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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA,

Plaintiff,

v.

RICARDO LORENZO GARCIA,

Defendant.

NO. CR20230574-001

MOTION *IN LIMINE* TO PRECLUDE
EXPERT DNA TESTIMONY

[Oral Argument Requested]

[Assigned Judge: Hon. J. Alan Goodwin]

The defendant, Ricardo Garcia, by and through his undersigned counsel, hereby respectfully requests this Court to issue its order *in limine* precluding the state from presenting proposed expert testimony concerning DNA analysis. The state's proposed DNA evidence is inadmissible under the principles set forth in *Smith v. Arizona*, 602 U.S. 779 (2024), and Mr. Garcia's state and federal constitutional rights to due process and to confront the evidence and witnesses against him under Art. II, §§ 4 and 24 of the Arizona Constitution, and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. This motion is based on the legal reasoning and authorities set forth in the attached Memorandum of Points and Authorities.

1 RESPECTFULLY SUBMITTED this 15th day of November, 2024.

2 PICCARRETA DAVIS KEENAN FIDEL PC

3 By: /s/ Louis S. Fidel
4 Louis S. Fidel
5 Jefferson Keenan
6 *Attorneys for Defendant*

7 MEMORANDUM OF POINTS AND AUTHORITIES

8 **I. Statement of Facts**

9 The state has listed “DNA Analyst A. Ackroyd-Isales” as a proposed expert witness
10 to “testify regarding the results of DNA testing performed on various items of evidence.”
11 Disclosure by State, filed January 12, 2024, p. 2. However, Mr. Ackroyd-Isales did not
12 perform any DNA testing on any items of evidence. The DNA testing was performed by
13 laboratory analysts at DNA Labs International laboratory facilities located in Florida. Mr.
14 Ackroyd-Isales resides and works in his home state of Georgia. Mr. Ackroyd-Isales
15 explained his work process: “Well, the evidence is physically sent to the laboratory in
16 Florida, and our technicians there process it, obtain DNA profiles from the samples they take
17 from the evidence, and I am able to access that electronically, perform analysis, and testify
18 as necessary.” Interview of Alan Ackroyd-Isales, December 1, 2023, p. 2. Mr. Ackroyd-
19 Isales did not perform any of the work involved in obtaining the DNA profiles from the items
20 that were tested in the laboratory in Florida. Mr. Ackroyd-Isales was not involved with “the
21 physical handling of the evidence or the DNA samples” and was not otherwise involved in
22 any of the laboratory testing work. *Id.*, p. 3. His role was “just analyzing the data that comes
23 from that process.” *Id.*

1 **II. Discussion**

2 In *Smith v. Arizona*, 602 U.S. 779 (2024), the United States Supreme Court recently
3 addressed a testifying expert’s reliance on “an absent analyst’s statements in support of his
4 opinion,” and held that the prosecution cannot use expert opinion testimony as a conduit for
5 “an absent lab analyst’s factual assertions to support his own opinion testimony.” *Id.* at 783.
6 “When an expert conveys an absent analyst’s statements in support of his opinion, and the
7 statements provide that support only if true, then the statements come into evidence for their
8 truth,” which “raises the Confrontation Clause problem” because “the defendant has no
9 opportunity to challenge the veracity of the out-of-court assertions.” *Id.* at 783, 796.

10 As in *Smith*, this is “a case in which an expert witness restates an absent lab analyst’s
11 factual assertions to support his own opinion testimony.” 602 U.S. at 783. Mr. Ackroyd-
12 Isales’ expert opinion testimony is necessarily based on the work performed, results
13 obtained, and data generated by “an absent lab analyst” who conducted this testing at DNA
14 Labs International laboratory in Florida. As in *Smith*, Mr. Ackroyd-Isales’ opinion depends
15 on the fact that “he accepted the truth of what [the absent analyst] had reported about [their]
16 work in the lab-- that [they] had performed certain tests according to certain protocols and
17 gotten certain results.” *Id.* at 798. Again, as in *Smith*, Mr. Garcia has the “right to confront
18 the person who actually did the lab work.” *Id.* at 800.

19 While Arizona courts have previously held that a testifying DNA expert may rely
20 upon “DNA profiles” obtained by testing performed by non-testifying lab technicians, *see*
21 *State v. Gomez*, 226 Ariz. 165 (2010); *State v. Ortiz*, 238 Ariz. 329 (App. 2015), that
22 reasoning does not survive *Smith v. Arizona* because it violates the defendant’s “right to
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1 cross-examine *the testing analyst* about what she did and how she did it and whether her
2 results should be trusted.” 602 U.S. at 799 (emphasis added). *Smith v. Arizona* cleaned up
3 the “confusion” on this issue left by *Williams v. Illinois*, 567 U.S. 50 (2012), involving DNA
4 profiles obtained by testing performed by a non-testifying lab analyst. 602 U.S. at 789. In
5 *Williams*, the testifying DNA expert “became the conduit for what a different analyst had
6 reported – that a particular DNA profile came from [the alleged victim’s] vaginal swabs.”
7
8 *Id.* at 787. Such testimony is now plainly inadmissible under *Smith v. Arizona*, and is
9 inadmissible in the present case. Mr. Ackroyd-Isales’ testimony necessarily depends on the
10 truth of the non-testifying analysts’ reports “that a particular DNA profile came from” a
11 particular item tested. Just as in *Smith*, “in addition to describing how [he] discovered a
12 match, [Ackroyd-Isales] became the conduit for what a different analyst had reported – that
13 a particular DNA profile came from” a particular tested item. *Id.* Accordingly, Mr. Ackroyd-
14 Isales’ proposed expert DNA testimony is inadmissible because Mr. Garcia has the “right to
15 confront the person who actually did the lab work.” *Id.* at 800.

16 **III. Conclusion**

17 For the foregoing reasons, Mr. Ackroyd-Isales’ proposed expert DNA opinion
18 testimony is inadmissible under the principles set forth in *Smith v. Arizona*, and the admission
19 of such evidence would violate Mr. Garcia’s state and federal constitutional rights to due
20 process and to confront the evidence and witnesses against him under Art. II, §§ 4 and 24 of
21 the Arizona Constitution, and the Fifth, Sixth, and Fourteenth Amendments to the United
22 States Constitution.
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RESPECTFULLY SUBMITTED this 15th day of November, 2024.

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By: /s/ Louis S. Fidel
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Jefferson Keenan
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Original of the foregoing e-filed
this 15th day of November, 2024.

Copy of the foregoing electronically delivered
this 15th day of November, 2024, to:

The Honorable J. Alan Goodwin
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