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NO. 84045-8

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SIONE LUI,

Petitioner.

STATE'S SUPPLEMENTAL BRIEF ADDRESSING STAY OF THIS CASE PENDING DECISION IN WILLIAMS V. ILLINOIS

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A. INTRODUCTION

At the direction of this Court, the State submits this supplemental brief regarding the desirability of staying resolution of Lui's appeal pending the decision of the United States Supreme Court in Williams v. Illinois, No. 10-8505.

B. RELEVANT FACTS

In a case that bears significant similarities to Lui's, the Illinois Supreme Court upheld the admission of expert testimony of a forensic biologist with the Illinois State Police ("ISP"). People v. Williams, 238 Ill.2d 125, 939 N.E.2d 268 (2010) The expert, Lambatos, testified that a DNA profile developed at Cellmark Diagnostic Laboratory matched the defendant's, which was on file in the ISP database. Williams, 939 N.E.2d at 270-71. Lambatos had conducted an independent evaluation of underlying data obtained by others, and had used her own expertise and professional judgment to compare the resulting DNA profiles. Id. at 276, 280. Lambatos used the underlying tests only to explain how she formed her own opinion. Id. at 278. Cellmark's report was not itself introduced into evidence. Id. at 272.

The Illinois Supreme Court held that Lambatos's testimony concerning the Cellmark report was not offered for the truth of the

matter asserted, and thus was not hearsay. Id. at 282. Accordingly, the court concluded, the testimony did not violate the Confrontation Clause. Id.

The United States Supreme Court granted certiorari in Williams on June 28, 2011. Williams v. Illinois, ___ S. Ct. ___, 2011 WL 2535081. The Court framed the question presented as follows: "Whether a state rule of evidence allowing an expert witness to testify about the results of DNA testing performed by non-testifying analysts, where the defendant has no opportunity to confront the actual analysts, violates the Confrontation Clause." Appendix A.

C. ARGUMENT

An appellate court has the authority to issue orders, before or after acceptance of review, to ensure "effective and equitable review." RAP 8.3. The United States Supreme Court will decide a question during its upcoming term that is virtually identical to the question presented by Lui's case. Because the question in Lui's case is based solely on the Sixth Amendment's Confrontation Clause, the Supreme Court's opinion, to the extent that it is relevant, will govern the outcome in Lui's case. In accordance with

its longstanding practice, the Court will likely issue a decision by the end of June, 2012.

Should this Court issue a decision in Lui before the Supreme Court's decision in Williams comes down, it is very likely that the losing party would file a petition for certiorari. Given the similarity of the issues in Lui and Williams, the Supreme Court would likely hold any petition in abeyance pending the outcome of Williams.[1] In such case, deciding this petition without benefit of the Supreme Court's opinion in Williams would not likely speed the ultimate outcome in Lui's case. Rather, a stay pending a decision in Williams would promote effective review.

[1] The Court did this with a number of petitions for certiorari pending the outcome of Melendez-Diaz v. Massachusetts, 557 U.S. ___, 129 S. Ct. 2527, 174 L. Ed.2d 314 (2009). See Brief of Respondent (Court of Appeals) at fn 28, 35, 36, 37, 39.

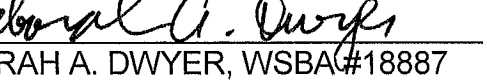
D. CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to stay this case pending a decision in Williams v. Illinois.

DATED this 30th day of August, 2011.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
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APPENDIX A

10-8505 WILLIAMS V. ILLINOIS

DECISION BELOW: 238 Ill. 2d 125

LOWER COURT CASE NUMBER: 107550

QUESTION PRESENTED:

Whether a state rule of evidence allowing an expert witness to testify about the results of DNA testing performed by non-testifying analysts, where the defendant has no opportunity to confront the actual analysts, violates the Confrontation Clause.

CERT. GRANTED 6/28/2011

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to **David B. Zuckerman**, the attorney for the petitioner, at 1300 Hoge Building, 705 Second Avenue, Seattle, WA 98104, containing a copy of the **State's Supplemental Brief Addressing Stay of this Case Pending Decision in Williams v. Illinois** in **STATE V. SIONE P. LUI**, Cause No. **84045-8**, in the Supreme Court of the State of Washington .

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Name UBrame Date 8/30/11

Done in Seattle, Washington