[J-54A-2017 and J-54B-2017] [Opinion: Dougherty, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 40 EAP 2016
	:	
Appellant	:	Appeal from the Judgment of Superior Court entered on 05/10/2016 at No. 1165 EDA 2015 (reargument denied 07/13/2016) affirming the Order entered on 03/26/2016 in the Court of Common Pleas, Criminal Division, Philadelphia County at No. CP-51-CR-0003322-2013
v.	:	
DARNELL BROWN,	:	
Appellee	:	
	:	ARGUED: September 12, 2017
COMMONWEALTH OF PENNSYLVANIA,	:	No. 41 EAP 2016
	:	
Appellee	:	Appeal from the Judgment of Superior Court entered on 05/10/2016 at No. 1165 EDA 2015 (reargument denied 07/13/2016) affirming the Order entered on 03/26/2016 in the Court of Common Pleas, Criminal Division, Philadelphia County at No. CP-51-CR-0003322-2013
v.	:	
DARNELL BROWN,	:	
Appellant	:	
	:	ARGUED: September 12, 2017

CONCURRING OPINION

JUSTICE DONOHUE **DECIDED: June 1, 2018**

I join the Majority's holding in Section IV(A) that the autopsy report prepared by Dr. Marlon Osbourne was testimonial and that its admission into evidence was a violation of Brown's right to confrontation guaranteed to him by the Sixth Amendment to the United States Constitution. I further agree with the conclusion in Section IV(B) that this error was harmless beyond a reasonable doubt. I part ways, however, with respect to the plurality's

determination, in Sections IV(B) and V, regarding the admissibility of the "independent opinion" of Dr. Albert Chu, in connection with which he recited portions of Dr. Osbourne's autopsy report to the jury. In my view, permitting Dr. Chu to so testify was error, as it permitted the Commonwealth to do indirectly what it could not do directly, namely, to advise the jury of the findings and opinions of Dr. Osborne without providing Brown with an opportunity to cross-examine him. The introduction of testimonial forensic evidence without cross-examination of the analyst who performed the work is a clear violation of the confrontation rights of the accused, and I cannot join in the plurality's decision to ignore this basic constitutional principle.

In *Crawford v. Washington*, 541 U.S. 36 (2004), the United States Supreme Court held that when the prosecution seeks to introduce testimonial statements to prove a fact at issue in the criminal proceedings, the Confrontation Clause guarantees the defendant the opportunity to cross-examine the person who made those statements. *Id.* at 59. According to the Court, the Confrontation Clause prohibits the prosecution from admitting "testimonial statements of a witness who [does] not appear at trial unless he [is] unavailable to testify, and the defendant ... had a prior opportunity for cross-examination." *Id.* at 53–54. This guarantee applies equally to live testimony and to testimonial reports created to establish specific aspects of past events that are potentially relevant to a later criminal prosecution. *See Commonwealth v. Yohe*, 79 A.3d 520, 531 & n.11 (Pa. 2013).

Five years later, in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009), the Supreme Court made clear that *Crawford* applies to forensic evidence. Overturning a decision to permit the introduction of a forensic report identifying a substance seized from the defendant as cocaine, the Court rejected the notion that "neutral scientific testing" was

presumptively reliable, indicating instead that forensic evidence is not "uniquely immune" from manipulation and mistake. *Id.* at 318. Instead, citing to *Crawford*, the Court insisted that the reliability of forensic testing must be assessed in a particular manner – through "testing in the crucible of cross-examination." *Id.* at 317 (quoting *Crawford*, 541 U.S. at 61). As a result, the Court held that any time the prosecution seeks to introduce a testimonial forensic report, the defendant must be afforded the right to cross-examine the analyst who performed the work and prepared the report. *Id.* at 319.

Echoing its decision in *Melendez-Diaz* and rejecting efforts to avoid its requirements, in *Bullcoming v. New Mexico*, 564 U.S. 647 (2011), the Court refused to permit testimony by a "surrogate analyst" – a substitute expert who did not author the report or conduct any of the testing/analysis involved – as the means for introducing forensic evidence at a criminal trial. The prosecution attempted to introduce a laboratory report documenting the defendant's blood alcohol level through someone who worked at the laboratory but did not perform the blood tests or sign the report. *Id.* at 651. Because the forensic report in question was testimonial, i.e., it was designed to "prov[e] some fact' in a criminal proceeding," *id.* at 662 (quoting *Melendez–Diaz*, 557 U.S., at 310), the Supreme Court held that *Melendez–Diaz* requires that the analyst who performed the testing and prepared and signed the report be made available for cross-examination. *Id.* at 661-62. A surrogate analyst cannot suffice for Confrontation Clause purposes, as only cross-examination of the "particular scientist" who did the work provides the defendant with the necessary opportunity to uncover any incompetence or dishonesty in the preparation of a forensic report through rigorous cross-examination. *Id.* at 652.

In the present case, pursuant to the dictates of *Crawford*, *Melendez–Diaz* and *Bullcoming*, Dr. Chu clearly should not have been permitted, in Dr. Osborne's absence, to testify regarding the contents of Dr. Osborne's testimonial autopsy report. Dr. Chu did not participate in, assist with or observe the autopsy performed by Dr. Osborne. The plurality takes no constitutional issue with the trial court's decision to allow Dr. Chu to convey to the jury the results of Dr. Osbourne's work, including the location of the bullet wounds, the trajectory of the bullets through the victims' body, the nature of the wounds (perforating versus penetrating), and the distance from which the victim was shot.[1] Op. at 24; N.T., 11/5/2014, at 124-28. Instead, it insists that Dr. Chu testified only in "partial reliance on Dr. Osbourne's findings," and that his review of the autopsy photographs, which are not testimonial, "assisted him in evaluating Dr. Osbourne's findings[] and permitted Dr. Chu to arrive at an independent opinion regarding the cause," and that Dr. Chu relied on "the data provided by the autopsy photographs" in forming his opinion. Op. at 24 n.11, 26. In so finding, the plurality assumes, without explication, that the photographs alone depicted "non-hearsay facts upon which Dr. Chu could rely to form an independent opinion regarding the cause of death." *Id.* at 24 n.11. Respectfully, the record does not support this conclusion.

Dr. Chu testified that he "reviewed the autopsy photographs" when preparing to testify. N.T., 11/5/2014, at 123. Neither he nor any other witness testified regarding what the photographs depicted, let alone how, if at all, they factored into Dr. Chu's "independent opinion" as to the cause of the victim's death. The Commonwealth did not present the

[1] Dr. Chu also testified to the opinion reached by Dr. Osbourne in his autopsy report. N.T., 11/5/2014, at 130. The Majority recognizes that this aspect of Dr. Chu's testimony was inadmissible on confrontation grounds. Op. at 26.

photographs at trial or seek their admission into evidence. Dr. Chu's testimony, summarized hereinabove, was given in direct response to questions posed to him about the contents of the autopsy report – he never mentioned his review of the photographs during the substance of his testimony or in relation to his "independent opinion." His testimony relied on, and vouched for, the accuracy of Dr. Osbourne's testing and analysis in the autopsy report. Dr. Chu presented no other basis in support of his "independent opinion" regarding the cause of the victim's death. *Id.* at 130. Because Brown had no opportunity to cross-examine Dr. Osborne, Dr. Chu's testimony plainly violated Brown's rights under the Confrontation Clause.

As the Supreme Court stated in *Crawford*, the Confrontation Clause "is a procedural rather than a substantive guarantee. It commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination." *Crawford*, 541 U.S. at 61. By permitting the introduction of Dr. Chu's testimony without affording Brown an opportunity to cross-examine Dr. Osborne, the plurality does not recognize this basic procedural guarantee.

This Court has routinely respected the guarantee. In *Yohe*, for example, there were several analysts in the same lab who participated in the testing of the defendant's blood for its alcohol concentration. This Court concluded that to satisfy the Confrontation Clause, Dr. Blum, the lab supervisor, was the expert required to testify at the defendant's trial for driving under the influence of alcohol. *Yohe*, 79 A.3d at 540. As this Court explained, Dr. Blum was the analyst that "engaged in the critical comparative analysis of the results of the gas chromatograph tests and the enzymatic assay," utilizing the raw data to determine the defendant's blood alcohol content, and authored the report detailing

his opinion. *Id.* Further, Dr. Blum was able to testify as to the laboratory procedures and could speak to any deviations from the established protocols or any concerns about the technicians who participated in the testing process. *Id.* Because Dr. Blum was directly involved in the testing process and authored the testimonial report at issue, his testimony at the defendant's trial satisfied the defendant's confrontation rights.

In *Commonwealth v. Ali*, 10 A.3d 282 (Pa. 2010), this Court held that the defendant's confrontation rights were satisfied by the testimony of a medical examiner who did not author the autopsy report. In that case, however, the testifying expert had supervised the autopsy in question, testified to his own observations of the body and other materials (slides and documents) from the examination, discussed the case with the physician that performed the autopsy, and reached his own independent opinions and conclusions regarding the cause of the victim's death. *Id.* at 305-07.

In significant contrast, in the case at bar, Dr. Chu did not participate in the autopsy, had no supervisory role and did not conduct any independent testing. *Id.* at 129. Dr. Chu conducted no independent assessment of the body or of the raw material available, if any, to reach his conclusion. Instead, Dr. Chu parroted the findings and analysis contained in Dr. Osbourne's report, and he provided his opinion in reliance thereupon that the victim died as a result of multiple gunshot wounds. That Dr. Chu was available for cross-examination regarding his conclusion as to cause of death is of no constitutional moment, as Brown could not cross-examine him on the inadmissible facts and analysis that formed the basis of his opinion. I therefore disagree with the plurality that Dr. Chu reached an "independent opinion" regarding the cause of death. The Confrontation Clause barred

the testimony of Dr. Chu because the testimony was a wholesale recitation of the inadmissible testimonial autopsy report.

The plurality declines to address the Superior Court's reliance, in its decision below, on Pennsylvania Rule of Evidence 703 to find that Dr. Chu's testimony was admissible. Op. at 25; *see Commonwealth v. Brown*, 139 A.3d 208, 218-19 (Pa. Super. 2016).[2] As this was the second issue upon which this Court granted allowance of appeal,

---

[2] Although the plurality states that it is not deciding whether Rule 703 permitted Dr. Chu's testimony in reliance on the autopsy report, it nonetheless also states, "[H]ad the autopsy report not been introduced into evidence at trial, Pa.R.E. 703 would arguably permit precisely the type of expert opinion testimony given by Dr. Chu, which was based in part on the otherwise inadmissible facts and data contained in the report upon which experts in the field of forensic pathology would reasonably rely in forming an opinion." Op. at 24-25 (emphasis omitted). The plurality does not explain these inconsistent positions.

The plurality further contends that Brown waived any claims related to Rule 703. *Id.* at 25 ("we decline to decide Brown's Rule 703-based claims challenging the admissibility of Dr. Chu's testimony because, as the Commonwealth correctly points out, Brown never relied on Rule 703 as a basis for his objections to Dr. Chu's testimony or to the admissibility of the autopsy report as trial"). This is a misstatement of the burdens related to Rule 703. As the party seeking to introduce Dr. Chu's expert testimony, it was for the Commonwealth, not Brown, to assert Rule 703 as a basis for doing so. At trial, in response to Brown's objection on constitutional grounds, the Commonwealth did not raise Rule 703 as a basis for admission. In response to the Superior Court's sua sponte injection of Rule 703 into its analysis, and the Commonwealth's subsequent argument before this Court in support of that analysis, Brown argues that his Sixth Amendment right to confrontation trumps any application of Rule 703. *See, e.g.*, Brown's Brief at 18 ("Where that inadmissible information is testimonial hearsay, however, [Rule] 703 must bow to the right of Confrontation, because the only way the in-court testimony has relevance is if the information relied upon is true – and that reliance consequently "back doors" testimonial hearsay, a violation of the Sixth Amendment."); Brown's Reply Brief at 10 ("Brown is not raising Rule 703 but is raising the Sixth Amendment – his analysis has been and is that his right of Confrontation was violated, and that the Superior Court's application of Rule 703 does not cure the Constitutional defect."). Brown has not waived any claims relating to Rule 703 because he has no affirmative claims to make based on Rule 703. Brown has consistently asserted, from the time of trial to the present, that the content of Dr. Osborne's autopsy report was inadmissible (either directly or indirectly through Dr. Chu's testimony) because permitting its presentation to the jury, in the absence of an opportunity to cross-examine Dr. Osborne, violated his constitutional rights under the Confrontation Clause. *See* N.T., 11/5/2014, at 101.

Commonwealth v. Brown, 164 A.3d 461 (Pa. 2016) (per curiam), and because, in my view, the Superior Court's reliance on Rule 703 was erroneous, I regard this as an important issue for this Court to address.

Rule 703 states:

> An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.

Pa.R.E. 703. In *Crawford*, the Supreme Court held that the Confrontation Clause "does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted." *Crawford*, 541 U.S. at 59. As five justices on the United States Supreme Court made clear in *Williams v. Illinois*, 567 U.S. 50 (2012), however, state evidentiary rules do not provide a basis for evading and ignoring the requirements of *Crawford*, *Melendez–Diaz* and *Bullcoming* with respect to the introduction of testimonial evidence. In *Williams*, a rape prosecution, the Court addressed whether the Confrontation Clause barred testimony by a prosecution expert who, in reaching her conclusion that the defendant's DNA profile matched the DNA recovered from a vaginal swab of the victim, relied on a DNA report created by an analyst at an independent lab (Cellmark). The prosecution expert described the contents of the Cellmark DNA report to the jury to support her conclusion that Cellmark's testing of the vaginal swabs produced a male DNA profile that implicated the defendant. The Cellmark analyst who prepared the DNA report did not testify and thus could not be cross-examined.

The case resulted in a fractured decision with no majority rationale. Four Justices (Justice Alito, joined by Chief Justice Roberts and Justices Kennedy and Breyer) were of

the view that the Confrontation Clause did not apply because the expert did not testify to the truth of the facts and analysis contained in the Cellmark report or "vouch for the quality" of the work. *Id.* at 70-71 (plurality). Alternatively, if offered for its truth, the plurality found that the Cellmark report was not testimonial because it "was not prepared for the primary purpose of accusing a targeted individual … or to create evidence for use at trial." *Id.* at 84. Justice Thomas concurred in the judgment, as he agreed with the plurality that the Cellmark report was not testimonial, though he did so for different reasons. *Id.* at 103-04 (Thomas, J., concurring) (stating that the report "lacked the requisite 'formality and solemnity' to be considered 'testimonial").

Justice Kagan, joined by Justices Scalia, Ginsburg and Sotomayor, dissented, insisting that the Cellmark report was testimonial and thus, pursuant to the dictates of *Crawford*, *Melendez–Diaz* and *Bullcoming*, its contents should not have been disclosed to the jury "except by calling to the stand the person who prepared it." *Id.* at 128 (Kagan, J., dissenting). According to Justice Kagan, in reciting Cellmark's testing and findings to the jury, the prosecution expert became a mere conduit for inadmissible testimonial evidence, a procedure the Court had just rejected in *Bullcoming*.[3] *Id.* at 129 ("By testifying in that manner, [the prosecution expert] became just like the surrogate witness in *Bullcoming* – a person knowing nothing about 'the particular test and testing process,' but vouching for them regardless.").

---

[3] In the present case, the Majority observes that in *Bullcoming*, Justice Sotomayor authored a concurring opinion in which she questioned whether the Confrontation Clause would bar testimony by an expert witness who provided an "independent opinion about underlying testimonial reports that were not themselves admitted into evidence." Op. at 16 (quoting *Bullcoming*, 564 U.S. at 673 (Sotomayor, J., concurring)). When faced with this very question in *Williams*, however, Justice Sotomayor joined Justice Kagan in finding that such testimony violates a defendant's confrontation rights.

Justice Kagan offered two sound reasons in support of this position. First, when out-of-court forensic testing is disclosed as the basis for an expert's conclusion, the out-of-court statement is, of necessity, introduced for its truth. Justice Kagan explained:

> If the statement is true, then the conclusion based on it is probably true; if not, not. So to determine the validity of the witness's conclusion, the factfinder must assess the truth of the out-of-court statement on which it relies. That is why the principal modern treatise on evidence variously calls the idea that such "basis evidence" comes in not for its truth, but only to help the factfinder evaluate an expert's opinion "very weak," "factually implausible," "nonsense," and "sheer fiction." D. Kaye, D. Bernstein, & J. Mnookin, The New Wigmore: Expert Evidence § 4.10.1, pp. 196–197 (2d ed.2011); *id.*, § 4.11.6, at 24 (Supp.2012). "One can sympathize," notes that treatise, "with a court's desire to permit the disclosure of basis evidence that is quite probably reliable, such as a routine analysis of a drug, but to pretend that it is not being introduced for the truth of its contents strains credibility." Id., § 4.10.1, at 198 (2d ed.2011); *see also, e.g., People v. Goldstein*, 6 N.Y.3d 119, 128, 810 N.Y.S.2d 100, 843 N.E.2d 727, 732–733 (2005) ("The distinction between a statement offered for its truth and a statement offered to shed light on an expert's opinion is not meaningful").

Id. at 127. According to Justice Kagan, rather than constituting a non-hearsay basis for the introduction of testimonial evidence, "admission of the out-of-court statement in this context has no purpose separate from its truth; the factfinder can do nothing with it **except** assess its truth and so the credibility of the conclusion it serves to buttress." *Id.* (emphasis in original).

Second, because forensic evidence is being offered for its truth, the "not-for-the-truth rationale is a simple abdication to state-law labels." *Id.* at 132. In this regard, state rules of evidence "do not define federal constitutional requirements." *Id.* In *Crawford*, the Court indicated that "[w]here testimonial statements are involved, we do not think the Framers meant to leave the Sixth Amendment's protection to the vagaries of the rules of

evidence[.]" *Crawford*, 541 U.S. at 61. Justice Kagan recognized that *Crawford* "made clear that the Confrontation Clause's protections are not coterminous with rules of evidence." *Williams*, 567 U.S. at 132. Moreover, the use of state evidentiary rules to introduce testimonial evidence without any opportunity for cross-examination, Justice Kagan emphasized, allows prosecutors "to do through subterfuge and indirection what we have previously held the Confrontation Clause prohibits." *Id.* at 132.

Importantly, while Justice Thomas did not find the Cellmark report to be testimonial, he agreed entirely with Justice Kagan regarding the plurality's "not-for-the-truth" rationale. First, he did not find that introducing testimonial evidence to provide a basis for an expert's opinion constituted a "**legitimate**, nonhearsay purpose," *id.* at 105 (emphasis in original), because it is being offered solely for its truth.

> There is no meaningful distinction between disclosing an out-of-court statement so that the factfinder may evaluate the expert's opinion and disclosing that statement for its truth. "To use the inadmissible information in evaluating the expert's testimony, the jury must make a preliminary judgment about whether this information is true." D. Kaye, D. Bernstein, & J. Mnookin, The New Wigmore: A Treatise on Evidence: Expert Evidence § 4.10.1, p. 196 (2d ed. 2011)). "If the jury believes that the basis evidence is true, it will likely also believe that the expert's reliance is justified; inversely, if the jury doubts the accuracy or validity of the basis evidence, it will be skeptical of the expert's conclusions." *Id.*

Id. at 106 (Thomas, J., concurring). Justice Thomas also agreed with Justice Kagan's view that evidentiary rules cannot trump federal constitutional confrontation rights. *Id.* at 105 ("[W]e have recognized that concepts central to the application of the Confrontation Clause are ultimately matters of federal constitutional law that are not dictated by state or federal evidentiary rules.").

Thus, in *Williams* five justices of the United States Supreme Court agreed that where a testifying expert relies upon a testimonial report that contains testing and analysis conducted by a non-testifying expert (in which the testifying expert did not participate or observe), the Confrontation Clause bars the expert from testifying to the statements contained in that report.[4] The prosecution cannot "rely on [the testifying witness'] status as an expert to circumvent the Confrontation Clause's requirements." *Id.* at 126 (Kagan, J., dissenting) (citing *id.* at 106 (Thomas, J., concurring)). Pa.R.E. 703 cannot be used as an end-run around the Sixth Amendment right to confrontation. It therefore does not operate to permit Dr. Chu to offer an "independent opinion" based almost exclusively on Dr. Osborne's autopsy report and, in so doing, permit Dr. Chu to disclose to the jury the contents of that report to the jury.

Nonetheless, in the present case, because I agree that the error of admitting the autopsy report was harmless, it necessarily follows that the error of admitting Dr. Chu's testimony regarding statements contained in the autopsy report was harmless as well. The law is clear that the Commonwealth satisfies its burden of proving that the defendant caused the victim's death beyond a reasonable doubt by presenting evidence establishing that the "action of the defendant … constitute[d] a direct and substantial factor in causing the death of the victim." *Commonwealth v. Johnson*, 284 A.2d 734, 735 (Pa. 1971). This Court has held, however, that medical testimony is not required to establish causation in

---

[4] Courts in other jurisdictions have likewise recognized this interpretation of the Confrontation Clause. *See, e.g., People v. John*, 52 N.E.3d 1114, 1128 (N.Y. 2016); *People v. Sanchez*, 374 P.3d 320, 333 (Ca. 2016); *State v. Stanfield*, 347 P.3d 175, 187 (Idaho 2015); *State v. Navarette*, 294 P.3d 435, 436 (N.M. 2013); *Martin v. State*, 60 A.3d 1100, 1108–09 (Del. 2013); *State v. Medical Eagle*, 835 N.W.2d 886, 898-99 (S.D. 2013); *Young v. United States*, 63 A.3d 1033, 1048 (D.C. 2013); *Rosario v. State*, 175 So.3d 843, 861-62 (Fla. Dist. Ct. App. 2015).

a murder prosecution. *Commonwealth v. Ilgenfritz*, 353 A.2d 387, 390 (Pa. 1976) ("While it is true, of course, that the Commonwealth must prove causation, like every element of a crime, beyond a reasonable doubt, it does not follow that only medical testimony can prove causation, or that any medical testimony which is relied upon by the Commonwealth must be framed specifically in terms of the beyond a reasonable doubt standard."); *Commonwealth v. Gilman*, 401 A.2d 335, 339 (Pa. 1979) (plurality) ("medical testimony is not required to prove the cause of death"). Rather, the evidence – direct or circumstantial – must be such that they jury could "justifiably conclude" that the defendant's action caused the victim's death beyond a reasonable doubt. *Ilgenfritz*, 353 A.2d at 389.

The record reflects that several witnesses testified to hearing and/or seeing Brown shoot the victim multiple times, and afterwards, observing the victim laying on the ground. N.T., 11/4/2014, at 86, 88, 122; N.T., 11/5/2014, at 13, 17, 27, 70. Further, according to the testimony of Philadelphia Police Officer Jonathan Mangual, the victim was unresponsive when he arrived at the scene following the shooting, was bleeding from multiple gunshot wounds, and he was pronounced dead at the hospital approximately twenty minutes after the shooting occurred. N.T., 11/4/2014, at 32-36. There was no evidence presented at trial that the victim died of any cause other than the gunshot wounds he sustained.[5] Brown's defense did not involve challenging the cause of the victim's death in any respect.

[5] To establish that the defendant's actions caused the victim's death, this Court has also held that "the Commonwealth is not required to prove that a merely hypothetical supervening event did not take place." *Commonwealth v. Green*, 383 A.2d 877, 879 (Pa. 1978) (citing *Commonwealth v. Williams*, 299, A.2d 643 (Pa. 1973)).

As stated hereinabove, the autopsy report and Dr. Chu's testimony in reliance thereupon established that the cause of the victim's death was multiple gunshot wounds. In the absence of the autopsy report and Dr. Chu's testimony, however, there was competent evidence presented at trial to allow a jury to justifiably conclude, beyond a reasonable doubt, that the victim died as a result of the gunshot wounds. Moreover, Brown's defense was not that the victim died of something other than the multiple gunshot wounds he sustained on the night in question, but that Brown was not the perpetrator of the murder. *See, e.g.,* N.T., 11/6/2014, at 19-20 (in his summation at trial, counsel for Brown acknowledged that gunshots "were definitely fired," but he argued to the jury that the question is, "by whom"). Neither the autopsy report nor Dr. Chu's testimony provided any information regarding the identity of the shooter. Thus, the errors of admitting the autopsy report and Dr. Chu's testimony did not prejudice Brown, or if they did prejudice him, the prejudice he suffered was de minimus. *See Commonwealth v. Young*, 748 A.2d 166, 193 (Pa. 1999). As "it is clear that [these errors] did not contribute to the verdict," they were harmless. *Commonwealth v. Mitchell*, 839 A.2d 202, 214 (Pa. 2003). I therefore concur in the conclusion that Dr. Chu's testimony does not entitle Brown to a new trial.

Chief Justice Saylor and Justice Wecht join this concurring opinion.