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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN ALAN BOWMAN,

Defendant and Appellant.

F058082

(Super. Ct. No. BF123975A)

OPINION

APPEAL from a judgment of the Superior Court of Kern County. Louis P. Etcheverry, Judge.

Richard Jay Moller, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Eric L. Christoffersen and Daniel B. Bernstein, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Appellant Kevin Alan Bowman was convicted after jury trial of transporting methamphetamine (Health & Saf. Code, § 11379, subd. (a)) and possessing drug paraphernalia (Health & Saf. Code, § 11364, a misdemeanor). He pled guilty to using a false license plate (Veh. Code, § 4462.5, a misdemeanor) and operating a vehicle with no license plate (Veh. Code, § 5200, an infraction). Other counts and enhancement allegations not relevant to this appeal were dismissed or found not true. He was sentenced to the upper term of four years in prison on the felony count, with concurrent terms on the misdemeanors. The court imposed various fees and fines, including four assessments totaling \$125 pursuant to Government Code section 70373.

Appellant contends that testimony establishing the nature of the controlled substance was admitted in violation of his Sixth Amendment right to confront witnesses. He also asserts, and respondent concedes, that the assessments imposed pursuant to Government Code section 70373 are impermissible because his crimes were committed prior to the statute's effective date.

In March 2010, this court issued a partially published opinion rejecting appellant's Sixth Amendment claim and accepting respondent's concession pertaining to the challenged assessments. At that time, the most recent decisions by the Supreme Courts of the United States and the State of California addressing the Sixth Amendment issue were *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305 (*Melendez-Diaz*) and *People v. Geier* (2007) 41 Cal.4th 555 (*Geier*). We modified the judgment to omit the challenged fines and affirmed the judgment as modified.

The California Supreme Court granted review. (See *People v. Bowman* (2010) formerly published at 182 Cal.App.4th 1616, depub. Jun. 9, 2010, upon grant of review.) On May 22, 2013, it transferred the case back to this court with instructions to reconsider our original opinion in light of *People v. Lopez* (2012) 55 Cal.4th 569 (*Lopez*), *People v.*

Dungo (2012) 55 Cal.4th 608 (*Dungo*), *People v. Rutterschmidt* (2012) 55 Cal.4th 650 (*Rutterschmidt*) and *Williams v. Illinois* (2012) 567 U.S. __ [132 S.Ct. 2221] (*Williams*). Having conducted the required reconsideration, we again reject appellant's Sixth Amendment claim but conclude that the challenged assessments were properly imposed. The judgment will be affirmed.

FACTS

As relevant to this appeal on June 6, 2008, Bakersfield Police Officer Chad Haskins stopped the vehicle appellant was driving for traffic infractions. Officer Haskins testified that appellant told him that "he does have some marijuana in the trunk of the vehicle, however, he had a medical marijuana card." Appellant was not able to provide the card to the officer. The car was searched. A digital scale and a police scanner were found in the center console and a black bag was found in the trunk. The black bag contained three bags of marijuana and a black canister. The black canister held a plastic zip-lock baggie containing a crystalline substance that appeared to be methamphetamine, as well as a clear glass pipe of the type used for smoking methamphetamine and six empty baggies. Appellant was searched and \$785 was found on his person. Officer Haskins formed the opinion that appellant was not under the influence of methamphetamine. The items found in the car and on appellant's person were seized. The crystalline substance was sent to the Kern County Regional Crime Lab for analysis.

On the first day of trial, the prosecutor informed the court that the criminalist who conducted chemical testing on the crystalline substance was out of the state for an extended period for training. The prosecutor requested "that Jeanne Spencer or an alternate substitute criminalist be used regarding the analysis." When defense counsel was asked by the court whether he objected to the substitution, counsel responded: "As long as the person will have first-hand knowledge of the testing procedure." The court responded: "I understand the rules of evidence. Whoever testifies is going to have to be

able to -- their testimony will be governed by the Evidence Code.” After further discussion about the nature of the testimony, the court informed defense counsel that the court did not understand the objection. Counsel responded: “Nothing else. I have no complaint about it, sir.”

Spencer testified that she was a supervisor at the Kern County Regional Crime Laboratory and described her experience and training. She stated that she had supervised the training and the current work of Chris Snow, the criminalist who performed the testing in the present case. Spencer described the protocols and procedures for testing suspected controlled substances and for reporting the results of that testing. The prosecutor did not move to have Spencer qualified as an expert witness.

Spencer testified that she regularly reviewed the contemporaneous notes required to be taken by her criminalists as they performed various steps of the testing, and that she had reviewed the notes in this case as part of her regular supervision of Snow’s work. The notes contained no indication that anything unusual occurred in the testing. Spencer identified Snow’s laboratory report concerning his test results and stated that it appeared to be in standard format. She stated laboratory reports are made near the time the results of the testing become known and that they are reliable and trustworthy.

The prosecutor asked Spencer: “And what were the results of the analysis of the evidence submitted?” Defense counsel objected on the basis the answer called for hearsay and that there was not sufficient foundation to permit the testimony. The court overruled the objections. Spencer then testified the “material that was examined contained methamphetamine.” Counsel interposed similar objections when Spencer was asked about the weight and usable quantity of the substance. The objections were overruled. Spencer was not asked, and did not testify, that based on her own separate abilities, she too concluded that the substance at issue contained methamphetamine.

On cross-examination, Spencer acknowledged that she did not personally perform any of the weighing or testing of the suspect substance. She testified, however, that in her review of Snow's notes and his laboratory report, she "would make sure that the results he put down for his tests basically support the conclusion he drew from those results." Defense counsel then questioned Spencer about several steps in the analysis. He closed the examination by having Spencer reiterate that she had not personally conducted the testing. After brief redirect, Spencer was excused as a witness.

At the close of the People's case, the prosecutor attempted to move the laboratory report into evidence. Defense counsel renewed his hearsay and lack-of-foundation objections. The court stated those objections would not be sustained but it had a practice of not allowing laboratory reports into evidence.

The next day, defense counsel moved to strike Spencer's testimony based on the constitutional right to confront witnesses. He said the Sixth Amendment guaranteed appellant the right to cross-examine the analyst who had performed the testing. The court stated: "I allowed that evidence in because there had been proper foundation given as to business records. And you did have the opportunity to cross-examine the person who reviewed that particular document and you did. So -- but I will note that objection for the record and overrule it."

On June 13, 2013, this court granted appellant's request to augment the record with the laboratory report and case notes that were prepared by Snow and reviewed by Spencer but not introduced into evidence (People's exhibit No. 2). People's exhibit No. 2 consists of a one-page "Report of Laboratory Analysis" (laboratory report) and a one page "Kern County Laboratory Analysis Note Sheet" (note sheet). Both documents are unsigned. Neither document has any certification or attestation affixed to it.

The note sheet reflects that on June 13, 2008, analyst Chris Snow tested item No. 4, which was 13.66 grams of "white crystalline material in clear plastic ziplock," to

determine if the material contains methamphetamine. Two screening tests are listed: marquis and nitroprusside. The color “orange-brown” appears after the marquis test and the color “deep blue” appears after the nitroprusside test. Two confirmatory tests are listed: gold chloride and hexachloroplatinic. The phrase “roach legs” appears after the gold chloride test and the phrase “feathery plumes” appears after the hexachloroplatinic test. The note sheet reflects that no amount of the material was retained after testing.

The laboratory report reflects that the drug analysis conducted by Chris Snow on item No. 4 produced the result: item contains “methamphetamine (schedule II).” A typed notation on the bottom of the laboratory report provides: “Report reviewed by Jeanne Spencer on 6/13/2008 at 4:31:05 PM.”

DISCUSSION

I. Appellant’s Confrontation Right Was Not Infringed By Spencer’s Testimony About The Results Of Tests That Snow Performed.

“Under the Sixth Amendment to the United States Constitution, a defendant in a criminal trial has the right to confront and cross-examine adverse witnesses (the Confrontation Clause). This provision bars the admission at trial of a testimonial statement made outside of court against a defendant unless the maker of the statement is unavailable at trial and the defendant had a prior opportunity to cross-examine that person. [Citations.]” (*People v. Barba* (2013) 215 Cal.App.4th 712, 720 (*Barba*).

Appellant contends that the trial court infringed his Sixth Amendment right to confrontation by permitting Spencer to testify about the results of tests that were conducted by Snow. Respondent argues, inter alia, that the laboratory report and note sheet lack sufficient formality and solemnity to be testimonial. Therefore, appellant’s confrontation rights were not implicated by Spencer’s testimony which was based, in

part, on the contents of these documents. We agree with respondent on this point and reject appellant's constitutional challenge for this reason.¹

A. Decisions by the Supreme Courts of the United States and the State of California.

To what extent the Confrontation Clause permits witnesses to testify in criminal trials about the results of scientific testing that they did not personally conduct has been the subject of several recent decisions by the United States Supreme Court and the California Supreme Court. The courts have fractured on the issue, producing a complicated array of majority, plurality and dissenting opinions.

The relevant line of authority begins with *Crawford v. Washington* (2004) 541 U.S. 36, in which “the United States Supreme Court held that the introduction of ‘testimonial’ hearsay statements against a criminal defendant violates the Sixth Amendment right to confront and cross-examine witnesses, unless the witness is unavailable at trial and the defendant has had a prior opportunity for cross-examination.” (*People v. Vargas* (2009) 178 Cal.App.4th 647, 653.) “Under *Crawford*, the crucial determination about whether the admission of an out-of-court statement violates the confrontation clause is whether the out-of-court statement is testimonial or nontestimonial.” (*Geier, supra*, 41 Cal.4th at p. 597.) While the court did not define or state what constitutes a testimonial statement for purposes of the confrontation clause, it observed:

“Various formulations of this core class of ‘testimonial’ statements exist: ‘ex parte in-court testimony or its functional equivalent -- that is, material

¹ Respondent contends appellant waived any Sixth Amendment claim by failing to object on this basis when Spencer testified. In our initial opinion, we decided to resolve this issue on the merits because: (1) the record was somewhat ambiguous; (2) the court ruled on the merits of the motion to strike; and (3) to forestall future proceedings claiming constitutional ineffectiveness of trial counsel. We adhere to this determination.

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,’ [citation]; ‘extrajudicial statements ... contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions,’ [citation]; ‘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 [citation].’” (*Crawford, supra*, 541 U.S. at pp. 51-52.)

In *Geier, supra*, 41 Cal.4th 555, the California Supreme Court held that the Confrontation Clause did not prohibit a laboratory director from testifying about the results of DNA tests that were conducted by another analyst. “[T]he *Geier* court concluded a statement was testimonial only if three requirements were all met: (1) it was made to a law enforcement officer or by a law enforcement officer or agent; (2) it describes a past fact related to criminal activity; and (3) it will possibly be used at a later trial.” (*Barba, supra*, 215 Cal.App.4th at p. 721.)

Next, in *Melendez-Diaz, supra*, 557 U.S. 305, the United States Supreme Court considered whether the admission of a sworn and notarized affidavit known as a “certificate of analysis” was properly allowed in evidence in order to prove that a substance tested positive as cocaine. “The *Melendez-Diaz* court held that the affidavits fell within the core class of testimonial statements—such as depositions, prior testimony, declarations, and affidavits—whose admission violates the Confrontation Clause. [Citation.] Therefore, the analysts were witnesses and their affidavits were testimonial, meaning that the defendant had a right to ‘confront’ them at his trial unless the analysts were unavailable for trial and the defendant had a previous opportunity to cross-examine them.” (*Barba, supra*, 215 Cal.App.4th at pp. 722-723.)

In *Bullcoming v. New Mexico* (2011) 564 U.S. ___ [131 S.Ct. 2705] (*Bullcoming*), the United States Supreme Court considered one of the issues left open in *Melendez-Diaz*: whether someone other than the person who conducted a laboratory analysis could testify about the results and report of the person who actually conducted the test.

Bullcoming involved testing of blood for alcohol level. “The analyst recorded his results on a state-prepared form titled ‘Report of Blood Alcohol Analysis.’ [Citation] The report included a ‘certificate of analyst,’ affirming that the sealed sample he tested was received at the laboratory intact, with the seal unbroken; the statements made by the analyst were correct; and that he had followed the procedures set out on the back side of the form.... [U]nder the heading ‘certificate of reviewer,’ a state lab examiner who reviewed the analysis certified that the person who tested the sample and prepared the report was qualified to do so and had followed the established procedures for conducting the test.” (*Barba, supra*, 215 Cal.App.4th at p. 723.) At trial, an analyst who was familiar with the laboratory’s procedures but had not participated in or observed the testing on Bullcoming’s sample testified about the testing results and report. (*Ibid.*)

Justice Ginsberg delivered a four-part plurality opinion holding that the analyst’s certificate was a testimonial statement. Part III of the *Bullcoming* decision, which commanded a majority of the court, explained why the analyst’s certificate was testimonial. “Even though the analyst’s certificate was not signed under oath, as was the case in *Melendez-Diaz*, the two documents were similar in all material respects As in *Melendez-Diaz*, a police officer provided a sample to a lab for testing to assist in a police investigation. An analyst tested the sample and prepared a certificate concerning the results. Finally, the certificate was formalized in a signed document that was sufficient to qualify the analyst’s statements as testimonial despite the absence of notarization present in *Melendez-Diaz*.” (*Barba, supra*, 215 Cal.App.4th at p. 725.)

Justice Sotomayor authored a concurring opinion in which she noted that formality is not the only test to determine whether a document is testimonial. She pointed to four additional circumstances demonstrating that the analyst’s certificate was testimonial. First, the state did not suggest an alternate primary purpose for the report, such as contemporaneous medical reports. Second, the person testifying about the analyst’s

certificate did not supervise the analyst or review the testing. Third, the testifying witness was not an expert who was asked for his or her independent opinion about underlying testimonial reports that were not themselves admitted into evidence. Fourth, the testing did not involve only machine generated results. (*Barba, supra*, 215 Cal.App.4th at pp. 725-726.)

Next, in *Williams, supra*, 567 U.S. ___ [132 S.Ct. 2221], the United State Supreme Court considered whether the Confrontation Clause prohibited admission of testimony by a police laboratory forensic specialist who conducted a computer search of DNA profiles in the state police database to see if any matched the DNA profile of the semen donor from a rape victim's vaginal swabs. Williams's DNA profile, which had been created from a blood sample taken in conjunction with an arrest on unrelated charges, matched the semen donor's DNA profile. A nontestifying analyst, who was employed by Cellmark, tested the vaginal swabs and produced the semen donor's DNA profile. The forensic specialist testified about her conclusions based on a DNA report produced by the Cellmark analyst. The report itself was not entered into evidence. (*Id.* at pp. ___-___ [32 S.Ct. at pp. 2222-2223; *Barba, supra*, 215 Cal.App.4th at p. 727.]

The *Williams* court upheld the judgment of conviction. Justice Alito authored a plurality opinion holding that testimony about the DNA tests did not violate the confrontation clause for two reasons: (1) testimony about the report was not admitted for its truth but only to explain the basis of the analyst's independent expert opinion that Williams's DNA profile matched the sperm donor's profile; and (2) the report was not testimonial because it was prepared for the primary purpose of finding a rapist who was still at large, not for targeting an accused individual. (*Barba, supra*, 215 Cal.App.4th pp. 727-728.) Justice Thomas' concurring opinion reasoned that the report was not testimonial, even though the analyst's testimony was premised on the truth of the

Cellmark Labs report, because the report “‘lack[ed] the solemnity of an affidavit or deposition.’ [Citation.]” (*Id.* at p. 728.)

In 2012, the California Supreme Court issued a trio of companion cases interpreting the *Williams* decision: *Lopez, supra*, 55 Cal.4th 569, *Dungo, supra*, 55 Cal.4th 608, *Rutterschmidt, supra*, 55 Cal.4th 650.

In *Lopez, supra*, 55 Cal.4th 569, a criminalist testified that he reviewed a lab report, created by a colleague whom he had trained, concluding that the defendant’s blood alcohol level was 0.09. The criminalist testified that, based on his own separate abilities, he too concluded the defendant’s blood alcohol level was 0.09. The lab report was admitted into evidence. Justice Kennard authored the lead opinion, in which four justices concurred. It reasoned, “[W]e need not consider the primary purpose of nontestifying analyst Peña’s laboratory report on the concentration of alcohol in defendant’s blood because, ... the critical portions of that report were not made with the requisite degree of formality or solemnity to be considered testimonial.” (*Lopez, supra*, at p. 582.)

“[T]he portions of the lab report that contained nothing other than the machine-generated results of the test performed were not sufficiently formal or solemn to be testimonial under the Confrontation Clause because they lacked any attestations or assertions of validity, and because there was no way to cross-examine the machine that generated those results. [Citation.] The same was true as to portions of the report that functioned like a chain of custody report by showing that it was the defendant’s sample being tested. Those notations ... were ... nothing more than an informal record of data for internal purposes.” (*Barba, supra*, 215 Cal.App.4th at p. 729.)

In *Dungo, supra*, 55 Cal.4th 608, a forensic pathologist gave expert witness testimony that the victim had been strangled. His opinion was based on facts contained in an autopsy report, which had been prepared by another pathologist. The report itself was not placed in evidence. As in *Lopez*, Justice Kennard authored the lead opinion, in

which four justices concurred, holding that the autopsy report was not testimonial. She reasoned that “the expert testified as to only the physical observations recorded in the autopsy report, not as to the conclusions reached by the pathologist who conducted the autopsy and prepared the report. Such observations lack the formality required under the Confrontation Clause.” (*Barba, supra*, 215 Cal.App.4th at p. 730.) Also, autopsy reports serve several purposes and do not have the primary purpose of targeting an accused individual. Justice Chin authored a concurring opinion, joined by three justices, in which he explained that the primary purpose of the autopsy report was to describe the condition of the victim’s body. (*Ibid.*)

Finally, in *Rutterschmidt, supra*, 55 Cal.4th 650, a lab director gave expert witness testimony that, based on lab tests conducted by others, the victims had been drugged. The court unanimously concluded that any possible Confrontation Clause error was harmless beyond a reasonable doubt due to overwhelming evidence that the defendants murdered the victims. (*Barba, supra*, 215 Cal.App.4th at pp. 730-731.)

B. Appellate court decisions applying this line of authority.

Several districts of the California Court of Appeals have published decisions applying the line of authority developed by the United States Supreme Court and the California Supreme Court. These decisions include *People v. Holmes* (2012) 212 Cal.App.4th 431 (*Holmes*), *People v. Steppe* (2013) 213 Cal.App.4th 1116 (*Steppe*) and *Barba, supra*, 215 Cal.App.4th 712.

In *Holmes, supra*, 212 Cal.App.4th 431, the appellate court decided that the Confrontation Clause did not bar testimony by “[t]hree supervising criminalists from these labs [who] offered opinions at trial, over defense objection, based on DNA tests that they did not personally perform. They referred to notes, DNA profiles, tables of results, typing summary sheets, and laboratory reports that were prepared by nontestifying analysts. None of these documents was executed under oath. None was admitted into

evidence. Each was marked for identification and most were displayed during the testimony. Each of the experts reached his or her own conclusions based, at least in part, upon the data and profiles generated by other analysts.” (*Id.* at p. 434.) The *Holmes* court concluded that these documents were not testimonial, reasoning: “The forensic data and reports in this case lack ‘formality.’ They are unsworn, uncertified records of objective fact. Unsworn statements that ‘merely record objective facts’ are not sufficiently formal to be testimonial.” (*Id.* at p. 438.)

In *Steppe, supra*, 213 Cal.App.4th 1116, the appellate court upheld admission of a laboratory technical reviewer’s independent opinion that the defendant’s DNA profile matched DNA that was retrieved from certain evidence. The *Steppe* court reasoned that, under *Williams* and *Lopez*, the DNA report was not formal enough to be testimonial. Also, the raw data and DNA report are materials that are reasonably relied on by experts and the jury knew that the nontestifying analyst and the reviewer reached the same conclusion. (*Id.* at pp. 1125-1127.)

Similarly, in *Barba, supra*, 215 Cal.App.4th 712, the appellate court held that admission of four DNA test reports that were prepared by nontestifying analysts and testimony by a laboratory director about the test results did not infringe Barba’s confrontation right. It provided three reasons for this determination. First, the “DNA reports lack the solemnity and formality required to be deemed testimonial.” (*Id.* at p. 742.) Second, the primary purpose of the DNA test materials was not an accusation of a targeted individual. Finally, the accusatory opinions were made by the director, who was qualified as an expert and conveyed an independent opinion about the test results. (*Id.* at pp. 742-743.)

C. The laboratory report and note sheet lack the formality and solemnity required to be testimonial.

The *Barba* court aptly observed that “[m]aking sense out of the case law in this area is to some extent an exercise in tasseomancy.”² (*Barba, supra*, 215 Cal.App.4th at p. 740.) Yet, recent appellate decisions have distilled and applied a principle that is agreed upon by a majority of the justices of the Supreme Courts of the United States and California Supreme Court: a document containing the results of scientific testing is considered testimonial for purposes of the Confrontation Clause *only* if it possesses the attributes of formality and solemnity. (*Holmes, supra*, 212 Cal.App.4th at p. 436; *Steppe, supra*, 213 Cal.App.4th at p. 1125; *Barba, supra*, 215 Cal.App.4th p. 742.) The *Holmes* court explained, “The California Supreme Court has extracted two critical components from the ‘widely divergent’ views of the United States Supreme Court justices. [Citations.] To be ‘testimonial,’ (1) the statement must be ‘made with some degree of formality or solemnity,’ and (2) its ‘primary purpose’ must ‘pertain[] in some fashion to a criminal prosecution.’ [Citations.]... [¶] It is now settled in California that a statement is not testimonial unless both criteria are met.” (*Holmes, supra*, at pp. 437-438.)

Appellant argues that lack of formality is not determinative and one must “look at the process that produced the statements ... in order to discern not only the statements’ ‘form’ but also their ‘function’ and ‘purpose.’” This argument fails because it is based on the dissenting opinions in *Williams* and *Lopez*. (*Williams, supra*, 567 U.S. at p. ____ [132 S.Ct. at p. 2276] (dis. opn. of Kagan, J.); *Lopez, supra*, 55 Cal.4th at p. 598 (dis. opn. of Liu, J).) “That a statement is prepared for use at trial is not alone sufficient to render it ‘testimonial’ under any formulation of that term yet adopted by a majority of the

² Tasseomancy is a divination or fortune-telling method that interprets patterns in tea leaves, coffee grounds or wine sediments.

United States Supreme Court justices or the California Supreme Court. It must also be ‘formalized.’ [Citation.]” (*Holmes, supra*, 212 Cal.App.4th at p. 436.)

Documents containing the results of scientific testing that have been deemed sufficiently formal and solemn to be testimonial include a chemical analyst’s affidavit and a blood alcohol report that included a signed analyst’s certificate. (*Melendez-Diaz, supra*, 557 U.S. 305; *Bullcoming, supra*, 564 U.S. ____ [131 S.Ct. 2705].) In contrast, the California Supreme Court concluded that an autopsy report and a laboratory report analyzing blood alcohol concentration data were not testimonial due to lack of formality. (*Dungo, supra*, 55 Cal.4th at p. 621; *Lopez, supra*, 55 Cal.4th at p. 582.) Several California appellate courts reached this same conclusion with respect to unsigned and uncertified DNA test reports. (*Holmes, supra*, 212 Cal.App.4th at p. 438; *Steppe, supra*, 215 Cal.App.4th at pp. 1126-1127; *Barba, supra*, 215 Cal.App.4th at p. 742.)

In this case, the lab report and note sheet that Spencer referred to during her testimony do not contain any of the following: (1) the analyst’s signature; (2) the analyst’s initials; (3) any assertion of validity or accuracy; (4) any certification; (5) any attestation; or (6) any oath. Neither of these documents was an affidavit or other formalized testimonial material. The lab report and note sheet are closely analogous to unsworn and uncertified materials that were deemed insufficiently formal to be testimonial in *Williams, Lopez, Dungo, Holmes, Steppe* and *Barba*. Following and applying these decisions, we hold that the lab report and case notes are not testimonial. Consequently, Spencer’s testimony about scientific testing performed by Snow did not infringe appellant’s Sixth Amendment confrontation right.

II. The Government Code Section 70373 Assessments Were Properly Imposed.

Appellant’s crimes were committed in 2008. He was convicted of these offenses in March 2009. At sentencing, the court imposed four assessments totaling \$125 pursuant to Government Code section 70373.

Appellant argues that these assessments are impermissible because his crimes were committed before the effective date of Government Code section 70373. This point has been settled adverse to appellant's position. (*People v. Castillo* (2010) 182 Cal.App.4th 1410, 1413-1415; *People v. Davis* (2010) 185 Cal.App.4th 998, 1000-1001.)

Government Code section 70373, which became effective January 1, 2009, provides for assessments on every conviction in order to provide funding for court facilities projects. (*People v. Castillo, supra*, 182 Cal.App.4th at pp. 1412-1413.) The history and substance of this statute demonstrate that it is not a penal statute, in terms or effect. Therefore, "the rules against ex post facto laws and for prospective application of a new statute are not offended where the offense was committed before the effective date but the plea, verdict or sentence occurred after that date." (*People v. Davis, supra*, 185 Cal.App.4th at p. 1000.) Since appellant's convictions occurred after the statute's effective date, the challenged assessments were properly imposed. (*Castillo, supra*, at pp. 1413-1415.)

DISPOSITION

The judgment is affirmed.

LEVY, Acting P.J.

WE CONCUR:

GOMES, J.

KANE, J.