NO. 1024053

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SAMANTHA HALL-HAUGHT,

Appellant.

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

SUPPLEMENTAL BRIEF

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I. RESTATEMENT OF THE ISSUES

A. Whether this Court should deny review when the testifying expert's opinion was not hearsay.

B. Whether the question of the testimonial nature of any out-of-court statements should be remanded to a lower court.

II. STATEMENT OF THE CASE

Samantha Hall-Haught was convicted by jury verdict on May 23, 2022, of one count of Vehicular Assault. CP 61. Hall-Haught timely appealed her conviction, challenging the introduction of blood test results through the testimony of a supervising toxicologist, Katie Harris. CP 81. The Court of Appeals upheld the conviction, finding that "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." State v. Hall-Haught, No 84247-1-I, slip op. at 1, 2023 WL 4861905 (Wash. Ct. App. July 31, 2023) (unpublished decision).

Hall-Haught filed a Petition for Review in this Court. Petition for Review. However, prior to consideration of the Petition, this Court granted a stay pending the decision from the United States Supreme Court in Smith v. Arizona, No. 22-899. Order Granting Stay. The decision in Smith was issued on June 21, 2024. Smith v. Arizona, 602 U.S. ___, 144 S.Ct. 1785, ___ L.Ed.2d ___ (2024). Shortly thereafter, this Court set consideration for a Motion to Lift Stay as well as the pending petition. Letter re Motion to Lift Stay on Petition for Review. As part of that consideration, this Court directed the parties to file supplemental briefing regarding the effect of Smith v. Arizona on this case. Id.

III. ARGUMENT

A. The Petition for Review should be denied because the testifying expert's independent opinion of blood test results, based upon her own personal review of the testing data, was not hearsay.

The Sixth Amendment's Confrontation Clause guarantees a criminal defendant's right "to be confronted with the witnesses against him." U.S. CONST. amend VI. The Clause bars admission

at trial of "testimonial statements" of an absent witness unless the witness is unavailable to testify and the defendant has had a prior opportunity for cross-examination. Smith v. Arizona, 602 U.S. ___, 144 S.Ct. 1785, 1791, ___ L.Ed.2d ___ (2024) (citing Crawford v. Washington. 541 U.S. 36, 53-54, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004)). In Smith v. Arizona, the U.S. Supreme Court reiterated that the prohibition applies to forensic evidence. Smith, 144 S.Ct. at 1791. But the Court also reaffirmed that the Clause confines itself to "testimonial statements", and it bars only the introduction of hearsay. Id. (citing Davis v. Washington, 547 U.S. 813, 823, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006)). So, the Clause's requirements apply only when the prosecution uses out-of-court statements for the truth of the matter asserted and when the primary purpose of those statements was testimonial. Id. The Clause did not apply to the admission of the testifying expert's opinion regarding blood test results in this case because her own, independent opinion was not hearsay.

Katie Harris' independent opinion regarding the blood test results in this case was not hearsay because it did not convey another analyst's out-of-court statements. Hall-Haught's Petition appears to focus its Confrontation claims on the blood test results themselves. See i.e. Petition at 6 ("Harris did not complete the testing of the blood sample but testified to the results"). However, the Petition's assertion that, "Harris's 'independent conclusion' was based not on any original analysis of her own but a mere parroting of the quantitative test conclusions of her subordinate," Petition at 25, is inaccurate. Prior to providing her opinion, Harris testified extensively regarding the procedures followed during the testing process and the data she personally reviewed before approving the reporting of the test results. RP 474-79, 482-83. Therefore, the Court of Appeals correctly found that Harris provided her own conclusions rather than "merely 'parrot[ing] the conclusions' of her subordinates". Op. at 6. As such, unlike the testimony offered in Smith, Harris' testimony

was not hearsay and, therefore, not prohibited by the Confrontation Clause.

In Smith, eight seized items were drug tested, and the results of four of those tests were admitted into evidence. Smith, 144 S.Ct. at 1799. However, because the original testing analyst had stopped working at the lab, the State called a surrogate witness at trial who had no prior connection to the case. Id. at 1795. Because he had not participated in the case, the surrogate expert prepared for trial by reviewing the testing analyst's typed notes and signed report, and the surrogate's testimony merely relayed "what [the testing analyst]'s records conveyed about her testing of the items". Id. After a conviction at trial, Smith brought an appeal arguing that the substitute expert's testimony violated his Confrontation Clause rights. Id. at 1796. The Arizona state courts upheld the conviction finding the tester's information was not hearsay because it was "used only to show the basis of the in-court-witness's opinion and not to prove their truth." Id.

The Supreme Court disagreed with Arizona's reliance on evidentiary rules that allow otherwise inadmissible evidence to show the basis of an in-court expert's independent opinion. Id. at 1797 (citing Ariz. R. Evid 703). Instead, the Court held that, for purposes of the Confrontation Clause, an out-of-court statement conveyed by an expert in support of his opinion is hearsay and inadmissible when the statement supports that opinion only if true. Id. at 1798. The testifying expert in Smith did not participate in any part of the testing process, and so, his opinions that the tested items were marijuana, methamphetamine, and cannabis were predicated on the truth of the tester's factual statements. Id. at 1799-1800. Because the State used him to relay what the testing analyst wrote down about how she identified the seized substances, the surrogate effectively became the mouthpiece for the tester. Id. at 1800-01. Therefore, the Court found the surrogate expert's use of the tester's materials was hearsay for the purpose of the Confrontation Clause.

Unlike the testimony in Smith, the expert testimony in this case was not hearsay because it was not predicated on the testing analyst's out-of-court statements. While Katie Harris did not personally perform the testing in this case, she did not simply review another analyst's notes in preparation for trial. She supervised the testing analyst's work from the onset of the case and reviewed the sample testing prior to approving the release of the testing results. RP 459-60, 467-69. Harris' testimony included a detailed description of the sample testing process followed for cannabinoid screening and quantification in this case, including the preparation of samples. RP 474-76. She also described the documentation, including quality control data, calibrators, controls, and chromatography criteria that are included in the case file to allow a reviewing scientist to independently ensure testing results meet all criteria for reporting. RP 478-79, 482-83.

As part of her responsibilities as the testing analyst's supervisor and case reviewer, Harris personally reviewed each

piece of data that was included in the sample testing to make sure that the testing results met all requirements for reporting. RP 468. She specifically studied all the preliminary testing, including "calibrators, controls, and all the data that was run as part of that batch" that confirmed the sample was properly extracted and instrument correctly prepared. RP 476-77. And, rather than simply relying on the testing analyst's notes, Harris personally confirmed, using printed test results directly from the instruments, that negative controls, positive controls, and calibrators were used and that they returned the anticipated results. RP 478-79 (qualitative testing), 482-83 (quantitative testing). She also directly confirmed that the test results met additional chromatography criteria. RP 479.

Because Harris was personally involved in the testing and reporting process, and because she personally reviewed the primary data and results in this case, she did not act as a mere mouthpiece for the testing analyst. Based on her personal knowledge of the testing processes and results, Harris'

testimony, unlike the surrogate's testimony in Smith, was not predicated on the truth of the analyst's notes. Instead, where the testimony in Smith accepted the truth of the tester's reports and notes, Harris based her opinion on the primary data generated during the testing process. As such, Harris' opinions regarding the test results were truly independent and not hearsay. Therefore, her opinions were not subject to Confrontation Clause restrictions.

B. The testimonial nature of any out-of-court statements identified within Harris' testimony should be determined by a lower court.

To the extent that any out-of-court statements were conveyed as part of Harris' testimony for the truth of their assertions, this Court should follow the example from Smith and remand this case for further proceedings. To implicate the Confrontation Clause, a statement must be both hearsay and testimonial. Smith, 144 S.Ct. at 1801. Those two issues are separate from each other. Id. So, even if some part of Harris' testimony included out-of-court statements, a court must still

identify the out-of-court statement introduced, and must determine, given all the "relevant circumstances", the principal reason the statement was made. Id. (citing Michigan v. Bryant, 562 U.S. 344, 369, 131 S.Ct. 1143, 179 L.Ed.2d 93 (2011)).

In Smith, the Supreme Court determined the question of the testimonial nature of out-of-court statements was not fit for resolution because neither the trial court nor the Arizona appeals courts addressed whether the testing analyst's statements were testimonial. Id. With no lower court decision to review, the Supreme Court declined to decide the testimonial question because "we are a court of review, not of first view." Id. (citing Cutter v. Wilkinson, 544 U.S. 709, 718, n. 7, 125 S.Ct 2113, 161 L.Ed.2d 1020 (2005)).

The same circumstance is presented here. Because a Confrontation Clause claim requires an out-of-court statement that is both offered for the truth of its assertion and testimonial, both the trial court and Court of Appeals ended their analysis after finding Harris' opinion was not hearsay. RP 456 ("Ms.

Harris is not merely going to be a mouthpiece for the conclusions of an absent analyst."), Op. at 6 ("Harris was not merely 'parrot[ing] the conclusions' of her subordinates"). So, like in Smith, there is no lower court decision regarding the testimonial nature of any out-of-court statement included in Harris' opinions for this Court to review. As this court is also a court of review and not of first view, questions regarding any hearsay identified within Harris' testimony is best addressed by a lower court.

IV. CONCLUSION

Katie Harris' expert testimony regarding blood test results in this case was not subject to Confrontation Clause restrictions because she provided her own, independent judgment, and she was available for cross-examination. Because she based her expert opinions on her personal review of the data generated during the blood testing process rather than on a testing analyst's notes, her testimony was not predicated on the truth of any factual statements by the testing analyst. Harris' testimony, therefore, was permitted by the Confrontation Clause because it

was not hearsay. If this Court identifies any out-of-court statements that were offered within Harris' testimony for the truth of their assertions, the issue of whether those statements were testimonial should be remanded to lower courts for further proceedings.

I certify this document contains 1,851 words. RAP 18.17.

Respectfully submitted this 1st day of August 2024.

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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

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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 B. Steed, Pllc Koch & Grannis
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Signed at Coupeville, Washington on this 1st day of August, 2024.

Addie Peabody
Lead Criminal Paralegal

ISLAND COUNTY PROSECUTING ATTORNEY'S OFFICE

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