No. 24–5118

IN THE
SUPREME COURT OF THE UNITED STATES

JARED HOLTON SEAVEY,

PETITIONER,

V.

STATE OF TEXAS,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF TEXAS
FOURTEENTH DISTRICT

BRIEF IN OPPOSITION

PHIL SORRELLS
CRIMINAL DISTRICT ATTORNEY
TARRANT COUNTY, TEXAS

STEVEN W. CONDER
ASSISTANT CRIMINAL DISTRICT
ATTORNEY
CHIEF, POST-CONVICTION

ANNE GRADY
ASSISTANT CRIMINAL DISTRICT ATTORNEY
Counsel of Record

TARRANT COUNTY
CRIMINAL DISTRICT ATTORNEY'S OFFICE
401 West Belknap, 4th Floor
Fort Worth, Texas 76196–0201
(817) 884-1687
COAappellatealerts@tarrantcountytx.gov

TABLE OF CONTENTS

TABLE OF CONTENTS 2
QUESTIONS PRESENTED 4
INDEX OF AUTHORITIES 5
STATEMENT OF THE CASE 8
The Night of the Murder 8
Seavey's Admissions to a Coworker 9
The Discovery of Mayfield's Body 9
Seavey's Arrest and Videotaped Confession 10
Pretrial Hearing and Midtrial Rule 705 Hearing 11
Medical Examiner's Trial Testimony 14
Direct Appeal 16
SUMMARY OF THE ARGUMENT 19
ARGUMENT 20
In a holding that does not implicate the Confrontation Clause, the Texas appellate court correctly upheld the trial court's ruling that an expert may testify to an independent opinion. 20
A. Surrogate expert testimony is inadmissible, but expert testimony on cause of death, even when based on matters outside the record, is admissible. 21
1. Experts routinely rely on out-of-court statements when forming their opinions without violating the Confrontation Clause. 21
2. Surrogate expert testimony is impermissible. 22
3. *Smith v. Arizona* did not create a new rule in Texas. 25
4. Autopsy reports may be testimonial. 26
5. Autopsy photographs and radiographs are certainly not testimonial. 28
6. Truly independent expert testimony based on a review of the records of an autopsy performed by another medical examiner is admissible. 29
B. Because in the case at bar, no hearsay was admitted at trial, the Confrontation Clause is not implicated, and this Court's holding in *Smith* is not applicable. 30

C. Likewise, the "error" identified by Seavey in the Fourteenth Court of Appeals's decision is unaffected by this Court's decision in *Smith*, and in any event, any error is harmless beyond a reasonable doubt..... 33

1. The purported error in the state court's opinion is unaffected by *Smith*. 33

2. Any error is harmless. 35

D. Conclusion..... 36

CONCLUSION AND PRAYER 38

QUESTIONS PRESENTED

Respondent objects to the Petitioner's Question Presented because it assumes certain procedural, legal, and factual premises that are demonstrably unfounded, as established more fully below. Respondent, therefore, presents the following questions:

1. Is the Confrontation Clause implicated by admission of an expert's opinion that is partially grounded on matters outside the record when that expert's trial testimony does not convey any hearsay statement?

2. Although the question whether autopsy reports are testimonial may benefit from this Court's answer, is this case the proper vehicle for answering that question given that the autopsy report was not entered into evidence or read from by the testifying expert and is not part of the record on appeal?

3. Because the evidence apart from the contested evidence overwhelmingly proved that Seavey stomped Mayfield to death, is the evidentiary ruling, if error, harmless beyond a reasonable doubt?

INDEX OF AUTHORITIES

Cases

Altes v. Pennywell, No. 13-cv-04522, 2015 WL 3430315 (N.D. Cal. May 28, 2015) 28

Anderson v. United States, 417 U.S. 211 (1974) 33

Bullcoming v. New Mexico, 564 U.S. 647 (2011) 23

Burch v. State, 401 S.W.3d 634 (Tex. Crim. App. 2013) 23

Campos v. State, 256 S.W.3d 757 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd) 27

Chapman v. California, 386 U.S. 18 (1967) 36

Christian v. State, 207 So.3d 1207 (Miss. 2016) 29

Delaware v. Fensterer, 474 U.S. 15 (1985) 34

Harrell v. State, 611 S.W.3d 431 (Tex. App.—Dallas 2020, no pet.) 29

Hensley v. Roden, 755 F.3d 724 (1st Cir. 2014) 26, 27

Herrera v. State, 367 S.W.3d 762 (Tex. App.—Houston [14th Dist.] 2012, no pet.) 30

Lawrence v. Chater, 516 U.S. 163 (1996) 20

McMinn v. State, 558 S.W.3d 262 (Tex. App.—Houston [14th Dist.] 2018, no pet.) 28

Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009) 22, 27

Moore v. State, 553 S.W.3d 119 (Tex. App.—Texarkana 2018, pet. ref'd) 29

Narvaiz v. State, 840 S.W.2d 415 (Tex. Crim. App. 1992) 32

Paredes v. State, 462 S.W.3d 510 (Tex. Crim. App. 2015) 24, 25

Seavey v. State, No. 14-22-00513-CR, 2023 WL 8588054 (Tex. App.—Houston [14th Dist.] Dec. 12, 2023, pet. ref'd) (mem. op. not designated for publication) 17, 33, 34

Smith v. Arizona, 144 S. Ct. 1785 (2024) 20, 21, 25, 26, 29-31, 33

State v. Hartley, 212 N.C. App. 1, 710 S.E.2d 385, 396 (2011) 29

State v. Lui, 221 P.3d 948 (2009), aff'd, 315 P.3d 493 (2014) 29

United States v. Ayers, 20-cr-239 (BMC) (E.D.N.Y. Apr. 4, 2024) 28, 29

United States v. Beach, 196 Fed. Appx. 205 (4th Cir. 2006) 28

United States v. Brooks, 772 F.3d 1161 (9th Cir. 2014) 28

United States v. Clotaire, 963 F.3d 1288 (11th Cir. 2020) 28

United States v. De La Cruz, 514 F.3d 121 (1st Cir. 2008) 27

United States v. James, 712 F.3d 79 (2d Cir. 2013) 27, 29

United States v. Johnson, 587 F.3d 625 (4th Cir. 2009) 22

United States v. Kamahele, 748 F.3d 984 (10th Cir. 2014) 22, 25

United States v. Lombardozzi, 491 F.3d 61 (2d Cir. 2007) 22, 25

United States v. Wallace, 753 F.3d 671 (7th Cir. 2014) 28

Williams v. State, 513 S.W.3d 619 (Tex. App.—Fort Worth 2016, pet. ref'd) 30

Wood v. State, 299 S.W.3d 200 (Tex. App.—Austin 2009, pet. ref'd) 27

Rules

Fed. R. Evid. 703 ..... 21, 22

Fed. R. Evid. 705 21

Tex. R. Evid. 703 21

Tex. R. Evid. 705(a) 11

Tex. R. Evid. 705(b) 12

Tex. R. Evid. 705(c) 14

Tex. R. Evid. 705(d) 22

Treatises

1 J. Wigmore, Evidence (1904) 21

Comment, Toward a Definition of "Testimonial": How Autopsy Reports Do Not Embody the Qualities of a Testimonial Statement, 96 Cal. L.Rev. 1093, 1094, 1115 (2008) 26

D. Kaye, D. Bernstein, A. Ferguson, M. Wittlin, & J. Mnookin, The New Wigmore: Expert Evidence (3d ed. 2021) 21

STATEMENT OF THE CASE

By a judgment of conviction and sentence entered June 10, 2022, by the 432nd District Court, Tarrant County, Texas (Gonzalez, J.), Jared Holton Seavey was convicted of murder by a jury and sentenced to 99 years' incarceration in the Correctional Institutions Division of the Texas Department of Criminal Justice (CR 303–305; RR6 105; RR7 114).[1]

The Night of the Murder

In August 2019, Seavey and his girlfriend, Vanessa Mayfield, were homeless and living in downtown Fort Worth, Texas (RR4 57–61). Just before midnight on August 16, 2019, Mayfield and Seavey said good night to friend, another homeless woman; Mayfield said she was heading toward her usual "sleeping spot" at the First United Methodist Church (RR4 61). The friend later arrived at her own sleeping spot and texted Mayfield to let her know she was safe (RR4 61). Mayfield did not respond (RR4 62).

Footage from multiple security cameras throughout the downtown Fort Worth area depicted the movement of Seavey and Mayfield from just before to just after midnight. They appeared amicable at first, but then an argument developed. Mayfield walked away twice, and Seavey caught up to her and followed her, angrily

[1] Numbers in parentheses preceded by "CR" refer to pages of the Clerk's Record. Those preceded by RR1, RR2, et seq. refer to pages of Volumes 1 through 8 of the trial transcript certified by the court reporter as the Reporter's Record. The Clerk's Record and Reporter's Record constituted the record on appeal in the Fourteenth Court of Appeals.

gesturing with his hands. Mayfield was last seen walking in the direction of the First United Methodist Church with Seavey trailing behind her. (RR5 48–63; State's Trial Exhibit 96: security footage compilation).

Seavey's Admissions to a Coworker

Less than 30 minutes later, at approximately 12:30 a.m. on August 17, Seavey returned to the restaurant where he worked (RR4 75-77). A coworker, Aaron Nees, noticed Seavey was sweaty, his arms and neck were covered in scratches and cuts he had not had earlier, and he had dark stains on his pants and boots (RR4 78, 90–91). Nees inquired, and Seavey looked down at himself and remarked that it was not his blood (RR4 78–79).

Seavey and Nees went to a bar for drinks and then got on the same train (RR4 76, 80–84). Over the next few hours, Seavey made numerous odd, incriminating statements (RR4 82, 85, 92). Finally, Seavey handed Nees his cell phone and said, "Hey check this out" (RR4 83). Nees looked at Seavey's phone and saw a photograph of a badly beaten woman covered in blood (RR4 83-84). She was lying on the ground against a blood-splattered wall with blood pooling around her head and shoulders (RR4 84). The beating had left the woman's face unrecognizable (RR4 84).

The Discovery of Mayfield's Body

Mayfield's body was found the next morning at the bottom of a set of stairs leading to a basement entrance to the First United Methodist Church (RR4 20–25, 41; State's Exhibits 15–16: photograph of railed stairway, body). There was a large amount of apparent blood on and around her, and one of her shirts was torn (RR4 41).

Blood was splattered on the walls around her body, on the door to the church opposite her body, and on the stairs leading down into the stairwell (RR4 42, 49–50; RR8 51–64, State's Exhibits 17–30: photographs). Mayfield's face bore deep cuts and abrasions and a deep split in the center of her upper lip (RR4 42, 49; State's Exhibits 20–22: photographs of body and face). Bloody boot prints in distinct and repeated patterns were on the concrete, on Mayfield's abdomen, and on her face (RR4 41–43; RR5 67–71; RR8 52–53, 56–57, State's Exhibits 18, 19, 22, and 23).

Seavey's Arrest and Videotaped Confession

Cooperation by Mayfield's friends and Seavey's family (who observed blood on his clothes) led to Seavey's quick arrest the next day (RR4 62–69, 95–102; RR5 76, 83). At 6:27 p.m., homicide detectives interviewed Seavey (RR5 84–85; State's Exhibit 97: video of interview).

Initially, Seavey contended that he last saw Mayfield at 11:30 p.m. After the detectives reminded him that the downtown area is covered with cameras, Seavey told a different narrative in which he and Mayfield got into an argument, broke up, and as he was picking up his stuff to leave, Mayfield grabbed him by the throat and pushed him. He blacked out and left. When Seavey "gained control" and went back to talk to her, he saw Mayfield's beaten condition. She was still breathing, but Seavey left rather than calling 911 because he did not trust the Fort Worth police (State's Exhibit 97 at 24:15–48:30).

However, Seavey eventually admitted what happened during his purported blackout. He admitted that he stomped Mayfield and "it may have been

continuously." When asked to demonstrate on a plastic trash can, Seavey crushed the can with his work boot. Seavey estimated that he stomped Mayfield's head "50, 30, 40" times. He also stomped her stomach. While he was stomping her head, she was on the ground with concrete behind her head. Seavey insisted he intended only to hurt her, "at the most give her a concussion," and prevent her from following him. (State's Exhibit 97 at 1:03:10–1:10:35).

At first, Seavey denied taking a photograph of Mayfield's dead body; then he admitted he used his flashlight app on his phone to look at her and he may have accidentally taken a photograph. Seavey admitted that he had showed the photograph to Nees, and also sent it electronically to his best friend in Chicago and his ex-girlfriend in Florida (State's Exhibit 97 at 1:11:15–1:17:15).

At the close of the interview, Seavey's boots and clothing were secured for testing (RR5 20–26; RR8 126–37, State's Exhibits 82–93). DNA testing later confirmed the presence of Mayfield's blood on Seavey's boots (RR6 85; State's Exhibit 139).

Pretrial Hearing and Midtrial Rule 705 Hearing

The trial court held two hearings before ruling on the admissibility of testimony from Deputy Medical Examiner Richard Fries, a pretrial hearing on June 3, 2022, and a midtrial Rule 705(b)[2] hearing on June 9, 2022 (RR2 5–41; RR6 34–54).

---

[2] In language similar to its federal counterpart, Texas Rule of Evidence 705 provides that "[u]nless the court orders otherwise, an expert may state an opinion—and give the reasons for it—without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination." Tex. R. Evid. 705(a). However, Texas's rule goes on to provide that before an

Dr. Susan Roe performed the autopsy of Vanessa Faye Mayfield (RR2 11). By the time of trial, Dr. Roe had left the Tarrant County Medical Examiner's Office and moved to North Dakota (RR2 12, 16, 23–24, 34; RR6 35). The State did not subpoena Dr. Roe because it would be logistically problematic and extremely expensive, particularly due to the unpredictability of what day she would testify at trial (RR2 25–26). Because caselaw supports having another medical examiner review autopsy materials and testify to their own conclusions based on those materials, the State elected to call Dr. Fries at Seavey's trial (RR2 25).

In addition, the State called Christopher White as a witness at trial (RR6 26). White photographed Mayfield's autopsy and collected samples for testing (RR6 27–28). White was able to authenticate the photographs he had taken during the autopsy, admitted as State's Exhibits 100 through 115 (RR6 26–27; RR8 147–62: autopsy photographs).

At the pretrial and midtrial hearings, Dr. Fries testified it was common practice for deputy medical examiners to review autopsies conducted by their colleagues (RR2 9; RR6 37). After such a review, it is possible to offer an independent opinion on injuries and cause of death (RR2 10; RR6 37). The facts and data used to form such an opinion include the autopsy report, photographs, toxicology reports, radiographs, and any other records (RR2 10; RR6 38). Reliance on such data is considered reasonable and accepted practice in the field of forensic pathology (RR2

---

expert states an opinion or discloses the underlying facts or data, the adverse party in a criminal case must be permitted to examine the expert about the underlying facts or data. This examination must take place outside the jury's hearing. *See* Tex. R. Evid. 705(b).

10; RR6 37). Dr. Fries had testified many times to his own opinions based on such reviews (RR2 10). With regard to Dr. Roe specifically, Dr. Fries was familiar with her work from first-hand observation of her methods and had confidence that her methods were standard practice for autopsies (RR6 38).

Dr. Fries reviewed the Mayfield autopsy report, the photographs of the autopsy, the radiographs, and the toxicology report (RR2 12; RR6 35). From his review of those materials, Dr. Fries discerned the injuries to Mayfield (RR2 12; RR6 35). Based on her injuries, Dr. Fries formed the opinion that her cause of death was traumatic injuries to the head and neck and that the manner of death was homicide (RR2 12–13).

Although White had testified that Dr. Roe dictated her notes during the autopsy (RR6 32), Dr. Fries had not listened to any audio recording of notes by Dr. Roe (RR6 36). The common practice of his medical examiner's office is "to dictate the autopsy report. Generally, those are not, you know, saved after they are transcribed, and the doctor then will review them to ensure their accuracy for the report" (RR6 36).

Seavey objected to Dr. Fries's testimony on Confrontation Clause grounds, arguing that the State had failed to establish that Dr. Roe was unavailable, and therefore was not free to rely on another expert (RR2 33; RR6 41–45). Seavey also argued that because Dr. Fries was not present for the autopsy, he had no way of knowing whether Dr. Roe had made a mistake (RR2 34–35; RR6 46).

The trial court ruled that, based on Dr. Fries's hearing testimony, Dr. Fries had drawn an independent conclusion based on his own evaluation of the autopsy records (RR6 51). Pursuant to Texas Rule of Evidence 705(c), the trial court found that Dr. Fries's independent opinion had an adequate basis, particularly in light of the photographs of the autopsy that had been authenticated at trial by White (RR6 26-27, 51–53). *See* Tex. R. Evid. 705(c). In addition, Dr. Fries was familiar with Dr. Roe's work, and they are both board certified (RR6 55).

The State assured the court it was not intending to offer Dr. Roe's autopsy report or any statements by Dr. Roe from it, particularly Dr. Roe's conclusions (RR2 37–38). At trial, neither Dr. Roe's autopsy report nor her conclusions were admitted into evidence (RR6 60–71).

Medical Examiner's Trial Testimony

The autopsy was performed by Dr. Roe on August 18–19, 2019[3] (RR6 60–61). Dr. Fries had reviewed the autopsy report, photographs, radiographs, and toxicology report (RR6 62). From the photographs, Dr. Fries discerned numerous injuries, including external abrasions, contusions, and lacerations around Mayfield's face, lips, head, and neck (RR6 62–64; State's Exhibits 100–103). Internally, Dr. Fries noted fractures of the maxilla and the nose (RR6 62; State's Exhibits 104–115: photographs admitted for record purposes only). Fries observed bleeding around the brain and

[3] The record is silent as to the precise time the autopsy commenced, but based on that testimony, it took place approximately 48 hours after Mayfield's death.

swelling of the brain, and hemorrhages and swelling in the neck, both in the soft tissues around the hyoid bone and larynx and in the back of the throat (RR6 62–63, 67–68). The hemorrhaging in the neck was consistent with trauma and injury to those areas but was also associated with the brain swelling and bleeding, which can force blood into the neck (RR6 67–68).

In Dr. Fries's opinion, Mayfield's injuries were consistent with someone stomping her head against concrete (RR6 68). Repeatedly stomping another person's head against concrete is readily capable of causing serious bodily injury or death (RR6 69). In Dr. Fries's opinion, the cause of death was traumatic injuries to the head and neck (RR6 69).

On cross-examination of Dr. Fries, Seavey did not ask him about the basis of his opinion. The cross-examination was limited to the following:

> BY MR. MOORE:
>
> Q. So for the record here, you were not the medical examiner who conducted this autopsy?
> A. That is correct. That was Dr. Roe.
> Q. And you weren't present in the room when it was conducted?
> A. That's correct.
> Q. And you have not talked to Dr. Roe about how she performed the autopsy?
> A. No, I have not.
> Q. And Dr. Roe is -- we know where she is?
> A. Not specifically at this moment but generally, yes.
> Q. Well, we know where she lives.
> A. Yeah.
> Q. Okay.
>
> MR. MOORE: That's all I have, Judge. I pass the witness.

RR6 70–71.

Direct Appeal

On appeal, Seavey claimed, inter alia, that he was denied his Sixth Amendment Right to Confrontation when the State "used a surrogate witness to establish cause of death instead of the medical examiner who had actually performed the autopsy and prepared the autopsy report." Seavey's Initial Brief at 14. Seavey argued that the cause of death depended on an

> examination of the brain, which first required the invasive process of sawing open the skull. While the testifying witness saw pictures of the brain, he could provide no insight into the particular autopsy process used in this case. The defense thus had no ability to question whether the blood seen on the brain had been caused due to errors made during the autopsy process, such as when the brain was cracked open.

Seavey's Initial Brief at 11; *see also id*. at 17–18. Seavey went on to argue that "Dr. Fries's surrogate testimony provided the sole basis from which to establish that her death had in fact been caused by traumatic injuries to the head and neck by another." *Id*. at 18–19. Citing the transcript of the Rule 705(b) hearing, not Dr. Fries's trial testimony, Seavey also contended that Dr. Fries "vouched" for Dr. Roe's methods. *See* Seavey's Initial Brief at 16 (quoting RR6 36).

In the State's Brief in response, the State argued that Dr. Fries's opinion was his own and that he had based it on the autopsy report, photographs, toxicology reports, and radiographs. *See* State's Brief at 24, 35 (citing RR2 10; RR6 38). Dr. Fries had testified that reliance on such data is considered reasonable and accepted

practice in the field of forensic pathology. *See* State's Brief at 24 (citing RR2 10; RR6 37).[4] In any event, the State argued, any error was harmless. *Id.* at 36-38.

The Fourteenth Court of Appeals affirmed the judgment of conviction, rejecting Seavey's Confrontation Clause claim on the merits:

> Although Dr. Fries's review of the autopsy file included the report made by Dr. Roe, Dr. Fries acted as more than a mere surrogate for Dr. Roe's autopsy report. The record shows that Dr. Fries did not blindly recite Dr. Roe's findings. Rather, his testimony illustrates his independent work. His testimony was based on his independent analysis of the autopsy report, toxicology report, radiology report, and the autopsy photographs, which he explained during the State's direct examination.
>
> Accordingly, because we conclude Dr. Fries did not act as a mere surrogate, and offered his independent opinions, his testimony was permissible, and we conclude the trial court did not err in admitting Dr. Fries's testimony over appellant's Sixth Amendment confrontation clause objection.

Seavey v. State, No. 14-22-00513-CR, 2023 WL 8588054, at *2–3 (Tex. App.—Houston [14th Dist.] Dec. 12, 2023, pet. ref'd) (mem. op. not designated for publication).

The Court of Appeals also rejected Seavey's contention that he was deprived of the ability to cross-examine Dr. Roe about alternative causes of the blood found in Mayfield's brain:

> Appellant argues that the trial court erred because it is possible that the bleeding in Mayfield's brain shown in the photographs could have been caused by an error or improper technique during Dr. Roe's autopsy and

---

4 The State also argued that two of Seavey's complaints were unpreserved for appellate review by any contemporaneous objection at trial: the claim that Dr. Fries "vouched" for Dr. Roe's work and the claim that he merely parroted the contents of Dr. Roe's autopsy report. *See* State's Brief at 26–27. The State pointed out that the autopsy report was not quoted from at trial and was not made a part of the record on appeal for the appellate court to compare to Dr. Fries's testimony. *Id.* The only claim preserved for appellate review was that Dr. Fries's opinion testimony violated the Confrontation Clause because: (1) the State failed to establish that Dr. Roe was unavailable, and was therefore not free to rely on a "surrogate" expert (RR2 33; RR6 41–45), and (2) Dr. Fries was not present for the autopsy, and he had no way of knowing whether Dr. Roe had made a mistake (RR2 34–35; RR6 46).

> that appellant was unable to confront and question Dr. Roe concerning this possibility. However, appellant's argument goes to the weight of Dr. Fries's testimony, not its admissibility. Further, appellant was free to question Dr. Fries concerning this possibility to question the credibility of Dr. Fries's opinion, but appellant did not do so.

Id. at *3.

Seavey sought review by the Texas Court of Criminal Appeals, which refused to grant discretionary review on April 17, 2024. This petition follows.

SUMMARY OF THE ARGUMENT

Seavey contends that the State of Texas has violated his constitutional rights and asks for this Court's intervention. According to Seavey, the only evidence of cause of death in this murder case was through the surrogate testimony of Dr. Fries, who relied "exclusively on the word of Dr. Roe in her autopsy report," *See* Petition at 7. Seavey's right of confrontation was therefore violated, he argues, because the defense "had no ability to challenge the autopsy process that undergirded the surrogate's so-called 'independent opinion.'" *Id.* at 8.

Seavey's assertions are not borne out by the record, which instead demonstrates that Dr. Fries's testimony was confined to his own independently formed opinion based primarily on the photographs of the autopsy that had been authenticated at trial by the technician who took those photographs. Dr. Roe's autopsy report was not admitted at trial, either in the form of an exhibit or through Dr. Fries reading from it. Therefore, the Confrontation Clause is not implicated by the evidence admitted in this case, and this Court's decision in *Smith* does not apply. *Smith v. Arizona*, 144 S. Ct. 1785 (2024).

Nor is it true that Dr. Fries's opinion was the only evidence of cause of death. By the time Dr. Fries took the stand at trial, the cause of death was already amply proved by the crime scene photographs and Seavey's videotaped confession to stomping Mayfield up to 50 times. And there is no evidence that after Seavey inflicted her injuries, Mayfield died from some other intervening cause.

For these reasons, certiorari should be denied.

ARGUMENT

In a holding that does not implicate the Confrontation Clause, the Texas appellate court correctly upheld the trial court's ruling that an expert may testify to an independent opinion.

Seavey asks this Court to grant certiorari, vacate the state court's affirmance of the conviction, and remand the case to that court for reconsideration, a "GVR" order. *See* Petition at 5. A GVR is appropriate only in certain circumstances. *See Lawrence v. Chater*, 516 U.S. 163, 166 (1996). Specifically, a GVR is appropriate when intervening developments, including this Court's own decisions, "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." *Id*. at 166-67.

In support of the notion that the Fourteenth Court of Appeals's decision rests on such a doubtful premise, throughout Seavey's petition for certiorari, he asserts that Texas allowed "the State's use of a surrogate medical examiner to opine on the decedent's cause of death." *See*, *e.g.*, Petition at 6. Seavey contends that the courts of Texas committed this error because they did not have the benefit of this Court's decision in *Smith*, and that the case should be vacated and remanded for the Fourteenth Court of Appeals of Texas to reconsider its analysis in light of that decision.

Contrary to that claim, the trial court did not permit "surrogate testimony" in this case and no hearsay from the medical examiner who performed the autopsy was admitted at trial. Indeed, the State of Texas has not allowed improper surrogate expert testimony for 10 years.

Accordingly, this Court's decision in *Smith* does not call into question the analysis of the Fourteenth Court of Appeals. A GVR order directing the Fourteenth Court of Appeals to reconsider its decision by applying *Smith* to a case where no hearsay or surrogate testimony was admitted at trial would only invite speculation regarding the import of the *Smith* decision itself and create confusion of the law. For these reasons, this Court should deny certiorari.

A. Surrogate expert testimony is inadmissible, but expert testimony on cause of death, even when based on matters outside the record, is admissible.

1. Experts routinely rely on out-of-court statements when forming their opinions without violating the Confrontation Clause.

As with any other expert witness, a doctor or other medical professional can review an inadmissible *and not admitted* document such as an autopsy report when forming an independent expert opinion that is admissible at trial. *See* Tex. R. Evid. 703; Fed. R. Evid. 703 ("An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed"). That is the very nature of modern expert testimony. *Smith*, 144 S. Ct. at 1805 (Alito, J., concurring) (citing D. Kaye, D. Bernstein, A. Ferguson, M. Wittlin, & J. Mnookin, The New Wigmore: Expert Evidence § 1.2.1, p. 4 (3d ed. 2021); 1 J. Wigmore, Evidence § 665(3), p. 762 (1904); *see also id.* (citing Kaye § 4.1, at 165 ("[P]art of an expert's very expertise inevitably derive[s] from hearsay."")). For that reason, Federal Rule of Evidence 705 provides that "an expert may state an opinion—and give the reasons for it—without first testifying to the underlying facts or data."

Admission of such an opinion does not run afoul of a defendant's Confrontation Clause rights because the expert is on the witness stand subject to cross-examination regarding the bases of his or her opinion. That is so even when the expert testifies that her opinion is based in part on hearsay, so long as the content of that hearsay is not conveyed to the jury. Tex. R. Evid. 705(d); Fed. R. Evid. 703; *see United States v. Kamahele*, 748 F.3d 984, 1000 (10th Cir. 2014) ("Introduction of expert testimony violates the Confrontation Clause only when the expert is simply parroting a testimonial fact. That did not occur here."); *United States v. Johnson*, 587 F.3d 625, 634–35 (4th Cir. 2009) (experts on the subject of drug trafficking did not violate Confrontation Clause by explaining the meanings of drug-related jargon); *United States v. Lombardozzi*, 491 F.3d 61, 72 (2d Cir. 2007) (the admission of organized crime expert's testimony was error "if he communicated out-of-court testimonial statements of cooperating witnesses and confidential informants directly to the jury in the guise of an expert opinion").

2. Surrogate expert testimony is impermissible.

In an application of *Crawford v. Washington*, 541 U.S. 36, 68 (2004), in *Melendez-Diaz v. Massachusetts*, this Court held that admitting certain notarized "certificates of analysis" showing the result of forensic testing and stating that the substances seized from the criminal defendant contained cocaine, without requiring any testimony from the analysts who performed the testing, violated the defendant's right to confrontation. 557 U.S. 305, 309–11 (2009). At the same time, the Court

clarified: the prosecution need not produce at trial "everyone who laid hands on the evidence." *Id.* at 311, n.1.

Melendez-Diaz was followed by *Bullcoming v. New Mexico*, a DWI prosecution in which the State did not call the analyst who tested the defendant's blood but, instead, called another analyst familiar with the lab's testing procedures. 564 U.S. 647 (2011). This Court was faced with the question: "Does the Confrontation Clause permit the prosecution to introduce a forensic laboratory report containing a testimonial certification, made in order to prove a fact at a criminal trial, through the in-court testimony of an analyst who did not sign the certification or personally perform or observe the performance of the test reported in the certification?" *Id.* at 657. The Court held that because the report was the testimonial statement of the analyst who performed the tests, it could not be offered into evidence through the testimony of a different, "surrogate" witness. *Id.* at 652. Crucially, the testifying expert had not offered any independent opinion regarding the defendant's blood alcohol content. *Id.* at 662. And, the Court noted, the witness was unable to convey what the nontestifying analyst knew or observed, for example, the particular test employed or any lapses in the analyst's methods. *Id.* at 661–62.

Following *Bullcoming*, and anticipating *Smith*, the Texas Court of Criminal Appeals has held that in the context of drug lab analyses, admission of a lab report through a witness with no personal knowledge that the test was done correctly or that the tester did not fabricate the results violated the defendant's right of confrontation. *Burch v. State*, 401 S.W.3d 634, 639–40 (Tex. Crim. App. 2013).

In contrast, the Court of Criminal Appeals has also considered whether the admission of an opinion regarding a DNA match violates the Confrontation Clause when that opinion is based upon computer-generated data obtained through batch DNA testing conducted by other non-testifying analysts. *Paredes v. State*, 462 S.W.3d 510 (Tex. Crim. App. 2015). Under the circumstances before the court, it held that the admission of the opinion was constitutional. *Id.* The raw data was not admitted into evidence. *Id.* at 512. Accordingly, the court held that the lab director's testimony was admissible because she was "more than a surrogate for a non-testifying analyst's report." *Id.* at 518.

Paredes concluded with "several general principles":

> (1) the Confrontation Clause renders inadmissible a lab report created solely by an analyst who does not testify at trial;
>
> (2) the Confrontation Clause likewise renders inadmissible expert testimony explaining a report solely created by a non-testifying analyst;
>
> (3) an expert may testify based on DNA analysis performed by non-testifying analysts, but only to the extent of the expert's opinions and conclusions; a testifying expert may rely on information from a non-testifying analyst, but he cannot act as a surrogate to introduce that information.

Id. at 517–18.

In short, in Texas, a testifying expert cannot repeat the statement of a non-testifying analyst, even if the statement of the non-testifying analyst is nontestimonial and provides the basis for the testifying expert's opinion.

3. Smith v. Arizona did not create a new rule in Texas.

In *Smith*, this Court was confronted with a case in which Arizona had allowed precisely what the above-cited cases held to be unlawful: a witness parroting extensive hearsay to the jury under the guise of expert opinion. The Arizona court's upholding of that procedure was inconsistent with the holdings of every decision cited above. *See, e.g., Kamahele*, 748 F.3d at 1000; *Lombardozzi*, 491 F.3d at 72; *Paredes*, 462 S.W.3d at 517–18. Unsurprisingly, this Court denounced use of such a mechanism.

But Seavey appears to read this Court's holding in *Smith* to be that whenever an expert testifies to an opinion based on material that is not admitted at trial, the defendant has a Sixth Amendment right to confront the declarant of every hearsay statement relied upon by that expert. Nothing in the Court's decision in *Smith* may be read for so broad a holding. Instead, in a holding virtually identical to the holdings of the Texas Court of Criminal Appeals in *Burch* and *Paredes*, this Court held that:

> A State may not introduce the testimonial out-of-court statements of a forensic analyst at trial, unless she is unavailable and the defendant has had a prior chance to cross-examine her. *See Crawford*, 541 U.S., at 68, 124 S.Ct. 1354; *Melendez-Diaz*, 557 U.S., at 311, 129 S.Ct. 2527. Neither may the State introduce those statements through a surrogate analyst who did not participate in their creation.

Smith, 144 S. Ct. at 1802.

Indeed, in *Smith*, this Court did not go as far as Texas courts have gone in barring all out-of-court statements relied upon by expert witnesses. Rather, this Court held simply that the Confrontation Clause is *implicated* when inadmissible hearsay is conveyed to the jury by a testifying expert:

> If an expert for the prosecution conveys an out-of-court statement in support of his opinion, and the statement supports that opinion only if true, then the statement has been offered for the truth of what it asserts.

Smith, 144 S. Ct. at 1798. That being the case, the Court held, "*if* the out-of-court statements were also testimonial, their admission violated the Confrontation Clause." *Id.* at 1801 (emphasis added). Observing that whether the statements were testimonial is "best addressed by a state court," the Court remanded the case back to Arizona for it to consider whether those hearsay statements were testimonial and therefore whether Smith's Confrontation Clause rights had been violated. *Id*. Their testimonial nature, the Court reminded, depended on their primary purpose at the time they were made. *Id.* at 1802. Some lab notes, for example, may be made to comply with laboratory accreditation requirements. *Id.* To count as testimonial, "the document's primary purpose must have a focus on court." *Id.* (internal quotation omitted).

4. Autopsy reports may be testimonial.

Whether autopsy reports are testimonial has long been litigated with disparate answers. *See Hensley v. Roden*, 755 F.3d 724, 733 (1st Cir. 2014) (and cases cited therein); *see also see* Comment, Toward a Definition of "Testimonial": How Autopsy Reports Do Not Embody the Qualities of a Testimonial Statement, 96 Cal. L.Rev. 1093, 1094, 1115 (2008) (noting that every court post-*Crawford* has held that autopsy reports are not testimonial, and warning that a contrary rule would "effectively functio[n] as a statute of limitations for murder").

Prior to this Court's decision in *Melendez-Diaz*, numerous Texas appellate courts had deemed autopsy reports nontestimonial because they contained "sterile recitations" of "objective facts," were "routine, descriptive, and nonanalytical," and "[did] not relate subjective narratives pertaining to [the defendant's] guilt or innocence." *See, e.g., Campos v. State*, 256 S.W.3d 757, 762 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd).

Following *Melendez-Diaz*, Texas courts began to look to at the procedural posture of a case to determine whether the autopsy report was testimonial. In cases where the death was under investigation as a homicide, such that the autopsy report likely would be used "prosecutorially," the report was deemed testimonial. Thus, for example, in *Wood v. State*, the court of appeals held that the defendant's rights were violated when the expert witness placed the contents of the autopsy report before the jury: "the jury could not consider the testimonial statements in the autopsy report as supporting or explaining [the witness's] opinion without assuming the statements were true." 299 S.W.3d 200, 213-14 (Tex. App.—Austin 2009, pet. ref'd).

To be sure, in light of this Court's remand in *Smith*, it is worth revisiting whether every document and notation made during an autopsy and not with "a focus on court" is a testimonial one. *Hensley*, 755 F.3d at 733; *see also United States v. James*, 712 F.3d 79, 99 (2d Cir. 2013); *United States v. De La Cruz*, 514 F.3d 121, 133 (1st Cir. 2008) (holding autopsy reports to be nontestimonial business records). Here, for example, Dr. Fries testified that in his office, the autopsy report is dictated orally during the autopsy and thus, it may qualify as a nontestimonial present sense

impression and business record (RR6 36). But because the appellate record does not include the autopsy report and Dr. Fries was never asked about particular hearsay statements contained therein, this case presents a poor basis to resolve that question.

5. Autopsy photographs and radiographs are certainly not testimonial.

In contrast to the autopsy report, autopsy *photographs* and *radiographs* are not testimonial statements subject to the Confrontation Clause. "Still frame pictures are not statements at all, let alone testimonial ones. We understand intuitively that pictures are not witnesses; pictures 'can convey incriminating information .... But one can't cross-examine a picture.'" *United States v. Clotaire*, 963 F.3d 1288, 1295 (11th Cir. 2020) (quoting *United States v. Wallace*, 753 F.3d 671, 675 (7th Cir. 2014)); *United States v. Ayers*, 20-cr-239 (BMC), 10 (E.D.N.Y. Apr. 4, 2024) (admitting expert testimony based on review of photographs and X-rays taken during autopsy); *Altes v. Pennywell*, No. 13-cv-04522, 2015 WL 3430315, at *5 (N.D. Cal. May 28, 2015) ("The accusatory opinions in this case, thus, were reached and conveyed … through the testifying expert's independent assessment of photographs and other nontestimonial evidence"); *McMinn v. State*, 558 S.W.3d 262, 268 (Tex. App.—Houston [14th Dist.] 2018, no pet.) ("A photograph itself is not a statement"); *see also United States v. Brooks*, 772 F.3d 1161, 1167 (9th Cir. 2014) (photographs of a parcel seized by postal worker); *United States v. Beach*, 196 Fed. Appx. 205, 209 (4th Cir. 2006) (photographs of physical evidence).

6. Truly independent expert testimony based on a review of the records of an autopsy performed by another medical examiner is admissible.

Under all the above-cited precedent, including this Court's holding in *Smith*, if a testifying medical examiner can form a truly independent opinion regarding cause of death by review of the documentation of an autopsy performed by another, particularly nontestimonial photographs and radiographs taken during an autopsy, then that opinion is admissible at trial. *James*, 712 F.3d at 97; *Ayers*, 20-cr-239 at *10; *see also Christian v. State*, 207 So.3d 1207, 1213 (Miss. 2016); *State v. Lui*, 319, 221 P.3d 948, 955 (2009), aff'd, 315 P.3d 493 (2014); *State v. Hartley*, 212 N.C. App. 1, 13, 710 S.E.2d 385, 396 (2011).

The expert witness may not "parrot" the contents of the autopsy report under the guise of an expert opinion. *Harrell v. State*, 611 S.W.3d 431, 439 (Tex. App.—Dallas 2020, no pet.); *Moore v. State*, 553 S.W.3d 119, 122 (Tex. App.—Texarkana 2018, pet. ref'd). That is because the Confrontation Clause is implicated when inadmissible hearsay is conveyed to the jury by a testifying expert. *Smith*, 144 S. Ct. at 1798.

However, because images of the body are not testimonial and the testifying doctor is subject to cross-examination about his or her interpretation of those images, the defendant's confrontation right is not violated by use of the images in aid of the doctor's opinion. *See, e.g.*, *Harrell*, 611 S.W.3d at 438 (upholding admission of evidence where doctor explained injuries by referring to autopsy photographs and provided his own opinion regarding cause and manner of death); *Ayers*, 20-cr-239 at

*10; *Williams v. State*, 513 S.W.3d 619, 637 (Tex. App.—Fort Worth 2016, pet. ref'd); *Herrera v. State*, 367 S.W.3d 762, 773 (Tex. App.—Houston [14th Dist.] 2012, no pet.).

B. Because in the case at bar, no hearsay was admitted at trial, the Confrontation Clause is not implicated, and this Court's holding in *Smith* is not applicable.

As noted above, in *Smith*, this Court held that "a State may not introduce the testimonial out-of-court statements of a forensic analyst at trial, [and … n]either may the State introduce those statements through a surrogate analyst who did not participate in their creation." 144 S. Ct. at 1802.

The *Smith* holding does not affect this case because, contrary to petitioner's claim that Dr. Fries acted as a mouthpiece for Dr. Roe's work, none of Dr. Fries's testimony described Dr. Roe's methods or conclusions as recorded in her autopsy report. Dr. Roe's autopsy report was not admitted as a trial exhibit and was neither quoted from nor expressly relied upon during Dr. Fries's testimony (RR6 62–71). At no time did Dr. Fries describe for the jury the particular methods used by Dr. Roe or vouch to the jury that a particular procedure had been done correctly. *Cf. Smith*, 144 S.Ct. at 1799–1800.

The only "vouching" Dr. Fries did was as to Dr. Roe's proficiency in general, as was personally known to him by working with her, and his belief that her documentation provided him with a sound basis upon which to form his opinion:

> Q. In your opinion, was Dr. Roe qualified at the time to perform that autopsy?
>
> A. Yes.

Q. After reviewing that autopsy, do you have any personal concerns about the techniques and methods used by Dr. Roe to perform this examination?

A. I do not.

(RR6 61).

Thereafter, Dr. Fries's trial testimony conveyed only his own opinion based primarily[5] on the photographs taken during the autopsy. Those photographs were admitted through the testimony of the autopsy technician who photographed Dr. Roe's work and took samples for testing (RR6 26–28; RR8 147–62: autopsy photographs). For example, Dr. Fries testified that normal procedure for an autopsy includes a visually examination of the brain:

Q. And is part of the examination sometimes actually opening up the skull and viewing these brains?

A. Yes. That is —when we perform the examination, we will reflect the scalp, remove the top of the skull with a saw to visualize and examine the brain, photograph it to document that those bleeds are present.

(RR6 66). But as for whether that particular procedure was followed in this case (correctly or not), Dr. Fries's answer was based on his examination of the autopsy photograph of the exposed brain (RR6 66-67).

In that way, Seavey's attempt to liken the case to the facts of *Smith* is unavailing. In *Smith*, the nontestifying drug analyst's methods and conclusions were the very substance of the expert witness's testimony. Here, they were not.

---

[5] Even though the autopsy report was among the sources of Dr. Fries's information, he also testified that such reports are dictated contemporaneously with the autopsy itself; White testified that Dr. Roe followed that procedure in this autopsy (RR6 32, 36). Thus, had Dr. Fries's trial testimony included references to the autopsy report when explaining the methods and procedures Dr. Roe used, that hearsay would have been nontestimonial. He did not, so the question is academic.

That being the case, when Seavey argues that "Fries had no ability to opine on the cause of death without Roe's autopsy report," he is attacking Dr. Fries's credibility. *See* Petition at 3, 7. Dr. Fries testified under oath and as an expert in the field that not only the autopsy report but also the photographs, radiographs and toxicology report were sufficient for him to form his opinion (RR2 10–13). In an attempt to counter that testimony, Seavey suggests that the photographs available to Dr. Fries depicted only the exterior "scrapes and abrasions." *See* Petition at 3. Seavey contends that Dr. Fries could not view the internal findings for himself and must have relied on Dr. Roe's descriptions of them in her report. *See* Petition at 3.

Even if such a credibility determination were appropriate here, Seavey's assertion is wholly belied by the record. The photographs of the exterior of Mayfield's head and face, State's Exhibits 100 to 103, were admitted for the jury's consideration, but other autopsy photographs, depicting the interior, were admitted for the record[6] as State's Exhibits 104 to 115 (RR6 27; RR6 65-68; RR8 147–62). Dr. Fries made clear that when forming his opinion, he reviewed *all* of the autopsy photographs, including those depicting the interior findings, and he explained to the jury their content and significance (RR6 65–68).

In short, the record does not bear out Seavey's assertion that Dr. Fries could not view the internal findings for himself and had to rely solely on Dr. Roe's

---

[6] That is because those interior photographs were deemed "gruesome" (RR6 67), and Texas law limits the introduction of gruesome photographs at trial, particularly autopsy photographs. *See Narvaiz v. State*, 840 S.W.2d 415, 429 (Tex. Crim. App. 1992).

descriptions in her autopsy report. *See* Petition at 3. Instead, Dr. Fries testified to his own opinion based on the nontestimonial autopsy photographs and radiographs (RR2 10; RR6 62, 66).

The autopsy report was not referred to or quoted from, and the Confrontation Clause is not implicated merely because an expert reviews hearsay information when forming his opinion. Since no hearsay was admitted in support of Dr. Fries's testimony, the Confrontation Clause was not implicated by his testimony. *Smith*, 144 S. Ct. at 1792 ("the Clause bars only the introduction of hearsay—meaning, out-of-court statements offered 'to prove the truth of the matter asserted'") (quoting *Anderson v. United States*, 417 U.S. 211, 219 (1974)). In short, this Court's opinion in *Smith* has no bearing on the admissibility of Dr. Fries's testimony.

C. Likewise, the "error" identified by Seavey in the Fourteenth Court of Appeals's decision is unaffected by this Court's decision in *Smith*, and in any event, any error is harmless beyond a reasonable doubt.

1. The purported error in the state court's opinion is unaffected by Smith.

Although at trial, Seavey's counsel noted the general inability to perceive mistakes made by Dr. Roe, it was not until the direct appeal that Seavey argued specifically that the massive bleeding found in Mayfield's skull could have been caused by a mistake during the autopsy. That argument was rejected by the Fourteenth Court of Appeals as one affecting the weight to be assigned Dr. Fries's opinion, not its admissibility. *Seavey*, 2023 WL 8588054, at *3. Seavey now pinpoints that rejection of his appellate argument as the error that would not have occurred if

the Court of Appeals had had the benefit of this Court's *Smith* decision. *See* Petition at 6.

On the contrary, the appellate court's rejection of the claim was a recognition that the argument was unsupported by the record due to Seavey's decision not to conduct cross-examination on this subject. Issues that go to the weight to be accorded to a piece of evidence are matters for cross-examination of the witness. *Delaware v. Fensterer*, 474 U.S. 15, 22, (1985). The Fourteenth Court of Appeals therefore came close to finding the argument that Dr. Roe caused the brain bleeding had been waived when it noted that, with regard to the possible errors by Dr. Roe, Seavey "was free to question Dr. Fries concerning this possibility to question the credibility of Dr. Fries's opinion, but appellant did not do so." *Seavey*, 2023 WL 8588054, at *3.

Had Seavey done so, perhaps Dr. Fries could have explained that autopsies conducted 48 hours after death would not cause the extensive bleeding observed in Mayfield's skull. Or, he might have explained that a mistake when opening the skull would not explain the extensive bleeding in Mayfield's neck, which Dr. Fries found so significant (RR6 67). The extensive amount of blood in Mayfield's neck was consistent with bleeding and swelling in the brain *as Mayfield died*, forcing blood down into the neck tissues (RR6 67–68). Thus, even assuming that Dr. Roe committed some grievous mistake when opening the skull to visualize the brain, that would not have altered Dr. Fries's opinion based on the amount of blood found in the neck tissues.

To some extent, of course, this is speculation. But the silence of the record is owing to Seavey's strategic decision to omit questions on the subject. Since Seavey

did not avail himself of the opportunity to cross-examine Dr. Fries on whether a mistake by Dr. Roe could have affected his opinion, Seavey failed to make a record of his need to establish such mistakes by questioning Dr. Roe. Even on appeal, Seavey has never explained how any mistake by Dr. Roe would have led to a different conclusion regarding cause of death.

In short, nothing in the Fourteenth Court of Appeals's reasoning is called into question by this Court's decision in *Smith*. To grant Seavey's requested GVR with the instruction to "reconsider in light of *Smith*," would only create confusion in a case where no hearsay was admitted at trial and the defendant did not avail himself of the opportunity to cross-examine the witness on the stand as to the basis for his opinion.

2. Any error is harmless.

By the time Dr. Fries took the stand and testified that the cause of death was traumatic injuries to the head and neck, that cause of death had already been overwhelmingly proved. Crime scene photographs and autopsy photographs showed that Seavey forcibly stomped Mayfield's head and neck until her face was crushed and blood pooled around her body. The jury was able to view for themselves the force Seavey used; Seavey demonstrated it for the detectives in his videotaped confession when he stomped a plastic trash can, crushing it. Common sense would have told the jurors that two or three such stomps to Mayfield's head with Seavey's work boot against concrete would have been sufficient to cause death, but Seavey did not relent. He continued stomping Mayfield's head 30 to 50 times, splashing her blood on the walls around her and imprinting bloody boot prints on her face and stomach.

And there is not a scintilla of evidence that after Seavey inflicted those catastrophic injuries, Mayfield died from some other intervening cause.

Given that overwhelming evidence of a violent murder, *any* medical opinion that Mayfield's cause of death was traumatic injuries to the head and neck, including Dr. Fries's correctly admitted opinion, was mere confirmation of what the jury already knew. Unsurprisingly, out of 251 pages of trial testimony, Dr. Fries's testimony, including introducing himself and his expertise to the jury, consumed a scant 15 pages (RR6 56–71). In short, any error was harmless beyond a reasonable doubt. *See Chapman v. California*, 386 U.S. 18, 24 (1967).

D. Conclusion.

Smith v. Arizona did not create a new rule in Texas, where surrogate expert testimony has been disallowed for over 10 years. In accordance with that longstanding law, in the case at bar, no hearsay was admitted or conveyed. The autopsy report was not admitted as evidence or read from in support of Dr. Fries's trial opinion, which was instead based primarily on the nontestimonial autopsy photographs. Seavey had ample opportunity to cross-examine the witness against him, Dr. Fries, regarding the sufficiency of the bases for his opinion, yet he declined to do so. And any error was harmless beyond a reasonable doubt.

This Court should not, therefore, grant certiorari, vacate, and remand to the Fourteenth Court of Appeals, thereby signaling to that court that its decision "rests on premises wholly untenable in light of this Court's decision in *Smith*." *See* Petition at 8. On the contrary, because the admission of Dr. Fries's trial testimony comported

with the principles articulated by *Smith*, no such reconsideration of the case is required.

For all the above reasons, Seavey's certiorari petition should be denied.

CONCLUSION AND PRAYER

The State did not violate Seavey's constitutional rights. Therefore, the State prays that the petition for certiorari be denied.

Respectfully submitted,

PHIL SORRELLS
Criminal District Attorney
Tarrant County, Texas

STEVEN W. CONDER
Assistant Criminal District Attorney
Chief, Post-Conviction

ANNE GRADY
Assistant Criminal District Attorney
Tim Curry Criminal Justice Center
401 West Belknap, 4th Floor
Fort Worth, Texas 76196–0201
(817) 884-1687 – Telephone
COAappellatealerts@tarrantcountytx.gov

No. 24-5118

IN THE SUPREME COURT OF THE UNITED STATES

JARED HOLTON SEAVEY,

PETITIONER,

V.

STATE OF TEXAS,

RESPONDENT.

PROOF OF SERVICE

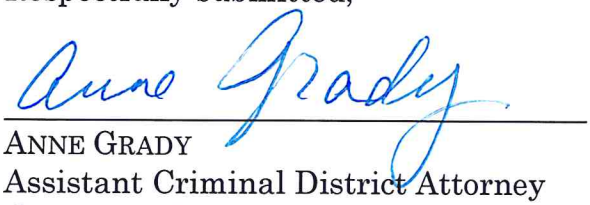
I, Anne Grady, do certify that I am a member of the bar of this Court and that on this date, September 10, 2024, I served the foregoing Brief in Opposition on each party to the above proceeding, or that party's counsel, and on every other person required to be served. I have served the Supreme Court of the United States via United States mail, with first-class postage prepaid. The remaining parties below were each served by depositing an envelope containing the above document in the United States mail properly addressed to each of them at the addresses set forth below and with first-class postage prepaid.

Clerk
Supreme Court of the United States
1 First Street, N.E.
Washington, DC 20543

William R. Biggs
Counsel for Petitioner
City Center | Tower II
301 Commerce St., Suite 2001
Fort Worth, TX 76102

Jared Holton Seavey
TDCJ No. 02395266
Wainright Unit
2665 Prison Road No. 1
Lovelady, TX 75851

Respectfully submitted,



ANNE GRADY
Assistant Criminal District Attorney
Counsel of Record
Tim Curry Criminal Justice Center
401 West Belknap, 4th Floor
Fort Worth, Texas 76196–0201
(817) 884-1687 – Telephone
COAappellatealerts@tarrantcountytx.gov