

45576CR  
CAUSE NO. 44576CR

THE STATE OF TEXAS                   §                   IN THE 443<sup>RD</sup> JUDICIAL  
  §  
VS.   §                   DISTRICT COURT  
  §  
JOHN ERIC ARMSTRONG               §                   OF ELLIS COUNTY, TEXAS

**MOTION FOR HEARING OUTSIDE THE PRESENCE OF THE JURY  
PURSUANT TO RULE 705, TEXAS RULES OF EVIDENCE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant in the above-entitled and numbered cause, and pursuant to Rule 705 of the Texas Rules of Criminal Evidence, hereby requests that the Court conduct a hearing outside the presence of the jury to determine the admissibility of any expert testimony offered by the State and as grounds therefor would show the Court as follows:

I

Rule 702 of the Texas Rules of Evidence provides that scientific, technical, or other specialized knowledge is admissible if it assists the trier of fact to understand the evidence or to determine a fact in issue. The Texas Court of Criminal Appeals has interpreted Rule 702 to require a showing that any expert testimony is both relevant and reliable. *Hartman v. State*, 946 S.W.2d 60 (Tex. Crim. App. 1997), *Kelly v. State*, 824 S.W.2d 568 (Tex. Crim. App. 1992).

Specifically, to be reliable the evidence must meet three criteria:

1. the underlying scientific theory must be valid,
2. the technique applying the theory must be valid, and
3. the technique must have been properly applied on the occasion in question.

*Id.* at 62 citing *Kelly v. State*, 824 S.W.2d 568, 572 (Tex. Crim. App. 1992).

II

If the Court determines that the expert testimony offered by the State is both relevant and

reliable, Defendant would request the Court determine if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice according to Rule 403 of the Texas Rules of Evidence.

III.

Under Rule 705(b) of the Texas Rules of Evidence Defendant is entitled to a hearing outside the presence of the jury for the trial court to make a determination of the admissibility of any expert testimony offered by the State.

IV.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the Court grant this motion and conduct a hearing outside the presence of the jury to determine the admissibility of any expert testimony. At that hearing, Defendant would request the Court to make the required determinations under Rules 702 and 403 as set out above.

Respectfully submitted,

/s/ Sarah D. Jacobs

**Mark D. Griffith, SB #00785928**

**Chad A. Hughes, SB #24082020**

**Sarah D. Jacobs, SB#24068658**

**GRIFFITH & ASSOCIATES**

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**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document was this date provided to the Attorney for the State of Texas to the Ellis County District Attorney's Office via the Court's e-filing system, on this 9th day of October, 2020.

/s/ Sarah D. Jacobs

Attorney, Griffith & Associates

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IN THE 443<sup>RD</sup> JUDICIAL

VS.

DISTRICT COURT

JOHN ERIC ARMSTRONG

OF ELLIS COUNTY, TEXAS

**ORDER ON**  
**MOTION FOR HEARING OUTSIDE THE PRESENCE OF THE JURY**  
**PURSUANT TO RULE 705, TEXAS RULES OF EVIDENCE**

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2020 came on to be considered the above titled motion and after consideration of the same it is the ORDER of this Court that the Motion is hereby:

(     )     Granted.

(     )     Denied, to which ruling Respondent excepts.

Signed on this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
JUDGE PRESIDING