

# APPENDIX A

(Judgment and Opinion of the Fourteenth Court of Appeals of Texas)

## *Seavey v. State*

Court of Appeals of Texas, Fourteenth District, Houston

December 12, 2023, Memorandum Opinion Filed

NO. 14-22-00513-CR

### **Reporter**

2023 Tex. App. LEXIS 9254 \*; 2023 WL 8588054

JARED HOLTON SEAVEY, Appellant v. THE STATE OF TEXAS, Appellee

**Notice:** PLEASE CONSULT THE TEXAS RULES OF APPELLATE PROCEDURE FOR CITATION OF UNPUBLISHED OPINIONS.

**Prior History:** [\*1] On Appeal from the 432nd District Court, Tarrant County, Texas. Trial Court Cause No. 1731280R.

## **Case Summary**

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### **Overview**

**HOLDINGS:** [1]-The trial court did not err in admitting the medical examiner's testimony over defendant's objection based on the confrontation clause of U.S. Const. amend. VI because the examiner did not act as a mere surrogate, and offered his independent opinions. The examiner's testimony was based on his independent analysis of, *inter alia*, the autopsy report, and toxicology report; [2]-Defendant did not suffer egregious harm for the alleged jury charge error because the alleged error did not deprive defendant of a fair and impartial trial since the charge correctly instructed the jury on the offense of murder and tracked the offense as alleged in the indictment. Moreover, there were multiple sources of evidence directly linking defendant to the victim's assault and that defendant was aware that the victim could have died from the assault.

### **Outcome**

Judgment affirmed.

**Counsel:** For The State of Texas, Criminal - State of Texas: Joseph W. Spence, Anne Grady.

For Seavey, Jared Holton, Criminal - Appellant: William R. Biggs.

**Judges:** Panel consists of Justices Bourliot, Hassan, and Poissant.

**Opinion by:** Margaret "Meg" Poissant

## **Opinion**

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## MEMORANDUM OPINION

Appellant Jared Holton Seavy appeals from his conviction for murder. *See Tex. Penal Code Ann. § 19.02*. In two issues, appellant argues: (1) he was denied his *Sixth Amendment* Right to confront the medical examiner who performed the victim's autopsy because the State used a "surrogate" witness to establish the victim's cause of death; and (2) there was an error in the jury charge because it failed to include the lesser-included offense of aggravated assault. We affirm.<sup>1</sup>

### I. BACKGROUND

On August 17, 2019, appellant was indicted for the murder of Vanessa Mayfield ("Mayfield") for intentionally or knowingly causing Mayfield's death by stomping her with a deadly weapon, his foot. Appellant pleaded not guilty and proceeded to trial before a jury.

Susan Roe, M.D. ("Dr. Roe"), a deputy medical examiner at the Tarrant County Medical Examiner's Office, performed Mayfield's autopsy. Prior to trial, the State [\*2] indicated to appellant that it intended to call Richard Fries, M.D. ("Dr. Fries"), another deputy medical examiner at the Tarrant County Medical Examiner's Office, to testify concerning Mayfield's cause of death at trial.<sup>2</sup> The trial court held a pretrial hearing to determine the admissibility of Dr. Fries's testimony regarding Mayfield's cause of death. Dr. Fries explained that he formed an opinion on Mayfield's cause of death based on his review of Dr. Roe's autopsy report of Mayfield and on photographs from the autopsy. It was Dr. Fries's opinion that Mayfield's cause of death was traumatic injuries to the head and neck.

Appellant objected to the admission of Dr. Fries's testimony based on the *Confrontation Clause*, arguing that Dr. Roe was the only witness who could testify concerning the autopsy and Mayfield's cause of death. The trial court overruled appellant's objection and ruled that Dr. Fries's testimony on the cause of death was admissible.

The jury found appellant guilty of murder and assessed his punishment at ninety-nine years' imprisonment. This appeal followed.

### II. *Confrontation Clause*

In his first issue, appellant argues he was denied his *Sixth Amendment* right to confront the medical examiner who performed Mayfield's autopsy [\*3] because the State used a "surrogate" witness, Dr. Fries, to establish Mayfield's cause of death.

### A. STANDARD OF REVIEW & APPLICABLE LAW

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<sup>1</sup>This case is before this court on transfer from the Second Court of Appeals in Fort Worth, Texas, pursuant to a docket equalization order issued by the Supreme Court of Texas. *See Tex. Gov't Code Ann. § 73.001*. We will apply the precedent of the Second Court to the extent it differs from our own.

<sup>2</sup>Dr. Roe left the Tarrant County Medical Examiner's Office the year prior to appellant's trial.

A trial court's ruling on the admissibility of evidence is reviewed for an abuse of discretion. *Thomas v. State*, 651 S.W.3d 102, 110 (Tex. App.—Houston [14th Dist.] 2021, pet. ref'd). We will not reverse the trial court's evidentiary ruling if it was within the zone of reasonable disagreement. *Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1991) (op. on reh'g). Therefore, we must uphold the trial court's ruling if it is reasonably supported by the record and is correct under any theory of law applicable to the case. *Willover v. State*, 70 S.W.3d 841, 845 (Tex. Crim. App. 2002).

The *Confrontation Clause of the Sixth Amendment* guarantees the accused the right to confront the witnesses against him. *U.S. Const. amend. VI*. The *Confrontation Clause* applies to in-court testimony and testimonial statements made outside of court. *Molina v. State*, 632 S.W.3d 539, 543 (Tex. Crim. App. 2021) (citing *Paredes v. State*, 462 S.W.3d 510, 517-18 (Tex. Crim. App. 2015)). Testimonial statements are those "that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *Paredes*, 462 S.W.3d at 514 (citing *Crawford v. Washington*, 541 U.S. 36, 52, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004)). Thus, the accused has a right to confront witnesses who make out-of-court testimonial statements, including forensic analysts. *See, e.g.*, *Bullock v. New Mexico*, 564 U.S. 647, 651, 131 S. Ct. 2705, 180 L. Ed. 2d 610 (2011); *Crawford*, 541 U.S. at 54; *Paredes*, 462 S.W.3d at 514-15.

Forensic analysts may not testify as "surrogate[s]" regarding reports made by other analysts. *See Bullock*, 564 U.S. at 661 (holding that a "surrogate" could not testify regarding what [\*4] the certifying analyst "knew or observed about the events his certification concerned . . . . Nor could such surrogate testimony expose any lapses or lies on the certifying analyst's part"). Therefore, "[w]hile the testifying expert can rely upon information from a non-testifying analyst, the testifying expert cannot act as a surrogate to introduce that information." *Paredes*, 462 S.W.3d at 517-18. However, expert witnesses may testify to their own independent conclusions, even if they reached those conclusions by examining data collected by another analyst. *See Tex. R. Evid. 703*<sup>3</sup>; *Paredes*, 462 S.W.3d at 517 ("For an expert's testimony based upon forensic analysis performed solely by a non-testifying analyst to be admissible, the testifying expert must testify about his or her own opinions and conclusions.").

## B. ANALYSIS

Dr. Fries testified at the pretrial hearing that, in forming his opinion on injuries or cause of death, he will use the autopsy report produced by the physician that conducted the autopsy, as well as photographs, radiographs, toxicology reports, and other reports taken during the procedure. Dr. Fries further testified that these items are reasonably relied upon by individuals in the field of forensic pathology in forming an opinion on an autopsy [\*5] for which they were not present. Dr. Fries explained he formed his opinion on reviewing Mayfield's autopsy report and pictures of her autopsy.

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

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<sup>3</sup> An expert may base an opinion on facts or data in the case that the expert has been made aware of, reviewed, or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, then they need not be admissible for the opinion to be admitted. *Tex. R. Evid. 703*. Unless 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; however, the expert may be required to disclose those facts or data on cross-examination. *Tex. R. Evid. 705(a)*.

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. *See Tex. R. Evid. 703; Harrell v. State, 611 S.W.3d 431, 439 (Tex. App.—Dallas 2020, no pet.)* (concluding that substitute medical examiner's testimony, premised upon his independent review of the autopsy file, did not violate the *Confrontation Clause*); *see also Johnson v. State, No. 14-22-00050-CR, 2023 Tex. App. LEXIS 6148, 2023 WL 5217800, at \*3 (Tex. App.—Houston [14th Dist.] Aug. 15, 2023, no pet. h.)* (mem. op., not designated for publication) (same).

Appellant argues that the trial court erred because it is possible that the bleeding in Mayfield's brain shown [\*6] in the photographs could have been caused by an error or improper technique during Dr. Roe's autopsy and 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.

We overrule appellant's first issue.

### III. JURY CHARGE

In his second issue, appellant argues that the trial court erred by not including the lesser included offense of aggravated assault in the jury charge.

#### A. APPLICABLE LAW & STANDARD OF REVIEW

In each felony case, the trial court shall deliver to the jury a written charge distinctly setting forth the law applicable to the case. *Tex. Code Crim. Proc. Ann. art. 36.14*. A review of alleged jury charge error involves a two-step process examining: (1) whether error existed in the charge; and (2) whether sufficient harm resulted from the error to compel reversal. *See Ngu v. State, 175 S.W.3d 738, 743-44 (Tex. Crim. App. 2005); Jones v. State, 531 S.W.3d 309, 321 (Tex. App.—Houston [14th Dist.] 2017, pet. ref'd).*

When the defendant fails to object, as in this case, we will not reverse for jury-charge error unless the record shows "egregious harm" to the defendant. *Ngu v. State, 175 S.W.3d 738, 743-44 (Tex. Crim. App. 2005)* (*Almanza v. State, 686 S.W.2d 157, 171 (Tex. Crim. App. 1984)* (op. on reh'g)). [\*7] Egregious harm deprives appellant of a fair and impartial trial. *See id.* In the egregious-harm analysis, we consider (1) the charge itself; (2) the state of the evidence, including contested issues and the weight of the probative evidence; (3) arguments of counsel; and (4) any other relevant information revealed by the trial record as a whole. *See Taylor v. State, 332 S.W.3d 483, 489 (Tex. Crim. App. 2011).*

#### B. ANALYSIS

Appellant did not object to the jury charge. Assuming without deciding that the trial court erred in its charge, we nevertheless conclude that appellant did not suffer egregious harm.

Here, the charge correctly instructed the jury on the offense of murder and tracked the offense as alleged in the indictment. There was substantial evidence that appellant severely assaulted Mayfield by stomping on her with his foot and left her unconscious. There were multiple sources of evidence directly linking appellant to Mayfield's assault. There also was evidence that appellant was aware that Mayfield could have died from the assault and that he told detectives he stomped on Mayfield's head as many as fifty times. We conclude that the jury-charge error alleged by appellant did not deprive him of a fair and impartial trial. *See Taylor, 332 S.W.3d at 489; Ngo, 175 S.W.3d at 743-44.*

We overrule [\*8] appellant's second issue.

#### IV. CONCLUSION

We affirm the trial court's judgment.

/s/ Margaret "Meg" Poissant

Justice

Panel consists of Justices Bourliot, Hassan, and Poissant.

Do Not Publish — *Tex. R. App. P. 47.2(b).*

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# **APPENDIX B**

(Texas Court of Criminal Appeals Denial of Discretionary Review)

**In re Seavey**

Court of Criminal Appeals of Texas

April 17, 2024, Decided

PD-0910-23

**Reporter**

2024 Tex. Crim. App. LEXIS 304 \*

JARED HOLTON SEAVEY

**Notice:** DECISION WITHOUT PUBLISHED OPINION

**Prior History:** [\*1] FROM TARRANT COUNTY - 14-22-00513-CR.

*[Seavey v. State, 2023 Tex. App. LEXIS 9254, 2023 WL 8588054 \(Tex. App. Houston 14th Dist., Dec. 12, 2023\)](#)*

**Opinion**

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APPELLANT'S PETITION FOR DISCRETIONARY REVIEW REFUSED.

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# APPENDIX C

(Trial Court Judgment of Conviction and Sentence)



CASE NO. 1731280R COUNT No. ONE  
INCIDENT NO./TRN: 9289096373

THE STATE OF TEXAS

v.

JARED HOLTON SEAVEY

STATE ID No.: TX50137590

IN THE 432ND DISTRICT COURT

TARRANT COUNTY, TEXAS

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## JUDGMENT OF CONVICTION BY JURY

Judge Presiding:	HON. RUBEN GONZALEZ JR.	Date Sentence Imposed:	6/10/2022
Attorney for State:	SHAREN WILSON CHARLES A BOULWARE 24068734 MADELINE P JONES 24110064	Attorney for Defendant:	TIM MOORE 14378300

Offense for which Defendant Convicted:

**MURDER**

Charging Instrument:	Statute for Offense:
Indictment	19.02 (C) PC
Date of Offense:	Plea to Offense:
8/17/2019	NOT GUILTY
Degree of Offense:	
<b>1ST DEGREE FELONY</b>	

Verdict of Jury:	Findings on Deadly Weapon:
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<b>Guilty</b>	<b>Yes, not a firearm</b>
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1 <sup>st</sup> Enhancement Paragraph:	Finding on 1 <sup>st</sup> Enhancement Paragraph:
<b>N/A</b>	<b>N/A</b>
2 <sup>nd</sup> Enhancement Paragraph:	Finding on 2 <sup>nd</sup> Enhancement Paragraph:

<b>N/A</b>	<b>N/A</b>
Punishment Assessed by:	Date Sentence Commences: (Date does not apply to confinement served as a condition of community supervision.)
<b>Jury</b>	<b>6/10/2022</b>

Punishment and Place of Confinement:	<b>99 YEARS Institutional Division, TDCJ</b>
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THIS SENTENCE SHALL RUN N/A.

<input type="checkbox"/> SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A. <small>(The document setting forth the conditions of community supervision is incorporated herein by this reference.)</small>
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Defendant is required to register as sex offender in accordance with Chapter 62, CCP.

(For sex offender registration purposes only) The age of the victim at the time of the offense was N/A

Fines:	Restitution:	Restitution Payable to: (See special finding or order of restitution which is incorporated herein by this reference.)
<b>\$0.00</b>	<b>\$0.00</b>	
Court Costs:	Reimbursement Fees:	
<b>\$290.00</b>	<b>\$55.00</b>	

Was the victim impact statement returned to the attorney representing the State? N/A

(FOR STATE JAIL FELONY OFFENSES ONLY) Is Defendant presumptively entitled to diligent participation credit in accordance with Article

Total Jail If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.  
 Time Credit:  
 1029 Days N/A Days Notes: N/A

This cause was called for trial by jury and the parties appeared. The State appeared by her District Attorney as named above.

**Counsel / Waiver of Counsel (select one)**

- Defendant appeared with counsel.
- Defendant appeared without counsel and knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.
- Defendant was tried in absentia.

Both parties announced ready for trial. It appeared to the Court that Defendant was mentally competent to stand trial. A jury was selected, impaneled, and sworn, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and **ORDERED** it entered upon the minutes of the Court.

**Punishment Assessed by Jury / Court / No election (select one)**

- Jury.** Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.
- Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.
- No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

In accordance with the jury's verdict, the Court **ADJUDGES** Defendant **GUILTY** of the above offense. The Court **FINDS** that the Presentence Investigation, if so ordered, was done according to the applicable provisions of Subchapter F, Chapter 42A, Tex. Code Crim. Proc.

The Court **ORDERS** Defendant punished in accordance with the jury's verdict or Court's findings as to the proper punishment as indicated above. After having conducted an inquiry into Defendant's ability to pay, the Court **ORDERS** Defendant to pay the fines, court costs, reimbursement fees, and restitution as indicated above and further detailed below.

**Punishment Options (select one)**

- Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State of Texas or the County Sheriff to take and deliver Defendant to the Director of the Correctional Institutions Division, TDCJ, for placement in confinement in accordance with this judgment. The Court **ORDERS** Defendant remanded to the custody of the County Sheriff until the Sheriff can obey the directions in this paragraph. Upon release from confinement, the Court **ORDERS** Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fines, court costs, reimbursement fees, and restitution due.
- County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant committed to the custody of the County Sheriff immediately or on the date the sentence commences. Defendant shall be confined in the county jail for the period indicated above. Upon release from confinement, the Court **ORDERS** Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fines, court costs, reimbursement fees, and restitution due.
- Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY**. The Court **ORDERS** Defendant to proceed immediately to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay the fine, court costs, reimbursement fees, and restitution ordered by the Court in this cause.
- Confinement as a Condition of Community Supervision.** The Court **ORDERS** Defendant confined N/A Days in N/A as a condition of community supervision. The period of confinement as a condition of community supervision starts when Defendant arrives at the designated facility, absent a special order to the contrary.

**Fines Imposed Include (check each fine and enter each amount as pronounced by the court):**

- General Fine (§12.32, 12.33, 12.34, or 12.35, Penal Code, Transp. Code, or other Code) **\$0.00** (not to exceed \$10,000)
- Add'l Monthly Fine for Sex Offenders (Art. 42A.653, Code Crim. Proc.) **\$ 0.00** (\$5.00/per month of community supervision)
- Child Abuse Prevention Fine (Art. 102.0186, Code Crim. Proc.) **\$0.00** (\$100)
- EMS, Trauma Fine (Art. 102.0185, Code Crim. Proc.) **\$0.00** (\$100)
- Family Violence Fine (Art. 42A.504 (b), Code Crim. Proc.) **\$ 0.00** (\$100)

- Juvenile Delinquency Prevention Fine (Art. 102.0171(a), Code Crim. Proc.) **\$0.00** (\$50)
- State Traffic Fine (§ 542.4031, Transp. Code) **\$0.00** (\$50)
- Children's Advocacy Center Fine - as Cond of CS (Art. 42A.455, Code Crim. Proc.) **\$ 0.00** (not to exceed \$50)
- Repayment of Reward Fine (Art. 37.073/42.152, Code Crim. Proc.) **\$ 0.00** (To Be Determined by the Court)
- DWI Traffic Fine (a/k/a Misc. Traffic Fines) (§ 709.001, Transp. Code) **\$0.00** (not to exceed \$6,000)

**Execution / Suspension of Sentence**

The Court ORDERS Defendant's sentence EXECUTED. The Court FINDS that Defendant is entitled to the jail time credit indicated above. The attorney for the state, attorney for the defendant, the County Sheriff, and any other person having or who had custody of Defendant shall assist the clerk, or person responsible for completing this judgment, in calculating Defendant's credit for time served. All supporting documentation, if any, concerning Defendant's credit for time served is incorporated herein by this reference.

**Furthermore, the following special findings or orders apply:**

**COURT COST IN THE AMOUNT OF \$290.00 AND REIMBURSEMENT FEES IN THE AMOUNT OF \$55.00 TO BE CREDITED FOR TIME SERVED**

**NOTICE OF APPEAL FILED: 6/10/2022**

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**Date Judgment Entered: 6/10/2022**

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JUDGE PRESIDING

CASE NO. 1731280R COUNT ONE  
INCIDENT NO./TRN: 9289096373

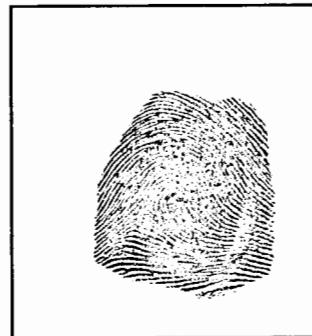
THE STATE OF TEXAS

v.

JARED HOLTON SEAVEY

STATE ID No.: TX50137590

§ IN THE 432ND DISTRICT COURT  
§  
§  
§  
§ TARRANT COUNTY, TEXAS  
§  
§ Date: 6/10/2022



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JUDGMENT AND SENTENCE  
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Clerk

<u>DA</u>	<u>EV</u>
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