

No. 10-8505

**IN THE  
SUPREME COURT OF THE UNITED STATES**

October Term, 2011

---

**SANDY WILLIAMS**, Petitioner,

-vs-

**PEOPLE OF THE STATE OF ILLINOIS**, Respondent.

---

On Petition For Writ Of Certiorari  
To The Supreme Court Of Illinois

---

**REPLY BRIEF FOR PETITIONER**

---

MICHAEL J. PELLETIER  
State Appellate Defender

ALAN D. GOLDBERG  
Deputy Defender

PATRICIA MYSZA  
Supervisor – Counsel of Record  
Office of the State Appellate Defender  
203 North LaSalle Street - 24th Floor  
Chicago, Illinois 60601  
Patricia.Mysza@osad.state.il.us  
(312) 814-5472

COUNSEL FOR PETITIONER

*Of Counsel:*  
Brian Carroll  
Assistant Appellate Defender

## TABLE OF CONTENTS

Table of Authorities .....	ii
Reply Brief for Petitioner .....	1
Conclusion .....	5

**TABLE OF AUTHORITIES**

<b>Cases:</b>	<b>Page</b>
<b>Federal Cases:</b>	
<i>Crawford v. Washington</i> , 541 U.S. 36 (2004) . . . . .	4
<i>Melendez-Diaz v. Massachusetts</i> , 129 S.Ct. 2527 (2009) . . . . .	4
<i>United States v. Mejia</i> , 545 F.3d 179 (2d Cir. 2008) . . . . .	3
<b>State Cases:</b>	
<i>Commonwealth v. Avila</i> , 912 N.E.2d 1014 (Mass. 2009) . . . . .	4
<i>New York v. Goldstein</i> , 843 N.E.2d 727 (N.Y. 2005) . . . . .	4
<i>People v. Williams</i> , 238 Ill.2d 125, 939 N.E.2d 268, 279 (2010) . . . . .	3
<b>Miscellaneous</b>	
John M. Butler, <i>Forensic DNA Typing</i> (2d ed. 2005) . . . . .	2

## REPLY BRIEF FOR PETITIONER

Respondent's brief in opposition argues that this Court's review is not warranted where Lambatos's testimony regarding the Cellmark's DNA analysis was not hearsay. However, Respondent's claim is based upon the false premise that Lambatos's opinion was independent of Cellmark's analysis and that her testimony did not convey any of the substance of Cellmark's analysis.

The DNA analysis that produced the male DNA profile from the semen recovered from the victim was conducted entirely by Cellmark. Lambatos took no part in the analysis, but instead merely compared Cellmark's results with the DNA profile deduced from a sample of Petitioner's blood. It was therefore critical for the trier of fact to believe Cellmark's assertions as being true in order for Lambatos's opinion regarding the DNA match to have any probative value.

Respondent's contention that Lambatos based her opinion on her own independent analysis of raw data produced by Cellmark's equipment rather than Cellmark's analysis of that data is incorrect. (Resp. Br. 5) We know this because Lambatos affirmatively testified that she did not review any of Cellmark's raw data when formulating her opinion:

[DEFENSE COUNSEL]: You did not receive any computer data, the electronic data?

[LAMBATOS]: I, myself, did not receive that but that was sent to the laboratory.

Q: You never viewed that?

A: Oh, no, I did not.

(R. JJJ83) Rather, Lambatos testified that she received from Cellmark the DNA profiles Cellmark deduced from the victim's standard and from male genetic material Cellmark separated from two vaginal swabs taken from the victim (the E1 and E2 fractions), and an electropherogram<sup>1</sup> for only one of the deduced male profiles. (R. JJJ82–83.) While Respondent places great importance on Lambatos's review of that electropherogram in its claim that Lambatos's opinion was somehow independent from Cellmark's analysis (Resp. Br. 5), an electropherogram is not raw data. The raw data collected from a genetic analyzing device must first be processed and analyzed before an electropherogram can be produced. *See* John M. Butler, *Forensic DNA Typing* 335–37 (2d ed. 2005). Thus, the electropherogram reviewed by Lambatos was the product of Cellmark's interpretation of the raw data, not the raw data itself. Everything Lambatos's relied upon regarding the male DNA profile was the product of Cellmark's subjective analysis.

Contrary to Respondent's assertion, Lambatos's opinion was entirely dependant on the accuracy of Cellmark's work and Lambatos did convey the substance of Cellmark's analysis to the trier of fact. (Resp. Br. 16.) Lambatos clearly testified that it was the DNA profile provided to her by Cellmark, not a profile she herself deduced from any raw data, that she relied upon in making her opinion.

---

<sup>1</sup> An electropherogram is a graphical representation of the genetic markers detected in a DNA sample.

Lambatos testified, “Well, after Celmark [sic] made their deduced male donor profile, that was put into the data base [sic] and then it was generated, the match was generated.” (R. JJJ91.) Furthermore, as the Illinois Supreme Court in its decision and Respondent in its brief note, Lambatos also testified regarding the specific genetic markers contained in the deduced male profile as reported by Cellmark. *People v. Williams*, 238 Ill. 2d 125, 145–46, 939 N.E.2d 268, 279 (2010); (Resp. Br. 5); (R. JJJ83–95.) Lambatos had no personal knowledge of the DNA analysis conducted on the samples taken from the victim and had no personal knowledge of any DNA profile being deduced from the sample. Thus, by testifying that a male DNA profile was deduced from the semen recovered from the victim, Lambatos conveyed to the trier of fact the substance of statements contained in Cellmark’s report. Further, because Lambatos’s opinion regarding the DNA match was based upon Cellmark’s analysis, the trier of fact necessarily had to assess the truth of Cellmark’s analysis in order to evaluate Lambatos’s opinion. The Illinois Supreme Court’s conclusion that Lambatos’s testimony regarding Cellmark’s analysis was not offered for its truth was therefore erroneous.

Accordingly, Respondent’s claim that the Illinois Supreme Court’s decision does not conflict with other federal and state court decisions is mistaken. (Resp. Br. 10–15.) For example, contrary to Respondent’s contention, the Illinois Supreme Court’s holding—that an expert’s testimony regarding the analysis conducted by non-testifying analysts does not violate a defendant’s confrontation rights—conflicts with the holdings in *United States v. Mejia*, 545 F.3d 179 (2d Cir. 2008) (gang

expert could not transmit testimonial statements directly to jury), *Commonwealth v. Avila*, 912 N.E.2d 1014 (Mass. 2009) (medical examiner could not testify to the underlying factual findings of non-testifying examiner who performed autopsy), and *New York v. Goldstein*, 843 N.E.2d 727 (N.Y. 2005) (out-of-court statements of laypersons regarding the defendant's behavior relied upon by the prosecution's psychiatric expert constituted inadmissible testimonial hearsay under *Crawford* because the trier of fact had to accept the statements as true in order to evaluate the expert's testimony), *cert. denied*, 547 U.S. 1159 (2006).

In sum, the Illinois Supreme Court's decision that an expert witness may present the DNA test results of non-testifying analysts to explain the basis of her opinion is both illogical and inconsistent with this Court's holdings in *Crawford v. Washington*, 541 U.S. 36 (2004), and *Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527 (2009). Respondent's argument that there is no conflict with this Court's precedent is based on a mistaken representation of Lambatos's testimony at trial. This Court should therefore grant *certiorari* and reverse the Illinois Supreme Court's erroneous decision.

## CONCLUSION

For the foregoing reasons, petitioner, Sandy Williams, respectfully prays that a writ of certiorari issue to review the judgment of the Illinois Supreme Court.

Respectfully submitted,

ALAN D. GOLDBERG  
Deputy Defender

PATRICIA MYSZA  
Supervisor – Counsel of Record  
Office of the State Appellate Defender  
203 North LaSalle Street - 24th Floor  
Chicago, Illinois 60601  
Patricia.Mysza@osad.state.il.us  
(312) 814-5472

COUNSEL FOR PETITIONER

*Of Counsel:*  
Brian Carroll  
Assistant Appellate Defender