No. 24-

IN THE

SUPREME COURT OF THE UNITED STATES

JARED HOLTON SEAVEY,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

PETITION FOR WRIT OF CERTIORARI

WILLIAM R. BIGGS
Counsel of Record

WILLIAM R. BIGGS, PLLC
City Center | Tower II
301 Commerce, Suite 2001
Fort Worth, TX 76102
817.332.3822 (t)
817.332.2763 (f)
wbiggs@williambiggslaw.com

QUESTION PRESENTED

I. Where the State used a surrogate medical examiner to opine as to the cause of death in a murder trial, should the Court GVR this matter in light of the Court's recent decision in *Smith v. Arizona*, 2024 U.S. LEXIS 2712 (June 21, 2024)?

PARTIES

Petitioner: Jared Holton Seavey

Respondent: The State of Texas

RELATED PROCEEDINGS

There are no related proceedings.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jared Holton Seavey respectfully petitions for a writ of certiorari to review the judgment of the Fourteenth Court of Appeals of Texas. The Texas Court of Criminal Appeals, the court of last resort in the State of Texas, denied a petition for discretionary review. *See In Re Seavey*, 2024 Tex. Crim. App. LEXIS 9254(Tex. Crim. App., Apr. 17, 2024).

OPINION BELOW

The unpublished opinion of the Fourteenth Court of Appeals is captioned as *Seavey v. State*, 2023 Tex. App. LEXIS 9254 (Tex. App.—Houston [14th Dist.], 2023, pet. ref'd) (mem. op., not designated for publication). A copy of the opinion is provided in Appendix A. In Appendix B, Counsel has provided a copy of the order from the Texas Court of Criminal Appeals denying his petition for discretionary review. Finally, Counsel provided in Appendix C the trial court judgment of conviction and sentence in cause number 1731280R, 432nd District Court, Tarrant County, Texas.

JURISDICTIONAL STATEMENT

The Court's jurisdiction is invoked under 28 U.S.C. § 1257(1). *See also* Sup. Ct. R. 13.1. The Texas Court of Criminal Appeals, the state court of last resort, denied discretionary review on April 17, 2024. The petition is therefore timely under Rule 13.1 of the Supreme Court Rules. *See In Re Seavey*, 2024 Tex. Crim. App. LEXIS 9254 (Tex. Crim. App. Apr. 17, 2024). *See* Sup. Ct. R. 13.1.

CONSTITUTIONAL AND PROVISION INVOLVED

The Sixth Amendment provides, in relevant part, that:

> [i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.

U.S. Const. amend. VI.

STATEMENT OF THE CASE

Relevant Facts and Proceedings in Trial Court

Petitioner was convicted of murder in the state of Texas and sentenced to 99 years imprisonment. *Seavey*, 2023 Tex. App. LEXIS 9254 at *1-2. The State of Texas had alleged that Petitioner caused Vanessa Mayfield's death by stomping her with a deadly weapon, his foot. *Id.* at *1.

At trial, the State declined to call Dr. Roe, the medical examiner who actually performed the autopsy to testify regarding Mayfield's cause of death. *Id.* at *2. Instead the State called a surrogate medical examiner, Dr. Richard Fries. Fries opined that Mayfield's cause of death was "traumatic injuries to the head and neck," and he based those opinions on "his review of Dr. Roe's autopsy report . . . and on photographs of the autopsy." *Id.* at *2.

Dr. Fries vouched for Dr. Roe by noting that "she was qualified at the time to perform the autopsy" and that he had "no personal concerns about the techniques and methods used by Dr. Roe to perform this examination." (6 RR 61.) But Fries admitted that "aside from what she described in the autopsy report," he "did not know any technique or method [Roe] used to conduct the autopsy." (6 RR 36.) He further

acknowledged "if there was some kind of mistake" in conducting the autopsy, he would not know it. (6 RR 36.)

Fries opined that death was caused by "traumatic injuries to the head and neck." (6 RR 69.) But this opinion could not have been formed merely by observing autopsy photos of the exterior, which seemed to show merely scrapes and abrasions. (6 RR 65-66.) As the case detective had indicated in the trial, the cause of death could not have been determined based on mere examination of the body. (5 RR 69-70.) Instead, in order to view damage to the brain, the medical examiner had to "reflect the scalp" and then "remove the top of the skull with a saw" to visually see the brain. (6 RR 66.) Fries did not do that; he had to rely on Roe's examination.

Petitioner objected to Dr. Fries's surrogate testimony on Confrontation grounds. *Seavey*, 2023 Tex. App. LEXIS 9254 at *2. The trial court overruled the objection and Petitioner was found guilty. *Id.*

Appeal

Petitioner appealed. The case was transferred from the Second to the Fourteenth Court of Appeals in Texas. *Seavey,* 2023 Tex. App. LEXIS 9254 at n. 1. On appeal Petitioner challenged *inter alia* Dr. Fries's surrogate testimony on Sixth Amendment Confrontation grounds. *Id.* at *3–6. The court of appeals overruled Petitioner's claims of error and affirmed the judgment in an unpublished opinion. *See Seavey*, 2023 Tex. App. LEXIS 9254 at *8.

On the Confrontation claim, the court of appeals found that "Dr. Fries did not act as a surrogate, and offered his independent opinions." *Id.* at *5. The court cited Rule 703 of the Texas Rules of Evidence and two other intermediate appellate court cases for the proposition that a "substitute medical examiner's testimony, premised upon his independent review of the autopsy file, did not violate the Confrontation Clause." *Id.* at *5 (citing *Harrell v. State*, 611 S.W. 3d 431, 439 (Tex. App.—Dallas 2020, no pet.) & *Johnson v. State*, No. 14-22-00050-CR, 2023 Tex. App. LEXIS 6148 (Tex App.—Houston [14th Dist.] August 15, 2023, no pet.) (mem. op., not designated for publication)).

Among other things, Petitioner claimed that he had no ability to confront and cross examine Dr. Roe regarding the possibility that bleeding in the brain had been caused by an error she had made during the autopsy. *See Seavey*, 2023 Tex. App. LEXIS at *6. In order to even view the brain, Dr. Roe had to "reflect the scalp" and then "remove the top of the skull with a saw" to visually see the brain. (6 RR 66.) The court of appeals found that this complaint went "to the weight of Dr. Fries's testimony, not its admissibility." *Id.* at *6.

Petitioner sought review from the Texas Court of Criminal Appeals, the court of last resort in Texas for criminal cases. The Court refused to exercise discretionary review. *See In Re Seavey*, 2024 Tex. Crim. App. LEXIS 9254 (Tex. Crim. App., Apr. 17, 2024).

This petition follows.

REASONS FOR GRANTING THE PETITION

I. The Texas court of appeals below rejected a Confrontation Clause challenge to the use of surrogate expert testimony prior to this Court's decision in *Smith v. Arizona*, 2024 U.S. LEXIS 2712 (June 21, 2024).

The "GVR order has . . . become an integral part of this Court's practice." *Lawrence v. Chater*, 516 U.S. 163, 166 (1996). A GVR is appropriate when:

> intervening developments, or recent developments that we have reason to believe the court below did not fully consider, reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation.

Lawrence, 516 U.S. at 167. One such intervening development includes this Court's "own decisions." *Id.* at 166. For example, a GVR would be appropriate where, as here, a "post-judgment decision of this Court has cast doubt on the judgment rendered by a lower . . . state court concerning a federal question." *Lawrence*, 516 U.S. at 180 (Scalia, J., dissenting) (citing cases).

In this case, the Texas appellate court below did not have the benefit of this Court's decision in *Smith v. Arizona*, 2024 U.S. LEXIS 2712 (June 21, 2024) when reaching its decision. *See Seavey*, 2023 Tex. App. LEXIS 9254 at *1 (decided December 12, 2023). Nor did the Texas Court of Criminal Appeals; the highest state court denied discretionary review before the Court issued its decision in *Smith*. *See In re Seavey*, 2024 Tex. Crim. App. LEXIS 304 (Tex. Crim. App. April 17, 2024). Petitioner submits that there is a reasonable probability that the intermediate appellate court may have

decided the case differently had it had the benefit of this Court's decision in *Smith*.

In the opinion below, the court of appeals rejected Petitioner's Confrontation challenge to the State's use of a surrogate medical examiner to opine on the decedent's cause of death. *Seavey*, 2023 Tex. App. LEXIS 9254 at *4-5. The court of appeals found the testimony was admissible under Tex. R. Evid. 703 and that Fries's opinions were "independent." *Id.* at *5. The court had no problem with Petitioner's inability to cross examine Roe as to whether the brain bleeding had been caused by the autopsy itself. This issue, the court found, merely went to "the weight of Dr. Fries's testimony, not its admissibility." *Id.* at *6.

The court of appeals did not have the benefit of the Court's subsequent decision in *Smith v. Arizona*. *Smith v. Arizona*, 2024 U.S. LEXIS 2712 (June 21, 2024). In *Smith*, the Court concluded that the State may not introduce out-of-court of court statements "through the use of a surrogate analyst who did not participate in their creation." *Smith*, 2024 U.S. LEXIS 2712 at *36. The court of appeals below found the surrogate medical examiner constitutionally acceptable because he was providing so-called "independent opinions." *Seavey*, 2023 Tex. App. LEXIS 9254 at *5. In *Smith*, the Court rejected this reasoning, because the "State's basis evidence—more precisely, the truth of the statements on which its [surrogate] expert relied—propped up its whole case." Smith, 2024 U.S. LEXIS at *29-30. Were the court to accept the "independent-opinion" workaround, the Court reasoned, "no defendant would have a right to cross-examine the testing analyst about what she did and how she did it and

whether her results should be trusted." *Id.* at *29-30. This would result amount to an "end run [of] all we have held the Confrontation Clause to require." *Id.* at *30.

The court of appeals further found that the surrogate testimony was Constitutionally acceptable because it was admissible under the Texas evidentiary rules. *See Seavey*, 2023 Tex. App. LEXIS 9254 at *5 (citing *inter alia* Tex. R. Evid. 703). In *Smith* the Court rejected this reasoning as well, and reaffirmed the principle that "federal constitutional rights are not typically defined—expanded or contracted—by reference to non-constitutional bodies of law like the evidence rules." *Smith*, 2024 U.S. LEXIS 2712 at *23.

As in *Smith*, in this case Petitioner had "no opportunity to challenge the veracity of the out-of-court assertions that are doing much of the work." *Smith*, 2024 U.S. 2712 at *26. Dr. Fries had "no personal concerns about the techniques and methods used by Dr. Roe to perform this examination." (6 RR 61.) But Fries relied exclusively on the word of Dr. Roe in her autopsy report as to what techniques had been used; he admitted that "aside from what she described in the autopsy report," he "did not know any technique or method [Roe] used to conduct the autopsy." (6 RR 36.)

Further, Fries had no ability to opine on the cause of death without Roe's autopsy report. In order to even view the brain, Dr. Roe had to "reflect the scalp" and then "remove the top of the skull with a saw" to visually see the brain. (6 RR 66.) Had this very process caused a brain bleed, Dr. Fries would not have known it because he had not been there when the autopsy itself was done. (6 RR 36.)

These are the very same problems highlighted by the Court in *Smith*. If the Confrontation Clause permitted surrogate expert testimony, "no defendant would have a right to cross examine the testing analyst about what she did and how she did it and whether her results should be trusted." *Smith*, 2024 U.S. LEXIS 2712 at *30. In this case, the defense had no ability to challenge the autopsy process that undergirded the surrogate's so-called "independent opinion." Fries testified that an independent opinion was "most commonly" based on the "autopsy report. . . documented by the individual that performed it." (6 RR 59.) But then he also acknowledged that "if there was some kind of mistake" in conducting the autopsy, he would not know it. (6 RR 36.) Without Dr. Roe, Petitioner can't "challenge the veracity of the out-of-court assertions that are doing much of the work" in forming Fries's opinion. *Smith*, 2024 U.S. LEXIS 2712 at *26. This "very fact . . . raises the Confrontation Clause problem." *Id.*

There is a "reasonable probability that the decision below rests upon a premise [or premises] that the lower court would reject if given the opportunity for further consideration." *Lawrence*, 516 U.S. at 167. The decision below rests on premises wholly untenable in light of this Court's decision in *Smith*. Accordingly, the Court should grant the petition, vacate the judgment of the court of appeals, and remand the case to the court of appeals for further consideration in light of *Smith*. *See Lawrence*, 516 U.S. at 167 (GVR appropriate where *inter alia* "our own decisions" provide an intervening circumstance); *see also, e.g.*, *Kappor v. United States*, 516 U.S. 801 (1995); *Edmond v. United States*, 516 U.S. 802 (1995).

CONCLUSION

Petitioner respectfully requests that the Court grant his petition for a writ of certiorari, vacate the judgment of the Fourteenth Court of Appeals, and remand the case to said court for further consideration in light of this Court's decision in *Smith v. Arizona*, 2024 U.S. LEXIS 2712 (June 21, 2024).

DATE: July 15, 2024

Respectfully Submitted,

WILLIAM R. BIGGS
Counsel of Record

WILLIAM R. BIGGS, PLLC
City Center | Tower II
301 Commerce St., Suite 2001
Fort Worth, TX 76102
817.332.3822 (t)
817.332.2763 (f)
wbiggs@williambiggslaw.com