Circuit Court for Baltimore City
Case No. 117138025

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2053

September Term, 2018

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OLIVER MILLER

v.

STATE OF MARYLAND

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Leahy,
Wells,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Wells, J.

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Filed: February 12, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury in the Circuit Court for Baltimore City convicted appellant, Oliver Miller, of first-degree rape, first-degree attempted rape, two counts of first-degree sex offense, three counts of third-degree sex offense, and false imprisonment. Miller was sentenced to 35 years for first-degree rape; 30 years for first-degree attempted rape, to be served consecutively; 20 years for each count of first-degree sex offense, one to be served concurrently and the other to be served consecutively; and 8 years for each count of third-degree sex offense, each to be served consecutively. Miller's conviction for false imprisonment merged with the other counts for a total sentence of 109 years. Miller filed a timely appeal and asks us to consider the following issues:

> 1. Was DNA evidence admitted in violation of Appellant's right to confrontation?
>
> 2. Did the trial court improperly impose separate sentences for rape and attempted rape, and for multiple counts of third-degree sex offense?

For the reasons explained below, we conclude that the trial court erred in permitting an analyst to testify as to the contents of a DNA report that she did not author and which was not entered into evidence. Because we shall vacate the sentences and order a new trial, we decline to discuss the merits of Miller's second issue.

## FACTUAL BACKGROUND

On January 19, 2008, an unidentified assailant followed a woman, L.J.[1], to her Baltimore City apartment and forced his way inside at knifepoint. Once inside the

[1] Given the nature of the offenses and to protect the victim's privacy, we shall refer to the adult victim by her initials.

apartment, the assailant instructed L.J. to remove her clothes and demanded that she perform various sexual acts throughout a lengthy encounter. Fearing for her life, L.J. complied. The assailant attempted to have vaginal sex with L.J. but was unable to "completely" penetrate her vagina with his penis. L.J. testified that she believed her assailant ejaculated onto a pillowcase and then forced her to shower with him.

After the shower, the assailant forced L.J. back onto the bed where he sucked one of her breasts. He next used cords to tie her to a chair and again sucked her breasts. After untying her from the chair, the assailant attempted to have vaginal sex with L.J. for a second time, but he could only partially penetrate her with his penis. Later, the assailant forced L.J. to drink from a bottle of whiskey because, according to L.J.'s account, the assailant believed it would cause her to appear intoxicated and "no one would believe" her. L.J. noted that he too drank directly from this bottle. Before leaving the apartment, the man again tied L.J. to a chair using electric cords and took her phone, debit card, and cash.

L.J. eventually freed herself from the chair and found help from a neighbor. Once police arrived, they transported L.J. to a nearby hospital where a Sexual Assault Forensic Examiner (SAFE) nurse examined her and collected DNA evidence from her body. The police also collected evidence from L.J.'s apartment, including the cords used to restrain her, a pillowcase, and swabs from the whiskey bottle.

In November 2008, Thomas Hebert, a DNA analyst with the Baltimore City Police Department, wrote a report indicating that the DNA from the unknown assailant was found on L.J.'s breast, the pillowcase, electronics cords, and the whiskey bottle. However, at that

time, police were unable to match the DNA with a perpetrator and suspended the investigation in late 2008.

Nine years later, in 2017, police obtained Miller's DNA sample in connection with an unrelated case. Hebert compared Miller's DNA profile to the DNA profiles generated in 2008 and found that it matched the profile of the unknown male in L.J.'s assault case. Hebert documented his findings in a "Supplemental Forensic Biology Report" prepared in May 2017.

At trial, Hebert was not called to testify about his Supplemental Forensic Biology Report. That report and its findings were not submitted into evidence.[2] Since preparing the 2017 report, Hebert left his post at the Baltimore City Police Department and moved to Georgia. The State notified the court of this fact and said that it would be possible to arrange Hebert's attendance at trial if two other analysts, Kelly Miller and Kimberly Morrow, were not permitted to testify in his place. The State anticipated that Miller would testify about the contents of Hebert's 2008 report and Morrow about his 2017 report. Although defense counsel moved to exclude both witnesses on Sixth Amendment confrontation grounds, the trial court denied that motion after hearing Morrow's testimony outside the presence of the jury and allowed both Miller and Morrow to testify about the respective reports. Of the two, our focus is on the 2017 report that linked the DNA taken from L.J. and her apartment with Miller.

[2] The 2017 report was submitted for identification purposes only.

In Morrow's own words, she performed "a technical review" of Hebert's 2017 report. As a technical reviewer, Morrow,

> [c]heck[ed] all of [Hebert's] documentation, check[ed] that the proper procedures were followed, check[ed] that all of the statements and conclusions [were] correct, check[ed] the statistics, [made] sure agreements [were] made with all of those things, they are consistent with the report and then . . . sign[ed] off on that report.

Upon completing her technical review, Morrow concluded that Miller's DNA matched the DNA found on L.J.'s body and on the items from her apartment. Morrow testified that she "agree[d] with all of [Hebert's] conclusions in his report and the statistical analysis." Over Miller's counsel's objections, the trial court found Morrow's testimony to be within the scope of other judicially-accepted expert testimony:

> Courts have said that it's all right for an expert to come in who actually didn't do the lab work, who didn't actually do the extraction and amplification, things along those lines, but instead relies on the data generated by others' efforts in making their analysis and making their conclusion.
>
> And that's what I think we have here. We have an individual who is reviewing step-by-step the process, the data generated and then looking to make sure (a) that the conclusion is based on the data and the process followed; and (b) not only that the conclusion is correct but there is a certain statistical analysis that goes along with that and ensure that it is done. So it is basically what – just duplicating efforts of other individuals.

Likening Morrow's testimony to that in other chain of custody cases and noting that the forensic laboratory had protocols that made error unlikely, the trial judge ultimately ruled that "the report and any information from the report is not testimonial." In response, Miller's trial counsel lodged a continuing objection to Morrow's testimony and moved to strike it in its entirety. The court overruled that motion.

On direct examination, Morrow informed the jury that she agreed with Hebert's conclusions in his 2017 report. Specifically, she testified that Hebert's analysis proved that Miller's DNA matched the DNA collected from L.J.'s left breast, pillowcase, whiskey bottle, and electronics cords. Although the 2017 report was admitted solely for identification purposes, Morrow read from it at length, reciting statistics that showed the likelihood of a false match was "infinitesimally small."

Ultimately, the jury found Miller guilty of the charges alleged. The court sentenced him to a total of 109 years' incarceration. This appeal soon followed.

## DISCUSSION

Miller argues that the trial court's admission of a forensic report authored by Hebert, a non-testifying witness, violated his Sixth Amendment right to confrontation for two reasons. *First*, Miller contends that Hebert's report was testimonial in nature, in that it was both formal and accusatory. *Second*, he argues that the testimonial conclusions Hebert made in the report required Hebert to testify at trial to satisfy Miller's right to confrontation. We agree and explain.

The Sixth Amendment to the United States Constitution provides, in part, 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. Known as the Confrontation Clause, this protection has been duly adopted by the State of Maryland. *See* Md. Decl. Rts., Art. 21. We review questions of Confrontation Clause violations independently from the circuit court, thereby providing no deference to the issuing court and applying a *de novo* standard

of review. *Hailes v. State*, 442 Md. 488, 506 (2015); *Taylor v. State*, 226 Md. App. 317, 332 (2016).

A. *Crawford* and Its Progeny

The Confrontation Clause provides a criminal defendant the right to hear and examine any witness who bears testimonial statements against the defendant, regardless of whether the statement is incriminating. *See Crawford v. Washington*, 541 U.S. 36, 68 (2004). Generally, testimonial evidence may only be introduced at trial when the declarant is available, and the defendant has the opportunity to cross-examine the declarant and subject him to scrutiny in front of the jury. *Id*. at 53-54. Only in limited circumstances may the testimony of an unavailable witness be admitted into evidence. *See generally* Maryland Rule 5-803. The United States Supreme Court adopted a new interpretation of the Confrontation Clause in *Crawford* when it concluded that "testimonial statements of witnesses absent from trial," may be admissible under the Sixth Amendment "only where the declarant is unavailable and only where the defendant has had a prior opportunity to cross-examine." 541 U.S. at 59. While the Court did not offer a comprehensive guide by defining "testimonial" for purposes of the Sixth Amendment, it did offer "various formulations" of a "core class of 'testimonial' statements," which included

> *ex parte* in-court testimony or its functional equivalent – that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially; extrajudicial statements contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions; statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial[.]

*Id*. at 51-52 (alterations, citations, and quotation marks omitted).

Until *Crawford*, though courts were mindful of a defendant's Sixth Amendment right, they struggled to determine which statements were testimonial in nature. *See Ohio v. Roberts*, 448 U.S. 56 (1980), *overruled by Crawford v. Washington*, *supra*, 541 U.S. 36 (2004); *see also Indiana v. Edwards*, 554 U.S. 164 (2008); *Davis v. Washington*, 547 U.S. 813 (2006). However, post-*Crawford* decisions provided clarity to trial courts on weighing testimonial statements against the Confrontation Clause.

For its first application of *Crawford* as it related to forensic laboratory reports, the Supreme Court, in *Melendez-Diaz v. Massachusetts*, held that a certificate of analysis of suspected cocaine "fall[s] within the core class of testimonial statements to which the Sixth Amendment right to confrontation applies as the document[] [is] quite plainly [an] affidavit[]." 557 U.S. 305, 310 (2009) (internal citation omitted). Within the framework of *Crawford*, the certificates of analysis, which had been sworn before a notary public in accordance with state law and stated that the bags seized from Melendez-Diaz contained cocaine, were "incontrovertibly a 'solemn declaration of affirmation made for the purpose of establishing or proving some fact.'" *Id*. (citing *Crawford*, 541 U.S. at 51). The Court held that such certificates "are functionally identical to live, in-court testimony, doing precisely what a witness does on direct examination." *Id*. at 310-11 (internal citation omitted).

Moreover, the Court held that under Massachusetts state law, "the *sole purpose* of the affidavits was to provide 'prima facie evidence of the composition, quality, and the net

weight' of the analyzed substance." *Id.* at 311 (citing Mass. Gen. Laws, ch. 111, § 13, (repealed 2012)) (emphasis in original). The authoring analysts, therefore, "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 examine them, petitioner was entitled to be 'confronted with' the analysts at trial." *Id.* (emphasis in original).

In 2011, the Supreme Court further clarified its *Crawford* decision in *Bullcoming v. New Mexico*, 564 U.S. 647 (2011) where it concluded that the admission of a blood alcohol analysis report through the testimony of an analyst who had neither performed nor witnessed the testing violated the Confrontation Clause. The Court explained that this "surrogate testimony" was inadequate because the testifying witness "could not convey what [the analyst] knew or observed about the events his certification concerned, i.e., the particular test and testing process he employed," *id.* at 661, considering the testifying analyst "had neither participated in nor observed the test on Bullcoming's blood sample." *Id.* at 651. Because the machines used to determine blood alcohol concentrations required specialized knowledge and training and involved a multi-step process where "human error can occur at each step," *id*. at 653-54, the Court reasoned that a fact-finder could not determine what the testifying analyst knew or observed in particular about the testing of Bullcoming's blood sample, nor could a fact-finder thoroughly uncover "any lapses or lies on the certifying analyst's part." *Id*. at 662.

Most recently, the Supreme Court ruled that a non-authoring analyst of a DNA report may testify as to the contents of a DNA report when the testifying analyst does not

refer to the report "to prove the truth of the matter asserted in the report, i.e., that the report contained an accurate profile of the perpetrator's DNA, but only to establish that the report contained a DNA profile that matched the DNA profile deduced from petitioner's blood." *Williams v. Illinois*, 567 U.S. 50, 79 (2012).

Of unique importance from *Williams* are the plurality opinion penned by Justice Samuel Alito and the concurrence drafted by Justice Clarence Thomas. Justice Alito, in concluding that the appellant's right to confrontation had not been violated, provided two distinct rationales. *First*, he reasoned that the expert witness did not refer to the underlying report tying the DNA evidence collected at the crime scene to appellant's DNA for "the truth of the matter asserted, i.e., that the report contained an accurate profile of the perpetrator's blood, but only to establish that the report contained a DNA profile that matched the DNA profile deduced from petitioner's blood." *Id*. *Second*, even if the prosecution offered the report for the truth of the matter asserted, it was not testimonial as it "plainly was not prepared for the primary purpose of accusing a targeted individual." *Id.* at 84. In the plurality's view, the report was not testimonial because at the time it was prepared, there was no known suspect in the case and "no incentive to produce anything other than a scientifically sound and reliable profile." *Id*. at 85-86. "[I]ts primary purpose," so reasoned the Court, "was to catch a dangerous rapist who was still at large, not to obtain evidence for use against [Williams], who was neither in custody nor under suspicion at the time." *Id.* at 84.

Justice Thomas' concurrence, however, rejected the plurality's primary-purpose test and, instead, followed the view expressed in prior cases, namely, "that the Confrontation

Clause regulates only the use of statements bearing 'indicia of solemnity'" as in "'formalized testimonial materials' such as depositions, affidavits, and prior testimony, or statements resulting from 'formalized dialogue,' such as custodial interrogation." *Id.* at 111 (Thomas, J., concurring in judgment) (internal citation omitted) (cleaned up). In adhering to the "formality" analysis, Justice Thomas reasoned that the report was not testimonial because, in pertinent part, it lacked the "solemnity of an affidavit or deposition" as it was "neither a sworn nor certified declaration of fact." *Id.*

B. The Court of Appeals' *Crawford* Jurisprudence: *State v. Norton*

In applying the Supreme Court precedent to Maryland, the Court of Appeals in *State v. Norton*, 443 Md. 517 (2015) formally adopted both the *Williams* plurality opinion and Justice Thomas' concurrence. There, the Court held that forensics evidence is testimonial if it is "accusatory," as the *Williams* plurality held, *or* if it is "formal," as it was discussed by Justice Thomas. The Court reasoned that the report was plainly formal, as it contained the phrase "within a reasonable degree of scientific certainty." *Id.* at 548. "Without this language certifying the result, the testimony is without foundation" because the phrase "constitutes such talismanic words that, without them, the testimony cannot cross the threshold of acceptance by the judge as gatekeeper." *Id.* at 548-49. The Court also found it important that the report was "certified and was signed by the analyst who performed the test" because such certification "indicat[ed] that the analyst's results had been validated according to federal standards, even if unsworn." *Id.* at 549. "It may not be within the

'core class' of sworn documents, such as affidavits . . . but it does come within 'formalized testimonial materials' to which Justice Thomas made reference [.]" *Id.*

Although the Court of Appeals concluded that a testimonial statement may be *either* formal *or* accusatory, it nevertheless held that the DNA analysis' report in question was also accusatory because it "was created with the primary purpose of accusing a targeted individual of engaging in criminal conduct." *Id.* at 550 (internal citations omitted). Specifically, the Court concluded that the words "'within a reasonable degree of scientific certainty, Harold Norton . . . is the major source of the biological material obtained from the evidence' clearly 'accuses a targeted individual of engaging in criminal conduct.'" *Id.* at 549 (internal citation omitted) (cleaned up).

C. *Rainey v. State*

Notably absent from the *Norton* analysis, though, is the situation presented here – whether a non-authoring analyst may testify to the contents of a lab report that is *not* entered into evidence. But, this Court's most recent case on this precise issue, *Rainey v. State*, __ Md. App. __, No. 1938 (Sept. Term 2017) aids us in closing that circle. In *Rainey*, the appellant pleaded guilty "to facts constituting the *actus reus* of first-degree murder," among other related offenses, yet elected to pursue a jury trial as to the issue of his criminal responsibility in those acts. Slip op. at 1. Rainey's defense, essentially, was that he was of unsound mind leading up to and during the commission of the crimes, thereby not possessing the requisite *mens rea* to convict him. Slip op. at 4-5.

During the jury trial, the State moved to admit the testimony of its psychiatric expert, Dr. Annette Hanson. Slip op. at 7. Specifically, the State sought to elicit from her the results of the Rainey's psychiatric tests in the so-called Kanal Report, which was authored by a separate non-testifying witness, Dr. Hyde. Slip op. at 7-8. Over defense counsel's objection, the trial court did not admit the report, but permitted Dr. Hanson to testify as to its contents. The court reasoned that the data contained in the report were "of a type reasonably relied upon by experts in the particular field forming opinions or inferences upon the subject[.]" Slip op. at 7 (citing Md. Rule 5-703(a)). After Dr. Hanson testified that Rainey should be found criminally responsible, the jury convicted him of the offenses charged. Slip op. at 7-9. He then appealed to this Court.

On appeal, and applying the *Norton* test, we concluded that Dr. Hanson's testimony of the non-admitted report did indeed violate Rainey's Sixth Amendment right to confrontation. Slip op. at 21. There, we reiterated that the "Confrontation Clause applies only to 'testimonial hearsay,'" but reasoned that Dr. Hanson's testimony of the non-admitted report was itself hearsay because, as Justice Thomas concluded in *Williams*, "[t]here is no meaningful distinction between disclosing an out-of-court statement so that the fact-finder may evaluate the expert's opinion and disclosing that statement for its truth." Slip op. at 21 (citing *Williams*, 567 U.S. at 106 (Thomas, J., concurring in judgment)).

As for whether the hearsay was testimonial, we determined that the Kanal Report was not formal, as Justice Thomas required, but was in fact accusatory per Justice Alito's

"targeted accusation" test and Justice Kagan's "evidentiary purpose" test.[3,4] Although the Kanal Report was signed by two psychologists, it was not notarized, nor did it "certify that the tests were administered according to any specific protocol" and was thus similar to the Cellmark lab report in *Williams*. Slip op. at 22. "Like the Cellmark report, the report at issue here 'certifies nothing.'" Slip op. at 22 (citing *Williams*, 567 U.S. at 112 (Thomas, J., concurring in judgment)).

The report was, nonetheless, accusatory. We reasoned that the Kanal Report was prepared by a maximum-security facility that "receives patients requiring psychiatric evaluation who have been accused of felonies and have raised the Not Criminally Responsible (NCR) defense and/or their Competency to Stand Trial is in question." Slip op. at 23 (internal citation omitted). Notably, the report indicated the criminal charges against Rainey, the case number, and the "Current Legal Status" *i.e.* whether Rainey was competent to stand trial. Slip op. at 23. Most importantly, though, the report included a Non-Confidentiality Statement, signed by Rainey, which explained that Rainey "understood that his chart could be subpoenaed in legal actions." Slip op. at 23 (emphasis omitted). "To say, as the State maintains, that the primary purpose of this report and the malingering tests 'was to aid in [Rainey's] diagnosis and treatment, not to accuse him of crime[s],' is to ignore reality." Slip op. at 24. As for Justice Kagan's "evidentiary

[3] According to Justice Elena Kagan's dissent in *Williams*, a report is testimonial when it is "a statement meant to serve as evidence in a potential criminal trial." 567 U.S. at 138 (Kagan, J., dissenting).

[4] "Because the report does not satisfy Justice Thomas's 'formality criterion,' it must satisfy both of the remaining tests to qualify as 'testimonial.'" *Rainey*, slip op. at 23.

purpose," we concluded that, due to "the centrality of Rainey's psychological condition to his criminal case," there was "no meaningful distinction between the medical or therapeutic purpose of the Kanal Report and its potential evidentiary purpose." Slip op. at 24. Despite this analysis, we concluded that the admission of Dr. Hanson's testimony amounted to harmless error, given the strength of the State's case and abundance of alternative evidence. Slip op. at 26-28. Considering the circumstances of *Rainey*, as we see it, Miller's case can be resolved squarely within this framework.

D. Analysis of Miller's Claim of Error

As we explained in *Rainey*, for purposes of Sixth Amendment analysis, it is irrelevant that Hebert's 2017 report was not itself admitted into evidence because Morrow effectively read its contents into evidence as the basis of her expert opinion. The results in Hebert's report and Morrow's testimony about them thereby constitute as hearsay. *See Williams*, 567 U.S. at 106 (Thomas, J., concurring in judgment). As we view it, Hebert's 2017 report, despite the State's assertion to the contrary, is both formal *and* accusatory.

*First*, similar to the report in *Norton*, Hebert's signed 2017 report certifies that his analysis "was performed using procedures that have been validated according to the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing Laboratories" and that the "test is accredited under the laboratory's ISO/IEC 17025 accreditation by the ANSI-ASQ National Accreditation Board." *See Norton*, 443 Md. at 549 (concluding that, under Justice Thomas' *Williams* formality test, a report is formal when it is "validated according to federal standards, even if unsworn.").

*Second*, the report expressly articulates that it "contains the conclusions based on the interpretation and opinions of the below signed author." This language further demonstrates that the results in the 2017 report are Hebert's, and his alone, "sworn [or] certified declaration[s] of fact." *See Williams*, 567 U.S. at 111 (Thomas, J., concurring in judgment) (defining "solemnity," for example, as the signature of a report's reviewer "purport[ing] to have performed the DNA testing" and "certify[ing] the accuracy of those who did.").

*Third*, assuming, purely for the sake of argument, that the 2017 report was not formal, per Justice Thomas's *Williams* test, it is nonetheless accusatory. The State's argument that Hebert's 2017 report was not accusatory because it was not authored with the intent to use ultimately at trial defies logic. Hebert's report expressly states that "Oliver Miller is the source of the DNA profiles" from the DNA collected from the victim's body and her pillowcase, with "a random match probability greater than 1 in 7.49 trillion," which "shows at least 99.9% confidence that the DNA profile is unique in the population." As for the DNA collected from the wires and whiskey bottle, Hebert concluded that the "chances of selecting an unrelated individual from a random population as a possible contributor" were "1 in 64.0 thousand (64,000) individuals in the African American population" (Miller's race) and "1 in 330 thousand (330,000) individuals in the African American population," respectively.

Moreover, like the report in *Rainey*, the header of Hebert's 2017 report (1) contained the criminal case file number; (2) stated, in bold letters, that the underlying offense to which the report related was rape; and (3) was addressed to a Baltimore Police Department

detective, Detective Stinnett. At trial, Detective Stinnett, a member of the Cold Case Unit, testified that he was assigned to L.J.'s case in April 2017. Less than one month later, in May 2017, Hebert authored the 2017 report and sent it directly to Stinnett. Under these circumstances, it is plainly evident that Hebert was or should have been aware that the report was to be used in a criminal prosecution; particularly, in Miller's criminal prosecution. Accordingly, it follows that the trial court erred in permitting Morrow to testify about the conclusions reached in Hebert's 2017 report without calling Hebert himself to testify.

E. Harmless Error

We now determine whether such error was harmless. *Delaware v. Van Arsdall*, 475 U.S. 673, 680-84 (1986) (concluding that Confrontation Clause violations are subject to the *Chapman*[5] harmless error analysis). "For all constitutional errors that do not defy analysis by harmless error standards, reviewing courts must apply [the] harmless-error analysis and must disregard errors that are harmless beyond a reasonable doubt." *United States v. Garcia-Lagunas*, 835 F.3d 479, 487-88 (4th Cir. 2016) (internal citations and quotations omitted) (cleaned up). "Once it has been determined that error was committed, reversal is required unless the error did not influence the verdict; the error is harmless only if it did not play any role in the jury's verdict." *Bellamy v. State*, 403 Md. 308, 332 (2008) (internal citations and quotations omitted). To find that an error did not facilitate the jury's verdict is "to find that error unimportant in relation to everything else the jury considered

[5] *Chapman v. California*, 386 U.S. 18 (1967).

on the issue in question, as revealed by the record." *Id*. at 333 (internal citations and quotations omitted). In such circumstances, we look to "a number of factors that may have influenced the jury's perspective as arbiters of fact," *Dionas v. State*, 436 Md. 97, 110 (2013), such as the strength of the State's case "from the perspective of the jury," *id.* at 116 and "the nature, and the effect, of the purported error upon the jury." *Id.* at 110.

Here, the entirety of the State's case was premised on Hebert's 2017 report. Although L.J. testified as to the events that transpired leading up to and during the crime, she could not identify her assailant from a photo array, nor could she identify him in court. The State did not have any video, photographic, or documentary evidence linking Miller to the assault on L.J. nor to the area surrounding her apartment around the time of the attack. Instead, the sole piece of evidence connecting Miller to the crime scene was Hebert's 2017 report that concluded that Miller's DNA profile matched the DNA found on L.J. and in her apartment. Given the dearth of evidence, not only did the 2017 report influence the "jury's perspective as arbiters of fact," we conclude that it was the primary influence on the jury's determination of guilt. The admission of the report and its effect on the jury, then, cannot be harmless.

Furthermore, the strength of the State's case was dependent upon the weight the jury gave to Morrow, who testified as to the contents of the 2017 report. The State introduced her to the jury as a DNA analyst with credentials equal to, if not superior to Hebert's, because she performed a "technical review" of Hebert's work. In other words, her testimony as an expert would establish her in the minds of the jurors as an important, if not highly credible witness. *See Dionas*, 436 Md. at 109 ("[The jury] is responsible for

weighing the evidence and rendering the final verdict. Therefore, any factor that relates to the jury's perspective of the case necessarily is a significant factor in the harmless error analysis.") Under these reasons, we conclude that the confrontation error was not harmless beyond a reasonable doubt.

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS REVERSED, AND THE CASE IS REMANDED FOR A NEW TRIAL. COSTS TO BE PAID BY MAYOR AND CITY COUNCIL OF BALTIMORE.**