No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

CECIL BOYETT — PETITIONER
(Your Name)

vs.

STATE OF NEW MEXICO — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE TENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CECIL BOYETT
(Your Name)

6900 W. MILLEN DR.
(Address)

Hobbs, N.M. 88244
(City, State, Zip Code)

NONE
(Phone Number)

QUESTION(S) PRESENTED

I

WHETHER PETITIONER BOYETT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT BECAUSE THE CIRCUIT OPINION CONFLICTS WITH CLEARLY ESTABLISHED LAW OF STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984); BELL V. MILLER, No. 05-5235 (2d CIR. 2007); AKE V. OKLA., 470 U.S. 68 (1985); GERSTEN V. SENKOWSKI, 426 U.S. F.3d 588 (2005); JACOBS V. HORN, (3rd CIR. 2005); AND PANEL V. HOLLINS, (2d CIR. 2001); STARR V. LOCKHART, 23 F.3d 1280 (2d CIR. 1994), YET PETITIONER BOYETT WAS NEVER AFFORDED THE BENEFIT OF REVIEW UNDER THESE CASES BY THE NEW MEXICO SUPREME COURT, AND THE UNITED STATES DISTRICT COURT (FEDERAL) DENIED RELIEF, AS DID ALL OTHER "REVIEWING" COURTS? see APP. A.

II

WHETHER THE CIRCUIT COURT COMMITTED ERROR WHEN, AFTER APPLYING THE HARMLESS ERROR STANDARD OF BRECHT V. ABRAHAMSON, 507 U.S. 619 (1993) AND CONCLUDED THAT THE CONSTITUTIONAL ERROR WAS SIGNIFICANT TO THE JURY'S DETERMINATION, THE CIRCUIT COURT'S DENIAL OF PETITIONER BOYETT'S REQUESTED HABEAS RELIEF CONFLICTS WITH THIS COURT'S RULING IN KOTTEAKOS V. UNITED STATES, 328 U.S. 750 (1946), WHICH HELD THAT GUILTY VERDICTS ARISING FROM JURY TRIALS CONTAINING CONSTITUTIONAL ERRORS SHOULD BE UPHELD ONLY WHEN THE ERROR DOES NOT IMPERMISSIBLY SWAY THE JURY'S VERDICT? APP. A

III.

WHETHER THE CIRCUIT COURT COMMITTED ERROR WHEN IT DETERMINED THE UNDERLYING CONSTITUTIONAL CLAIMS STATED BY PETITIONER BOYETT, WHICH INCLUDED CLAIMS OF VIOLATIONS TO HIS DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT CONFLICTS WITH THIS COURT'S RULING IN GONZALEZ V. THALER, 132 S.CT. 641, 644 (2012), WHICH HELD THAT IT WOULD BE "COUNTERINTUITIVE TO RENDER A PANEL OF COURT OF APPEAL JUDGES POWERLESS TO ACT ON APPEALS SIMPLY BECAUSE A COA FAILED TO INDICATE AN ISSUE? SEE APP. A AND RECORD E

IV.

WHETHER THE CIRCUIT COURT COMMITTED ERROR WHEN IT DENIED PETITIONER BOYETT APPOINTMENT OF COUNSEL, DESPITE THE COURT'S CONSIDERABLE AUTHORITY AND DISCRETION UNDER 18 U.S.C. SECTION 3006 A (a)(2)(B) (2012), AND BECAUSE PETITIONER BOYETT'S 2254 PETITION HAD BEEN DECLARED FLAWED, DESCRIBED BY THE U.S. MAGISTRATE AS "MIXED" AND WAS SUBSEQUENTLY DISMISSED BY THE U.S. DISTRICT COURT? SEE RECORDS A, B (PG. 22), C.

V.

WHETHER THE CIRCUIT COURT COMMITTED ERROR WHEN IT FAILED TO REVIEW OR CONSIDER PETITIONER BOYETT'S VALID CLAIM THAT HIS DUE PROCESS WAS VIOLATED UNDER THE FOURTEENTH AMENDMENT, WHEN THE TRIAL COURT FAILED TO PERMIT JURY INSTRUCTIONS PROPERLY FOR HIS DIMINISHED CAPACITY CLAIM OF INABILITY TO FORM SPECIFIC INTENT? SEE APP. A, B, C, D.

VI.

AMONG THE RECORD PRESENTED, WHETHER THE CIRCUIT COURT COMMITTED ERROR WHEN IT FAILED TO REVIEW AND CONSIDER IF A DUE PROCESS VIOLATION OCCURRED UNDER THE FOURTEENTH AMENDMENT, WHEN THE RECORD SHOWED THE EXCLUSION OF PROMISED PSYCHOLOGICAL EXPERT WITNESS TESTIMONY CRUCIAL TO THE DEFENSE? SEE APP. D.

VII.

WHETHER THE CIRCUIT COURT COMMITTED ERROR WHEN IT FAILED TO REVIEW OR CONSIDER PETITIONER BOYETT'S CLAIM OF A DUE PROCESS VIOLATION UNDER THE FOURTEENTH AMENDMENT FOR ABUSE OF DISCRETION BY STATE DISTRICT COURT JUDGE JAMES L. SANCHEZ'S FINDINGS AND CONCLUSIONS OF LAW DISREGARDING PETITIONER BOYETT'S EXPERT WITNESS TESTIMONIES PRESENTED AT HIS 2016 STATE HABEAS EVIDENTIARY HEARING IN FAVOR OF PETITIONER'S DEFENSE? SEE APP. A, E.

VIII.

AMONG THE RECORD PRESENTED, IS THERE A PLAIN ERROR FOUND THAT THIS COURT IS WITHIN ITS JURISDICTION TO DECIDE? SEE APP. A, B, C, D, E AND RECORDS A, B, C, D, E, F, G, H, I, J, K, L, M.

IX.

WHETHER THE CIRCUIT COURT COMMITTED ERROR BY DENYING PETITIONER BOYETT'S REQUESTED RELIEF BECAUSE THE CIRCUIT OPINION CONFLICTS WITH CLEARLY ESTABLISHED LAW OF RHAGI V. ARTUZ, 309 F.3d 103, 106 (2d CIR. 2002) AND TREVINO V. DAVIS, 829 F.3d 328, 356-57 (5TH CIR. 2016)? SEE APP. A.

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:

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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

[✓] For cases from **federal courts**:

The opinion of the United States court of appeals 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 United States district 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.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits 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 _____ 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.

JURISDICTION

[✓] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was JANUARY 9, 2019.

[ ] 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 _____. A copy of that decision appears at Appendix _____.

[ ] 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).

JURISDICTION

THIS PETITION SEEKS THIS COURT'S REVIEW OF THE TENTH CIRCUIT COURT OF APPEALS DECISION ENTERED ON PETITIONER BOYETT'S CASE JANUARY 9, 2019. A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL IS MADE UNDER THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION. THE TENTH CIRCUIT'S DECISION AFFIRMED THE U.S. DISTRICT COURT IN NEW MEXICO'S FINDINGS, WHICH PREVIOUSLY AFFIRMED THE DECISION OF THE NEW MEXICO SUPREME COURT FILED JULY 13, 2018, SEE APP. B. THEREFORE, THE UNITED STATES SUPREME COURT NOW HAS JURISDICTION OVER THIS MATTER UNDER 28 U.S.C, SECTION 1254 (1).

U.S. SUPREME COURT, RULE 10, ALLOWS PETITIONER BOYETT TO RAISE THE ISSUES OF HIS CASE BECAUSE THE TENTH CIRCUIT COURT OF APPEALS "CONFLICTS WITH THE DECISION OF ANOTHER U.S. COURT OF APPEALS ON THE SAME IMPORTANT MATTER," AND PETITIONER BOYETT SEEKS THIS COURT'S SUPERVISORY POWER TO OVERRULE THE TENTH CIRCUIT'S CONFLICTUAL RULING.

ARGUMENT IN SUPPORT CITING CONFLICTUAL CASES

PETITIONER BOYETT'S TRIAL COUNSEL FAILED TO PRESENT AN EXPERT PSYCHOLOGICAL EXPERT WITNESS TO THE TRIAL JURY. IN JACOBS V. HORN, (3RD CIR. 2005) THE COURT HELD THAT "COUNSEL'S FAILURE TO INVESTIGATE AND PRESENT EVIDENCE THAT DEFENDANT SUFFERED FROM MENTAL RETARDATION, ORGANIC BRAIN DAMAGE, AND OTHER

EMOTIONAL AND MENTAL IMPAIRMENTS WAS INEFFECTIVE ASSISTANCE BECAUSE SUCH EVIDENCE SHOWED DEFENDANT UNABLE TO FORM SPECIFIC INTENT TO MURDER VICTIM." PETITIONER BOYETT WAS EVALUATED PRIOR TO TRIAL, AND THE PSYCHOLOGICAL EVALUATION DETERMINED HE WAS UNABLE TO FORM SPECIFIC INTENT TO MURDER BUT PSYCHOLOGIST, DR. LORI MARTINEZ, WAS A NO-SHOW AT HIS TRIAL. PETITIONER BOYETT'S INABILITY TO FORM SPECIFIC INTENT DIAGNOSIS WAS AGAIN CONFIRMED BY DR. SUSAN CAVE, AND HER TESTIMONY WAS PRESENTED AT PETITIONER BOYETT'S STATE EVIDENTIARY HEARING PROCEEDING IN 2016. SEE APP. E.

IN GERSTEN V. SENKOWSKI, 426 F.3d 588 U.S. (2005) THE COURT "FAULTED DEFENSE COUNSEL FOR FAILING TO CONSULT WITH OR CALL A PSYCHOLOGICAL EXPERT, FINDING THIS FAILURE TO BE AN 'IN-DEPENDENT AND SUFFICIENT INDICATION OF DEFICIENCY.'"

IN BELL V. MILLER, (2d CIR. 2007) COUNSEL WAS FOUND TO BE "INEFFECTIVE ASSISTANCE OF COUNSEL BECAUSE COUNSEL FAILED TO CONSULT MEDICAL EXPERT WHERE THERE WAS NO TACTICAL JUSTIFICATION FOR SUCH FAILURE." IN PETITIONER BOYETT'S CASE COUNSEL COULD HAVE REQUESTED A CONTINUANCE UNTIL SUCH TIME THAT ANOTHER EXPERT COULD HAVE BEEN PRESENTED. INSTEAD, COUNSEL ATTEMPTED TO USE HIS OWN CLIENT'S TESTIMONY TO SHOW INABILITY TO FORM SPECIFIC INTENT, SO THE TRIAL JURY WAS DEPRIVED OF EXPERT WITNESS TESTIMONY.

JURISDICTION

IN PANEL V. HOLLINS, (2d CIR. 2001) COUNSEL'S FAILURE TO CALL IMPORTANT FACT WITNESSES AND MEDICAL EXPERT AT TRIAL WAS INEFFECTIVE ASSISTANCE BECAUSE TESTIMONY OF THOSE WITNESSES WOULD HAVE REBUTTED PROSECUTION'S ALREADY WEAK CASE."

TABLE OF AUTHORITIES CITED

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OTHER

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. SECTION 2254 (d) PROVIDES THAT,

> AN APPLICATION FOR A WRIT OF HABEAS CORPUS ON BEHALF OF A PERSON IN CUSTODY PURSUANT TO THE JUDGEMENT OF A STATE COURT SHALL NOT BE GRANTED WITH RESPECT TO ANY CLAIM THAT WAS ADJUDICATED ON THE MERITS IN STATE COURT PROCEEDINGS UNLESS THE ADJUDICATION OF THE CLAIM - (1) RESULTED IN A DECISION THAT WAS CONTRARY TO, OR INVOLVED AN UNREASONABLE APPLICATION OF, CLEARLY ESTABLISHED FEDERAL LAW, AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES; OR (2) RESULTED IN A DECISION THAT WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURT PROCEEDING,

THE FOURTEETH AMENDMENT TO THE UNITED STATES CONSTITUTION STATES THAT "NO STATE SHALL DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW."

THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION STATES THAT IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT..." TO A PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE..., TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE."

STATEMENT OF THE CASE

PETITIONER BOYETT WAS CHARGED IN THE THIRTEENTH JUDICIAL DISTRICT COURT FOR VALENCIA COUNTY, NEW MEXICO WITH THE FIRST DEGREE MURDER OF DEBRA ROACH. AFTER A TRIAL, THE JURY FOUND PETITIONER BOYETT GUILTY AS CHARGED AND HE WAS SENTENCED TO AN AUTOMATIC MANDATORY SENTENCE TO A THIRTY (30) YEAR LIFE SENTENCE. STATE V. BOYETT, D.N.M. - D-1314-CR-2004-065. PETITIONER BOYETT PREVIOUSLY DECLINED THE PROSECUTOR'S PLEA OFFER OF SECOND-DEGREE MURDER AND A FIFTEEN-YEAR SENTENCE.

PETITIONER BOYETT APPEALED HIS CONVICTION AND SENTENCE TO THE NEW MEXICO SUPREME COURT, ARGUING, INTER ALIA, THAT THE TRIAL COURT ERRED WHEN THE COURT REFUSED TO INSTRUCT THE JURY ON PETITIONER BOYETT'S INABILITY TO FORM SPECIFIC INTENT, AND THAT THE ADDITIONAL ELEMENT ADDRESSING INABILITY TO FORM SPECIFIC INTENT FOR FIRST DEGREE MURDER IS MANDATORY, BUT THE TRIAL COURT FAILED TO PROPERLY INSTRUCT THE JURY ON ALL ESSENTIAL ELEMENTS OF FIRST DEGREE MURDER. (SEE RECORD G - APPELLANT'S BRIEF IN CHIEF) THE NEW MEXICO SUPREME COURT DENIED PETITIONER BOYETT'S APPEAL STATE V. BOYETT, NMSC-030, 144 N.M. 184, 185 P.3d 355, see APPENDIX D., NMSC NO. 29,730 (2008). (SEE ALSO UJI 14-5110 NMRA) AND NMSA 1978, SECTION 30-2-1 (A).

PETITIONER BOYETT'S COURT-APPOINTED APPELLANT ATTORNEY, SHEILA LEWIS, FILED A PRO BONO PETITION FOR WRIT OF HABEAS

CORPUS ON OCTOBER 31, 2008. SEE RECORD D. AN EXCESSIVELY LONG DELAY OCCURRED AFTER THE STATE HABEAS WAS FILED, CAUSED BY THE APPOINTMENT OF PUBLIC DEFENDER ATTORNEY, MARC GORDON, WHO WAS INDEFINITELY SUSPENDED BY THE N.M. STATE SUPREME COURT'S DISCIPLINARY BOARD BASED UPON COMPLAINTS SUBMITTED BY PETITIONER BOYETT. A PRO SE PETITION FOR WRIT OF MANDAMUS WAS FILED BY PETITIONER BOYETT IN AN ATTEMPT TO COMPEL THE THIRTEENTH JUDICIAL DISTRICT STATE COURT JUDGE, WILLIAM A. SANCHEZ, TO RESPOND TO THE STATE HABEAS PETITION. THE NEW MEXICO PUBLIC DEFENDER DEPARTMENT THEN ASSIGNED CONTRACT ATTORNEY, ROBERT TANGORA, TO PROVIDE LEGAL REPRESENTATION FOR PETITIONER BOYETT, AND IT WAS DISCLOSED THAT MR. TANGORA'S CASELOAD EXCEEDED 100 FELONY CASES. SEVEN YEARS ELAPSED FROM THE DATE OF FILING UNTIL AN EVIDENTIARY HEARING WAS SCHEDULED TO HEAR PETITIONER BOYETT'S STATE HABEAS. THE STATE DISTRICT COURT DENIED RELIEF AND DISMISSED THE CASE. (SEE APP. E.) PETITIONER BOYETT FILED A PETITION FOR WRIT OF CERTIORARI ON AUGUST 1, 2016 AND IT WAS DENIED. (SEE RECORD E) THE NEW MEXICO SUPREME COURT DECLINED TO REVIEW THE PETITION.

AFTER EXHAUSTING HIS REMEDIES IN STATE COURT, PETITIONER BOYETT FILED A PRO SE PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. SECTION 2254 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO. THE PETITION WAS REFERRED TO U.S. MAGISTRATE, CARMEN GARZA, WHO DENIED PETITIONER BOYETT'S RELIEF AND RECOMMENDED HIS CASE BE DISMISSED WITH PREJUDICE,

AND THAT PETITIONER'S PETITION UNDER 28 U.S.C. SECTION 2254; MOTION FOR ORDER OF RELEASE FROM CUSTODY; AND SECOND REQUEST FOR APPOINTMENT OF COUNSEL BE DENIED. (SEE APP. C). THE U.S. DISTRICT COURT ADOPTED THE MAGISTRATE'S FINDINGS AND DISMISSED PETITIONER BOYETT'S CASE, DESPITE HIS OBJECTIONS. (SEE APP. B AND RECORD J)

PETITIONER BOYETT FILED AN APPLICATION FOR A COA IN THE TENTH CIRCUIT COURT OF APPEALS AUGUST 2, 2018 IN COMPLIANCE WITH 28 U.S.C. SECTION 1746. (SEE RECORD F), AND AN APPEAL BRIEF WAS FILED IN THE TENTH CIRCUIT ON AUGUST 9, 2018. (SEE RECORD F). THE COURT OF APPEALS DENIED THE APPEAL. (SEE APP. A). PETITIONER BOYETT NOW FILES THIS PETITION FOR A WRIT OF CERTIORARI IN A TIMELY MANNER TO THIS HONORABLE AND DISTINGUISHED COURT.

PETITIONER BOYETT'S APPEAL TO THE TENTH CIRCUIT RESULTED IN THE ISSUANCE OF A COA FOR TRIAL COUNSEL'S INEFECTIVE ASSISTANCE OF COUNSEL, WHICH INITIALLY APPEARED TO HIGHLIGHT THE INJUSTICE INVOLVED IN THIS CASE) BUT, ANOTHER PANEL OF TENTH CIRCUIT JUDGES DECIDED OTHERWISE, AND THAT DECISION, IN ITSELF, SEEMS CONFLICTUAL. THE STRENGTH AND PERSUASIVE VALUE OF THE UNCONSTITUTIONAL EXCLUSION OF CRUCIAL EXPERT WITNESS TESTIMONY PROMISED BY COUNSEL, AND THE LACK OF INFORMATION PROVIDED TO THE JURY, INCLUDING THE OMISSION OF PROPER JURY INSTRUCTIONS WAS CONSTITUTIONALLY UNFAIR, AND IT HAD A SUBSTANTIALLY NEGATIVE AND INJURIOUS EFFECT ON THE JURY'S DELIBERATIONS AND VERDICT.

STATEMENT OF THE CASE (PETITIONER)

PETITIONER, CECIL BOYETT, AND RENATE WILDER LIVED TOGETHER AND PLANNED TO MARRY FEBRUARY 6, 2004. UPON AWAKENING ON FEB. 4, 2004 BOYETT FOUND A NOTE FROM RENATE STATING SHE WOULD BE BACK SOON. AFTER SEVERAL HOURS PASSED, PETITIONER BOYETT BECAME CONCERNED AND CALLED AROUND TRYING TO LOCATE RENATE. HE CONTACTED JORGE TRUJILLO, A VALENCIA COUNTY DEPUTY, ON HIS PERSONAL CELL PHONE, WHO CALLED AND TALKED TO DEBBIE ROACH. HE RELAYED THE MESSAGE THAT RENATE WAS OK AND WITH HER. RENATE REMAINED GONE UNTIL THE NEXT AFTERNOON ON FEBRUARY 5, 2004. WHEN SHE ARRIVED HOME, SHE HAD BLOOD ON HER FACE AND HANDS FROM BEING IN A WRECK. A GIRL NAMED SYLVIA ROMERO BROUGHT HER HOME AND SAID SHE FOUND RENATE WALKING DOWN THE ROAD A FEW MINUTES AGO. SYLVIA DEPARTED. RENATE THEN TOOK SOME COCAINE AND SIMULTANEOUSLY THERE WAS POUNDING ON THE FRONT DOOR OF THE RESIDENCE. PETITIONER LOOKED THROUGH THE PEEPHOLE OF THE DOOR AND SAW ROACH, WHO APPEARED ANGRY, RED-FACED, AND GLARING. PETITIONER OPENED THE DOOR AFTER RETRIEVING A HANDGUN LOCATED NEARBY. PETITIONER ASKED HER "WHAT DO YOU WANT, DEBBIE;" ROACH REPLIED "I WANT TO SEE RENATE." PETITIONER REPLIED IN THESE EXACT WORDS: "NO, DEBBIE, YOU NEED TO GET THE FUCK OFF OUR PROPERTY - YOU DON'T BELONG HERE." ROACH THEN REACHED UNDER HER RIGHT WAIST AREA AND RETRIEVED A CONCEALED HANDGUN. SIMULTANEOUSLY, RENATE SHOWED UP AND PUT HERSELF

POSITIONED BETWEEN ROACH AND MYSELF AND YELLED AT ROACH SAYING "NO!" ROACH COULD NOT SEE MY HANDGUN AS I KEPT IT OUT OF VIEW ON MY RIGHT SIDE. ROACH THEN BEGAN RAISING HER WEAPON IN A WAY THAT I BELIEVED SHE WAS GOING TO SHOOT ME [PETITIONER], SO I REACHED AROUND RENATE AND FIRED ONE SHOT, WHICH STRUCK ROACH IN THE HEAD. SHE FELL BACKWARDS AND APPEARED TO BE INCAPACITATED. PETITIONER RETREATED INTO THE HOUSE AND CALLED 911 ON HIS PERSONAL CELL PHONE. THAT MOMENT AND DURING THE HEAT OF THE EXCHANGE, RENATE APPARENTLY GRABBED THE BARREL OF MY HANDGUN AND DIRECTED THE AIM TO ROACH'S HEAD, BECAUSE RENATE SUSTAINED BURNS TO HER HAND, WHICH WAS PHOTOGRAPED AND DOCUMENTED. PETITIONER WAS ARRESTED, TAKEN TO THE OLD COURTHOUSE, AND FREELY GAVE A TRUTHFUL STATEMENT WITHOUT COUNSEL. DETECTIVE RENE RIVERA TOLD PETITIONER AFTER THE INTERVIEW THAT HE WOULD BE KEPT OVERNIGHT IN JAIL, BUT THAT "IT LOOKED LIKE SELF-DEFENSE" TO HIM. THE NEXT MORNING PETITIONER WAS ARRAIGNED ON FIRST-DEGREE MURDER CHARGES. PETITIONER'S TRIAL TOOK PLACE ALMOST TWO YEARS LATER. TWO PSYCHIATRIC EVALUATIONS TOOK PLACE PRIOR TO TRIAL, BUT NO TESTIMONY WAS PRESENTED BY A PSYCHIATRIST OR PSYCHOLOGIST. PETITIONER WAS CONVICTED OF FIRST DEGREE MURDER AND SENTENCED TO A 30 YEAR LIFE SENTENCE. PRIOR TO TRIAL PETITIONER WAS OFFERED A PLEA AGREEMENT FOR SECOND-DEGREE MURDER AND 15 YEARS, BUT

DECLINED THE OFFER WHEN HIS TRIAL COUNSEL "GUARANTEED" HIM ACQUITTAL, AND BECAUSE HE FELT LIKE HE ACTED IN SELF-DEFENSE. OBVIOUSLY, PETITIONER'S NAIVE IGNORANCE OF THE NEW MEXICO JUDICIAL SYSTEM WORKED AGAINST HIM. TO MAKE THE SITUATION WORSE, PETITIONER'S COUNSEL WAS INEFFECTIVE AND HIS COUNSEL FAILED TO DISCLOSE HIS CRIMINAL BACKGROUND, DISBARMENT, AND RELATIONSHIP TO THE TRIAL JUDGE. THE DECEASED, DEBRA ROACH, HAD THREATENED TO KILL PETITIONER PREVIOUSLY, ONCE BRANDISHING A HANDGUN WHILE HE WAS UNARMED. ROACH WAS A DISGRACED POLICE OFFICER WHO WAS TERMINATED FROM THE BELEN, NEW MEXICO POLICE DEPARTMENT FOR SHOOTING AT TWO UNARMED SUSPECTS RUNNING AWAY FROM HER. WITH HER LAW-ENFORCEMENT BACKGROUND, TRAINING, AND EXPERIENCE SHE POSED A DEADLY THREAT TO PETITIONER'S LIFE WHEN SHE PULLED HER CONCEALED WEAPON. PETITIONER BELIEVES VICTIM'S BEHAVIOR AND ACTS WERE SUFFICIENTLY PROVOCATIVE TO WARRANT HIS REACTION. THE FACT THAT PETITIONER HAD ALCOHOL AND COCAINE IN HIS SYSTEM WAS NOT A FACTOR IN HIS DECISION OR INTERPRETATION OF THE CIRCUMSTANCES AT THE TIME OF THE SHOOTING. PETITIONER ADMITS USING ALCOHOL AND COCAINE WAS NOT LEGALLY, MORALLY, OR RESPONSIBLY GOOD JUDGEMENT, BUT IT WAS ONLY COINCIDENTAL AT THE MOMENT HE FEARED FOR HIS LIFE, AND HE WAS PROVOKED INTO ACTING IN SELF-DEFENSE. FROM THE ONSET OF THE PROSECUTING PROCEEDINGS PETITIONER STATES THERE HAS BEEN A PRESUMPTION OF GUILT AND THAT PETITIONER INTENDED TO KILL ROACH. THIS IS NOT TRUE.

IN FACT, IT WAS THE PROVOCATIVE AND DANGEROUS ACTS OF VICTIM ROACH WHO SHOULD HAVE KNOWN THERE WOULD BE PROBABLE CONSEQUENCES TO HER DELIBERATE, THREATENING, SUDDEN AND UNEXPECTED VOLUNTARY ACTS. INSTEAD OF TURNING AROUND AND LEAVING THE PROPERTY, SHE SUDDENLY ESCALATED HER THREAT BY PULLING A LOADED WEAPON ON PETITIONER. SHE CERTAINLY WAS NO BYSTANDER, AND SHE WAS THE FIRST AGGRESSOR, BUT THE STATE MANIPULATED THE EVIDENCE TO APPEAR OTHERWISE, AND DEFENSE COUNSEL FAILED TO CHALLENGE THE EVIDENCE WITH ANY DEGREE OF COMPETENCY, OR OFFER EXPERT WITNESS REBUTTAL. THE EVIDENCE OF PETITIONER'S INABILITY TO FORM SPECIFIC INTENT WAS NOT CLEAR, SUBJECT TO QUESTION, AND THE PSYCHOLOGICAL EXPERT WITNESS TESTIMONY WAS NEVER PRESENTED TO THE TRIAL JURY, SO AN INFORMED DETERMINATION WAS NOT POSSIBLE. A NEW TRIAL WOULD BE REQUIRED TO ALLOW PETITIONER A FULL AND FAIR TRIAL TO PRESENT A COMPLETE DEFENSE. ALLOWING THE STATE COURT HABEAS EVIDENTIARY HEARING JUDGE TO MAKE HIS OWN FINDINGS THE ONLY REASON TO DENY PETITIONER RELIEF IS FUNDAMENTALLY UNFAIR, BECAUSE IT DENIES PETITIONER HIS COMPULSORY PROCESS RIGHTS TO PRESENT FAVORABLE WITNESS AT HIS TRIAL. SURELY, THIS CANNOT BE FOUND TO BE HARMLESS.

Cecil Bowett

CECIL BOWETT, PRO SE PETITIONER
DATED: JANUARY 22, 2019

REASONS FOR GRANTING THE PETITION

PETIONER BOYETT CONTENDS THAT HE IS ENTITLED TO RELIEF PURSUANT TO 28 U.S.C. SECTION 2254 (d)(1) BECAUSE THE JUDGEMENT OF THE NEW MEXICO SUPREME COURT "RESULTED IN A DECISION THAT WAS CONTRARY TO ... CLEARLY ESTABLISHED FEDERAL LAW, AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES." 28 U.S.C. SECTION 2254 (d)(1). AS ONE PANEL OF JUDGES FROM THE TENTH CIRCUIT COURT HELD:

> "WE ARE PESUADED AFTER REVIEWING THE LIMITED RECORD THAT REASONABLE JURISTS COULD DISAGREE WITH THE DISTRICT COURT'S CONCLUSION THAT THE STATE DISTRICT COURT'S DISMISSAL OF THIS CLAIM WAS CONSISTENT WITH THE STANDARDS OF REVIEW OUTLINED IN 28 U.S.C. SECTION 2254(d). MORE SPECIFICALLY, WE CONCLUDE THAT REASONABLE JURISTS COULD DISAGREE AS TO WHETHER THE STATE DISTRICT COURT MADE TWO ERRORS IN REJECTING THE CLAIM. DIST. CT. DOCKET No. 11, EXH. 5 AT 22. BUT THAT CONCLUSION WAS ARGUABLY INCONSISTENT WITH THE TESTIMONY OF DR. CAVE, WHO TESTIFIED THAT, HAD SHE BEEN CALLED AS A WITNESS AT BOYETT'S TRIAL, SHE WOULD HAVE TESTIFIED THAT HE LACKED THE CAPACITY, DUE TO HIS BRAIN INJURY, TO FORM THE SPECIFIC INTENT TO KILL ROACH (AS OPPOSED TO THE INTENT TO SHOOT HER)."
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> (SEE APP. A - PART 2, PAGE 9 AT 13)

PETITIONER BOYETT ARGUES THAT A CONSTITUTIONAL ERROR OF ANY "SIGNIFICANCE" TO THE JURY, AS A MATTER OF LAW, SUBSTANTIALLY SWAYED THE JURY'S DELIBERATIONS UNDER KOTTEAKOS V. UNITED STATES, 328 U.S. 750, 764 (1946). FROM THE LANGUAGE OF THIS CASE WE CAN SEE THAT A CONSTITUTIONAL ERROR MAY WARRANT HABEAS RELIEF EVEN IF THE COURT BELIEVES THE PETITIONER WOULD HAVE BEEN CONVICTED WITH-OUT THE ERROR. ACCORDINGLY, THE LEGAL QUESTION BEFORE THE CIRCUIT COURT WAS TWOFOLD, WHETHER THE JURY WAS SWAYED OR INFLUENCED

BY THE EVIDENCE PRESENTED WITHOUT THE DEFENSE'S EXPERT MEDICAL WITNESS TESTIMONY WHICH CREATED CREDIBILITY QUESTIONS, AND DUE TO THE EXCLUSION OF THIS CRUCIAL TESTIMONY, WAS THE JURY SUBSTANTIALLY AND INJURIOUSLY INFLUENCED BY THE ONLY EVIDENCE PRESENTED BY THE PROSECUTOR? PETITIONER BOYETT BELIEVES THE ONLY OBJECTIVE ANSWER HERE IS, YES.

JUSTICE STEVENS ASTUTELY OBSERVED, THE LEGAL STANDARD IS "FAR LESS IMPORTANT THAN THE QUALITY OF THE JUDGEMENT WITH WHICH IT IS APPLIED." BRECHT, 507 U.S. AT 643. THIS OBSERVATION BEARS SERIOUS CONSIDERATION IN THIS CASE. HERE, THE CIRCUIT COURT HELD THAT THE CONSTITUTIONAL ERROR OF INEFFECTIVE ASSISTANCE OF COUNSEL UNDER STRICKLAND WAS NEITHER "CONTRARY TO OR AN UNREASONABLE APPLICATION OF STRICKLAND"; AND "WAS NOT DEFICIENT PERFORMANCE" AND FURTHER CONCLUDED NO PREJUDICE WAS SUFFERED. PETITIONER BOYETT STRONGLY DISAGREES AND OBJECTS TO THE CIRCUIT COURT'S OPINION, BECAUSE HIS TRIAL COUNSEL DID NOT PRESENT A PLAUSIBLE DEFENSE OR A COMPLETE DEFENSE, (SEE APP. A)

THIS COURT FOUND DEFICIENT PERFORMANCE AND PREJUDICE IN THE CASE OF STARR V. LOCKHART, 23 F.3d 1280 (1994) BECAUSE DEFENSE COUNSEL'S "DEFICIENT PERFORMANCE THEREFORE RESULTED IN STARR BEING SUBJECTED TO AN UNRELIABLE DETERMINATION." AND ALTHOUGH STARR'S ISSUE WAS THAT "HE SHOULD RECEIVE THE DEATH PENALTY," PETITIONER BOYETT STATES HE RECEIVED A LIFE SENTENCE FROM AN "UNRELIABLE DETERMINATION" CAUSED BY HIS DEFENSE COUNSEL'S DEFICIENT PERFORMANCE,

AND SIMILARLY TO STARR'S CASE, THIS COURT RULED "SUCH UNRELIABILITY EASILY SUFFICES TO ESTABLISH STRICKLAND PREJUDICE." THE TENTH CIRCUIT'S DECISION ON PETITIONER BOYETT'S APPEAL IS IN CONFLICT WITH THIS RULING. THIS COURT FURTHER STATED IT HAS "EXTENSIVELY DISCUSSED THE IMPORTANCE OF PSYCHIATRIC TESTIMONY TO A DEFENDANT WHOSE MENTAL CONDITION IS CRUCIAL TO HIS DEFENSE," AKE V. OKLAHOMA, 105 S. CT. 68 (1985) AT 79-81. IN AKE, THE ISSUE WAS PRIMARILY ABOUT THE DEFENDANT'S SANITY AND COMPETENCY TO STAND TRIAL. THE UNDERLYING CONSTITUTIONAL ISSUE OF A DEFENDANT RECEIVING THE ASSISTANCE OF A PSYCHIATRIST WHEN THAT ASSISTANCE IS NECESSARY TO THE DEFENSE IS RELATIVE TO PETITIONER BOYETT'S CASE, BECAUSE DEFENSE COUNSEL FAILED TO COMPEL THE EXPECTED AND PROMISED EXPERT TO PRESENT TESTIMONY TO THE TRIAL JURY. COUNSEL ALSO FAILED TO REQUEST A CONTINUANCE FOR THE PURPOSE OF REPLACING THE NO-SHOW PSYCHOLOGIST, DR. LORI MARTINEZ. UNDER ANY CIRCUMSTANCES THIS IS AN UNREASONABLE OMISSION AND DEFICIENT ACT AND WAS FAR FROM BEING "HARMLESS."

IN MOORE V. TEXAS, S. CT. (2017), CITATIONS OMITTED, AND HALL V. FLORIDA, 134 S. CT. 1986, 1996-98 (2014), THIS COURT LEFT TO THE STATES "THE TASK OF DEVELOPING APPROPRIATE WAYS TO ENFORCE" EXECUTING INTELLECTUALLY DISABLED PERSONS, AND CONCLUDED THAT FLORIDA HAD VIOLATED THE EIGHTH AMENDMENT BY "DISREGARDING ESTABLISHED MEDICAL PRACTICE." IN PETITIONER BOYETT'S CASE, THE STATE DISTRICT JUDGE, JAMES L. SANCHEZ, DISREGARDED THE TESTIMONY OF DR. CAVE WHEN SHE

TESTIFIED REGARDING THE ESTABLISHED MEDICAL STANDARDS ABOUT THE INABILITY TO FORM SPECIFIC INTENT RELEVANT TO PETITIONER BOYETT, AND HER ASSESSMENT OF PETITIONER AFTER HER EVALUATION. DR. CAVE GAVE THIS TESTIMONY AT PETITIONER BOYETT'S 2016 STATE HABEAS EVIDENTIARY HEARING, AND SHE CONCLUDED THAT BECAUSE OF BOYETT'S TRAUMATIC BRAIN INJURY SUSTAINED IN 1998, HE WAS NOT ABLE TO FORM SPECIFIC INTENT TO MURDER WHEN HE SHOT DEBRA ROACH, AND THAT HE WOULD NOT HAVE THE ABILITY TO FORM SPECIFIC INTENT AT THE TIME OF THE HEARING, OR ANYTIME IN THE FUTURE. THAT TESTIMONY WAS TRANSCRIBED. SO, THIS BRINGS A QUESTION ABOUT THE ABUSE OF DISCRETION BY THE STATE DISTRICT JUDGE'S DENIAL OF PETITIONER BOYETT'S CLAIM. WAS HIS CONFLICTUAL RULING MADE BASED ON HIS OWN EXPERTISE IN PSYCHOLOGY OR WAS HE SIMPLY REFUSING TO ACCEPT THE EXPERTISE OF DR. CAVE? IT SEEMS TO POINT OUT THE NEED FOR A NEW RULE OF CONSTITUTIONAL LAW THAT WOULD REQUIRE AN EXPERT WITNESS IN PSYCHIATRY TO BE INTRODUCED AT TRIAL SO THEIR TESTIMONY IS HEARD BY THE TRIAL JURY, AND NOT LEFT TO BE DECIDED BY A LONE TRIER OF FACT STATE DISTRICT JUDGE ELEVEN YEARS AFTER TRIAL, AS IS THE CASE HERE. THEN, A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL WOULD BE OBVIOUS WHEN A DEFENSE LAWYER FAILS TO PRESENT SUCH EVIDENCE, BECAUSE IT CAN MAKE A DIFFERENCE IN THE DETERMINATION, AND THE QUALITY OF THE JURY'S VERDICT. CURRENTLY, IT SEEMS TOO MANY STATE COURTS AND FEDERAL COURTS OF APPEAL ARE RELYING ON STRICKLAND, WHEN THERE

ARE OTHER IMPORTANT CONSIDERATIONS TO SHOW A DEFENSE ATTORNEY'S INEFFECTIVE ASSISTANCE OF COUNSEL. WHEN PETITIONER BOYETT'S APPELLANT COUNSEL, SHEILA LEWIS, STATED THAT TRIAL COUNSEL THOMAS C. ESQUIBEL, WAS "GROSSLY NEGLIGENT" SHE WAS ACCURATELY DESCRIBING HIS WORK PERFORMANCE. WHERE IS THE COMMON SENSE APPROACH TO THOSE MATTERS?

UNFORTUNATELY, IN NEW MEXICO, THERE IS A WELL-KNOWN TACTIC USED BY PROSECUTORS, AND SUPPORTED IN LARGE PART, BY CRIMINAL DEFENSE LAWYERS, TO DISCOURAGE ACCUSED SUSPECTS FROM GOING TO TRIAL. THE PREFERRED WAY TO DISPOSE OF A CASE IS FOR A DEFENDANT TO ENTER INTO A PLEA AGREEMENT, REGARDLESS OF GUILT OR INNOCENCE, IN AN EFFORT TO AVOID A COSTLY TRIAL. THOSE DEFENDANTS WHO DECLINE A PLEA OFFER, LIKE PETITIONER BOYETT, ARE THEN SUBJECTED TO AN OVERLY-AGGRESSIVE AND HARSH PROSECUTION AGAINST THE TACTICS OF WIN AT ANY COST, AND BY ANY MEANS NECESSARY. THIS CLAIM IS BASED ON PETITIONER'S PERSONAL KNOWLEDGE AFTER TALKING TO HUNDREDS OF OTHER PRISONERS OVER FIFTEEN YEARS, WHO ARE INCARCERATED AS A RESULT OF JURY TRIAL CONVICTIONS AS OPPOSED TO PLEA AGREEMENTS. THE BOOK OF AMOS SAYS: "JUSTICE FLOWS LIKE A RIVER" BUT PETITIONER BOYETT HAS BEEN ENCOUNTERING ONE DAM AFTER ANOTHER IN HIS QUEST FOR HONORABLE JUSTICE.

ANOTHER ASPECT OF AKE THAT IS RELEVANT TO PETITIONER'S CASE IS APPROPRIATELY STATED BY JUSTICE MARSHALL:

"THIS COURT... MUST TAKE STEPS TO ASSURE THAT THE DEFENDANT HAS A FAIR OPPORTUNITY TO PRESENT HIS

DEFENSE" AND "JUSTICE CANNOT BE EQUAL WHERE, SIMPLY AS A RESULT OF HIS POVERTY, A DEFENDANT IS DENIED THE OPPORTUNITY TO PARTICIPATE MEANINGFULLY IN A JUDICIAL PROCEEDING IN WHICH HIS LIBERTY IS AT STAKE."

IN ANY DIMINISHED CAPACITY CASE, CONSIDERATION IS GIVEN TO PROVIDE A DEFENDANT WITH A PSYCHOLOGICAL EXPERT WITNESS DURING HIS TRIAL AND DURING THE SENTENCING PHASE. SO, WAS PETITIONER BOYETT DENIED HIS DUE PROCESS UNDER THE FOURTEENTH AMENDMENT BY THE EXCLUSION AND ABSCENCE OF A PSYCHOLOGICAL EXPERT WITNESS AT HIS TRIAL? PETITIONER BOYETT'S CLAIM THAT HE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT IS SUPPORTED BY THE EXCLUSION AND DENIAL OF COMPULSORY PROCESS WHEN NO PSYCHOLOGICAL EXPERT WITNESS TESTIFIED WHO MAY HAVE BEEN ESSENTIAL TO HIS DEFENSE. THE FAILURE OF TRIAL COUNSEL TO COMPEL THE EXPERT'S ATTENDANCE BY SUBPOENA, OR TO REQUEST A CONTINUANCE WAS ERROR. SEE UNITED STATES V. SIMPSON, 992 F.2d 1224 (1993) WHERE THE CIRCUIT COURT VACATED THE CONVICTION OF GERALD SIMPSON BECAUSE A WITNESS FAILED TO SHOW UP TO COURT PURSUANT TO A SUBPOENA, BUT THE TRIAL JUDGE FAILED TO ISSUE A BENCH WARRANT TO COMPEL HIS PRESENCE. PETITIONER BOYETT HAD A PARTICULARIZED NEED FOR A WITNESS THAT DID NOT SHOW, SO ISN'T THE UNDERLYING PRINCIPLE THE SAME? THE ISSUE IN BOTH CASES IS THE RIGHT TO COMPULSORY PROCESS FOR A WITNESS ESSENTIAL TO THE DEFENSE.

IT IS ARGUED THAT THE JURY HAD INSUFFICIENT EVIDENCE TO MAKE AN INFORMED DECISION ON PETITIONER BOYETT'S VERDICT BECAUSE THEY WERE DENIED THE TESTIMONY OF DEFENSE EXPERT REBUTTAL TESTIMONY,

WHICH WAS PETITIONER BOYETT'S RIGHT TO HAVE PRESENTED, THAT MAY HAVE PROVIDED THE JURY WITH REASONABLE DOUBT AND INFLUENCED THEIR VERDICT. WITHOUT THIS TESTIMONY PETITIONER BOYETT'S "ABILITY TO CREATE REASONABLE DOUBT WAS SEVERELY RESTRICTED," HOWARD V. WALKER, 406 F.3d 114 (2d CIR. 2005). AND THIS COURT HELD IN COLEMAN V. THOMPSON, (S.CT. 1991), CITATIONS OMITTED, ""[IT] IS NOT THE GRAVITY OF THE ATTORNEY'S ERROR THAT MATTERS, BUT THAT IT CONSTITUTES A VIOLATION OF PETITIONER'S RIGHT TO COUNSEL," PETITIONER BOYETT ARGUES THAT HIS TRIAL COUNSEL'S PERFORMANCE WAS SUBSTANDARD, DEFICIENT, AND CAUSED PREJUDICE BECAUSE HE FAILED TO USE THE SKILLS OF A COMPETENT CRIMINAL DEFENSE ATTORNEY UNDER THE ABA STANDARDS FOR CRIMINAL DEFENSE REPRESENTATION; HE FAILED TO ADHERE TO THE RULES OF PROFESSIONAL CONDUCT, RULES 16-100 THRU 16-905, NMRA, AND HE DID NOT UTILIZE THE NECESSARY COMPONENTS OF THE NEW MEXICO PUBLIC DEFENDER DEPARTMENT'S GUIDELINES FOR CRIMINAL DEFENSE REPRESENTATION, PUBLISHED 1998, GUIDELINES 1.1 THROUGH CONCLUSION.

PETITIONER BOYETT ALSO HAD A PARTICURIZED NEED FOR AN EXPERT IN CRIME SCENE RECONSTRUCTION, A FORENSIC DNA WITNESS TO TESTIFY AT HIS TRIAL, AND TO THE JURY FOR THE PURPOSE OF REBUTTING GUESS-WORK, EXPERIMENTAL, AND UNPROVEN FANTASY FORENSICS PRESENTED TO THE JURY BY STATE WITNESS, ART ORTIZ, A STATE POLICE SARGENT AND PERSONAL FRIEND OF THE VICTIM'S FAMILY. THESE ARE ONLY SOME

OF THE FACTUAL INADEQUACIES DEMONSTRATED BY TRIAL COUNSEL. AN "UNREASONABLE APPLICATION OCCURS WHEN A STATE COURT IDENTIFIES THE CORRECT GOVERNING LEGAL PRINCIPLE FROM THE U.S. SUPREME COURT'S DECISIONS BUT UNREASONABLY APPLIES THAT PRINCIPLE TO THE FACTS OF A PETITIONER'S CASE." ROMPILLA V. BEARD, 545 U.S. 374, 380 (2005); LENZ V. WASHINGTON, 444 F.3d 295, 300 (4TH CIR. 2006).

IT SHOULD NOT BE THE DEFENDANT'S OBLIGATION TO KNOW THE IMPORTANCE OF EXPERT WITNESS TESTIMONY AT TRIAL, OR THE COMPLEXITIES OF THE PROCEEDINGS TAKEN AGAINST HIM. PETITIONER BOYETT FACED A LIFE AND DEATH SITUATION WHEN HE WAS CONFRONTED BY AN ARMED INTRUDER AT THE FRONT DOOR OF HIS HOME ON FEBRUARY 5, 2004. THE SITUATION WAS SIMILAR TO WHAT IS NOW CALLED A "HOME INVASION", AND THERE WAS A DEADLY THREAT POSED, WHICH WAS SUFFICIENT PROVOCATION, FORCING PETITIONER TO REACT IN MICRO SECONDS. PETITIONER BELIEVES HE SHOT THE VICTIM IN SELF-DEFENSE, BECAUSE HE FEARED FOR HIS LIFE, AND THERE WAS NEVER ANY PREMEDITATION OR INTENT TO MURDER. THE DISORGANIZED AND INCOMPETENT LEGAL REPRESENTATION BY HIS TRIAL COUNSEL HAS NOT BEEN EASY TO PROVE, SO PETITIONER BOYETT NOW SUBMITS THESE REASONS TO THIS HONORABLE COURT AS HIS REASONS FOR GRANTING HIS WRIT.

TO PREVENT AN ARBITRARY APPLICATION OF A COURT'S DISCRETION TO

HARSHLY OR VICDICTIVELY PROSECUTE A CRIMINAL DEFENDANT SUSPECTED OF A CRIME, WHO REFUSES TO ACCEPT AN UNREASONABLE PLEA OFFER BECAUSE HE CLAIMED ACTUAL INNOCENCE DUE TO SELF-DEFENSE, PETITIONER BOYETT WAS DENIED THE PRESUMPTION OF INNOCENCE, AND HIS UNFAIR TRIAL WAS BASED ON THE VICTIM'S CLOSE FAMILY TIES AND INVOLVEMENT IN LAW-ENFORCEMENT. THE VICTIM'S FAMILY WAS SHOWN AN EXCESSIVE AMOUNT OF FAVORITISM AS A RESULT OF MISPLACED SENTIMENT, WHICH IS USUALLY DEFINED AS "POPULAR JUSTICE" BASED ON A PRESUMPTION OF GUILT. A PRESUMPTION IS CONSIDERED AN EVIDENTIARY DEVICE THAT ENABLES THE FACTFINDER TO FIND A STATUTORY ELEMENT OF A CRIME, AND IT IS UNCONSTITUTIONAL IF IT UNDERMINES THE FACTFINDER'S RESPONSIBILITY TO FIND THE ELEMENTS OF A CRIME BEYOND A REASONABLE DOUBT, AND "DUE PROCESS PROHIBITS USE OF A PRESUMPTION THAT RELIEVES THE STATE OF BURDEN OF PERSUASION ON ESSENTIAL ELEMENT OF INTENT." FRANCIS V. FRANKLIN, 471 U.S. 307, 316 (1985).

FOR THESE REASONS, PETITIONER BOYETT BELIEVES THE TENTH CIRCUIT DECISION IS WRONG AND THAT HIS PETITION BEFORE THIS COURT SHOULD BE GRANTED. IN GOODMAN V. BERTRAND, 467 F.3d 1022 (7TH CIR. 2006) THE COURT HELD COUNSEL INEFFECTIVE FOR "FAILURE TO SUBPOENA A CRITICAL DEFENSE WITNESS." A SIMILAR ERROR WAS COMMITTED BY PETITIONER BOYETT'S COUNSEL, YET THE TENTH CIRCUIT RULED IN CONFLICT TO THE SEVENTH CIRCUIT.

PRAYER OF RELIEF

A. AN ORDER DECLARING PETITIONER BOYETT'S CONVICTION IS UNCONSTITUTIONAL AND HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WAS VIOLATED; THAT HIS TRIAL WAS UNFAIR IN VIOLATION OF HIS FOURTEENTH AMENDMENT DUE PROCESS RIGHTS; AND THE TENTH CIRCUIT WAS IN ERROR IN THEIR CONFLICTUAL DECISION.

B. AN ORDER OVERTURNING PETITIONER'S VERDICT, VACATING HIS SENTENCE, REMAND FOR A NEW TRIAL OR RELEASE FROM CUSTODY.

CONCLUSION

FOR THE RELIEF REQUESTED ABOVE, AND FOR THE REASONS STATED HEREIN, PETITIONER BOYETT RESPECTFULLY REQUESTS THE COURT TO ISSUE A WRIT OF CERTIORARI.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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