

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal No. 13-83-GAM-3
)	Civil No. 20-CV-800-GAM
AMY GONZALEZ,)	
)	
Defendant.)	

AFFIDAVIT

COMES NOW, Jeremy H. Gonzalez Ibrahim, Esquire, in compliance with the ORDER of this Court issued on February 10th 2021[D.I. 452], and respectfully submits the following:

ALLEGATION: Counsel failed to advise petitioner to accept an alleged offer to plead nolo contendere to a lesser-included offense with a five-year sentence.

RESPONSE: During the early phases of representation, in the normal course, I inquired of the assigned prosecutor whether there was any type of plea offer. The assigned AUSA indicated an openness to discuss a plea, including discussion that would allow the defendant to enter a guilty plea to the charge of 18 U.S.C. § 371 Conspiracy to Engage in Interstate Staking and Cyberstalking. The caveat was that any offer, if made, would have a statement of facts that essentially mirrored the Indictment. I discussed the aforesaid with the defendant and inquired whether I should pursue good faith discussions in earnest. The defendant declined and was adamant that no law was broken and that she would not agree to a statement of facts that implicated her family/codefendants. Consequently, no plea offer was sought from or offered by the government.

ALLEGATION: Counsel failed to present evidence and argue that Thomas Matusiewicz had a brain tumor, which caused him to act independently when he shot and killed Christine Belford.

RESPONSE: The defense for all defendants worked jointly on certain issues given the complexity of the issues presented in the Indictment. The defendant was aware that the attorneys were working together on the issue of whether Thomas Matusiewicz had a tumor in his brain that would have affected his judgement and cause him to act independently. I reviewed the issue as to whether the purported tumor could serve as a basis for a defense and discussed with the defendant. I concluded that the expert opinion did not form a basis for a valid and credible defense. The medical findings stated, *inter alia*, that the tumor was not in a location nor the type of ailment that would have impacted judgement in a manner material to a criminal defense. In addition, upon review of the ongoing conduct, confrontations and decisions made by Thomas Matusiewicz, leading up to the killings, I determined that any such strategy would fail. I was also concerned that it would appear to the jury that it was an effort by a daughter to blame her father for her own decisions. The information regarding the tumor was not such that it had the medical impact needed to overcome my concern.

WHEREFORE, counsel remains available to the Court as needed.

Respectfully submitted,

/s/ _____
Jeremy H. Gonzalez Ibrahim

DATE: March 11, 2021

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Affidavit has been served on the below listed parties as indicated.

via 1st class mail

Amy Gonzalez
49619-379
Post Office Box 27137
Fort Worth, TX 76127

via ECF

Shawn A. Weede
Chief, Criminal Division
United States Attorney's Office
District of Delaware
1313 N. Market Street
Wilmington, DE 19801

DATE: March 11, 2021

/s/
Jeremy H. Gonzalez Ibrahim

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. : Criminal No. 13-83-GAM-1
 : Civil No. 20-CV-799-GAM
 DAVID MATUSIEWICZ, :
 :
 Defendant. :

AFFIDAVIT

COMES NOW, Edson A. Bostic, Esquire, respectfully submits the instant Affidavit, as directed by the ORDER of this Court issued on March 15, 2021, to the allegations made in Petitioner's, David Matusiewicz, Motion to Vacate Sentence. The Court directed a response to the following two claims of ineffective assistance of counsel: (1) counsel's alleged failure to advise David Matusiewicz to accept an alleged offer to plead nolo contendere to a fifteen-year sentence (D.I 443 at 14-16, ¶¶ 34-48); and (2) the allegation that counsel failed to present evidence and argue that Thomas Matusiewicz had a brain tumor, which caused him to act independently when he shot and killed Christine Belford (D.I. 443 at 18, ¶¶ 57-60) (D.I. 458).

**A. RESPONSE TO CLAIM – FAILURE TO ADVISE OF PLEA
OFFER TO NOLO CONTENDERE PLEA TO FIFTEEN YEARS**

1. Counsel never received any plea offer from the government for petitioner to plead *nolo contendere* at any time in connection with the indictment upon which petitioner was convicted. Counsel, as best as can be recalled, on two occasions attempted to explore a non-trial disposition with the government on Petitioner's behalf – once pretrial and again after the trial had started. These were only preliminary discussions, both of which were shut down by Petitioner.
2. During the pretrial phase of the case, counsel sought approval from Petitioner to enter plea discussions with the government. The preliminary discussion never progressed, because Petitioner said that he was not interested in pleading guilty since he had done nothing wrong and was innocent of all charges. Thus, counsel did not further explore the possibility of a plea at that time.
3. During the course of the trial, shortly before Petitioner's children were set to testify and after substantial evidence had been presented, counsel again discussed with Petitioner the possibility of taking advantage of the government and his concerns about his children testifying. With Petitioner's approval, counsel had a preliminary discussion with the government. The government made no specific plea offer, but indicated that any guilty plea would have to contain the following essential elements: (1) The plea would have to be global, that is all defendants would have to plead guilty; (2) Petitioner would have to agree to serve at least 15

years, with a substantial period of supervised release; and during which time Petitioner was not to attempt to, nor have, any contact with his children, for whom his parental rights were previously terminated by the Family Court of Delaware. These preliminary discussions with the government were premised upon **all defendants** pleading guilty out right – admitting all the elements of the charges, and not based on a *nolo contendere* plea. Petitioner informed counsel not to pursue any further discussions because he could not agree to proposed conditions one and two of the preliminary plea discussions. To be explicitly clear, there was no formal plea offer made by the government.

B. RESPONSE TO CLAIM - FAILURE TO PRESENT EVIDENCE AND ARGUE THAT THOMAS MATUSIEWICZ HAD A BRAIN TUMOR, WHICH CAUSED HIM TO ACT INDEPENDENTLY WHEN HE SHOT AND KILLED CHRISTINE BELFORD

4. Counsel presented no evidence on this issue because all medical evidence available **did not** support that Thomas Matusiewicz' brain tumor guided and/or caused his action in shooting and killing Ms. Belford. Counsel retained Barry Gordon, M.D., Ph.D., to investigate and provide an opinion regarding whether Thomas Matusiewicz' meningioma could have caused his behavior and actions leading up to and his killing of Ms. Belford. Dr. Gordon, a medical doctor, is a Board-certified neurologist, with over 30 years of training and experience in behavioral neurology, cognitive neuroscience, experimental psychology, neuropsychology, and brain disorders.

5. Dr. Gordon provided counsel an opinion stating to a medical degree of certainty, *inter alia* that:

□ The meningioma that was known to be present on the inside of Mr. Matusiewicz's skull since at least 1990 and confirmed that autopsy would not have been expected to have appreciably affected Mr. Matusiewicz's ability to control his behavior on February 11, 2013, nor is there evidence that it did appreciably affect his ability to control his behavior prior to that time (based upon what is cited in the available records, and the behaviors reported by Mr. Bostic in his conversation with me on April 7, 2015).

□ There is no reliable evidence available that Mr. Matusiewicz had any other 'extrinsic' organic neurologic condition affecting the control of his behavior, either prior to February 11, 2013, or on February 11, 2013.

□ It is highly unlikely that any further investigation at this point in time, and at this state of medical science, of Mr. Matusiewicz's past behaviors, his past medical history, or microscopic or other analysis of his brain tissue, could reveal any reliable evidence for there having been an 'extrinsic' pathologic alteration of Mr. Matusiewicz's control of his behavior, as these terms are currently generally understood.

Opinion of Dr. Gordon. P.4 (Opinion, along with Dr. Gordon's Curriculum Vitae attached as Exhibit "1").

Respectfully submitted,

/s/ Edson A. Bostic
EDSON A. BOSTIC, ESQUIRE

Date: April 14, 2021

EXHIBIT 1

BARRY GORDON, M.D., PH.D.

April 12, 2015

Edson A. Bostic, Esq.
Federal Public Defender
Office of the Federal Public Defender
800 King Street
Suite 200
Wilmington, DE 19801

RE: Matusiewicz, Thomas
DOB 8/28/1944
USA v. Matusiewicz et al.
Criminal Action No.: 1:13-cr-83-GAM
Your File No.: 2013-00160

Dear Mr. Bostic:

I understood you to be asking for my opinion(s) as to whether the above-referenced individual had or could have an extrinsic neurologic condition or condition(s) which may have affected or contributed to his behavior(s) on or before February 11, 2013.

This report of my opinion(s) is organized as follows:

1. A summary of my qualifications, which are set forth in greater detail in my Curriculum Vitae (CV), which also includes a list of all my publications authored in the previous 10 years (attached as Attachment 1).
2. A listing of the cases in which I have testified as an expert at trial or by deposition within the preceding four (4) years (attached as Attachment 2).
3. Fees for services.
4. The facts and data considered in forming my opinions.
5. My opinion(s).

To expand on these categories:

1. Qualifications

My qualifications are set forth in greater detail in my CV, which is attached to this report. My CV also includes a list of all my publications authored in the previous 10 years. To summarize my background and qualifications:

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I graduated from Pennsylvania State University in 1971 with a B.A. as part of a Five-Year Cooperative Program in Medicine. I received my M.D. from Jefferson Medical College in 1973 as part of that Five-Year program. After joining the faculty of The Johns Hopkins University ("Johns Hopkins") and School of Medicine in 1977, I entered the Ph.D. program in Psychology at Johns Hopkins, receiving my M.A. in Psychology in 1980, and my Ph.D. in 1981. I am a Board-certified neurologist, with over 30 years of training and experience in behavioral neurology, cognitive neuroscience, experimental psychology, neuropsychology, and brain disorders.

I have authored or co-authored more than 120 professional, peer-reviewed articles, over 50 book chapters and other publications for professionals (including chapters on the diagnosis of neurologic conditions), and two books on aspects of memory for a general audience. I note in the context of this case that I have authored or co-authored chapters on the diagnosis of neurologic conditions, including headache, dizziness and vertigo, and tremor. I have been an investigator on a grant and co-author of a peer-reviewed publication on the possible neurologic/neuropsychological effects of exposure to lead in adults.

I am the inaugural holder of an endowed Chair, the Therapeutic Cognitive Neuroscience Chair, and a full Professor of Neurology, with a joint appointment in Cognitive Science, at the Johns Hopkins Medical Institutions (of the Johns Hopkins University) in Baltimore, Maryland. In 1982, I founded and directed the Cognitive Neurology/Neuropsychology Division and clinic, including the Memory Clinic, of the Department of Neurology at Johns Hopkins. I still direct this Division. I currently see patients through this Division, and, at least one month per year, I see general neurology patients at Johns Hopkins and/or at the Johns Hopkins Bayview Medical Center. I have also been Deputy Chairman and Acting Chairman of the Department of Neurology at the Baltimore City Hospitals (now Johns Hopkins Bayview, a part of The Johns Hopkins Medical Institutions). I was medical director of what became the Johns Hopkins Bayview Sleep Center in 1979-80. I am and have been on the staff of the Johns Hopkins Hospital as a neurologist since 1977. I am on the Courtesy Staff of the Johns Hopkins Bayview Medical Center.

I am currently the Editor-in-Chief of *Cognitive and Behavioral Neurology* (formerly *Neuropsychiatry, Neuropsychology, and Behavioral Neurology*), and have been on the editorial boards of several professional journals, and also on the Scientific Advisory Board of The Johns Hopkins University Press. I have been President of the Behavioral Neurology Society, and President of the Behavioral Neurology Section of the American Academy of Neurology, as well as Chairman of the Board of Governors of the Academy of Aphasia. I am a member of many medical and scientific organizations, including the American Academy of Neurology (Fellow), the American Neurological Association, the American Psychological Association (a Fellow in Division 3 [Experimental Psychology] and Division 6 [Behavioral Neuroscience and Comparative Psychology]), a member of Division 40 [Clinical Neuropsychology]), and of the International Neuropsychological Society. I have been a reviewer and chaired scientific review panels for the National

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Institutes of Health, as well as a peer reviewer for other professional and governmental organizations, and for many professional journals.

Of perhaps particular relevance to this report, I have given testimony as an expert in at least four (4) cases involving capital crimes, at both the Federal and state level, and for both the prosecution and the defense. The two most recent such cases are identified on my listing of testimony, attached as Attachment 2. Including both criminal and civil cases, I have been accepted by the Courts as an expert in medicine, neurology, behavioral neurology, cognitive neurology, and/or neuropsychology.

2. Testimony

A listing of the cases in which I have testified as an expert at trial or by deposition within the preceding four (4) years is attached as Attachment 2.

3. Fees for services

The fee for my services in this matter is an hourly charge of \$550/hour.

4. Facts and data considered in forming my opinions

The specific facts and data I have considered in forming my opinions have consisted of the following:

- a. Background information obtained from my conversation(s) with you, including a conversation on April 7, 2015, in which you indicated that no more medical records or information about Mr. Matusiewicz's behavior prior to the incident on Feb. 13, 2013, were likely to be forthcoming.
- b. An Indictment, dated August 6, 2013.
- c. A clinical note by Giancarlo Barolat, M.D., Associate Professor, Dept. of Neurosurgery, Thomas Jefferson University, dated November 7, 1990.
- d. Several medical notes from various dates in 2009. ?
- e. The report of the autopsy by Richard T. Callery, M.D., F.C.A.P., Chief Medical Examiner, Delaware Health and Social Services, reporting on an autopsy performed on February 12, 2013 (which I note included a report of the gross examination of the brain after fixation, and "representative" microscopic sections of the meningioma).

5. Opinions

a. My opinions stated here are given to the standard of a reasonable degree of medical certainty. My opinions are based upon my education, training, experience (including my experience with the medical/scientific literature(s)), and the records and

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materials made available to me in this matter (as noted above). I offer my opinions from the perspective(s) of my particular area(s) of expertise, which are those of a physician, a neurologist, and a specialist in behavioral neurology (cognitive neurology). I reserve the right to amend or modify the opinions expressed here based upon any additional materials and/or information I may receive about this case, or any additional information as may be found in the relevant medical/scientific literature(s).

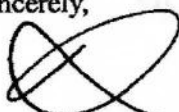
b. The meningioma that was known to be present on the inside of Mr. Matusiewicz's skull since at least 1990 and confirmed that autopsy would not have been expected to have appreciably affected Mr. Matusiewicz's ability to control his behavior on February 11, 2013, nor is there evidence that it did appreciably affect his ability to control his behavior prior to that time (based upon what is cited in the available records, and the behaviors reported by Mr. Bostic in his conversation with me on April 7, 2015). Although the meningioma did produce some mass effect on at least the surface of Mr. Matusiewicz's left hemisphere (at least judging from the CAT scan report cited in the 1990 note by Dr. Barolat), it had hardly changed in size in the over 20 year interval between the time of the CAT scan and time of the autopsy. Moreover, there is no reliable evidence that it affected deeper areas of Mr. Matusiewicz's brain, those that might have caused alterations in his ability to control his behavior.

d. There is no reliable evidence available that Mr. Matusiewicz had any other 'extrinsic' organic neurologic condition affecting the control of his behavior, either prior to February 11, 2013, or on February 11, 2013.

e. It is highly unlikely that any further investigation at this point in time, and at this state of medical science, of Mr. Matusiewicz's past behaviors, his past medical history, or a microscopic or other analysis of his brain tissue, could reveal any reliable evidence for there having been an 'extrinsic' pathologic alteration of Mr. Matusiewicz's control of his behavior, as these terms are currently generally understood.

Thank you for asking me to opine about this matter.

Sincerely,



Barry Gordon, M.D., Ph.D.

Executed on April 12, 2015, in Baltimore Maryland.

Attachments:

- 1) Current *Curriculum Vitae*
- 2) Case List