NO. 1024053

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SAMANTHA HALL-HAUGHT,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR ISLAND COUNTY

The Honorable Carolyn Cliff, Judge
Superior Court Cause No. 21-1-00010-15

REPLY TO PETITION FOR REVIEW

GREGORY M. BANKS
ISLAND COUNTY PROSECUTING ATTORNEY
WSBA # 22926
Law & Justice Center
P.O. Box 5000
Coupeville, WA 98239
(360) 679-7363

By: David E. Carman
Deputy Prosecuting Attorney
WSBA # 39456
Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Cases

Constitutional Provisions

Regulations and Rules

I. IDENTITY OF RESPONDENT AND COURT OF APPEALS DECISION

The State of Washington, respondent below, asks this Court to deny review of the Court of Appeals unpublished decision in State v. Hall-Haught, No. 84247-1-I.

II. ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Appeals decision follows the legal principles and analyses from the Supreme Court and from published decisions of the Court of Appeals.

2. Whether the Petition for Review raises a significant question of law under the Washington or Federal Constitutions or involves an issue of substantial public interest.

III. STATEMENT OF THE CASE

On September 12, 2019, the Samantha Hall-Haught drove a 2001 Honda Civic northbound on South Camano Drive, approaching Irenella Lane on Camano Island, Island County, Washington. RP 270-71, 348-49. At the same time, Kyra Hall was driving her 2010 Toyota Sienna van southbound on South Camano Drive. RP 266. Mrs. Hall passed Irenella Lane and

entered the curve when she observed a vehicle's headlights approach her at a frighteningly fast rate of speed. RP 270. Mrs. Hall observed the headlights were not only approaching "really, really fast", but they were travelling in a straight line, not attempting to turn or bend or navigate the curve. RP 273. Ms. Hall-Haught drove over the centerline into the southbound lane and struck Mrs. Hall with the driver's side headlight area of her car into Mrs. Hall's left front wheel area. RP 367, 418.

The impact of the collision pushed Mrs. Hall's Toyota Sienna onto the grassy shoulder where she came to rest. RP 405. She lost consciousness as a result of the collision and woke up to find herself pinned inside the minivan. RP 273. She was in immense pain, and she could barely breathe. Id. She was able to locate her phone using the charging cable that was plugged into the car and called her husband, James Hall. RP 274. During the call, Mrs. Hall was having a very difficult time breathing and speaking, but she was eventually able to explain that she had been in a serious collision and provide her approximate location.

RP 292-93. Mr. Hall then called 911 and relayed that information before travelling to the scene of the collision. RP 293.

Once medical personnel arrived, they were required to use the Jaws of Life to extricate Mrs. Hall from her vehicle. RP 308. They placed a collar around her neck and used a backboard to move her to a stretcher and then into an ambulance. RP 308-09. She was transported to Skagit Valley Hospital for assessment and treatment. RP 240. Following assessments and scans, Mrs. Hall was diagnosed with three neck fractures, a broken rib, and lung contusion among other injuries. RP 244.

The impact of the collision rotated Ms. Hall-Haught's Honda Civic counter-clockwise until she came to rest across the centerline facing southwest. RP 405. The trunk opened up and threw or deposited a significant amount of personal articles, paper, and magazines northbound into the roadway and west side embankment. RP 363-64. The debris from Ms. Hall-Haught's trunk included some marijuana paraphernalia, a pipe, and empty dispensary containers. RP 407.

Ms. Hall-Haught exited her Honda Civic and fled the collision on foot. RP 345. She contacted a residence on Irenella Lane and asked for help. RP 326-27. Tara Rispoli, the resident at the house, called 911 and remained with Ms. Hall-Haught until medical assistance and law enforcement arrived. RP 327-29. Deputy Luke Plambeck of the Island County Sheriff's Office responded to the collision scene and made his way to the Rispoli residence where he located Ms. Hall-Haught. RP 347. She was on the porch of the house, in a blanket and crying. Id. Dep. Plambeck asked her what happened, and she admitted she was the driver and sole occupant of her vehicle. RP 348-49.

Ms. Hall-Haught was also taken to Skagit Valley Hospital for medical treatment. RP 413. Washington State Patrol Trooper Ryan Williams contacted her at the hospital. Id. After being provided her Miranda warnings, Ms. Hall-Haught agreed to speak with Trooper Williams about the collision. RP 414-15. She informed him that she was the driver of the sedan, that she was traveling northbound to Stanwood to pick up a friend, and that

she was alone in the vehicle. RP 415-16. And she confirmed that she had crossed the center line. RP 418.

Trooper Williams also asked Ms. Hall-Haught about marijuana use, and she informed him that her boyfriend had smoked in the car. RP 416. She denied recent use herself, though she admitted to using marijuana four days prior. Id. Based on the nature of the collision, his observations that her eyes were bloodshot and watery with slightly dilated pupils, and Ms. Hall-Haught's admission to marijuana use, Trooper Williams requested and was granted a search warrant to obtain her blood. RP 420. Skagit Valley Hospital technician Elizabeth Edwards performed the blood draw. RP 445.

At trial, Katie Harris, a supervisor with the Washington State Toxicology Laboratory, testified that testing of the Ms. Hall-Haught's blood sample at the laboratory found 1.5 nanograms of active THC and 14 nanograms of carboxy THC per milliliter of blood. RP 486. As a supervisor, Ms. Harris's regular duties include reviewing case files. RP 459. Doing

extractions, putting extractions onto an instrument, and preparing data for review are tasks that are generally done by a bench-level scientist. RP 460. In this case, Ms. Harris did not perform the physical testing tasks herself. RP 467. However, Ms. Harris reviewed all of the contents of the case file, including all the administrative information, sample extraction and equipment calibration materials, and each piece of the raw blood testing data. RP 467-83. Based on her full review of the entire case file, Ms. Harris determined that the extraction and testing protocols were done correctly and the standard procedures for the laboratory were followed. RP 483. And, based on her review of each piece of data in the case file, she reached her own, independent conclusion as to the results of the blood testing. RP 496.

Ms. Hall-Haught was charged with one count of Vehicular Assault, alleged to have been committed via all three possible prongs of the crime. CP 1-2. Following a jury trial, she was convicted as charged. CP 61. However, the jury was unable to

unanimously agree on any of the three possible prongs of Vehicular Assault. CP 62. Therefore, the trial court imposed a sentence using the standard sentencing range for Vehicular Assault by Disregard for the Safety of Others. CP 63-74.

Ms. Hall-Haught timely appealed her conviction to the Court of Appeals.[1] CP 81. The Court of Appeals upheld the conviction, finding her confrontation rights were not violated because, "the supervisor who testified and was available for cross-examination had independently reviewed the testing and the results and testified to her own opinions about them." Op. at 1.

IV. ARGUMENT

A petition for review will be accepted by the Superior Court only in limited circumstances. RAP 13.4(b). A decision of the Court of Appeals may be reviewed only if it is in conflict with a decision of the Supreme Court or a published decision of the

[1] Ms. Hall-Haught's direct appeal also included arguments regarding the trial court's imposition of fines and fees as part of her sentence. Her Petition for Review includes only her claims regarding the admission of blood test results.

Court of Appeals. RAP 13.4(b)(1), (2). A petition for review may also be granted if it raises a significant question of law under the State or Federal Constitution or if the petition involves an issue of substantial public interest. RAP 13.4(b)(3), (4). The Court of Appeals decision in this case does not conflict with other decisions. And, because the decision followed the analysis described in State v. Lui, 179 Wn.2d 457, 315 P.3d 493 (2014) and City of Seattle v. Wiggins, 23 Wn.App. 2d 401, 515 P.3d 1029 (2022), the petition presents no new significant question of law or issue of substantial public interest.

A. The Court of Appeals decision is not in conflict with a decision of the Supreme Court or a published decision of the Court of Appeals.

The Petition for Review should be denied because the Court of Appeals decision provides a factual distinction, but no legal conflict, between this case and Lui and Wiggins. While a criminal defendant has the right to confront the witnesses against her, U.S. CONST. amend. VI, WASH. CONST. art I**,** § 22, not everyone who makes some affirmation of fact to the tribunal will

fall under the confrontation clause. State v. Lui, 179 Wn.2d 457, 481, 315 P.3d 493 (2014). In Lui, this Court carefully reviewed caselaw regarding confrontation rights for scientific evidence and determined that a person is a "witness" for confrontation clause purposes only if she makes some inculpatory statement of fact to the court. Id. at 471-82.

In applying that test in the context of scientific evidence, the Lui court distinguished between a person who attests to a fact and a person who aids an expert witness in reaching an attestation of fact. Id. at 490. An expert witness may "rely on technical data prepared by others when reaching their own conclusions, without requiring each laboratory technician to take the witness stand." Id. at 483. So, live testimony is only required from witnesses who use their expertise to turn raw data into a conclusion that inculpates a defendant. Id. at 493. In the context of DNA testing, the witness who provided ultimate expert analysis was required to testify, but testimony from additional DNA analysts was not

required because their work merely facilitated the testifying expert's opinion. Id. at 486.

In Wiggins, the Court of Appeals applied the analysis from Lui to the introduction of blood test results via a reviewing toxicologist. City of Seattle v. Wiggins, 23 Wn.App. 2d 401, 515 P.3d 1029 (2022). The Wiggins decision noted this Court's "two-part test 'to determine whether the lack of testimony from a witness who assisted in the preparation of forensic evidence testing implicates the confrontation clause.'" Id. at 410. And it followed the holding in Lui that "an expert's testimony is within the scope of the confrontation clause only if (1) the individual is a 'witness' by virtue of making a statement of fact to the tribunal and (2) the individual is a witness 'against' the defendant by making a statement that tends to inculpate the accused." Id. In Wiggins, the Court of Appeals accepted the unchallenged findings of fact from the trial court that the testifying laboratory supervisor "did not add any original analysis to the work of the primary forensic scientist to render the evidence inculpatory." Id.

at 409. Thus, while the Wiggins court applied the same legal analysis as Lui, it found that, as a matter of fact, the supervisor in that case "did not engage in the sort of independent inquiry required by the case law in order to permit his testimony as the inculpatory witness." Id. at 411.

The Court of Appeals decision in this case applied the same legal analysis as the courts in Lui and Wiggins. The decision below cited the finding in Wiggins that "[t]he BAC number attributed to [the defendant's] blood is the inculpatory statement against him." Op. at 6. But, like Wiggins, the decision below acknowledged that "[i]n Washington, expert witnesses may testify to their own conclusions, even when they rely on data prepared by nontestifying technicians." Op. at 4 (citing Lui, 179 Wn.2d at 483). And the decision below also noted that the Lui test "does not permit 'a laboratory supervisor to parrot the conclusions of his or her subordinates.'" Op. at 5 (citing Lui, 179 Wn.2d at 483).

However, while the Court of Appeals conducted the same legal analysis in both cases, the significant factual differences between this case and Wiggins compelled different results. In Wiggins, the technician who reached the BAC number was required to testify because she was the only witness who reached that number. Wiggins, 23 Wn.App. 2d at 410. Like the supervisor in Wiggins, Katie Harris in this case was a supervisor who reviewed reports prepared by a different forensic scientist rather than being present during the testing. Op. at 6. But, unlike the supervisor in Wiggins, Harris "specifically testified that she 'came to [her] own independent conclusion' following her review of all the data in the file." Op. at 6. Thus, she was relying on technical data prepared by others when reaching her own conclusions rather than merely parroting the conclusions of her subordinates. Op. at 6. So, Harris could provide that testimony in this case because, "the number establishing the THC concentration in Hall-Haught's blood was independently reached by both the lab technician and Harris." Op at 7.

Different results were reached by the Court of Appeals in this case and Wiggins because of the factual differences in the two cases, but both cases followed the same legal analysis that was described in Lui. Because all three cases applied consistent legal principles, this case does not present a conflict with either Wiggins or Lui.

B. The Petition for Review does not present a significant question of law or an issue of substantial public interest.

As noted above, the Court of Appeals legal analysis in this case followed and was consistent with the relevant precedential decisions in State v. Lui, 179 Wn.2d 457, 315 P.3d 493 (2014) and City of Seattle v. Wiggins, 23 Wn.App. 2d 401, 515 P.3d 1029 (2022). The decision below and Wiggins both followed the holding in Lui that an individual's statements come within the scope of the confrontation clause only if the person makes an inculpatory statement of fact to the tribunal. Lui, 179 Wn.2d at 462; Wiggins, 23 Wn.App. 2d at 410; Op. at 4. Wiggins and the decision below also both followed the distinction in Lui that

testimony is required only for "the ultimate expert analysis and not the lab work that leads into that analysis" Lui, 179 Wn.2d at 490; Wiggins, 23 Wn.App. 2d at 410; Op. at 5. While following the analysis from Lui, the facts in Wiggins led to a different conclusion because, unlike the expert in Lui who "engaged in direct analysis of raw data to reach the inculpatory conclusion", the supervisor in Wiggins "did not engage in the sort of independent inquiry required by the case law." Wiggins, 23 Wn.App. 2d at 411.

The Court of Appeals in this case upheld Hall-Haught's conviction because the supervisor's testimony was factually similar to the testimony in Lui and factually distinguishable from the testimony in Wiggins. Like the expert in Lui, Ms. Harris in this case testified to her own conclusion while relying on technical data prepared by others, but she did not merely parrot the conclusions of her subordinates. Compare Lui, 179 Wn.2d 457, 490-91, with Op. at 6-7. Wiggins was factually, but not legally, distinguished because, unlike Harris or the expert in Lui,

the supervisor in Wiggins engaged in no independent inquiry. Compare Wiggins, 23 Wn.App. 2d at 411 with Op. at 6-7.

While Lui, Wiggins, and this case all considered constitutional challenges to the admissibility of expert testimony, all three cases applied the same, consistent legal analysis. The varying results between Wiggins and Lui and this case were due only to differences in their case-specific facts. The Petition for Review does not claim that the Court of Appeals decision below incorrectly applied constitutional or legal principles; instead, the Petition simply disagrees with the Court's factual distinction between this case and Wiggins. That factual disagreement does not present a significant question of law under either the Washington or Federal Constitutions. And it does not involve any issue of substantial public interest that should be determined by this Court.

V. CONCLUSION

The Petition for Review in this case should be denied because the Court of Appeals decision below is not in conflict

with a decision of this Court or a published decision of the Court of Appeals. The petition also presents no significant question of law, and it does not involve an issue of substantial public interest that should be determined by this Court. The decision below followed the legal principles and analyses presented in State v. Lui, 179 Wn.2d 457, 315 P.3d 493 (2014), and applied in City of Seattle v. Wiggins, 23 Wn.App. 2d 401, 515 P.3d 1029 (2022). While the same analysis resulted in admission of evidence in this case and exclusion in Wiggins, that was the result factual differences between the testimony in Wiggins and this case. Those factual differences do not create a significant question of constitutional law, and they do not pose an issue of substantial public interest. The Petition for Review should be denied.

I certify this document contains 2,785 words. RAP 18.17.

Respectfully submitted this 20th day of October 2023.

GREGORY M. BANKS
ISLAND COUNTY
PROSECUTING ATTORNEY

By: 
DAVID E. CARMAN
DEPUTY PROSECUTING ATTORNEY
WSBA #39456

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Plaintiff/Respondent, vs. SAMANTHA HALL-HAUGHT, Defendant/Appellant.	No. 1024053

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury of the laws of the State of Washington that on the below date, the original or an electronic facsimile of the document to which this declaration is attached/affixed was filed in the Supreme Court of the State of Washington, and a true copy was served on the persons named below at the address or email address indicated:

☒ Jared Berkeley Steed, steedj@nwattorney.net
PLLC Koch & Grannis, sloanej@nwattorney.net

Signed at Coupeville, Washington on this 20th day of October, 2023.

Kristin LeClercq
Office Administrator

ISLAND COUNTY PROSECUTING ATTORNEY'S OFFICE

October 20, 2023 - 10:11 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,405-3
Appellate Court Case Title:	State of Washington v. Samantha Hall-Haught
Superior Court Case Number:	21-1-00010-7

The following documents have been uploaded:

- 1024053_Answer_Reply_20231020101123SC423094_5348.pdf
  This File Contains:
  Answer/Reply - Other
  The Original File Name was 2023.10.20 Reply to Petition for Review.pdf

A copy of the uploaded files will be sent to:

- ICPAO_Webmaster@islandcountywa.gov
- Sloanej@nwattorney.net
- office@davidcarmanlaw.com
- steedj@nwattorney.net

Comments:

Sender Name: Kristin LeClercq - Email: k.leclercq@islandcountywa.gov
Filing on Behalf of: David Carman - Email: d.carman@islandcountywa.gov (Alternate Email:)

Address:
PO Box 5000
Coupeville, WA, 98239
Phone: (360) 679-7363

Note: The Filing Id is 20231020101123SC423094