would be blood, semen, urine, saliva, feces, vaginal secretions.

Q How long have you worked at the metro east [JJJ 41] crime lab?

A Four years.

Q Where were you previously employed?

A At the Illinois State police forensic science center in Chicago.

Q Is that the lab at 1941 West Roosevelt?

A Yes.

Q What was your position there?

A I was a forensic biologist.

Q What were your duties in that capacity?

A They were the same duties.

Q How long did you work at the Illinois state police crime lab in Chicago?

A I was there for three years.

Q Can you tell us about your educational background?

A Yes. I have an Associates Degree from Lincoln Community college. I have a bachelor's in biology and chemistry from Illinois college. I'm also a graduate of Saint John's hospital school of clinical laboratory science.

Q Is your Associate's degree also in biology?

A Yes.

Q Have you had any specialized training in your [JJJ 42] field?

A Yes. I completed a training program with the Illinois state police at their Carbondale lab in the area of forensic biology.

Q What did that program consist of?

A It consisted of six months of training involving tests, both written and laboratory practical exams, followed by six month period of supervised case work.

Q Have you lectured in your field?

A I gave a presentation at a mass meeting in Chicago several years ago.

Q Is your work in forensic biology at the state lab subject to peer supervisor review?

A Yes.

Q Did that include your work in this case?

A Yes.

Q Were proficiency tests administered to you in your field at the Illinois state police crime lab?

A Yes, they are.

Q Can you tell us about those tests?

A Yes. Each year we perform an internal proficiency test as well as an external proficiency test -- simply a set of samples that we don't know what they [JJJ 43] are, and we have to try to identify them.

Q Have you successfully completed these tests?

A Yes.

Q Do you have any experience related to your work in forensic biology at the Illinois state police crime lab?

A Yes. I worked at the DNA indexing section in the Springfield laboratory as a researcher.

Q Do you belong to any professional organizations?

A Yes, the Midwestern Association Of Forensic scientists.



Q Can You tell us the approximate number of samples you've analyzed for the presence of biological fluids?

A Many thousands.

Q Have you previously testified in a court of law as an expert in forensic biology?

A Yes.

MS. PETRONE: At this time I would tender this witness as an expert in forensic biology.

THE COURT: Cross?

MR. WALSH: No questions.

THE COURT: The witness is an expert in forensic [JJJ 44] biology.

MS. PETRONE: Q Directing your attention to the date of February 15th of 2000 to the Illinois state police Forensic Science Center in Chicago receive evidence under RD number F083574 inventory 2276053?

A Yes.

Q What was that evidence?

A It was a sexual assault collection kit from Latonya Jackson.

Q Was that also recorded in the Illinois state police crime lab under lab case number C00007770?

A Yes.

Q From whom was this evidence received?

A From the Chicago police department.

Q For what purpose was it received?

A To analyze the contents for the presence of semen.

Q And what condition was the evidence when received?

A It was in a sealed condition.

Q What did you do with the sexual assault evidence collection kit when you received it?

A I took it to my laboratory examination area where I opened the kit up and then performed, [JJJ 45] inventoried the contents and then performed semen testing on it.

Q Was there a separate sealed envelope inside the kit marked as the vaginal swabs from Latonya Jackson?

A Yes.

Q What did you do with this evidence?

A I opened the vaginal swabs and performed two tests for semen on it.

Q Can you tell us what types of tests for semen you did?

A The first test I performed was the acid phosphatase.

Q Acid phosphastase?

A Yes.

Q Can you describe that test, please.

A Yes. Acid Phosphastase is an enzyme that's present in semen in high concentration and in much lower concentrations than in other body fluids. It gives an indication of whether semen is present in the stain. It's performed by taking and cutting of the suspected stain, adding one drop of two different reagents and in observing if there is a color change to a purple color change. That color change is then graded from plus one [JJJ 46] to plus four based on the intensity of that color with a plus four being the strongest reaction and the strongest indicator of semen.

Q Was the result in this case from your performing the acid phosphastase test?

A Yes the result was a four plus positive.

Q Is that the highest indication of semen?

A Yes.

Q Did you perform another test for the presence of semen?

A Yes, I did perform a test called the Abacard test.

Q Is that spelled A-b-a-c-a-r-d?

A Yes.

Q Can you please explain that?

A Abacard tests for protein called P30. P30 is produced in the prostate and is present in semen in high concentration and absent and detectable levels in other body fluids. The test works basically by using a protein that reacts specifically with P30. It's very similar to the way an over-the-counter pregnancy test would work. You would take -- extract a suspected stain, add that to a test card, allow it to react for ten minutes and then observe if you see two pink lines, [JJJ 47] that's a positive result; one pink line would be a negative result.

Q What was the result of the testing in this case?

A They were two pink lines. It was a positive result.

Q Did you use any safe cards to ensure the quality of your work?

A Yes, we practice what is called clean technique. This involves using a ten percent bleach solution to clean the counter top area where we perform our examinations. We have rolls of clean butcher paper that we place down to put the evidence on. We also keep on hand a ten percent bleach solution in a beaker to cleanse our tools as we perform the examinations. All of this is done while wearing disposable gloves, sleeve covers, and a lab coat and a face mask as well.

Q Is this type of analysis generally accepted in the scientific community?

A Yes.

Q What did you do after you found the presence of semen in the vaginal swabs?

A I took the swabs and placed them into a coin envelope, sealed them with evidence tape, gave them the [JJJ 48] some exhibit designation 1B1 and then placed them in a secure freezer until a later date when DNA analysis could be conducted.

Q Is this freezer secure and at the Illinois state police crime lab?

A Yes, it is.

Q Who has access to it?

A The forensic scientists and supervisors working in the biology section of the forensic science center in Chicago.

Q In addition to the evidence being put in an envelope, which was sealed in the freezer, was that envelope also labeled as to the information regarding this case?

A Yes, it was; the case number was and the exhibit number was placed on it, yes.

Q Included in the sexual assault evidence collection kit, was there also a separate sealed

envelope marked as being a blood standard of Latonya Jackson?

A Yes, there was.

Q What, if anything, did you do with this?

A I took the stain card and placed it into a coin envelope and sealed with evidence tape and placed [JJJ 49] that also in a secured freezer. I gave it the sub exhibit designation of 1A1, and it remained in the freezer until a later date when DNA could be conducted.

Q What was the point of doing this?

A To preserve the evidence.

Q Is this type of preservation of a blood standard generally accepted in the scientific community?

A Yes.

Q In addition to this envelope being sealed, was it labeled with information, identified information, about this case?

A Yes, it was.

Q And was that kept in the same secured storage area at the Illinois state police crime lab that you just referred to?

A Yes.

Q Do you then prepare reports of your findings so that these reports are assessable by other analysts?

A Yes.

MS. PETRONE: May I approach?

THE COURT: Yes.

MS. PETRONE: Q Showing you what's been previously marked as People's Exhibit Number One for identification and ask if you recognize that?

[JJJ 50] A Yes, I do.

Q How do you recognize that?

A By my marks.

Q And what type of markings do you have on there?

A A date and my initials.

Q Is that the sexual assault evidence collection kit that you were referring to?

A Yes.

Q And can you please look inside and see if the separate sealed envelope regarding the blood standards from Latonya Jackson and the vaginal spots from Latonya Jackson are located inside that kit?

A Yes.

Q And showing you for the record what's been marked as People's Exhibit Number One A for identification. Do you recognize that?

A Yes.

Q What is that?

A This is the envelope containing the vaginal swabs from Latonya Jackson.

Q Showing you People's Exhibit Number One B for identification. Do you recognize that?

A Yes.

[JJJ 51] Q What's that?

A This is the blood standard from Latonya Jackson.

Q When you received this evidence, were People's Exhibit Number One A and One B separately sealed inside of this sexual assault kit?

A Yes.

Q And was the sexual assault kit itself sealed?

A Yes, it was.

Q Except for the fact that this kit has been opened today, does it appear to be in the same or substantially the same condition as when you received?

A Yes.



MS. PETRONE: No further questions.

THE COURT: Cross?

# CROSS-EXAMINATION

BY

MR. WALSH:

Q With regard to Exhibit One, the sex assault kit you identified, you indicated you had placed markings on the box?

A Yes.

Q There were also other markings on there?

A Yes.

[JJJ 52] Q After you had seen this box?

A Excuse me?

Q There have been other markings subsequent to after the time you processed this, correct?

A If I could see it again. Yes.

Q And you have no knowledge as to who or when it had been processed as after you had handled it?

A After I handled it, I placed it in the vault to be returned.

Q You examined a blood standard card and processed that?

A I didn't perform any examinations. I simply repackaged it and placed it into the freezer.

Q And some vaginal swabs, right?

A Correct.

Q There were no rectal swabs, correct?

A No, there were none.

Q And with regards to the vaginal swabs, the first test you performed the AP test. That is a presumptive test for the presence of semen, correct?

A Correct.

Q It is not confirmatory?

A Correct.

Q And there are other things will indicate a [JJJ 53] positive reaction, correct?

A There are other things that will react with the test, yes.

Q Including vaginal fluids, correct?

A Correct.

Q You testified that you performed a Abacard test?

A Yes.

Q And you got a positive report?

A Correct.

Q Now, that was – running that test allows it to change color after ten minutes, right?

A That's correct.

Q Do you run a control with that card?

A There's a built in control into each test.

Q Both a positive and negative control?

A Well, the control is – the way the test is set up is there's a – if you imagine a card, there's a sample area and then there's a window area where you can read the test. In this area, in the sample area, is an anti-human P30 anti-body with a pink die card attached to it. As you add the sample, that migrates down the membrane and at the opposite end, there is bonded to that membrane and anti-anti-body which basically will [JJJ 54] react and form a pink line to let you know that, yes, the re-agent was added to the tube and migrated properly down the length of the test strip.

Q So it actually has a positive control?

A Yes.

Q There's also a third test for sperm identification, correct?

A Yes.

Q And that would be a staining and microscopic examination, correct?

A That's correct.

Q You did not perform that test here?

A No, I did not.

Q With regard to -- now, backing up back to the AP test. You also ran controls there, right?

A Yes.

Q Both the positive control?

A Yes.

Q And a negative control?

A That's correct.

Q And a negative control, what's the purpose of the negative control?

A To demonstrate a negative reaction.

Q And also show that the lack of any [JJJ 55] contamination or any other contaminants there are?

A Correct.

Q With regard to each of those tests, you checked the re-agents you used?

A Well, yes, I performed a positive and negative control to ensure that the test was working properly.

Q And you checked to see that you have followed proper procedure, correct?

A Yes.

Q And you used equipment, right?

A Yes, clean technique is always used.

Q You processed these samples one at a time?

A Yes, well, they're both in the kits, and the kit is present there during the examination, but you would only have one sample out working on it at a time.

Q And it would be against policy and as well as your practice to process samples and batches, correct?

A You would have to -- batch work, that's a broad term. Basically, you would not -- you would only have one exhibit out working on it at one time and then before you went to work on another exhibit, you would have to put that away.

\* \* \*

[JJJ 56] SANDRA LAMBATOS,

called herein as a witness on behalf of the People of the State of Illinois, having been first duly sworn, was examined and testified as follows:

### DIRECT EXAMINATION

BY

MS. PETRONE:

Q Can you please state your name and spell your last name?

A Sandra L-a-m-b-a-t-o-s.

Q What is your current occupation?

A I am a stay-at-home mom.

Q How long have you been a stay-at-home mom?

A About a year.

Q What did you do previously?

A I worked at Independent Forensics of Illinois as a paternity DNA analyst.

Q What were your duties in that capacity?

A To examine swabs for DNA profiles and to do [JJJ 57] paternity tests.

Q How long did you do that work?

A About a year and a half.

Q Where did you work before that?

A At the Illinois state police crime laboratory.

Q Is that the laboratory located in Chicago in 1941 West Roosevelt?

A Yes, it is.

Q How long did you work at the Illinois State police crime lab in Chicago?

A About eight and a half years.

Q What was your position there?

A I was a forensic scientist 3.

Q Were you also an acting supervisor in the biology section?

A Yes, I was.

Q What were your duties as a forensic scientist 3?

A My duties included examining evidence for the presence of bodily fluids such as blood, semen, and saliva and then I would conduct a DNA comparison on this evidence as requested to do so.

Q What were your duties as an acting supervisor [JJJ 57] in the biology section?

A To supervise the daily activities of the biologist in that section and to perform supervisory review on the lab work.

Q Can you tell us about your educational background?

A I have a bachelor's science degree from University of Illinois at Urbana Champaign.

Q What was your major?

A Biology.

Q Do you have any specialized training in your field?

A Yes, I do from the Illinois state police crime laboratory I received about three years of training in the forensic biology and DNA field.

Q Can you describe the training you received in the area of forensic biology?

A Yes. That training was about a year and a half – about a year and that included learning about the identification of blood, semen, and saliva. We had written, oral, and practical examinations as well as supervised case work.

Q Can you tell us about the specialized training you received in the area of DNA?

[JJJ 59] A Yes. That training lasted about two years and that included learning about DNA in the form of lectures, written materials, supervised case work, written, oral, and practical laboratory exams.

Q Did you successfully complete these three years of training?

A Yes, I did.

Q Have you attended any seminars from other laboratories in the area of DNA analysis?

A Yes, I did. Seminars was [sic] presented by Bodi technology and the Midwestern Association of Forensic scientists.

Q Did you – have you conducted lectures of presentations in DNA technology?

A Yes, I did. I gave lectures at Kent Law school at the Museum of Science and Industry, at the Chicago police department new detective training, and also for the Cook County State's attorney's office.



Q Was your work at the Illinois state police crime lab subject to peer or supervisory review?

A Yes, it was.

Q Would that include your work in this case?

A Yes, it did.

Q Were you given proficiency tests in your [JJJ 60] field at the Illinois state police crime lab?

A Yes.

Q Can you tell us about that?

A There were three proficiency tests in DNA; two being external every 180 days and one being internal.

Q Did you pass these tests?

A Yes, I did.

Q Did you belong to any professional organization?

A I did. I belonged to the Midwestern Association of Forensic Scientists.

Q Can you tell us the approximate number of samples you analyzed for the presence of bodily fluids?

A Thousands.

Q Can you tell us the approximate number of samples you performed DNA analysis on?

A Thousands.

Q Have you previously testified in a court of law as an expert in forensic DNA analysis?

A Yes.

MS. PETRONE: At this time I would tender the witness as an expert of both forensic biology and forensic DNA analysis.

[JJJ 61] MR. WALSH: No questions.

THE COURT: Witness is an expert in forensic biology and forensic DNA analysis.

MS. PETRONE: Q What do the letters PCR stand for?

A They stand for preliminary [sic] chain reaction.

Q Is that spelled P-O-L-Y-M-E-R-A-S-E?

A Yes, it is.

Q Is this the type of DNA testing that you did at the Illinois state police crime lab?

A Yes, it is.

Q Is this type of testing generally accepted in the scientific community?

A Yes, it is.

Q Is this one of the most modern types of DNA testing available?

A Yes, it is.

Q Can you briefly explain how PCR DNA testing is done?

A Briefly PCR takes the evidence samples which typically comes in low amounts, and we need to multiply it, make greater amounts so we can do our scientific examination on that and through a series of different cycles and temperature changes, we are able to make millions and millions of areas of interest on the DNA [JJJ 62] molecule.

Q After the DNA is amplified, what is done?

A After the DNA is amplified, then the specific areas of interest are tagged with florescent markers and examined through a genetic analyzer, and a DNA profile is generated.

Q In this manner can male DNA profile be identified from semen?

A Yes, it can.

Q Can this profile be compared to DNA from a suspect's blood to determine if it is a match with or consistent with having originated from that suspect?

A Yes, it can.

Q Can this testing be used to exclude as well as include a person as being a contributor to a sample?

A Yes.

Q Is the statistical probability of a match determined?

A Yes.

Q Is calculating statistical probability of a match part of your DNA training?

A Yes, it is.

Q Is the method used by the Illinois State police crime lab of determining the statistical [JJJ 63] probability of a match generally accepted in the scientific community?

A Yes, it is.

Q Can you briefly explain how this is done?

A The alleles are looked at and put into a frequency data base to determine how common they are in the general population.

Q Directing your attention to the years when you were employed by the state crime lab 2000 and 2001, was it the practice of the Illinois state police crime lab in Chicago to send evidence samples from cases being worked on to [Cellmark] diagnostic laboratory in Germantown, Maryland?

A Yes.

Q Was [Cellmark] an accredited crime lab?

A Yes.

MR. WALSH: Objection.

THE COURT: Overruled.

MS. PETRONE: Q Why was this done?

A To expedite and reduce our backlog.

Q How was the evidence sent?

A It was sent in a sealed condition via Federal Express.

Q Was shipping manifests or records kept as all [JJJ 64] evidence sent by the Illinois state police crime lab to [Cellmark] diagnostic laboratory?

A Yes.

Q Were these records kept in the ordinary course of business at the Illinois state police crime lab?

A Yes, they were.

Q Were these records kept in a secured area of the lab?

A Yes, they were.

Q Who has access to these records?

A Laboratory personnel.

Q Were these records ordinarily relied on by analysts in performing their work?

A Yes, they were.

Q Were these records used to maintain a record of the chain of custody of evidence?

A Yes.

Q How would the evidence be returned to the Illinois state police crime lab from [Cellmark] diagnostic laboratory?

A In a sealed condition via Federal Express.

Q Is this manner of transporting evidence for DNA analysis generally accepted in the scientific [JJJ 65] community?

A Yes, it is.

Q Was it then and is it now a commonly accepted practice in the scientific community for one DNA expert to rely on the records of another DNA expert in order to complete his or her work?

A Yes.

MR. WALSH: Objection to the form of question.

THE COURT: Overruled, she answered.

MS. PETRONE: Q Directing your attention specifically to RD number F083574 Illinois state police crime lab number C00007770 involving the victim named Latonya Jackson. On the date of November 28th of 2000, was evidence from this case sent to [Cellmark] diagnostic laboratory from the Illinois state police crime lab in the manner in which you described?

MR. WALSH: Objection, hearsay.

THE COURT: Overruled.

MS. PETRONE: Q What was the evidence that was sent?

A Vaginal swab and a blood standard from Latonya Jackson.

Q Was this transportation of evidence documented in shipping manifest records of the Illinois [JJJ 66] state police crime lab?

A Yes, it was.

MS. PETRONE: May I approach?

THE COURT: Yes.

MS. PETRONE: Q Showing you People's Exhibit Number 25 for identification and ask if you recognize that?

A I do.

Q What is that?

A It's a shipping manifest.

Q Is that a manifest that's kept in the ordinary course of business by the Illinois State police crime lab?

A Yes, it is.

Q And does this manifest document evidence on several cases, this case and cases that have nothing to do with this that were sent on the same date from the Illinois state police to [Cellmark] diagnostic laboratory?

A Yes.

Q Referring to this case number C00007770, does it document when this evidence was sent and the method that was used to send this from the State police lab in Chicago to [Cellmark] diagnostic lab in Maryland?

A Yes, it does.

[JJJ 67] Q What was the date and what was the manner noted in this manifest?

A The date was November 28th of 2000 and the manner noted was via Federal Express.

Q And is there also a specific Federal Express number noted on the document?

A Yes, there is.

Q And does this document also note the date received by [Cellmark] diagnostic laboratory?

A Yes, it does.

Q And what is that date?

A November 29, 2000.

Q Showing you what's been marked as People's Exhibit Number 26 for identification. Do you recognize that?

A I do.

Q What is that?



A The return shipping manifest.

Q Is that a return shipping manifest for other cases that have nothing to do with this one plus this case number C00007770?

A Yes, it is.

Q And does this indicate the date that the evidence in that case number was sent back from [Cellmark] [JJJ 68] diagnostic laboratory in Maryland to the Illinois state police crime lab in Chicago, Illinois?

A It does.

Q What is the date that this manifest notes?

A April 3rd of 2001.

Q And does it show the manner of shipment?

A Manner of shipment was by Federal Express and there's a shipping number.

Q Is this manifest also People's Exhibit Number 26 kept in the ordinary course of the business at the Illinois state police crime lab?

A Yes, it is.

Q Were these pieces of evidence People's Number 25 and 26 relied on by you when you did work on this case?

A Yes, it was.

Q And these also keep track of the chain of custody; is that correct?

A Correct.

Q Do they also note what evidence was sent?

A Yes, they do.

Q What evidence was sent?

A The vaginal swabs and the blood standards.

Q Were you assigned to work on this case at the [JJJ 69] Illinois State police crime lab?

A Yes, I was.

Q Was there a computer match generated of the male DNA profile found in semen from the vaginal swabs of Latonya Jackson to a male DNA profile that had been identified as having originated from Sandy Williams.

MR. WALSH: Objection, lack of foundation, Judge. There's no evidence with regard to any testing that's been done to generate a DNA profile by another lab to be testified to by this witness.

THE COURT: As to who?

MR. WALSH: With regard to the swabs that she says that testimony that were sent to another lab in Maryland.

THE COURT: Right.

MS. PETRONE: I'm not getting at what another lab did. I was referring to a computer data base without saying any more about that but after she received that information for the data base she did her own testing based on that information.

THE COURT: Overruled.

MR. WALSH: It's still relying on testing that's done by another lab.

THE COURT: We will see. If she says she didn't do [JJJ 70] her own testing and she relied on a test of another lab and she's testifying to that, we will see what she's going to say. I don't know. Go ahead.

MS. PETRONE: Q Was there a computer match generated of the male DNA profile found in semen from the vaginal swabs of Latonya Jackson to a male DNA profile that had been identified as having originated from Sandy Williams?

A Yes, there was.

Q Did you compare the semen that had been identified by Brian Hapack from the vaginal swabs of Latonya Jackson to the male DNA profile that had been identified by Karen Kooi from the blood of Sandy Williams?

A Yes, I did.

MR. WALSH: Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: Yes, I did.

MS. PETRONE: Q Did you use the method of DNA testing which you described earlier?

A Yes.

Q What was your conclusion?

A I concluded that Sandy Williams cannot be excluded as a possible source of the semen identified in [JJJ 71] the vaginal swabs.

Q In other words is the semen identified in the vaginal swabs of Latonya Jackson consistent with having originated from Sandy Williams?

A Yes.

Q What is the probability of this profile occurring in the general population?

A Can I refer to my report?

THE COURT: Yes.

THE WITNESS: This profile would be expected to occur in approximately 1 in 8.7 quadrillion black, 1 in 390 quadrillion white, or 1 in 109 quadrillion Hispanic unrelated individuals.

Q Do you know the approximate population of the world?

A Approximately 6 billion.

MR. WALSH: Objection.

THE COURT: Overruled.

MS. PETRONE: Q In your expert opinion, can you call this a match to Sandy Williams?

A Yes.

MR. WALSH: Objection.

THE COURT: Overruled.

MS. PETRONE: No further questions.

[JJJ 72] CROSS-EXAMINATION

BY

MR. WALSH:

Q You prepared a report in this case?

A I did.

Q And that was dated April 19, 2001?

A Yes.

Q I'll show you what I'll mark as Defense Exhibit Number 6 for identification. Can you take a look at that report. Is that the report you made and issued in this case?

A Yes.

Q Dated April 19, 2001?

A Yes.

Q Is that the only report you had in this case?

A Yes.

Q And that test -- strike that. That report indicates that testing was performed by on the vaginal swabs by [Cellmark] diagnostic, correct?

A Correct.

Q You did not perform testing on those vaginal swabs, correct?

A Correct.

Q You did not receive those vaginal swabs?

[JJJ 73] A Correct.

Q You never examined that evidence, correct?

A Correct.

Q And you based your testimony on testing that was done by that other lab, correct?

A Correct.

Q You did not observe their testing or their procedures, correct?

A Correct.

Q You did not know if they observed or checked the calibration of their instruments, correct?

A Well, [Cellmark] diagnostic is an accredited laboratory so they would have to meet certain guidelines to perform DNA analysis for the Illinois State police and so all those calibrations and internal

proficiencies and controls would have had to have been in place for them to perform the DNA analysis.

Q You'd hope they would be able to.

MS. PETRONE: Objection.

THE COURT: Sustained.

MR. WALSH: Q You don't know -- the question was you did not observe calibration or the acts of calibration of any instrumentation used by [Cellmark]?

A I did not observe anything.

[JJJ 74] Q And you did not -- did you review their procedures?

A No, I did not.

Q Are you aware that they have different procedures?

A Yes, I am.

Q From the Illinois State police?

A Yes.

Q And are you aware that they have different standards for the results?

A Yes.

Q You did not observe the preparation of or running of any controls in that case?

A No, I did not observe.

Q Either positive controls or negative controls, right?

A I did not observe them doing that.

Q Now, you received our report from [Cell-mark], right?

A Yes.

Q Dated February 15, 2001?

A Yes, Judge, may I look at my copy?

THE COURT: Yes.

THE WITNESS: What was the date on that?

[JJJ 75] MR. WALSH: Q February 15, 2001?

A Yes.

Q And that report included a allele chart, correct?

A Yes.

Q And that would be the results of their testing?

A Correct.

Q In that included data that you used to run your data bank search?

A Correct.



Q You did not interpret the results by [Cell-mark], did you?

A Partially. I did review their data, and I did make my own interpretations so I looked at what the programs, what they sent to me and did make my own determination, my own opinion.

Q That would be the electropherogram with regard to the vaginal swab E2, right?

A What was the last part of your statement?

Q E2?

A Yes.

Q You did not receive electropherograms for the E1?

[JJJ 76] A I believe all I have in my case file is E2, correct.

Q And you did not receive electropherograms form the standard of Latonya Jackson, did you?

A No, I do not.

Q Did you receive electropherograms for any positive controls?

A No, I did not.

Q Did you receive electropherograms for any negative controls?

A No, I did not.

Q And all of those are generated data which would be part of accepted practice in generating DNA analysis, correct?

A Correct.

Q And you did not do any biology testing either, correct?

A Correct.

Q Now, with regard to shipping evidence to [Cellmark], you did not prepare any of that packaging, right?

A Correct.

Q And there were at least 20 other cases that were batched together and sent out?

[JJJ 77] A I believe so as per the shipping manifest.

Q And you don't know what was done with that box when it landed at [Cellmark], correct?

A Correct.

Q With regard to comparison, DNA profile has, looks at 13 separate locations plus a gender location, right?

A And it also looks at an additional 4.

Q Not -

A Did you say, I'm sorry?

Q I said 13?

A You're correct.

Q And each of those locations will report -- the results will report out two numbers; one inherited from your mother, one inherited from your father, correct?

A Correct.

Q Sometimes those can be the same number?

A Correct.

Q And then for a comparison if the numbers are the same in one profile in an evidence sample compared to a reference standard, that would be said to be a match, right?

A What numbers are you referring?

[JJJ 78] Q If the two numbers at one location from an evidence sample are the same as the two numbers from that same location in a reference standard, it would be said to be a match?

A You're referring to the Alleles.

Q Yes.

A Yes.

Q And from there you would go on to calculate a frequency of that match or that inclusion of the incurring?

A Correct, yes.

Q If one of those numbers is different, it's not a match, right?

A Correct.

Q It's an exclusion, right?

A Correct.

Q And then the probability of that would be zero, right?

A Well, it would be an exclusion so they wouldn't do any statistics on it.

Q Now, you entered the what was labeled the deduced male profile from the [Cellmark] report for the data bank search, right?

A Yes.

[JJJ 79] Q And a data bank search will only come up with matches to those in the data bank?

A Yes.

Q If the contributor is not in the data bank, you won't get a hit or result?

A It has to match to something in the data base, correct.

Q You're aware of coincidental matches?

A And how would you define that?

Q False, positive.

A If there was a question of a match, then we would investigate that further by looking at the electropherograms from all the cases involved and do some more comparisons on that.

Q You are aware of that profiles will match at a certain number of locations?

MS. PETRONE: Objection to a certain number.

THE COURT: Sustained.

MR. WALSH: Q From anywhere between 1 and 13 locations?

A Yes. And I guess the best way to say that is the data base is a tool that we use and then from that tool, we go on to investigate and look further at the data that we have to determine if it is a match.

[JJJ 80] Q And is it fair to say that the larger the data bank the higher the chance of a coincidental match?

A It's fair to say because there is more information in there.

Q Now, are you aware that the Arizona crime lab had an instance of a coincidental match at nine locations?

MS. PETRONE: Objection.

THE COURT: Sustained.

MR. WALSH: Q Now, the donor profile generated by [Cellmark], you said you reviewed the electropherograms that they sent?

A Yes.

Q Just on that one fraction?

A Correct.

Q And just to back up from for general testing purposes, a vaginal swab DNA is extracted from that swab, correct?

A Yes.

Q And there's what's called differential extraction performed on that swab, right?

A Yes.

Q And that's to try to separate the female scanner epithelial cells from any possible sperm cells, [JJJ 81] correct?

A Yes.

Q Sometimes there will be separation in the testing where you get one profile, a single donor profile, correct?

A Correct.

MS. PETRONE: Objection to the form that question.

THE COURT: She seemed to understand it. Overruled.

MR. WALSH: Q And sometimes you won't get separation when you get a mixture, correct?

A Correct.

Q The results you received here indicated a mixture, correct?

A Correct.

Q And you reviewed the electropherograms just for that second fraction from the differential extraction proceed, correct?

A Correct.

Q You did not receive the electropherograms for that first fraction, that first part of the extraction?

A Correct.

Q Now, if the results were wrong from [Cellmark]'s data and any matches you call would be wrong, correct?

[JJJ 82] MR. BUNTINAS: Objection.

THE WITNESS: Well -

THE COURT: Hold it. Overruled. Didn't she do her own testing on this?

MS. PETRONE: Yes.

MR. BUNTINAS: She did.

THE COURT: She matched -

MR. WALSH: She matched up numbers. She did not perform any testing.

MR. BUNTINAS: That's the testing that was performed by this expert and she has an opinion based on it.

THE COURT: Overruled. You can answer.

THE WITNESS: Well, some -- they sent the chart which listed the profile that was in the F1 fraction E1. Also, the profile that was in the E2 fraction and the profile that was in Latonya Jackson's standard, and I only had the electropherograms from the E2 fraction; however, the chart gives me the profile that was in the F1 fraction and it also gives me her standards so I do have that information.

MR. WALSH: Q But you did not receive their data or their electropherograms?

A No, I did not receive electropherograms for [JJJ 83] those fractions.

Q You did not receive any computer data, the electronic data?

A I, myself, did not receive that but that was sent to the laboratory.

Q You never viewed that?

A Oh, no, I did not.

Q And so if the results in their E2 data were wrong, would any matches be wrong?



MR. BUNTINAS: Objection, Judge.

THE COURT: Sustained. Speculation with no basis of fact.

MR. WALSH: Q Now, you're aware that the donor profile generated by [Cellmark] – strike that. With regard to the donor profile generated by [Cellmark], all of the Alleles there are not foreign to the victim, correct? Strike that. In other words is it fair to say that some of the alleles in the locations in the donor profile are matched to the victim?

A Some of the alleles in the donor profile are of match to the victim, is that your question?

Q Yes.

A Yes, some of them are consistent with the victim.

[JJJ 84] Q For example D21, is a 29 and 30?

A Yes.

Q And that's the victim's profile, correct?

A Correct.

Q And in the T-POX location is an 8-11, correct?

A Yes.

Q And that's Ms. Jackson's reported profile, correct?

A It's consistent with her, yes.

Q And no other Alleles were reported there, right?

A Correct.

Q Now, are you aware that there was a location in the donor profile which reported three numbers, D5?

A Correct.

Q Where you would expect for a donor to have or the — or a contributor to have either one or two numbers, correct?

A Not in this instance, no. This is a mixture and so the interpretation of a mixture differs from the interpretation of the fraction if there were not a mixture so with regard to coming up with the information to enter into the data base, we are entering just the [JJJ 85] Alleles only; that is, we are not putting in a profile, per say, it's just the alleles so that's why that particular area there are three Alleles because of the interpretation, you were not able to determine a profile with only two because it is two people.

Q Sure. Well, because the deduced profile is not purporting to be a single source profile, right?

A The deduced — they have it written it's a mixture, yes.

Q It could be — a number of possibilities could match that profile?

A That particular area?

Q Yes.

A We are talking than about the three Alleles?

Q Yes.

A There's a limited number of profiles that I could match with that area.

Q Well, six different ones, right?

A Well, we are talking about only two people in the mixture.

Q Well, from the combination of 3 and here in the D5 the deduced male profile was a 10, 12 and a 13 so the different combinations of the – could include 10,10, right?

[JJJ 86] A Not in this instance, no.

Q A 10, 12?

A A D5?

Q Yes.

A No, not in this instance.

Q A 10, 13?

A That's a possibility.

Q A 12, 12?

A That is not a possibility.

Q A 12,13?

A That is a possibility.

Q Or a 13,13?

A That is a possibility.

Q And there could also be a tri-allele pattern, correct, where the three Alleles could be the actual donor the 10, 12, 13 pattern?

A That's -- in my opinion I would not agree with that statement in this case.

Q You are aware that there are instances of tri-alleleic patterns?

A There are instances, yes.

Q Now, you're aware that some offer these bulk mailings of samples for testing?

A Yes, I am aware of that.

[JJJ 87] Q You don't know how they receive them?

Q You don't know how they receive them?

A Well, we send them out in a sealed condition, and they are sealed and then shipped to the Federal Express with the tracking number so I know when they leave our laboratory, they are sealed.

Q Do you know how they process them when they receive them?

A No, I do not but again [Cellmark] is an accredited laboratory that must meet certain guidelines to a receive accreditation.

Q Are you aware that [Cellmark] cases are batched processed by teams of technicians?

A I am aware of that, yes.

Q And not by the general practice of single analysts done by Illinois state police?

A That's correct, yes, it differs.

Q So it's fair to say that some are multiple people handing multiple samples?

A It's possible, yes.

Q And that's over the course of extraction, the extraction step?

A Yes.

Q The amplification step, two separate quantitation steps as well as the electrophoresis step, [JJJ 88] the analysis?

A That's correct.

Q And you're aware that they use a separate type of instrumentation? Are you aware that they use a gel slab instrument as opposed to a capillary instrument?

A No, I wasn't aware of that.

Q And that requires --

THE COURT: Actually, I'm not going to go entertain that question. According to who? She's not – the phrasing of that question assumes a fact not in evidence that are you aware that they used this and she said she's not aware of it and what does that mean to me as a fact finder that what you just said is true that they do do that; that she's unaware of. Are you going to prove that somehow?

MR. WALSH: It goes to evidence coming in of a different lab testing practices.

THE COURT: I'm just talking about the last question, that question, what does it mean to me. How do I assess that last question.

MR. WALSH: Well, it does go –

THE COURT: As a fact finder.

MR. WALSH: It does go to her ability to interpret [JJJ 89] the data she received with regard to –

THE COURT: Assuming what you're saying is true, your hypothetical, how do I know if it is or if it isn't?

MR. WALSH: Judge, it goes to her basis of knowledge with regard to the testimony that the witness is offering.

THE COURT: Her basis of knowledge of what she's unaware of if what you say is true, which I don't know if it is, doesn't help me one way or the

other on this one question. Rephrase the question or ask something different.

MR. WALSH: Q You're aware that there are different types of electrophoretic platforms for DNA analysis, correct?

A Correct, but the medical field might use a different form for what they are looking for versus what the forensic field would use for what they are looking for.

Q Well, the forensic field, forensic labs use both gel slab, what's called gel slab technology. Are you aware of that?

MR. BUNTINAS: Objection.

THE COURT: Overruled.

[JJJ 90] THE WITNESS: I believe that was for the old PCR technique that used to be done many years ago that's not done anymore. They called that dots and gels. I was not even trained in that.

MR. WALSH: Q You can't determine what instrument was used in the reviewing when you reviewed the electropherograms?

MS. PETRONE: Objection, asked and answered.

THE COURT: Sustained.

MR. WALSH: Q For the interpretation here on differential extraction and generating a donor profile is to look at that E2 profile, correct?

MS. PETRONE: Objection, asked and answered.

THE COURT: Overruled. Go ahead.

MR. WALSH: Q You look at the E2 fraction from the vaginal swabs and compare that to the victim's profile, correct?

A In my opinion that's what [Cellmark] did.

Q And that's how you would do it in your case work, right?

A We have slightly different guidelines so it would be a little bit different.

Q Well, the goal here is to try to determine the male donor?

[JJJ 91] A Correct.

Q And in the E2 fraction or the vaginal swab assuming the victim's profile is present and subtract that out?

A In my opinion that's how [Cellmark] approached it, yes.

Q At the D3 location -- strike that. And then after you looked at this data, you compared that to the profile that is purportedly came from Sandy Williams, right?



A Well, after [Cellmark] made their deduced male donor profile, that was put into the data base and then it was generated, the match was generated.

Q And you compared that profile, right?

A To?.

Q The profile that was purportedly came from Sandy Williams?

A Correct.

Q To the vaginal E2?

A Correct, yes.

Q At the D3 location in the vaginal swab E2, 16, 17, 18 in brackets and a 19 were reported, correct?

A Correct.

Q The victim was a 16 and a 17?

[JJJ 92] A Yes.

Q The deduced profile was a 16 and a 19?

A Yes.

Q And Mr. Williams had a 16 and a 19, right?

A I need to refer to my records.

THE COURT: Go ahead.

THE WITNESS: Correct.

MR. WALSH: Q There was no accounting for that 18 there, right?

A In a deduced male donor profile, the 18 was not included and [Cellmark] interpreted – [Cellmark]'s interpretation guidelines differ from ours and when I review the electropherograms that I have, it looks like that 18 may or may not even be a real illegal [sic]. In my opinion it looks like it's some background noise because the other alleles presents are there in a very large quantity. There's a larger amount of the alleles present. Sometimes when you have so much DNA and the instrumentation is only so sensitive sometimes you get background noise and it looks to me in my opinion that the 18 maybe just that background noise.

Q But [Cellmark] reported that out, correct?

A They did not reports [sic] it in the deduced male donor profile. They only reported it as an illegal [sic] that [JJJ 93] was present in the E2 fraction.

Q At the D21 location, the vaginal swab E2 results reported by [Cellmark] were 29, 30 and a 32 indicated that that 32 may be present?

A That is correct. That's how [Cellmark] wrote their key, yes.

Q And the victim had a 29, 30, and they deduced, reported out was a 29, 30?

A Correct.

Q And they did not use that 32?

A No, they did not.

Q At the D5 location again that was where three alleles were reported 10, 12 and 13 in the E2?

A That's correct.

Q And those three were reported in the deduced profile, right?

A Yes, they were.

Q And that there are different possibilities that would fit that profile at that location?

A Yes, sir.

Q At the T-POX location vaginal swab E2 reported by [Cellmark] is 8,11,

A Yes, it is.

Q The reported profile of Ms. Jackson is also [JJJ 94] 8, 11?

A That's correct.

Q That was not subtracted out but that 8, 11 was still reported as the deduced profile, right?

A That's correct.

Q Now, you're not able to determine whether alleles are carried over by the victim or by an offender, correct, or male donor?

A Which area are you referring to?

Q At T-POX?

A In my opinion with this profile, it is a mixture so when we have a mixture you are looking at the profile as a whole and again your interpretation very [sic] slightly and it's important to note that the alleles at each locus [sic] on a DNA molecule that we look at are very common. It is not uncommon for you and I to have the same alleles at a locus or you and I to have the same Alleles. The power of this DNA comes with looking at all 13 areas of the DNA because it's that uniqueness looking at all 13 that's going to give us the numbers. And here like a T-POX and in the other two that you mentioned, there are only two alleles and like I say in my opinion there are only two people in this profile and it just may so happen that they share an 8 and they [JJJ 95] share an 11 or it may so happen that she is an 8 and 11 and he is just an 11, 11 or he is an 8, 11 and she is an 8, 8. There's only certain possibilities that can be attributed at each locus.

Q If you have full data for that profile, correct?

A What exactly does that mean?

Q Well, you could get a degraded evidence sample?

MS. PETRONE: Objection, speculative.

THE COURT: Overruled.

THE WITNESS: Yes, it's possible to have a degraded sample but if the sample was degraded, that would be known by our earlier examination of the evidence. We determine the quantity and the

DNA that we have and the quality of the DNA and also after we look at the electropherograms, you can see the degradation, their specific patterns, and the data looks a certain way when it is degraded. The peaks aren't as defined. They slope off missing here and there. Different things happen with degradation, and I didn't see any evidence of degradation in this particular fraction.

Q And you did not receive data for the quantitation, correct?

[JJJ 96] A Correct.

Q And you only received electropherograms for the E2, correct?

MS. PETRONE: Objection, asked and answered.

THE COURT: Sustained.

MR. WALSH: Q Now, the reports that you prepared in this case and all reports in this case were prepared for this criminal investigation, correct?

A Yes.

Q And for the purpose of the eventual litigation here, correct?

A Yes.

Q Now, are you aware that the [Cellmark] lab in Germantown, Maryland, is subsequently closed?

MS. PETRONE: Objection.

THE COURT: Sustained.

MR. WALSH: Q Are you aware of any instances of contamination or fraud by analysts at [Cellmark]?

MS. PETRONE: Objection.

THE COURT: Sustained.

MR. WALSH: Q With regard to different possibilities on the deduced male profile if that does not match Sandy Williams at each of those locations, he will be excluded, correct?

[JJJ 97] A Well, again it's a mixture so when we have the different possibilities of profiles, there's different possibilities of him matching.

Q And it just takes one exclusion of one number to be excluded?

MS. PETRONE: Objection.

THE COURT: Overruled. Is that true?

THE WITNESS: It is -- two part answer. It is true it takes one illegal [sic] to exclude; however, we are not talking about a straight profile in this case. We are talking about a mixture and because it is a mixture from the F2 fraction of the victim and the male or the female and the male fraction, when we do those deduced male profiles an allele from the victim maybe included in one of those possibilities so in that allele from the victim may not match the suspect's but that would not be a reason to include because

there are two other possibilities there that if it was a match, he would match too so once he is included as a match in one of those possibilities, it's an inclusion and you would – and this is again how we look at the whole profile and all the information that we are given we would see that allele and determine, okay, that is from the victim, and we are looking at all the other loicides [sic]. Is there [JJJ 98] evidence a third person? No. Is there evidence of two people? Yes. Does he fit one of these possibilities? Yes, he does. What about this allele? Could it have come from the victim? Yes, it could. And when we do the statistics on that particular locus, we are putting the Alleles in. We are not putting a profile so we will put in three alleles so the stats will actually be more common. The stats reflect the interpretation on that locus. It is not as unique.

MR. WALSH: Q And if taking a mixed profile, if you take out – if you account for the victim's presence there and if there are additional alleles or combinations of alleles that do not match a suspect, that person would be excluded.

MS. PETRONE: Objection.

THE COURT: Is that what's here?

THE WITNESS: In this particular locus, all combinations are reported. That is the most conservative way to do it and that's how it was done. We would not pull out the – let me refer to my electropherograms. In this instance it's a three allele pattern and there is evidence of alleles being shared so I

would not pull out the victim but each locus, like I said, with a mixture, each locus is interpreted a little [JJJ 99] bit differently, and we will always go the most conservative route and do the alleles only and provide all possibilities.

MR. WALSH: Q At D5 victim was a 10, 12?

MS. PETRONE: Objection, asked and answered.

THE COURT: Sustained.

MR. WALSH: Q If the male donor was a 10, 12 or I'm sorry, if the male donor was a 13, 13, Sandy Williams would have been excluded, correct?

MS. PETRONE: Objection.

THE COURT: Overruled.

THE WITNESS: In this instance with these three alleles that the 12 is the largest of the two and the assumption is the 12 how it's interpreted is, in fact, being shared.

MR. WALSH: Q You did not do calculations for that, did you?

A When we do the calculations, we are putting in the alleles only so the possibility at that locus, the possibilities were a 12, 13, a 10, 13 and a 13, 13.

Q You did not do any of the peacock (phonetic) calculations?



A I beg your pardon?

Q You did not do any peacock calculations?

[JJJ 100] A Those are determined from the instrumentation during electrophoresis process.

Q So you did not?

A They were already there, no. And that's just something that comes off the instruments.

MR. WALSH: Nothing further.

THE COURT: Redirect?

MS. PETRONE: Could I have a moment?

THE COURT: Sure. I'm taking a ten minute recess. Don't talk to anyone during the recess, and we will call you back.

## REDIRECT EXAMINATION

BY

MS. PETRONE:

Q Ms. Lambatos, the only two people in this mixture are Sandy Williams and Latonya Jackson; isn't that correct?

A That's correct.

Q In your expert opinion, were the methods used by [Cellmark] diagnostic laboratory here generally accepted in the scientific community?

MR. WALSH: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

[JJJ 101] MS. PETRONE: Q You, yourself, helped develop line proficiency tests to be administered to analysts at [Cellmark]; isn't that correct?

A Correct.

Q And you routinely, in the course of your work in the Illinois state police crime lab, relied on results from [Cellmark] in performing your work; isn't that correct?

MR. WALSH: Objection.

THE COURT: Overruled.

THE WITNESS: Correct.

MS. PETRONE: Q And in your work in this case, you also relied on work from analysts Karen Kooi and Brian [Hapack]; is that correct?

A Correct.

Q You received the results in this case from [Cellmark], and you agreed with their analysis; is that correct?

A Correct.

Q You reviewed the data and you made your own determination; is that correct?

MR. WALSH: Objection.

THE COURT: Overruled.

THE WITNESS: Correct.

[JJJ 102] MS. PETRONE: Q Did you see any problem with either the chain of custody or with contamination of evidence?

MR. WALSH: Objection.

THE COURT: Overruled.

THE WITNESS: No, I do not.

MS. PETRONE: Q The fact that there was a mixture of Sandy Williams and Latonya Jackson in this case does not affect your conclusion that there was a match to Sandy Williams of semen in the vaginal swabs of Latonya Jackson; is that correct?

A Correct.

Q And the fact that there was a mixture of two people, Sandy Williams and Latonya Jackson, does not change your opinion that the match here is expected to occur in 1 in 8.7 quadrillion blacks; is that correct?

MR. WALSH: Objection.

THE COURT: Sustained.

MS. PETRONE: Q In your expert opinion, the DNA and the vaginal swabs of Latonya Jackson

came from Latonya Jackson and Sandy Williams; isn't that correct?

A Correct.

MS. PETRONE: Nothing further.

THE COURT: Re-cross?

[JJJ 103] RECROSS-EXAMINATION

BY

MR. WALSH:

Q You only had electropherograms on the E2 of the vaginal swab, correct?

MS. PETRONE: Objection.

THE COURT: Overruled.

THE WITNESS: Correct.

MR. WALSH: Q You had no other electropherograms on any other evidence tested there, correct?

A Correct.

Q You had no other documentation with regard to any of the sample prep, correct?

MS. PETRONE: Objection, beyond the scope.

THE COURT: Sustained.

MR. WALSH: Q You had no other documentation other than a shipping manifest with regard to the chain of custody?

MS. PETRONE: Objection.

THE COURT: Sustained.

MR. WALSH: Q Well, you have no other documentation to examine chain of custody, correct?

MS. PETRONE: Objection.

THE COURT: Overruled.

[JJJ 104] THE WITNESS: Correct.

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MR. WALSH: I'd like to address the Court. I would move to exclude that evidence with regards to testing done by [Cellmark] based on 6th amendment right to confront witnesses and cite the United States Supreme Court case of [Crawford] versus Washington. I also cite the Illinois Supreme Court case of People versus Raney. There's no evidence with regards to work, any work done by [Cellmark] analyst to justify testimony coming in into this case with regard to their analysis, and I'd ask that that testimony be stricken.

THE COURT: State?

MR. BUNTINAS: Judge, Crawford versus Washington doesn't apply in this case. It's a complication [sic] clause case where the witness' testimony of the defendant's -- the testimony of the defendant's

wife at trial in Washington State on a marriage privilege law. It doesn't apply in this case, Judge. Judge, this type of expert testimony is done routinely every day in this [JJJ 105] courtroom, Judge, and since the Illinois state police crime lab has been using Orkin, [Cellmark], and Bodi technology group to out-source some of their analysis, this is exactly the kind of testimony that you get from the analysis, not the technical person who does the actual analysis. We are not going to be putting on the 15 people who analyzed or processed this evidence at [Cellmark]. You call the analyst who reviewed the data, formed the opinion, gathered everything, and did the statistical analysis, and performed an opinion as an expert, Judge.

Judge, you've got cases throughout the country that apply the specific, the specific type of evidence where you have [Cellmark], results from [Cellmark] being testified by experts in the case of Commonwealth versus Sparks, 742 N.E.2d 133. It's a 2001 Massachusetts Supreme court case again using this exact type of evidence. Also in State versus Kennedy, 1077 S.W. 3d 58. It's a 1999 Tennessee case. Again, the defendant's not deprived the right to cross examine. There is a witness who analyzed the data, they have the opportunity to cross examine them. If there is a genuine problem with any of the results or any of the analysis, they have the right to bring in their own witnesses to rebut [JJJ 106] that or bring that issue up. Doesn't go to the admissibility of the testimony. It goes to the weight of the testimony that they chose to challenge it that they can. There's not a jurisdiction

in any – there's not a jurisdiction within the country that is [sic] rejected this type of testimony that's been expert testimony at all.

Judge, if the basis or the legal standard that allows this type of testimony that was allowed in every day the expert witness testimony comes with the adoption of the federal rule of evidence 703 by the Illinois Supreme Court in the case of People versus [Nieves] and Wilson versus Clark; that the testimony by experts facts are dated in a particular case upon which an expert based on opinion or reference or inference maybe perceived by or made known to the expert at or before the hearing. And if they rely on that in forming their opinion, it's allowed. Judge. It's similar to evidence of a doctor reviewing X-rays or in the [Nieves] case, the testimony of Dr. Donahue of reviewing an autopsy performed by another doctor. Dr. Donahue never performed the autopsy in the [Nieves] case, but just like in this case he reviewed the data provided by another doctor who did perform the autopsy, formed his opinion [JJJ 107] that agreed with the previous opinion and that was admissible, Judge.

Judge, in addition since the Illinois state police crime lab has been sending cases to Orkin, [Cell-mark], and Bodi Technology, this kind of evidence has been accepted in courts within this building, numerous courts, numerous judges have reviewed this type of evidence and it becomes standard practice for an expert to come in and testified with regard to the results, the mechanical results performed at a

different lab and then taken that raw data and analyzing and coming up with an opinion and that's what's been done in this case and that's what's been done in numerous courts within this building. It's an accepted practice among the judges -- Judge [Toomin], Judge [Bowie], and I believe Judge Fox has accepted this among other judges as an acceptable use of experts that they would analyze raw data and apply that data, Judge, so, therefore, on that basis, Judge, we believe that the evidence is admissible. We are asking you deny counsel's motion to exclude.

THE COURT: Rebuttal?

MR. WALSH: Judge, the practice here deals with analysis done by the state lab and comment and you heard testimony from those analysts and that is the general [JJJ 108] practice, to hear from the analyst who performs the work. Defendant has a right under the 6th amendment and the Illinois constitution the right to confront the witnesses against him. Crawford versus Washington makes that clear that that with regard to testimonial evidence and submit that the evidence here with regards to the analysis performed the lack of evidence presented with regard to as far as chain of custody, the receipt of evidence, how it's handled, processed, how equipment is calibrated, how re-agents are prepared, how tests are run, what procedures are followed, what people handled, manipulate the evidence. None of that was presented here. Defendant has a right to confront the testimonial evidence against him with



regard to those practices. People versus Raney from the Illinois Supreme Court stands for proposition that evidence must be presented with regard to those factors of calibration of equipment, accuracy and reliability of testing procedures performed. The evidence you heard here does not support that and is just based on speculation of review of partial documentation and it's clear that the witness here, Ms. Lambatos, just received partial documentation, partial data from the lab and was not able to answer questions with regard to the testing [JJJ 109] practices. The State's assertion of our ability to call witnesses improperly shifts the burden onto the defense which violates defendant's constitutional right to a fair trial and violates the burden of proof. The cases cited all predate, I believe, Crawford versus Washington, and I submit that the evidence of Ms. Lambatos with regard to [Cellmark] testing is improperly admitted for the Court and should be stricken.

THE COURT: I don't think Crawford applies in this kind of case. I've read a lot of memorandums of law about Crawford. The premier memorandum is written by Appellate court justice Quinn. I've read his memorandum, his updated memorandum which he updates every year. I don't think this is a Crawford scenario, and I agree with the State that the evidence is -- the issue is, you know, what weight do you give the test, not do you exclude it and accordingly your motion to exclude or strike the testimony of the last witness or opinions based on her own

independent testing of the data received from  
[Cellmark] will be denied.

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**PEOPLE OF THE** )  
**STATE OF ILLINOIS** ) **No. 01-CR-10786**  
**vs.** )  
**SANDY WILLIAMS** )

Now comes the defendant, SANDY WILLIAMS, by his attorney, EDWIN A. BURNETTE, Public Defender of Cook County, through SOPHIA ATCHERSON, Assistant Public Defender, after a finding of guilty and before sentencing and respectfully moves this Honorable Court to set aside the finding of guilty in the above-entitled cause and grant him a new trial, it being expressly understood that defense counsel has not yet been furnished with an official transcript of the trial and makes this motion on behalf of her client, without prejudice to or waiving the later discovery of error in the trial record.

1. The State failed to prove defendant guilty of the charge beyond a reasonable doubt.

2. The finding is against the weight of the evidence.

3. The defendant was denied due process of law.

4. The defendant was denied equal protection of the laws.

5. The State failed to prove every material allegation of the offense beyond a reasonable doubt.

6. The defendant did not receive a fair trial and impartial trial as guaranteed him under Article I, Section 2, 6, 8, and 10 of the Constitution of the State of Illinois (1970) and under the Fourteenth Amendment of the Constitution of the United States.

7. The Court erred in overruling the defendant's motion for a directed finding at the close of the State's case.

**WHEREFORE**, for the various reasons urged before and during the trial, and every error as may appear from the official transcript of proceedings, defendant requests a New Trial.

Respectfully submitted,

EDWIN A. BURNETTE

Public Defender of Cook County

/s/ Sophia Atcherson

BY: **SOPHIA ATCHERSON**

Assistant Public Defender

Attorney #30295

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**PEOPLE OF THE** )  
**STATE OF ILLINOIS** ) **No. 01-CR-10786**  
**vs.** )  
**SANDY WILLIAMS** )

(Filed Jul. 10, 2006)

Now comes the defendant, SANDY WILLIAMS, by his attorney, EDWIN A. BURNETTE, Public Defender of Cook County, through SOPHIA ATCHERSON, Assistant Public Defender, after a finding of guilty and before sentencing and respectfully moves this Honorable Court to set aside the finding of guilty in the above-entitled cause and grant him a new trial.

In addition to the statements made in support of the previous motion, the defendant states the following:

1. The court erred in overruling defense counsel's objection to arresting officer Denyal Williams' testimony that the nature of the call he was responding to was a criminal sexual assault in progress. The nature of the call was improper hearsay. (4/24/06 transcript, p15)

2. The court erred in allowing the State to introduce testimony relating to the other pending criminal cases of the defendant in violation of the defense's motion in limine. Specifically, that after responding to a call of a criminal sexual assault in progress, Officer Denyal Williams "[met] with a victim in this case Natasha Hardy," and that Officer Williams then saw the defendant fleeing, gave chase and placed him into custody. (4/24/06 transcript, p15-17)

3. That the court erred in denying defense counsel's motion to strike Officer Williams' testimony in its entirety, as it violated the defense motion in limine regarding the defendant's other pending criminal cases.

4. That the court erred in overruling defense counsel's hearsay objection to the testimony of Officer Alvin Crawford that he responded to a dispatch call for a criminal sexual assault.

5. That the court erred in sustaining the State's objection to defense counsel asking Officer Crawford whether he could have changed what his partner wrote in her report if he did not agree with it.

6. That the court erred in sustaining the State's objection to defense counsel asking Officer Crawford whether the complaining witness, LaTonya Jackson, expressed any doubt to Officer Crawford about her identification of James McChristine as her attacker while at the hospital.

7. That the court erred in sustaining the State's objection to defense counsel asking Officer Crawford whether Mr. McChristine was free to leave after being identified as the offender by Ms. Jackson.

8. That the court erred in overruling defense counsel's objection to the State asking Dr. Nancy Schubert to offer an opinion about whether the chance of vaginal trauma is decreased if a person does not resist due to fear.

9. That the court erred in overruling defense counsel's objection to the lack of foundation or basis of knowledge for Dr. Schubert to testify that the sexual assault kit that she prepared was subsequently turned over to Detective Michael Baker.

10. That the court erred in overruling defense counsel's hearsay objection to Sandra Lambatos, who testified regarding her work as an analyst for the Illinois State Police Crime Lab, being allowed to testify to the manner in which evidence from the case was sent to Cellmark Diagnostic Laboratory based on her review of shipping manifests.

11. That the court erred in overruling defense counsel's objections to Sandra Lambatos being allowed to testify to her opinions and conclusions reached as a result of her analysis of testing conducted at Cellmark Diagnostic Laboratory where there was no foundation for her testimony because Ms. Lambatos had no personal knowledge regarding the testing done by Cellmark, and the defendant, therefore, was denied the right to meaningfully confront

the witnesses against him. Specifically, the court erred in allowing Ms. Lambatos to testify:

- a. That "there was a computer match generated of the male DNA profile found in semen from the vaginal swabs of LaTonya Jackson to a male DNA profile that had been identified as having originated from Sandy Williams," where there was no foundation for the male DNA profile obtained from the vaginal swabs that were tested by Cellmark Diagnostic Laboratory; (4/26/06 transcript, p. 67)
- b. That she made a comparison of the semen that was identified from the vaginal swabs of LaTonya Jackson to the male DNA profile that had been identified by Karen Kooi from the blood of Sandy Williams; (4/26/06 transcript, p. 68)
- c. That it was her expert opinion that the male DNA profile from the vaginal swabs of LaTonya Jackson were a match to Sandy Williams; (4/26/06 transcript, p. 69)
- d. That it was her expert opinion that the methods used by Cellmark Diagnostic Laboratory in this case are generally accepted in the scientific community; (4/26/06 transcript, p. 98)
- e. That she routinely relied on results from Cellmark in performing her work in the Illinois State Police Crime Lab; (4/26/06 transcript, p. 99)



- f. That she reviewed the data from Cellmark and made her own determination regarding their results; (4/26/06 transcript, p. 99) and
- g. That she did not see any problem with either the chain of custody or with contamination of evidence regarding the testing done at Cellmark. (4/26/06 transcript, p. 100)

12. That the court erred in denying defense counsel's motion to exclude and strike the testimony of Sandra Lambatos with regard to opinions and conclusions based on testing done by Cellmark Diagnostic Laboratory where such testimony lacked the proper foundation and violated the defendant's Sixth Amendment right to confront the witnesses against him as stated in the United States Supreme Court case of *Crawford v. Washington*, 541 U.S. 36; 124 S. Ct. 1354; 158 L. Ed. 2d 177 (2004), and the Illinois [sic] case of *People v. Raney*, 324 Ill. App. 3d 703; 756 N.E.2d 338 (1st Dist. 2001) (4/26/06 transcript, p. 102-107)

13. That the court erred in sustaining the State's objection to defense counsel's question to Ms. Lambatos as to whether an error in Cellmark's results regarding the data for the E2 fraction of the vaginal swabs would mean that any matches made regarding that data would also be wrong.

14. That the court erred in sustaining the State's objection to defense counsel's question to Ms.

Lambatos as to whether she was aware of any instances of contamination or fraud by any analysts at Cellmark Diagnostic Laboratory.

15. That the court erred in allowing over defense objection, State's exhibits 25 and 26, which were shipping manifests regarding evidence shipped from the Illinois State Police Crime Lab to Cellmark Diagnostic Laboratory and back again, where those documents did not qualify as business records because they were prepared as pare [sic] of a criminal investigation and for the purpose of litigation.

**WHEREFORE**, for the various reasons urged before and during the trial, and every error as may appear from the official transcript of proceedings, defendant requests a New Trial.

Respectfully submitted,

**EDWIN A. BURNETTE**

Public Defender of Cook County

/s/ Sophia Atcherson

**BY: SOPHIA ATCHERSON**

Assistant Public Defender

Attorney #30295

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STATE OF ILLINOIS    )  
                                  ) SS:  
COUNTY OF COOK     )

IN THE CIRCUIT COURT OF  
COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT – CRIMINAL DIVISION

PEOPLE OF THE	)	
STATE OF ILLINOIS,	)	
Plaintiff	)	
	)	No. 01 CR 10786
v.	)	
SANDY WILLIAMS,	)	
Defendant	)	

REPORT OF PROCEEDINGS had before the  
Honorable KENNETH J. WADAS, Judge of the  
Criminal Division, on the 18th day of August, 2006.

APPEARANCES:

HON. RICHARD A. DEVINE  
State's Attorney of Cook County, by  
MS. ANGELA PETRONE and  
MR. ARUNAS BUNTINAS  
Assistant State's Attorneys  
on behalf of the People;

MR. EDWIN A. BURNETTE  
Public Defender of Cook County, by  
MS. SOPHIA ATCHERSON and  
MR. BRIAN WALSH  
Assistant Public Defenders  
on behalf of the Defendant.

Renee M. Mason, CSR  
 Official Court Reporter  
 2650 S. California, Room 4C02  
 Chicago, Illinois 60608  
 (773) 869-6065  
 License No. 084-002064

\* \* \*

[MMM3] MS. ATCHERSON: Judge, we rest on the written motions regarding the motions for new trial.

MS. PETRONE: The state would do likewise.

THE COURT: Any argument?

MS. ATCHERSON: No argument.

THE COURT: I'll stand on all my rulings and deny the motion for new trial.

\* \* \*

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## IN THE CIRCUIT COURT OF COOK COUNTY

PEOPLE OF THE	) CASE NUMBER 01CR1078601
STATE OF ILLINOIS	) DATE OF BIRTH
V.	) [Date Of Birth Omitted]
<u>SANDY WILLIAMS</u>	) DATE OF ARREST 04/17/01
Defendant	IR NUMBER 0723909
	SID NUMBER 025162660

ORDER OF COMMITMENT AND SENTENCE  
TO ILLINOIS DEPARTMENT OF CORRECTIONS

=====

The above named defendant having been adjudged guilty of the offense(s) enumerated below is hereby sentenced to the Illinois Department of Corrections as follows:

Count	Statutory Citation	Offense	Sentence Class
004	<u>720-5/12-14(A)(3)</u>	AGG CRIM SEX ASLT/ THREAT LIFE	YRS. 888 X MOS. 00
	and said sentence shall run concurrent with count(s) 006 ____		
006	<u>720-5/12-14(A)(3)</u>	AGG CRIM SEX ASLT/ THREAT LIFE	YRS. 888 X MOS. 00
	and said sentence shall run concurrent with count(s) 004 ____		
015	<u>720-5/10-2(A)(3)</u>	AGG KIDNAP- ING/INFLICT HARM	YRS. 060 X MOS. 00
	and said sentence shall run consecutive with count(s) 004 006 ____		

017	<u>720-5/18-5</u>	AGGRAVATED	YRS. 015	1
		ROBBERY	MOS. 00	

and said sentence shall run concurrent with  
count(s) 004 006 015 \_\_\_\_

YRS.           

MOS. \_\_\_\_\_

and said sentence shall run (concurrent with) (consecutive to) the sentence imposed on:

On Count \_\_\_\_ defendant having been convicted of a class \_\_\_\_ offense is sentenced as a class x offender pursuant TO 730 ILCS 5/5-5-3(C)(8).

On Count 015 defendant is sentenced to an extended term pursuant to 730 ILCS 5/5-8-2.

The Court finds that the defendant is entitled to receive credit for time actually served in custody for a total credit of 1949 days as of the date of this order

IT IS FURTHER ORDERED that the above sentence(s) be concurrent with the sentence imposed in case number(s) \_\_\_\_\_

AND: consecutive to the sentence imposed under case  
number(s) \_\_\_\_\_

IT IS FURTHER ORDERED THAT COUNT 4 AND 6 CONCURRENT TO EACH OTHER. COUNT 15 CONSECUTIVE\_\_ TO COUNTS 4 AND 6. COUNT 17 CONCURRENT TO COUNTS 4, 6, AND 5. O/C MITTIMUS TO \_\_ ISSUE.

IT IS FURTHER ORDERED that the Clerk provide the Sheriff of Cook County with a copy of this Order and that the Sheriff take the defendant into

custody and deliver him/her to the Illinois Department of Corrections and that the Department take him/her into custody and confine him/her in a manner provided by law until the above sentence is fulfilled.

DATED AUGUST 18, 2006 ENTER: 08/18/06

CERTIFIED

BY	<u>G FOSTER</u>	/s/ <u>Kenneth J. Wadas</u>
	DEPUTY	JUDGE:
	CLERK	WADAS, KENNETH J.
		1700

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THIRD DIVISION  
AUGUST 27, 2008

No. 1-06-3463

THE PEOPLE OF THE	)	Appeal from the
STATE OF ILLINOIS,	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	No. 01 CR 10786
v.	)	The Honorable
SANDY WILLIAMS,	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE GREIMAN delivered the opinion of the court:

Following a bench trial that included inculpatory deoxyribonucleic acid (DNA) evidence, defendant, Sandy Williams, was convicted of two counts of aggravated criminal sexual assault, aggravated kidnaping and aggravated robbery. He was subsequently sentenced to two concurrent terms of natural life imprisonment for the aggravated criminal sexual assault counts; a consecutive term of 60 years' imprisonment for the aggravated kidnaping count; and a concurrent term of 15 years' imprisonment for the aggravated robbery count. On appeal, defendant contends that the trial court erred in admitting the inculpatory DNA evidence because sufficient foundation was not established for the forensic scientist's opinion testimony on the matter. Defendant additionally contends that admission of the forensic scientist's opinion testimony violated defendant's confrontation rights according to *Crawford v. Washington*, 541 U.S.



36, 158 L. Ed. 2d 177, 124 S. Ct. 1354 (2004). Defendant finally contends that the trial court erroneously ordered that his aggravated kidnaping sentence run consecutive to his sentence of natural life imprisonment for aggravated criminal sexual assault.

The evidence adduced at trial demonstrated that, on February 10, 2000, defendant grabbed the 22-year-old victim, L.J., as she was [sic] walked home from work, forced her into a car and repeatedly sexually assaulted her. Once finished, defendant took the victim's money and some of her personal belongings and fled. The victim immediately ran home and reported the incident.

The victim later went to the hospital, where she provided a blood sample and a vaginal swab for a sexual assault kit (kit). Doctor Nancy Schubert sealed the samples in the kit and placed it in a secured lock box in the emergency room. Early the next morning, Detective Michael Baker obtained the kit from the emergency room and inventoried it prior to sending the kit to the Illinois State Police crime lab (Crime Lab) for testing and analysis.

Prior to going to the hospital, the victim spoke to the police and described defendant as a black male, standing 5 feet 8 inches tall, wearing a black skull-cap, black jacket and jeans and driving a beige station wagon. The police subsequently issued a "flash" message including that description. Pursuant to the "flash" message, two officers stopped an individual matching the perpetrator's description. The suspect,

James McChristine, agreed to accompany the officers to the hospital where the victim was being treated. The victim first viewed McChristine's driver's license and stated that there was potential that he was her attacker; however, she asked to view him in person. As a result, the victim viewed McChristine in the hospital parking lot and there was conflicting evidence presented as to whether the victim positively identified McChristine at that time. Notwithstanding, the victim again viewed McChristine at a police station thereafter and confirmed that McChristine was not her offender.

Defendant was arrested on August 3, 2000, on an unrelated offense. While in custody, defendant was required to provide a blood sample for the police DNA database. John Duffy, an investigator for the State's Attorney's office, placed defendant's blood sample into a sealed envelope. Duffy then inventoried the sample and sent it to the Crime Lab for testing and analysis. In March 2001, a DNA "hit" was generated in the database linking defendant to the underlying offenses. As a result, on April 16, 2001, L.J. viewed a lineup and positively identified defendant as her attacker. Defendant was subsequently charged with the instant offenses.

Karen Kooi, a forensic scientist at the Crime Lab, testified that she received defendant's sealed blood sample on August 24, 2000, and performed a short tandem repeat (STR) analysis on a portion of the sample. Kooi obtained a DNA profile from the sample and entered it into the Crime Lab database, which is

used to compare DNA profiles to blood samples from unsolved crimes. While extracting defendant's DNA profile from his blood sample, Kooi acted in accordance with the nationwide standards for DNA analysis.

Brian Hapack, a forensic scientist at the Crime Lab, testified that he received the victim's sealed kit on February 15, 2000, and performed two tests on the vaginal swabs in order to detect the presence of semen. First, Hapack conducted an acid phosphatase test and received the highest indication for semen, four plus positive. Next, Hapack conducted an Abacard test and again received a positive result for the presence of semen with two pink lines. Hapack guaranteed the accuracy of his results by working in a clean environment free from contamination and by ensuring that the tests functioned properly. Hapack did not perform any tests on the victim's blood sample. Thereafter, Hapack sealed both the vaginal swabs and the blood sample in envelopes and placed them in a secure freezer in order to secure the evidence for future testing, as was a common practice in the scientific community.

Sandra Lambatos, a forensic scientist at the Crime Lab, testified, as an expert in forensic biology and forensic DNA analysis, that a procedure known as polymerase chain reaction (PCR) enables forensic examiners to extract a male DNA profile from semen, which could then be compared to the DNA from a suspect's blood in order to garner a statistical probability that the DNA matched.

In particular to the instant case, Lambatos testified that the victim's kit was sent, in a sealed condition, to Cellmark Diagnostic Laboratory (Cellmark), an accredited crime lab in Maryland, for further analysis. According to Lambatos, at the time, the Crime Lab commonly sent evidence samples to Cellmark to expedite analysis. The samples were sent via Federal Express, which was a generally accepted manner of transporting DNA evidence in the scientific community. A Crime Lab shipping manifest indicated that the victim's kit was shipped to Cellmark on November 28, 2000, in a sealed condition; was received by Cellmark on November 29, 2000; and was returned to the Crime Lab on April 3, 2001. According to Lambatos, the Crime Lab shipping manifest was generated in the ordinary course of business and was kept in a secure area of the lab.

Lambatos further testified that she used the comparison method described earlier to conclude that the semen obtained from the victim's vaginal swabs, as identified by Hapack, and the male DNA profile produced from defendant's blood sample, as identified by Kooi, were a match. The probability of the match was 1 in 8.7 quadrillion unrelated black individuals, 1 in 390 quadrillion unrelated white individuals and 1 in 109 quadrillion unrelated Hispanic individuals.

On cross-examination, Lambatos admitted that she was unaware of what happened to the Federal Express package containing the victim's kit when it arrived at Cellmark. Lambatos further admitted that she did not examine or perform any physical testing

of the samples herself; rather, she based her opinion, in part, on the results generated by Cellmark. In particular, Cellmark provided a DNA profile for the semen recovered from the victim's vaginal swabs using electropherograms and allele charts. Although she did not personally observe Cellmark perform the tests on the evidence at issue, Lambatos averred that, because Cellmark was an accredited laboratory, it was required to meet "certain guidelines to perform DNA analysis for the Illinois State Police and so all those calibrations and internal proficiencies and controls [of the equipment used] would have had to have been in place for them to perform the DNA analysis." Lambatos, however, admitted that Cellmark had different procedures and standards for results than the Crime Lab. Nevertheless, Lambatos maintained that Cellmark analysts generally performed proficiency tests that she personally developed.

According to Lambatos, Cellmark's electropherogram tests revealed a mixture of DNA profiles; therefore, Lambatos opined that Cellmark subtracted the victim's profile, as generated from the vaginal swab, from the sample in order to deduce the male's DNA profile, namely, defendant's. Lambatos admitted that Cellmark's results demonstrated a minor presence for unaccounted genetic material, which she described as "white noise." Lambatos then entered the retrieved male DNA profile into the Crime Lab database to search for a match. Lambatos admitted that it was possible to have a degraded evidence sample; however, she did not observe any evidence degradation

in the instant case. According to Lambatos, she reviewed Cellmark's results; made her own interpretations; and formed her own opinion of the evidence.

On redirect examination, Lambatos clarified that the results demonstrating a mixture only produced DNA profiles for the victim and defendant. In her expert opinion, Lambatos stated that Cellmark's testing and analysis methods were generally accepted in the scientific community. Lambatos further testified that she routinely relied on results from Cellmark and she did not observe any problems with the chain of custody or contamination of the evidence at issue.

At the conclusion of Lambatos' testimony, defense counsel moved to exclude that portion of her testimony related to Cellmark's testing based upon *Crawford* and a lack of established foundation. In particular, defense counsel argued that the evidence presented lacked a suitable foundation in terms of the chain of custody; who handled the evidence; how the equipment was calibrated; how the tests were run; and what procedures were followed. Following the parties' arguments, the trial court concluded that *Crawford* was inapplicable. In so ruling, the court stated:

"I've read a lot of memorandums of law about *Crawford*. The premier memorandum is written by Appellate [C]ourt [J]ustice Quinn. I've read his memorandum, his updated memorandum which he updates every year. I don't think this is a *Crawford* scenario, and I agree with the State that the evidence is –

the issue is, you know, what weight do you give the test, not do you exclude it and accordingly your motion to exclude or strike the testimony of the last witness or opinions based on her own independent testing of the data received from Cel[l]mark<sup>1</sup> will be denied."

The trial court ultimately found defendant guilty as previously described. The court subsequently denied defendant's motion for a new trial and proceeded to sentencing. In aggravation, the State presented the testimony of G.M., an individual whom defendant kidnaped, repeatedly raped and robbed in 1984. Defendant's criminal record further demonstrated that he was paroled for those offenses, including aggravated criminal sexual assault, in February 1997 and was discharged from parole on February 4, 2000, less than a week before the instant offense. Following additional evidence in aggravation and mitigation, the court sentenced defendant to two concurrent terms of natural life imprisonment for the aggravated criminal sexual assault counts; a consecutive term of 60 years' imprisonment for the aggravated kidnaping count; and a concurrent term of 15 years' imprisonment for the aggravated robbery count. Thereafter, the court denied defendant's motion to reconsider that sentence. This timely appeal followed.

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<sup>1</sup> According to the parties, the transcript reflects an improper spelling of the laboratory.

Defendant first contends that the trial court erred in admitting the DNA evidence produced by Cellmark where a sufficient foundation was not established to demonstrate that the equipment used was adequately calibrated and properly functioning, and where the State failed to establish a sufficient chain of evidence based upon Cellmark's handling of the evidence.

At the outset, we note that neither argument was waived for purposes of our review. Despite the State's insistence that defendant expressly waived review of his chain of custody argument, our review of the record reveals that defense counsel included the issue in his oral motion to exclude Lambatos' testimony and in his posttrial motion as well. *See People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Accordingly, we review defendant's arguments.

The admission of Lambatos' expert testimony was within the trial court's sound discretion; therefore, we will not overturn that decision absent an abuse of discretion. *People v. Eyler*, 133 Ill. 2d 173, 211 (1989).

In *Wilson v. Clark*, 84 Ill. 2d 186 (1981), our supreme court adopted Rule 703 of the Federal Rules of Evidence, holding that an expert may offer an opinion based upon facts not in evidence if those facts are "of a type reasonably relied upon by experts in the particular field." *People v. Raney*, 324 Ill. App. 3d 703, 706 (2001), citing *Wilson*, 84 Ill. 2d at 193. Moreover, where expert testimony is based upon an electronic



or mechanical device, the expert must provide some foundational proof that the device was functioning properly at the time it was used. *Raney*, 324 Ill. App. 3d at 710-11; *People v. Bynum*, 257 Ill. App. 3d 502, 514 (1994). Notwithstanding, in a post-*Bynum* and post-*Raney* decision, this court approvingly cited *People v. Hill*, 169 Ill. App. 3d 901 (1988), for the proposition that a chemical analyst need not personally determine the reliability of the instrument being used to perform the evaluation at issue. *People v. Rucker*, 346 Ill. App. 3d 873, 890 (2003), citing *Hill*, 169 Ill. App. 3d at 911. Thereafter, it is the defendant's responsibility to challenge the sufficiency or reliability of the basis for the expert's opinion during cross-examination, and the determination of the weight to be given that expert's opinion is left to the finder of fact. *Adams v. Family Planning Associates Medical Group, Inc.*, 315 Ill. App. 3d 533, 550 (2000), citing *People v. Lipscomb*, 215 Ill. App. 3d 413, 435 (1991).

In the case at bar, Lambatos was qualified, without objection, as an expert in forensic biology and forensic DNA analysis and concluded, based upon her expertise, Kooi's analysis of defendant's blood, Hapack's analysis of the semen found on the victim's vaginal swabs and Cellmark's report detailing the DNA profile generated from the semen on the victim's vaginal swabs, that the semen belonged to defendant. Although she admittedly did not perform the actual tests on the evidence, Lambatos familiarly testified regarding the PCR procedure, which was used to

extract the male DNA profile from the semen found on the vaginal swabs. Moreover, Lambatos repeatedly averred that Cellmark was an accredited laboratory and therefore was required to follow specified guidelines in order to perform DNA analysis. Lambatos additionally provided that Cellmark's testing and analysis methods were generally accepted in the scientific community, so much so that she routinely relied on Cellmark's facility. Accordingly, despite Lambatos' inability to speak to the precise conditions of Cellmark's equipment and testing of the instant samples, we find that she provided a sufficient foundation upon which to partially base her assessment and conclusion. See *People v. Sutherland*, 223 Ill. 2d 187, (2006) (where the supreme court dismissed the same argument because the defendant did not mount a challenge against the facts relied upon by the expert as not typically relied upon in the relevant field).

Defendant relies heavily on *Raney* to support his argument that the foundation was inadequate because Lambatos could not testify that Cellmark's equipment was calibrated and working properly. *Raney*, 324 Ill. App. 3d at 710-11. The *Raney* court, however, recognized that it may not be feasible to require that an expert personally test the instrument relied upon for making the relevant determination. *Raney*, 324 Ill. App. 3d at 710. Moreover, the instant case is distinguishable from *Raney* in that Lambatos provided "some foundational proof as to the fact that the instrument was functioning properly at the time

it was used" (*Raney*, 324 Ill. App. 3d at 710), where she maintained that Cellmark's testing necessarily met the threshold of proper DNA analysis. In comparison, the expert in *Raney* did not provide any testimony that the machine used was calibrated and working properly or how she knew its results were accurate. *Raney*, 324 Ill. App. 3d at 710. Consequently, defendant's argument is based upon pure speculation that the equipment may not have been working properly, and such speculation is best tested during cross-examination. See *Adams*, 315 Ill. App. 3d at 550. The record reveals that defense counsel thoroughly cross-examined Lambatos on the basis of her opinion. Accordingly, the issue of Lambatos' reliance on Cellmark's report went to the weight of her opinion and not its admissibility. The trial court assessed the weight of Lambatos' testimony and clearly found it convincing.

We next turn to defendant's argument regarding the chain of custody of the victim's kit. Specifically, defendant argues that the State failed to demonstrate a sufficient chain of evidence because it did not offer any evidence regarding whether Cellmark "employed protective measures to guard against contamination of the samples."

Where physical evidence is not readily identifiable or may be susceptible to tampering, contamination or exchange, the State is required to establish a chain of custody "that is sufficiently complete to make it improbable that the evidence has been subject to tampering or accidental substitution." *People v.*

*Woods*, 214 Ill. 2d 455, 467 (2005). Our supreme court further instructed:

“Unless the defendant produces evidence of actual tampering, substitution or contamination, a sufficiently complete chain of custody does not require that every person in the chain testify, nor must the State exclude every possibility of tampering or contamination; the State must demonstrate, however, that reasonable measures were employed to protect the evidence from the time that it was seized and that it was unlikely that the evidence has been altered.” *Woods*, 214 Ill. 2d at 467.

In those circumstances, any deficiencies in the chain of custody are considered against the weight of the evidence and not its admissibility. *Woods*, 214 Ill. 2d at 467.

In the case at bar, defendant does not take issue with the chain of custody of the victim’s kit prior to its transport to Cellmark; therefore, we focus only on that portion of the chain. Lambatos testified that the Crime Lab kept a shipping manifest in the ordinary course of business in a secure area which detailed the arrival and departure of specified evidence samples. In regard to the relevant evidence here, the shipping manifest reflected that the victim’s kit was sent to Cellmark on November 28, 2000, in a sealed condition via Federal Express, a generally accepted manner of transporting DNA evidence within the scientific community; was received by Cellmark the next day;

and was returned to the Crime Lab on April 3, 2001. Lambatos was unaware of the express condition of the samples when they arrived at Cellmark; however, based on her expertise, Lambatos testified that the sample did not show any signs of degradation. We are not persuaded by defendant's argument that the chain of custody was inadequate because no Cellmark analyst testified regarding the condition and handling of the samples, where Lambatos testified regarding the reasonable measures employed to safeguard the evidence. See *Woods*, 214 Ill. 2d at 467 (every person in the chain of custody need not testify). Accordingly, the State established a *prima facie* demonstration that the chain of custody was sufficient.

Defendant briefly argues that the State could not establish a chain of custody based upon the shipping manifests because they were inadmissible business records produced for purposes of litigation in violation of section 115-5(c)(2) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-5(c)(2) (West 2006)). Defendant, however, has waived review of this argument where he barely mentioned it and did not cite to any relevant authority outside the statute, in violation of Supreme Court Rule 341(h)(7) (210 Ill. 2d R. 341(h)(7)). "A reviewing court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented [citation], and it is not a repository into which an appellant may foist the burden of argument and research [citation]; it is neither the function nor the obligation of this court to

act as an advocate or search the record for error.” *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993).

Defendant further argues that he sufficiently rebutted the State’s *prima facie* case because he presented evidence of contamination *vis-a-vis* Cellmark’s reported mixture of DNA profiles and presence of unaccountable genetic material. We disagree. Lambatos clearly testified that the mixture at issue was a combination of only defendant’s and the victim’s DNA profiles. Moreover, in regard to the unaccounted-for genetic material, Lambatos categorically designated it “white noise.” Consequently, we do not find that defendant presented sufficient evidence to suggest that the samples were tampered with or contaminated. Accordingly, Lambatos’ testimony regarding Cellmark’s testing and analysis was properly admitted on the basis of the State’s sufficient chain of custody.

Defendant next contends that the results of Cellmark’s testing and analysis were testimonial in nature and therefore Lambatos’ expert testimony in reference thereto violated defendant’s constitutional right to confrontation, where no Cellmark representative was presented for cross-examination. The State responds that Lambatos’ testimony regarding Cellmark’s analysis was not testimonial hearsay, and thus, defendant’s confrontation rights were neither implicated nor violated.

In *People v. Spicer*, 379 Ill. App. 3d 441 (2007), this court recently provided that, where a defendant claims that a trial court admitted a hearsay statement in

violation of the confrontation clause, we defer on review to the trial court's evidentiary ruling unless that discretion has been frustrated by an erroneous ruling of law. *Spicer*, 379 Ill. App. 3d at 451.

Pursuant to *Crawford*, "[w]here testimonial statements are at issue, the only indicum of reliability sufficient to satisfy constitutional demands is the one the Constitution actually proscribes: confrontation." *Crawford*, 541 U.S. at 68-69, 158 L. Ed. 2d at 203, 124 S. Ct. at 1374. Hence, since no Cellmark representative was available for cross-examination, the purported question before us is whether Cellmark's report constituted improper testimonial evidence. *Crawford*, however, reiterated that "the [Confrontation] Clause also does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted. See *Tennessee v. Street*, 471 U.S. 409, 414, 85 L. Ed. 2d 425, 431, 105 S. Ct. 2078, 2081-82 (1985)." *Crawford*, 541 U.S. at 59 n.9, 158 L. Ed. 2d at 197, 124 S. Ct. at 1370. As a result, we must initially determine whether Lambatos' reliance on the Cellmark results was hearsay. See *Spicer*, 379 Ill. App. 3d at 449 ("hearsay analysis and sixth amendment analysis are completely different").

Hearsay generally prohibits the introduction of an out-of-court statement offered to prove the truth of the matter asserted therein. *Spicer*, 379 Ill. App. 3d at 449. However, underlying facts and data may be disclosed by an expert, not for the truth of the matter asserted, but for the purpose of explaining the basis of his opinion. *People v. Nieves*, 193 Ill. 2d 513, 528

(2000), citing *People v. Pasch*, 152 Ill. 2d 133, 176 (1992); *People v. Almighty Four Hundred*, 287 Ill. App. 3d 123, 132 (1997). Moreover, “[i]t is well established that an expert may testify about the findings and conclusions of a nontestifying expert that he used in forming his opinions.” *People v. Jones*, 374 Ill. App. 3d 566, 579-80 (2007).

Defendant argues that Cellmark’s report was inadmissible hearsay because it was necessarily offered for the truth of the matter asserted where Lambatos could not conclude that defendant’s semen was present on the victim’s vaginal swabs absent the DNA profile generated by Cellmark. We disagree. Cellmark’s report was not offered for the truth of the matter asserted; rather, it was offered to provide a basis for Lambatos’ opinion. Lambatos clearly testified that she performed her own evaluation of the data, which included Kooi’s findings, Hapack’s findings and Cellmark’s report, prior to forming her opinion.

In *Almighty Four Hundred*, this court provided:

“[a]n expert witness may base his or her opinion on information that has not been admitted into evidence so long as that information is reliable and is of a type reasonably relied upon by experts in that field. Rule 703 did not, however, create an exception to the hearsay rule. [Citation]. The underlying facts or data upon which an expert in a particular field is found to have reasonably relied are not admitted for their truth. [Citation].



Rather, these facts are admitted for the limited purpose of explaining the basis for the expert witness' opinion. [Citation]. Furthermore, it is for the circuit court, in the exercise of its discretion, to determine whether the underlying facts or data upon which an expert bases an opinion are of a type reasonably relied upon by experts in the particular field." *Almighty Four Hundred*, 287 Ill. App. 3d at 132.

Similar to the facts of *Lipscomb*, Lambatos relied on Cellmark's report, which included data of the type generally relied upon by experts in the field. *Lipscomb*, 215 Ill. App. 3d at 435 (the expert's opinion was properly admitted even though it was based on a final report which included data generated by individuals that did not testify).

Moreover, defense counsel vigorously cross-examined Lambatos regarding her opinion and was free to call another expert to dispute that opinion. It was, therefore, the trial court's duty to determine the weight of Lambatos' testimony. *Adams*, 315 Ill. App. 3d at 550. Furthermore, the record does not affirmatively show that the instant trial judge considered anything but competent evidence. *People v. Schmitt*, 131 Ill. 2d 128, 138-39 (1989) (a trial judge is presumed to consider only competent evidence unless the record affirmatively demonstrates otherwise). On the contrary, defendant objected to Lambatos' testimony and the Honorable Kenneth Wadas entertained arguments on the matter, yet determined that the opinion based on Cellmark's reports was admissible.

Simply put, the report was not introduced to prove the truth of Cellmark's results consequently the Confrontation Clause was not violated. *Crawford*, 541 U.S. at 59 n.9, 158 L. Ed. 2d at 197, 124 S. Ct. at 1370. Further, because we have already determined that it was reasonable for Lambatos to rely on Cellmark's report, we find that Lambatos' testimony regarding the Cellmark report was properly admitted to assist in explaining the basis of her ultimate opinion. See *Nieves*, 193 Ill. 2d at 528.

Overall, defendant essentially requests that we require each and every individual involved in the testing and analysis of DNA to testify at trial. For obvious reasons in the abstract and for those provided in the case at bar, we decline to issue such a ruling.

Defendant finally contends that the trial court erred in sentencing him to a term of imprisonment consecutive to his term of natural life. The State responds that the plain language of section 5-8-4 of the Unified Code of Corrections (Code of Corrections) (730 ILCS 5/5-8-4 (West 2006)) and section 12-14 of the Criminal Code of 1961 (Criminal Code) (720 ILCS 5/12-14 (West 2006)) require that defendant's prison term for aggravated kidnaping run consecutive to his term of natural life for aggravated criminal sexual assault.

Although the imposition of a sentence is within a trial court's discretion, we review the propriety of defendant's sentence *de novo* because it involves a

question of law.<sup>2</sup> *People v. Chaney*, 379 Ill. App. 3d 524, 527 (2008).

Section 5-8-4 of the Code of Corrections provides that a “court shall impose a consecutive sentence” if a defendant was convicted of a violation of section 12-14 of the Criminal Code. 730 ILCS 5/5-8-4(a)(ii) (West 2006). Moreover, pursuant to section 12-14(d)(2) of the Criminal Code, an individual, like the instant defendant, who has been convicted of aggravated criminal sexual assault after having been previously convicted of aggravated criminal sexual assault “shall be sentenced to a term of natural life imprisonment.” 720 ILCS 5/12-14(d)(2) (West 2006).

In *People v. Dixon*, 366 Ill. App. 3d 848 (2006), this court resolved the question before us and in *People v. Spears*, 371 Ill. App. 3d 1000 (2007), this third division approvingly cited and relied on *Dixon* to resolve the same issue. Following the supreme court’s logic in *People v. Palmer*, 218 Ill. 2d 148 (2006), that, under the principles of natural law and within the plain meaning of the consecutive sentencing statute, only one natural life sentence may be served, we concluded that a term of years could not be served consecutive to a term of natural life because a defendant is only capable of serving one natural life sentence. *Spears*, 371 Ill. App. 3d at 1008; *Dixon*, 366 Ill. App. 3d at 856, citing *Palmer*, 218 Ill. 2d at 164.

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<sup>2</sup> We note that neither party provided the proper standard of review for this issue.

“His natural life sentence without parole means that he will remain in prison for the remainder of his life and at the conclusion of this sentence, his life is over.” *Spears*, 371 Ill. App. 3d at 1008. Consequently, the instant defendant, like that in *Spears*, cannot serve a 60-year term at the conclusion of his term of natural life. Accordingly, pursuant to Supreme Court Rule 615(b)(4) (134 Ill. 2d R. 615(b)(4)), we vacate that portion of the trial court’s order sentencing defendant to consecutive terms of natural life and 60 years’ imprisonment and modify his sentence to reflect concurrent terms.

Based on the foregoing, we affirm the judgment of the circuit court of Cook County in relation to defendant’s convictions. We vacate that portion of the circuit court’s order imposing consecutive sentences for aggravated criminal sexual assault and aggravated kidnaping, and instead modify defendant’s sentence to impose concurrent sentences for those convictions.

Affirmed in part and vacated in part; sentence modified.

QUINN, P.J., concurs.

CUNNINGHAM, J., dissents.

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JUSTICE CUNNINGHAM dissenting:

Because I believe the complete failure to lay a sufficient foundation should have barred a key State witness from presenting critical DNA testimony, I must respectfully dissent.

This analysis requires some clarification of the facts of the case. The attack on the victim occurred on the night of February 2, 2000. A man grabbed the victim from behind, forced her into a beige station wagon, robbed her, sexually assaulted her, and then pushed her out of the car. That same evening the police stopped a man in a car near the crime scene who matched the victim's description of her assailant. According to police testimony, this man voluntarily accompanied them to the hospital where the victim was being treated. When shown the man's driver's license photograph, the victim said he looked like her assailant, but she told the police officer that she wanted to see the man in person. A police officer took the victim to the hospital parking lot where the man was being held. That police officer testified at trial that when the victim observed this man, she positively identified him as her attacker. The police officer's testimony was contradicted by the victim, who claimed that in the hospital parking lot she first saw the man sitting in a police car, and she had some doubts about whether he was her assailant. The police then took the man out of the car and she told them he was not her assailant. Although the victim claimed that she told the police officer that the man was not her assailant, nonetheless, it is undisputed

that the police subsequently took her to the police station to look at the man again, at which time she said he was not her assailant. No DNA material was taken from this man. *Fourteen months passed before the victim first identified another man, the defendant Williams, in a lineup, as her assailant.* She had never seen the defendant before she was attacked.

The eyewitness testimony of the victim, if believed by the trier of fact without additional bolstering evidence, may meet the State's burden of proof of the defendant's guilt beyond a reasonable doubt. *People v. Bannister*, 378 Ill.App.3d 19, 39, 880 N.E.2d 607, 625 (2007); see *People v. Smith*, 185 Ill.2d 532, 545, 708 N.E.2d 365, 371 (2007) (stating this proposition of law, but reversing the conviction outright because of serious impeachment of the eyewitness which resulted in the State failing to meet its burden of proof). In this case the testimony of the victim, although impeached by her initial contradictory identification of another man as her assailant, could have been sufficient evidence of the defendant's guilt. But it is clear that the State's strongest evidence, which greatly bolstered the victim's testimony, was the testimony of the Illinois State Police Crime Lab's forensic scientist, Sandra Lambatos.

Lambatos testified that the DNA in vaginal swabs of semen recovered from the victim matched the defendant's DNA. She described the odds of this match occurring as 1 in 390 quadrillion for white people, 1 in 8.7 quadrillion for black people and 1 in 109 quadrillion for Hispanic people. If valid, this is

devastating evidence whether it is heard by a jury or a judge. The problem is that this testimony should never have been admitted because the State never established a proper foundation for its admission.

This court has repeatedly set out the foundation required before an expert may give his or her opinion based upon machine-generated results which are not in evidence. The State must establish a foundation which includes some evidence that the machine producing those results was functioning properly when it was used for testing. *People v. Raney*, 324 Ill. App. 3d 703, 709-11, 756 N.E.2d 338, 343-45 (2001); *People v. Bynum*, 257 Ill. App. 3d 502, 513-14, 629 N.E.2d 724, 732-34 (1994). The defendant in *Raney* was convicted of possession of cocaine with intent to deliver. A State forensic scientist from the Illinois State Police Crime Lab (Crime Lab) testified that she had used a gas chromatography mass spectrometer (GCMS) to determine that substances recovered from the defendant were cocaine. The witness testified that the results of GCMS testing were generally relied upon by experts in her field and that the testing she utilized was generally accepted in the scientific community. But she failed to provide any evidence that the GCMS she used was operating properly. Nor did she testify that she had done any testing to verify its accuracy or to determine that it was in good operating condition. *Raney*, 324 Ill. App. 3d at 707-09, 756 N.E.2d at 342-44. *Raney* had preserved this issue by objecting to the witness' qualification as an expert, and by moving for a

directed finding based upon a lack of foundation for this evidence. Because there was no competent evidence that Raney was in possession of illegal drugs, we reversed his conviction outright for lack of sufficiency of the evidence. We first set out this standard in *Bynum*, holding that an insufficient foundation was laid for the opinion of an expert witness concerning the nature of drugs recovered from the defendant because the State's expert did not testify that the GCMS was generally relied upon by experts in the field. The expert also failed to testify regarding how the machine was calibrated or how she knew the results of this analysis were correct. *Bynum*, 257 Ill. App. 3d at 513-14, 629 N.E.2d at 732. However we then found this issue to have been waived by the defendant because he did not object to it at trial. *Bynum*, 257 Ill. App. 3d at 514-15, 629 N.E.2d at 732-34.

As the majority notes, in the case before us there is no question of waiver or forfeiture. The defendant properly preserved these issues by contemporaneous objection at trial and in his motion for a new trial. Accordingly, the holding of *Raney* is directly applicable to this case. Over the defendant's objection, forensic scientist Sandra Lambatos was permitted to testify that the defendant's DNA matched the vaginal swabs taken from the victim and that the odds against this occurring randomly were astronomical. But the foundation testimony in this case was even weaker than that in *Raney*. Unlike the testifying scientist in *Raney*, Lambatos did not perform or even



observe the critical procedure which was allegedly used to isolate the defendant's DNA. In fact Lambatos had no knowledge of whether the machine used in the testing was functioning and whether it was accurately calibrated, or anything else about it. Neither did she personally know anything about *any* of the procedures used in the laboratory where the testing was done. The DNA data identified as the defendant's which was provided to Lambatos by the Cellmark Laboratory (Cellmark) was taken from the vaginal swabs of the victim. This sample was sent to Cellmark, an out-of-state laboratory in Maryland. Once it was mailed there, Lambatos knew nothing of how the material was handled or tested. She knew only that she subsequently received test results back from Cellmark. She merely matched the defendant's DNA as provided to her by Cellmark to the DNA later recovered from the defendant. As the State conceded in oral argument before this court, Lambatos could not have reached her conclusion without relying on the tests performed by technicians at Cellmark.

Lambatos did not observe the tests done by Cellmark, nor could she state that the tests were done in accordance with established protocols or accurate calibrations. She could only state that as an accredited laboratory, Cellmark was required to meet certain guidelines. She obviously could not testify that these guidelines were followed in this particular case. She also admitted that genetic material other than that of the defendant or the victim had been found in the tested material at Cellmark, although

she dismissed this as “background noise.” Like the expert witness in *Raney*, Lambatos did not testify regarding whether the test upon which her opinion was based had been properly performed, with proper calibrations and safeguards. Again like the witness in *Raney*, she did testify that the type of procedure used by Cellmark was generally accepted in the scientific community, but this failed to demonstrate that the testing procedure in this particular case was properly performed.

These are not idle concerns. DNA evidence is powerful because it always appears to be based on pure science. It can convict the guilty or free the innocent. The importance of DNA evidence has been highlighted in society at large. Courts have been known to take judicial notice that improperly performed DNA tests have resulted in wrongful convictions. In *Brown v. Farwell*, 525 F.2d 787, 796-97 (9th Cir. 2008), the district court’s decision granting the defendant’s *habeas corpus* petition was affirmed because the defendant presented expert testimony establishing that the State’s DNA expert at trial had grossly exaggerated the odds that the defendant was the assailant. In Houston, Texas, the police crime laboratory temporarily shut down its DNA laboratory and faced the prospect of retesting DNA samples in thousands of criminal cases because of a State audit which revealed misinterpreted data, poorly trained workers, shoddy records, and a leaky roof which contaminated evidence. A. Liptak and R. Blumenthal, *New Doubt Cast on Crime Testing in Houston Cases*,

New York Times, August 5, 2004. It was reported that at least one defendant was wrongly convicted of rape and served four years in prison before he was exonerated and released. In addition, in a preliminary review and retesting of 360 DNA cases, experts were unable to confirm the original results in 18 cases. Further, many criminal convictions have been reversed and remanded for new trials because of improper DNA evidence. Annotation, *Admissibility of DNA Identification Evidence*, 84 ALR 4th 313, Section 10 (1991).

In this case, the record clearly establishes that an insufficient foundation was presented concerning whether proper procedures and protocols were followed in testing by Cellmark, located in Maryland. The majority refers to Lambatos' generalized testimony concerning the sufficiency of the protocols, testing, and methods of analysis ordinarily followed by Cellmark. The majority also refers to Lambatos' testimony that Cellmark's methods were generally accepted in the scientific community. But none of this testimony applied to the testing done by Cellmark in this case. Lambatos had no knowledge of what occurred at Cellmark with respect to the testing in this case. Indeed there was no evidence that she had any personal knowledge regarding how Cellmark and its staff conducted their work. The cases cited establish that absent a proper foundation, it was error to permit the expert testimony of forensic scientist Lambatos concerning a match between the

defendant's DNA and the DNA found in the samples taken from the victim.

In light of the case law cited, the majority equivocates. It spends a great deal of time in an exhaustive summary of the DNA testimony presented at trial. But the fundamental fact that cannot be avoided is that the State's expert, Lambatos, had to rely on Cellmark technicians' testing which allegedly identified the defendant's DNA in the victim's sample. As previously noted, in oral argument the State conceded that without the DNA profile produced at Cellmark, Lambatos could not have testified to a match between the defendant's DNA and that found in the material taken from the victim. Lambatos simply compared that DNA profile to one obtained from the defendant's blood and found a match.

Faced with case law concerning the necessary foundation for evidence derived from scientific testing, which the majority appears to admit continues to be good law in this State, the majority cites to numerous inapplicable cases. They are all inapplicable for a number of reasons. For example, there was a determination that the defendant had waived the issue of the sufficiency of a foundation for evidence of scientific testing (*People v. Sutherland*, 223 Ill. 2d 187, 237, 860 N.E.2d 178, 279 (2006)); the defense stipulated to the validity of the testing procedure (*People v. Rucker*, 346 Ill. App. 3d 873, 892-94, 803 N.E.2d 31, 46-47 (2003)); the expert who performed the testing actually testified in court concerning the validity of that test (*People v. Hill*, 169 Ill. App. 3d

901, 910-11, 524 N.E.2d 604, 610-11 (1988)). In the case before us there was no forfeiture or waiver, no stipulation, and no testimony by the technicians who performed the critical test.

I also note that there was insufficient chain-of-custody evidence presented by the State concerning the materials tested by Cellmark. The evidence established that materials were sent by Federal Express from the Illinois Crime Lab to Cellmark in Maryland along with samples from twenty other cases. It was received in Maryland on November 29, 2000. The evidence also established that the Crime Lab received test results back from Cellmark by Federal Express on April 3, 2001. But no witness could account for the manner in which this material was kept or treated at Cellmark for the 126 days that it was there. In that period there were many ways in which the materials could have been compromised. Under cross-examination by the defense, forensic scientist Karen Abbinanti, who performed the DNA testing on the defendant's blood at the Illinois Crime Lab, provided numerous examples of possible sources of contamination. Abbinanti testified that a sample could be contaminated if someone sneezed on it or dripped sweat on it. There could be cross-contamination from other samples. To guard against these possibilities, she said that she used a clean technique. Lab personnel wore lab coats, masks and gloves. Before examining material, they would clean their area with a ten percent bleach solution and in between examinations would clean their instruments with the same solution. Prior

to performing her testing, Abbinanti also checked the calibration of the instrument she used. The record is absolutely silent as to whether any of these precautions were taken at Cellmark in this case, or whether any contaminating incidents occurred. We do know, according to forensic scientist Lambatos, that the sample she received back from Cellmark also contained genetic material not consistent with that of either the victim or the defendant. Lambatos testified that she did not believe it came from a third person, but was merely "background noise" generated by the sensitive testing. Nonetheless we have genetic material tested by technicians yielding so called "background noise" yet those technicians did not testify as to their methods, safety procedures or calibration of instruments. We have genetic material that may have been contaminated, and we have the trial court's refusal to allow the defense to obtain the testimony of the technicians who actually performed the testing at Cellmark.

As cited by the majority, the law is that physical evidence which is susceptible to tampering or contamination requires the State to establish a chain of custody that makes it improbable that such tampering or contamination occurred. *People v. Woods*, 214 Ill. 2d 455, 466-67, 828 N.E.2d 247, 255 (2005). Not every person who handled the evidence must testify, but the State must establish that reasonable measures were used to protect the evidence from the time it was obtained. Clearly this burden was not met by the State in this case. There is absolutely no

testimony or evidence concerning the manner in which the sample was treated or tested during the 126 days that it was under the control of Cellmark. Adhering to proper foundational procedure is critical when DNA evidence is presented. Such evidence is powerfully persuasive. In a case like this, where the identification testimony is weak, special care is necessary to ensure that all aspects of the required foundational process have been followed.

Finally, the majority suggests that it may not have been "feasible" to require the expert who testified, Lambatos, to personally test the instrument relied upon. This presents a false choice and undermines the importance of established law on this issue. The issue is whether the *technicians who performed the test* were required to testify. This was a case in which a conviction would necessarily result in a sentence of life in prison without the possibility of parole. Under these circumstance, the importance of adhering to the tenets of well settled law cannot be overstated. In this bench trial, I can fathom no legitimate reason for the trial court to refuse to allow the defendant to avail himself of this fundamental procedural safeguard. The court could have postponed the remainder of the trial to allow the defense to subpoena the Cellmark technicians who performed the DNA test. Given what is at stake, slight inconvenience to the State or the trial court should not be the overriding factor. The failure to do this, in my judgment has resulted in a grievous error requiring reversal and remand for a new trial. In so finding, I

must also comment on the State's effort to muddy the waters by including in their brief, copious, irrelevant facts concerning other crimes committed by the defendant. But, the only reason to include those details would have related to an issue regarding sentencing. The only sentencing issue in this case, the validity of a term sentence imposed consecutive to a life sentence, required no detailed description of the defendant's prior offenses.

For all these reasons, I would reverse and remand for a new trial.

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**IN THE APPELLATE COURT,  
STATE OF ILLINOIS  
FIRST DISTRICT**

THE PEOPLE OF THE	)	
STATE OF ILLINOIS,	)	
Plaintiff-Appellee,	)	
v.	)	No. 1-06-3463
SANDY WILLIAMS,	)	
Defendant-Appellant,	)	

**ORDER**

This cause coming on to be heard on Plaintiff-Appellee's Petition for Rehearing and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that the Petition for Rehearing is hereby denied.

/s/ Allan J. Greiman  
Justice

**ORDER ENTERED**      /s/ Patrick J. Quinn  
**OCT 14 2008**      Justice

**APPELLATE COURT,**      /s/ Jay V. Cunningham  
**FIRST DISTRICT**      Justice

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Docket No. 107550.

**IN THE  
SUPREME COURT  
OF  
THE STATE OF ILLINOIS**

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THE PEOPLE OF THE STATE OF ILLINOIS, Appellee and Cross-Appellant, v. SANDY WILLIAMS, Appellant and Cross-Appellee.

*Opinion filed July 15, 2010.*

CHIEF JUSTICE FITZGERALD delivered the judgment of the court, with opinion.

Justices Thomas, Kilbride, Garman, and Karmeier concurred in the judgment and opinion.

Justice Freeman specially concurred, with opinion.

Justice Burke concurred in part and dissented in part, with opinion.

**OPINION**

After a bench trial in the circuit court of Cook County, the defendant, Sandy Williams, was convicted of two counts of aggravated criminal sexual assault and one count each of aggravated kidnapping and aggravated robbery of L.J. The appellate court affirmed the defendant's conviction, but reversed the trial court's imposition of a consecutive sentence. 385

Ill. App. 3d 359, 371. On appeal to this court, the defendant argues that the testimony of an Illinois State Police forensic analyst, who relied upon a DNA report prepared by a nontestifying third-party analyst, lacked a sufficient evidentiary foundation. Alternatively, the defendant argues that this testimony concerning the report was hearsay presented for the truth of the matter asserted and violated the defendant's sixth amendment confrontation clause right. The State cross-appeals, maintaining the appellate court improperly reversed the trial court's imposition of a consecutive sentence. For the following reasons, we affirm in part and reverse in part.

### BACKGROUND

The State charged the defendant in a 17-count indictment with aggravated criminal sexual assault, aggravated kidnapping, and aggravated robbery. The cause proceeded to a bench trial. The counts that the State ultimately submitted to the judge were counts IV and VI (aggravated criminal sexual assault under 720 ILCS 5/12-(a)(3) (West 2000)), count XV (aggravated kidnapping under 720 ILCS 5/10-2(a)(3) (West 2000)) and count XVII (aggravated robbery under 720 ILCS 5/18-5 (West 2000)). The State entered a *nolle prosequi* on the remaining counts. The following facts were adduced at trial.

On February 10, 2000, 22-year-old L.J. worked until 8 p.m. as a cashier at a clothing store in Chicago. On her way home to the south side of the city, she

purchased items at the store for her mother and went toward her home. As she passed an alley, the defendant came up behind her and forced her to sit in the backseat of a beige station wagon, where he told her to take her clothes off. The defendant then vaginally penetrated L.J. The defendant also contacted L.J.'s anus with his penis, but did not penetrate. He then pushed L.J. out of the car while keeping L.J.'s coat, money, and other items. After L.J. ran home, her mother opened the door and saw her in tears, partially clothed with only one pant leg on. After L.J. went into the bathroom, her mother called the police.

Shortly after 9 p.m., Chicago police officers arrived at the home and found L.J. in the bathtub. She had not yet washed her vaginal area. After L.J. told the officers what had transpired, the officers issued a "flash" message for a black male, 5 foot, 8 inches tall, wearing a black skull cap, a black jacket and driving a beige station wagon. An ambulance transported L.J. and her mother to the emergency room. Dr. Nancy Schubert conducted a vaginal exam of L.J. and took vaginal swabs, which were then sealed and placed into a criminal sexual assault evidence collection kit along with L.J.'s blood sample. The kit was sent to the Illinois State Police (ISP) Crime Lab for testing and analysis.

On February 15, 2000, forensic biologist Brian Hapack with the ISP Crime Lab received L.J.'s sexual assault evidence collection kit and performed tests that confirmed the presence of semen. Hapack placed the swabs in a coin envelope, sealed the envelope, and

placed the evidence in a secure freezer. Hapack guaranteed the accuracy of his results by working in a clean environment free from contamination and by ensuring that the tests functioned properly.

On August 3, 2000, police arrested the defendant for an unrelated offense and, pursuant to a court order, drew a blood sample from the defendant. On August 24, 2000, forensic scientist Karen Kooi performed an analysis on the sample that consisted of four quarter-sized bloodstains on a filter card. Kooi extracted a deoxyribonucleic acid (DNA) profile<sup>1</sup> and entered it into the database at the ISP Crime Lab. Meanwhile, the samples from L.J.'s sexual assault kit

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<sup>1</sup> When a DNA laboratory receives a sample of blood, the DNA is extracted from the fraction containing the nucleic material in the white blood cells. DNA is a tightly wound strand that measures approximately six feet in length. Uncoiled, DNA resembles a twisted ladder with rungs of the ladder made of chemicals called nucleotides. DNA has four different types of nucleotides (A: adenine, T: thymine, G: guanine, and C: cytosine) that form interlocking pairs. D. Kaye & G. Sensabaugh, *Reference Guide on DNA Evidence*, Reference Manual on Scientific Evidence 485, 491 (2d ed. 2000). It is the order (sequence) of these building blocks that determines each person's genetic characteristics. The great majority of DNA is identical from person to person but forensic scientists commonly examine 13 specific regions, or loci, where certain nucleotide patterns are repeated again and again. These patterns are called "Short Tandem Repeats" (STRs). The number of repeated sequences determines the length of an STR. This length of repeated sequences, often called an allele, may vary between people and is what analysts measure and use for comparison. D. Kaye & G. Sensabaugh, *Reference Guide on DNA Evidence*, Reference Manual on Scientific Evidence 485, 494 (2d ed. 2000).

were sent to Cellmark Diagnostic Laboratory in Germantown, Maryland, for DNA analysis on November 29, 2000. Cellmark returned L.J.'s vaginal swabs and blood standard to the ISP Crime Lab on April 3, 2001. Cellmark derived a DNA profile for the person whose semen was recovered from L.J. According to ISP forensic biologist Sandra Lambatos, whose testimony will be set forth more fully below, the DNA profile received from Cellmark matched the defendant's DNA profile from the blood sample in the ISP database. L.J. identified the defendant in a line up on April 17, 2001. The defendant was then arrested for the instant offenses.

At the bench trial, Lambatos was accepted as an expert in forensic biology and forensic DNA analysis by the trial court. Lambatos began her testimony with a brief explanation of polymerase chain reaction (PCR) testing. PCR testing, according to Lambatos, is one of the most modern types of DNA analysis available and is generally accepted in the scientific community. Lambatos explained how PCR analysis can be used to identify a male profile from a semen sample. First, an analyst conducts a procedure that isolates and extracts DNA from a sample that may include a mixture from a particular defendant and the victim. The DNA is not large enough to test at this point, and requires amplification to form a more workable sample. After amplification, an analyst can measure the length of an individual specific strand through a process called electrophoresis. A computer translates this measurement onto a graph called an

electropherogram. The electropherogram is a representation of the individual's specified DNA data into a line with peaks representing the lengths of the DNA strands of the 13 STR regions. Reports generally also provide a "table of alleles" showing the DNA profile of each sample. She also stated that the statistical probability of a match can also be determined by entering the alleles into a frequency database to learn how common they are in the general population.

Lambatos further testified that it is a commonly accepted practice in the scientific community for one DNA expert to rely on the records of another DNA analyst to complete her work. As mentioned, she used the DNA profile from Cellmark to match the DNA profile from the defendant's blood sample, which was contained in the ISP database. She stated that, because Cellmark was an accredited laboratory, it was required to meet "certain guidelines to perform DNA analysis for the Illinois State Police and so all those calibrations and internal proficiencies and controls [of the equipment used] would have had to have been in place for them to perform the DNA analysis." Cellmark's testing and analysis methods were generally accepted in the scientific community according to Lambatos. Lambatos, however, admitted that Cellmark had different procedures and standards for results than the ISP Crime Lab. Nevertheless, Lambatos testified that she personally developed proficiency tests for Cellmark technicians to perform. She further testified that she routinely relied on

results from Cellmark and she did not observe any chain of custody or contamination problems.

The prosecutor then asked her expert opinion regarding the DNA match. Defense counsel objected and asserted that Lambatos could not rely upon the testing performed by another lab. The trial court replied, "We will see. If she says that she didn't do her own testing and she relied on a test of another lab and she's testifying to that. We'll see what she's going to say."

Lambatos then testified that a match was generated of the male DNA profile found in the semen from L.J.'s vaginal swabs to the defendant's male DNA profile from the defendant's blood standard. In response to defense questioning, Lambatos restated her interpretation of the alleles at each of the 13 locations. She testified about several locations where she visually filtered out spurious alleles and "background noise" and distinguished the defendant's profile. Lambatos concluded that in her expert opinion, the semen from L.J.'s vaginal swab was a match to the defendant. Lambatos testified that the probability of this profile occurring in the general population was one in 8.7 quadrillion black, one in 390 quadrillion white, and one in 109 quadrillion Hispanic unrelated individuals. She did not observe any degradation or irregularities in the sample from L.J.'s vaginal swab.

She stated that, in general, if "there was a question of a match, then we would investigate that further by looking at the electropherograms from all



the cases involved and do some more comparisons on that." She explained that in looking at Cellmark's report, she interpreted it and "I did review their data, and I did make my own interpretations so I looked at what \* \* \* they sent to me and did make my own determination, my own opinion." While Lambatos testified to her conclusion informed by Cellmark's report, Cellmark's report itself was not introduced into evidence. Also, while Lambatos referenced documents she reviewed in forming her own opinion, she did not read the contents of the Cellmark report into evidence.

At the conclusion of Lambatos' testimony, the defendant moved to strike the evidence of testing completed by Cellmark based upon a violation of his sixth amendment right to confront witnesses against him. The defendant also objected on the grounds of foundation, citing *People v. Raney*, 324 Ill. App. 3d 703 (2001), and argued insufficient evidence was presented regarding the calibration of the Cellmark equipment. The trial court denied the defendant's motion to strike. The trial court stated, "I don't think this is a *Crawford* scenario, and I agree with the State that the evidence is – the issue is, you know, what weight do you give the test, not do you exclude it and accordingly your motion to exclude or strike the testimony of the last witness or opinions based on her own independent testing of the data received from Cellmark will be denied."

Following this and other testimony concerning the incident, the State rested. The trial court denied

the defendant's motion for a directed finding. The defendant did not present any evidence in his defense. Thereafter, the trial court found the defendant guilty of two counts of aggravated criminal sexual assault, and one count each of aggravated kidnapping and aggravated robbery. The court denied the defendant's motion for a new trial.

A sentencing hearing was held. At the hearing, evidence was presented demonstrating the defendant was convicted and sentenced for the aggravated sexual assault, armed robbery, and aggravated kidnapping of G.M. in case number 84-C-12720. The defendant was paroled in February 1997 and discharged from mandatory supervised release on February 4, 2000, six days prior to the instant crime. Following the hearing, the trial court sentenced the defendant to two concurrent terms of natural life imprisonment for the aggravated criminal sexual assault counts and a concurrent term of 15 years' imprisonment for the aggravated robbery count. The court also ordered that the defendant should serve a consecutive term of 60 years' imprisonment for the aggravated kidnapping count. The court denied the defendant's motion to reconsider his sentence.

On appeal, the appellate court rejected the defendant's contentions that the State failed to establish a sufficient foundation for Lambatos' opinion (385 Ill. App. 3d at 366); that the State failed to establish that Cellmark's equipment was adequately calibrated and properly functioning (385 Ill. App. 3d at 366); and that the State failed to establish a sufficient chain of

custody based upon Cellmark's handling of the evidence (385 Ill. App. 3d at 367).<sup>2</sup> The appellate court next rejected the defendant's argument that the results of Cellmark's testing and analysis were testimonial in nature and therefore Lambatos' expert testimony thereto violated the defendant's constitutional right to confrontation. 385 Ill. App. 3d at 370. The court noted that the confrontation clause does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted. The appellate court found that "Cellmark's report was not offered for the truth of the matter asserted; rather, it was offered to provide a basis for Lambatos' opinion." 385 Ill. App. 3d at 369. The court stated, "Overall, defendant essentially requests that we require each and every individual involved in the testing and analysis of DNA to testify at trial. For obvious reasons in the abstract and for those provided in the case at bar, we decline to issue such a ruling." 385 Ill. App. 3d at 370. Lastly, the court addressed the sentencing issue. The appellate court, following the decisions of *People v. Dixon*, 366 Ill. App. 3d 848 (2006), and *People v. Spears*, 371 Ill. App. 3d 1000 (2007), and this court's decision in *People v. Palmer*, 218 Ill. 2d 148 (2006), found that a term of years could not be served consecutive to a term of natural life. 385 Ill. App. 3d at 371. The appellate court therefore vacated that portion of the circuit court's

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<sup>2</sup> The chain of custody issue is presently not before this court.

order imposing consecutive sentences for aggravated criminal sexual assault and aggravated kidnapping, and instead modified the defendant's sentence to impose concurrent sentences for those convictions. 385 Ill. App. 3d at 371. Justice Cunningham filed a dissent, asserting that the prosecution failed to lay a sufficient foundation for Lambatos' testimony. 385 Ill. App. 3d at 371 (Cunningham, J., dissenting).

This court granted the defendant's petition for leave to appeal. 210 Ill. 2d R. 315. The State has requested cross-relief concerning the appellate court's modification of the sentence.

## ANALYSIS

### Foundational Challenge

The defendant argues generally before this court that the trial court committed reversible error when it permitted Lambatos to testify that the defendant's DNA profile matched the male DNA profile of the semen in L.J.'s vaginal swabs. The defendant specifically argues that the trial court erred in admitting Lambatos' testimony regarding the match because a sufficient foundation was not established. The defendant additionally argues that Lambatos' testimony violated his sixth amendment confrontation right under *Crawford v. Washington*, 541 U.S. 36, 158 L. Ed. 2d 177, 124 S. Ct. 1354 (2004). We begin with the foundational argument. We apply the abuse of discretion standard to the defendant's foundational challenge to the trial court's admission of Lambatos'

expert testimony. *People v. Lovejoy*, 235 Ill. 2d 97, 141 (2009); *People v. Sutherland*, 223 Ill. 2d 187, 281 (2006).

The defendant contends that the trial court should not have permitted the State's forensic analyst to testify because of a lack of sufficient testimony that the Cellmark report was reliable. According to the defendant, when expert testimony relies upon data obtained from electronic or mechanical equipment, the proponent of the testimony must offer foundational proof that the equipment was calibrated and functioning properly at the time the data was presented in order to establish that the expert's testimony is reliable. The State responds that Lambatos' testimony that Cellmark's testing was done according to valid scientific theory and reliable methodology provided a sound basis upon which Lambatos could formulate her opinion. Therefore, the State asserts that it was not obliged to present additional testimony regarding the calibration and functioning of Cellmark's equipment to admit Lambatos' expert opinion pursuant to *Wilson v. Clark*, 84 Ill. 2d 186 (1981). We agree with the State.

In *Wilson v. Clark*, this court adopted Rules 703 and 705 of the Federal Rules of Evidence concerning an expert's testimony at trial. *Wilson*, 84 Ill. 2d at 196. Former Rule 703 states in part:

"The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made

known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted.” Fed. R. Evid. 703 (amended 2000).

The court in *Wilson* noted that, in a trial context, “[b]oth Federal and State courts have interpreted Federal Rule 703 to allow opinions based on facts not in evidence.” *Wilson*, 84 Ill. 2d at 193. Rule 705 states:

“The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.” Fed. R. Evid. 705.

Following Rule 705, we held in *Wilson* that, at trial, “an expert may give an opinion without disclosing the facts underlying that opinion.” *Wilson*, 84 Ill. 2d at 194. “Under Rule 705 the burden is placed upon the adverse party during cross-examination to elicit the facts underlying the expert opinion.” *Wilson*, 84 Ill. 2d at 194. Thus, an expert testifying at trial may offer an opinion based on facts not in evidence, and the expert is not required on direct examination to disclose the facts underlying the expert’s opinion. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 334 (2002).

This court applied *Wilson v. Clark* to DNA evidence in *People v. Sutherland*, 223 Ill. 2d 187 (2006). There, the defendant filed a motion during trial to bar testimony from Terry Melton, the president of Mitotyping Technologies, concerning human mitochondrial DNA (mtDNA). Melton did not complete the actual laboratory “bench work” on the evidence. *Sutherland*, 223 Ill. 2d at 281. The defendant argued that, without the lab technician’s testimony, Melton’s testimony regarding the mtDNA results was improper. We rejected that argument, holding that it was enough that Melton relied upon data reasonably relied upon by other experts in her field. *Sutherland*, 223 Ill. 2d at 282.

Here, the trial court correctly denied defense counsel’s objection to the foundation for Lambatos’ expert opinion. It is undisputed that Lambatos was qualified as an expert in forensic biology and DNA analysis; Lambatos testified that it is the commonly accepted practice in the scientific community for a forensic DNA analyst to rely on the work of other analysts to complete her own work; and Lambatos based her opinion on information reasonably relied upon by experts in her field.

As in *Sutherland*, Lambatos testified that Cellmark’s work on the vaginal swabs in this case and the results of the PCR analysis conducted by Kooi are the types of data reasonably relied upon by experts in her field. Lambatos testified that, because Cellmark was an accredited laboratory, calibrations, internal proficiencies, and controls had to be in place

for the DNA analysis to be completed in this case. These internal controls were, according to Lambatos' testimony, ones that she personally developed. Lambatos herself reviewed Cellmark's data, including the electropherogram, and did not have any question about the match. Rather, she used her own expertise to compare the two profiles before her. She also did not observe any problems in the chain of custody or any signs of contamination or degradation of the evidence. Lambatos ultimately agreed with Cellmark's results regarding the male DNA profile, and then made her own visual and interpretive comparisons of the peaks on the electropherogram and the table of alleles to conclude there was a match to the defendant's genetic profile. See P. Gianelli & A. Imwinkelreid, *Scientific Evidence* § 18.04(b), at 54 (4th ed. 2009) ("in STR testing, the analyst can visually compare the two electropherograms or rely on a computerized comparison").

We also reject the defendant's specific complaint that there was no testimony that the instruments used by Cellmark were calibrated and functioning properly. The defendant principally relies on *People v. Raney*, 324 Ill. App. 3d 703 (2001). *Raney* held that where the expert testimony is based upon an electronic or mechanical device, the expert must provide some foundational proof that the device was functioning properly at the time it was used. *Raney*, 324 Ill. App. 3d at 710. The defendant there argued that the State failed to establish a proper foundation for the admission of scientific results from the gas



chromotography mass spectrometer (GCMS) machine. The court agreed, finding that the record contained no evidence regarding whether the GCMS machine was functioning properly at the time it was used to analyze the substance. Further, the *Raney* court stated an expert should be able to explain how the GCMS machine was calibrated or why she knew the results were accurate. *Raney*, 324 Ill. App. 3d at 710, citing *People v. Bynum*, 257 Ill. App. 3d 502 (1994). Finding a lack of such an explanation, the court concluded that the State failed to prove the defendant guilty beyond a reasonable doubt because of the lack of foundation. *Raney*, 324 Ill. App. 3d at 711. The *Raney* court acknowledged, however, that “[i]t may not be feasible for each expert to personally test the instrument relied upon for purposes of determining what is a suspected controlled substance.” *Raney*, 324 Ill. App. 3d at 710.

We find that the testing of narcotics using a GCMS machine is not comparable to the scientific process at issue in this case. At the defendant’s bench trial, Lambatos did not merely regurgitate results generated by a machine, as the witness in *Raney* did. Lambatos conducted an independent evaluation of data related to samples of genetic material, including items processed at both Cellmark and the ISP Crime Lab. Lambatos used her expertise and professional judgment to compare the DNA profiles. Her examination of the different alleles from the blood sample and from the semen sample indicated a match with the defendant. She also determined the

statistical probability of the match by examining the alleles and entering them into a frequency database to determine how common they are in the general population. Further, this case is distinguishable from *Raney* because Lambatos maintained that Cellmark necessarily met the threshold of proper DNA analysis because Cellmark was an accredited laboratory and followed guidelines that she had personally developed. We therefore do not accept the defendant's invitation to broadly interpret *Raney* to find an insufficient foundation where an analyst merely relies upon data obtained from electronic or mechanical equipment.

Finally, under *Wilson*, the burden is placed upon the adverse party during cross-examination to elicit facts underlying the expert opinion. *Wilson*, 84 Ill. 2d at 194, citing Fed. R. Evid. 705. The record reveals substantial cross-examination of Lambatos' comparison of the DNA profile from the database to the DNA profile from the sexual assault kit. The record also reveals that the trial court, sitting as a fact finder, appropriately weighed the testimony. It stated:

"The DNA expert that testified, the last witness, was in my view the best DNA witness I have ever heard. Under detail [*sic*], lengthy complex cross-examination by the defense on every single part of her report she explains, she told what was the basis of her opinion, she was an outstanding witness in every respect. There is the issue of she didn't do the actual test. The testing is farmed out to other labs. Some did the testing, some are an

accredited lab. That was part of the playback you might say of the Illinois state police forensic division at that time, and I agree with the State that there is no misidentification here. This is a match, this is 1 in 8.7 quadrillion, 50 times the population for the last 2000 years. It's an absolute match."

Accordingly, the issue of Lambatos' reliance on Cellmark's report went to the weight of her opinion and not its admissibility. See *Melendez-Diaz v. Massachusetts*, 557 U.S. \_\_\_, \_\_\_ n.1, 174 L. Ed. 2d 314, 322 n.1, 129 S. Ct. 2527, 2532 n.1 (2009) (stating that it was not the case that "anyone whose testimony may be relevant in establishing the chain of custody, authenticity of the sample, or accuracy of the testing device, must appear in person as part of the prosecution's case"). The trial court assessed the weight of Lambatos' testimony and found it convincing.

We therefore find that the trial court did not abuse its discretion in finding a sufficient foundation for Lambatos' testimony and therefore turn to the defendant's *Crawford* argument.

### Sixth Amendment

The trial court rejected the defense objection that his sixth amendment right was violated by Lambatos' testimony concerning Cellmark's report. The appellate court affirmed this decision, finding that the complained-of statements regarding Cellmark's report by Lambatos were not used for the truth of the

matter asserted and therefore the sixth amendment was not implicated. The defendant's claim that his sixth amendment confrontation right was violated involves a question of law, which we review *de novo*. *Lovejoy*, 235 Ill. 2d at 141-42.

The sixth amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right \* \* \* to be confronted with the witnesses against him." U.S. Const., amend. VI. This part of the sixth amendment is called the confrontation clause and applies to the states through the fourteenth amendment. *People v. Stechly*, 225 Ill. 2d 246, 264 (2007). In *Crawford v. Washington*, 541 U.S. 36, 158 L. Ed. 2d 177, 124 S. Ct. 1354 (2004), the United States Supreme Court held that the sixth amendment's "primary object" is with "testimonial hearsay." *Crawford*, 541 U.S. at 53, 158 L. Ed. 2d at 194, 124 S. Ct. at 1365. Accordingly, "[t]estimonial statements of witnesses absent from trial have been admitted only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine." *Crawford*, 541 U.S. at 59, 158 L. Ed. 2d at 197, 124 S. Ct. at 1369. The Supreme Court added an explicit logical corollary to this statement by pointing out, in a footnote, that the confrontation clause does not bar the admission of testimonial statements that are admitted for purposes other than proving the truth of the matter asserted. *Crawford*, 541 U.S. at 59 n.9, 158 L. Ed. 2d at 197 n.9, 124 S. Ct. at 1369 n.9, citing *Tennessee v. Street*, 471 U.S. 409, 414, 85 L. Ed. 2d 425, 431, 105 S. Ct. 2078, 2081-82 (1985);

see also *Lovejoy*, 235 Ill. 2d at 142. Stated another way, we need only consider whether a statement was testimonial if the statements at issue were, in fact, hearsay statements offered to prove the truth of the matter asserted. *Crawford*, 541 U.S. at 59 n.9, 158 L. Ed. 2d at 197 n.9, 124 S. Ct. at 1369 n.9; see also *Lovejoy*, 235 Ill. 2d at 142; *People v. Johnson*, 389 Ill. App. 3d 618, 631-32 (2009); *People v. Melchor*, 226 Ill. 2d 24, 34-35 (2007) (vacating appellate court judgment and remanding with instructions to consider the hearsay exception first before proceeding to the sixth amendment issue).

The hearsay rule generally prohibits the introduction of an out-of-court statement offered to prove the truth of the matter asserted therein. *Lovejoy*, 235 Ill. 2d at 145; *People v. Tenney*, 205 Ill. 2d 411, 432-33 (2002). Underlying facts and data, however, may be disclosed by an expert, not for the truth of the matter asserted, but for the purpose of explaining the basis for his opinion. *Lovejoy*, 235 Ill. 2d at 143. Moreover, it is well established that an expert may testify about the findings and conclusions of a nontestifying expert that he used in forming his opinions. *Lovejoy*, 235 Ill. 2d at 143.

The defendant argues that the State introduced the Cellmark report to establish the truth of the matter asserted and it is therefore hearsay. Without Cellmark's report, according to the defendant, Lambatos could not have given her testimony that the defendant's DNA matched the profile deduced by Cellmark. The State counters that Lambatos testified

about the Cellmark tests only to explain how she formed her own opinion. Therefore, the only statement that the prosecution offered for the truth of the matter asserted was Lambatos' own opinion. According to the State, presentation of the person who prepared the DNA profile at Cellmark was not necessary for confrontation purposes. We agree with the State.

This court has long held that prohibitions against the admission of hearsay do not apply when an expert testifies to underlying facts and data, not admitted into evidence, for the purpose of explaining the basis of his opinion. *Lovejoy*, 235 Ill. 2d at 142. In *Lovejoy*, a medical examiner testified that another toxicologist detected six different types of drugs in the victim's body after conducting blood tests, indicating that poisoning caused the victim's death. *Lovejoy*, 235 Ill. 2d at 141. The medical examiner testified that he was trained in toxicology interpretation and that the toxicology report showed lethal amounts of several medications in the victim's blood. *Lovejoy*, 235 Ill. 2d at 141. He explained how the toxicology report added to his own physical observations during the autopsy and that it aided him in determining the cause of death. *Lovejoy*, 235 Ill. 2d at 144. Following *Wilson v. Clark* and its progeny, we noted that experts may not only consider the reports commonly relied upon by experts in their particular field, but also to testify to the contents of the underlying records. *Lovejoy*, 235 Ill. 2d at 143, citing *Wilson v. Clark*, 84 Ill. 2d 186

(1981), *People v. Pasch*, 152 Ill. 2d 133 (1992). Quoting *People v. Pasch*, we explained:

“While the contents of reports relied upon by experts would clearly be inadmissible as hearsay if offered for the truth of the matter asserted, an expert may disclose the underlying facts and conclusions for the limited purpose of explaining the basis for his opinion. [Citation.] By allowing an expert to reveal the information for this purpose alone, it will undoubtedly aid the jury in assessing the value of his opinion.” *Lovejoy*, 235 Ill. 2d at 143, quoting *Pasch*, 152 Ill. 2d at 176.<sup>3</sup>

Accordingly, we held that the medical examiner’s testimony repeating the nontestifying analyst’s conclusions was not admitted for the truth of the matter asserted, but rather was introduced “to show the jury the steps [the examiner] took prior to rendering an expert opinion in this case.” *Lovejoy*, 235 Ill. 2d at 144. Consequently, there was no confrontation clause violation. *Lovejoy*, 235 Ill. 2d at 145.

Our appellate court addressed a similar factual situation in *People v. Johnson*, 394 Ill. App. 3d 1027 (2009). In *Johnson*, the defendant challenged an expert’s testimony regarding DNA test results,

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<sup>3</sup> As we noted in *Lovejoy*, Federal Rule of Evidence 703, upon which the *Wilson* opinion was based, has been amended. Illinois has not adopted the amended version of Rule 703, and the defendant does not ask us to consider the amended version of the rule in this case.

arguing that he had no opportunity to cross-examine the analysts who conducted the testing. The court observed that experts are permitted to disclose underlying facts and data to the jury in order to explain the basis for their opinions. It concluded that the State offered the DNA report at issue as part of the basis for the expert opinion and no confrontation violation occurred. 394 Ill. App. 3d at 1034.

Like *Lovejoy* and *Johnson*, Lambatos' testimony about Cellmark's report was not admitted for the truth of the matter asserted. The State introduced this testimony, rather, to show the underlying facts and data Lambatos used before rendering an expert opinion in this case. *Lovejoy*, 235 Ill. 2d at 144. The evidence against the defendant was Lambatos' opinion, not Cellmark's report, and the testimony was introduced live on the witness stand. Indeed, the report was not admitted into evidence at all. Rather, Lambatos testified to her conclusion based upon her own subjective judgment about the comparison of the Cellmark report with the existing ISP profile. *Cf.* P. Gianelli & A. Imwinkelreid, *Scientific Evidence* § 18.04(b), at 57 (4th ed. 2007) ("when technical problems materialize, it can be very difficult to interpret the electropherograms. \* \* \* Thus, there is room for subjective judgment").

For instance, at trial, the defense attorney questioned her if she confused the defendant's DNA with L.J.'s DNA. He asked Lambatos if the alleles were not more consistent with the victim than the defendant at



several loci. When asked about a specific locus called "T-POX," Lambatos responded:

"In my opinion with this profile, it is a mixture so when we have a mixture you are looking at the profile as a whole \* \* \* and it's important to note that the alleles at each locus on a DNA molecule that we look at are very common. It is not uncommon for you and I to have the same alleles at a locus or you and I to have the same alleles. The power of this DNA comes with looking at all 13 areas of the DNA because it's that uniqueness looking at all 13 that's going to give us numbers. And here like a T-POX and in the other two that you mentioned, there are only two alleles and like I say in my opinion there are only two people in this profile and it just may so happen that they share an 8 or that they share an 11 or it may so happen that she is an 8 and 11 and he is just an 11, 11, or he is an 8, 11 and she is an 8, 8. There's only certain possibilities that can be attributed at each locus."

After defense counsel stated that Lambatos' interpretation could have erred because of a degraded sample, she stated:

"Yes, it's possible to have a degraded sample but if the sample was degraded, that would be known by our earlier examination of the evidence [by Hapack]. We determine the quantity and the DNA that we have and the quality of the DNA and also after we look at the electropherograms, you can see the

degradation, their specific patterns, and the data looks a certain way when it is degraded. The peaks aren't as defined. They slope off missing here and there. Different things happen with degradation, and I didn't see any evidence of degradation in this particular fraction."

The defendant's suggestion that Lambatos was merely a "conduit" for Cellmark's report and that the report was entirely dispositive of Lambatos' opinion, and thus hearsay, is not compelling. Her testimony consisted of her expert comparison of the DNA profile in the ISP database with the DNA profile from the kit prepared by Cellmark. She used her own expertise to compare the two profiles before her: the blood sample prepared by Kooi and the semen sample prepared by Cellmark. She also did not observe any problems in the chain of custody or any signs of contamination or degradation of the evidence. Lambatos ultimately agreed with Cellmark's results regarding the male DNA profile. But Lambatos additionally made her own visual and interpretive comparisons of the peaks on the electropherogram and the table of alleles to make a conclusion on the critical issue: that there was a match to the defendant's genetic profile. Accordingly, Cellmark's report was not used for the truth of the matter asserted and was not hearsay.

The defendant further asserts that the instant matter is "directly analogous" to the United States Supreme Court's recent holding of *Melendez-Diaz v. Massachusetts*, 557 U.S. \_\_\_, 174 L. Ed. 2d 314, 129

S. Ct. 2527 (2009). In *Melendez-Diaz*, the Court considered whether a certification by a forensic lab analyst as to the nature and weight of a controlled substance was a testimonial statement, and thus its admission in lieu of live testimony by the analyst violated the sixth amendment right to confrontation. The defendant in that case, Luis Melendez-Diaz, was charged with cocaine trafficking in an amount between 14 and 28 grams. *Melendez-Diaz*, 557 U.S. at \_\_\_, 174 L. Ed. 2d at 320, 129 S. Ct. at 2530. At trial, the prosecution placed into evidence white plastic bags containing a substance that resembled cocaine. *Melendez-Diaz*, 557 U.S. at \_\_\_, 174 L. Ed. 2d at 319-20, 129 S. Ct. at 2530. It also submitted three “certificates of analysis” showing the results of forensic analysis performed on the seized substances. The certificates reported the weight of the substances and stated that the bags “[have] been examined with the following results: The substance was found to contain: Cocaine.” *Melendez-Diaz*, 557 U.S. at \_\_\_, 174 L. Ed. 2d at 320, 129 S. Ct. at 2531. The certificates were sworn to before a notary public by analysts at the State Laboratory Institute of the Massachusetts Department of Public Health as required by Massachusetts law. *Melendez-Diaz*, 557 U.S. at \_\_\_, 174 L. Ed. 2d at 320, 129 S. Ct. at 2531. Massachusetts law permitted the use of such affidavits to provide *prima facie* evidence of the analyzed substance’s composition, quality and net weight. *Melendez-Diaz*, 557 U.S. at \_\_\_, 174 L. Ed. 2d at 320, 129 S. Ct. at 2531.

In a 5-4 decision, the Court held that, following *Crawford*, the analyst's certificates "were testimonial statements and the analysts were 'witnesses' for purposes of the Sixth Amendment. Absent a showing that the analysts were unavailable to testify at trial and that petitioner had a prior opportunity to cross-examine them, petitioner was entitled to "'be confronted with"' the analysts at trial." *Melendez-Diaz*, 557 U.S. at \_\_\_, 174 L. Ed. 2d at 322, 129 S. Ct. at 2532, quoting *Crawford*, 541 U.S. at 54, 158 L. Ed. 2d at 194, 124 S. Ct. at 1365. The Court found the "case involves little more than the application of our holding in *Crawford*." *Melendez-Diaz*, 557 U.S. at \_\_\_, 174 L. Ed. 2d at 332, 129 S. Ct. at 2542, citing *Crawford*, 541 U.S. 36, 158 L. Ed. 2d 177, 124 S. Ct. 1354.<sup>4</sup>

The Court based its holding on two rationales derived from *Crawford*. First, the forensic analyst's certificates were within the "core class of testimonial statements" in *Crawford*. Because the critical issue was whether the substance was cocaine, the Supreme Court found that "[t]he 'certificates' are functionally identical to live, in-court testimony, doing 'precisely what a witness does on direct examination.'" *Melendez-Diaz*, 557 U.S. at \_\_\_, 314 L. Ed. 2d at 321, 129

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<sup>4</sup> Justice Thomas, in providing the fifth vote, "join[ed] the Court's opinion in this case because the documents at issue in this case 'are quite plainly affidavits,' [citation]. As such, they 'fall within the core class of testimonial statements' governed by the Confrontation Clause. [Citation.]" *Melendez-Diaz*, 557 U.S. at \_\_\_, 174 L. Ed. 2d at 333, 129 S. Ct. at 2543 (Thomas, J., concurring).

S. Ct. at 2532, quoting *Davis v. Washington*, 547 U.S. 813, 830, 165 L. Ed. 2d 224, 242, 126 S. Ct. 2266, 2278 (2006). Second, the Court stated, “not only were the affidavits “made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial,” [citation] but under Massachusetts 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.” (Emphasis in original.) *Melendez-Diaz*, 557 U.S. at \_\_\_, 174 L. Ed. 2d at 321, 129 S. Ct. at 2532, quoting Mass. Gen. Laws, ch. 111, §13.

The majority explicitly rejected the suggestion that the prosecutors were required to call each person involved in the chain of custody to the witness stand. Responding to the dissent in a footnote, the majority stated:

“[We] do not hold, and it is not the case, that anyone whose testimony may be relevant in establishing the chain of custody, authenticity of the sample, or accuracy of the testing device, must appear in person as part of the prosecution’s case. \* \* \* ‘[G]aps in the chain [of custody] normally go to the weight of the evidence rather than its admissibility.’ 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 introduced must (if the defendant objects) be introduced live. Additionally, documents prepared in the regular course of equipment

maintenance may well qualify as nontestimonial records.” (Emphasis omitted.) *Melendez-Diaz*, 557 U.S. at \_\_\_ n.1, 174 L. Ed. 2d at 322 n.1, 129 S. Ct. at 2532 n.1.

Accordingly, the Court in *Melendez-Diaz* held that the defendant’s confrontation clause right had been violated.

We find that *Melendez-Diaz* does not change our determination. In *Melendez-Diaz*, the disputed evidence was a “bare-bones statement” that the substance was cocaine, and the defendant “did not know what tests the analysts 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.” *Melendez-Diaz*, 557 U.S. at \_\_\_, 174 L. Ed. 2d at 327, 129 S. Ct. at 2537. Here, Lambatos testified about her own expertise, judgment, and skill at interpretation of the specific alleles at the 13 loci, and confirmed her general knowledge of the protocols and procedures of Cellmark. Lambatos also conducted her own statistical analysis of the DNA match. She did not simply read to the judge, sitting as a fact finder, from Cellmark’s report. This is in contrast to Cellmark’s report, which did not include any comparative analysis of the electropherograms or DNA profiles and was not introduced into evidence. Cellmark’s electropherogram, rather, was part of the process used by Lambatos in rendering her opinion concluding that the profiles matched. Thus, Lambatos’ opinion is

categorically different from the certificate in *Melendez-Diaz*.

In sum, the State did not offer Lambatos' testimony regarding the Cellmark report for the truth of the matter asserted and this testimony did not constitute "hearsay." Thus, the trial court and appellate court properly concluded that *Crawford* considerations did not apply here. Lambatos disclosed the underlying facts from Cellmark's report for the limited purpose of explaining the basis for her opinion on the critical issue concerning whether there was a DNA match between the defendant's blood sample and the semen sample recovered from L.J. By allowing the expert to reveal the information for this purpose alone, it undoubtedly aided the judge, sitting as the factfinder, in assessing the value of Lambatos' opinion. *Lovejoy*, 235 Ill. 2d at 143, quoting *Pasch*, 152 Ill. 2d at 176; see also *Johnson*, 394 Ill. App. 3d at 1034 ("The Cellmark report was not offered to prove the truth of its contents"). Finally, the record demonstrates that the gaps in the chain of custody went to the "weight of the evidence rather than its admissibility" (*Melendez-Diaz*, 557 U.S. at \_\_\_ n.1, 174 L. Ed. 2d at 322 n.1, 129 S. Ct. at 2532 n.1, quoting *United States v. Lott*, 854 F.2d 244, 250 (7th Cir. 1988)), and our review of the record shows that Lambatos' conclusion was tested "in the crucible of cross-examination." *Crawford*, 541 U.S. at 61, 158 L. Ed. 2d at 199, 124 S. Ct. at 1370; see also *Delaware v. Fensterer*, 474 U.S. 15, 20, 88 L. Ed. 2d 15, 19, 106 S. Ct. 292, 294 (1985) (the sixth amendment

“guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish” (emphasis in original)).

### Sentencing

We note that the defendant was subject to two mandatory natural life sentences for his aggravated criminal sexual assault convictions and a concurrent term of 15 years for the aggravated robbery conviction. The defendant was also convicted of aggravated kidnapping, for which the trial court imposed an extended-term sentence of 60 years in prison. The trial court ordered that the 60-year sentence was to run consecutively to the end of his natural life sentences. The appellate court vacated that portion of the circuit court’s order imposing the consecutive sentence, and instead modified the defendant’s sentence to impose concurrent sentences for those convictions. 385 Ill. App. 3d at 371. This court recently held in *People v. Petrenko*, No. 107503 (June 4, 2010), that a sentence consecutive to a natural-life sentence was proper. We therefore reverse the appellate court on this issue and do not disturb the trial court’s order.



## CONCLUSION

For the foregoing reasons, the judgment of the appellate court is affirmed in part and reversed in part.

*Appellate court judgment affirmed in part  
and reversed in part.*

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JUSTICE FREEMAN, specially concurring:

I agree that defendant's convictions and sentences must be affirmed. With respect to defendant's appeal in which he raises several evidentiary challenges, I concur in the court's judgment for reasons other than those expressed in its opinion. With respect to the State's cross-appeal, I join in that portion of the opinion reversing the appellate court's modification of defendant's sentence.

My concerns in this case are based on the lack of foundation for Sandra Lambatos' testimony. Lambatos was employed at the Illinois State Police Crime Laboratory at the time defendant's DNA was connected to the sexual assault at issue. Lambatos testified that the male DNA profile generated from the victim's vaginal swabs matched the DNA generated from a known sample of defendant's blood. Lambatos also testified that the statistical probabilities for such a match were astronomical. The crux of defendant's argument is that Lambatos' opinion was based on a DNA profile that was generated by Cellmark Laboratory. Due to backlogs at the Illinois

State Police Lab at the time of the testing, that lab often sent blood and semen samples to Cellmark, located in Maryland, in order for DNA material to be extracted from the samples. Cellmark would then amplify the extracted DNA material in order to produce a profile. The profile is thereafter used to produce a chart for comparison purposes. As defendant correctly notes, Lambatos did not conduct any of the scientific procedures used at Cellmark to generate the male DNA profile from the victim's vaginal swabs and she had no personal knowledge of any of the conditions at the lab when the profile was generated.

The court dismisses defendant's contentions based on Lambatos' testimony that "because Cellmark was an accredited laboratory, calibrations, internal proficiencies, and controls had to be in place for the DNA analysis to be completed in this case." Slip op. at 9. The court concludes that because witnesses like Lambatos are permitted in Illinois to give an opinion without disclosing the facts or data upon which the expert bases her opinion, such testimony is sufficient. Slip op. at 8. In other words, Lambatos' foundational testimony was based upon data reasonably relied upon by other experts in her field, and defendant's appellate concerns relate to the weight of the evidence, not its admissibility. Slip op. at 8-9.

An expert may certainly base her opinion on information reasonably relied upon by other experts in the field. See, *e.g.*, *Wilson v. Clark*, 84 Ill. 2d 186 (1981). But that was not what occurred here. Strikingly absent from Lambatos' testimony is any

information about Cellmark's extraction and amplification processes in generating the profile that was used to produce the data upon which she relied in her making comparisons. Lambatos' "testing" in this case consisted of her own reading to match up the numbers generated on the computer charts, which was derived from Cellmark's underlying scientific processes. What Lambatos failed to testify to during her examination was what occurred at Cellmark beginning from when Cellmark received the package containing the victim's vaginal swabs and blood sample to when Cellmark analysts performed the extraction and amplification procedures. Instead, she speculated that because Cellmark was accredited, "they would have to meet certain guidelines to perform DNA analysis for the Illinois State Police so all those calibrations and internal proficiencies and controls would have had to have been in place for them to perform the DNA analysis."

Lambatos' testimony on this point is insufficient. First, with respect to the fact of accreditation, Lambatos did not identify when or by whom Cellmark received its accreditation. Whether a laboratory is accredited is a fact that can be established without the need of an expert witness. Here, Lambatos' testimony does not establish that Cellmark was accredited; rather, it was her opinion that the laboratory was accredited at the time it ran the tests. Further, Lambatos did not base her assumption that "certain guidelines \* \* \* would have had to have been in place" on sources such as the report of another expert, *i.e.*,

the written report of the technicians who generated the profile or even the lab's logbook at the time the profile was generated. See *United States v. Lawson*, 653 F.2d 299, 301-02 (7th Cir. 1981) (allowing testifying psychiatrist to base opinion under Rule 703 on staff reports and defendant's interviews with other physicians); *O'Gee v. Dobbs Houses, Inc.*, 570 F.2d 1084, 1089 (2d Cir. 1978) (allowing physician expert to testify under Rule 703 as to the patient's version of other doctors' opinion because expert had reports of two doctors as well as a hospital report). Lambatos' opinion regarding whether Cellmark followed proper guidelines at the time the DNA material was extracted and amplified was not based on anything other than her rank speculation that it "had to have been done" solely because Cellmark was an accredited lab.

While I do not believe that Lambatos is required to personally verify the protocols used by Cellmark to generate the DNA profile from the swab, she, at the very least, should be able to point to something concrete in order to give her opinion as to what protocols were used at the time the profile was generated. She did not. There was *no* testimony on which protocols were used. In fact, Lambatos admitted that Cellmark used procedures and standards that were different from those used by her own employer, the Illinois State Police Crime Laboratory. Although Lambatos stated that she personally "helped develop line proficiency tests to be administered to analysts at Cel[l]mark," nothing in her testimony revealed that the analysts who performed the DNA extraction and

amplification in this case had taken, let alone passed, the tests she had developed or that, when the tests were run, they were run according to the standards preferred by the Illinois State Police Lab.

The lack of any information regarding Cellmark's generation of the male DNA profile from the victim's vaginal swabs contrasts sharply with the testimony the State produced with respect to the DNA profile generated from defendant's blood sample by Karen Kooi, upon which Lambatos also relied to read and match up the numbers on her chart. Kooi, an employee of the Illinois State Police Crime Lab at the time, testified as to the protocols she used to generate the DNA profile taken from defendant's blood.<sup>5</sup> Kooi further stated that she utilized "clean lab" techniques when she generated the profile.

This case, therefore, differs from *People v. Sutherland*, 223 Ill. 3d 187 (2006), upon which the court primarily relies in reaching its conclusion today. There, the witness in question was an employee of the laboratory which did the DNA analysis, who not only testified at trial, but who had also testified at the *Frye* hearing. Moreover, the defendant had received from the State, pursuant to Rule 417(b), extensive information including records reflecting compliance with quality control guidelines. *Sutherland*, 223 Ill. 2d

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<sup>5</sup> Kooi identified the national guidelines that the Illinois State Police Crime Lab follows and testified that she followed the guidelines in this case.

at 280-81. In fact, even the defendant's own DNA expert was able to testify from the records produced that the lab's results were "clean." *Sutherland*, 223 Ill. 2d at 282. These facts render *Sutherland* distinguishable.

Two cases from our appellate court support my point regarding foundation. In *People v. Johnson*, a panel of the First Division of the First District held that a sufficient foundation was established where the DNA expert, an actual employee of Cellmark, testified that although she did not personally perform any of the testing used to generate the male DNA profile from the sexual assault kit, she based her opinion on records used in the ordinary course of business. *People v. Johnson*, 389 Ill. App. 3d 618 (2009). In particular, the witness relied on a written Cellmark report, which indicated that 10 Cellmark analysts had been involved in the lab work in the case and that all the methods used, conclusions and results reached were to a reasonable degree of scientific certainty. *Johnson*, 389 Ill. App. 3d at 626-27. Another witness, who like Lambatos was employed by Illinois State Police, testified that he compared the Cellmark-generated male DNA profile to the DNA panel he had generated from saliva obtained from the defendant and concluded that they were a match. Like Lambatos, he testified as to the statistical probabilities of the match. In holding that an adequate foundation for Cellmark's work had been established for the Cellmark witness, the court found it significant that the witness actually worked for

Cellmark, which was the lab that generated the DNA profile from the victim's samples. *Johnson*, 389 Ill. App. 3d at 629-30. She also performed an independent review of the work to make sure all of the procedures done at the lab were followed correctly, which the court held was sufficient foundation upon which to partially base her assessment and conclusion. *Johnson*, 389 Ill. App. 3d at 630. I note that the court stressed, in reaching its conclusion, that the foundational testimony was stronger than that in this case, specifically citing the Third Division's opinion in this case. *Johnson*, 389 Ill. App. 3d at 629.

Similarly, in *People v. Johnson*, 394 Ill. App. 3d 1027 (2009), a panel from the Sixth Division of the First District held that a sufficient foundation was established where the DNA expert, again an actual employee of Cellmark, testified not only about the proper procedures that were expected to be utilized at her lab, but that the case file indicated that those procedures had been followed with respect to the DNA profile in question. To reach this conclusion, the witness relied on the records of other Cellmark employees, which indicated that the proper procedures had been followed. Therefore, although the witness did not perform any of the testing, her testimony showed a sufficient foundation of Cellmark's procedures and specifications upon which to partially base her assessment and conclusion. *Johnson*, 394 Ill. App. 3d at 1040. The court stressed that the foundation in the case was stronger than that found sufficient by the appellate court in this case.

Lambatos' testimony is demonstrably different from the testimony in either of the *Johnson* opinions. Lambatos' direct testimony was based on two documents offered into evidence by the State, which consisted of two shipping manifests from FedEx. One manifest showed that the victim's vaginal swabs and blood standards were sent to Cellmark from the Illinois State Police Crime Laboratory on November 28, 2000, and were received by Cellmark on November 29, 2000. The second manifest showed that the victim's samples were "sent back from Celmark [sic]" on April 3, 2001, along with samples from "other cases" that had nothing to do with the present case. Lambatos testified that she relied on these two pieces of evidence when she did the work in this case. I submit that these shipping manifests are not the kind of "facts or data" contemplated by this court in *Wilson*. Unlike the witnesses in the *Johnson* cases, Lambatos was not a Cellmark employee. She did not rely on the detailed type of reports that those witnesses relied upon. She did not know who performed the tests at Cellmark nor could she testify as to what protocols, if any, they followed. The shipping manifests, which are not enough to even establish a proper chain of custody once the samples reached their destination at Cellmark, certainly cannot establish whether a laboratory was "clean" or whether Lambatos' protocols were actually followed.

By accepting Lambatos' assumption that because Cellmark was accredited, the protocols she had personally developed for the lab to use were, in fact,



used to generate the DNA profile, the court errs in finding that an adequate foundation was laid. The court relies on the fact that Lambatos used her expertise and professional judgment to compare the DNA profiles in this case. But the problem with this is that there was no foundation established for the DNA profile generated by Cellmark. Lambatos' opinion that the DNA profile generated there matched defendant's DNA profile does not change that fact. It is certainly the law that alleged infirmities in the performance of a test usually go to the weight of the evidence, not to its admissibility. Slip op. at 11. Courts should not automatically exclude scientific evidence whenever a forensic analyst deviates from a correct test protocol in minor respects; instead, the deviation would have to materially affect the outcome in order to warrant exclusion. E. Imwinkelried, *The Debate in the DNA Cases Over the Foundation for the Admission of Scientific Evidence: The Importance of Human Error as a Cause of Forensic Misanalysis*, 69 Wash. U.L.Q. 19, 46 (1991). Here, however, Lambatos could not offer any testimony to establish *any protocol*. Contrary to what the court rests its analysis upon, there is simply no foundational evidence to "weigh."

Last, and of equal importance, the court today implies that the scientific process involved in DNA analysis is "not comparable" to narcotics Gas Chromatography Mass Spectrometer (GCMS) testing because Lambatos did not "regurgitate" the results from Cellmark as experts do with respect to GCMS

test results. Slip op. at 10. Lambatos took on faith the DNA profile generated by Cellmark from the victim's samples, assuming that because the lab was accredited all quality controls were in place when the profile was created. This seems no different from how expert witnesses in drug cases view the results from the GSMS [sic] machine. Unfortunately, it has been well-documented in DNA cases that "[q]uality control and quality assurances procedures that are followed religiously in some labs are ignored or followed intermittently in others." W. Thompson, *Tarnish on the "Gold Standard": Understanding Recent Problems in Forensic DNA Testing*, 30 Champion 10, 11-12 (January-February 2006). The failure to employ quality control and quality assurance procedures can result in DNA matches in criminal cases that are wrong because of sample contamination or misconduct on the part of the technician. 30 Champion at 11-12. This explains why an adequate foundation is as essential in DNA cases as it is in drug cases. Given the impact a DNA match has on the trier of fact, courts must be vigilant in ensuring that DNA evidence is admitted with proper foundation. This is particularly so in jury cases where lay people might not be able to appreciate arguments which go to weight once they hear of a match that is one in a billion.

Based on the foregoing, I would hold that the foundation for Lambatos' testimony was insufficient, and the circuit court abused its discretion in admitting it. Based on my resolution of defendant's

foundational challenge, I need not reach defendant's sixth amendment confrontation clause argument.

Although I believe the circuit court abused its discretion by admitting Lambatos' testimony without proper foundation, the error does not require a new trial. The testimony of a single witness, if it is positive and the witness credible, is sufficient to convict a defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). In this case, the trial judge specifically found defendant guilty on the basis of the victim's testimony, which he characterized as "highly credible." The trial judge also commented specifically on the strength of the victim's lineup identification and her in-court identification. The judge found the victim to be "an outstanding witness" and believed her testimony "a hundred percent." These findings indicate to me that the error in admitting Lambatos' testimony was harmless. On that basis, I would affirm the convictions.

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JUSTICE BURKE, concurring in part and dissenting in part:

I join the part of Justice Freeman's special concurrence that concludes that the circuit court abused its discretion in admitting Lambatos' testimony. I write separately because I disagree with the majority's resolution of the consecutive-sentencing issue. The defendant was sentenced to two concurrent natural-life terms for the aggravated criminal sexual

assault counts and a concurrent 15-year term for aggravated robbery. Defendant received an additional 60-year prison term for aggravated kidnapping, to be served consecutively to the natural-life terms. The appellate court held, pursuant to our decision in *People v. Palmer*, 218 Ill. 2d 148 (2006), that a term of years could not be served consecutively to a term of natural life. Accordingly, the court vacated that portion of the circuit court's order imposing consecutive sentences and modified defendant's sentence to impose concurrent sentences. 385 Ill. App. 3d at 371. The majority now reverses the appellate court. Relying on *People v. Petrenko*, No. 107503 (June 4, 2010), which overruled *Palmer* on this point, the majority in the case at bar has held that a sentence consecutive to a natural-life sentence was proper. For the same reasons set forth in my partial concurrence and partial dissent in *Petrenko*, I do not believe that good cause exists to overrule *Palmer*. Therefore, I would affirm the appellate court below on the consecutive-sentencing issue.

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Supreme Court of Illinois  
Clerk of the Court  
Supreme Court Building  
Springfield, Illinois 62701  
(217) 782-2035

September 27, 2010

Mr. Brian Carroll  
Assistant Appellate Defender  
203 North LaSalle Street – 24th Floor  
Chicago, IL 60601

No. 107550 – People State of Illinois, appellee, v.  
Sandy Williams, appellant. Appeal,  
Appellate Court, First District.

The Supreme Court today DENIED the petition for  
rehearing in the above entitled cause.

The mandate of this Court will issue to the appropri-  
ate Appellate Court and/or Circuit Court or other  
agency on November 1, 2010.

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**Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001**

**William K. Suter**  
Clerk of the Court  
(202) 479-3011

June 28, 2011

Ms. Patricia G. Mysza  
Supervisor  
Office of the State Appellate Defender  
203 North LaSalle St., 24th Floor  
Chicago, IL 60601

Re: Sandy Williams  
v. Illinois  
No. 10-8505

Dear Ms. Mysza:

The Court today entered the following order in the above-entitled case:

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted.

Sincerely,

/s/ William K. Suter  
**William K. Suter**, Clerk

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