

ATTACHED TO RESUBMITTED PETITION FOR REFERENCE ONLY.
Cecil Boyett

NO. 19-7275

IN THE
SUPREME COURT OF THE UNITED STATES

CECIL BOYETT,
PETITIONER

VS.

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

ON PETITION FOR WRIT OF CERTIORARI
TO THE THIRTEENTH JUDICIAL DISTRICT COURT OF
VALENCIA COUNTY, NEW MEXICO

PETITION FOR REHEARING

CECIL BOYETT, PETITIONER PRO SE
NMCD NO. 164272
LEA COUNTY CORRECTIONAL FACILITY
6900 W. MILLEN DR.
HOBBS, NEW MEXICO 88244

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PETITION FOR REHEARING - GROUNDS FOR SUPPORT

PETITIONER BOYETT HEREBY SUBMITS HIS TIMELY-FILED PETITION FOR REHEARING FOR CONSIDERATION WITHIN TWENTY-FIVE (25) DAYS AFTER ENTRY OF JUDGEMENT BY THIS COURT ON HIS PETITION FOR A WRIT OF CERTIORARI, PURSUANT TO U.S. SUPREME COURT RULE 44, AND PETITIONER IS PROCEEDING IN FORMA PAUPERIS PURSUANT TO RULE 39 DUE TO HIS STATUS AS AN INDIGENT INCARCERATED INMATE OF A STATE CORRECTIONAL INSTITUTION, AND IN COMPLIANCE WITH SUPREME COURT RULE 12.2,

PETITIONER BOYETT AFFIRMS THIS PETITION IS BEING PRESENTED IN GOOD FAITH AND NOT FOR PURPOSES OF DELAY, AND BASED ON THE QUALITY OF HIS CLAIMS AND IN THE INTEREST OF MANIFEST JUSTICE, HE RESPECTFULLY REQUESTS CONSIDERATION ON THE SUBSTANTIAL MERITORIOUS GROUNDS OF OF HIS CLAIMS DESERVING OF THIS HIGHLY-ESTEEMED COURT'S CONSIDERATION. PETITIONER BOYETT HAS CLAIMED ACTUAL INNOCENCE FROM THE ONSET OF PROCEEDINGS AGAINST HIM, AND A DE NOVO REVIEW BY AN OBJECTIVE COURT SUCH AS THIS COURT IS REQUIRED TO SHOW HE FACTUALLY ACTED IN SELF-DEFENSE AND THAT HIS MURDER CONVICTION WAS OBTAINED AS A RESULT OF A CONSTITUTIONALLY UNFAIR TRIAL.

PETITIONER BOYETT SEEKS REVIEW AND CONSIDERATION FOR HIS PETITION FOR REHEARING ON THE GROUNDS THAT:

1. PETITIONER BOYETT SUBMITTED A TIMELY PETITION FOR A WRIT OF CERTIORARI IN THIS COURT WITH VALID AND MERITORIOUS CLAIMS NOT PREVIOUSLY REVIEWED BY THE NEW MEXICO SUPREME COURT, THE STATE COURT OF LAST RESORT. HIS PETITION WAS DENIED REVIEW, WITHOUT REASON.

2. THE PETITION FOR A WRIT OF CERTIORARI FILED IN THE STATE COURT OF LAST RESORT, NEW MEXICO SUPREME COURT, AND THE PETITION FOR A WRIT OF CERTIORARI FILED IN THIS COURT SPECIFICALLY RAISED CLAIMS OF CONSTITUTIONAL VIOLATIONS THAT OCCURRED DURING PETITIONER BOYETT'S UNFAIR STATE JURY TRIAL. SULLIVAN V. LA., 508 U.S. 275, 281 (1993).
3. PETITIONER BOYETT IDENTIFIED AND RAISED CLAIMS OF CONSTITUTIONAL VIOLATIONS IN HIS STATE 5-802 PETITION FOR WRIT OF HABEAS CORPUS. SEE APPENDIX A, PETITION FOR A WRIT OF CERT., No. 19-7275.
4. THE CLAIMS RAISED IN PETITIONER'S STATE 5-802 PETITION FOR WRIT OF HABEAS CORPUS INCLUDED MERITORIOUS CLAIMS OF SUBSTANTIAL VIOLATIONS OF HIS CONSTITUTIONAL DUE PROCESS RIGHTS. WASHINGTON V. TEXAS, 388 U.S. 14, 17-18 (1967); HOLMES V. S.C., 547 U.S. 319, 324 (2006).
5. PETITIONER BOYETT FILED HIS PETITION FOR A WRIT OF CERTIORARI IN THIS COURT PRO SE, DESPITE HIS CURRENT SERIOUS HEALTH PROBLEMS RELATED TO HIS ADVANCED AGE, AND HE CONTENTS HE NEEDS ASSISTANCE OF COUNSEL APPOINTED AS HE IS UNABLE TO AFFORD AN ATTORNEY.
6. PETITIONER BOYETT'S PREVIOUS "PETITION FOR REHEARING" FILED IN THIS COURT, NO. 18-7774, EXECUTED APRIL 19, 2019 AND DENIED JUNE 10, 2019 CONTAINS VALID GROUNDS SUPPORTING REVIEW OF THIS PETITION. RECORD F
7. THE ONLY BURDEN OF PERSUASION ESTABLISHED AT PETITIONER BOYETT'S STATE JURY TRIAL WAS UNCHALLENGED EVIDENCE PRESENTED BY THE STATE PROSECUTOR, AND ONLY BECAUSE THE DEFENSE WAS DENIED THE RIGHT OF ACCESS TO MATERIAL EVIDENCE WHICH, IF PRESENTED, WOULD HAVE INFLUENCED THE JURY'S DETERMINATION ABOUT REASONABLE DOUBT OF GUILT. FRANCIS V. FRANKLIN, 471 U.S. 307, 316 (1985); AKE V. OKLAHOMA, 470 U.S. 68, 82-83, 105 S.Ct. 1087, 1096 84 L.Ed. 53, 66 (1985).
8. THE STATE PROSECUTOR WITHHELD EXONERATING AND EXCULPATORY EVIDENCE WHICH IS DETAILED IN THE RECORD, AND THE DEFENSE WAS DENIED AN OPPORTUNITY TO PRESENT REBUTAL EVIDENCE BECAUSE NO REBUTTERS WERE CALLED, DESPITE A REASONABLE PROBABILITY THAT SUCH TESTIMONY WOULD HAVE CREATED REASONABLE DOUBT IN THE MIND OF AT LEAST ONE JUROR. BRADY V. MARYLAND, 373 U.S. 83, 87 (1963).
9. PETITIONER BOYETT HAS CONSISTENTLY ASSERTED HIS ACTUAL INNOCENCE AND CLAIMS THE CIRCUMSTANCES HE FACED FEBRUARY 5, 2004 FORCED HIM TO REACT IMMEDIATELY USING DEADLY FORCE IN AN ACT OF OBVIOUS SELF-DEFENSE. BURTON V. STEWART, 549 U.S. 147, 127 S.Ct. 793, 166 L.Ed. 628 (2007).

IN PETITIONER BOYETT'S STATE CRIMINAL PROCEEDING, THE TESTIMONY OF HIS EXPECTED PSYCHOLOGICAL EXPERT WITNESS, WAS EXCLUDED BECAUSE SHE [THE EXPERT WITNESS - DR. LORI MARTINEZ] DID NOT SHOW UP FOR TRIAL, WAS NOT SUBPOENED BY DEFENSE COUNSEL, AND WAS INAPPROPRIATELY INFLUENCED BY THREATENING INTIMIDATION FROM THE STATE PROSECUTOR, ASST. DISTRICT ATTORNEY, SUSAN MCLEAN, WHOSE BLATANT PROSECUTORIAL MISCONDUCT INTERFERED IN THE DEFENSE PRESENTING A CRITICALLY NEEDED MATERIALLY FAVORABLE WITNESS. UNDER THE U.S. CONSTITUTION'S COMPULSORY PROCESS CLAUSE, PETITIONER WAS DENIED HIS RIGHT TO PRESENT THIS WITNESS, WHICH WAS CLEARLY AND DIRECTLY CAUSED BY THE PROSECUTOR'S MISCONDUCT. THE PROSECUTOR TIMED HER INTERFERENCE JUST TWO DAYS PRIOR TO THE EXPERT'S ANTICIPATED TESTIMONY, WHICH UNDOUBTEDLY WAS INTENDED TO DISRUPT THE DEFENSE'S PLANS, AND DONE IN BAD FAITH, WHICH IS IMPROPER PROFESSIONAL BEHAVIOR. BECAUSE THE PSYCHOLOGIST WAS GOING TO PRESENT FAVORABLE TESTIMONY FOR THE DEFENSE, AND IN THE INTEREST OF JUSTICE, A HARMLESS ERROR ANALYSIS WOULD LIKELY ESTABLISH THE VALIDITY OF PETITIONER'S CLAIM THAT THE EXCLUDED EXPERT WITNESS TESTIMONY WOULD HAVE SUPPORTED A FINDING OF REASONABLE DOUBT BY THE JURY, U.S. V. SIMPSON, 992 F.2d 1224, 1230 (D.C. Cir. 1993); CHAMBERS V. MISSISSIPPI, 410 U.S. 284, 294 (1973), AKE V. OKLAHOMA, 470 U.S. 68, 83 (1985) WHICH HELD THAT "DUE PROCESS REQUIRES DEFENDANT BE GIVEN ACCESS TO COMPETENT PSYCHIATRIST AT TRIAL OR SENTENCING IF MENTAL STATE AT ISSUE."

THIS HIGHLY RESPECTED AND ESTEEMED COURT HAS THE AUTHORITY AND JURISDICTION TO CONDUCT A FULL REVIEW ON THE ISSUES CLAIMED IN PETITIONER'S PETITION FOR A WRIT OF CERTIORARI FILED IN THIS COURT AND TO DETERMINE THE VALIDITY OF PETITIONER'S CONSTITUTIONAL QUESTIONS RAISED AND CLAIMED IN HIS STATE 5-802 PETITION FOR WRIT OF HABEAS CORPUS. [APPENDIX A], WRIT OF CERT. 19-7275.

PETITIONER BOYETT BASES HIS CLAIMS ON A SHOWING OF A SUBSTANTIAL DEPRIVATION OF HIS CONSTITUTIONAL RIGHTS UNDER THE DUE PROCESS CLAUSE, COMPULSORY PROCESS CLAUSE, AND THE RIGHT TO A FAIR AND IMPARTIAL TRIAL UNDER THE SIXTH AMENDMENT. SUBSTANTIAL ELEMENTS OF VIOLATIONS OF PETITIONER'S PROCEDURAL RIGHTS ARE ALSO CLAIMED, AND THESE ISSUES BOTH WARRANT AN ASSESSMENT BY THIS COURT BECAUSE THERE ARE CLEAR DEMONSTRATIONS OF ERRORS MADE, RECORDED DURING PETITIONER'S TRIAL, THAT CONTRIBUTED TO A WRONGFUL CONVICTION, THAT WERE CAUSED BY THE STATE, AND WITHOUT THESE CONSTITUTIONAL VIOLATIONS, REASONABLE JURISTS WOULD PROBABLY COME TO A DIFFERENT CONCLUSION, THUS INDICATING THE STATE DISTRICT COURT'S DECISION WAS ABSOLUTELY WRONG. MILLER-EL V. COCKRELL, 537 U.S. 322, 327 (2003); SLACK V. MCDANIEL, 529 U.S. AT 484 (2000). THESE CASES CLOSELY RELATE ISSUES VERY SIMILAR TO THE CONSTITUTIONAL ISSUES CLAIMED IN PETITIONER'S CASE, INCLUDING HIS STATE 5-802 HABEAS PETITION AND THE PETITION FOR A WRIT OF CERTIORARI FILED IN THIS COURT. THE CONSTITUTIONAL CLAIMS ARE VALID, AND WOULD BE DIFFICULT TO DEBATE.

WHEREFORE, PETITIONER BOYETT RESPECTFULLY REQUESTS THIS COURT GRANT HIS PETITION FOR REHEARING, BASED ON THE COMPELLING REASONS STATED, AND TO GRANT HIS PETITION FOR A WRIT OF HABEAS CORPUS, AND FOR ANY OTHER RELIEF THIS HONORABLE AND ESTEEMED COURT DEEMS JUST, PROPER, AND APPROPRIATE.

RESPECTFULLY SUBMITTED,

Cecil Boyett
CECIL BOYETT
PETITIONER PRO SE
NMCD NO. 64272
LEA COUNTY CORRECTIONAL FACILITY
6900 W. MILLEN DR.
HOBBS, NEW MEXICO 88244

CERTIFICATE OF COMPLIANCE

AS REQUIRED BY S.C.T. RULE 33.1, I CERTIFY THE FOREGOING PETITION FOR REHEARING CONTAINS 1,100 WORDS, EXCLUDING THE PARTS EXEMPTED BY RULE 33.1(d). I DECLARE UNDER PENALTY OF PERJURY THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON FEBRUARY 28, 2020.

Cecil Boyett
CECIL BOYETT, PETITIONER PRO SE

UNCONSTITUTIONAL CONDITIONS DOCTRINE

PETITIONER, CECIL BOYETT, CHOSE TO EXERCISE HIS FUNDAMENTAL RIGHT TO A FAIR AND IMPARTIAL TRIAL. HE REJECTED THE IDEA OF ACCEPTING THE PROSECUTOR'S PLEA OFFER FOR SECOND-DEGREE MURDER PRIOR TO TRIAL BECAUSE: (1) IT VIRTUALLY ELIMINATED HIS CONSTITUTIONAL RIGHT TO A TRIAL (2) HE WAS ACTUALLY INNOCENT OF MURDER BECAUSE HE WAS SUFFICIENTLY PROVOKED AND ACTED WITH JUSTIFIABLE DEADLY FORCE IN SELF-DEFENSE (3) THE ALLEGATIONS AND CHARGES MADE BY THE STATE PROSECUTOR LACKED SUBSTANTIAL CREDIBLE EVIDENCE TO MEET THE BURDEN OF PROOF FOR THE CHARGE OF MURDER.

ACCORDINGLY, PETITIONER ASSERTS THE FOREGOING PARAGRAPH DEMONSTRATES AN OBVIOUS DISCREPANCY BETWEEN WHAT THE CONSTITUTION PROMISES AND WHAT THE CRIMINAL JUSTICE SYSTEM DELIVERED IN PETITIONER BOYETT'S PARTICULAR CIRCUMSTANCES. PETITIONER'S CASE BROUGHT OUT NUMEROUS DISCREPANCIES ABOUT POLICE CONDUCT, AND PUT THE CONDUCT OF THE STATE PROSECUTOR, AND THE STATE POLICE "BLOOD SPATTER EXPERT" WITNESS UNDER HEAVY SCRUTINY. THE ADMINISTRATION OF JUSTICE WAS NOT A TOP PRIORITY IN PETITIONER'S TRIAL.

THERE WAS NO SAFEGUARDS IN PLACE FOR PETITIONER AFTER HE REJECTED THE PROSECUTOR'S PLEA OFFER FOR SECOND-DEGREE MURDER, AND THE FIFTEEN (15) YEAR SENTENCE. WHAT TRUTHFULLY

DEVELOPED AFTER PETITIONER REJECTED THE PLEA OFFER, WAS THE PROSECUTOR, SUSAN MCLEAN, MADE A DECISION TO ABUSE HER AUTHORITATIVE POSITION AND CHARGE PETITIONER WITH FIRST-DEGREE MURDER, AS A REPERCUSSION FOR PETITIONER BOYETT INSISTING UPON EXERCISING HIS SIXTH AMENDMENT RIGHT TO A JURY TRIAL, WHICH IS AN EXPENSIVE AND TIME-CONSUMING PROCESS. THIS PROCESS CREATED A BURDEN ON PETITIONER WHICH IS KNOWN AS "TRIAL PENALTY," A TERM AND PROCESS NOT COMMONLY KNOWN BY LAWYERS, BUT IS CERTAINLY EXEMPLIFIED IN PETITIONER BOYETT'S CASE, AND THE CASE OF JOSEPH TIGANO. SEE UNITED STATES V. TIGANO, (2d CIR, 2016)

UNDER THE UNCONSTITUTIONAL CONDITIONS DOCTRINE, THE STATE OF NEW MEXICO PROSECUTOR, ASSISTANT DISTRICT ATTORNEY, SUSAN MCLEAN, WAS PROHIBITED FROM CONDITIONING A BENEFIT ON THE DEFENDANT, CECIL BOYETT, GIVING UP A CONSTITUTIONAL RIGHT. IN BOYETT'S SITUATION, THE STATE IS ESSENTIALLY PENALIZING HIM FOR CHOOSING TO EXERCISE HIS CONSTITUTIONAL RIGHTS, WHICH EFFECTIVELY VIOLATES DEFENDANT BOYETT'S DUE PROCESS RIGHTS WHICH NORMALLY ENTAILS STRICT SCRUTINY REVIEW. MCCOY AND MIRRA, PLEA BARGAINING AS DUE PROCESS IN DETERMINING GUILT, 32 STAN. L. REV. 887, 888 (1980).

THE PROSECUTOR'S UNLIMITED DISCRETION TO PICK AND CHOOSE WHICH CHARGES TO BRING AGAINST DEFENDANT BOYETT WAS COERCIVE BECAUSE IT CREATED A SITUATION WHERE DEFENDANT

HAD TO DECIDE TO ACCEPT HER OFFER, OR RISK BEING OVER-CHARGED AND THREATENED WITH THE HARSHTEST SENTENCE POSSIBLE. SO, THE PROSECUTOR TOOK ON THE ROLE OF JUDGE AND JURY, AND CREATED A DISTINCT UNFAIR ADVANTAGE FOR THE STATE. UNFORTUNATELY, THE END RESULT HAD LITTLE TO DO WITH THE PRIMARY OBJECTIVES OF THE CRIMINAL JUSTICE SYSTEM, OR THE PROSECUTOR'S DUTY TO SEEK THE TRUTH. DEFENDANT BOYETT PLEAD NOT GUILTY BECAUSE HE WAS INNOCENT - THIS FACT WILL NOT CHANGE. PROSECUTOR MCLEAN'S VINDICTIVE AND RETALIATORY PROSECUTION OF DEFENDANT BOYETT UNDERMINED THE INTEGRITY OF THE ENTIRE CRIMINAL JUSTICE SYSTEM.

PROSECUTOR MCLEAN'S CONDUCT DURING PETITIONER'S TRIAL WAS OUTRAGEOUSLY PREJUDICIAL, AND THE COURT SHOULD HAVE DECLARED A MISTRIAL IN FAIRNESS TO PETITIONER. SHE WAS BRIEFLY ADMONISHED ON THE RECORD BY THE TRIAL JUDGE [TR-214, LINES 8 THRU 25 AND TR-215, LINES 1 THRU 8, VOL. 2, DEC. 7, 2005]. HOWEVER, SHE CONTINUED HER DISRUPTIVE MANNERISMS THROUGHOUT THE TRIAL PROCEEDING WITHOUT ANY FURTHER CORRECTIVE ACTION TAKEN BY THE COURT, BUT WAS ABLE TO CONCEAL HER "EYEROLLING" AND OTHER GESTURES FROM THE TRIAL JUDGE.

THE STATE PROSECUTOR INAPPROPRIATELY DISPLAYED GRAPHICALLY GRUSOME CRIME SCENE PHOTOS AND AUTOPSY PHOTOS FOR EXTENDED PERIODS OF TIME IN VIEW OF THE JURY, AND USED A LARGE SCREEN

TO UNREASONABLY ENLARGE VERSIONS OF THE GROUESOME IMAGES TO SHOCK THE JURY IN AN EFFORT TO EVOKE AN EMOTIONAL RESPONSE. DURING THE TRIAL PROCEEDING, DEFENSE COUNSEL OBJECTED TO THE INTRODUCTION OF ONE PHOTO IN PARTICULAR WHICH WAS "EXHIBIT 41". AFTER THE TRIAL JUDGE RULED THAT THE PROSECUTOR COULD NOT DISPLAY EXHIBIT 41 ON THE VIEWING SCREEN, HE ALLOWED EXHIBIT 41 TO BE INTRODUCED BUT COULD ONLY BE SHOWN TO THE JURY IN THEIR ORIGINAL PHOTO FORM. PROSECUTOR MCLENN LATER PUT EXHIBIT 41 ON THE VIEWING SCREEN IN DIRECT VIOLATION OF THE COURT'S PREVIOUS RULING. [VOL 2, DEC. 7, 2005 TR-3, LINES 24-25]; [TR-4, LINE 1-20 WITH SPECIAL EMPHASIS TO LINES 18-20]; [TR-23 LINES 22-25]; [TR-24, LINES 1-22]. THE RECORD SHOWS THE COURT WAS AWARE OF THE SENSITIVE NATURE AND PREJUDICIAL EFFECT OF EXHIBIT 41, BUT THE PROSECUTOR USED UNDULY PREJUDICIAL TACTICS IN DIRECT VIOLATION OF THE COURT'S RULING. SEE SPEARS V. MULLIN, 343 F.3d 1215, 1229 (10th Cir. 2003) WHERE THE COURT HELD IT WAS PREJUDICIAL TO SHOW THE JURY GROUESOME PHOTOS OF THE VICTIM IN AN EFFORT TO EVOKE AN EMOTIONAL RESPONSE. PROSECUTOR MCLENN DISPLAYED AN AUTOPSY PHOTO TO THE JURY ON A LARGE FLASHSCREEN THAT SHOWED A LARGE EXIT WOUND TO DEBBIE REACH'S SHAVED HEAD. THAT PHOTO WAS A CLOSE-UP OF A LARGE CAVERNOUS BLOWN OUT PORTION OF THE VICTIM'S POSTERIOR SKULL AREA. PROSECUTOR MCLENN DISPLAYED THE IMAGE FOR ALMOST TWENTY MINUTES, INSTEAD OF DEMONSTRATING

HER POINT AND MOVING ON, SHE ENHANCED THE EFFECT OF THE GRUESOMENESS BEYOND REASON, AND IT EVOKED VISIBLE EMOTIONAL RESPONSES OF THE JURORS.

PETITIONER BELIEVES A COMPETENT ARGUMENT FOR SELF-DEFENSE SHOWS THAT NO RATIONAL TRIER OF FACT COULD HAVE FOUND THE ESSENTIAL ELEMENTS OF MURDER BEYOND A REASONABLE DOUBT AND THIS IS A VALID REASON TO CLAIM THE TRIAL COURT ERRED IN ALLOWING THE PROSECUTOR TO VINDICTIVELY CHARGE AND PROSECUTE PETITIONER FOR MURDER, BECAUSE THE PROSECUTOR'S THEORY WAS BASED ON PURE CONJECTURE AND SPECULATION. EVEN THE TRIAL JUDGE WAS VISIBLY SURPRISED WHEN HE LEARNED DEBBIE ROACH DID HAVE A FIREARM IN HER HAND WHEN SHE WAS SHOT. PROSECUTOR MCLAN INTENTIONALLY AND DELIBERATELY RETALIATED AGAINST PETITIONER BOYETT FOR HIS REFUSAL OF HER PLEA OFFER. THE STATE DISTRICT COURT'S DETERMINATION TO DENY HABEAS RELIEF IN 2016 WAS ERROR. JACKSON V. VA., 443 U.S. 307, 319 (1979). THE EVIDENCE AS A WHOLE AND THE EVIDENCE WITHHELD OR EXCLUDED DID NOT SUFFICIENTLY SHOW A TRUTHFUL DEPICTION OF WHAT REALLY TRANSPIRED ON FEBRUARY 5, 2004 WHEN DEBBIE ROACH WAS FATALY SHOT BY PETITIONER BOYETT IN SELF-DEFENSE. CASE V. HATCH, 731 F.3d 1015, 1032-33 (10TH CIR. 2013), BECAUSE WHEN CONSIDERING A CLAIM OF CONSTITUTIONAL VIOLATION IN THE UNDERLYING CRIMINAL PROCEEDING, THE COURT MUST CONSIDER THE CREDIBLE AND COMPELLING

EVIDENCE PETITIONER HAS INTRODUCED THAT CALLS INTO SERIOUS DOUBT EVIDENCE INTRODUCED BY THE PROSECUTOR, BOTH AT TRIAL AND SUBSEQUENT COLLATERAL PROCEEDINGS. NOONER V. HOBBS, 689 F.3d 921, 933 (8TH CIR. 2012). THE TESTIMONY OF ALL THREE EXPERT WITNESSES TESTIFYING AT PETITIONER'S 2016 EVIDENTIARY HEARING WAS CLEARLY DISREGARDED BY THE COURT.

THE STATE DISTRICT COURT ADJUDICATED THE CLAIMS ALLEGED BY PETITIONER, BUT THE COURT'S DECISION WAS AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW AS DETERMINED BY THE SUPREME COURT, AND THE STATE COURT'S DECISION WAS BASED ON INCONCLUSIVE AND UNREASONABLE DETERMINATION OF THE FACTS, APPLYING THE BRECHT STANDARD. BRECHT V. ABRAHAMSON, 507 U.S. 619, 629-30 (1993). SEE ALSO PAYATT V. ROYAL, 859 F.3d 920, 937-38 (10TH CIR. 2017).

THE STATE PROSECUTOR'S MISCONDUCT CONSTITUTED PLAIN ERROR THAT IMPAIRED AND IMPEDED DEFENDANT BOYETT'S RIGHT TO FULL DISCLOSURE, WHICH PREJUDICED HIS CASE, AND HARMED THE INTEGRITY OF HIS TRIAL PROCEEDING. THE RESULTANT EFFECTS OF THE PROSECUTOR'S MISCONDUCT LED TO SUBSTANTIAL AND INTUOUS EFFECTS OR INFLUENCE ON HOW THE JURY'S VERDICT WAS DETERMINED. DEFENDANT-PETITIONER BOYETT ASSERTS THE JURY'S VERDICT WOULD HAVE MOST LIKELY BEEN DIFFERENT HAD THE JURY NOT BEEN DEPRIVED OF CRITICAL COMPELLING EVIDENCE SUCH AS DEFENSE EXPERT WITNESS TESTIMONY, THE VIOLENT HISTORY

OF THE "VICTIM", INCLUDING HER PREVIOUS VIOLENT ACTS INVOLVING A FIREARM, AND THE EXCLUSION OF REQUESTED DISCOVERY MATERIAL. THIS DEPRIVATION OF EVIDENCE INFECTED THE INTEGRITY OF DEFENDANT BOYETT'S TRIAL PROCEEDING, AND FOR THESE REASONS, HIS CASE SHOULD BE REMANDED FOR A NEW TRIAL.

THERE SHOULD BE LITTLE DOUBT, IF ANY, THAT PETITIONER'S TRIAL PROCEEDING HAD VERIFIABLE DEMONSTRATIONS OF PROSECUTORIAL MISCONDUCT WHICH MATERIALLY AFFECTED THE FAIRNESS OF DEFENDANT BOYETT'S TRIAL, U.S. V. RUIZ, 710 F.3d 1077, 1082 (9TH CIR. 2013), AND THESE FACTORS REQUIRE REVERSAL BECAUSE PROSECUTOR'S MISCONDUCT PREJUDICED DEFENDANT'S TRIAL PROCEEDING AND THE COURT DID LITTLE, IF ANYTHING, TO MITIGATE THE PREJUDICE. SEE U.S. V. RICHARDS, 719 F.3d 746, 766-67 (7TH CIR. 2013). IN PETITIONER'S PARTICULAR CASE, IT IS MOST PROBABLE THE RESULTING PREJUDICE AFFECTED THE VERDICT, BECAUSE OF THE SEVERITY OF THE MISCONDUCT AND THE LACK OF CURATIVE MEASURES. THE GROUNDS FOR REVERSAL OF DEFENDANT'S CONVICTION ARE PRESENT IF "THERE IS REASON TO BELIEVE IT [THE MISCONDUCT] INFLUENCED THE JURY'S VERDICT." U.S. V. SORENSON, 801 F.3d 1217, 1243 (10TH CIR. 2015). THE PROSECUTOR'S MANIPULATIVE STYLE COERCED THE JURY INTO MAKING A DETERMINATION WITHOUT PROVIDING ALL THE SIGNIFICANT AND MEANINGFUL EVIDENCE FOR THE JURY TO CONSIDER, WHILE ACTUALLY VOUCHING FOR HER OWN PRESENTED WITNESSES, AND THIS IS IMPROPER.

BECAUSE SHE HAD NO KNOWLEDGE OF HER WITNESSES TRUTHFUL-
NESS OUTSIDE OF THE EVIDENCE ACTUALLY PRESENTED. DOUGLAS V.
WORKMAN, 560 F.3d 1156, 1179 (10 TH CIR. 2009).

THE PRECEDING PAGES EXPLAINING THE UNCONSTITUTIONAL CONDITIONS
DOCTRINE IS PETITIONER BOYETT'S REASONING FOR DECLINING THE PLEA
OFFER PRIOR TO HIS TRIAL, AND THE MANNER IN WHICH THE PROSECUTOR
INAPPROPRIATELY TOOK ADVANTAGE OF THE SITUATION, AND WAS ALLOWED BY
AN UNFAIR PROCEEDING TO COMMIT ACTS OF PROSECUTORIAL MISCONDUCT.
THE PROSECUTOR INTERFERED WITH AN EXPERT DEFENSE WITNESS, WITHHELD
EXONERATING AND EXCULPATORY REQUESTED DISCOVERY EVIDENCE, AND
DIRECTLY VIOLATED THE COURT'S RULING ON THE RECORD WHEN PRESENTING
EVIDENCE EXHIBIT 41, TO BE SPECIFIC, THESE ACTS, AND OTHERS, DURING
PETITIONER'S TRIAL PREJUDICED THE DEFENSE, IN VIOLATION OF THE DUE
PROCESS RIGHT TO A FAIR AND IMPARTIAL TRIAL AS GUARANTEED BY THE
SIXTH AMENDMENT. THE OTHER CLAIMS IN PETITIONER'S STATE 5-802
PETITION ARE JUST AS VALID AND PROVABLE.

RESPECTFULLY SUBMITTED,

Cecil Boyett
CECIL BOYETT, PETITIONER PRO SE
NMCD NO. 64272
6900 W. MILLEN DR.
HOBBS, N.M. 88244

No. 19-7275

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CECIL BOYETT,
PETITIONER

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DWAYNE SANTISTEVAN, WARDEN, et. al.,
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TO THE THIRTEENTH JUDICIAL DISTRICT COURT OF
VALENCIA COUNTY, NEW MEXICO

(PETITION FOR REHEARING)

CERTIFICATION FOR GROUNDS AND GOOD FAITH

I, CECIL BOYETT, THE UNDERSIGNED PRO SE PETITIONER, DO HEREBY
CERTIFY THAT I AM SUBMITTING MY PETITION FOR REHEARING IN GOOD FAITH AND
NOT FOR DELAY. I FURTHER CERTIFY THAT THE GROUNDS ARE LIMITED TO INTER-
VENING CIRCUMSTANCES OF SUBSTANTIAL OR CONTROLLING EFFECT OR TO OTHER
SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED.

SIGNED: Cecil Boyett
CECIL BOYETT, PETITIONER PRO SE
NMCD No. 64272
6900 W. MILLER DR. - L.C.C.F.
Hobbs, N.M. 88244

DATED: MARCH 12, 2020

PETITION FOR REHEARING GROUNDS-- BRIEFLY STATED

PETITIONER BOYETT HEREBY RE-SUBMITS HIS CORRECTED PETITION FOR REHEARING AND PRAYS THE COURT'S CONSIDERATION TO GRANT HIS PETITION FOR REHEARING ON THE GROUNDS THAT:

1. PETITIONER'S STATE HABEAS PETITION WAS MERITORIOUS AND STATED VALID CONSTITUTIONAL VIOLATIONS BUT WAS DISMISSED IN ERROR AND PETITIONER WAS DENIED REVIEW BY THE STATE COURT OF LAST RESORT, THE NEW MEXICO SUPREME COURT.
2. PETITIONER'S TRIAL WAS UNFAIR DUE TO CONSTITUTIONAL VIOLATIONS, INCLUDING MULTIPLE DUE PROCESS VIOLATIONS.
3. PETITIONER WAS DENIED FULL DISCLOSURE OF REQUESTED DISCOVERY.
4. PETITIONER IS ACTUALLY INNOCENT AND HIS SELF-DEFENSE THEORY WAS NOT ADEQUATELY ARGUED.
5. PETITIONER WAS DENIED A FAIR AND IMPARTIAL HEARING FOR HIS STATE 5-802 EVIDENTIARY HEARING BY A BIASED JUDGE.

PETITIONER BOYETT IS ATTACHING THE REJECTED PETITION FOR REHEARING SOLELY FOR THE USE BY THE COURT TO REFERENCE THE BRIEF GROUNDS STATED ABOVE, BUT THIS ATTACHMENT IS NOT TO BE CONSTRUED AS PART OF THE PETITION FOR REHEARING THAT HAS BEEN CORRECTED AND RESUBMITTED.

WHEREFORE, PETITIONER BOYETT HUMBLY AND RESPECTFULLY PLEADS THIS COURT GRANT HIS PETITION FOR REHEARING AND FOR ANY OTHER RELIEF THIS HONORABLE COURT DEEMS JUST AND PROPER.

RESPECTFULLY,

Cecil Boyett

CECIL BOYETT, PETITIONER PRO SE
NMCD NO 64272

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