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STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v.

LANTZ WASHINGTON,

Defendant-Appellee.

Supreme Court No. 165296
Court of Appeals No. 353052
St. Clair County Circuit Court No. 19-002078-FH

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BRIEF *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-APPELLEE

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Questions Presented

Confrontation Clause

Did the prosecutor violate Mr. Washington's United States Sixth Amendment and Michigan Article 1, Section 20, constitutional rights to confrontation by introducing Officer Lavers's out-of-court, testimonial statement against Mr. Washington?

The Court of Appeals answered: Yes.
The Prosecutor answers: No.
The Defendant answers: Yes.
Amicus answers: Yes.[1]

Corpus Delicti and Harmless Error

Were Mr. Washington's statements admissible under the corpus delicti rule? Was the constitutional error at Mr. Washington's trial harmless beyond a reasonable doubt?

The Court of Appeals answered: No.
The Prosecutor answers: Yes.
The Defendant answers: No.
Amicus takes no position.

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[1] No counsel for a party, or anybody else other than *amicus*, has authored this brief in whole or in part. Part of the cost of preparing and submitting this brief may be paid for by research funds provided by the University of Michigan Law School to *amicus* and under his control. The brief does not necessarily reflect the views of that Law School or any of its faculty other than *amicus*. Except as just noted, no persons or other entities other than *amicus* made any monetary contributions to fund the preparation or submission of the brief.

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As stated in the accompanying motion for leave to file this brief, *amicus* is a legal academic who has a particular interest in, and a long record of activity related to, the Confrontation Clause of the Sixth Amendment to the United States Constitution. He submits this brief in support of the defendant-appellee, Lantz Washington, because he believes Washington's confrontation rights were violated by evidence presented in this case.

STATEMENT OF FACTS AND SUMMARY OF ARGUMENT

The key facts of this case are quite simple. Defendant Washington was tried for violating MCL 750.227g, which generally provides that a person who has been convicted of a violent felony "shall not purchase, own, possess, or use body armor." Washington had driven past a toll both at the Blue Water bridge, a crossing between the United States and Canada, without paying the toll. He was brought back across the border in a caravan of three vehicles by a crew of at least five or six Canadian officers, Pros. App. 29a-30a, none of whom testified at trial. An American border officer, Paul Stockwell, testified that the Canadian officers turned Washington over to a group of about six American officers, including him, and that one of the Canadian officers, Matthew Lavers, also handed him "other evidence," a body armor. *Id.* 32a. Stockwell also testified that, "based on . . . communications" with Lavers, he took custody of Washington and of the body armor. *Id.* Washington was convicted, but the Court of Appeals reversed, on the grounds that Stockwell's testimony violated the Confrontation Clauses of the state and federal Constitutions, and this Court granted review.

This brief makes three basic points. First, though Stockwell did not testify explicitly to what Lavers told him, his testimony conveyed the substance of Lavers's statement, that the Canadian officers had found the body armor in the possession of Washington. This is not an "implied assertion," as that term (which *amicus* believes is not useful and potentially confusing) has often been used. That is, this was not evidence of out-of-court conduct offered to prove the truth of a proposition on the ground that it reflected the actor's belief in that proposition even though the actor did not assert the proposition. Here, Lavers, the

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out-of-court actor, *did* assert the proposition at issue – that Washington was found in possession of the body armor – and Stockwell's testimony communicated that fact to the jury.

Second, Lavers's statement was communicated to the jury for the truth of what it asserted – again, that Washington was found in possession of the body armor. The evidence was not necessary to demonstrate Stockwell's subsequent behavior, and it was not presented to the jury for that purpose. The only plausible inference is that the jury inferred from what it learned about the Lavers-Stockwell exchange that Washington was indeed found in possession of the body armor.

Third, Lavers's statement was testimonial for purposes of the confrontation right. The purpose of the confrontation right is to prevent the development of a system in which a witness can testify for a prosecutor other than by confronting the accused, face to face and subject to oath and cross-examination, and if reasonably possible at trial. Accordingly, the best way of determining whether a statement is testimonial is to assess the reasonable expectations that a person in the position of the declarant would have if there were no constraints on admitting the statement at a trial. If such a declarant would expect that the statement would be used as evidence, then a ruling that the statement is in fact admissible means that we have in fact created a system that the confrontation right is supposed to prevent, for future declarants in the position of the current one would understand that they are creating evidence for use in prosecution. Here, the analysis is rather straightforward. Lavers, a law enforcement officer, was speaking to another law enforcement officer, known by him to be such, after an incident that, according to his account, involved significant criminal activity. He was one of a team of Canadian officers who delivered Washington to the American side of the border, where a team of American officers took custody of him and of the body armor. He must have known that he was providing evidence for use in prosecution.

Holding that Stockwell's testimony of his exchange with Lavers violated Washington's confrontation right would not work any change in current law. There would

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not have been any problem had Lavers, an officer of a friendly, cooperative, neighboring nation, testified in person, either at trial or, if he was unavailable to testify at trial, at a deposition. Given that he never testified subject to confrontation, Washington's confrontation rights were plainly violated.

ARGUMENT

I. STOCKWELL'S TESTIMONY CLEARLY CONVEYED THAT LAVERS HAD TOLD HIM THAT WASHINGTON WAS FOUND IN POSSESSION OF THE BODY ARMOR. IT IS A CATEGORY ERROR TO LABEL THIS EVIDENCE AS AN "IMPLIED ASSERTION."

Both the United States and Michigan Constitutions guarantee the right of a criminal defendant "to be confronted with the witnesses against him." US Const, 6th amend.; Mich Const (1963), art. 1, § 20. As the text indicates, the confrontation right "is concerned with a specific type of out-of-court statement, i.e., the statements of 'witnesses,' those people who bear testimony against a defendant." *People v Fackelman*, 489 Mich. 515, 528 (2011).

The bounds of the confrontation right are not determined by hearsay law – it is always important to keep the doctrines separate – but the two doctrines do share some important elements. Suppose the prosecution presents proof as to what an out-of-court person, **O**, said. If this evidence is offered to prove the truth of a matter asserted by **O**, then it fits within the definition of hearsay, and is presumptively inadmissible as a matter of ordinary evidence law (though it may fit within a long list of exemptions to the rule against hearsay). If **O**'s statement is not only offered for the truth of a matter asserted but was testimonial in nature, then (putting aside the possibility of forfeiture and dying declarations, which do not arise in this case) there is a Confrontation Clause violation, unless the prosecution demonstrates *both* that **O** is unavailable *and* that the accused has had an earlier opportunity for confrontation.

There is presumably no dispute over that. But at the outset it will help to clear up confusion that the dissent in the Court of Appeals and the People introduce by examining a matter that this case does *not* involve. Suppose that **O** did not assert the matter of interest

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but acted in a way apparently reflecting his belief in the truth of that proposition. For example, in the classic case of *Wright v Tatham,* 7 ER 559 (HL, 1838), letters written to the decedent Marsden were offered to prove that Marsden was mentally competent, on the basis that the letters were written in a way that arguably reflected the writers' belief that Marsden was competent. And in a famous hypothetical presented in that case, a party attempts to prove that a vessel was safe by demonstrating that a ship captain, after inspecting it, embarks in it with his family, arguably indicating the captain's unexpressed belief in the vessel's safety.[2] Such conduct is often referred to as an *implied assertion*, but in the view of *amicus* that term is not helpful; the significant fact is that the conduct does *not* assert the proposition at issue. A more descriptively accurate (though longer) term would be *conduct offered to prove the truth of an apparently implicit belief*.

However such conduct may be described, under the holding of *Wright* it was deemed hearsay, because its value in proving the proposition at issue depended on the accuracy of the out-of-court actor's belief. Under modern hearsay law in most jurisdictions, that rule does not hold, because the category of hearsay is limited to *assertions*. E.g., Fed R Evid 801(a), (c). That is the law in Michigan as well. Mich R Evid 801(a), (c); *accord*, *e.g.*, *People v Propp*, 340 Mich App 652, 666-67 (2022). And if the conduct does not assert the proposition at issue, it cannot be deemed testimonial with respect to that issue; there is no confrontation problem.

But, contrary to the position taken by the People and by the dissent in the Court of Appeals, this kind of conduct is not what is involved in this case. Here, there is no suggestion that the out-of-court actor **O**, Lavers in this case, acted in a way apparently reflecting implicit belief in the proposition at issue, that Washington possessed the body armor. Rather, the clear implication of the prosecution evidence was that Lavers explicitly asserted that proposition. And in fact we know that he did. Pros. App. 202a ("CBSA stated that WASHINGTON was wearing body armor under his tee shirt when apprehended.").

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[2] This hypothetical was presented by Baron Parke in the Exchequer Chamber. *Wright v Doe dem Tatham,* 112 ER 488, 516 (Exch, 1837), *aff'd*, 7 ER 559 (HL, 1838).

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True, the prosecution evidence did leave a matter open to inference. But this is at a different level from the so-called implied-assertion cases. In those cases, the evidence is of conduct by the out-of-court actor **O** that did not assert the proposition at issue but that supports an inference of **O**'s belief in that proposition. Here, the *in-court witness's* testimony does not expressly assert that **O** made a statement asserting that proposition but clearly supports an inference that **O** made such a statement. Thus, Washington is correct in saying that the People and the dissent make a category error in treating this as an implied-assertion case.

That Stockwell's testimony did not explicitly repeat Lavers's statement does not matter. The critical issue, as Washington's brief indicates, is whether given the evidence presented at trial the jury could "readily infer the contents" of the out-of-court statement. *State v Roscoe*, 198 A3d 1232, 1246 (RI, 2019), quoted in Def. Br. at 23. The point is made clearly and thoroughly, with extensive case citations, in Washington's brief, pp. 21-27, so *amicus* will offer only a few additional comments.

A rule that made the Confrontation Clause inapplicable unless the exact statement was formally presented to the trier of fact wold make no sense and would render the Clause a virtual nullity (and the same goes for the hearsay rule): A prosecutor could avoid the Clause simply by having the in-court witness offer a paraphrase or summary of the statement, or for that matter any other testimony from which the substance of the statement might be inferred. And the nullification of the Clause's effect would be most apparent in the case of oral statements, because usually a paraphrase or summary is all that the in-court witness can offer; usually, the witness will not be able to quote an earlier statement exactly.

Consider, for example, *United States v Meises*, 645 F3d 5 (1st Cir, 2011), a case very similar to this one. There, the prosecutor, recognizing that statements made by a cooperating arrestee to law enforcement agents were testimonial, did not ask a testifying agent what the arrestee said; instead, he secured the agent's testimony that after the

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interview "the targets of [the] investigation change[d]" and that the accused was taken into federal detention. The Court of Appeals for the First Circuit saw through this blatant ruse:

> It makes no difference that the government took care not to introduce [the out-of-court witness's] "actual statements." . . . [A]ny other conclusion would permit the government to evade the limitations of the Sixth Amendment . . . by weaving an unavailable declarant's statements into another witness's testimony by implication.

Id. at 21-22; *accord, e.g.*, *United States v. Reyes*, 18 F3d 65, 69 (2d Cir, 1994) ("although the jury was not told exactly what words [the out-of-court declarants] had spoken, [the in-court witness's] testimony clearly conveyed the substance of what they had said"); *Young v United States*, 63 A3d 1033, 1044 (DC, 2013) (holding it immaterial "whether the statement is quoted verbatim or conveyed only in substance [or] whether it is relayed explicitly or merely implied"); *see also Douglas v Alabama*, 380 US 415, 419 (1965) (confrontation right "plainly" violated given that "the jury might improperly infer both that the statement had been made and that it was true").

In some cases, it might be a close question whether the jury could infer that a statement had been made and what the contents of the statement were. Here it is not. In response to questions by the prosecutor, Stockwell testified that he had "communications" with Lavers, that "based on those communications" he took custody of Washington, and that he "took possession of the body armor that was passed over at the same time." Pros. App. 32a. Amicus believes that the ultimate question is whether the jury could *plausibly* infer that a statement had been made and the contents of the statement. Here, Stockwell was explicit that Lavers had made a statement, and it is essentially *certain* that the jury would infer that Lavers had stated at least that the body armor had been found in Washington's possession.

II. LAVERS'S STATEMENT WAS COMMUNICATED TO THE JURY FOR THE TRUTH OF WHAT IT ASSERTED.

The People contend that "Officer Stockwell's testimony was offered for a non-hearsay purpose, explaining his actions and involvement." Pros. Br. at 22. (The analysis here is of the confrontation right, rather than hearsay law, but "a non-hearsay purpose" is

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synonymous with "a purpose other than the truth of the matter asserted by the statement.") The argument fails – but the fact that the People make it highlights a significant danger to the Confrontation Clause to which the Court should be acutely sensitive.

There is no doubt that the confrontation right, like the hearsay rule, applies only to the extent that the statement in question is offered to prove the truth of a matter it asserts. *E.g.*, *Tennessee v Street*, 471 US 409 (1985). The difficulty is that it is often easy for the prosecution to come up with a proposition, other than one asserted by the statement, to which the statement is assertedly relevant and to contend that the statement should be admitted to prove that proposition – even though the prosecution actually has little or no need to prove it. The prosecution's hope, of course, is that, even if the court gives a limiting instruction, the jury will use the statement in the most natural way, to prove the truth of what it asserts. *Amicus* wrote about this tactic some years ago, labeling it the "not-for-the-truth end run." *Richard D.* Friedman, *The Not-for-the-Truth End Run*, http://tinyurl.com/uvefvy4u (Confrontation Blog, Jan. 25, 2006).

This case exemplifies a particularly common type of case in which prosecutors try this "end run": The prosecution contends that the statement is offered not for the truth of what it asserts, though that is a critical issue in the case, but rather to explain the subsequent actions of law-enforcement authorities. In most cases, including this one, the argument is a sham, and should be recognized as such. The prosecution has no genuine need to explain Stockwell's conduct. But the jury would almost certainly use the inferential evidence of Lavers's statement for the truth of what it asserted, that Washington was found in possession of the body armor.

Meises, *supra*, is helpful in this respect. There, the prosecutor asked a DEA agent, "After this interview, did the targets of your investigation at this point change?" The agent answered in the affirmative, and then testified that the appellants were processed and taken to a federal detention facility. 645 F3d at 19. The court was very clear that this evidence not only amounted to admission of the agent's out-of-court statement but did so for the truth of what it asserted:

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> We take it to be common ground that the government may not have an agent testify, "X told us that the defendant was involved in the crime." Quoting X's out-of-court accusation remains impermissible if the agent's testimony is changed to say, "We began to investigate the defendant because X told us that the defendant was involved in the crime," and the government seeks to justify it by arguing that X's out-of-court statement was offered not for its truth but only to explain why the agent focused on (or arrested) the defendant. Nor does the result change if, instead of *quoting* the out-of-court statement, the government communicates its content to the jury by implication. In such instances, the relatively minor "probative value [of the evidence of why the agent began surveillance or made an arrest] is substantially outweighed by the danger of unfair prejudice" that results from communicating the accusatory hearsay to the jury. Fed.R.Evid. 403; *see also* [*United States v Maher*, 454 F3d 13, 20 (1st Cir, 2006)] ("The need for this evidence is slight, and the likelihood of misuse great.") (quoting 2 Broun, et al., *McCormick on Evidence* § 249, at 103 (5th ed. 1999) (emphasis omitted)).

645 F3d at 22 n.25; *accord, e.g., United States v Jones*, 960 F3d 366, 377-78 (5th Cir, 2019) (emphasizing need for vigilance in preventing violation of confrontation right by evidence supposedly offered to explain officer's actions, for which limited information is needed).[3]

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[3] The McCormick passage quoted by the *Maher* court is worth presenting more fully, from the most recent edition of the treatise:

> One area where abuse may be a particular problem involves statements by arresting or investigating officers regarding the reason for their presence at the scene of a crime. The officers should not be put in the misleading position of appearing to have happened upon the scene and therefore should be entitled to provide some explanation for their presence and conduct. They should not, however, be allowed to relate historical aspects of the case, such as complaints and reports of others containing inadmissible hearsay. Such statements are sometimes erroneously admitted under the argument that the officers are entitled to give the information upon which they acted. The need for this evidence is slight, and the likelihood of misuse great. Instead, a statement that an officer acted "upon information received," or words to that effect, should be sufficient.

2 ROBERT P. MOSTELLER, gen. ed., MCCORMICK ON EVIDENCE § 249, pp. 198-99 (2020). The copious case citations offered by the treatise in footnotes are omitted here; they include cases in which the prosecution contended that the evidence was offered to explain the officer's subsequent actions as well those in which the contention was that it was offered to explain his presence at the scene. Here, no further evidence was necessary to explain Stockwell's presence; he worked at the Blue Water Bridge, and he had received a phone call that Canadian officers were coming to the United States side. Def. App. 29a. And if any information were needed to explain his subsequent actions – *amicus* does not believe it was – the fact that Washington was being delivered together with body armor was sufficient.

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Amicus recognizes, of course, that in some cases the prosecution has a legitimate reason for offering a testimonial statement for a reason other than proving the truth of a matter that it asserted. Determining whether a particular case is one of those requires great care. *Amicus* has suggested a two-step process for a reviewing court in making this determination. *The Not-for-the-Truth End Run, supra*.

In the first step, the court should determine whether the statement was genuinely offered for a purpose other than proving the truth of a matter that it asserts. *Amicus* has suggested that this set of conditions for determining that question: (1) Assuming the defense objected to the evidence on confrontation grounds, the prosecution must have put forth the alternative theory of admission. (2) The trial judge must have offered to give a limiting instruction. (3) If the prosecution relied on the statement in arguing to the jury, it must have argued only on the basis of the alternative theory and not that the jury should conclude that the facts are as asserted in the statement because the statement asserts them. (4) Unless some other, non-tetimonial statement by the out-of-court declarant is also admitted, the prosecution must not have tried to support the declarant's credibility. *Id.*

If these conditions are not all satisfied, then the statement should not be deemed to have been offered for the alternative purpose. If they are all satisfied, then the court should move on to the second step, determining whether the statement has sufficient value for the alternative purpose to warrant admission notwithstanding the risk that the jury will use it in violation of the Confrontation Clause. *Id.; cf. Street, supra*, 471 US at 417-18 (Brennan, J., concurring) (emphasizing that "the record contains no suggestion that the State was engaged in any improper effort to place prejudicial hearsay before the jury"). Here, the court should ask whether admissibility for the alternative purpose is warranted, as in *Street*, to correct a potential misimpression created by the accused. *Cf. Street*, 471 US at 417 (Brennan, J., concurring) (asserting that "it is important to note that [Street] created the need to admit the statement by pressing the contention that his confession was a coerced imitation of [that statement]"). If not, then *amicus* suggests that the out-of-court testimonial statement should be excluded unless the court is confident that (a) the prosecution genuinely has a substantial need to present the statement for the alternative

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purpose, taking into account other possibilities (such as other evidence, or a stipulation, that would serve the same purpose), and (b) it is not likely that, given a limiting instruction, the jury would use the statement to prove the truth of what it asserts. *The Not-for-the-Truth End Run, supra*.

Here, it is clear that these conditions are not satisfied. As to the first step, this Court should hold that the statement was not genuinely offered for the supposed alternative purpose: The prosecution did not indicate when the evidence was admitted that this was its purpose for offering it, and no limiting instruction was suggested. As to the second step, there is no suggestion that the evidence is necessary to correct a misimpression created by Washington, the prosecution had no substantial need to explain Stockwell's "actions and involvement," and it is highly likely that, even if a limiting instruction had been given, the jury would have used the evidence of Lavers's statement for its obvious significance, in indicating that Washington was found in possession of the body armor.

No categorical solution is possible for resolving cases in which the prosecution cites an alternative purpose for offering an out-of-court testimonial statement. In determining whether the statement should be admitted for such an alternative purpose, notwithstanding the risk of a violation of the accused's confrontation rights, there may be some difficult cases. This is not one of them.

III. LAVERS'S STATEMENT WAS TESTIMONIAL.

The People contend in passing that Lavers's statement was not testimonial. The contention has no merit.

As Washington argues, the governing standard for determining whether a statement is testimonial under Michigan's Confrontation Clause is the one adopted in *People v Fackelman,* 489 Mich. 515, 556 (2011), whether the statement was made "under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." This standard, presented as a possibility in *Crawford v Washington*, 541 US 36, 51-52 (2004), is also the standard

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applied by the United States Supreme Court in *Melendez-Diaz v Massachusetts*, 557 US 305, 311 (2009), and it is far preferable to one adopted in other decisions by that Court, *e.g., Davis v Washington*, 547 US 813, 822 (2006), whether "the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." Speakers often have multiple purposes in making a statement, and there is no sure way to determine which of them is the primary one. Furthermore, as in this case, there is not necessarily an interrogation – and if there is the interrogator's purpose cannot make the statement testimonial. (Otherwise, questioning by undercover officers would violate the confrontation right.) Even more fundamentally, in *amicus*'s view, the governing factor should be the declarant's expectation, not purpose. Consider, for example, the case of a confederate of the accused who becomes a cooperating witness. She may have no desire at all to help the prosecution or to create evidence that will be used against the accused. Her primary purpose, and her only purpose, is to save her skin. But she – or more precisely, a reasonable person in her position – knows full well that in all likelihood her statement will be used against the accused. It would be absurd to characterize her statement to law enforcement authorities as non-testimonial. *See generally* Richard D. Friedman, *Grappling with the Meaning of "Testimonial"*, 71 BROOKLYN L REV 241, 251-59 (2005-06) (arguing for a test based on reasonable expectation of use, from perspective of the speaker).

Amicus believes that the "reasonable expectation" test should be applied in a particular way to avoid a potential logical glitch. One might ask: If a statement is testimonial, and that means that its use for the truth of what it asserts against the accused violates the Confrontation Clause, then how can the speaker have a reasonable expectation that it will be used at trial? The solution, *amicus* believes, is to ask what the reasonable expectation would be *assuming hypothetically that there were no legal constraints on use of the evidence*. This is useful, because a court should always be mindful of this question: *If this type of evidence were allowed, would we have a system in which a witness would effecctively be able to testify against an accused in an unacceptable way?* In this case, for example, if the evidence of Lavers's exchange with Stockwell were allowed, we would have

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a system in which a law enforcement officer describing criminal conduct to another law enforcement officer would know that the description could be used in prosecution. In any realistic sense, that would mean that the first officer is testifying in making the statement – and this is plainly unacceptable.

Amicus discerns two grounds on which the People nevertheless contend that Lavers's statement was not testimonial. The first is simply to characterize Lavers's conduct as "ministerial." Pros. Br. at 19-20. The People never explain what significance they believe this characterization has. It has none. If Officer 1, in turning Accused over to Officer 2, gives Officer 2 a full description of an assault committed by Accused, and Accused is then charged with that assault, Officer 1's conduct could equally be described as ministerial – but it is clearly testimonial. An officer filing a report describing a crime scene, or a lab technician filing a report with the police asserting that a given substance is cocaine, might also be characterized as acting ministerially, but each would also be making testimonial statements. *See Melendez-Diaz, supra*, 557 US at 312 ("rather straightforward application" of *Crawford* to conclude that lab certificates were testimonial).

More substantively, the People contend that Lavers's statement was not testimonial because presumably he did not know that Washington had been convicted of a violent felony and that possession of body armor by him would be a crime. In their view, Lavers was simply returning a toll jumper to the United States, where that infraction had occurred. Pros. Br. at 19-20.

The facts do not bear out this characterization. Washington, according to Lavers's account, not only jumped the toll, but he did so at great speed. Def. App. 5b. When he was apprehended, the record indicates, he got into a physical altercation with the officers. *Id.* Plainly, the officers did not simply detain him and return him to the United States side of the border; they conducted a search, removing several items from him and his vehicle. *Id.* And a full crew of at least five or six officers, in three vehicles, returned him across the border – where he was received, and taken into custody, by about six American officers. Pros. App. 29a-32a. Clearly, Lavers did not regard this, and did not treat it, as a simple case

of toll jumping. Whether or not he knew that Washington's possession of the body armor was unlawful in itself, he knew that Washington had acted in an unusual and highly risky way suggestive of criminal involvement, that the fact that he was in possession of body armor would be relevant evidence to any prosecution arising from that involvement, and that he was reporting on the incident to another law enforcement officer, to whose custody Washington was being transferred. Lavers's statement was testimonial.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains 4,970 words in the sections covered by MCR 7.212(C)(6)-(8).

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