

No. 18-7774

IN THE
SUPREME COURT OF THE UNITED STATES

CECIL BOYETT,
PETITIONER

v.

DWAYNE SANTISTEVAN, WARDEN, et al.,
RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI
TO THE TENTH CIRCUIT COURT OF APPEALS

SUPPLEMENTAL BRIEF

CECIL BOYETT, PETITIONER PRO SE
INMATE: LEA COUNTY CORRECTIONAL FACILITY
NMCD# 64272
6900 W. MILLEN DR.
HOBBS, NEW MEXICO 88244
No PHONE

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SUPREME COURT, U.S.

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COMES NOW PETITIONER, CECIL BOYETT, PRO SE, IN THE ABOVE ENTITLED AND NUMBERED CAUSE WITH HIS SUPPLEMENTAL BRIEF IN THE MATTER OF HIS PETITION FOR WRIT OF CERTIORARI FILED FEBRUARY 1, 2019 AND DOCKETED FEBRUARY 5, 2019, AND NOW SUBMITS HIS SUPPLEMENTAL BRIEF TO THIS HONORABLE COURT UNDER SUPREME COURT RULE 15.8 AND RULE 18.10 IN COMPLIANCE WITH RULE 33.1 (g) iv AND RULE 33.2 (b).

AN INTERVENING MATTER NOT AVAILABLE AT THE TIME OF PETITIONER BOYETT'S LAST FILING IS BEING BROUGHT TO CALL ATTENTION TO NEW INFORMATION RECEIVED SINCE FEBRUARY 1, 2019 THAT CONTAINS FACTUAL EVIDENCE DISCOVERED BY DILIGENT RESEARCH CONDUCTED BY AN AMICUS CURIAE, BUT WILL BE SUBMITTED TO THE COURT BY PETITIONER BOYETT. SOME OF THE FACTUAL DATA RECEIVED WILL BE INCLUDED AS APPENDICES BECAUSE OF THEIR FORMAT. PETITIONER BOYETT SEEKS TO INCLUDE THE ATTACHED APPENDICES IN AN EFFORT TO DOCUMENT AND DEMONSTRATE THE AMICUS CURIAE'S OBJECTIVE POINT OF VIEW REGARDING PETITIONER BOYETT'S TREATMENT BY THE COURTS THROUGHTOUT THE PAST FIFTEEN (15) YEARS, AND TO INTRODUCE EVIDENCE RELATED TO DEBORAH ROACH'S GENDER DYSPHORIA SUICIDAL IDEATION AND DEPRESSION. (SEE APPENDIX AA NO. 2 "DEBORAH ROACH" AND APPENDIX BB NO. 6 "WHAT IS GENDER DYSPHORIA?")

IN ADDITION TO THE ABOVE STATED FACTUAL INTERVENING MATTER, OTHER ISSUES ARE BROUGHT FORTH IN THE APPENDICES, INCLUDING AN

ANALYSIS OF THE TENTH CIRCUIT COURT OF APPEAL'S JANUARY 9, 2019
DECISION (SEE APPENDIX AA-CONT'D. 2); AND AN ANALYSIS FOR
PLAIN ERROR, "CIRCULAR LOGIC AND OMISSIONS OF THE COURT DECISION"
(SEE APPENDIX AA-CONT'D. 3); AND AN ARGUMENT IN SUPPORT OF
PETITIONER BOYETT'S LACK OF SPECIFIC INTENT AS IT RELATES TO A CRIME
OF PASSION (SEE APPENDIX AA-CONT'D. 4 AND APPENDIX DD), THAT
A COMPETENT LAWYER REPRESENTING A CLIENT ACCUSED AND CHARGED
WITH FIRST DEGREE MURDER, SHOULD HAVE INCLUDED IN HIS DEFENSE.
AND FINALLY, THERE IS AN ABSTRACT ENTITLED "PRINCIPLES FOR PASSION
KILLING: AN EVOLUTIONARY SOLUTION TO MANSLAUGHTER MITIGATION"
(SEE APPENDIX DD). PETITIONER BOYETT HEREBY RESPECTFULLY
REQUESTS LEAVE OF THE COURT TO ALLOW THE APPENDICES INCLUDED
IN THIS SUPPLEMENTAL BRIEF BE GIVEN CONSIDERATION SHOULD THIS
COURT REVIEW PETITIONER'S CASE. THE IMPORTANCE OF THE INFORMATION
CONTAINED IN THE AMICUS CURIAE'S OBJECTIVE ASSESSMENT OF PETITIONER
BOYETT'S CASE CANNOT BE OVERSTATED, BECAUSE IT WAS CREATED
FROM EXISTING RECORDS, AND THESE SAME RECORDS WERE AVAILABLE
TO THE U.S. DISTRICT COURT AND THE TENTH CIRCUIT COURT OF APPEALS.
THE RECORD SHOWS THE UNMISTAKENABLE FACT THAT DEBORAH ROACH
WAS FACTUALLY THE PROXIMATE CAUSE OF HER OWN DEATH BECAUSE
OF THE FORESEEABILITY AND INTENTIONS OF HER ACTS ON FEBRUARY
5, 2004.

PETITIONER BOYETT HAS ARGUED EXHAUSTIVELY TO EXPOSE THE

CONSTITUTIONAL ERRORS CAUSED BY HIS TRIAL COUNSEL, AND AGAIN STATES HIS TRIAL COUNSEL FAILED TO ADOPT A DEFENSE STRATEGY THAT WAS PLAUSIBLE, AND HIS DEFICIENT PERFORMANCE WAS OBVIOUS UNDER PAVEL V. HOLLINS, 261 F.3d 210, 216-26, 223, 228 (2d Cir. 2001) WHERE THE COURT HELD COUNSEL INEFFECTIVE BECAUSE COUNSEL DID NOT PREPARE A DEFENSE, FAILED TO CALL FACT WITNESSES, AND DID NOT CALL A MEDICAL EXPERT. UNDER GRAY V. LYNN, 6 F.3d 265, 269, 271-72 (5TH CIR. 2001) THE COURT FOUND COUNSEL FAILED TO OBJECT TO ERRONEOUS JURY INSTRUCTIONS REGARDING ELEMENTS OF FIRST-DEGREE MURDER, AND IN VIEW OF THE AMICUS CURIAE'S ASSESSMENT, PETITIONER BOYETT CITES DELUCA V. LORD, 77 F.3d 578, 590 (2d CIR. 1996) WHICH HELD THAT "COUNSEL'S FAILURE TO PURSUE EXTREME EMOTIONAL DISTURBANCE DEFENSE CONSTITUTED INEFFECTIVE ASSISTANCE WHEN A REASONABLE PROBABILITY EXISTED THAT A JURY WOULD HAVE FOUND THIS PERSUASIVE AND WOULD HAVE REDUCED DEFENDANT'S LIABILITY FROM SECOND-DEGREE MURDER TO MANSLAUGHTER." THE OPINION OF THE TENTH CIRCUIT COURT OF APPEALS CONFLICTS WITH THESE CASES FROM OTHER CIRCUITS. PETITIONER BOYETT BELIEVES THE TENTH CIRCUIT BECOMES PART OF THE PROBLEM BY DECLINING TO GRANT RELIEF BECAUSE IT APPEARS THAT A LESS THAN MEANINGFUL REVIEW WAS CONDUCTED, AND THEREFORE, PETITIONER BOYETT'S CASE DID NOT RECEIVE ADEQUATE CONSIDERATION BASED ON ALL THE MERITS OF THE CASE.

PETITIONER BOYETT WAS SUBJECTED TO A FUNDAMENTAL MIS-CARRIAGE OF JUSTICE [EMPHASIS ADDED] AT TRIAL BECAUSE TRIAL COUNSEL FAILED TO SUBPOENA A CRITICAL WITNESS NAMED "FLOSSIE", AN ALBUQUERQUE POLICE DEPARTMENT OFFICER, LIVING IN RIO RANCHO, NEW MEXICO (AN ALBUQUERQUE SUBURB), WHO HAD KNOWLEDGE ABOUT DEBORAH ROACH'S SEVERE SUICIDAL DEPRESSION. THIS WITNESS COULD HAVE TESTIFIED AS A "HOSTILE WITNESS" AND GIVEN THE JURY A GLIMPSE INTO DEBORAH ROACH'S LESS THAN HONORABLE SERVICE AS A FORMER OFFICER IN BELEN, NEW MEXICO, WHERE SHE WAS TERMINATED AFTER AN INTERNAL AFFAIRS INVESTIGATION FOR SHOOTING AT TWO UNARMED SUSPECTS. PROSECUTOR MCLEAN SUCCESSFULLY SUPPRESSED THIS VALUABLE EXCULPATORY EVIDENCE, AND THE EXCLUSION OF THIS EVIDENCE WAS A MISSED OPPORTUNITY FOR DEFENSE COUNSEL TO SHOW DEBORAH ROACH'S TRUE MOTIVE TOWARD PETITIONER BOYETT. PETITIONER'S PERSONAL COMPUTER HAD EVIDENCE THAT WAS DELETED BY POLICE WHEN THEY CONFISCATED IT, THAT INCLUDED A "SAFETY CONTRACT" SIGNED BY "FLOSSIE" AND DEBORAH ROACH. IT WAS A HAND-WRITTEN LETTER ON YELLOW-LINED PAPER THAT CONTAINED AN AGREEMENT THAT DEBORAH ROACH WOULD NOT ACT OUT (PARAPHRASED) AND WOULD CALL HER FRIEND, FLOSSIE, IF SHE BECAME SUICIDAL. THE PROSECUTOR KNEW ABOUT ROACH'S MENTAL ILLNESS, BUT SUPPRESSED ANY AND ALL EVIDENCE RELATED TO HER HISTORY OF TREATMENT. DEBORAH ROACH'S PLACE OF RESIDENCE WAS NOT SECURED BY INVESTIGATORS AND

SANITIZED OF ANY EVIDENCE BY ROACH'S TWO LAW-ENFORCEMENT BROTHERS, MICHAEL AND JERRY ROACH (NOW RETIRED FROM APD). NO SEARCH WARRANT WAS EVER OBTAINED FOR ROACH'S RESIDENCE, AND BECAUSE OF THE LAW-ENFORCEMENT TIES, AN ILLEGAL COVERUP WAS SANCTIONED BY THE VALENCIA COUNTY SHERIFF'S DEPARTMENT, AND ASSISTANT DISTRICT ATTORNEY, SUSAN MCLEAN. ANY EXPERIENCED AND REASONABLE INVESTIGATOR WOULD HAVE EASILY ESTABLISHED PROBABLE CAUSE TO SHOW THE NEED FOR A SEARCH WARRANT FOR THE PURPOSE OF SECURING AND SEIZING POTENTIAL EVIDENCE BELONGING TO DEBORAH ROACH, INCLUDING HER PERSONAL COMPUTER, CELL-PHONE, AND MEDICATIONS RELATED TO HER HISTORY OF DEPRESSION AND GENDER DYSPHORIA. INVESTIGATORS INTENTIONALLY FAILED TO MEET THEIR RESPONSIBILITIES AS PUBLIC OFFICIALS, AND THIS WAS OBJECTIVELY UNREASONABLE BEHAVIOR FALLING BELOW POLICE STANDARDS, AND DEMONSTRATES AN UNSCRUPULOUS DOUBLE STANDARD FOR SEARCHES CONDUCTED AGAINST NON LAW-ENFORCEMENT CITIZENS. AND THE FACT THAT PETITIONER BOYETT'S COMPUTER WAS CONFISCATED, SEARCHED AND NEVER RETURNED IS CONTRARY TO A RULING IN U.S. V. OTERO, 563 F.3d 1127, 1132 (10TH CIR. 2009). THE TENTH CIRCUIT DID NOT ADDRESS THIS ISSUE. DEFENSE COUNSEL FAILED TO ATTEMPT A MEANINGFUL COUNTERATTACK, BECAUSE TO ACCOMPLISH THIS WOULD REQUIRE FUNDING FOR EXPERT WITNESSES, AND COUNSEL WAS SIMPLY SAVING MONEY AND DEPRIVING HIS CLIENT OF AN ADEQUATE

AND COMPLETE DEFENSE.

THE ACTUAL "CRIME SCENE" WAS VERY CONTAMINATED AND THIS IS FACTUALLY RECORDED. COUNSEL WAS DEFICIENT, BECAUSE ONLY A TRAINED EXPERT IN FORENSIC CRIME SCENE RECONSTRUCTION AND BLOOD-SPATTER ANALYSIS COULD HAVE MADE AN OBJECTIVE AND UNBIASED [EMPHASIS ADDED] OPINION ABOUT MULTIPLE ISSUES INVOLVED. THE STATE'S EXPERT, SGT. ART ORTIZ, A ROACH FAMILY FRIEND, CERTAINLY DID NOT OFFER AN OBJECTIVE, SCIENTIFICALLY PROVEN ANALYSIS OF THE CRIME SCENE, AND DURING HIS CGI "FANTASY FORENSIC" PRESENTATION, DEFENSE COUNSEL DID NOT OFFER A MEANINGFUL OBJECTION, NOR DID HE PRESENT AN EXPERT REBUTTAL AS HE SHOULD HAVE. SGT. ORTIZ'S VERSION OF THE SHOOTING WAS PURE SPECULATION AND BLATANTLY FALSE, BUT THE COURT ALLOWED THE JURY TO BE MESMERIZED BY THE IMAGES AND COMMENTS. INVESTIGATORS FAILED TO ANALYZE BLOOD EVIDENCE TAKEN FROM THE SCENE OF THE SHOOTING, INCLUDING:

- A. BLOOD DROPLETS ON DEBORAH ROACH'S GUN, WHICH WERE LOCATED ON THE TOP OF THE BARREL AND THE TRIGGER GUARD.
- B. BLOOD SPATTER ON DEBORAH ROACH'S COAT WORN AT THE TIME SHE WAS SHOT.
- C. BLOOD SPATTER ON RENATE WILDER'S SHIRT, WHO WAS STANDING BETWEEN BOYETT AND ROACH AT THE TIME OF THE SHOOTING.
- D. BLOOD SPATTER ON PETITIONER BOYETT'S SHIRT.

NO DNA TESTS WERE CONDUCTED ON ANY OF THE ITEMS, AND NO EXPERT EVER IDENTIFIED WITH THE BLOOD DROPLETS BELONGED TO OR

IF THE BLOOD EVIDENCE WAS HUMAN.

QUESTIONS REMAIN UNANSWERED ABOUT THE FACTS OF THE SHOOTING BECAUSE THE ONLY TESTIMONY PRESENTED TO THE TRIAL JURY WAS NOT AN EXPERT'S EVALUATION OF THE EVENTS, BUT AN EMOTIONALLY INVOLVED POLICE SGT. ORTIZ'S TESTIMONY THAT WAS HEAVILY BIASED AND UNOBJECTIVE, INTENDED TO HELP HIS "BLUE FAMILY" LAW-ENFORCEMENT FRIENDS, THE ROACH FAMILY.

PETITIONER BOYETT IS STILL WAITING FOR AN OPPORTUNITY TO PRESENT AN OBJECTIVE AND UNBIASED FORENSIC EXPERT TO A JURY TO ANSWER THESE FEW SIMPLE QUESTIONS:

1. WHO WAS THE FIRST AGGRESSOR AND DID IT APPEAR DEBORAH ROACH SUFFICIENTLY PROVOKED PETITIONER BOYETT?
2. HOW DO YOU EXPLAIN HOW DEBORAH ROACH'S GUN WAS IN A "HORIZONTAL" FIRING POSITION AND "EXPOSED?"
3. WHAT WAS THE ACTUAL POSITION OF ALL THREE PEOPLE STANDING IN OR NEAR THE DOORWAY OF PETITIONER BOYETT'S RESIDENCE AT THE TIME OF THE SHOOTING?
4. HOW DID RENATE WILDER'S HAND SUSTAIN FLASHBURNS FROM PETITIONER BOYETT'S GUN, AND WAS GUN POWDER RESIDUE TESTS PERFORMED ON ANYONE PRESENT?
5. WOULD THE RELEVANT TESTIMONY OF AN EXPERT FORENSIC SCIENTIST HAVE SHOWN A PREPONDERANCE OF EVIDENCE BEYOND A REASONABLE DOUBT THAT PETITIONER BOYETT ACTED IN SELF-DEFENSE, OR AT VERY LEAST, CREATED ENOUGH REASONABLE DOUBT THAT THE JURY'S DETERMINATION WOULD HAVE BEEN DIFFERENT?

SIMPLY STATED, THERE IS NO LOGICAL READING OF THE NEW MEXICO STATUTE REGARDING FIRST-DEGREE MURDER THAT WOULD ALLOW A CONVICTION OF A CRIMINAL DEFENDANT FACING A DEADLY THREAT

WITH SUFFICIENT PROVOCATION THAT IS OBVIOUS TO A REASONABLE PERSON ABLE TO UNDERSTAND THE TRUE DYNAMICS OF PETITIONER BOYETT'S LIFE-THREATENING EXPERIENCE ON FEBRUARY 5, 2004, WHICH RESULTED IN THE FATAL SHOOTING OF DEBORAH ROACH, AN ARMED AND THREATENING INDIVIDUAL WITH A HISTORY OF GUN VIOLENCE, DRUG ABUSE AND MENTAL ILLNESS. AND IT DOES NOT CONSIDER PREVIOUS THREATS MADE AGAINST PETITIONER BOYETT BY DEBORAH ROACH.

THE STANDARD OF REVIEW FOR DETERMINING IF PETITIONER BOYETT'S PROSECUTION WAS BASED ON WHETHER THE LAW WAS CORRECTLY APPLIED TO THE FACTS, OR IF THERE WAS EVIDENCE AVAILABLE TO SHOW THE PROSECUTOR CHOSE TO USE HER OWN CONCLUSIONS IN AN EFFORT TO SUPPORT A "BLUE FAMILY" AND APPLY ONLY THE EVIDENCE MOST FAVORABLE TO THE STATE, WHICH WOULD BE CONTRARY TO THE STATUTORY DUTIES AND OBLIGATIONS OF THE PROSECUTOR AS DEFINED BY STATE LAW, AND WOULD BE SUBJECT TO SCRUTINY UNDER WINSHIP, 397 U.S. 358, 364 (1970), AND THE FEDERAL STANDARD OF SULLIVAN V. LA., 508 U.S. 275, 278 (1993). IN MAKING THIS DETERMINATION AS TO WHETHER EACH ELEMENT OF THE CRIME CHARGED HAS BEEN ESTABLISHED BEYOND A REASONABLE DOUBT, THE COURT MUST NOT RELY ON IMPROPER INFERENCE, SURMISE, OR USE CYNICAL SPECULATION TO FILL THE GAPS OF THE STATE'S PROOF. PETITIONER BOYETT CASE WAS FILLED WITH CYNICAL SPECULATION BECAUSE HE WAS PRESUMED GUILTY BEFORE HIS TRIAL.

SPECIFIC ARTICULABLE FACTS RELATED IN SCOPE TO THE

CIRCUMSTANCES FALL SHORT OF CONCLUSIVE, OBJECTIVE INFERENCES MADE BY LAW-ENFORCEMENT INVESTIGATORS, CONSIDERING THE TOTALITY OF THE CIRCUMSTANCES, SO THE PROSECUTOR'S ANALYSIS WAS BASED ON INCOMPLETE EVIDENCE, SOME WHICH WAS INTENTIONALLY AND IMPROPERLY SUPPRESSED BY THE TRIAL COURT, INCLUDING THE "VICTIMS" HISTORY OF GUN VIOLENCE, DRUG ABUSE, AND MENTAL ILLNESS. THE FEDERAL STANDARD IS FOUNDED ON "A FUNDAMENTAL VALUE DETERMINATION OF OUR SOCIETY THAT IT IS FAR WORSE TO CONVICT AN INNOCENT MAN THAN TO LET A GUILTY MAN GO FREE." *Id.* AT 372 (HARLAN J., CONCURRING).

THE PROSECUTOR'S USE OF UNPROVEN, UNTESTED EVIDENCE THAT WAS SPECULATIVE AT BEST, IS CONTRARY TO THE REQUIREMENT THAT EVIDENCE "BE ASSESSED IN A PARTICULAR MANNER" AND THAT EVIDENCE SHOULD BE SUBJECTED TO TESTING BY CROSS-EXAMINATION UNDER THE CRAWFORD RULE AND UNDER THE CONFRONTATION CLAUSE, BECAUSE THE RELIABILITY OF CRUCIAL EVIDENCE IS AN ABSOLUTE REQUIREMENT FOR THE BURDEN OF PROOF ISSUE. BULLCOMING V. N. M., 564 U.S. 647, 652 (2011); CRAWFORD V. WASHINGTON, 541 U.S. 36 (2004).

IN CONCLUSION, PETITIONER BOYETT BELIEVES THE TENTH CIRCUIT'S DETERMINATION WAS IN ERROR WHEN IT DENIED RELIEF AND BECAUSE THE MERITS OF PETITIONER'S OTHER CLAIMS THAT WAS "VOLUNTARILY DISMISSED" AT THE U.S. DISTRICT COURT LEVEL, SHOULD HAVE BEEN

GIVEN CONSIDERATION ON THEIR MERITS AND NOT JUST TECHNICALLY
OR PROCEDURALLY DECLARED "UNEXHAUSTED."

WHEREFORE, IN SUPPORT OF PETITIONER BOYETT'S PETITION FOR
WRIT OF CERTIORARI FILED FEBRUARY 1, 2019 IN THIS UNITED STATES
SUPREME COURT CASE NUMBER 18-7774, HE HEREBY SUBMITS THIS
SUPPLEMENTAL BRIEF FOR CONSIDERATION.

RESPECTFULLY SUBMITTED,

Cecil Boyett
CECIL BOYETT, PETITIONER PRO SE
NMCD #64272
6900 W. MILLEN DR.
HOBBS, NEW MEXICO 88244

DATED: FEBRUARY 12, 2019

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APPENDIX AA (1) AMICUS BRIEF, PART 1, NUMBERS 1-12.

APPENDIX AA (2) AMICUS BRIEF, PART 2, ANALYSIS OF TENTH
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a. DISCUSSION
b. REMEDY
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APPENDIX AA (3) AMICUS BRIEF, PART 3, ANALYSIS FOR PLAIN ERROR,
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APPENDIX AA (4) AMICUS BRIEF, PART 4, CONCLUSION OF ANALYSIS OF
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APPENDIX BB AMICUS BRIEF, ARTICLE: "WHAT IS GENDER DYSPHORIA?"

APPENDIX CC AMICUS BRIEF, FACTUAL DATA REGARDING "STAND
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APPENDIX DD AMICUS BRIEF, ARTICLE: "PRINCIPLES FOR PASSION
KILLING: AN EVOLUTIONARY SOLUTION TO MANSLAUGHTER
LITIGATION."

CERTIFICATE OF COMPLIANCE

NO. 18-7774

CECIL BOYETT,
PETITIONER

v.

DWAYNE SANTISTEVAN, WARDEN, et al.,
RESPONDENT(S)

AS REQUIRED BY SUPREME COURT RULE 33.1(g) iv AND RULE
33.2(b), I CERTIFY THAT THE SUPPLEMENTAL BRIEF CONTAINS
1,800 WORDS, EXCLUDING THE PARTS OF THE BRIEF THAT ARE
EXEMPTED BY SUPREME COURT RULE 33.1(d), INCLUDING APPENDICES.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS
TRUE AND CORRECT.

EXECUTED ON FEBRUARY 12, 2019.

Cecil Boyett

CECIL BOYETT, PETITIONER PRO SE
NMCD#64272