No.

IN THE

Supreme Court of the United States

[redacted] JOHNS,

Petitioner,

v.

THE STATE OF GEORGIA,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Georgia

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

A forensic pathologist who performed an autopsy on a homicide victim was unavailable for trial. In her place, the State of Georgia offered testimony by a "peer review" pathologist who did not participate in the autopsy but testified as to the results based on her review of the autopsy report. Does the surrogate's oral recitation of testimonial hearsay from an unadmitted autopsy report violate the Confrontation Clause?

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Johns v. State*, No. S25A0875, Supreme Court of Georgia. Judgment entered August 12, 2025.

- *State v. Johns*, No. 23SC186170, Superior Court for the County of Fulton, State of Georgia. Judgment entered December 13, 2023.

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OPINIONS BELOW

The opinion of the Georgia Supreme Court is reported at 919 S.E.2d 588. Pet. App. at 1a–13a. The judgment and order of the Superior Court of Fulton County is unreported. Pet. App. at 17a–21a.

JURISDICTION

The Supreme Court of Georgia entered judgment on August 12, 2025. Pet. App. at 1a–13a. On October 22, 2025, Justice Thomas granted an application to extend the time to file a petition for a writ of certiorari to December 10, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The constitutional provision at issue is reproduced below.

United States Constitution, Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT

On November 10, 2022, Atlanta police responded to an emergency 911 call. Trial Tr. Vol. II at 294, *State v. Johns*, No. 23SC186170 (Ga. Super. Ct. Dec. 12, 2023). James Fred Cason, Jr. was found dead in his apartment, covered in blood. Tr. 294; Pet. App. at 3a. Police suspected homicide. Tr. 298. They contacted the Fulton County Medical Examiner's Office, which is tasked with determining the "cause and manner of death of people who die of sudden, unexpected, or unexplained causes." Tr. 397.

1. Typically, an examination process begins when a "legal death investigator" from the Medical Examiner's Office reports to the scene, examines the body, and places it in a "disaster bag or body bag" for transport. Tr. 400–01. The body is assigned a number and is then transported back to the Office. *Id.* at 401. The investigator reports the information obtained from the scene about the circumstances surrounding the person's death, either orally or in written form. *Id.*

At the Office, the bag is opened, and the forensic pathologist begins her work. *Id.* at 402. She receives narrative information from the investigator and works in partnership with a forensic technician, who washes and cuts the body. *Id.* at 401–02. Sometimes, there is a photographer who takes pictures of the body, while in other cases, the technician takes photographs in addition to completing other duties. *Id.* As the pathologist examines and measures the body, she takes notes for the written report. *Id.* at 402.

A forensic autopsy is a surgical examination ordered by legal authorities to determine the cause and mechanism of a death, including whether the death was natural (*i.e.*, due to a disease process) or unnatural (*i.e.*, due to an accident, a suicide, or a homicide). Joseph A. Prahlow & Roger W. Byard, *Atlas of Forensic Pathology* 13 (2012). Because an autopsy disrupts the normal anatomy of the body, and because human tissues break down and disintegrate, an autopsy cannot be replicated. *Id.* at 15. It is, therefore, essential that the pathologist produce proper documentation including photographs, diagrams, and written descriptions. *Id.*

Typically, a forensic autopsy includes visually examining all aspects of the body, both internal and external; weighing of the body and its organs; measuring the body, its components, and its wounds; and collecting tissue, blood, and urine samples for toxicology, DNA, and other types of testing. Prahlow & Byard, *supra*, at 101; Tr. 400–04. When a body presents with apparent sharp force injuries, the wounds should be "described, photographed, and measured as [the wound] presents, and again with the margins brought together, as wound edges will artifactually fall apart or gape due to the elastic recoil of the skin . . . ." Prahlow & Byard, *supra*, at 573.

Additionally, the pathologist collects and preserves testable samples of blood and tissue, as well as skin samples from underneath the fingernails. Prahlow & Byard, *supra*, at 101; Tr. 404. All the pathologist's relevant observations are recorded in the autopsy report as part of the State's investigatory function. Prahlow & Byard, *supra*, at 31 ("A vital part

of the practice of forensic pathology is the accurate and complete documentation of findings.”).

2. Johns was arrested 55 minutes after the 911 call about Cason’s death. Tr. 291. He was charged with Cason’s murder early the next morning. Booking Report, *State v. Johns*, 23SC186170 (Ga. Super. Ct. Nov. 11, 2023). As part of the State’s criminal investigation of its only suspect, Johns, the Fulton County Medical Examiner’s Office arranged for Dr. Sally Aikens—a forensic pathologist based in Washington State with whom Fulton County contracted work on a temporary basis—to conduct a forensic autopsy. Tr. 407.

At Johns’s trial, the prosecution gave notice that Aiken was unavailable to testify because she resided in Washington State. Notice of Intent to Present Testimony of a Substitute Medical Examiner at 1, *State v. Johns*, No. 23SC186170 (Ga. Super. Ct. Nov. 20, 2023). Georgia sought permission to produce a substitute expert witness, Dr. Karen Sullivan, the chief medical examiner for Fulton County. *Id.* at 2.

When defense counsel objected based on the Confrontation Clause, the prosecutor acknowledged that admitting Aiken’s autopsy report via Sullivan would be impermissible. The prosecutor argued, however, that Sullivan could testify as a “substitute” expert based on her own expertise and her review of the investigator’s case information, Aiken’s autopsy report, and the photographs, so long as the written report, itself, was not admitted into evidence. Pet. App. at 23a–24a; Tr. 407.

Sullivan was not personally involved in Cason's forensic autopsy; she never saw or examined Cason's body and she never performed any tests or measurements on the body. *Id.* at 406. Sullivan's preparation was limited to reviewing three resources: (1) the case information that the investigator prepared, (2) the photographs taken during Cason's autopsy, and (3) Aiken's written autopsy report. *Id.* at 407. The court overruled defense counsel's objection, and the prosecution elicited Sullivan's testimony without offering the autopsy report into evidence. Pet. App. at 23a–24a; Tr. 395–420.

During the State's direct examination, Sullivan testified as to Cason's age, race, and sex, *id.* at 408; that his body was received directly from the crime scene, *id.* at 409; that he was 5' 7" tall and weighed 149 pounds, *id.* at 420; and that his wounds were of diverse size and shape, offering descriptions of the wounds that went beyond what was ascertainable from photographs, *id.* at 409. She also testified that blood samples, fingernail samples, and "tape lifts," were taken from Cason's body. *Id.* at 419, 421. Sullivan reported that Cason's blood was tested for toxicology and that she did not know whether the fingernail samples or "tape lifts" were tested. *Id.* at 421–22.

Sullivan gleaned the information she relayed to the jury from reading the autopsy report prepared by Aiken, which documented Aiken's findings. Sullivan had no independent way of knowing whether the findings recorded in the autopsy report were true, accurate, or reliable, nor did she have any personal knowledge of whether Aiken had any motive to

obfuscate, lie, or exaggerate. Johns never had an opportunity to confront and cross-examine Aiken.

After Johns's conviction, defense counsel moved the trial court to vacate the judgment and order a new trial because Sullivan's testimony (parroting Aiken) violated Johns's Confrontation Clause rights. *See* Pet. App. at 14a The court denied the motion. *Id.* at 16a.

Subsequently, Johns appealed to the Supreme Court of Georgia, which affirmed. *Id.* at 13a. Regarding the Confrontation Clause, the Georgia Supreme Court reasoned that Sullivan's testimony was permissible as an "independent, expert opinion" based on "the facts contained in Dr. Aiken's preliminary report, along with the autopsy photographs . . . ." *Id.* at 12a–13a. Relying on precedent pre-dating *Smith v. Arizona*, 602 U.S. 779 (2024), the Georgia court held that the Confrontation Clause is not violated when the State offers an independent expert's testimony based upon facts she gleaned by reviewing an unavailable expert's report. *See* Pet. App. at 13a (citing *Naji v. State*, 797 S.E.2d 916, 920 (Ga. 2017)).

REASONS FOR GRANTING THE PETITION

Courts disagree sharply about whether a surrogate expert may testify against a criminal defendant about another expert's technical report. Many courts, including the court in this case, permit such testimony, despite this Court's instructions in *Melendez-Diaz v. Massachusetts,* 557 U.S. 305 (2009), *Bullcoming v. New Mexico,* 564 U.S. 647 (2011), and *Smith*, 602 U.S. 779. But the courts that permit surrogate testimony disagree about why the

testimony is admissible. Meanwhile, other courts forbid such testimony because allowing it would violate the Confrontation Clause. This Court's review is necessary to resolve this conflict.

Review is also warranted because the decision below is wrong: permitting surrogate experts to offer testimony about scientific tests and procedures they did not conduct or witness violates the Confrontation Clause because it results in the admission of "testimonial hearsay."

The Confrontation Clause entitles a criminal defendant to confront all witnesses against him. It prohibits the admission of any out-of-court testimonial statement except on a showing of "unavailability and a prior opportunity for cross-examination." *Crawford v. Washington*, 541 U.S. 36, 68 (2004).

As the Court explained in *Smith*, "[w]hen an expert conveys an absent analyst's statements in support of his opinion, and the statements provide that support only if true, then the statements come into evidence for their truth." 602 U.S. at 783. Confrontation is specifically designed to afford an accused person the opportunity to reveal through cross examination when an analyst has been incompetent or even committed fraud. *See Melendez-Diaz*, 557 U.S. at 319. Allowing a surrogate to testify about another technician's work eviscerates "the greatest legal engine ever invented for the discovery of truth." *United States v. Salerno*, 505 U.S. 317, 328 (1992) (Stevens, J., dissenting) (quoting 5 J. Wigmore, *Evidence* § 1367, 32 (J. Chadbourn rev. 1974)).

Given staff turnover and attrition at state and county crime labs, the surrogacy practice is undoubtedly administratively convenient for the state. David B. Muhlhausen, *Needs Assessment of Forensic Laboratories and Medical Examiner/Coroner Offices*, Nat'l Inst. of Just., 52 (2020), https://www.ojp.gov/pdffiles1/nij/253626.pdf; *see also* W. Mark Dale & Wendy S. Becker, *A Case Study of Forensic Scientist Turnover*, 6 Forensic Sci. Commc'n (2004). But the quest for convenience does not justify a violation of a fundamental constitutional right. To prevent the erosion of the Confrontation Clause, this Court should draw a bright line forbidding use of a surrogate forensic expert to testify in place of the analyst who performed the investigatory procedures, measurements, or tests.

I. Lower courts remain divided about use of surrogate expert testimony

Despite this Court's strong instructions in *Smith*, *Melendez-Diaz*, and *Bullcoming*, many lower courts continue to evade the Confrontation Clause by permitting surrogate experts to testify about the results of forensic tests they did not perform and as to which they have no personal knowledge. Other courts, however, adhere to the rules outlined in *Bullcoming*, *Melendez-Diaz*, and *Smith*, respecting a defendant's constitutional right to confront witnesses against him through cross-examination.

1. Many courts continue to stretch to find ways to permit surrogate experts to testify. In *Gourley v. State*, 710 S.W.3d 368 (Tex. Ct. App. 2025), for example, the Texas court allowed a surrogate lab employee to testify about toxicology results he had no

role in producing and about which he had no personal knowledge. Two lab technicians handled the blood sample and ran the relevant toxicology tests. The results were printed on a page that was introduced for record-keeping purposes but not shown to the jury. A surrogate technician, who was uninvolved in the testing, "reviewed the raw data and opined about the results of the testing." *Id.* at 378.

The surrogate testified that the defendant's blood tested positive for methamphetamines and amphetamine based on his "analysis" of analytic data recorded by others who actually performed the test procedures. The defendant did not get to cross-examine the technicians who handled the blood and ran the tests that led to the printed data, rendering cross-examination all but useless. Ruling on the merits, the court concluded the surrogate expert's testimony did not violate the Confrontation Cause because the lab report was not admitted into evidence and the surrogate "formed his own conclusions from the data." *Id.* at 374.

Similarly, in *State v. Shea*, No. A23-1523, 2024 WL 4115377 (Minn. Ct. App. Sept. 9, 2024), the Minnesota Supreme Court allowed a surrogate analyst to testify about DNA testing that he had no role in performing and about which he had no personal knowledge. The first analyst tested blood from a crime scene for DNA. Later, the same analyst determined that the crime scene DNA matched a profile belonging to the defendant.

Instead of having the first analyst testify at trial, the state presented a surrogate analyst who had reviewed the printed results to testify about what the

first analyst had apparently done. The defendant did not get an opportunity to cross-examine the person who handled the samples and ran the tests and so could not assess by that means whether the testing analyst was incompetent, a cheat, or a fraud. The Minnesota court nonetheless allowed the testimony, reasoning that the surrogate's testimony was premised upon "a machine-generated DNA profile," which it did not consider to be "a statement." *Shea*, 2024 WL 4115377, at *5.

In *United States v. Dillenburger*, 85 M.J. 599, 609 (N-M. Ct. Crim. App. 2025), an analyst ran forensic tests on a sample of urine, which generated data, including "machine generated charts and graphs." A surrogate analyst reviewed those documents and testified, without personal knowledge, that the defendant's urine tested positive for cocaine. If the original analyst mixed up the urine samples, either intentionally or accidentally through poor chain-of-custody discipline, the defendant would never have had a chance to find out through cross-examination. In permitting the testimony, the court attempted to distinguish the scenario before it from *Smith* on the ground that, unlike the records at issue in *Smith*, "machine generated charts and graphs" are not "hearsay."[1] *Dillenburger*, 85 M.J. at 609.

In *State v. McElveen*, 406 So.3d 429 (La. Ct. App. 2024), the state tried harder to justify a surrogate analyst's testimony but still fell short of the Constitutional standard. There, investigators sent the defendant's reference DNA to a crime lab. A

[1] The court also held, alternatively, that the admission of the evidence was harmless. *Dillenburger*, 85 M.J. at 609.

testing analyst handled the DNA and produced a test result showing it matched prior samples allegedly found on the straps, zipper, and zipper pulls of a backpack used in a robbery. By the time of trial, the testing analyst no longer worked at the crime lab. The State offered a surrogate as a "reviewer" who could confirm that the first analyst's records of his process "upheld the lab's policies and procedures." *Id.* at 444. Nevertheless, there was no indication that the surrogate ever handled the DNA samples personally, ever replicated the first analyst's results through repeated testing, or had any way of knowing whether the missing analyst made mistakes or had committed fraud or deceit.

The court ruled this surrogate testimony was acceptable for two reasons. First, under *Williams v. Illinois*, 567 U.S. 50 (2012) (plurality opinion), it was not "testimonial" because the defendant (unlike Johns in this case) was neither a suspect nor a target when the backpack DNA profile was generated. *McElveen*, 406 So.3d. at 444–46. Second, as to the DNA results generated after the defendant became a suspect, the surrogate "reviewed every step of the process to verify that the established procedure . . . had been followed," rendering him "a participant in the process." *Id.* at 445.

2. In contrast, several states have taken care to ensure that a testifying forensic analyst has all the proper personal knowledge necessary to render the defendant's right to confrontation and cross-examination meaningful, consistent with this Court's precedents.

In *Commonwealth v. Gordon*, 266 N.E.3d 369 (Mass. 2025), for example, the Commonwealth attempted to offer a surrogate expert who performed a technical and administrative review of an original analyst's lab results. The surrogate did not participate in or observe the chemical testing. Like the surrogate pathologist in this case, the expert in *Gordon* could competently discuss the typical process followed in the lab, and that those processes appeared to have been followed based on the face of the written report, but she "had no personal knowledge" stemming from the context of this case. *Id.* at 382.

The Massachusetts high court overturned the defendant's conviction, holding that statements about the results of the testing were hearsay and also testimonial because (as in this case) the lab process began at the request of the police for the purpose of developing evidence in a criminal prosecution. The Massachusetts court concluded that the "relevant witness against the accused, in a constitutional sense, is the absent analyst." *Id.* at 389. The court held that the fact that the surrogate "is familiar with the testing analyst's laboratory protocols and reviewed the analyst's case file" did not save the testimony. *Id.* at 388.

Similarly, in *State v. Thomas*, 334 A.3d 686 (Me. 2025), the Maine Supreme Judicial Court rejected the state's attempt to offer a second chemist's "technical review" of a first chemist's forensic drug testing. The court held that the surrogate expert's testimony violated the defendant's Confrontation Clause rights because it relied upon the truth of the notes and data generated by the first chemist and was testimonial.

Just as in this case, the surrogate "testified about the weight of the [fentanyl] samples," but "relied on [the first chemist's] notes to determine the weight of the samples" providing "minimal, if any, independent scrutiny." *Id.* at 703.

In *United States v. Seward*, 135 F.4th 161 (4th Cir. 2025), the Fourth Circuit considered the testimony of a surrogate DNA analyst who performed a "technical review" of an absent analyst's work. The surrogate analyst was familiar with the State's laboratory's procedures and provided an ostensibly "independent" opinion. She was not, however, "hands-on with the evidence samples." *Id.* at 168.

The court noted that under prior Fourth Circuit precedent, *United States v. Summers*, 666 F.3d 192 (4th Cir. 2011), this type of "technical reviewer" testimony was permissible. *Seward*, 135 F.4th at 169. It concluded, however, that this Court's decision in *Smith* abrogated *Summers*. The court held that, under *Smith*, a criminal defendant has "a right to cross-examine the testing analyst about what she did and how she did it and whether her results should be trusted." *Id.* (quoting *Smith*, 602 U.S. at 799). Nonetheless, assuming without deciding that the non-testifying analyst's statements were testimonial, the Fourth Circuit affirmed, concluding the error was harmless. *Id.* at 169–70.

* * *

These directly conflicting approaches mean that the Confrontation Clause rights of criminal defendants vary across the country. Had Johns been tried in Maine, Massachusetts, or in the Fourth

Circuit, the surrogate expert would not have been permitted to testify against him. This Court should accept review to clarify once and for all how the Confrontation Clause applies in the context of surrogate experts.

II. The Georgia Supreme Court's decision allowing a surrogate expert to testify is wrong

1. The Sixth Amendment provides that in "all criminal prosecutions," a criminal defendant has the right to "be confronted with the witnesses against him." U.S. Const. amend. VI. This provision prohibits the state from introducing out-of-court testimonial statements against a defendant in a criminal case, unless the person who made the statement is unavailable and the defendant previously had the opportunity to cross-examine that person. *Crawford*, 541 U.S. at 68–69.

This Court's primary guidance on what constitutes testimonial evidence comes from the opinions in *Williams*. Statements are considered testimonial if they are made with an eye toward being introduced as evidence in a criminal case. *See Williams*, 567 U.S. at 82–83 (plurality opinion) (defining testimonial to include formal statements made with the "primary purpose" of accusing an individual); *id.* at 121 (Kagan, J., dissenting) (referring to statements "made under circumstances which would lead an objective witness reasonably to believe that [they] would be available for use at a later trial" (citing *Melendez-Diaz*, 557 U.S. at 310–11 (quoting *Crawford*, 541 U.S. at 51–52))). The Confrontation Clause restricts the admission of

all out-of-court testimonial statements against a criminal defendant.

This Court has repeatedly emphasized that this prohibition applies equally to experts. "A State may not introduce the testimonial out-of-court statements of a forensic analyst at trial, unless she is unavailable and the defendant has had a prior chance to cross-examine her." *Smith*, 602 U.S. at 802–03 (first citing *Crawford*, 541 U.S. at 68; then citing *Melendez-Diaz*, 557 U.S. at 311). The State may not avoid this limitation by introducing testimonial "statements through a surrogate analyst who did not participate in their creation," nor by having the surrogate "present[] the out-of-court statements as the basis for his expert opinion." *Id.* at 803 (citing *Bullcoming*, 564 U.S. at 663). That is so because those types of court statements are necessarily relied upon for their truth, since "only if true can they provide a reason to credit the substitute expert." *Id.* The Sixth Amendment therefore guarantees the defendant's "right to cross-examine the person who made them." *Id.*

Forensic analysis carries significant—and at times outsized—weight with juries. *See*, *e.g.*, *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 595 (1993); *United States v. Frazier*, 387 F.3d 1244, 1263 (11th Cir. 2004) ("[E]xpert testimony may be assigned talismanic significance in the eyes of lay jurors."). It is a powerful tool for prosecutors, but modern-day science is not infallible because humans remain fallible. The Constitution's protection against absent witnesses remains just as important in the scientific context as anywhere else.

Under this Court's precedents, the testimony of the surrogate expert, Sullivan, violated the Confrontation Clause because it parroted statements in Aiken's autopsy report, and those statements were plainly testimonial. Georgia contracted with Aiken to prepare the autopsy report for the purpose of generating evidence for a homicide investigation. Notice of Intent to Present Testimony of a Substitute Medical Examiner at 1, *State v. Johns*, No. 23SC186170 (Ga. Super. Ct. Nov. 20, 2023). At the time Aiken prepared the autopsy report, Johns was already in custody; he was a "targeted individual." Tr. 291. Consequently, Sullivan's recitation of the results of the autopsy were testimonial under the definitions adopted by both the plurality and the dissent in *Williams*: the statements were formalized and made with the primary purpose of accusing Johns, *Williams*, 567 U.S. at 82–83 (plurality), and they were "made under circumstances which would lead an objective witness reasonably to believe that [they] would be available for use at a later trial," *id.* at 121 (Kagan, J., dissenting) (citing *Melendez-Diaz*, 557 U.S. at 310–11 (quoting *Crawford*, 541 U.S. at 51–52)).

2. The Georgia Supreme Court relied on its own pre-*Smith* precedent to justify the admission of Sullivan's surrogate expert testimony. Pet. App. at 11a (citing *Naji*, 797 S.E.2d at 920). It reasoned that there was no Confrontation Clause problem because the State did "not seek to admit [the] autopsy report itself, but rather ask[ed] a second expert [her] independent, expert opinion regarding the facts contained in that report and associated documents." *Id.* (quoting *Naji*, 797 S.E.2d at 920).

But Sullivan's testimony was not wholly independent; Sullivan necessarily repeated testimonial hearsay from the written autopsy report, presenting it to the jury as truthful without any personal knowledge basis for doing so. The parroted statements were hearsay because they were Aiken's out-of-court statements offered to the jury for their truth. *Smith*, 602 U.S. at 780; *see also* Fed. R. Evid. 801(c). Whenever the prosecution offers an expert opinion, "[t]he truth of the basis testimony is what makes it useful to the State; that is what supplies the predicate for—and thus gives value to—the state expert's opinion." *Smith*, 602 U.S. at 780. After all, if the facts on which the surrogate relies for her opinion, and recites to the jury, were untrue, the resulting opinion could not reasonably be credited. The facts on which the surrogate expert relies are necessarily at issue before the jury.

Indeed, in *Smith*, the Court explicitly rejected the notion that a statement does not come in for its truth "[w]hen an expert conveys an absent analyst's statements in support of his opinion, and the statements provide that support only if true." *Id.* at 783; *id.* at 803 (Thomas, J. concurring); *see id.* at 805 (Gorsuch, J. concurring). The Court explained that "truth is everything" when "an expert for the prosecution conveys an out-of-court statement in support of his opinion, and the statement supports that opinion only if true . . . ." *Id.* at 795. The *Smith* Court also emphasized that "[t]he jury cannot decide whether the expert's opinion is credible without evaluating the truth of the factual assertions on which it is based." *Id.* at 796. Thus, permitting a surrogate expert to testify as Sullivan did in this case presents

a straightforward Confrontation Clause violation because "the defendant has no opportunity to challenge the veracity of the out-of-court assertions that are doing much of the work." *Id.*

This case demonstrates why this Court should end the creative means prosecutors have devised to introduce surrogate experts in place of the testing analyst. Georgia contracted with Aiken, a pathologist in Washington State, to come to Georgia to conduct the autopsy. Then, at trial, Georgia asserted that the out-of-state expert it hired to come across the country to conduct the autopsy was not available to testify because she lives out of state. On that basis, the State produced Sullivan as a surrogate to review Aiken's autopsy report and testify in her place. Sullivan, the Chief Medical Examiner for Fulton County, had familiarity with the Office's governing procedures and protocols, but no personal involvement in Cason's autopsy. Tr. 406–07. She could not have known if Aiken's chain-of-custody procedures were correct or whether her recorded measurements and observations were sound.

Rather than complying with this Court's clear directives, the Georgia court held that it is permissible for a surrogate expert to testify about the results and findings of an autopsy report so long as the written report itself is not admitted into evidence. But refraining from admitting the actual report does not solve the Confrontation Clause problem; it merely obfuscates it by presenting indirectly what may not be presented directly. Sullivan testified to procedures that someone else performed; observations that someone else made; measurements someone else took;

and characterizations of injuries that she could not have gleaned from a two-dimensional photograph. Sullivan's testimony was by necessity—and by admission—based upon Aiken's written autopsy report. Pet. App. at 12a–13a; Tr. 407

In cases of autopsies, this is particularly concerning because of the quick deterioration of reliable evidence. Prahlow & Byard, *supra*, at 15. As in this case, cross-examination on potential procedural missteps only elicits "I don't know" from a surrogate expert witness like Sullivan. Tr. 421.

In sum, the Georgia Supreme Court's decision in this case is an end-run around the Confrontation Clause principles this Court articulated in *Smith*, *Melendez-Diaz* and *Bullcoming*. Sullivan, a surrogate expert, parroted key findings of an autopsy she did not perform and as to which she had no personal knowledge. Johns never had an opportunity to cross-examine Aiken, the expert who performed the autopsy and wrote the autopsy report. The Confrontation Clause does not permit the State to use a "reviewing expert" as an escape hatch to avoid confrontation. In a criminal trial, the prosecution must produce the expert technician whose personal observations and labor are the basis for the opinion offered against the accused defendant.

III. This case presents an important issue and is an ideal vehicle for resolving the confusion and conflict in the lower courts regarding use of surrogate experts

The Question Presented concerns a recurring issue of national significance. Forensic analysis is a vital

part of modern criminal trials. It is a common source of errors and fraud leading to wrongful convictions and exonerations. Nat'l Inst. of Just., *The Impact of False or Misleading Forensic Evidence on Wrongful Convictions* (Nov. 28, 2023), https://nij.ojp.gov/topics/articles/impact-false-or-misleading-forensic-evidence-wrongful-convictions (identifying half of forensic pathology examinations containing at least one error); *see also*, Brief for The Innocence Network as Amicus Curiae Supporting Petitioner at 10, *Smith v. Arizona*, 602 U.S. 779 (No. 22-899) (collecting incidents of widespread forensic fraud).

"[T]he animating idea behind the Confrontation Clause [is] the prevention of a system in which witnesses can offer their testimony in private without cross-examination." Richard D. Friedman, *The Confrontation Clause Re-Rooted and Transformed*, Cato Sup. Ct. Rev. 439, 457 (2003–2004 ed., 2004). The purpose of cross-examination is defeated when a surrogate expert gives testimony about a prior analyst's work product. Even if the reviewing expert is a supervisor, she does not have personal knowledge of the testing conditions and procedures unless she was there at the time and witnessed them. While most modern forensic tests have a high degree of scientific reliability, human beings remain vulnerable to incompetence, fraud, and malice. Uncovering these sources of error is the primary purpose of cross-examination and the animating reason for the Confrontation right.

While the Court recently provided strong instructions on this issue in *Smith*, courts

nevertheless continue to diverge on how to handle surrogate experts. *See supra* Section I. Courts need clear guidance about whether a "technical review" of a forensic report is ever permissible in a criminal trial and, if so, under what circumstances and with what procedural safeguards.

The factual scenario here is simple and straightforward. The State contracted with a pathologist in Washington State to come to Georgia to perform the autopsies (including this one) on a contract basis, but decided not to bring her back to Georgia for trial. The State admitted it could not introduce Aiken's autopsy report without Aiken's live testimony and so proposed an end-run: have Aiken's local supervisor, Sullivan, testify instead. This case comes to the Court on direct appeal under the broadest standard of review and free of any procedural constraints. Johns preserved his Confrontation Clause objection at all stages of his prosecution. The Georgia Supreme Court substantively addressed and decided Johns's Confrontation Clause argument.

This case thus provides an ideal vehicle to delineate a bright line rule that finally clarifies the widespread confusion and efforts to avoid this Court's holding in *Smith*. The Court should grant review to decide the critically important Question Presented.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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December 10, 2025

APPENDIX

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APPENDIX A — OPINION OF THE SUPREME COURT OF GEORGIA, DATED AUGUST 12, 2025

SUPREME COURT OF GEORGIA

S25A0875

JOHNS

v.

THE STATE.

August 12, 2025, Decided

WARREN, Presiding Justice.

In December 2023, [redacted] Johns was convicted of malice murder and other crimes in connection with the November 2022 stabbing death of Jason Cason, Jr.[1] Johns appeals those convictions, contending that the

1. The stabbing occurred on November 10, 2022. On February 7, 2023, a Fulton County grand jury indicted Johns for malice murder (Count 1), felony murder (Count 2), and aggravated assault (Count 3). Johns was tried from December 12 to 13, 2023. After the jury found Johns guilty of all counts, the trial court entered a final judgment sentencing Johns to life in prison for malice murder. The remaining counts were merged or vacated by operation of law. On December 15, 2023, Johns timely filed a motion for new trial, which he later amended on September 2, 2024. On September 24, 2024, the trial court entered an order denying the motion. Johns then filed a timely notice of appeal, which he subsequently amended, and the case was docketed to the April 2025 term of this Court and submitted for a decision on the briefs.

evidence was insufficient as a matter of constitutional due process; that the trial court abused its discretion by admitting photographs taken before and during Cason's autopsy; and that the trial court violated his rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution by allowing a medical examiner to provide testimony about Cason's autopsy when she was not the person who performed the autopsy. For the reasons explained below, each of these claims fails and we affirm Johns's convictions and sentence.

1. As relevant to his claims on appeal, the evidence presented at Johns's trial showed the following. Cason shared an apartment with Gary Mack, who testified about the events on the evening of November 10, 2022. Both Mack and Cason knew Johns and had lived in the same apartment complex with him for several years. Cason and Johns were "friends," and Johns came over to Cason and Mack's apartment to see Cason "every day." Mack described Cason as "a little man" compared to Johns, who was "more muscular."

On the afternoon of November 10, Mack came home to his apartment. After Mack greeted Cason, who was sitting in the living room, Mack went into his bedroom, turned on the television, and lay down on his bed. While he was watching television, Mack saw Cason walk down the hallway to his own bedroom. After a short time, Johns came into the apartment and went into Cason's room. Mack testified that no one else was in Cason's room besides Cason and Johns. At first, Mack heard the men "laughing and talking," but then Mack heard Cason say in

a low voice, "[D]on't hit me no more." Sitting up on his bed, Mack sensed "something [was] wrong." Then, Mack saw Johns leave Cason's room, walk down the hall, and close the front door to the apartment. Mack got off of his bed, walked out of his bedroom, and called Cason's name. After several moments of silence, Mack looked into Cason's room and saw Cason "laying on the floor up against the wall" "in a pile of blood."

Mack called Cason's name again, but Cason was unresponsive. Because Mack "[didn't] know [what was] going on," he went to the front door of the apartment and locked the door. Then, Mack noticed that "the door handle" "was moving" and that Johns was "trying to come back in" the apartment. Unsuccessful, Johns walked off toward a nearby road and eventually disappeared from view. When he could no longer see Johns, Mack called 911.

Around 6:00 p.m., Atlanta police arrived at the apartment complex. One of the police officers who responded testified that he found Cason in a bedroom in the back of his apartment. Cason "appeared to be deceased" and was "covered in blood." After securing the crime scene, the officer received information that Johns lived in a different apartment unit 200-300 yards away from Mack and Cason's unit and "had been previously inside [Cason's] apartment." At 6:59 p.m., the officer and a police captain walked to Johns's apartment and knocked on the door. Johns answered and allowed the officers to enter his apartment, where they conducted a sweep of the premises. When Mack later identified Johns as the person he saw leaving Cason's bedroom around the time of the

killing, officers detained Johns and procured a search warrant. By the end of the night, Johns was arrested and taken into custody.

At trial, a crime-scene investigator who searched and processed Johns's apartment testified that she took samples from "reddish stains on the bathroom door" and "collected a towel with reddish stains" inside the apartment. A forensic serologist with the Georgia Bureau of Investigation testified that her analysis of both samples "indicated that there was blood present." And a forensic biologist concluded that Cason's DNA matched the primary profile found on the swabs taken from Johns's bathroom door and the towel.

Dr. Karen Sullivan conducted a peer review of Cason's autopsy photographs and the draft report prepared by Dr. Sally Aiken, the primary forensic pathologist. Dr. Sullivan was qualified as an expert in forensic pathology at trial and testified that she concluded that Cason sustained 27 "sharp force injuries" on "the left side of [his] torso" that she deemed "sharp force wounds or stab wounds[.]" Cason's autopsy photographs showed "a number of ... sharp force injuries ... in the heart," the aorta, and the pulmonary trunk, any one of which could have been "independently fatal." The photographs also showed that Cason sustained "a sharp force injury on the left side of the neck," along with "defensive wounds" on his hands that suggested Cason had "tr[ied] to ward off the knife or object that [he was] being assaulted with." Dr. Sullivan opined that the cause of Cason's death was "stab wounds of the chest" which caused "rapid death ... within minutes." In her opinion, Cason's injuries were consistent with homicide.

2. Johns contends that the evidence was not sufficient as a matter of constitutional due process to support his convictions. See *Jackson v. Virginia*, 443 US 307, 318–19, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). When assessing this claim, "we view all of the evidence presented at trial in the light most favorable to the verdicts and consider whether any rational juror could have found the defendant guilty beyond a reasonable doubt of the crimes of which he was convicted." *Moulder v. State*, 317 Ga. 43, 46–47, 891 SE2d 903 (2023). In making this determination, "[w]e leave to the jury the resolution of conflicts or inconsistencies in the evidence, credibility of witnesses, and reasonable inferences to be derived from the facts." *Perkins v. State*, 313 Ga. 885, 891, 873 SE2d 185 (2022) (quotation marks omitted). "As long as there is some competent evidence, even [if] contradicted, to support each fact necessary to make out the State's case, the jury's verdict will be upheld." *Jones v. State*, 304 Ga. 594, 598, 820 SE2d 696 (2018) (quotation marks omitted).

The evidence presented at Johns's trial, viewed in the light most favorable to the verdicts, authorized the jury to find Johns guilty beyond a reasonable doubt of malice murder. A person commits malice murder if "he unlawfully and with malice aforethought, either express or implied, causes the death of another human being." OCGA § 16-5-1(a). Among other things, the(1) evidence showed that Johns was the only other person in Cason's bedroom at the time of the murder. Mack, Cason's roommate, testified that, while Johns was in Cason's bedroom, he overheard Cason tell Johns, "[D]on't hit me no more." Mack further testified that he saw Johns leave Cason's bedroom and then

the apartment alone; and, after he observed Cason "laying on the floor up against the wall" "in a pile of blood," he locked the apartment door and Johns attempted to reenter the apartment. Additionally, the jury heard testimony from the State's forensic biology expert, who testified that blood stains found on a white towel in Johns's apartment and on Johns's bathroom door contained traces of Cason's DNA. Finally, the State's forensic pathology expert testified that, based on her review of Cason's autopsy examination, Cason sustained 27 "sharp force injuries" and "defensive wounds" on his hands that indicated Cason had "tr[ied] to ward off the knife or object that [he was] being assaulted with."

Presented with this evidence, a reasonable jury could find Johns guilty beyond a reasonable doubt of malice murder. See *Pounds v. State*, 320 Ga. 288, 292–93, 908 SE2d 631 (2024) (evidence presented was constitutionally sufficient to support defendant's conviction for malice murder when, among other things, the defendant was the only other person present at the time of the death); *Russell v. State*, 319 Ga. 556, 559–60, 905 SE2d 578 (2024) (evidence presented was constitutionally sufficient to support defendant's conviction for malice murder when the victim suffered approximately 28 sharp and blunt force injuries, including defensive wounds to the hands and arms); *Smith v. State*, 306 Ga. 556, 556–57, 832 SE2d 379 (2019) (evidence presented was constitutionally sufficient to support defendant's conviction for malice murder when witnesses testified that they had last seen the victim with the defendant and "[i]nvestigators later found [the victim's] DNA on [the defendant's] shorts");

Collins v. State, 290 Ga. 505, 505, 722 SE2d 719 (2012) (evidence presented was constitutionally sufficient to support defendant's conviction for malice murder when a blood stain found on the defendant's clothing contained traces of the victim's DNA). See also *Martin v. State*, 306 Ga. 747, 747–48, 833 SE2d 122 (2019) (evidence presented was constitutionally sufficient to support defendant's conviction for felony murder when paramedics found the victim "lying on a bedroom floor with a stab wound to the chest" and the defendant and the victim "had been fighting" before the stabbing).[2]

3. Johns contends that the trial court abused its discretion by admitting into evidence five photographs taken before and during Cason's autopsy. Two of the five photographs Johns objected to were taken before Cason's autopsy and depicted Cason's appearance at the time the body bag was opened by forensic examiners. The other three photographs were taken during Cason's autopsy and depicted, from different angles, the location, severity, and extent of Cason's injuries, including the injuries to

2. To the extent Johns also argues that the trial court failed to exercise its discretion as the thirteenth juror under OCGA §§ 5-5-20 and 5-5-21 as a separate enumeration of error, this claim also fails. The trial court expressly declined "to grant a new trial under the authority provided by OCGA §§ 5-5-20 and 5-5-21" after having concluded that "this is not an exceptional case in which the evidence preponderates heavily against the verdict." Because the record does not support Johns's argument that the trial court failed to exercise its discretion under OCGA §§ 5-5-20 and 5-5-21, Johns's general grounds claim — to the extent he makes one — fails. See *Drennon v. State*, 314 Ga. 854, 861, 880 SE2d 139 (2022).

his chest and defensive wounds to his hands. Johns moved to exclude these photographs under OCGA § 24-4-403, arguing that they were cumulative because the State had introduced similar photographs in connection with the testimony of the crime-scene investigator; that the photographs did not "add anything of value, as far as to the evidence"; and that the purpose of introducing the photographs was to inflame the passions of the jury. Over Johns's objection, the trial court ruled that the State could introduce only one of the two pre-autopsy photographs and admitted the other three photographs taken during Cason's autopsy.

On appeal, Johns contends that the trial court abused its discretion "when it allowed the State to introduce photos of the victim's body." In enumerating this error, he does not specify which of the four photographs he contends the trial court abused its discretion by admitting. But even assuming he complains of all four photographs, his claim fails.

In general, the admissibility of autopsy photographs is governed by OCGA §§ 24-4-401, 24-4-402, and 24-4-403. See *White v. State*, 319 Ga. 367, 375, 903 SE2d 891 (2024). Under OCGA § 24-4-401, an autopsy photograph is relevant evidence if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Relevant autopsy photographs are generally admissible as evidence, see OCGA § 24-4-402, but such photographs "may be excluded if [their] probative value is substantially outweighed by

the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." OCGA § 24-4-403. We review a trial court's evidentiary rulings for an abuse of discretion. *Baker v. State*, 318 Ga. 431, 446, 899 SE2d 139 (2024).

Johns does not dispute that the photographs taken before and during Cason's autopsy were relevant evidence under OCGA § 24-4-401. Instead, he contends that the trial court abused its discretion in concluding that the probative value of the photographs was not substantially outweighed by the danger of unfair prejudice under OCGA § 24-4-403 ("Rule 403"). In particular, Johns complains that the probative value of the photographs was low because they were "cumulative" of other photographs that had been previously introduced by the State, and that the photographs unfairly "inflam[ed] the passions of the jurors against him."

We disagree. To begin, (2) neither the pre-autopsy photograph nor the autopsy photographs were "needlessly cumulative," see *Salvesen v. State*, 317 Ga. 314, 317, 893 SE2d 66 (2023), of other photographs the State had already admitted. The previously admitted photographs — those introduced through the crime-scene investigator — depicted Cason's apartment building, his apartment unit and bedroom, the condition of his body after he was found dead, Johns's apartment unit, and Johns once he was in custody. Although some of those photographs also depicted Cason's injuries, they were not probative of the nature and extent of those injuries, including his defensive

wounds — key evidentiary points in the State's case. The photographs taken before and during Cason's autopsy, by contrast, assisted the State's forensic-pathology expert in "describing the nature and severity" of Cason's injuries and were "highly relevant to the issues of both how and when the injuries were sustained." *Johnson v. State*, 316 Ga. 672, 683, 889 SE2d 914 (2023). As to the prejudicial effect of these photographs, they were not "especially gory or gruesome in the context of autopsy photographs" and therefore were unlikely inflame the jury's passions in a murder case involving fatal stab wounds. *Pike v. State*, 302 Ga. 795, 799, 809 SE2d 756 (2018). Accordingly, we cannot say that the trial court abused its discretion when it concluded that the probative value of the photographs taken before and during Cason's autopsy was not substantially outweighed by the danger of unfair prejudice under Rule 403.

4. Finally, Johns asserts that his rights under the Confrontation Clause were violated when the trial court allowed Dr. Sullivan to provide testimony about Cason's autopsy when she was not the person who performed the autopsy. We review this claim of error de novo. See *State v. Gilmore*, 312 Ga. 289, 292, 862 SE2d 499 (2021).

The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." US Const. Amend. VI. "The Clause bars the admission at trial of 'testimonial statements' of an absent witness unless she is 'unavailable to testify, and the defendant has had a prior

opportunity' to cross-examine her." *Smith v. Arizona*, 602 US 779, 783, 144 S. Ct. 1785, 219 L. Ed. 2d 420 (2024) (quoting *Crawford v. Washington*, 541 US 36, 53–54, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004) (alterations adopted)). Therefore, the State in a criminal prosecution "may not introduce the testimonial out-of-court statements of a forensic analyst at trial, unless she is unavailable and the defendant has had a prior chance to cross-examine her." See id. at 802–03. As a result, the State cannot "introduce a forensic laboratory report containing a testimonial certification — made for the purpose of proving a particular fact — through the in-court testimony of a scientist who did not sign the certification or perform or observe the test reported in the certification." *Bullcoming v. New Mexico*, 564 US 647, 652, 131 S. Ct. 2705, 180 L. Ed. 2d 610 (2011).

But these Sixth Amendment principles were not violated in Johns's trial. We have explained that a defendant's rights under the Confrontation Clause are not violated when "the State [does] not seek to admit [an] autopsy report itself, but rather ask[s] [a second expert] his independent, expert opinion regarding the facts contained in that report and associated documents." *Naji v. State*, 300 Ga. 659, 663, 797 SE2d 916 (2017). Dr. Sullivan was that second expert in Johns's case. At trial, Dr. Sullivan, a pathologist, testified that as a general practice, autopsies performed at the Fulton County Medical Examiner's Office are peer-reviewed, meaning that a second pathologist independently reviews the autopsy photographs and the primary pathologist's draft report and that the peer-reviewing pathologist forms his

or her own expert opinion as to the victim's cause and manner of death. According to Dr. Sullivan, that is what happened here: Cason's autopsy was conducted by Dr. Aiken, the primary pathologist, and then Dr. Sullivan conducted a peer review.[3] Dr. Sullivan testified that she reviewed "the case information that the investigator had prepared initially, and then [she] viewed the photographs that had been taken during [Cason's] autopsy, and Dr. Aiken's draft report," and that her independent, expert opinion regarding Cason's cause and manner of death were based on these materials.

But the State never sought to admit the materials prepared by Dr. Aiken, the medical examiner who performed Cason's autopsy. Instead, (3) Dr. Sullivan used the facts contained in Dr. Aiken's preliminary report,

---

3. The State filed a pre-trial notice of its intent "to present the testimony of a substitute medical examiner" because Dr. Aiken, the primary forensic pathologist that performed Cason's autopsy, "resides and practices in the State of Washington" and the State "anticipates Dr. Aiken's unavailability at trial." The State represented that Dr. Sullivan, the forensic pathologist that "signed Dr. Aiken's autopsy report as a peer reviewer," would testify in lieu of Dr. Aiken "pursuant to" OCGA § 24-7-702, which says that "[t]he opinion of a witness qualified as an expert under this Code section may be given on the facts as proved by other witnesses," and OCGA § 24-7-703, which says that "[t]he facts or data in the particular proceeding 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." In his brief, Johns argues only that Dr. Sullivan's testimony violated his rights under the Confrontation Clause; he does not challenge the State's reliance on OCGA §§ 24-7-702 and 24-7-703 to introduce Dr. Sullivan's testimony.

along with the autopsy photographs, to inform her expert opinion regarding the cause of Cason's injuries and the cause of death. In other words, "[t]he expert opinion admitted at trial was not the restatement of the diagnostic opinion of another expert," *Naji*, 300 Ga. at 663, the Confrontation Clause was not violated, and Johns's claim therefore fails. See *Taylor v. State*, 303 Ga. 225, 230, 811 SE2d 286 (2018) (holding that the Confrontation Clause was not violated when the medical examiner testified as to his independent, expert opinion regarding the facts contained in an autopsy report he did not prepare, and the State did not seek to admit the report itself). See also *Moody v. State*, 316 Ga. 490, 544–46, 888 SE2d 109 (2023) (holding that the Confrontation Clause was not violated when a medical examiner testified as to his expert opinion regarding the results of testing and evaluations that were conducted by resident trainees, and the trainees' evaluation and testing results were not admitted into evidence).

Judgment affirmed. All the Justices concur, except LaGrua, J., disqualified, and Land, J., not participating.

APPENDIX B — OPINION OF THE SUPERIOR COURT OF FULTON COUNTY, STATE OF GEORGIA, FILED SEPTEMBER 24, 2024

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CASE NO.: 23SC186170

STATE OF GEORGIA

v.

[redacted] JOHNS,

Defendant.

JUDGE WHITAKER

ORDER DENYING MOTION FOR NEW TRIAL

Before the Court is Defendant [redacted] Johns' motion for new trial, as amended. In December 2023, a jury convicted Johns of the malice murder of Fred Cason, Jr., and the Court sentenced him to imprisonment for life. Johns filed a timely motion for new trial, which he has amended. The State has responded. The parties submitted the case to the Court for a decision on the briefs. Now, considering the evidence and the filings of the parties, the Court hereby **DENIES** Defendant's motion for new trial.

The Court further makes the following more specific findings.

1.

The Court specifically **FINDS** the evidence is sufficient to support the verdict as to each count. See *Jackson v. Virginia*, 443 U.S. 307 (1979).

2.

The Court **FINDS** this is not an exceptional case in which the evidence preponderates heavily against the verdict, and thus the Court **DECLINES** to grant a new trial under the authority provided by OCGA §§ 5-5-20 and 5-5-21.

3.

Defendant claims the Court erred in admitting autopsy photographs at his trial, claiming that their admission violated OCGA § 24-4-403. The Court **FINDS** no abuse of discretion in the admission of such autopsy photographs. The autopsy photographs were highly relevant to and probative of the issues before the jury as they showed, and assisted the medical examiner in describing, the nature and location of the victim's injuries. *See White v. State*, 319 Ga. 367, 375-376 (2024); *Johnson v. State*, 316 Ga. 672, 683 (2023). The Court also **FINDS** the autopsy photographs at issue were "not especially gory or gruesome in the context of autopsy photographs in a murder case," *Pike v. State*, 302 Ga. 795, 799 (2018), and that the proper balancing under OCGA § 24-4-403 did not authorize the extraordinary remedy of evidence exclusion.

4.

Defendant claims that his constitutional Confrontation Clause rights were violated by the testimony of an expert forensic pathologist who was not the person who conducted Cason's autopsy. However, the Confrontation Clause "'applies only to testimonial hearsay.'" *Smith v. Arizona*, 144 S. Ct. 1785, 1792 (2024) (quoting *Davis v. Washington*, 547 U.S. 813, 823 (2006)). Here, the testifying pathologist explained what she reviewed to reach her own opinions and provided those opinions. The testifying pathologist did not convey testimonial hearsay from the pathologist who performed the autopsy. The Court **FINDS** Defendant's Confrontation Clause rights were not violated. *See Roalson v. Noble*, 2024 U.S. App. LEXIS 21839, *11 (7th Cir. Aug. 28, 2024) (finding no Confrontation Clause violation when a peer-reviewing analyst examined another analyst's materials to reach her own conclusions but did not testify to the primary reviewer's conclusions); *Naji v. State*, 300 Ga. 659, 662-663 (2017). Moreover, even assuming Defendant's Confrontation Clause rights were violated, the Court **FINDS** such a violation was harmless beyond a reasonable doubt given the other properly admitted evidence.

[*Signature on following page*]

It is **SO ORDERED** this 24 day of September, 2024.

s/ Alford J. Dempsey, Jr.
ALFORD J. DEMPSEY, JR., SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

APPENDIX C — JUDGMENT OF THE SUPERIOR COURT OF FULTON COUNTY, STATE OF GEORGIA, FILED DECEMBER 13, 2023

IN THE SUPERIOR COURT OF FULTON COUNTY,
STATE OF GEORGIA

CRIMINAL ACTION #: 23SC186170
NOV/DEC Term of 2023

STATE OF GEORGIA

vs

[redacted] JOHNS, BK# 2216696

Clerk to complete if incomplete:
OTN(s):
DOB: 10/28/1972;

Final Disposition:
FELONY CONFINEMENT

First Offender/Conditional Discharge entered under:
___ O.C.G.A. § 42-8-60 ___ O.C.G.A. § 16-13-2
___ Repeat Offender as imposed below
___ Repeat Offender Waived

PLEA: VERDICT:
__ Negotiated __ Non-negotiated _X_ Jury __ Non-Jury

The Court enters the following judgment:

Count	**Charge** (as indicted or accused)		**Disposition** Guilty; Not Guilty; Guilty-Alford Guilty-Lesser Incl; Nol Pros; Nolo Contendere; Dead Docket 1st Offender, 1st Offender-Alford; Order
1	Murder	16-5-1	GUILTY
2	Murder	16-5-1	GUILTY
3	Aggravated Assault	16-5-21	GUILTY

Sentence	**Fine**	**Concurrent/ Consecutive**, Merged, Suspended, Commute to Time Served
LIFE, WITH THE POSSIBILITY OF PAROLE	0.00	
VACATED BY OPERATION OF LAW		
MERGED WITH COUNT 1		

The Defendant is adjudged guilty or sentenced under First Offender for the above-stated offense(s); the Court sentences the Defendant to confinement in such institution as the Commissioner of the State Department of Corrections may direct, with the period of confinement to be computed as provided by law.

Sentence Summary: The Defendant is sentenced for a total of: ***[LIFE, WITH THE POSSIBILITY OF PAROLE]***

The Defendant is to receive credit for time served in custody: ☒ from ***[JAN 10, 2022 TO PRESENT]*** ; or ☐ As determined by the custodian.

☐ The Court sentences the Defendant as a recidivist under O.C.G.A.:

☐ § 17-10-7(a); ☐ § 17-10-7(c); ☐ § 16-7-1(b); ☐ § 16-8-14(b); or ☐ § ***[ ]***

☐ The Defendant shall pay restitution in the amount of $[ ] through the Clerk of Court for the benefit of the victim(s), [ ]

FIRST OFFENDER
(If designated by the Court)

The Defendant consenting hereto, it is the judgment of the Court that no judgment of guilt be imposed at this time but that further proceedings are deferred and the Defendant is hereby sentenced to confinement at such institution as the Commissioner of the State Department of Corrections or the Court may direct, with the period of confinement to be computed as provided by law.

Upon the Court's determination that the Defendant is or was not eligible for sentencing under the First Offender Act, the Court may enter an adjudication of guilty and

proceed to sentence the Defendant to the maximum sentence as provided by law.

For Court's Use: The Clerk of Court shall mark the disposition of all FTA cases associated with this case (as of this date) as NO FURTHER ACTION ANTICIPATED.

The Hon. **SAMANTHA TRIPPEDO**, Attorney at Law, represented the Defendant by: ☐ employment; or ☒ appointment.

EVELYN PARKER
Court Reporter

SO ORDERED this 13th day of December, 2023

s/ Paige Reese Whitaker
Honorable PAIGE REESE WHITAKER
Judge of Superior Court
Atlanta Judicial Circuit

FIREARMS - If you are convicted of a crime punishable by imprisonment for a term exceeding one year, or of a misdemeanor crime of domestic violence where you are or were a spouse, intimate partner, parent, or guardian of the victim, or are or were involved in another similar relationship with the victim, it is unlawful for you to possess or purchase a firearm including a rifle, pistol or revolver, or ammunition, pursuant to federal law under 18 U.S.C §922(g)(9) and/or applicable state law.

Acknowledgment: I have read the terms of this sentence or had them read and explained to me.

_____

Defendant

APPENDIX D — EXCERPTS OF TRANSCRIPT OF THE DECEMBER 12, 2023 TRIAL PROCEEDINGS IN THE SUPERIOR COURT OF FULTON COUNTY, STATE OF GEORGIA, FILED MAY 7, 2024

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CRIMINAL ACTION
FILE NO. 23SC186170

STATE OF GEORGIA

vs.

[redacted] JOHNS,

Defendant.

VOLUME II OF V

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TRANSCRIPT OF THE TRIAL PROCEEDINGS
IN THE ABOVE-MENTIONED CASE,
BEFORE THE HONORABLE PAIGE REESE
WHITAKER, COMMENCING ON THE
12TH DAY OF DECEMBER, 2023.

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[341]MR. HAWKINS: I MEAN, SHE IS HERE. DR. SULLIVAN IS HERE, SO I GUESS IT DEPENDS ON HOW --

THE COURT: WELL, MR. MACK IS NOT GOING TO TAKE THAT LONG, IS HE?

MS. TRIPPEDO: HE IS THEIR KEY WITNESS, SO I IMAGINE IT IS GOING TO TAKE SOME TIME.

THE COURT: OKAY. WELL, DO YOU THINK IT COULD TAKE AN HOUR?

MR. HAWKINS: I HONESTLY DON'T KNOW, JUDGE.

THE COURT: WHAT IS YOUR OBJECTION?

MS. TRIPPEDO: SO OUR OBJECTION --

THE COURT: WHAT'S THE NEXT WITNESS'S NAME? THIS IS THE PEER REVIEWING PERSON?

MS. TRIPPEDO: DR. SULLIVAN, I BELIEVE IS HER NAME. SO WE WOULD OBJECT BASED UPON THE SIXTH AMENDMENT RIGHT TO CONFRONT, TO CONFRONTATION. THE CONFRONTATION CLAUSE. DR. SULLIVAN IS NOT THE ONE THAT ACTUALLY PERFORMED THE AUTOPSY OF MR. CASON IN THIS CASE, AND SO WE WOULD OBJECT TO HER BEING ABLE TO TESTIFY AS A SUBSTITUTE.

THE COURT: ALL RIGHT. AND THE PEER REVIEW ENTAILED WHAT?

MR. HAWKINS: YOUR HONOR, SHE WILL PROVIDE TESTIMONY THAT AS PART OF THE PEER REVIEW PROCESS, SHE REVIEWS THE AUTOPSY PHOTOGRAPHS. SHE REVIEWS [342]THE NOTES AND DRAFT OF THE PRIMARY FORENSIC PATHOLOGIST'S AUTOPSY REPORT. AND THEN SHE PERFORMS HER OWN INDEPENDENT CONCLUSION ABOUT TO THE CAUSE OF DEATH AND MANNER OF DEATH. I WILL NOT -- I AM NOT SEEKING TO INTRODUCE THE AUTOPSY REPORT. I UNDERSTAND THAT'S BARRED. I WILL NOT BE ASKING DR. SULLIVAN TO TESTIFY AS TO WHAT DR. AIKEN FOUND.

I WILL BE GOING THROUGH THESE EXHIBITS WHICH SHE PREVIOUSLY WENT THROUGH AS PART OF HER DUTIES AS A PEER REVIEWER, AND ASKING HER EXPERT OPINION ON WHAT SHE OBSERVED.

THE COURT: ALL RIGHT. SO YOU WILL QUALIFY HER AS AN EXPERT, AND THIS WILL BE HER OWN INDEPENDENT EVALUATION AND CONCLUSIONS?

MR. HAWKINS: YES, JUDGE.

THE COURT: ALL RIGHT. I'M GOING TO OVERRULE THAT OBJECTION.

MS. TRIPPEDO: YES, YOUR HONOR.

THE COURT: ALL RIGHT. ANYTHING ELSE? LET'S GET MR. MACK IN. I WILL INSTRUCT HIM, AND THEN WE WILL GET THE JURY.

GOOD MORNING, MR. MACK. SO YOU CAN COME ON OVER HERE NEXT TO THE WITNESS STAND. WE ARE GOING TO GET THE JURY OUT IN JUST A MINUTE, AND THEN AFTER THE JURY IS HERE, I WILL HAVE THE DEPUTY SWEAR YOU IN.