Circuit Court for Prince George's County
Case No. CT200229X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1717

September Term, 2021

TAVON JONATHON BARNES

v.

STATE OF MARYLAND

Wells, C.J.,
Shaw,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 28, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Convicted by a jury in the Circuit Court for Prince George's County of first degree murder and use of a firearm in the commission of a crime of violence, Tavon Jonathon Barnes, appellant, presents for our review a single issue: whether the court erred in admitting "DNA testing evidence" and related testimony. For the reasons that follow, we shall reverse the judgments of the circuit court and remand the case for a new trial.

On December 18, 2018, Abdul Thomas was shot and killed in an apartment building located at 9170 Edmonston Road in Greenbelt. There were no witnesses to the shooting. In opening statement, the prosecutor contended that Mr. Barnes shot Mr. Thomas, and "in the rapid speed that the gun was firing off," Mr. Barnes "got a nick." The prosecutor further contended that Mr. Barnes subsequently "left his blood" on the door of the building and in a vehicle in which he departed, and that the blood would "come[] back to his DNA."

The State subsequently called Joseph Rose, who worked in the DNA laboratory of the Forensic Science Division of the Prince George's County Police Department. During his testimony, Mr. Rose stated that the "original analyst" who prepared "the report . . . associated with this case" was Mary Sanchez, who is "no longer employed with the DNA laboratory." Mr. Rose stated that "[i]mmediately after the original testing, [he] performed an administrative review of the DNA work," and "a few weeks [before] trial," he "went back and . . . rereviewed the entire case file and performed [a] technical review." Defense counsel subsequently objected to Mr. Rose's testimony, his "references [to] the findings in the report," and the introduction of the report into evidence on the ground, among others, that "it violates [Mr. Barnes's] right to confrontation." The court overruled the objection, admitted the report, and allowed Mr. Rose "to testify based on the report." Mr. Rose

subsequently testified regarding the conclusions reached in the report, which were that swabs from the building door, building floor, and vehicle "yielded a complete DNA profile that is consistent with the known DNA profile of" Mr. Barnes, and that a second swab of the building floor "yielded a mixed DNA profile" that contained "a distinguishable major male component . . . consistent with the known DNA profile of" Mr. Barnes. Following trial, Mr. Barnes moved for a new trial on the ground, among others, that the court erred in admitting the report and Mr. Rose's testimony. The court denied the motion.

Mr. Barnes contends that the court erred in overruling his objections and denying the motion for new trial, because the "admission of the . . . evidence, . . . report[,] and . . . testimony . . . violated [his] right of confrontation." The State agrees that the "report . . . and analysis and testimony about its conclusions were inadmissible," as do we. The Supreme Court of Maryland (formerly known as the Court of Appeals of Maryland)[1] has stated that "a statement contained in a scientific report is testimonial if a declarant reasonably would have understood that the primary purpose for the creation of the report was to establish or prove past events potentially relevant to later criminal prosecution," and if the "report is testimonial under this standard, the report (and/or testimony relaying the information set forth in the report to the trier of fact) is inadmissible . . . unless the declarant

[1]At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Rule 1-101.1(a) ("[f]rom and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland").

is unavailable to testify and the defendant previously had the opportunity to cross-examine the declarant concerning the report." *Leidig v. State*, 475 Md. 181, 243 (2021). The Court has also stated that a defendant's right to confrontation is violated when the State calls the "administrative reviewer" of the author of a report, not the author's "technical reviewer." *Id.* at 247. The Court has further indicated that a technical reviewer's testimony does not satisfy a defendant's right to confrontation unless the "reviewer's adoption of a report's results and conclusions" is "based on a complete review of the same data the primary author used, *and [made] as part of the process of finalizing and releasing the report*[.]" *State v. Miller*, 475 Md. 263, 291 (2021) (emphasis in original) (upholding the testimony of a technical reviewer of a DNA report where the reviewer adopted the conclusions in the report as her own "prior to the issuance of the report"). Here, the State does not dispute that the primary purpose for the creation of Ms. Sanchez's report was to establish or prove past events potentially relevant to later criminal prosecution of Mr. Barnes, and that Mr. Rose did not conduct his technical review of the report as part of the process of finalizing and releasing the report. Hence, the court erred in admitting the report and Mr. Rose's related testimony. The State "does not contend that the admission of the DNA report and analysis through an improper witness was harmless error," and we cannot conclude that the error was harmless given that no eyewitnesses identified Mr. Barnes as the shooter and DNA report was a significant component of the evidence against him. Consequently, we shall reverse the judgments of the circuit court and remand the case for a new trial.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. CASE REMANDED TO

THAT COURT FOR A NEW TRIAL. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.