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State of Michigan

In The Supreme Court

People of the State of Michigan

Plaintiff-Appellee

-vs-

Lantz Howard Washington

Defendant-Appellant

_____/

Saint Clair County Prosecutor
Attorney for Plaintiff-Appellant

_____

State Appellate Defender Office
Attorney for Lantz Howard Washington

_____/

Supreme Court No. 165296

Court of Appeals No. 353052

Circuit Court No. 19-002078-FH

Supplemental Authority

State Appellate Defender Office

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Supplemental Authority

On June 21, 2024, the Supreme Court of the United States issued the opinion in *Smith v. Arizona*, 602 U.S. __ (2024), holding that when an expert testifies to an absent analyst's statements as a basis of their opinion, and those statements support the opinion only if true, then those statements have been presented for their truth in a Confrontation Clause analysis. The Court did not determine whether the statements were testimonial. Although Mr. Washington's conviction presents a different set of facts, the analysis here is instructive.

The prosecution argues that the Confrontation Clause is inapplicable to Mr. Washington because the statement of Officer Lavers is "offered to establish a series of events and chain-of-custody, and not offered to prove Defendant possessed body armor." (Appellant's brief, page 21). Per the prosecution, the statement is not admitted for the truth, but to show why Officer Stockwell arrested Mr. Washington. The Supreme Court rejects this approach:

> So the State's basis evidence—more precisely, the truth of the statements on which its expert relied—propped up its whole case. But the maker of those statements was not in the courtroom, and Smith could not ask her any questions.
>
> Approving that practice would make our decisions in *Melendez-Diaz* and *Bullcoming* a dead letter, and allow for easy evasion of the Confrontation Clause…In short, Arizona wants to end run all we have held the Confrontation Clause to require. It cannot. (Slip op. at 17-18).

Mr. Washington's trial presents a comparable situation: Officer Laver's statements are presented for the truth that Mr. Washington possessed a bulletproof vest, not as the "basis evidence" for Officer Stockwell's actions.

Respectfully submitted,

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