

No. _____

19-5426

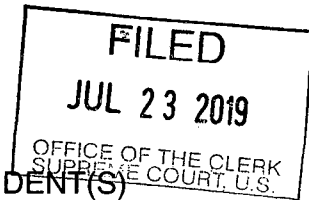
IN THE

SUPREME COURT OF THE UNITED STATES

Leonard Stausberry — PETITIONER
(Your Name)

vs.

The State of Texas — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

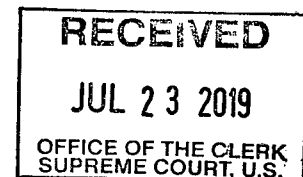
Texas Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Leonard Stausberry
(Your Name) No. # 02132855
John M. Wynne State Farm
810 F.M. 2821
(Address)

Huntsville, Texas. 77349
(City, State, Zip Code)

(936) 295-9125
(Phone Number)



QUESTION(S) PRESENTED

Question No. 1 Presented:

Whether a Medical Examiner's Opinion as to the cause and manner of death is admissible in a criminal trial when the Opinion given is based in part on witness statements or information obtained through law enforcement investigation rather than primarily and exclusively on the autopsy of the deceased?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner:

Leonard Stansberry
TDCJ-CID No. # 02132855
John M. Wynne State Farm
810 F.M. 2821
Huntsville, Texas. 77349

Respondent:

The State of Texas;
C/O: Paul Johnson
District Attorney - Denton County
P.O. Box 2344
Denton, Texas. 76202-2344

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Second Appellate court appears at Appendix B to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was May 8, 2019. A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

XI Amendment to the United States Constitution as set forth in full in Appendix - C

XIV Amendment to the United States Constitution as set forth in full in Appendix - D

Rule 702 of the Texas Rules of Evidence as set out in full in Appendix - E

Rule 5.702 of the Iowa Rules of Evidence as set out by reference to Rule 702 of the Texas Rules of Evidence in Appendix - E.

STATEMENT OF THE CASE

The Petitioner was convicted before a jury upon a plea of not guilty for the alleged offense of Murder before the 362ND Judicial District Court of Denton County, Texas, in Cause No. # F16-216-362, Styled: The State of Texas v. Leonard Stansberry. (Appendix-B; p. 2). An appeal was taken to the Second Court of Appeals for the State of Texas in Cause No. # 82-17-88158-CR, Styled: Leonard Stansberry v. The State of Texas, and on December 13, 2018 in an Unpublished Memorandum Opinion the Court of Appeals affirmed the trial Court's judgment. (Appendix-B; pp. 1-38).

The Court of appeals in its back ground of the case overment stated that following an extensive investigation, law enforcement officers concluded that the deceased had not shot herself like the Petitioner said. Rather they believed the evidence showed that the Petitioner had shot her. (Appendix-B; p. 2). Before the Court of appeals the Petitioner argued that the trial court erred by admitting medical examiner Tasha Greenburg's opinion that the manner of the deceased death was a homicide. (Appendix-B; p. 28). The Petitioner advanced, that Greenburg's opinion was inadmissible under Rule 702 and 705(c) of the Texas Rules of Evidence because in reaching her conclusion, she impermissibly relied upon information that others had provided to her. (Appendix-B; p. 29).

In a summation of the facts by the Court of appeals, Greenburg was a Forensic Pathologist with the Tarrant County Medical Examiner Office, who performed the autopsy upon the deceased, and compiled an Autopsy Report that included her conclusions as to the cause and manner of the deceased death. Greenburg testified that in reaching those conclusions, she relied in part on a critical case review, which she explained was a conference at the Medical Examiner's Office where all of the physicians, as well as the lead investigator, chief administrator, chief of toxicology, and chief of crime lab gather together to present a case for discussion and come to a consensus

Opinion about the case. Greenburg furthered that she also relied in part on information law enforcement officers had provided to her that they had learned through their investigation, including information about the shooting scene and the defendant's account of how the shooting occurred, as well as the results of the stippling pattern testing investigators had performed at the DEA gun range. Greenburg added that the Medical Examiners of Tarrant County consistently confer with a variety of different people in reaching conclusions about the cause and manner of a person's death and that it was a common practice for medical examiners to obtain initial information from investigators before performing an autopsy. To conclude she stated that when she meets with investigators to obtain information relevant to an autopsy, they do not tell her how to rule on the manner of a person's death, because the manner-of-death determination was an internal medical examiner's decision that law enforcement officers neither dictate nor participate in. (Appendix-B; pp 29-30).

The crux of the Petitioner's argument was that Greenburg's testimony as to the manner of the deceased's death was not sufficiently based on scientific, technical, or other specialized knowledge. The court of appeals held that it was. (Appendix-B; p. 32). Relying on *Tyler v. State*, 867 N.W.2d 136 (Iowa 2015), the Petitioner argued that because Greenburg, in reaching her cause and manner of death determination, relied on the results of the stippling pattern testing investigators performed at the DEA gun range, as well as the Petitioner's account of the shooting as relayed to her by investigators, her opinion was not sufficiently based on scientific, technical, or specialized knowledge such would assist the jury. The court of appeals without deciding whether the Iowa case was applicable, concluded that it was distinguishable. (Appendix-B; p. 33). The court of appeals held that because Greenburg's manner-of-death opinion was not based primarily or exclusively on non-scientific, non-technical, or non-specialized knowledge such that it was unhelpful to the jury, it was concluded that the trial court did not abuse its discretion by

admitting the testimony of Greenburg regarding the manner of the deceased death.

Before the Texas Court of Criminal Appeals, the Petitioner argued that the court of appeals erred in construing Rule 702 of the Texas Rules of Evidence, that is identical to Rule 5.742 of the Iowa Rules of Evidence, and it's holding, because Greenburg's opinion on the cause or manner of death was not based primarily on the autopsy. The Texas Court of Criminal Appeals refused to consider the issue notwithstanding that there is no live of authority in Texas outlining Rule 702 of the Texas Rules of Evidence. (Appendix - A).

REASONS FOR GRANTING THE PETITION

The Petitioner moves that compelling reasons exist in this case for the granting of the foregoing petition for a writ of certiorari, because the State Court of last resort has decided an important Federal question in a way that conflicts with the decision of another State Court of last resort and has decided an important question of Federal law that has not been, but should be, settled by this Court with respects to a criminal defendant's constitutional rights to a fair and impartial trial as envisioned by the 6TH and 14TH Amendments to the United States Constitution.

Although, the issue surrounds the admissibility of testimony produced by an expert witness in a criminal trial, the admission of such testimony impinges upon a criminal defendant's constitutional rights to a fair and impartial trial when that testimony will not likely assist the jury in understanding evidence upon which the opinion was given especially when the opinion were not sufficiently based on scientific, technical, or other specialized knowledge so as to assist the jury.

The concern is whether the State can rely on evidence in a murder prosecution as to the cause or manner of death from a Medical Examiner who's opinion as to the cause or manner of death was not based primarily on the autopsy? The Petitioner through what resources are available within the prison law library has not found any precedents from this Court on the matter, nor has a Texas State court decided the issue, [O]ther, than the Iowa Supreme Court in *Tyler v. State*, 867 N.W2d 136 (Iowa 2015).

Rule 702 of the Texas Rules of Evidence provides for and governs the testimony by an expert witness, which is identical to Rule 5.702 of the Iowa's Rules of Evidence, that 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." The State Court of Appeals has conceded that Rule 702 of the Texas Rules of Evidence is identical to Rule 5.702 of the Iowa's Rules of Evidence. (Appendix-B; p. 34).

Is it to say, that the death of an individual that is not caused by natural causes is a "Homicide?" As, in this case, could Greenburg have opined that the death of the deceased was a homicide, or that the cause or manner of death was a homicide based on the autopsy alone? Thus, Greenburg would have had to rely primarily, if not exclusively on information independent from the autopsy of the deceased that was performed.

In providing a rule of law, the Iowa Supreme Court stated, that: "Whether a medical examiner's opinion on cause or manner of death is admissible depends on the particular circumstances of each case. For example, when a medical examiner bases his or her opinion of cause or manner of death largely on witness statements or information obtained through police investigation, such opinions would ordinarily be inadmissible under Rule 5.702 because they would not assist the trier of fact. In contrast, when a medical examiner bases his or her opinion on cause or manner of death primarily on the autopsy, such opinions will likely assist the jury in understanding the evidence and would ordinarily be admissible." Thus, the Iowa State Supreme Court, that because the medical examiner's opinion as to the cause and manner of death were based primarily, if not exclusively inconsistent of the State's witness and the uncorroborated statements to law enforcement officers as opposed to objective medical findings the opinion was not based on scientific, technical, or other specialized knowledge and thus did not assist the trier of fact, and therefore those opinions were inadmissible. (Appendix B; pp. 34-35).

The court of appeals is affirming the Petitioner's conviction held, that since Greenburg's did not reflect that she relied exclusively or primarily on the results of the stippling pattern testing investigators performed at the DTA gun range or the Petitioner's account of the

Shooting in forming her opinions as to the manner of the deceased's death, the testimony was admissible.

However, the veracity of the court of appeals ruling is highly questionable in view of the evidence and the application of the law as interpreted by the Iowa Supreme Court, that held "When a medical examiner bases his or her opinion of cause or manner of death largely on witness statements or information obtained through police investigation, such opinions would ordinarily be inadmissible." Thus, it is not a matter of whether the opinion was based primarily or exclusively on outside sources independent from the autopsy, it was not based on an objective medical finding because the record shows that Greenburg relied on outside sources independent of the autopsy to reach a conclusion that the manner and cause of death of the deceased was a homicide. This was the only evidence upon which it was predicated that the Petitioner intentionally and knowingly caused the death of an individual by shooting the individual with a firearm. Without the testimony and opinion of Greenburg that the cause and manner of death of the deceased was a homicide, the Petitioner could not have been convicted of murder under the evidence. The testimony and opinion of Greenburg was a contributing factor in the jury's determination of whether this case was a homicide or a self-inflicting gun shot wound---

The Sixth Amendment to the United States Constitution provides that: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury. (Appendix C). Yet alone the Fourteenth Amendment to the United States Constitution provides that no State shall deprive any person of life, liberty or property without due process of law, nor deprive a person the equal protection of the law. (Appendix D). It is clear that the admission of the testimony deprived the Petitioner of a fair trial by an impartial jury, yet alone the Petitioner's rights to due process and equal protection of the law.

Under the protection of Rule 702 of the Texas Rules Evidence (Appendix E) as defined by the Iowa Supreme Court in the case of Tyler, Supra, the testimony was not

admissible and should have never been placed before the jury in the wake of the Petitioner's objection to the testimony of Greenburg...

Now comes the task of persuading this Court to hear this case and grant the petition since it is clearly understood that a petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law. However, the Petitioner moves that compelling reasons exist that would warrant the granting of a writ of certiorari in this case...

First, there is no authoritative decisions from this Court on the matter and issue of whether, that in a murder prosecution can the cause and manner of death come before a jury in the form of an opinion by a medical examiner whom has compiled an Autopsy Report based on sources outside of the pathological findings or objective medical findings? As a matter of any interpretation of the law given by this Court will become a set precedent for both State and Federal jurisprudence, this Court should take the opportunity to cultivate the law on this matter and controversial issue.

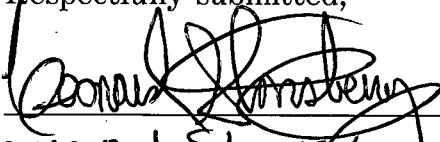
Second, this Court should take the opportunity to settle the conflict of the matter and issue as generated between the Iowa Supreme Court and the Texas Court of Criminal Appeals whom sided with the lower court of appeals on the matter and issue.

This is a matter of first before this Court that should decided and settled...

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Leonard Stansberry
Date: July 15, 2019

Petitioner, *In propria persona*.