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Chain of Fools: Why the Admissibility Bar Should Be Raised for Drug Evidence

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The Chain of Fools: Why the Admissibility Bar Should Be Raised for Drug Evidence

Charles White*

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INTRODUCTION

Leroy Coty’s case started and ended with cocaine. Law enforcement searched Coty’s vehicle and discovered one bag of cocaine inside a Golden Puffs cereal box.¹ After pleading guilty to possession of a controlled

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1. *Ex parte Coty*, 418 S.W.3d 597, 599 (Tex. Crim. App. 2014).

substance, Coty filed for a writ of habeas corpus on the basis that the crime lab failed to properly test the cocaine as a controlled substance that he had possessed.²

In addressing the issue, the Court of Criminal Appeals of Texas noted that courts have applied two conflicting approaches regarding the admissibility of drug evidence. Most courts apply a traditional admissibility standard based on the assumption that the risk of forgery exists with any evidence.³ Other courts, however, impose a higher admissibility bar based on forgery concerns unique to drug evidence.⁴ This Article argues against the majority approach and in favor of a more stringent admissibility standard for drug evidence.

I. AUTHENTICATION FRAMEWORK

Before a party can introduce evidence, it must first provide some indication that the evidence is what the party claims it to be, i.e., it must authenticate the evidence.⁵ For example, a prosecutor seeking to introduce a confession note allegedly written by the defendant must first present evidence that the defendant in fact wrote the letter.⁶ According to Federal Rule of Evidence 901(a), “To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.”⁷

This authentication standard is the same as the conditional relevance standard contained in Federal Rule of Evidence 104(b):⁸ if a reasonable juror could find the conditional fact—authentication—by a preponderance of the evidence, Rule 901(a) has been satisfied.⁹

2. *Id.* at 602.

3. *Id.* at 603.

4. *Id.*

5. Colin Miller & Charles White, *The Social Medium: Why the Authentication Bar Should Be Raised For Social Media Evidence*, 87 TEMP. L. REV. ONLINE 1, 2 (2014).

6. *Id.*

7. FED. R. EVID. 901(a).

8. *See* FED. R. EVID. 104(b) (“When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.”).

9. *See* United States v. Branch, 970 F.2d 1368, 1370 (4th Cir. 1992) (stating that authenticity is a question for the jury and indicating that admissibility is governed by the procedure set forth in Federal Rule of Evidence 104(b)).

Rule 901(a) allows for a party to exclude drug evidence. In *Loper v. State*,¹⁰ “[t]he State sought to establish a long and complicated chain of custody concerning the cocaine.”¹¹ According to the Supreme Court of Delaware:

Because of the foregoing circumstances, and the additional problem that the cocaine field tested and cocaine tested by the Medical Examiner’s office were of questionable similarity, the State cannot be said to have established a valid chain of custody. As a result, the cocaine was not properly authenticated in accordance with [Delaware Uniform Rules of Evidence] 901(a).¹²

Meanwhile, a party can exclude narcotics through authentication without Rule 901. In *Crisco v. State*,¹³ Keith Crisco showed that the State failed to prove that the drug tested was properly authenticated.¹⁴ According to the Supreme Court of Arkansas:

In the case before us, Crisco hinges his contention of lack of authenticity on the fact that Officer Hanes’s description of the drugs differed significantly from that of the chemist, Michael Stage, in color and consistency. In fact, the chemist admitted that he would not have described the substance as off-white powder. Crisco’s point has merit. True, there was no obvious break in the chain of custody of the envelope containing the plastic bag or conclusive proof that any tampering transpired.¹⁵

The court then acknowledged, “Yet, the marked difference in the description of the substance by Officer Hanes and the chemist leads us to the conclusion that there is a significant possibility that the evidence tested was not the same as that purchased by Officer Hanes.”¹⁶

II. CHAIN-OF-CUSTODY FRAMEWORK

A court can exclude drug evidence because of chain-of-custody issues. In *Abbott v. State*,¹⁷ Richard Abbott showed that the State failed to

10. See *Loper v. State*, No. 580, 1992, 1994 WL 10820 (Del. Jan. 3, 1994).

11. *Id.* at *1.

12. *Id.* at *5.

13. *Crisco v. State*, 943 S.W.2d 582 (Ark. 1997).

14. *Id.* at 583.

15. *Id.* at 585.

16. *Id.*

17. *Abbot v. State*, No. 54813, 2010 WL 3497642, at *1 (Nev. July 6, 2010).

establish a chain of custody for the evidence and therefore did not present sufficient evidence to support his conviction.¹⁸ According to the Supreme Court of Nevada:

Based on the trial testimony, we determine that the State failed to establish an apparent link between the single clear package that [the officer] testified he confiscated from Abbott's body during the unclothed search and the four bags of white powdery substance [that other officers] testified to having seen on a table in the drug testing room at CCDC.¹⁹

III. SIXTH-AMENDMENT FRAMEWORK

The following decisions provide illustrations of ineffective-assistance-of-counsel issues in drug cases. In *McBride v. State*,²⁰ the determination that Israel McBride was not entitled to the appointment of a chemist to assist in his defense was reversed.²¹ The Court of Criminal Appeals of Texas found that “[f]rom these cases we conclude that, to meaningfully participate in the judicial process, an indigent defendant must have the same right to inspection as a non-indigent defendant.”²²

As another example of ineffective assistance of counsel, in *United States v. Smith*,²³ Major Eric B. Smith showed that Major BG's performance was deficient in failing to obtain the litigation packet for the negative hair follicle test in time to evaluate its potential for admission in the event that the tactical decision was made to admit the negative test result as substantive evidence.²⁴ According to the U.S. Army Court of Criminal Appeals, “The record demonstrate[d] a reasonable likelihood that the hair follicle test was admissible and sufficiently reliable to warrant a reasonable defense counsel to obtain it in advance of trial, evaluate it, consider its admission, and if admitted, emphasize its weight on findings and, if necessary, sentencing.”²⁵

18. *Id.*

19. *Id.* at *2.

20. *McBride v. State*, 838 S.W.2d 248 (Tex. Crim. App. 1992).

21. *Id.* at 249.

22. *Id.* at 252.

23. *United States v. Smith*, ARMY 20120918, 2015 WL 4400220 (A. Ct. Crim. App. July 17, 2015).

24. *Id.* at *8–10.

25. *Id.* at *10.

IV. DRUG EVIDENCE

According to the Court of Criminal Appeals of Texas in *Ex parte Coty*,²⁶ a single laboratory technician might work on 4,944 cases during a six-year tenure.²⁷ Attorneys are increasingly introducing narcotic evidence at trial. For example, in *State v. Conlin*,²⁸ police officers found marijuana, evidence of an operation to grow marijuana, and several guns while executing a search warrant at Stephen Conlin's residence on October 22, 2010.²⁹ During two subsequent searches, officers found marijuana in a shed in Conlin's backyard.³⁰ Conlin was convicted for possession of five or more kilograms of marijuana with intent to sell.³¹ Later, the Court of Appeals of Minnesota reversed.³² The court noted it was aware of only one case where "nonscientific evidence alone was sufficient to establish the identity and weight of a suspected controlled substance."³³ The court found that "the state failed to produce evidence beyond a reasonable doubt, that Conlin possessed with intent to manufacture one or more mixtures of a total weight of five kilograms or more containing marijuana."³⁴

V. THE ADMISSIBILITY OF DRUG EVIDENCE

A comparison of standards that courts apply to drug evidence reflects two methods. There is a business-as-usual method and a stricter method.

A. The Business-as-Usual Approach

Confronted with narcotic evidence, most courts have applied the traditional approach to admissibility, typically relying on law not customized to narcotics. For instance, in *People v. Jones*,³⁵ Tony Jones was arrested for the possession of five separate packets containing a white, rocky substance that the police believed to be a controlled substance.³⁶

26. *Ex parte Coty*, 418 S.W.3d 597 (Tex. Crim. App. 2014).

27. *Id.* at 599.

28. *State v. Conlin*, No. A13-0666, 2014 WL 1272118 (Minn. Ct. App. Mar. 31, 2014).

29. *Id.* at *1.

30. *Id.*

31. *Id.* at *2.

32. *Id.*

33. *Id.* at *6.

34. *Id.* at *7.

35. *People v. Jones*, 675 N.E.2d 99 (Ill. 1996).

36. *Id.* at 100.

Before trial, the State selected two of the five packets and tested their contents.³⁷ The contents of the remaining three packets were not tested.³⁸ Jones was tried and convicted of possession with intent to deliver 1.4 grams of cocaine, the combined amount that was contained in all five packets.³⁹ The appellate court reversed, finding that the evidence only supported defendant's possession of 0.59 grams of cocaine with intent to deliver.⁴⁰ The Supreme Court of Illinois later agreed, concluding as follows:

When a defendant is charged with possession of a specific amount of an illegal drug with intent to deliver and there is a lesser included offense of possession of a smaller amount, then the weight of the seized drug is an essential element of the crime and must be proved beyond a reasonable doubt.⁴¹

The court acknowledged that “the chemist failed to test a sufficient number of packets to prove beyond a reasonable doubt that defendant possessed one gram or more of cocaine.”⁴² But the court concluded that a chemist generally need not test every sample seized in order to render an opinion as to the makeup of the substance of the whole.⁴³

B. The Stricter Approach

Other courts have raised the admissibility bar in cases involving narcotic evidence. In *State v. Roche*,⁴⁴ James Roche and Roy Sweeney were convicted of methamphetamine possession.⁴⁵ After convictions, it became public knowledge that a chemist had engaged in conduct such as “self-medicating with heroin sent to the crime lab for testing purposes.”⁴⁶ That chemist was the chemist who tested the substances recovered in both Roche and Sweeney's cases and who reported them to be methamphetamine.⁴⁷

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 101.

43. *Id.* at 100.

44. *State v. Roche*, 59 P.3d 682 (Wash. Ct. App. 2002).

45. *Id.* at 686.

46. *Id.*

47. *Id.*

The Court of Appeals of Washington later reversed, finding that “this newly discovered evidence of [the chemist’s] malfeasance broke the chain of custody and tainted the integrity of Roche and Sweeney’s trials.”⁴⁸ Specifically, the court observed that “a rational trier of fact could reasonably doubt [the chemist’s] credibility regarding his testing of any alleged controlled substances, not just heroin, and regarding his preservation of the chain of custody during the relevant time period.”⁴⁹

Later, in *Ex parte Coty*, the Court of Criminal Appeals of Texas moved *Roche* forward when considering whether a due process violation should be presumed when a laboratory technician has committed misconduct in another case.⁵⁰ According to the court:

After thoroughly reviewing the record, the filed briefs, and cases from other jurisdictions, we hold that an applicant can establish that a laboratory technician’s sole possession of a substance and testing results derived from that possession are unreliable, and we will infer that the evidence in question is false, if the applicant shows that: (1) the technician in question is a state actor; (2) the technician has committed multiple instances of intentional misconduct in another cases or cases; (3) the technician is the same technician that worked on the applicant’s case; (4) the misconduct is the type of misconduct that would have affected the evidence in the applicant’s case; and (5) the technician handled and processed the evidence in the applicant’s case within roughly the same period of time as the other misconduct.⁵¹

VI. RAISING THE BAR

The split of authority acknowledged by the Court of Criminal Appeals of Texas in *Ex parte Coty* suggests the test that should be used for determining whether the admissibility bar should be raised for narcotic evidence: if the risk of forgery with narcotic evidence is similar to the forgery risk for other evidence, and if the circumstantial evidence typically used to admit exhibits under law not customized to narcotics is similarly able to quell concerns regarding that risk, then the admissibility bar should not be raised. But if there is a higher forgery risk with narcotic evidence, or if the typical circumstantial evidence does not alleviate doubts

48. *Id.*

49. *Id.* at 690–91.

50. *Ex parte Coty*, 418 S.W.3d 597, 602 (Tex. Crim. App. 2014).

51. *Id.* at 605.

concerning narcotic authorship, then the admissibility bar should be raised.

A. The Higher Forgery Risk Associated with Drug Evidence

Assume the prosecution claims that the defendant possessed cocaine, while the defendant claims that the cocaine is a forgery. How easy will it be to determine whether the cocaine was forged? The Court of Criminal Appeals of Texas relayed a finding from a trial court that a substance losing 10.75 grams between measurements is “attributable to the evaporation of chemical compounds during the thirty-one . . . month period between the initial analysis and reanalysis.”⁵² The U.S. Supreme Court’s opinion in *Melendez-Diaz v. Massachusetts*⁵³ indicated that it is not evident that “what [Massachusetts] calls ‘neutral scientific testing’ is as neutral or as reliable as [Massachusetts] suggests.”⁵⁴ The Supreme Court backed that concern and noted that “[f]orensic evidence is not uniquely immune from the risk of manipulation.”⁵⁵

The Sixth Amendment’s guarantee of a speedy trial in turn allows for the exclusion of prejudicially delayed narcotics, meaning that “excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify.”⁵⁶ The district court’s opinion in *Bachtel* indicated that sometimes “there is simply no way to determine how the witnesses’ memories were impacted or whether the reliability of defendant’s trial was compromised by the lapse of time.”⁵⁷ In other words, the admissibility structure is based upon the foundational belief that the detection of forgeries is important. This supposition is borne out by the multitude of cases in which lab technicians testify that an anonymous substance is illegal.⁵⁸

It is uniquely easy to create, and difficult to detect, narcotic forgeries. On most city streets, supermarkets wholesale identical items. A recent case in which a defendant prevailed against testimony of an expert in the visual-

52. *Id.* at 601 (quoting the “findings of the trial court”).

53. *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009).

54. *Id.* at 318.

55. *Id.*

56. *United States v. Bachtel*, No. 13-00159-01-CR-W-FJG, 2015 WL 2151788, at *3 (W.D. Mo. May 7, 2015).

57. *Id.*

58. *See, e.g., Colbert v. State*, 547 S.E.2d 714 (Ga. Ct. App. 2001).

comparison or visual-assessment method illustrates the susceptibility of narcotic chemistry to analysis error.⁵⁹

B. The Impracticability of Standard Admissibility

Such concerns about narcotic forgery might be acceptable if courts applied an admissibility standard that substantially quelled concerns about genuineness. As noted, courts typically allow for the admission of narcotic evidence under laws not customized to narcotics. The problem is that, as currently applied, laws not customized to narcotics are outdated rules in a biochemical world. The following cases suggest methods to better exclude drug evidence.

1. Dogs

First, a dog may be shown to be the reason narcotics must be excluded. As support for this proposition, consider *State v. Farmer*.⁶⁰ In *Farmer*, law enforcement officers conducted a warrantless search of the defendant's car based, in part, on an alert by a drug-detection dog.⁶¹ The trial hinged on the admissibility of the dog-alert testimony, indicating there was probable cause to search the car.⁶² The Court of Appeals of Oregon found that the dog-alert testimony was improperly admitted because "the record d[id] not establish that [the dog's] alert was sufficiently reliable to contribute to a conclusion that there was probable cause to search defendant's car."⁶³

In the 21st century, the extraordinary has become ordinary, and the notion that many chemical makeups are peculiarly in the knowledge of a wild animal or small domesticated pet seems quaint. And yet, many courts deem narcotic evidence admissible based upon the assumption of such animal knowledge.⁶⁴

59. See, e.g., *State v. Shalash*, 13 N.E.3d 1202, 1203 (Ohio Ct. App. 2014) (reviewing the trial court's decision not to grant the request for a Daubert hearing on a motion in limine to exclude the state's expert testimony on whether the substances seized from his premises by police were in fact controlled substance analogs).

60. *State v. Farmer*, 311 P.3d 888 (Or. Ct. App. 2013).

61. *Id.* at 889.

62. *Id.* at 890.

63. *Id.* at 900.

64. *Id.* at 893.

2. Scales

Second, cases indicate that narcotics may be excluded by scale circumstances indicating lab problems. In *State v. Richardson*,⁶⁵ the district court for Hall County, Nebraska allowed for testimony regarding the accuracy of the scale used to weigh the cocaine in part because “the court overruled Richardson’s objection based on ‘lack of proper and sufficient foundation, foundation contains hearsay and confrontation.’”⁶⁶ Before it was reversed, the jury found Richardson guilty, and it further found that the weight of the mixture containing cocaine was 10.25 grams.⁶⁷ On appeal to the Supreme Court of Nebraska, Richardson alleged that the court of appeals erred when it affirmed the district court’s admission of evidence of the weight of the cocaine over his objection that there was not sufficient foundation regarding the accuracy of the scale used to weigh the cocaine.⁶⁸ The state supreme court found that the chemist’s testimony was improperly admitted because “testimony regarding general procedures used by the laboratory was not sufficient foundation to admit her testimony regarding the weight of the cocaine.”⁶⁹

In order for any of these rulings to hold water, it would have to be extraordinary for anyone other than the alleged author to have possessed the narcotics. In *Regan v. State*,⁷⁰ this was a possibility because even though Regan was convicted of felony possession of marijuana after being arrested while driving, the Supreme Court of Wyoming reversed in part after finding “the evidence insufficient as a matter of law to support a conviction of constructive felony possession.”⁷¹ In *United States v. Pecina*,⁷² the district court acknowledged that the quantity of drugs is relevant and most often will be offered in the government’s case-in-chief, because it must be proved to a jury and will impact the charge.⁷³ Moreover, in *Pecina*, the government tried to request to videotape the defense expert’s work in weighing and testing the drugs.⁷⁴ A request to videotape the defense expert’s work is more than ironic given that crime laboratories

65. *State v. Richardson*, 830 N.W.2d 183 (Neb. 2013).

66. *Id.* at 185.

67. *Id.* at 186.

68. *Id.*

69. *Id.* at 190.

70. *Regan v. State*, 350 P.3d 702 (Wyo. 2015).

71. *Id.* at 710.

72. *United States v. Pecina*, 302 F.R.D. 492 (N.D. Ind. 2014).

73. *Id.* at 494.

74. *Id.* at 496.

do not provide videotape of the lab, and the crime labs are where the misconduct occurs.

All of these cases reinforce the reality that we live in a world in which *almost* no chemical makeup is certain. Moreover, once material is collected from the scene, the word “almost” can be removed from the previous sentence. Thus, it seems appropriate to raise the bar on exactly what type of information allows for admissibility under laws not customized to narcotics.

For instance, in *State v. Irwin*,⁷⁵ “during a trial in Kent County Superior Court, it was discovered that drug evidence had been in a sealed envelope stored at the Chief Medical Examiner’s Office Controlled Substances Unit (‘OCME drug lab’) was missing, despite their being no appearance of tampering.”⁷⁶ Someone had replaced the actual drugs that were seized with blood-pressure pills.⁷⁷ One subsequent investigation uncovered “multiple issues at the OCME drug lab relating to the storage of the evidence, security at the lab, documentation of the evidence’s arrival at and movement within the lab, and other failures in protocol.”⁷⁸

Irwin reflects the reality of modern crime labs and the fact that scientific hypothesis is truly hypothesis, especially in the realm of narcotic chemistry. Courts should not rely on lab reports and someone’s testimony to conclude that the facts contained in the report are genuine and that the drug was in fact in the possession of the alleged author of the narcotic substance.

3. Analysis Equipment

The analysis equipment used on drugs may indicate inadmissibility. In some cases involving the admissibility of narcotic evidence, however, courts have tried to extend the protection of analysis equipment to a formula—the forensic formula—that is less hospitable to this type of process. For instance, in *People v. Pope*,⁷⁹ the trial court found that the failure of police to preserve for testing an apparently empty chemist’s tray on which screening tests had been conducted deprived the defendant of due process of law and required dismissal.⁸⁰ Meanwhile, the Supreme Court of Colorado found that if the trial court concludes that the defendant’s due process rights were violated, under either the U.S. or

75. *State v. Irwin*, No. 1309012464, 2014 WL 6734821 (Del. Nov. 17, 2014).

76. *Id.* at *1.

77. *Id.*

78. *Id.*

79. *People v. Pope*, 724 P.2d 1323 (Colo. 1986).

80. *Id.*

Colorado Constitution, because the officer failed to preserve the residue of the field test, then the trial judge must decide on the appropriate sanction.⁸¹

This case illustrates two problems with applying a liberal version of the law on analysis equipment to narcotic evidence. Under the traditional law of analysis equipment, one would want to preserve the material because the material has intrinsic legal value. In these cases, the material would be put back on the market through the likelihood that someone else could legally use the original.

Conversely, because narcotics do not have similar characteristics, and because narcotics can only be sold on black markets, people like the law enforcement official in *Pope* are trying to get rid of the narcotics as fast as they can. In *Commonwealth v. Scott*,⁸² the chemist “deliberately committed a breach of lab protocols by removing the samples from the evidence locker without following proper procedures,”⁸³ and the same chemist “forged an evidence officer’s initials.”⁸⁴ Courts such as the *Scott* court also seem to grasp the way that crime labs work in applying the analysis-equipment doctrine. For a crime lab to report accurate information, the chemist cannot burglarize the drug lockers or pilfer the evidence vault to get high. On the other hand, crime labs generally do not feature video cameras that can be copied or re-shared with anyone who needs them, who is usually anyone with a cocaine charge, even if the person already entered a plea. Therefore, the fact that a chemist said that a given substance is illegal says nothing more than that the chemist thought the defendant’s cocaine was admissible.

One of the few courts to recognize the problems with applying a liberal version of the law on analysis equipment to narcotic evidence was an appellate court in Illinois in *People v. Raney*.⁸⁵ In *Raney*, the court noted that in a controlled substance prosecution, the State must present sufficient evidence that the substance at issue is in fact a controlled substance, and the court also found that “the State failed to prove defendant guilty beyond a reasonable doubt based on the lack of proper foundation for [the expert’s] opinion that the substance in the 14 packets contained cocaine.”⁸⁶

Given the difference between a letter and one kilogram of cocaine, courts should apply something approximating the more rigorous analysis utilized by the courts in *Scott* and *Raney*. It should not be enough that the

81. *Id.* at 1327.

82. *Commonwealth v. Scott*, 5 N.E.3d 530 (Mass. 2014).

83. *Id.* at 536.

84. *Id.*

85. *People v. Raney*, 756 N.E.2d 338 (Ill. App. Ct. 2001).

86. *Id.* at 339–41.

alleged author was identified with cocaine by a chemist; instead, courts should require additional evidence that links the alleged author to the cocaine.

Many courts today use a less rigorous analysis that only requires identification by a chemist to admit narcotic evidence. There are at least a few problems with applying this analysis to narcotic evidence. The defendant could be singled out because his grocery flour comes back as cocaine, for example.

The analysis equipment may indicate inadmissibility or more. As support for this proposition, consider *Commonwealth v. Fernandez*,⁸⁷ a case in which Carlos Fernandez was charged with possessing cocaine with intent to distribute.⁸⁸ The government was allowed to admit certificates of analysis without calling the technicians who performed the laboratory tests to testify.⁸⁹ After Carlos was convicted, the U.S. Supreme Court held in *Melendez-Diaz v. Massachusetts* that certificates of analysis are testimonial statements the admission of which must be accompanied by live testimony that can be confronted.⁹⁰ In *Fernandez*, the Supreme Judicial Court of Massachusetts observed, “As to the certificate of analysis admitted to prove that the plastic bag found under the seat of [Carlos’s] automobile was cocaine, it was the only evidence of the identity of the bag’s contents.”⁹¹ The court noted, “Without question, the admission of the certificate of analysis was not harmless beyond a reasonable doubt.”⁹² The court ordered Carlos’s convictions reversed.⁹³

Fernandez should not be read for the proposition that a chemical analysis can never be used to admit particular narcotic content given the abundance of misconduct in crime laboratories. But, if a case features evidence of prior or subsequent self-medicating or stealing drugs; “dry labbing,” or falsifying test results at the same time; or interested third parties accessing the lab, then the proponent should have to present evidence of something beyond the testimony of a chemist or the criminal background of the alleged author.

87. *Commonwealth v. Fernandez*, 934 N.E.2d 810 (Mass. 2010).

88. *Id.* at 812.

89. *Id.* at 822.

90. *Id.* (citing *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009)).

91. *Id.* at 823.

92. *Id.*

93. *Id.*

CONCLUSION

Courts are at a crossroads with regard to the admissibility of narcotic evidence. Most courts cling to the belief that the risk of forgery of narcotic evidence is no different than the forgery risk of other types of evidence, and they continue to apply an admissibility standard put in place when the “theory of science” was still primarily a theory. A few courts, however, are beginning to recognize that law not customized to narcotics is an outdated rule in a biochemical world that must be ratcheted up to address both an organic world where no substance identity is certain and a formula—the forensic formula—where controlled substances are fungible and highly susceptible to dry labbing. This Article is a first attempt at addressing how to raise the bar on the admissibility of narcotic evidence.