

**No. 01-24-00668-CR**

**IN THE COURT OF APPEALS  
FOR THE FIRST DISTRICT OF TEXAS**

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HOUSTON, TEXAS

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**XAVIER JAWIN HOWARD**  
*Appellant*

DEBORAH M. YOUNG  
Clerk of The Court

**v.**

**THE STATE OF TEXAS**  
*Appellee*

On Appeal from Cause Number 1756207  
From the 351<sup>st</sup> District Court of Harris County, Texas

**BRIEF FOR APPELLANT**

**ORAL ARGUMENT REQUESTED**

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## **STATEMENT OF THE CASE**

Mr. Howard, Appellant, was charged with the murder of Tammy Mouton, Complainant, alleged to have occurred on January 7, 2022. (C.R. at 51). On July 16, 2024, he entered a plea of not guilty and proceeded to trial by jury. (C.R. at 703; 3 R.R. at 23-25). On July 23, 2024, the jury found Mr. Howard guilty of murder as charged. (C.R. at 703, 7 R.R. at 63). After the jury found him guilty, Mr. Howard was sentenced by the trial court to forty-five (45) years in the Institutional Division of the Texas Department of Criminal Justice. (C.R. at 703; 8 R.R. at 48). On August 16, 2024, Mr. Howard filed a timely notice of appeal. (C.R. at 729). On August 20, 2024, the Harris County Public Defender's Office was appointed to represent him. (C.R. at 726). On September 11, 2024, undersigned counsel was assigned to this appeal.

## **ISSUE PRESENTED**

### **ISSUE ONE**

WHETHER THE TRIAL COURT ERRED BY ADMITTING UNRELIABLE FIRE CAUSATION EVIDENCE?

### **STATEMENT OF FACTS**

On March 24, 2022, an indictment was filed charging Mr. Howard with murder as follows:

The duly organized Grand Jury of Harris County, Texas, presents in the District Court of Harris County, Texas, that in Harris County, Texas, XAVIER JAWIN HOWARD, hereafter styled the Defendant, heretofore on or about January 7, 2022, did then and there unlawfully, intentionally, and knowingly cause the death of Tammy Mouton, hereafter called the Complainant, by applying pressure to the Complainant's neck and restricting the breathing of the Complainant.

It is further presented that in Harris County, Texas, Xavier Jawin Howard, hereafter styled the Defendant, heretofore on or about January 7, 2022, did then and there unlawfully intend to cause serious bodily injury to Tammy Mouton, hereinafter called the Complainant, and did cause the death of the Complainant by intentionally and knowingly committing an act clearly dangerous to human life, namely, applying pressure to the Complainant's neck and restricting the breathing of the Complainant.

(C.R. at 51). Cindy Gomez identified Mr. Howard in the courtroom as her neighbor. She lived next door along with her ex-husband and six children. She was able to recall the events of January 7, 2022, when it was cold outside and more than half of her family was home sick with COVID. On that evening she was suddenly awakened by her ex-husband who was telling her the neighbor's house was on fire. She immediately put on

her jacket and went outside to observe the situation. She attempted to contact the neighbor she knew lived there named Crystal. Crystal was Mr. Howard's wife. Unable to reach her, she called 911. Her ex-husband was banging on the garage door trying to wake the residents. Another neighbor, Cevilo Perez, arrived at the scene and assisted in attempting to wake the residents. (3 R.R. at 33–38).

According to Ms. Gomez, just after she called 911 Mr. Howard pulled up to the house. He was driving a van and wearing only pajama pants. He appeared to go inside the house through a side door while calling for his daughters who might be in the house. Ms. Gomez witnessed Mr. Perez coming out of the house with the youngest girl in his arms. He handed the girl over to her and Ms. Gomez set the girl on the grass wrapped in a blanket. Mr. Perez brought her the second young girl he rescued from the house and Ms. Gomez wrapped her in a blanket and placed her on the grass next to her sister. (3 R.R. at 39-45). Finally, a police officer arrived and soon after firefighters arrived. Ms. Gomez explained to them the situation at the scene. (3 R.R. at 45-46).

Mr. John Benavides, a hazardous materials technician with the Harris County Fire Marshal's Office, documented the scene as a photographer/videographer. (3 R.R. at 64-66). He arrived at the burning house early in the morning on January 7, 2022, and was there for approximately 90 minutes. (3 R.R. at 120-21). He photographed various fire-damaged structures noticing soot and smoke damage on the northeastern side of the residence (3 R.R. at 69-70). He photographed interior areas including the hallway and laundry area that appeared to be significant points of fire damage (3 R.R. at 110-

113). When cross-examined, he admitted he was not present during the initial extinguishing of the fire during the early hours of the incident. He did not conduct any interviews or provide analysis on fire causation. His role was strictly related to visual documentation. (3 R.R. at 65-66, 120-121).

Lieutenant Jeffery Foster from the Northwest Fire Department arrived on the scene early in the morning of January 7, 2022. Lieutenant Foster was "lineman," responsible for handling the fire nozzle as they entered the structure. He. (3 R.R. at 124-125, 134-135). He described looking for people in the house under heavy smoke conditions. He was able to locate one individual when he saw her foot. They lifted the individual straight up with "the lower extremities, heels and the legs" on the ground and drug her out of the house. (3 R.R. at 133).

On cross-examination, he acknowledged that he was not involved in determining the fire's cause and he did not prepare an independent report. (3 R.R. at 140-141).

Lieutenant James Singleton, with the Arson Investigation Division at the Harris County Fire Marshal's Office, arrived at the scene of the fire to provide support for the investigation. He spent approximately six hours at the scene. (3 R.R. at 141-143). Lieutenant Singleton photographed the scene. He described injuries to a deceased individual found in the home and he examined the layout of the fire-damaged area. He located a pan that appeared damaged, but he did not know the cause of the damage. (3 R.R. at 147-148, 153-154). Lieutenant Singleton took over 200 pictures of the scene.



He turned the photos over to Lieutenant Foster as evidence. (3 R.R. at 121-122; State's Exhibits 174-183).

Deputy Demetrius Lewis, a homicide investigator with the Harris County Sheriff's Office, testified that his responsibilities generally include canvassing the area for evidence, conducting interviews, and collecting video footage. (3 R.R. at 158-159). On January 7, 2022, he received a call from the homicide investigation team to come to the scene of the fire. When he arrived at the scene he met with investigator Miller before canvassing the surrounding areas for potential surveillance footage. (3 R.R. at 177-179).

Deputy Lewis was able to locate a few homes with surveillance systems. He obtained consent from homeowners to access the relevant footage. (3 R.R. at 181-182). 3 R.R. at 195-197; State's exhibits 4, 6 & 7). Deputy Lewis noticed that on January 6, 2022, a white van with an elongated white sticker was depicted in some of the video footage. An individual he believed to be Mr. Howard can be seen exiting the van and walking towards the front of the house. The individual appears to be wearing a red hoodie, a white shirt, and dark-colored pants. He is moving in and out of view but appears to enter the house before the garage door opens and he can be seen pulling into the garage and backing the van into the garage. (4 R.R. at 15-22).

Then, during the early morning hours of January 7, 2022, the van can be seen in a video driven by a man wearing the same clothes who exits the van and walks toward the house. The man walks to the side of the home and after some time it becomes

apparent that the house is on fire. (4 R.R. at 23-38). As the house burns, the man can be seen leaving the house and walking back toward the vehicle. The man ultimately gets into the vehicle and drives away. (4 R.R. at 39-43).

Later that same morning, the same van can be seen returning to the residence and pulling into the driveway. A shirtless man wearing dark pants can be seen exiting the vehicle and running along the right side of the house. Individuals determined to be neighbors can be seen leaving their homes and walking toward the house. Some of them tried to enter the house when it became apparent the house is on fire. The shirtless man drove the van from the driveway into the garage. Just as he got out of the van, the fire department arrived at the scene. In the end, two children were rescued from the burning house. (4 R.R. at 44-49).

Ms. Luz Vargas, a resident of 11206 Zada Park Lane, identified two CDs that captured the view from certain vantage points at her house. She provided the videos to law enforcement. Although the video cameras were working, the time was intentionally altered in order to “help the video to move correctly.” (4 R.R. at 7-10; State’s Exhibits 2 & 3).

On January 7, 2022, Sergeant Sidney Miller with Homicide Unit of the Harris County Sheriff’s Office, was called to the scene to investigate the house fire at 2727 Tremontina Drive. Upon arrival, he learned that a deceased individual was found in the house having died under suspicious circumstances. (4 R.R. at 68-69). He confirmed that the medical examiner determined that the death was a homicide not caused by the

fire accident. (4 R.R. at 72-73). He canvased the scene looking for witnesses or surveillance video that could provide information. (4 R.R. at 70-71).

The investigation led Sergeant Miller to Mr. Xavier Howard as a possible suspect. He identified Appellant in the courtroom as Xavier Howard. (4 R.R. at 76-77).

Sergeant Miller determined the residents of the house that had been on fire located at 2727 Trementina Drive included Mr. Xavier Howard (Appellant), Mrs. Crystal Howard (Appellant's wife and the mother of two daughters), Ms. Tammy Mouton (Appellant's mother-in-law and the Complainant), Alaya and Alayria (Appellant's and Chrystal's daughters). (5 R.R. at 12-13).

The surveillance cameras that he located captured an individual parking a van at 11206 Zada Park Lane around 3:15 a.m. on January 7, 2022. That same could be seen walking towards the house at 2727 Trementina Drive. At 5:01 a.m., video footage showed a fire starting at that house. The individual can be seen leaving the burning house. (5 R.R. at 17-22). Sergeant Miller narrowed the identity of the individual as Mr. Xavier Howard and he was transported to the Sheriff's Department on January 25, 2022 to be interviewed. (5 R.R. at 22-26). Mr. Howard identified the van as his by the rectangular sticker and he informed Sergeant Miller of a suspicious ex-girlfriend who drove a blue Trail Blazer. (5 R.R. at 27-31).

During cross-examination, Sergeant Miller admitted there was a lack of DNA evidence in this case and the identification of Mr. Howard was solely based on video footage. He also admitted the widespread presence of vans like the one in the video

and admitted that video of the van alone was not definitive proof of anything. (5 R.R. at 48-62). Sergeant Miller further admitted that the identifying sticker on the van was a Rideoutnow.com sticker. Because Rideoutnow is a popular local car dealership, he acknowledged that such stickers are common on vehicles. (5 R.R. at 60-65, 75-80).

On January 25, 2022, Deputy Michael Contreras with the Harris County Sheriff's Office, was assigned the task of transporting Mr. Howard to the police station to be interviewed. Mr. Howard was with Sergeant Miller at the time. Mr. Howard complained of chest pain before Miller and Contreras were able to place him in handcuffs. As Deputy Contreras attempted to move Mr. Howard into his patrol vehicle, Mr. Howard suddenly got away and fled northbound while still in handcuffs. (5 R.R. at 98-101). Deputy Contreras gave chase and almost regained control of Mr. Howard by grabbing his shoulder, but Mr. Howard broke free. At one point Deputy Contreras fell to the ground but he eventually caught and detained Mr. Howard on the southbound side of the road. (5 R.R. at 101-105). The entire episode lasted less than 25 seconds. (5 R.R. at 106).

On January 25, 2022, Deputy Donald Seymore, also with the Harris County Sheriff's Office, went to assist Deputy Contreras with the transport of Mr. Howard. Deputy Seymore arrived at 601 Lockwood Drive and parked facing southbound on the east side of a building. Deputy Seymore saw Deputy Contreras moving Mr. Howard towards his patrol car. As Deputy Contreras gestured to open the car door, Mr. Howard abruptly ran across Lockwood. Deputy Seymore immediately pursued by making a U-

turn and using his vehicle to block Mr. Howard's path. By the time Deputy Seymore exited his vehicle, Deputy Contreras had caught up with him and regained control over Mr. Howard. Mr. Howard was again complaining about chest pain after he was recaptured. Although Deputy Seymore was wearing a body camera at the time of the arrest, his camera did not capture the pursuit. (5 R.R. at 107-115).

A hearing was conducted outside the presence of the jury to establish the admissibility of expert testimony from Sergeant Oscar Castiblanco. Thomas Sing, a retired fire and arson investigator who had been with the State Fire Marshall's Office, would testify as an expert for the defense. He reviewed the reports and testimony in this case and came to the conclusion that the fire's cause was "undetermined" due to the lack of clear evidence. According to Sing, biases like expectation and confirmation bias can affect fire investigations. Here, the investigation failed to identify the exact ignition source or conduct arc mapping or electrical testing. (5 R.R. at 137-151). Sing further testified that he believed there were multiple potential origins for the fire that were not ruled out. The investigation did not meet the standards outlined in NFPA-921 and other scientific guidelines and he asserted that without eliminating all other potential causes, it is impossible to conclude the fire was intentionally set. (5 R.R. at 151-155).

Sergeant Oscar Castiblanco, a fire investigator with the Harris County Fire Marshal's Office, would testify at the hearing that his role in this case was focused strictly on the fire investigation. He used the scientific method in conducting his

investigation. This involves recognizing the need, defining the problem, collecting and analyzing data, and developing and testing hypotheses. (5 R.R. at 116-120). Sergeant Castiblanco was dispatched to a residential fire involving a possible fatality on January 7, 2022. He arrived at the scene at around 6:30 a.m. and performed a 360-degree walk-around to assess external damage and gather information from potential witnesses. Inside the house, working from the front door clockwise through each room, he observed significant fire damage in the foyer / guest room area. He believed the fire originated in this area due to the burn patterns. He noted V-shaped burn patterns which suggested the fire was intentionally set. His investigation did not reveal any electrical malfunctions or appliance failures. (5 R.R. at 121-126; 158-171; State's Exhibits 87-123).

Sergeant Castiblanco described the injuries to the Complainant including evidence of blunt force trauma to her head and isolated burns on her left ankle caused by an open flame such as a lighter or a torch. On cross-examination, Sergeant Castiblanco admitted that he did not trace electrical lines, open appliances or check electrical faults. He did not identify the first item ignited in the fire nor did find any accelerant. (5 R.R. at 127-132; 171-174). Ultimately, the trial court allowed Sergeant Castiblanco to testify as an expert with regard to the fire's origin. (6 R.R. at ).

Dr. Pramrod Gumpeni, a Deputy Chief Medical Examiner at the Harris County Institute of Forensic Sciences, conducted the autopsy of the Complainant, Tammy Mouton. He testified that he found evidence of blunt force trauma and petechiae in

the eyes and mouth, indicating pressure-related trauma. He concluded the cause of death was asphyxia due to neck compression, with the manner of death being homicide. (6 R.R. at 89, 96-124; State's Exhibits 185-257).

Dr. Julie Fleishman, a forensic anthropologist with the Harris County Institute of Forensic Sciences, became involved in this case at the request of a Dr. Podduturi, a forensic pathologist. She was asked to examine trauma to the facial bones and structures in the neck of the Complainant. She produced a report as part of the lab's standard activities, and it was signed on March 4, 2022.

Dr. Fleishman identified three key neck structures including the hyoid bone, thyroid cartilage, and cricoid cartilage. She noted fractures in the superior horns of the thyroid cartilage which were disconnected indicating a break. She concluded the fractures occurred at or near the time of death. On cross-examination, Dr. Fleishman admitted that she was not present at the scene on January 7, 2022, and she could not definitively identify the exact cause of the fractures. In completing her report, she considered the notes of Dr. Deborah Pinto who conducted the initial facial bone examination during the autopsy. (6 R.R. at 145-156).

Thy Nguyen, a toxicology technician with the Harris County Institute of Forensic Sciences, was tasked with testing for carbon monoxide in this case. She used an oximeter to detect the carbon monoxide and reported her results to a case reviewer. (6 R.R. at 157-163). Dr. Teresa Gray, the Director of Forensic Toxicology with the Harris County Institute of Forensic Sciences, reviewed the toxicology report in this

case. She testified that the report indicated a carbonoxyhemoglobin saturation level under 10% in the Complainant indicating no significant carbon monoxide exposure. This level indicates normal, non-exposure to carbon monoxide, meaning smoke inhalation did not significantly contribute to the toxicology findings. (6 R.R. at 164-170).

### **SUMMARY OF THE ARGUMENTS**

The trial court abused its discretion by allowing Sergeant Castiblanco to testify as an expert witness about the origin of the fire. To have been admissible, the State had to prove by clear and convincing evidence that Castiblanco's expert testimony was reliable. The State disavowed this responsibility so the judge should have prohibited his testimony.



## ARGUMENT

### ISSUE ONE

WHETHER THE TRIAL COURT ERRED BY ADMITTING UNRELIABLE FIRE CAUSATION EVIDENCE?

#### A. Standard of Review

This Court reviews a trial court's decision to admit scientific expert testimony under an abuse of discretion standard. *See Weatherred v. State*, 15 S.W.3d 540, 542 (Tex. Crim. App. 2000).

#### B. The Trial Court Erred and abused its Discretion by allowing Sergeant Castiblanco to testify as an expert regarding the cause of the fire's ignition.

The Court of Criminal Appeals has held that before scientific evidence may be presented to the jury, the proponent of that evidence must demonstrate by clear and convincing evidence that the scientific evidence is trustworthy and relevant. *Kelly v. State*, 824 S.W.2d 568, 573 (Tex. Crim. App. 1992)(enbanc); *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 585-587 (1993). “[R]eliability depends upon whether the evidence has its basis in sound scientific methodology,” which “demands a certain technical showing.” *Vela v. State*, 209 S.W.3d 128, 133 (Tex. Crim. App. 2006)(quoting *Jordan v. State*, 928 S.W.2d 550, 555 (Tex. Crim. App. 1996)). In sorting invalid theories from those that are grounded in “good” science, trial judges are called upon to serve as “gatekeepers.” *Daubert*, 509 U.S. at 595-599.

Texas Rule of Evidence 702 provides:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

Tex. R. Evid. 702.

To testify as an expert, the proponent must prove by clear and convincing evidence that his “testimony is reliable and helpful to the jury in deciding the ultimate issue.” *Blasdel v. State*, 470 S.W.3d 59, 62 (Tex. Crim. App. 2015). Meeting this threshold requires proof of the witnesses qualifications, the reliability of the testimony, and its relevance. *Rhomer v. State*, 569 S.W.3d 664, 669 (Tex. Crim. App. 2019).

The test for expert reliability requires that (A) the underlying scientific theory be valid, (B) the technique applying the theory be valid, and (C) the technique have been properly applied on the occasion in question. *Kelly*, 824 S.W.2d at 573. Factors that could affect a trial court's determination of expert reliability include, but are not limited to:

- (1) The extent to which the underlying scientific theory and technique are accepted as valid by the relevant scientific community, if such a community can be ascertained;
- (2) The qualifications of the testifying expert;
- (3) The existence of literature supporting or rejecting the underlying scientific theory and technique;
- (4) The potential rate of error of the technique;

- (5) The availability of other experts to test and evaluate the technique;
- (6) The clarity with which the underlying scientific theory and technique can be explained to the court; and
- (7) The experience and skill of the person(s) who applied the technique on the occasion in question.

*Id.*

The trial court held a hearing outside the presence of the jury for the purpose of ascertaining if Sergeant Castiblanco was qualified to testify as an expert about investigative procedures and conclusions regarding fire causation. At the conclusion of the evidence at the hearing, Mr. Howard objected to Sergeant Castiblanco testifying as an expert on the grounds that he did not utilize the NFPA (National Fire Protection Association) standards, which are used by Texas courts, federal courts, and many other agencies when determining fire causation. Mr. Howard further pointed out that because no accelerant was found and no definitive point of origin was established, the fire's cause should be classified as "undetermined." Also, the methodology Sergeant Castiblanco employed did not follow the recognized scientific standards used by fire investigators, thereby undermining the reliability of his testimony. (5 R.R. at 152-155).

Sergeant Castiblanco would testify at the hearing that upon arriving at the scene, he assessed the damage, conducted witness interviews, and performed a 360-degree external and internal examination of the property. Using the scientific method, his primary focus was to determine the fire's point of origin and cause. (5 R.R. at 119-122). Sergeant Castiblanco testified that he performed a systematic room by room

examination, noting fire damage concentrated in the front foyer/guestroom area. He found significant fire effects in this region and proceeded to examine the kitchen living room, and other rooms. Emphasizing his use of the scientific method, he testified that he analyzed fire patterns, examined possible ignition sources, and determined that no clear accidental cause was apparent. (5 R.R. at 123-126). Sergeant Castiblanco concluded the fire was intentionally set because it exhibited signs of deliberate ignition.

On cross-examination, Sergeant Castiblanco admitted that he had not conducted in-depth electrical tracing nor physically examined appliances or electrical fixtures. He relied on a visual rather than hands-on inspection. (5 R.R. at 127-132).

Mr. Howard would call Thomas Sing as an expert to challenge Casablanca's methodology. Sing testified that the fire should be classified as "undetermined." Sing criticized Casablanca's investigation for failing to eliminate all accidental causes, stating that NFPA 921 requires investigators to identify an ignition source and first fuel source before concluding arson. He pointed out that multiple possible causes, including electrical failure, were not fully investigated. Additionally, Sing noted that no accelerants were detected, and that the fire's exact origin was uncertain. He opined that confirmation bias, where an investigator forms a hypothesis and then seeks evidence to support it instead of considering all possibilities objectively, could be contributing to Casablanca's results. (5 R.R. at 137-151).

The trial court ruled as follows:

The Court's considered the testimony that was presented and guidelines relevant to it's obligation under Rule 702. The Court as a gatekeeper must determine whether scientific evidence is sufficiently reliable. Certainly the evidence that's proffered is relevant to the case; but with regards to reliability, the Court is not satisfied that the technique applying the theory was valid and that the technique was properly applied on the occasion in question.

In regards to the State's expert opinion, with the location of the source of the fire as well as whether or not the fire was started intentionally, and so those two opinions are excluded.

(5 R.R. at 156). The State called Lieutenant James Singleton in an attempt to rehabilitate their expert testimony. Singleton reviewed Castiblanco's report and opined that it followed the accepted scientific method. He testified that while outcomes may differ due to different data collection or hypothesis evaluation, the methodology itself was valid. He acknowledged that Castiblanco did not identify all potential ignition sources or take depth-of-char measurements on the table. Nonetheless, Singleton concluded that Castiblanco had ruled out all accidental causes to his satisfaction. (6 R.R. at 25-33).

Having considered this testimony, the trial court ruled as follows:

Based on all of the evidence that the court has heard and considering Rule 702 and related case law, under Daubert, the Court finds that the expert is qualified to testify with regards to the origin of the fire but grants the objection with regards to whether the fire was intentionally started.

(6 R.R. at 33). The trial court erred in allowing the expert testimony as to the fire's origin because his methodology was not reliable. Castiblanco admitted that he did

not test any materials in the room, including the loveseat, which he claimed was the point of origin of the fire. He also failed to determine the burn temperatures of anything in the room. (5 R.R. at 136). The trial court originally acknowledged that the methodology was not sufficiently reliable to support the conclusion drawn. (5 R.R. at 156). Even though nothing about his methodology changed, the trial court changed its ruling.

Under Daubert, expert testimony must be scientifically valid and reliably applied, which Castiblanco failed to demonstrate. His conclusions should be deemed inadmissible. Sergeant Castiblanco's methodology in determining the origin of the fire was unreliable because it failed to adhere to the rigorous scientific principles required under *Daubert*. His approach did not meet the necessary standards of reliability, falsifiability, and acceptance within the scientific community.

At trial, before the jury, Sergeant Castiblanco testified that on January 7, 2022, he arrived at the scene of a house fire to conduct an investigation. His role was to determine the fire's origin using the scientific method and industry standards outlined in NFPA 921 and 1033. However, throughout his testimony, his conclusions faced significant challenges regarding their reliability, consistency, and adherence to scientific principles. (6 R.R. at 36-38). Despite claiming to follow NFPA 921's scientific method, Castiblanco conducted no physical tests to confirm his hypothesis. Instead, he relied solely on visual observations, making his determination subjective rather than scientifically verified. (6 R.R. at 52-53). When asked whether he conducted any testing,

he admitted, "No." (6 R.R. at 52). He also stated that his conclusions were based only on visual observations, which can be easily influenced by assumptions rather than measurable data. (6 R.R. at 53). His failure to conduct char depth analysis, gas leak tests, electrical arc tracking, or other forensic methods undermines his claim of using a scientific methodology.

Sergeant Castiblanco determined that the fire originated in the front living room, specifically near a loveseat. However, his investigation lacked a thorough examination of other potential sources of ignition. (6 R.R. at 51-52). He dismissed the kitchen as a possible fire origin despite observing pots on the stove, one burner turned on, and food left out. (6 R.R. at 44-46). He did not test any electrical appliances, despite acknowledging that fires can originate from electrical arcing, appliance failures, or wiring issues. (6 R.R. at 72-76). He did not examine metal frames or oxidation levels, which could indicate whether the fire started in a different location before spreading to the front living room. (6 R.R. at 73). Glass windows were broken, possibly due to a sudden heat surge or explosion, which could suggest another origin point, but he did not investigate further. (6 R.R. at 70-71). His process of elimination was incomplete and speculative, leaving open the possibility of other sources of ignition that he did not thoroughly test.

A key weakness in Castiblanco's testimony was his inconsistencies in describing how the fire spread and how burn patterns supported his conclusion. He claimed that burn patterns indicated the fire started in the front of the house, but when challenged,

he admitted that high-heat fires, like one from a burning couch, could obscure true fire origins. (6 R.R. at 68-69). The presence of soot and char around other areas contradicted his claim that the fire's origin was limited to the front room. (6 R.R. at 47-50). He noted that smoke detectors were missing but did not investigate when or why they were removed—which could indicate tampering or an alternate fire origin. (6 R.R. at 50-51). If a fire spreads rapidly and intensely, it can destroy or cover up key evidence of its true origin. By failing to account for this possibility, Castiblanco's conclusions remained questionable.

Castiblanco acknowledged the presence of electrical appliances, wiring, and gas fixtures, but he did not test them as potential ignition sources. (6 R.R. at 74-77). He did not check for electrical arcing, even though exposed wires could have been an ignition source. He did not test the breaker box or use a tonometer to trace electrical current failures. (6 R.R. at 76). He acknowledged that gas could have been leaking from the stove, but never tested for gas levels. (6 R.R. at 78-80). Without ruling out these key fire hazards, his conclusion that the fire started from a loveseat in the front room lacks scientific rigor.

Sergeant Castiblanco cited the Complainant's injuries to support his fire origin theory. However, his observations were inconsistent with standard fire dynamics. (6 R.R. at 54-58). The Complainant was found with severe burns on only one leg, which Castiblanco admitted was inconsistent because fire typically spreads symmetrically. (6 R.R. at 58). He relied on secondhand reports from emergency responders about where



the victim was found, instead of analyzing her positioning in relation to the fire's spread. (6 R.R. at 57). If the fire had truly started in the front of the house, her injury patterns should have been different. This further weakens his theory about where and how the fire began.

Throughout the cross-examination, defense counsel highlighted the gaps in Castiblanco's investigation, pointing out that many of his conclusions were based on assumptions rather than direct evidence. (6 R.R. at 71-73, 78-80). He admitted that burn patterns can be misleading and that fire intensity can mask its true origin. (6 R.R. at 68-71). He failed to take precise measurements of fire damage, oxidation, and burn residue. (6 R.R. at 73-74). He did not record key details in his report, such as observations about oxidation, broken appliances, or wire damage. (6 R.R. at 73). His reliance on assumptions rather than empirical data made his conclusion about the fire's point of origin unreliable.

Sergeant Castiblanco's testimony about the origin of the fire was unreliable due to:

1. Lack of scientific testing—He relied solely on visual observations. (6 R.R. 52-53).
2. Failure to consider alternate fire origins—He did not thoroughly test electrical sources, appliances, or gas leaks. (6 R.R. at 72-76).
3. Contradictions in burn patterns—He ignored factors that could have obscured the fire's true start point. (6 R.R. at 68-71).
4. Lack of analysis on electrical and gas components—He did not check arcing, oxidation, or breaker failures. (6 R.R. at 74-76).

5. Conflicting evidence from the victim's injuries—Her burns did not match the assumed fire spread. (6 R.R. at 54-58).
6. Overreliance on assumptions—He failed to document or measure crucial fire dynamics. (6 R.R. at 71-73, 78-80).

Without scientific verification, proper testing, and consideration of alternative ignition sources, Castiblanco's determination that the fire originated in the front living room remains speculative and unreliable.

Not only did the trial court abdicate its role under Rule of Evidence 702, but the State failed to meet its burden of proof and it does not appear that they could have met that burden. Accordingly, the admission of Deputy Castiblanco's testimony was error.

**C. Improper Admission of Unreliable Scientific Evidence in a Weak Case Affected Mr. Howard's Substantial Rights.**

The violation of an evidentiary rule that results in erroneous admission of evidence constitutes nonconstitutional error. See Tex. R. App. P. 44.2(b). Where the error affects the appellant's substantial rights, reversal is proper. *Barshaw v. State*, 342 S.W.3d 91, 93 (Tex. Crim. App. 2011). The Court focuses "not on whether the outcome of the trial was proper despite the error, but whether the error had a substantial or injurious effect or influence on the jury's verdict." *Id.* At 93-94. The Court determines the effect that the wrongfully admitted evidence had on the verdict, specifically, all the evidence that was admitted at trial, the nature of the evidence that supports the verdict, the character of the alleged error, and how the evidence might be considered in connection with other evidence in the case. *Id.* At 94. Further, the Court may consider

the trial court's instructions to the jury, the theories advanced in the case by the parties, closing arguments, jury voir dire, and the extent to which the state emphasized the error. *Id.*

Sergeant Castiblanco's testimony regarding the origin of the fire was critical to the final conviction because it established the location and possible cause of the fire, which in turn helped the prosecution build their case. His findings provided the foundation for the legal arguments regarding whether the fire was accidental or deliberately set. His testimony established the fire's point of origin by ruling out the kitchen, bedrooms, and other areas, concluding that the fire originated in the front living room/foyer area, where a loveseat had been reduced to its metal frame. (6 R.R. at 51-52). This was important because the fire's starting point could indicate whether it was accidental or intentionally set.

His testimony determined that no electrical malfunctions or appliance failures were responsible. (6 R.R. at 53, 84-85). It confirmed that there were no accelerants detected by the K9 unit, weakening potential defenses related to accidental ignition by flammable liquids. (6 R.R. at 39-40, 85). He further testified that the fire's intensity and burn patterns were consistent with a fire that started at the loveseat and spread outward rather than from an accidental household source. (6 R.R. at 51-52, 72-73).

In support of the State's narrative, he testified the pattern of fire damage in the home aligned with potential human actions (e.g., something being placed or ignited near the loveseat) rather than an unavoidable event. (6 R.R. at 50-52, 74-75) and that the

absence of typical accidental fire indicators, such as electrical arcing or malfunctioning outlets, further eliminated common alternative explanations. (6 R.R. at 74-76). He opined that discrepancies in the fire's progression and missing objects suggested that items may have been deliberately removed before or during the fire. (6 R.R. at 48-49, 55-56).

In closing argument the State argued that Mr. Howard started the fire to cover up the murder of his mother-in-law, that the fire was set in a manner that could have been intended to destroy evidence, with the ignition point being where the Complainant slept, and emphasized that there was no other plausible explanation for the fire except that it was set to hide evidence of murder. (7 R.R. at 41-60).

Sergeant Castiblanco's testimony artificially strengthened the State's case when he explained how heat and smoke traveled, leading him to determine that the living room fire was the strongest and first to ignite (6 R.R. at 46-47, 69-71), when he described how broken windows and oxygen flow could have intensified the fire in a way that suggested human intervention rather than an accidental, slow-building fire (6 R.R. at 70-71), and that his observations on the victim's burn patterns and injuries suggested she was already in the home when the fire started, a critical element in determining potential intent. (6 R.R. at 56-58, 83-85).

## **D. Conclusion**

Sergeant Castiblanco's testimony was essential for establishing the prosecution's timeline and the way the fire spread, leading to a conviction based on evidence that suggested the fire was not purely accidental. His exclusion of no other causes, combined with the pattern of fire damage, provided scientific backing for claims of intent, which were necessary for the conviction.

It cannot be said that this erroneously admitted evidence had little or no impact on the jury. This Court should reverse the conviction and remand the case for a new trial.

## **PRAYER**

Mr. Howard prays this Court reverse his conviction and order a new trial or any other relief he may be entitled.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

Pursuant to proposed Rule 9.4(i)(3), undersigned counsel certifies that this brief complies with the type-volume limitations of *Tex. R. App. Proc. 9.4(e)(i)*.

1. Inclusive of the portions exempted by *Tex. R. App. Proc. 9.4 (i)(1)*, this brief contains 6,719 words printed in a proportionally spaced typeface.
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3. Undersigned counsel understands that a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in *Tex. R. App. Proc. 9.4(j)*, may result in the Court's striking this brief and imposing sanctions against the person who signed it.

/s/ Dancie Schindler  
DAUCIE SCHINDLER

## **CERTIFICATE OF SERVICE**

I certify that on the 11<sup>th</sup> day of February, 2025, a copy of the foregoing instrument has been electronically served upon the Appellate Division of the Harris County District Attorney's Office.

/s/ *Daucie Schindler*  
DAUCIE SCHINDLER

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