

... [In *Norman*,] [w]e ... held that, for three reasons, Intoxilyzer certificates of accuracy were not “testimonial”:

First, the certifications in this case do not resemble the classic kind of testimonial evidence at which the Confrontation Clause was aimed - *ex parte* examinations of witnesses intended to be used to convict a particular defendant of a crime. Rather, the certifications are evidence about the accuracy of a test result arrived at by a machine. They were created by state employees in the course of carrying out routine ministerial duties required by statute and administrative rule to certify the accuracy of test results of Intoxilyzer machines. . . .

Second, the *Crawford* court emphasized the investigative and prosecutorial functions held by seventeenth and eighteenth-century English justices of the peace, observing that police officers and prosecutors perform a similar function today. It is the exercise of those kinds of functions that implicate the Sixth Amendment right to confront. But here, there is no evidence in the record that the technicians were functioning as the proxy of the police investigation concerning defendant . . . Rather, it appears that they were merely ensuring that the machines operated properly and provided accurate readings before and after defendant’s test result was obtained. . . .

Third, . . . [b]ecause the Sixth Amendment is implicitly deemed to incorporate the hearsay exceptions established at the time of the founding, it follows that modern-day hearsay exceptions enacted by statute will not be deemed testimonial in nature if they parallel the hearsay exceptions that were not by their nature testimonial at common law . . . . Here, the certifications of the accuracy of an Intoxilyzer machine in Oregon are more akin to hearsay statements that were not considered testimonial in nature at common law, such as public or business records.

*Bergin*, 217 P.3d at 1088. Conceding that the U.S. Supreme Court held in *Melendez-Diaz* “that affidavits from a forensic analyst showing that the substance seized from the defendant was cocaine were ‘testimonial’ and inadmissible because the state did not establish that the analyst was unavailable and the defendant had had the opportunity for cross-examination,” the Oregon appellate court discerned no violation of the