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1ST DISTRICT

No. 10-8505

IN THE
SUPREME COURT OF THE UNITED STATES

SANDY WILLIAMS,

Petitioner,

v.

ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF ILLINOIS

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should grant certiorari to review the Illinois Supreme Court's judgment that a testifying expert's reliance on the results of DNA analysis conducted at a private laboratory did not implicate the Confrontation Clause because references to the data generated by non-testifying analysts was offered not for the truth of the matter asserted, but rather for the non-hearsay purpose of explaining the basis of the expert's own, independent opinions.

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BRIEF IN OPPOSITION

The certiorari petition should be denied. The Illinois Supreme Court's judgment rests on this Court's express pronouncement in *Crawford v. Washington*, 541 U.S. 36 (2004), that the Sixth Amendment's Confrontation Clause does not bar the admission of statements admitted for a purpose other than proving the truth of the matter asserted. In assessing whether the testimony of DNA expert Sandra Lambatos implicated petitioner's confrontation rights, the Illinois Supreme Court recognized that Lambatos referenced DNA testing conducted at Cellmark, a private laboratory, only to explain how she formed her own expert opinions. Thus, the only statements offered for the truth of the matter asserted against petitioner were Lambatos's opinions, which were introduced via her live in-court testimony and were subject to cross-examination. Cellmark's reports regarding DNA analysis of the vaginal swabs were not introduced at trial, nor did Lambatos parrot the reports during her testimony, thus distinguishing this case from *Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527 (2009), and *New Mexico v. Bullcoming*, 226 P.3d 1 (N.M.), *cert. granted*, 131 S.Ct 62 (2010). Despite petitioner's claim to the contrary, this case does not implicate any split in authority. Indeed, federal appellate courts and state high courts, when presented with similar facts, uniformly hold that a testifying expert may rely on the work of other experts in formulating opinions admitted pursuant to Federal Rule of Evidence 703 and its state counterparts without triggering Confrontation Clause concerns. The Illinois Supreme Court's judgment is in line with these decisions and the decisions of this Court.

STATEMENT

1. Petitioner Sandy Williams was convicted of two counts of aggravated criminal sexual assault and one count each of aggravated kidnapping and aggravated robbery. Pet. App. C1. At petitioner's bench trial, L.J. testified that petitioner approached her from behind as she walked near an alley on her way home from work on February 10, 2000. *Id.* at C2. Petitioner forced L.J. into a beige station wagon and ordered her to remove her clothes. *Id.* Petitioner vaginally penetrated L.J. with his penis while he choked her. *Id.*; R. III107-09. Petitioner then turned L.J. onto her stomach and attempted to penetrate L.J.'s anus with his penis. Pet. App. C2. Petitioner pushed L.J. out of the vehicle and drove away with L.J.'s coat, money and other items. *Id.* at C2.

L.J. ran home and her mother called the police. *Id.* Chicago police officers responded, spoke with L.J., and issued a "flash" message describing the offender and car. *Id.* Later, an emergency room doctor conducted a vaginal exam of L.J. and took vaginal swabs, which the doctor sealed in a criminal sexual assault evidence collection kit along with L.J.'s blood sample. *Id.* at C2-C3. The kit was inventoried by a Chicago Police detective and sent to the Illinois State Police ("ISP") Crime Lab for testing and analysis. *Id.* at C3.

On August 3, 2000, police arrested petitioner for an unrelated offense and, pursuant to court order, drew a blood sample from him. Pet. App. C3. Following the DNA analysis described below, L.J. identified petitioner from a line up on April 17, 2001. *Id.* at C4. Petitioner was then arrested for the instant offenses. *Id.* At trial, L.J. identified petitioner in court as the man who sexually assaulted her. R. III104.

Three witnesses testified at petitioner's trial concerning the DNA evidence in this case. First, ISP Crime Lab forensic scientist Karen Kooi testified that, using STR (short tandem repeat) DNA analysis, she extracted a DNA profile from petitioner's blood standard and entered the profile into the database at the ISP Crime Lab. *Id.* at C3.

Second, ISP Crime Lab forensic biologist Brian Hapack testified that he received L.J.'s sexual assault evidence collection kit and performed tests on the vaginal swabs that confirmed the presence of semen. *Id.* Hapack repackaged and sealed the vaginal swabs and L.J.'s blood standard in accordance with accepted procedure for preserving evidence for future DNA testing. *Id.*; R. JJJ48-49; R. JJJ52.

Third, former ISP Crime Lab forensic biologist Sandra Lambatos testified that L.J.'s vaginal swabs and blood standard were sent to Cellmark Diagnostic Laboratory in Germantown, Maryland, for DNA analysis on November 29, 2000.¹ Pet. App. C3. Cellmark returned the vaginal swabs and blood standard to the ISP Crime Lab on April 3, 2001. *Id.* After the trial court accepted Lambatos as an expert in forensic biology and forensic DNA analysis, she testified about polymerase chain reaction (PCR) DNA testing and explained how PCR-based analysis is used to identify a male DNA profile from semen. *Id.* at C4. The analyst isolates and extracts DNA from a sample, then amplifies it until a workable amount of DNA is present. *Id.* The amplified DNA is then examined through a genetic analyzer, and specific areas of interest are tagged with florescent markers, thus generating a DNA profile that can be compared to other profiles. *Id.*; R. JJJ62.

¹ Lambatos testified that the ISP Crime Lab sent evidence samples to Cellmark during 2000-2001 to expedite the analysis of evidence and to reduce the backlog at the ISP Crime Lab, and she detailed the procedures surrounding this arrangement. R. JJJ63-65.

Lambatos testified that it is commonly accepted practice in the scientific community for one DNA expert to rely on the records of another DNA analyst to complete her own work and that she routinely relied on DNA analysis performed at Cellmark. Pet. App. C4-5. Lambatos further testified that Cellmark was an accredited laboratory and that Cellmark's testing and analysis methods were generally accepted in the scientific community. *Id.* at C4.

Lambatos testified that she was assigned to work on the instant case at the ISP Crime Lab. R. JJJ69-71. A computer match was generated of the male DNA profile identified in L.J.'s vaginal swabs to petitioner's DNA profile in the database. *Id.* After the database match was generated, Lambatos compared the male profile identified in L.J.'s vaginal swabs to the DNA profile identified by Kooi in petitioner's blood standard. *Id.*; Pet. App. C5. Lambatos explained that the ISP Crime Lab uses the database as an investigative tool; after a database search is run, the analysts examine the actual data to determine whether there is a DNA match. R. JJJ79. Thus, after the database match was generated in this case, Lambatos compared petitioner's DNA profile to the electropherogram of the E2 (sperm) fraction of L.J.'s vaginal swabs. R. JJJ91. In Lambatos's expert opinion, the semen from L.J.'s vaginal swabs was a match to petitioner. Pet. App. C5. Lambatos testified that the probability of this profile occurring in the general population was one in 8.7 quadrillion black, one in 390 quadrillion white, and one in 109 quadrillion Hispanic unrelated individuals. *Id.* Lambatos did not observe any degradation or irregularities in the sample from L.J.'s vaginal swab. *Id.*

On cross-examination, Lambatos repeated that Cellmark was an accredited

laboratory; it had to meet certain guidelines to receive accreditation and to perform DNA analysis for the ISP Crime Lab. *Id.* at C4. Lambatos further explained that calibrations and internal proficiencies had to be in place for Cellmark to perform the DNA analysis in this case. *Id.* While Lambatos did not personally observe the testing of the samples in the laboratory or do any biological testing herself, she reviewed the electropherogram of the vaginal swab and made her own determinations, interpretations, and conclusions about the evidence. *Id.* at C5; R. JJJ75-76. Specifically, Lambatos examined the electropherogram for the E2 fraction and the donor profile generated at Cellmark. R. JJJ80-82. The data indicated a mixture in the E2 fraction, and some of the alleles were consistent with the victim's profile. R. JJJ81, JJJ83. Lambatos explained that the female epithelial cells are separated from any possible sperm cells during differential extraction of a vaginal swab, thus resulting in either a single donor profile or a mixture. R. JJJ80-82.

Cellmark's report was not introduced into evidence at petitioner's trial. Pet. App. C5. While Lambatos referenced documents she reviewed in forming her own independent opinion and answered questions regarding the data at particular loci, she did not read the contents of any Cellmark report into evidence. *Id.*; R. JJJ75-87. Contrary to representations made in the petition,² Lambatos repeatedly testified that she reviewed the raw data generated at Cellmark, in addition to Cellmark's report and allele chart, and that she independently interpreted the data during her comparative analysis to petitioner's known DNA profile. R. JJJ75, JJJ80, JJJ81, JJJ82, JJJ91, JJJ98, JJJ101, JJJ103.

² Petitioner incorrectly states that Lambatos "did not review any of the raw data produced by such analysis. Rather she merely performed the statistical matching of the DNA profile provided to her by Cellmark with a profile derived from a blood sample taken from Williams." Pet. at 14.

Furthermore, in response to defense questioning, Lambatos referenced the raw data to explain how interpretation of mixtures differs from single donor profiles, to illustrate how Cellmark's process and reporting guidelines differ from those used at the ISP Crime Lab, and to field specific questions from defense counsel regarding how she would interpret the allelic patterns identified at particular loci. R. JJJ84-88, JJJ90-95, JJJ97-99.

At the conclusion of Lambatos's testimony, petitioner moved to strike the evidence of testing completed at Cellmark on foundational and Sixth Amendment Confrontation Clause grounds. Pet. App. C5. The trial court denied the motion, stating: "I don't think this is a *Crawford* scenario, and I agree with the State that *** the issue is *** what weight do you give the test, not do you exclude it and accordingly your motion to exclude or strike the testimony of the last witness or opinions based on her own independent testing of the data received from Cellmark will be denied." *Id.* at C6.

Petitioner did not present any evidence. *Id.* The trial court ultimately found petitioner guilty of two counts of aggravated criminal sexual assault and one count each of aggravated kidnapping and aggravated robbery. *Id.* The court sentenced petitioner to two concurrent terms of natural life imprisonment for the aggravated criminal sexual assault convictions and a concurrent term of 15 years' imprisonment for aggravated robbery; the court sentenced petitioner to a consecutive term of 60 years' imprisonment for aggravated kidnapping. *Id.*

2. On appeal, the Illinois Appellate Court affirmed petitioner's convictions. *Id.*; *People v. Williams*, 895 N.E.2d 961 (Ill. App. Ct. 2008). In doing so, the court concluded that Lambatos's testimony did not violate petitioner's constitutional right to confrontation,

stating: “Cellmark’s report was not offered for the truth of the matter asserted; rather, it was offered to provide a basis for [Lambatos’s] opinion. Lambatos clearly testified that she performed her own evaluation of the data, which included Kooi’s findings, Hapack’s findings and Cellmark’s report, prior to forming her opinion.” Pet. App. A6. One justice dissented, concluding that the State failed to lay a sufficient foundation for Lambatos’s opinion testimony as a matter of Illinois law. *Id.* at A7-10.

3. The Illinois Supreme Court granted leave to appeal. In his brief to the Illinois Supreme Court, petitioner argued that Lambatos should not have been allowed to testify about Cellmark’s report because the report constituted testimonial hearsay. Petitioner further argued that, because the evidentiary value of Lambatos’s opinion depended on the trier of fact accepting Cellmark’s report as accurate, the report was offered for the truth of the matter asserted and constituted hearsay for Confrontation Clause purposes. While petitioner’s case was pending, this Court issued its opinion in *Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527 (2009). In his reply brief to the Illinois Supreme Court, petitioner argued that *Melendez-Diaz* was directly analogous to his case and therefore compelled reversal of the state appellate court’s judgment. Pet. App. C16-18.

The Illinois Supreme Court affirmed the state appellate court’s judgment regarding Lambatos’s testimony.³ Pet. App. C1-19. Like the appellate court, the Illinois Supreme Court recognized that petitioner’s constitutional right to confrontation was neither implicated nor violated by Lambatos’s expert testimony. Pet. App. C12-19. The court

³ The Illinois Supreme Court reversed the state appellate court’s judgment on an unrelated sentencing issue and affirmed the sentence originally imposed by the trial court. Pet. App. C19.

reasoned that, under *Wilson v. Clark*, 427 N.E.2d 1322 (Ill. 1981), and its progeny (wherein Illinois adopted the pre-amended version of Federal Rule of Evidence 703), Lambatos's references to Cellmark's analysis of the vaginal swabs was not hearsay because it was not offered for the truth of the matter asserted. Pet. App. C12-19. Rather, Lambatos referenced DNA testing completed at Cellmark for the limited purpose of explaining the basis of her opinion. *Id.* Citing this Court's express pronouncement in *Crawford v. Washington*, 541 U.S. 36 (2004), that the Confrontation Clause does not bar the admission of testimonial statements admitted for a purpose other than proving the truth of the matter asserted, the Illinois Supreme Court concluded that "*Crawford* considerations did not apply here." Pet. App. C12, C18.

The Illinois Supreme Court also rejected petitioner's argument that this case is "directly analogous" to *Melendez-Diaz*. *Id.* In distinguishing *Melendez-Diaz*, the court noted that Cellmark's analysis was confined to processing the vaginal swabs and did not include the type of comparative analysis conducted by Lambatos. *Id.* at C18. The Illinois Supreme Court again highlighted that no Cellmark reports were introduced or read into evidence and that Lambatos testified about her own expertise, judgment and skill in interpreting the specific alleles identified in the vaginal swabs and her general knowledge of the protocols and procedures in place at Cellmark. *Id.* at C18.

Two justices opined in a special concurrence that the DNA evidence should have been excluded on Illinois-law foundational grounds, but concluded that the foundational error was harmless. Pet. App. C20-27. The specially concurring justices did not address the Sixth Amendment Confrontation Clause issue. *Id.*

