

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

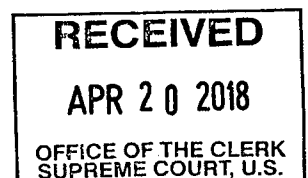
LEIGH LAZ LEPON — PETITIONER

Vs.

THE STATE OF IOWA — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE IOWA COURT OF APPEALS

LEIGH LAZ LEPON Pro se
IOWA STATE PENITENTIARY
P.O. BOX 316
FORT MADISON, IA 52627



QUESTIONS PRESENTED

I. DID THE STATE OF IOWA VIOLATE CLEARLY ESTABLISHED FEDERAL LAW REGARDING LEON'S FOURTH AMENDMENT RIGHTS TO BE FREE FROM ILLEGAL SEARCHES AND SEIZURES?

II. DID OFFICERS AUTHOR WARRANT APPLICATIONS WITH A RECKLESS DISREGARD FOR THE TRUTH?

III. DID THE STATE OF IOWA VIOLATE LEON'S DUE PROCESS RIGHTS TO A FUNDAMENTALLY FAIR PROCEEDING, EQUAL PROTECTION, AND EQUAL OPERATION OF THE LAW?

IV. DID THE STATE OF IOWA VIOLATE LEON'S RIGHT TO PRESENT A DEFENSE?

V. WHAT CONSTITUTES A VALID DETERMINATION OF RELIABLE EXPERT TESTIMONY UNDER FEDERAL CONSTITUTIONAL DUE PROCESS?

VI. DID THE STATE VIOLATE DEFENDANT'S DUE PROCESS RIGHTS BY FAILING TO ADJUDICATE CLAIMS PROPERLY PRESENTED ON DIRECT REVIEW?

LIST OF PARTIES

All Parties appear in the caption of the case on the cover page.

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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

This petition for writ of certiorari is from a state court judgment.

The highest state court to have addressed the merits of the instant case is the Iowa Court of Appeals. The opinion of the Iowa Court of Appeals appears at Appendix A to the petition and at the time of the authoring of this petition no official decision has been made on the publication of the opinion.

JURISDICTION

This petition for writ of certiorari is from a state court judgment.

The date on which the Iowa Court of Appeals decided the merits of the instant case was September 13th, 2017. A copy of that decision appears at Appendix A.

A timely application for further review was filed with the Iowa Supreme Court, being thereafter denied on January 17th, 2018. A copy of the order denying further review appears at Appendix C, and the Iowa Supreme Court order issuing procedendo appears at Appendix D.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. IV — The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amend. V — No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

U.S. Const. Amend. VI — In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

U.S. Const. Amend. XIV — No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This case involves a miscarriage of justice, as this is a case of actual innocence. Many factors are involved. Though the statement of the case appears lengthy, every effort has been made to use brevity while still accurately detailing all pertinent information. Given the nature of this case, and the State's position on any given point, many facts are in dispute.

Late in the evening of December 20th, 2013, Devlin Lockman accidentally shot himself. I was with him. Sadie Book was also present.

Prior to Devlin shooting himself we had all been spending time together. Devlin had been drinking throughout the day, and Sadie, after returning from work, began drinking and doing methamphetamine. I had consumed some alcoholic beverages earlier in the day.

Prior to Devlin shooting himself he had begun to act and speak irrationally. I've dealt with similar situations in the past, and I did feel like being Devlin's babysitter that evening. I began calling for a cab so Sadie and I could leave, as Devlin had driven us to his house and I did not have a vehicle. Shortly before Devlin got out his gun he was called by his younger brother Stanley. Stanley became concerned after speaking with Devlin, because he did not think Devlin was making much sense. (App. G, Tr. p. 372, L. 5-8) Devlin, sometime after speaking with Stanley, got his loaded 9mm handgun out from under his couch cushion and continued talking and acting foolishly. I tried talking Devlin into letting me put his gun up. I wanted to hide it from him before I left. Devlin flipped his gun back and forth, in the end, leaving his gun in his left hand as he then turned perpendicular to the back of the couch, sat with his left side towards me, and had his left hand holding the gun hanging down at his side. I thought maybe he was going to put the gun back under the couch cushion. Shortly before the accident occurred I again tried to call a cab; this being while I was telling Devlin to let me put his gun up.

Within that period I reached down to coax Devlin into giving me his gun, as he appeared to be ignoring me. I grabbed his left wrist that was hanging down holding the gun, and I told him, "Let me put your gun up." That's when it happened. In that moment he said something about me not getting his gun and he forcibly jerked his arm up out of my hand. I flinched backward. There was a loud boom. In a matter of milliseconds I thought maybe I'd been shot, and then realized Devlin had just shot himself. Immediately after Devlin shot himself I did what I could to help him. I quickly pulled him up, as he'd fallen back towards the arm of the couch. Devlin was seriously injured, and quite intoxicated. His injury did not appear to be immediately life threatening. He was conscious, and could respond, although he couldn't speak with any discernible clarity given the injury to his mouth and jaw. I have never been trained in emergency medical response and the situation left me shaken and in shock. After pulling Devlin up to a more seated position I yelled at Sadie to clean up her drug paraphernalia and I ran out of the room to dial 911, as music was loudly playing in the room where Devlin was injured. I called 911, and reported the incident to the emergency dispatcher. I hung up. Medical assistance was dispatched. Police were also dispatched. After calling 911, I re-entered the room where Devlin was seated on the couch, and noticed the handgun was on the floor next to him. I did not believe that to be a good place for a loaded gun to be sitting. I moved the gun to the front of the house and set it on top of a cooler that was situated just inside the front door; my thought at the time being that law enforcement then would not have to worry about the location of a firearm upon arrival. It seemed the safest thing to do in that moment. (App. E, 5/23/2014 Hr. Tr. pg. 9, L. 16-21) Upon my return to Devlin the 911 dispatcher called me back, and in my frantic state, upon being asked, I tried my best to explain what had just happened. I believe I told the operator to let the officers know that the gun had been placed at the front door. I do not recall every detail of

my conversation with 911. I went back and remained with Devlin, letting him know that help was on the way. At some point during this time Devlin's younger brother Stanley arrived. He did not actively help me with Devlin. Shortly thereafter Ames Police Officers arrived. Sadie yelled that "911" was there, and I ran towards the front of the house to guide officers back to where Devlin was seated. (App. E, 5/23/2014 Hr. Tr. pg. 9, L. 1-15). I guided officers into the back of the house and sat with Devlin. Sadie was back in the house, and an officer told her to get a towel, which he had me place over Devlin's wound. (App. E, 5/23/2014 Hr. Tr. pg. 22, L. 5-7)

When officers first arrived Devlin became upset upon seeing them, as he did not appreciate the fact that the police were in his home.¹ (I know this because of my past history with Devlin, and his and my past history with the local police.) I did my best to keep Devlin calm, and continued to reassure him that they were only there to help. I continued to provide Devlin with first aid, although I was also waiting for someone to take over. At some point I was given a "trauma pad", and I held it over Devlin's wound in place of the towel. Around this time I noticed that officers were rummaging about Devlin's house, and I began to get quite concerned, as it felt like a lot of time had passed, and Devlin was still sitting on the couch, bleeding in my hands. It did not seem that there was any urgency regarding getting Devlin out of the house and into the ambulance. I started to voice my concerns. I may not have been entirely polite. We eventually put Devlin on a stretcher-type carrier. For whatever reason, Devlin was laid down, as opposed to standing him and walking/carrying him to the ambulance. He began choking. I made my concerns known regarding what was going on and questioned why he was choking. Again, I do not believe I was entirely polite. In loading Devlin into the ambulance I attempted to accompany him by riding along. I was informed by one of the Ames Police officers that I

¹ There is a body mic recording that exists wherein Devlin's agitation upon seeing one of the first officers is readily apparent. LePon is also heard trying to reassure and calm Devlin.

couldn't leave, and that I had to go back into the house. (App. E, 5/23/2014 Hr. Tr. pg. 22 L. 19-24) After re-entering the residence I was informed that the house was "locked-down" or "secured" and I wasn't allowed to go retrieve my tablet out of the den where Devlin had injured himself. (App. E, 5/23/2014 Hr. Tr. pg. 31, L. 3 – 7) (App. F, 6/25/2015 Hr. Tr. pg. 70 L. 2-6; L. 16-19, pg. 75, L. 23 – 25) I told several officers in general what had occurred. I was still in shock, and I was still processing what had just occurred. Given the circumstances, I was not critically detailed, nor was I mentally in a position to accurately detail what had occurred. I did, however, give a general description of the events. I asked if I could go use the restroom and wash-up, as I had blood on my arms and hands from helping Devlin. After exiting the bathroom I noticed that Stanley was being told that he was free to leave, and that he could go to the hospital. I asked Stanley if I could ride with him, and one of the officers told me that I couldn't go. (App. F, 6/25/2015 Hr. Tr. pg. 71, L. 12 – 18) At that point I felt a dynamic shift in the atmosphere—I was being told what I could and couldn't do while I was being told where I could and couldn't go, and I was being asked to give statements, and I was told that I was going "to go down to the station" for an interview. I was asked to fill out a written statement and I told officers that I was done talking to them without an attorney. (App. E, 5/23/2014 Hr. Tr. pg. 23, L. 25 — pg. 25, L. 9). At that point it did not feel as though I was being treated properly under the circumstances, and I did not feel free to simply go about my business. I felt that I needed an attorney present if there were going to be any more interactions between myself and law enforcement. I made that point quite clearly known to the officers around me. (App. F, 6/25/2015 Hr. Tr. pg. 75, L. 2-4; pg. 80 L. 16-24). It didn't matter. I was repeatedly told that I needed to go down to the station to give an interview. During this time, Sadie left with an officer. I am unaware of exactly how she was asked to go to the station. (App. E, 5/23/2014 Hr. Tr. pg. 36, L. 3-8). I continued to argue

with officers about going to the hospital, and about not going to the station, and about how I'd already told them I didn't want to talk to them anymore without an attorney. (App. F, 6/25/2015 Hr. Tr. pg. 93, L. 6 — pg. 94, L. 1). I was told again that the house was on lock-down, and that I couldn't stay there. I was made to go outside with Sergeant Heath Ropp.² (App. F, 6/25/2015 Hr. Tr. pg. 83, L. 13–19)

Sergeant Ropp told me to walk with him to his car, and that we'd discuss my request to go to the hospital. Officer Ropp continued to tell me that I needed to go to the police station. I was told that they were waiting for me, and that I would get to go to the hospital after I was "interviewed". I again told Sergeant Ropp that if he was taking me to the police station I wanted an attorney. In the end I told Ropp that I wasn't going with him, and he informed me that I was going "one way or the other." (App. E, 5/23/2014 Hr. Tr. pg. 124, L. 10–15). At that point I believed my option was to physically resist and end up in a fight with the officer, or comply with his demands. I submitted to his authority, and he had me come around to the back of the squad car where he had me empty my pockets and he patted me down. Inside of the police car I again made my request for an attorney, and I told Officer Ropp that I wanted him to take me to the hospital. (App. F, 6/25/15 Hr. Tr. pg. 101, L. 13 — pg. 102, L. 8). Again, I was told that I could go to the hospital after the police station. The conversation wasn't brief, and it should have been recorded by the in-car hard-wired microphone. The microphone however didn't seem to work for the period of time that I was in the car. It worked before, and it worked after. Sergeant Ropp later testified that "there was some audio that was missing." (App. F, 6/25/15 Hr. Tr. pg. 97, L. 24–25). (It should be noted that Sgt. Ropp had two microphones which should have captured audio

² In testifying at the hearing on the Motion to Dismiss I could not recall the exact circumstances under which I left the residence. I believe I was experiencing Post-Traumatic Stress which affected my ability to clearly recall events. I later sought to amend my previous testimony, attempting to do so during the hearing on my Motion to Suppress, however, my attorney closed the record before I was given the opportunity. (App. F, 6/25/2015 Hr. tr. pg. 182, L. 12—pg. 183, L. 20).

that night. The officer was equipped with a body mic that didn't work or wasn't on, and then there is the separate hard-wired microphone inside of his police cruiser, which for some reason appears to have not worked only for the period of time that I was around or inside the car. (App. F, 6/25/2015 Hr. Tr. pg. 99, L. 4–24)).

Upon arriving at the police station I was told that we were going to wait outside until they were ready for me. During that time I attempted to leave twice. Both times I was directed back to the door of the police station. On the first occasion an officer came around from behind a police car, and, getting in my personal space, corralled me back to the door of the police station. On the second occasion I was given a directive to return to the area of the door. It was delivered in a commanding tone. It was not posed as a request. (App. E, 5/23/2014 Hr. Tr. pg 120 L. 2 — pg. 121 L. 8)

The officers involved deny that I attempted to leave, however, as one of the officers later testified upon being asked if I was “allowed” to walk around: “Right by the door, yeah.” (App. F, 6/25/2015 Hr. pg. 54 L. 9–10)

During the time that I was outside with officers they continued asking me questions. I again renewed my request for an attorney, telling them that I wasn't comfortable with all of the questions and interaction without an attorney present. Sergeant Ropp was there, and at that time he told me I just needed to get in there and get it over with. He told me that after the interview I would get to go to the hospital. I was told by Sergeant Ropp that I shouldn't bring up wanting an attorney once I got inside because if I did they would have to stop the interview and I would have to wait in jail until an attorney could be provided. I was told that it would probably be the next day, so I would have to spend the night in jail. (App. E, 5/23/2014 Hr. tr. pg. 121, L. 21 — pg. 122, L. 4) I was told to give an interview without any mention of an attorney, and after that

he would see to it that I was taken to the hospital. It should be noted that during this time I continued to inquire about Devlin's condition, and though officers were aware that he had passed away, they continued to lie to me, telling me that they didn't know how he was doing. I was interviewed by Ames Police Detective Chad Lovig. I was never told that I was free to leave. I was read my Miranda rights. I *involuntarily* waived my rights. I was still in shock, and I was further befuddled by the treatment I was receiving from law enforcement, given how I wasn't allowed to leave. I did not want to be there. I tried to explain what had occurred. It was clear to me that I wasn't leaving the police station until after I spoke with the detective. It should be noted that my "interview" at the police station occurred after hours, and, given how an officer always operated the doors, I believed all of the doors were locked. The multiple doors where in fact locked. (App. F, 6/25/2015 Hr. Tr. pg. 55, L. 2-25)

My phone had not yet been taken from me, and during the "interview" my friend David LeCount called me. He told me Devlin had died. I realized that the police had been lying to me. I was upset. Detective Lovig took me outside. I again told him I wanted to leave. He brought me back in, and attempted to shut me in the interview room. I pushed the door back open. He stopped the interview, but I still wasn't allowed to leave. I was eventually allowed to go in the back room to be with Sadie. I told her that Devlin had died. The police then told us that they had a warrant and that they were going to take our phones and my clothes. I do not recall ever being shown a warrant.

After they decided they were done with us we were told that an officer was going to drive us back to our apartment. I wanted to walk, but was told that I'd be given a ride.

Approximately 10 days later Sadie and I had a fight. We were at David LeCount and Brittany Loftin's house. We were drinking and celebrating New Year's Eve. Sadie became quite

intoxicated. We began to argue. She came over to where I was seated and began punching me in the face. I yelled at her. David Came down from upstairs and told us to go into the basement if we were going to fight because Brittany's daughter was asleep. Sadie and I went downstairs. I was bleeding from my lip and my nose. I didn't want to fight. I attempted to hug Sadie. She bit me in the arm, near my armpit. I hit Sadie in the side of the head when she was biting me, as I did not appreciate her teeth being incised in my flesh and muscle. The strike hit her in the ear, and she let go of my arm. In that moment Shannon Ricci came down the stairs and started yelling at me. Shannon and I have a history, and Shannon does not care for me. She grabbed Sadie, and ran upstairs with her. Sadie took my phone from where it was and left with Shannon. I did not give my phone to Sadie. Shannon took Sadie to the hospital and called the police. Sadie reported that I hit her one time. She also informed the E.R. doctor that I had struck her once. She left out her attack on me.

I was never interviewed by anyone at the Ames Police Department regarding what had occurred on the night of New Year's Eve. It later became the basis of a wrongful arrest.

The next night, January 2nd, I was out by myself at a bar in Downtown Ames. There were many other patrons in the bar. Sadie Book's father, Craig Book, came into the bar. He was accompanied by Ames Police Sergeant Joel Congdon. Craig Book pulled a gun on me, and threatened to kill me. Sergeant Joel Congdon was standing next to him. I asked Craig if we could please go to a booth. I talked to Craig about what had happened, and I gave him Sadie's phone. I had Sadie's phone because when she took mine she left hers behind. Sergeant Congdon interrupted and told Craig that he was going to talk to me. Craig left. I went out behind the bar with Officer Congdon. He asked me where Sadie was, and I told him that I did not know. I confronted him about Craig Book threatening to kill me with his gun. I was told not to worry

about it. Again, during his interaction with me, Sgt. Congdon did not have his body mic turned on.

Hours later the bar tender gave me a ride home to the apartment I was staying at with Sadie. Sadie was not there. After being there some time, Craig Book showed up. He was banging on the door, and demanded that I open it for him. I told him no thanks, given how he had earlier pointed a gun at me and threatened to kill me. He attempted to shoot me through the door. A narrative was created after the fact, and that became the States story regarding what was claimed to have been the circumstances under which Craig shot at me.

A neighbor called 911, and police were dispatched to a report of "shots fired". I was eventually detained inside the residence, and police searched the apartment. Craig Book was transported to the police department. Meanwhile, Detective Lovig was brought in. I was arrested. I was told that I was arrested for what occurred on New Year's Eve. I told the arresting officer, who happened to be Sergeant Heath Ropp, that it was self-defense and that I had been attacked by Sadie. I showed him my arm and the broken flesh inside of my mouth and asked that he take pictures. He ignored my request. Again, he did not have his body mic on, or if it was, I was never provided with a copy of any recordings in existence. The State claims none exist.

I was transported to the County Jail. I was not taken to the Ames Police Department to give an interview. My neighbor who called 911 was also not taken to the police station to be formally interviewed. Craig Book was taken to the Ames Police Department and was "interviewed". He was then taken to the County Jail. Craig Book was given two misdemeanor charges. He was released without having to post bond. I was not released. Later that day Craig Book, Sadie Book, and Joel Congdon were at Craig's house. Congdon was not wearing a body mic, or it was not on. Sadie was then taken to the police department by Sergeant Congdon, and at

that time she gave a recorded interview wherein she accused me of shooting Devlin. She was interviewed two times prior. Those interviews were also recorded. After Sadie Book accused me of shooting Devlin the recorded interviews with Sadie Book came to an end. All future interactions between Sadie and law enforcement went unrecorded.

On January 11th, 2014, Detective Chad Lovig and Detective Sergeant Christine Crippen came to the Story County Jail where I was being held. My Aunt was going to bond me out on that day. She called the jail and asked about the bonding procedure. Someone from the jail called the Ames Police Department and let them know that I was going to bond out.

I told them I didn't want to speak with them without an attorney. Just as before, my statement went ignored. I talked to them about other things. They weren't letting me out of the room. I told them I was done, and that I was going to eat lunch. I was not taken back to my normal housing unit. I was put in a cell-block where I wasn't given access to the phone. I told jail staff that I wasn't going back to talk to the Ames Police Officers. They again made me go back to talk to them. In the first instance I was never informed, though I inquired, as to whom it was I was going to speak with. And the second time, my demand to not be brought up there went ignored. Clearly my rights were being violated in a calculated manner, and in order to bring other officials unwittingly into their conspiracy they were telling them that I had shot my friend. This is in direct conflict with their testimony and on-record positions. Christine Crippen was confronted about this fact at a pre-trial hearing. (App. E, 5/23/2014 Hr. Tr. p. 117, L. 5-25)

Given the trial courts evidentiary rulings, I was barred from presenting evidence of the officers' perjured testimony regarding the January 11th incident.

At the close of the county jail “interview” incident, I was given another charge. This time it was a felony domestic charge. They alleged that I choked Sadie on Christmas Eve. It was another false arrest. The charge was used in order to raise my bond.

On February 14th, 2014, the State charged me with first degree murder, alleging that I shot Devlin on December 20th, 2013. The State claimed that the decision to charge me with murder was based on “witness statements and forensic evidence”. The State then dismissed the other charges, citing judicial economy, and stating that “the continued prosecution of this matter will impede the State’s ability to prosecute the defendant for the greater charge”. The State never made any record of the “impediment”. The fact is the State did not want the truth of the matter litigated, as the truth in that situation impeded the State’s ability to continue to manufacture a murder case against me.

I later moved to have the charges reinstated, as I wanted my opportunity to defend against the false charges. The court overruled my request.

Course of Proceedings:

On February 25th, 2014, the State of Iowa filed a trial information in Story County District Court charging the Defendant, Leigh Laz LePon, (hereinafter “LePon” or “Defendant”), with first degree murder. LePon initially demanded his right to have a speedy trial, but later waived that right upon the urging of counsel.

On April 11th, 2014, LePon filed a motion to dismiss his charge for a violation of his speedy indictment rights. (Motion to Dismiss, App. H, pg. 32). On August 29th, 2014, LePon filed a motion to suppress evidence obtained from him following an illegal warrantless seizure. (Motion to Suppress, App. H, pg. 48, pg. 68). The District Court denied both motions. (6/4/2014 Order, App. H, pg. 37; 8/21/2015 Order, App. H, pg. 109).

On October 26th, 2015, LePon filed a motion in limine seeking to exclude expert testimony regarding the manner of death as resting on witness statements. (10/26/2015 Defendant's Motion in Limine, App. H, pg. 123). The District Court denied the motion on October 30th, 2015. (10/30/2015 Order, App. H, pg. 165).

Jury trial commenced November 3rd, 2015. (App. G, Tr. p. 1, L. 1-25). The jury returned a verdict on the lesser included offense of murder in the second degree. Iowa Code section 707.3 (2013). (App. G, Tr. p. 1226, L. 19 — p. 1227, L. 25) (Forms of Verdict- 11/18/2015, App. H, pg. 177).

The District Court held a sentencing hearing on January 4th, 2016. (App. I, Sent. Tr. p. 1, L. 1-25). The Court denied LePon's combined motion in arrest of judgment and motion for new trial. The Court sentenced LePon to an indeterminate term of years not to exceed 50 years, with a 70 percent mandatory minimum.

LePon filed a timely notice of appeal on January 14th, 2016. The case was transferred to the Iowa Court of Appeals, and on September 13th, 2017, the Iowa Court of Appeals affirmed the conviction, claiming that there were no reversible errors, and also upheld the district courts erroneous conclusions of law and findings of fact.

LePon moved for further review in the Iowa Supreme Court, arguing that the Iowa Court of Appeals failed to address certain issues, erred in its adjudication of issues, and also argued that the Court had violated LePon's right to equal protection of the law. The Iowa Supreme Court denied review of LePon's case. (App. C).

REASONS FOR GRANTING THE WRIT

I. THE STATE OF IOWA VIOLATED CLEARLY ESTABLISHED FEDERAL LAW REGARDING LEPON'S FOURTH AMENDMENT RIGHTS TO BE FREE FROM ILLEGAL SEARCHES AND SEIZURES.

On several instances the State of Iowa violated LePon's Fourth Amendment rights. On the night of December 20th, and into the early morning hours of the 21st, 2013, the State violated LePon's right to be free from illegal searches and seizures.

LePon was seized by police at Devlin's house, and certainly by the time he was transported to the police station. Officers told LePon he could not go in the ambulance, deflected his requests to go to the hospital, and told him to get back into the house. ((App. E, 5/23/2014 Hr. Tr. p. 25, L. 5-9; p. 65, L. 6-13; p. 121, L. 12-18; p. 123, L. 7-17; (App F, 6/25/2015 Hr. Tr. p. 25, L. 13 — p. 26, L. 1; p. 101, L. 13-25)). Ropp admitted LePon was not free to leave the house. (App. E, 5/23/2014 Hr. Tr. p. 65, L. 8-11).

When officers "asked" LePon to go to the station to speak with detectives, LePon said that he did not want to go and wanted an attorney. ((App. E, 5/23/2014 Hr. Tr. p. 48, L. 13-22; p. 51, L. 14-17; p. 55, L. 19—p. 56, L. 7; p. 65, L. 14-21; (App. F, 6/25/2015 Hr. tr. p. 31, L. 22—p. 32, L. 7; p. 74 L. 25—p. 75, L. 7; p. 80, L. 8-24)).

Ropp also testified that LePon was never told that he had a choice to not go to the police station. (App. E, 5/23/2014 Hr. Tr. p. 66, L. 17-19).

Ropp admitted he had to "press" LePon in order to get him into the patrol car. ((App. E, 5/23/2014 Hr. Tr. p. 67, L. 5—p. 68, L. 22; (App. F, 6/25/2015 Hr. Tr. p. 96 L. 3-24)).

When they arrived at the station, LePon was always in the presence of an officer. ((App. E, 5/23/2014 Hr. Tr. p. 37, L. 24—p. 38, L. 19; p. 59, L. 17—p. 60, L. 8; p. 62, L. 12—p. 63, L.

1; p. 119-122; (App. F, 6/25/2015 Hr. Tr. p. 52, L. 8—p. 53, L. 5; p. 84, L.4-23; p. 86, L. 23—p. 87, L. 25)).

Ropp admitted that he had no grounds to arrest LePon, and no reason to hold him at the station other than detectives wanted to speak with him. Ropp admitted that LePon was not free to leave. ((App. E, 5/23/2014 Hr. Tr. p. 69, L. 18—p. 70, L. 7; (App. F, 6/25/2015 Hr. Tr. p. 103, L. 17—p. 105, L. 9). Likewise, Officer Scott Clewell also assumed that LePon was not free to leave. (App. E, 5/23/2014 Hr. Tr. p. 38, L. 6-12).

LePon was seized by the police at the house when he was not allowed to go to the hospital and was instead “pressed” to go to the police station. LePon’s transportation to the police station in a patrol car was a warrantless seizure unsupported by reasonable suspicion, let alone probable cause.

The limitations on LePon’s liberty continued at the station, where he was never left alone outside the presence of an officer and where he continued to ask to be allowed to go to the hospital, to no avail. The fact that Detective Lovig began his interview by reading LePon his Miranda rights does not remedy the constitutional violations. LePon’s seizure was unreasonable unless an exception applied. The Iowa courts cured the State’s violation of LePon’s constitutional rights by unreasonably determining that LePon voluntarily consented to his seizure and subsequent interactions with law enforcement. As the Iowa courts have it, LePon appears to be the only person that night that was unable to deduce that he was not free to leave. Officers have testified that they did not believe that LePon was free to leave, based on what was going on, and yet the Iowa Courts have determined that a reasonable person would have believed himself to be free to leave, despite the belief of everyone else on site. Such a determination is unreasonable.

LePon did not consent to the seizure of his person. Under the Fourth Amendment, the validity of consent is based upon whether it was voluntary and not the product of duress or coercion. **Shneckloth v. Bustamonte**, 412 U.S. 218, 247-48 (1973) Knowledge of the right to refuse consent is one factor to consider in the “totality of the circumstances” test for voluntariness. LePon was never told he had a choice. None of the officers testified that they informed LePon that he was free to leave. Ropp admitted he did not tell LePon he had a choice not to go to the police station. Ropp admitted having to “press” LePon to get him into the patrol car.

LePon’s alleged “consent” to go to the station was received after he had already informed officers he did not intend to go to the station without an attorney present, after he clearly indicated his preference to go to the hospital, after officers refused to permit him to leave the house, and after officers then locked-down the house, telling him he had to go outside with Sgt. Ropp.

Moreover, Detective Lovig clearly admitted the reality of the circumstances on the night of December 20th, 2013, when he later applied for a search warrant. In the search warrant application Lovig swore under oath that LePon had been “detained and transported for questioning” on December 20th, 2013. Lovig stated that he did not pick the word “detained” with a reckless disregard for the truth, but also tried, upon the State’s rehabilitation of his testimony, to characterize the language as an “error”. (App. E, 5/23/2014 Hr. Tr. p. 98, L. 2—p. 102, L. 5) Either Detective Lovig authored the warrant application with a reckless disregard for the truth, or LePon was in fact “detained” and “transported”. The evidence supports the latter conclusion. The State’s claim that Lovig’s use of the terminology was a mistake is not borne out by the evidence. The Iowa courts’ contrary conclusion is unreasonable.

The Court should grant the writ in this case, as State courts should not disregard a defendant's Fourth Amendment rights. A person should not be subject to police coercion such as that which occurred in this case. Moreover, the Court should signal to the State courts that no judicial approval should ever be granted regarding an officer's reckless disregard for the truth, and the courts should likewise not approve or lend judicial support to the notion that it's ok for police officers to play fast and loose with "facts". Officers should not state under oath that a person has been "detained" and "transported" only to later again under oath attempt to walk that back. Does the oath to tell the truth mean anything? The Iowa courts have acted unreasonably by allowing Detective Lovig to have it both ways.

The Iowa courts upheld the violation of LePon's Fourth Amendment rights to be free from illegal searches when they did not strike down warrants which contained fruits of the poisonous tree. On December 21st, 2013, the Ames Police searched LePon's phone without a warrant. They had supposedly received a warrant for the seizure of LePon's phone, however, they conducted a forensic exam of LePon's phone, and they never first secured a warrant to conduct a forensic exam. Information from that illegal search was later used in other search warrants. The Iowa courts never ruled on the issue under the framework of **Riley v. California**. A legally seized cell phone cannot be searched unless a search warrant is issued. **Riley v. California**, 134 S.Ct. 2473 (2014). Additionally, the Iowa Court's avoided application of the fruit of the poisonous tree doctrine as established under **Wong Sun v. United States**, 371 U.S. 471, 83 S.Ct. 407 (1963).

It should be noted that the trial court ruled that the police seized the phone without a warrant; (8/21/2015 Order, App. H, pg. 109), the appellate court later reversed that holding, deciding that the police did have a warrant. Regardless, the police, on December 21st, 2013,

never had a warrant to search the contents of LePon's cell phone. The failure of the State courts to properly adjudicate the issue is a violation of LePon's due process rights.

Moreover, the court also failed to address the illegal warrantless seizure of LePon's phone from out of the ditch. (See LePon's Amended Motion to Suppress: App. H, pg. 68).

The Court should grant the writ in this case in order for the defendant to more fully brief the issues surrounding and involving Fourth Amendment rights. A State should not avoid the adjudication of Fourth Amendment principles when claims presenting the same are properly before the State Court on direct review. In this case the Iowa Court of Appeals did not address LePon's Fourth Amendment Claims under prevailing U.S. Supreme Court and Iowa Supreme Court decisions.

II. OFFICERS AUTHORED WARRANT APPLICATIONS WITH A RECKLESS DISREGARD FOR THE TRUTH.

On the night of December 20th, into the early morning hours of the 21st, 2013, Ames Police sought and secured a search warrant by authoring the warrant application with a reckless disregard for the truth. The other warrant applications were also authored with a reckless disregard for the truth.

Specifically, regarding the warrant that was sought the night Devlin shot himself, officers authored the search warrant application with intentional factual omissions. Either the omissions were intentional, or they were done with a reckless disregard for the truth.

There are, in Iowa, two accepted methods by which it may be proved an affiant recklessly disregarded the truth in preparation of a search warrant application.

"The first of these is by showing directly that the affiant had serious doubts as to the veracity of an informant's statement... The second method by which proof [an affiant] recklessly disregarded the truth may be shown requires an inference from circumstances evincing obvious reasons to doubt the veracity of the allegations."

State v. Niehaus, 452 N.W.2d 184, 187 (Iowa 1990).

Regarding the application for search warrant SWSW002416, an inquiry based upon the second method is appropriate in determining the affiant's reckless disregard of the truth.

A review of the facts known to law enforcement at the time the warrant application was drafted clearly evinces "obvious reasons to doubt" that a crime had been committed. However, such facts were intentionally left out of the warrant application. (SWSW002416 Application and Warrant, App. H, pgs. 6-13). "[I]n determining whether misrepresentation was intentional or material the surrounding facts are relevant and may be considered." **State v. Paterno**, 309 N.W.2d 420, 424 (Iowa 1981)

Law enforcement officials should not avoid presenting the totality of the circumstances to the magistrate or judge in order to generate the appearance of criminal activity and probable cause in contravention of extant facts.

"To void a search warrant under **Franks** based on a claim of factual omission, a defendant must show by a preponderance of the evidence first that facts were omitted with the intent to make, or in reckless disregard of whether they make, the affidavit misleading, and, second, that the affidavit, if supplemented by the omitted information, could not support a finding of probable cause. If a defendant shows a **Franks** violation, then the fruits of the search [must be] excluded to the same extent as if probable cause was lacking on the face of the affidavit."

United States v. Bausby, 720 F.3d 652, 657 (8th Cir. 2013); according to: **Franks v. Delaware**, 438 U.S. 154 (1978).

Officers were dispatched to Lockman's residence for medical assistance. The call to 911 was placed by LePon and he reported the accidental self-inflicted gunshot wound. The warrant application failed to address these facts. Moreover, the warrant application states that LePon was present and had blood on his clothes, yet fails to mention that *LePon was actively involved in providing first aid to his friend*. Additionally the warrant fails to mention that Devlin was awake and conscious upon the arrival of first responders, and at no time did Devlin appear to be adverse

to LePon helping him. Further, the affidavit fails to address the fact that all on-scene personnel believed the situation to be that of an accident. Moreover, police reports authored in close temporal proximity to the night of the accident do not address any odor of burnt marijuana. The only persons making such a claim are those officers who spoke with Sadie Book, as she had stated that LePon and Lockman had earlier smoked marijuana. These factual omissions and misrepresentations were made intentionally or with a reckless disregard for the truth.

The other warrant affidavits in this case were also created with a reckless disregard for the truth. Regarding the information provided to law enforcement by Sadie Book, Detective Lovig expressly admitted to having concerns about her veracity, however, he thought it best to keep such concerns from the reviewing magistrate. Detective Lovig also failed to include any information regarding the incident that occurred with Sadie's father, Craig Book. (App. F, 6/25/2015 Hr. Tr. pg. 140 L.1 – pg. 142, L. 17)

The warrant affidavits in this case were created with a reckless disregard for the truth. They were created with intentional factual omissions and misrepresentations. This is especially apparent regarding the circumstances surrounding the questionable veracity of Sadie Book and the affiants handling of such concerns. "Cases that test the sufficiency of affidavits for warrants obtained are highly fact specific, but information about the informant's credibility or potential bias is crucial." **United States v. Conant**, 799 F.3d 1195, 1200 (8th Cir. 2015) (Internal quotations and citations omitted.) Reckless disregard of the truth renders the warrants in this case invalid. Moreover, the Iowa Court of Appeals has violated LePon's right to due process of law by failing to address the reckless disregard for the truth claims.

III. THE STATE OF IOWA VIOLATED LEPON'S DUE PROCESS RIGHTS TO A FUNDAMENTALLY FAIR PROCEEDING, EQUAL PROTECTION, AND EQUAL OPERATION OF THE LAW.

In adjudicating some claims and failing to adjudicate other claims on direct review, the Iowa Court of Appeals violated LePon's right to due process, equal protection, and equal operation of the law. This violation of LePon's Fifth and Fourteenth Amendment rights occurred in several instances, to wit:

1. The Iowa Court of Appeals upheld the State's use of prejudicial and irrelevant character evidence against the accused. The Iowa Court of Appeals decided this issue against LePon, while also ruling contrary to its own prior case precedent. In this case the State of Iowa alleged that LePon was high on meth the night Devlin shot himself. The State alleged that LePon had been up for two days prior. This allegation was used to make LePon appear to be a bad person, and was intended to create character speculation in the minds of the jurors. The State, in a surprise twist at trial, presented a case wherein LePon was alleged to have been high on meth for days; therefore, as apparently the State's theory goes, LePon had to have shot his friend for no other reason. The State's use of this allegation in such a manner has violated LePon's right to a fundamentally fair trial. Moreover, the State's position, as well as the Court's ruling, is in conflict with a prior decision. In **State v. Ritenour** the State argued against the admission of methamphetamine related evidence. The State asserted that "most jurors lack knowledge or experience with the effects of methamphetamine". The Court agreed and held that "absent expert testimony, or even additional lay testimony concerning... methamphetamine use, the [offering party] did not show the relevance." The Court went on to opine that "jurors would have [had] to fend for themselves" in deciding how to apply the evidence. **State v. Ritenour**, 885 N.W.2d 219 (Iowa Ct. App. 2016). In *Ritenour*, the State did not want the defense to present

methamphetamine related evidence, in this case the State wanted the alleged evidence to come in. The State, however, did not want to support any sort of “theory” with lay or expert testimony. The State simply wanted to create speculation based upon bad character evidence. That’s exactly what they did, and the Iowa Court of Appeals, in upholding the State’s devious tactic only served to violate LePon’s right to equal protection and equal operation of the law, as well as his due process right to a fundamentally fair trial. If the State, during trial, wanted to accuse LePon of having been up for days and high on meth prior to and on the night Devlin was injured, then the State should have also presented such evidence during pretrial hearings when the State was claiming that LePon voluntarily went to the police department, after all, intoxication and sleep deprivation are classic factors to be analyzed. Apparently the State gets to have it however they want it, whenever they need it a certain way. Additionally, it should be noted that the Iowa Court of Appeals disposed of the issue by stating that the evidence was just briefly presented, and that the State had a high need for the evidence. The Iowa Court of Appeals assertion is not borne out by the evidence. First, the only reason there can be a high need is because the State’s case is weak, which makes sense given that LePon did not shoot Devlin, and therefore no murder, let alone homicide, ever occurred. The very fact the State had a weak case increases the risk of unfair prejudice and strengthens the possibility that the case was decided improperly. The courts own determination without further elaboration only serves to solidify the Defendant’s assertion that the State presented the meth intoxication allegation as bad character evidence specifically intended to produce impermissible speculation. A paraphrased version is this: The Defendant was hopped up on meth ladies and gentlemen; therefore he must have shot his friend. Secondly, the meth allegation is sprinkled throughout the trial record, with the word appearing over sixty (60) times. LePon’s right to equal protection of the law was violated when the Court of Appeals

ruled contrary to one of its own opinions in order to allow the State its use of bad character tactics, and that tactic itself violated LePon's due process right to a fundamentally fair proceeding.

2. The Iowa Court of Appeals violated LePon's right to equal operation of the law when it failed to adjudicate LePon's claim of illegal seizure under prevailing law. (See LePon's Amended Motion to Suppress, App. H, pg. 68) Specifically, LePon argued that the State illegally seized his phone from out of a ditch when it removed the phone without a warrant. The police knew that the phone was in fact LePon's, and they also knew that he did not put his phone in the ditch. His phone was stolen from him by Sadie Book, and Book threw LePon's phone in the ditch. The Iowa Court of Appeals did not apply the Fourth Amendment law as determined by the Iowa Supreme court in the case of **State v. Jackson**, 878 N.W.2d 422 (Iowa 2016). The District Court's ruling, upheld by the Iowa Court of appeals, held that the seizure of LePon's cell phone was not unlawful because "it was mistakenly picked up by [Sadie Book's] friend... on January 31, 2013." The Court then acknowledged that Book, not LePon, threw the phone in the ditch. The Court found that since LePon did not have physical possession of his phone at the time, it was not unlawfully seized because it was "seized as part of a criminal investigation". The Court erred in its ruling. LePon did not abandon his property. It was taken without his permission. Sadie Book had no authority to consent to the seizure of the phone. There is no contention that Book was not allowed to show officers where she had thrown LePon's phone. However, upon locating it, law enforcement was still required to obtain a warrant in order to lawfully seize the phone. LePon argued as much relying upon the rationale in **State v. Jackson**, 878 N.W.2d 422 (Iowa 2016) and **State v. Grant**, 614 N.W.2d 848 (Iowa 2000). The Iowa Court of Appeals

violated LePon's right to due process and equal protection of the laws by not properly adjudicating the claims under existing precedent.

IV. THE STATE OF IOWA VIOLATED LEPON'S RIGHT TO PRESENT A DEFENSE.

As outlined above in the statement of the case, prior to being accused of murder, LePon was first falsely arrested for willful injury, and later for a felony domestic assault. The State did not allow LePon an opportunity to defend against the charges, but rather had them dismissed before LePon was given an opportunity to litigate the unfounded charges. The charges were used tactically against LePon, and he was not allowed to present evidence regarding the erroneous charges during trial. The trial court ruled in favor of the State regarding several issues that the State had presented in its 10/31/2014 Motion in Limine, and its subsequent Motion in Limine. Specifically, the court violated LePon's right to present a defense as the court barred LePon from:

1. Presenting any evidence concerning the prior erroneous charges.
2. Presenting evidence regarding the incident where Sadie Book's father shot at LePon, though that was eventually overruled towards the end of the trial.
3. Presenting any arguments or asking any questions that would led the jury to believe that the defendant had been framed by the Ames Police Department. (See: 10/31/2014 State's Motion in Limine, App. H, pgs. 83- 85; State's additional Motion in Limine (not appended))

Additionally, the State made it appear that LePon was a possessive and controlling boyfriend, yet LePon was not allowed to present evidence establishing that Sadie Book worked as a stripper while she and LePon were dating, and that LePon would drop her off at work.

Clearly, LePon being ok with Sadie Book working as an adult entertainer was material to the issue of whether or not he was an overly jealous and possessive boyfriend.

If a person is actually innocent and yet has still ended up in front of a jury accused of a crime, how is a defense presented when the defendant isn't allowed to ask questions or present arguments that would illustrate an actual manufacturing process by the prosecutor and police, or the motivation behind it? Evidence of medical negligence and or deliberate indifference was also excluded by the trial court. LePon had a right to explain and demonstrate to the jury that the city could be motivated to absolve itself of a possible wrongful death claim based on medical negligence by pointing the finger at LePon thereby making him out to be the proximate cause of Devlin's injury. LePon was not allowed to present his defense.

"When a defendant is denied the ability to respond to the state's case against him, he is deprived of his fundamental constitutional right to a fair opportunity to present a defense." **O'dell v. Netherland** 521 U.S. 171 (1997).

LePon's right to present a defense was violated by the trial courts evidentiary rulings, as it was not simply one exclusion, but rather the many evidentiary exclusions that kept LePon from presenting his side of the case to the jury. "The fundamental requisite of due process of law is the opportunity to be heard". **Grannis v. Ordean** 234 U.S. 385, 394 (1954)

V. DUE PROCESS OF LAW SHOULD REQUIRE STATES TO USE RELIABLE EXPERT TESTIMONY.

In this case the State used unreliable and fraudulent expert testimony in a calculated fashion in order to produce a wrongful conviction. The guarantees of due process of law should bar such tactics. The first order of concern is that regarding the Associate State Medical Examiner.

The Iowa Court of Appeals violated LePon's right to due process of law when it upheld the erroneous admission of unreliable expert testimony. Dr. Catellier opined that Devlin's death was a homicide. Her opinion was based primarily upon statements provided to her by law enforcement; mostly that of Sadie Book where she claimed LePon shot Devlin, but also law enforcement's characterization of LePon's statement on the night of the accident. Detective Lovig purportedly took it upon himself to tell Dr. Catellier that LePon said the gun discharged away from Devlin's face. LePon never made any such statement. Detective Lovig's testimony to Dr. Catellier was either made intentionally to mislead her, was made with a reckless disregard for the truth, or was simply an invention produced through discussion by all parties present. Dr. Catellier was used by the State to put a scientific stamp of approval on its case. In the end does not the whole gambit amount to a paradox? Dr. Catellier's homicide ruling is established by crediting Sadie Book's claim that LePon shot Devlin, and Sadie Book's claim is credited because of Dr. Catellier's homicide ruling... Which comes first; the chicken or the egg? Is this a new phenomenon that could be termed: "mutually exclusive corroboration"?

During the pendency of pretrial proceedings the Iowa Supreme Court issued its ruling in **Tyler**, *infra*. LePon filed a motion in limine consistent with its newly announced holding regarding medico-legal expert testimony. The State then evolved its narrative regarding Dr. Catellier's stamp of approval on the investigatory acumen of the police; they moved away from it. The State also moved away from the obvious credibility determinations present in Dr. Catellier's opinion. Just as State agents aren't allowed to supplement the information contained in a search warrant application after it's been executed, State agents, via prosecutorial shaping, shouldn't be allowed to supplement or change the clear ramifications apropos the inherent credibility vouching of an already released autopsy report, barring some unforeseen scientific

advancement. All of the “scientific” and “objective” physical evidence the state later claimed was a part of Dr. Catellier’s determination should have been clearly presented and outlined in her original findings, which again, were only released after Sadie Book claimed that LePon shot Devlin. Simply because the state evolved its position after the filing of the motion in limine does not change the facts. If Devlin’s death was so obviously a homicide, Dr. Catellier could have made that determination on the day of the autopsy. She did not make that determination because she could not make such a claim unless there was a statement purporting there to be something other than an accident. Indeed, it should further be noted that Dr. Catellier was alone in her erroneous diagnosis of “hard contact”. Dr. Catellier was one of three forensic pathologists that testified. Two agreed that it was not a hard contact wound.

Under the Iowa case, **State v. Tyler** 867 N.W.2d 136 (Iowa 2015) LePon should have been successful in his move to have the medical examiners claim of homicide excluded from trial. The State of Iowa did not have to manufacture a murder case against LePon, and the Iowa Court of Appeals decision approving the very tactics used to produce a wrongful conviction has violated LePon’s right to due process of law, as it goes to the issue of fundamental fairness.

The Tyler case was beyond blatant. The Iowa Supreme Court had to step in, for the sake of the appearance of judicial integrity. In this case the State took lessons from the Tyler case, and evolved its argument. That doesn’t mean that the Iowa Court of Appeals should have condoned the State’s tactics. It simply should not stand federal due process scrutiny for a state to only apply the framework of a law when the circumstance is blatant and undeniable. The State evolved its argument and made the claim that Dr. Catellier’s autopsy was based primarily on scientific evidence. Her own autopsy report refutes that claim, as she clearly speaks to Sadie’s statement claiming that LePon shot Devlin. If she did not rely on Sadie’s statement then it

wouldn't be in her autopsy report. Moreover, after LePon gave two separate media interviews and described in more detail what had occurred, Dr. Catellier again evolved her "scientific evidence" to include reference to a phenomenon known as "tenodesis". There was no basis for Dr. Catellier's "tenodesis" claim. No one, including Dr. Catellier, is aware of, or knows, exactly how Devlin's wrist was positioned at the time of the firearm's discharge. The physical evidence directly refutes and is diametrical to Dr. Catellier's tenodesis claim. Dr. Catellier's invention of circumstance is based upon the premise of Devlin's wrist being flexed or bent forward towards the forearm. Mr. LePon's description did not include any statement claiming Devlin's wrist to be in such a position, and, based upon the Defendant's description; had Devlin's wrist been bent in a manner consistent with that described in Dr. Catellier's spontaneous reconstruction — Devlin would have shot himself in the shoulder or neck, or lower face — with any of these areas seeing a downward trajectory from the entrance wound. All a person needs to do is bend his or her wrist forward and attempt to touch any part of the body from the shoulder up to see the error of Dr. Catellier's claim. Dr. Catellier's "tenodesis" claim is not consistent with the physical evidence. Furthermore, this "tenodesis" claim was not included in Dr. Catellier's autopsy opinion. Again, it all simply goes to show that the medical examiner in this case worked with police and prosecutors to create and sculpt evidence.

Additionally, there is the fact that Dr. Catellier was allowed to testify that Devlin's wound showed "intent", stating: "in order to make that hard contact wound there has to be some holding of the gun against the skin and usually *that implies intent*." (Emphasis added) Intent was an issue based upon the State's allegations, and Dr. Catellier's comment was highly prejudicial. The Iowa courts disposed of the issue by characterizing the incident as being *de minimus*. As this court has recognized regarding the introduction of impermissible expert testimony:

“When a jury hears expert testimony... the impact of that evidence cannot be measured simply by how much air time it received at trial or how many pages it occupies in the record. *Some toxins can be deadly in small doses.*”
Buck v. Davis, 137 S. Ct. 759,777 (2016) (emphasis added)

The court allowing and condoning such testimony has violated LePon’s right to due process of law, as again, it affected the fundamental fairness of the trial.

Dr. Catellier’s testimony was calculated and prejudicial. The testimony invaded the province of the jury. It was misleading and unreliable. LePon did not receive a fundamentally fair trial. The State used “expert” testimony in a calculated fashion to. The states should not be allowed to use manipulative expert testimony in such a way. This tactic has directly contributed to the wrongful conviction in this case.

The second “expert” of concern is Kenneth Martin. He was used as a purported “blood pattern analyst”. Mr. Martin provided testimony that was directly contradicted by record evidence. The testimony invaded the province of the jury. It was misleading and unreliable.

Martin’s opinion was based upon photographs he did not take. The photographs from which Martin drew his “conclusions” were all taken well after medical intervention and additional scene contamination.

Martin did not present relevant testimony regarding high-velocity impact spatter.

In this case the most relevant blood stain evidence was that of a large stain on the decedent’s couch. How the stain got there was actually presented through testimony of first responders, and the State knowing as much needed to misdirect the jury. Mr. Martin simply took the photographs and claimed to have deduced that Devlin was sitting in a manner consistent with Sadie Book’s anticipated trial testimony. His testimony was presented to make Sadie appear more believable, and to distract from the testimony of other witnesses that explained how Devlin was seated. Mr. Martin simply used the guise of science to tell the jury what to believe.

“[A]n expert who simply draws inferences or reaches conclusions within the jury’s competence does not provide helpful testimony... Simply put, expert testimony may be admitted [only] where the inferences that are sought to be drawn are inferences that a jury could not draw on its own... expert evidence can be both powerful and quite misleading, the Court must be particularly careful to exclude such testimony if it might lead the jury to simply rely on the experts opinion and surrender its own common sense... Permitting [an expert] to draw an inference that the jury can reach on its own [does] little more than put [the expert’s] imprimatur on the case, and, in essence, simply tell[s] the jury what result to reach.”

Somnis v. Country Mut. Ins. Co., 840 F.Supp.2d 1166, 1173 (8th Cir. 2012)

Martin’s testimony, in the form of his conclusory opinion, went against firsthand accounts detailing the position of Lockman’s body during medical intervention, and, in addition, it contradicts the testimony given by officers regarding their observation of Lockman’s position upon arrival. Martin’s testimony was unreliable and misleading; it should have been excluded from trial.

“When an expert opinion is not supported by sufficient facts to validate it in the eyes of the law, or when indisputable record facts contradict or otherwise render the opinion unreasonable, it cannot support a jury’s verdict... Expert testimony is useful as a guide to interpreting... facts, but is not a substitute for them.”

Brooke Group v. Brown & Williamson, 125 L.Ed.2d 168, 198, 509 U.S. 209, 242 (1993)

Martin’s conclusory opinion, other than when applied to Book’s testimony, went against all firsthand accounts concerning the position of decedent Lockman’s body prior to and throughout the duration of on-scene first response.

A careful review of the record shows that Martin’s testimony, in the same way as Dr. Catellier’s, was designed to bring credence to the State’s narrative by attempting to corroborate and add credibility to the testimony of Sadie Book.

LePon believes the prosecution worked with Martin to develop his trial testimony, and contends that the State offered Martin’s testimony in order to intentionally mislead the jury. This

assertion finds support in that during closing argument the prosecutor claimed “And the blood evidence. By the time Steve Flugrad gets there... By that point the defendant has – or Devlin has – moved from where he was at...” (App. G, Tr. pg. 1220 L. 12-16) The prosecutor’s argument and its premise fall under its own weight. It clearly evinces the unreliability of Martin’s testimony, insofar as the prosecutor’s comment was a misleading invention of fact which finds no basis or support in the record. Additionally Martin claimed that LePon could not have been cradling Devlin, and yet that is exactly what Steven Flugrad had testified that he observed at the scene. (App. G, Tr. pg. 980, L. 18—p. 981, L. 22; Tr. pg. 559, L. 5-21).

Martin’s testimony was offered in bad faith by the State in order to mislead the jury.

“[W]e have recognized the threat to fair criminal trials posed by the potential for incompetent or fraudulent prosecution forensics experts, noting that ‘serious deficiencies have been found in the forensic evidence used in criminal trials... One study of cases in which exonerating evidence resulted in the overturning of criminal convictions concluded that *invalid forensic testimony contributed to the convictions*’”

Hinton v. Alabama, 188 L.Ed.2d 1, at pg 11, Citing **Melendez-Diaz v. Massachusetts**, 557 U.S. 305, 319, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009) (citing Garret & Nuefeld, *Invalid Forensic Science Testimony and Wrongful Convictions*, 95 Va. L. Rev. 1, 14 (2009)). (Emphasis added)

The conclusory opinion testimony offered by the State through purported expert witness Kenneth Martin invaded the province of the jury. The testimony was misleading and unreliable. Its admission violated LePon’s Federal due process rights to a fair trial.

The State’s fraudulent use of “expert” testimony should not be condoned. It should not stand that such unreliable “scientific” evidence can be used by states to produce wrongful convictions. The States should be held to a higher standard under the Federal Constitution. States are free to devise trial rules and procedures; however, under the Fifth and Fourteenth Amendment’s due process clauses State’s should be required to make specific findings of

reliability regarding the offered testimony of experts. The Court should grant the writ in this case so this issue may be fully briefed and presented.

VI. THE STATE VIOLATED DEFENDANT'S DUE PROCESS RIGHTS BY FAILING TO ADJUDICATE CLAIMS PROPERLY PRESENTED ON DIRECT REVIEW.

What process is due a criminal defendant in state court proceedings under the Federal Constitution's guarantees to due process of law? When the defunctive appellate structure of a state's judiciary allows a defendant's properly preserved and presented state constitutional claims to fall upon deaf ears, is not his federal constitutional due process right to be *heard* violated?

In this case very specific questions were asked of the Iowa Supreme Court regarding state constitutional law. One question was of knowing and voluntary consent to search and seizure under the State Constitution's relevant provision. The other question presented under State constitutional terms was the heretofore undecided question of whether or not the due process clause of the Iowa Constitution mandates a prophylactic protection against police coercion similar to that enunciated in the U.S. Supreme Court's **Miranda** decision.

Both of the above mentioned questions, (along with a few others), went undecided, and essentially unheard. The Iowa Court of Appeals did, in a sense, address the Defendant's State Constitutional claim regarding the knowing and voluntary consent; however, it was addressed insofar as the court stated it was the specific purview of the Iowa Supreme Court to decide the question. The Iowa Supreme Court, however, rather than retaining the case, transferred it to the lower court, and then denied further review.

State judiciaries should not use deflection and therefrom and thereafter the guise of discretion to intentionally or arbitrarily avoid the adjudication of properly presented state

constitutional claims. As the Iowa Court of Appeals pointed out: “It is the role of the [Iowa] Supreme Court to interpret the Iowa Constitution”. (Iowa Court of Appeals decision, App. A) The Defendant asserts that when there is nowhere to go other than to a state Supreme Court on a question of state constitutional law, and that court simply avoids the question, such a circumstance is a violation of that persons due process rights as guaranteed by the due process provisions of the United States Constitution. How does it square with the process of law due when the only court with ears to hear says “I’m not listening”?

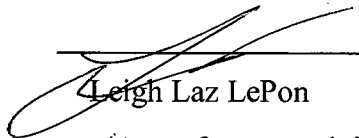
Additionally other claims too went unresolved and not decided. Specifically, LePon presented the issue of extrinsic fraud based upon actions of the State regarding the above mentioned dismissed charges. Similarly the Iowa Court of Appeals, and in denying further review, the Iowa Supreme Court, failed to address LePon’s claims of tactical advantage gained by the State from using charges and dismissing them prior to trial, and also the Iowa Courts did not address LePon’s claim regarding the denial of his right to present a defense. The Iowa Court of Appeals’ own order of non-oral submission stated: “All issues presented in the briefs will be fully considered by the court.” It appears the order went unfulfilled. LePon simply asks for fair proceedings, and he asks that his claims to which he has a right to have heard on direct review are in fact heard.

LePon respectfully requests that the writ be granted in this case so that all issues may be fully briefed.

CONCLUSION

The Petitioner herein, Leigh Laz LePon, does respectfully submit this petition for writ of certiorari, and humbly prays that this court issue said writ.

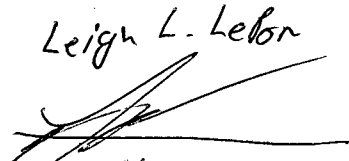
I, Leigh Laz LePon, upon setting my hand below, swear and declare that the foregoing information contained in this petition is true and correct to the best of my knowledge.


Leigh Laz LePon
Date: 4-12-2018

Certificate of Service

Upon setting my hand below I do swear and certify that the foregoing document was served and filed with the Clerk of The United States Supreme Court on this 12th day of April, 2018, by placing one true copy thereof in the United States Mail, proper postage attached addressed to:

Clerk of the United States Supreme Court


Date: 4-12-2018

1 First Street, N. E.

Washington, DC 20543



