

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellee,

v.

JEFFREY D. BELEW

Appellant.

Case No. 2013-0711

On Appeal from the Court of
Appeals, Sixth Appellate District

Court of Appeals Case
No.: L-11-1279

**MERIT BRIEF OF AMICI CURIAE OHIO SUICIDE PREVENTION FOUNDATION,
DISABILITY RIGHTS OHIO, NATIONAL DISABILITY RIGHTS NETWORK,
NATIONAL ALLIANCE ON MENTAL ILLNESS OF OHIO, AND THE OHIO
EMPOWERMENT COALITION IN SUPPORT OF APPELLANT**

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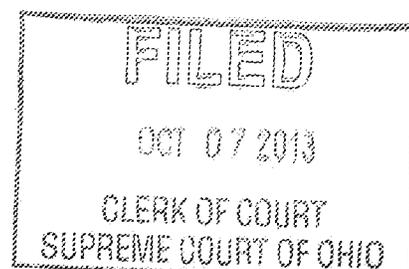


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I. STATEMENTS OF INTEREST OF *AMICI CURIAE*

The Ohio Suicide Prevention Foundation has served Ohio as a focus and a catalyst for the prevention of suicide since 2005. Its energy and activity is targeted on promoting suicide prevention as a public health issue, supporting evidence-based practices in awareness, intervention and methodology, and working for the elimination of stigma and the increase of help-seeking behavior that surrounds the brain illnesses of depression, other mental illness and addiction. The Ohio Department of Mental Health, as well as the Department of Health and multiple community stakeholders have encouraged, endorsed and trusted the Ohio Suicide Prevention Foundation as the statewide steward and resource partner for Ohio's suicide prevention effort. The organization is led by a dedicated and organized board whose members represent a variety of geographical interests and expertise in the suicide prevention and public health fields.

The Ohio Disability Rights Law and Policy Center, Inc. (d.b.a. Disability Rights Ohio) is the system to protect and advocate for the rights of people with disabilities in Ohio. *See, e.g.*, R.C. 5123.60; 29 U.S.C. § 794e; 42 U.S.C. § 10801 *et seq.* Disability Rights Ohio is a 501(c)(3) not for profit corporation chartered under the laws of Ohio. The mission of Disability Rights Ohio is to advocate for the human, civil, and legal rights of people with disabilities in Ohio. In accordance with that mission, Disability Rights Ohio is participating in this case as *amicus curiae* to provide information about the disabilities that are involved in this case, and to advocate for individuals with disabilities not to be punished disproportionately for actions that are manifestations of their disabilities.

The National Disability Rights Network (NDRN) is the non-profit membership association of protection and advocacy (P&A) agencies that are located in all 50 states, the

District of Columbia, Puerto Rico, and the United States Territories. P&A agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. The P&A system comprises the nation's largest provider of legally-based advocacy services for persons with disabilities. NDRN supports its members through the provision of training and technical assistance, legal support, and legislative advocacy, and works to create a society in which people with disabilities are afforded equality of opportunity and are able to fully participate by exercising choice and self-determination.

The National Alliance on Mental Illness (NAMI) is the nation's largest grassroots mental health organization. NAMI of Ohio is dedicated to improving the quality of life, dignity, and respect for persons with serious mental illness and to offering support to their families and close friends.

The Ohio Empowerment Coalition, Inc., (OEC) is a consumer-operated organization that consists of members statewide who are united to provide a platform for the voice of the people with mental illness to support persons and groups working to transform systems, and to promote wellness, mental health recovery, and resiliency. OEC envisions that all people whose lives have been affected by mental illness and addiction will live a meaningful life of wellness by implementing their choices in an accepting and supportive community.

II. STATEMENT OF FACTS

Amici adopt the Statement of Facts set forth in Defendant-Appellant's Merit Brief, with the following supplementation.

The psychological evaluation report of Dr. Wayne Graves was admitted into evidence without objection (Tr. p. 18) and Dr. Graves testified at the sentencing hearing without cross-

examination by the prosecuting attorney (Tr. p. 47-61). Dr. Graves diagnosed Mr. Belew with Post-Traumatic Stress Disorder (PTSD), major depression without psychosis, and alcohol dependence. (Tr. p. 57.)

Mr. Belew's parents were both drug and alcohol dependent at a serious level. (Tr. p. 49-50.) Mr. Belew began drinking alcohol as a child and continued with excessive use while in the Marines. (Tr. p. 51.) He was heavily intoxicated at the time of the incident with the police. (Tr. p. 55-56.)

While in the Marines in Iraq, Mr. Belew was told repeatedly that he was expendable. (Tr. p. 51.) He believed that he had a 50/50 chance of dying each day. (Tr. p. 52.) He returned after his term of duty with few connections, no meaningful relationships with friends or family, and no support system. (Tr. p. 52-54.) He has never received any counseling or psychotherapy. (Tr. p. 53-54, Graves rep. p. 6.)

The events relating to his confrontation with the police are not in dispute and follow a typical "suicide by cop" pattern. Mr. Belew was so intoxicated that he has little memory of the events. (Tr. p. 56.) He was told that he told his girlfriend, "It doesn't matter. I am going to f_ing kill myself and shoot the cops." (Graves rep. p. 7.) After the altercation with his brother, he ran toward the police saying, "I ain't got nothing to lose." (Graves rep. p. 8.) Mr. Belew's only statement to the Court at the sentencing hearing was to apologize to the police officers. (Tr. p. 66.) Dr. Graves concluded that the behaviors Mr. Belew engaged in seemed to be those of someone intent on trying to end his life by engaging with the police, i.e., "suicide by cop." (Tr. p. 56.) The state did not present any evidence at the sentencing hearing that contradicted the findings of Dr. Graves.

III. ARGUMENT

Proposition Of Law: When Credibly Diagnosed, A Trial Court Must Consider Combat-Related Post-Traumatic Stress Disorder And Other Service-Related Disabilities As Mitigation When Imposing Sentence On A Military Veteran.

When the trial court was presented with testimony and evidence that Mr. Belew's Post-Traumatic Stress Disorder (PTSD), major depression, and alcohol dependence led him to attempt to commit "suicide by cop," the court was required pursuant to R.C. 2929.12 to consider that mitigating evidence in crafting Mr. Belew's sentence for felonious assault. Instead, the court dismissed this wealth of evidence as an "excuse" and sentenced Mr. Belew to a near-maximum, consecutive sentence of twenty-seven years imprisonment for a shooting that physically injured only himself.

It should be noted from the outset that this *amicus* brief is not meant to condone or excuse Mr. Belew's actions. Justice requires that he must face an accounting for his actions, but the severity and method of his punishment must take into consideration his combat experiences and the fact that he suffers from PTSD and related conditions that contributed to his actions.

In its support of specialized dockets for veterans and individuals with mental illness, this Court has recognized the importance of accounting for the root causes of problems that lead to an individual's involvement with the criminal justice system. The trial court in this case did the opposite—using Mr. Belew's military service, PTSD, substance abuse, and attempted suicide as a justification for imposing a twenty-seven year prison sentence. The judge imposed this sentence despite Mr. Belew's lack of prior felony convictions, despite the fact that the officers involved in the incident were not injured, and despite psychologist Dr. Wayne Graves' testimony that the incident occurred because Mr. Belew was attempting to commit "suicide by cop" by firing at the officers' vehicle.

The trial court's use of this mitigating evidence as aggravating evidence to support near-maximum, consecutive prison terms is contrary to the direction in which the U.S. Supreme Court, this Court, and the Ohio General Assembly are moving. The U.S. Supreme Court has held that defense counsel's failure to uncover and present any mitigating evidence of a defendant's PTSD and military service during his death penalty sentencing constitutes ineffective assistance of counsel. *Porter v. McCollum* (2009), 558 U.S. 30, 130 S.Ct. 447. The Court noted that "Our Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines as Porter did." *Id.* at 44. Similarly, in an attorney discipline case, this Court accepted the respondent's mitigating evidence of PTSD and a traumatic brain injury resulting from his military service to reduce his disciplinary sanction from a two-year partially stayed suspension to a one-year fully stayed suspension. *Butler Cty. Bar Assn. v. Minamyers*, 129 Ohio St.3d 433, 2011-Ohio-3642. In concurrence, Justice Lundberg Stratton emphasized the importance of recognizing the real effects that PTSD and other service-connected disabilities can have on an individual's actions. *Id.* at ¶ 71.

Amici urge this Court to consider the wealth of information *infra* about PTSD, veterans, and suicide, which should have informed the trial court's decision on sentencing. PTSD is a serious, widespread condition, particularly among veterans. As in Mr. Belew's case, PTSD often co-occurs with depression or substance abuse, and can lead to dangerous behaviors. Some individuals reach the point of attempting suicide, including "suicide by cop." When an individual becomes involved with the criminal justice system as a result of such an attempt, the trial court should consider the mitigating weight of these circumstances instead of using them as aggravating factors to impose near-maximum, consecutive sentences.

A. The Trial Court Improperly Disregarded Mr. Belew's Mitigating Evidence.

When sentencing a defendant for a felony, a trial court must consider the factors listed in R.C. 2929.11 and R.C. 2929.12. Of particular importance in Mr. Belew's case is R.C. 2929.12(C)(4), whether "there are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense." R.C. 2929.12(C) states that this factor "indicat[es] that the offender's conduct is less serious than conduct normally constituting the offense."

The trial court ordered two evaluations of Mr. Belew so his trial counsel could determine whether he could pursue a defense of not guilty by reason of insanity (NGRI). Those evaluations determined that Mr. Belew was not sufficiently impaired to meet the requirements of the NGRI defense, but the evaluation by Dr. Graves strongly supported Mr. Belew's argument at sentencing that his PTSD, major depression, and alcohol dependence contributed to his actions. Dr. Graves also testified that Mr. Belew's actions were consistent with an attempt to commit "suicide by cop," not an intent to harm the responding police officers. Thus, pursuant to R.C. 2929.12(C)(4), the trial court should have considered this evidence in mitigation.

1. The Trial Court Improperly Disregarded Mr. Belew's Mental Illness.

At Mr. Belew's sentencing hearing, the trial court stated: "Mr. Belew, you claim that you suffer from post-traumatic stress disorder as a result of being in the military and you provide that as an excuse for your actions. There is no excuse, Mr. Belew." (Tr. p. 68-69.) This statement shows that the trial court failed to appreciate what PTSD is, how it affects veterans and other individuals, the implications of substance abuse and other co-occurring conditions, and the mitigating effect that this evidence should have on sentencing.

PTSD has been recognized in the American Psychiatric Association's Diagnostic and

Statistical Manual of Medical Disorders (DSM) since 1980. In the new DSM-V,¹ a PTSD diagnosis requires that an individual have been exposed to a traumatic event (directly or indirectly, if the event occurred to a close relative or close friend) that involved actual or threatened death, serious injury, or sexual violence. To be diagnosed with PTSD, the individual must experience intrusive symptoms (such as flashbacks, nightmares, or intrusive memories); avoidance of thoughts, feelings, or external reminders of the traumatic event; negative alterations in thought or mood; and alterations in arousal and reactivity (such as irritable or aggressive behavior, self-destructive or reckless behavior, hyper-vigilance, or exaggerated startle response). These symptoms must last for more than a month and cause distress or functional impairment.

In the United States, it is estimated that 6.8% of people experience PTSD in their lifetimes.² For military veterans, the prevalence is much higher. The National Vietnam Veterans Readjustment Study estimated the lifetime prevalence of PTSD among Vietnam-era veterans to be 30.9% for men and 26.9% for women.³ For Gulf War veterans, the lifetime prevalence is estimated at 10.1%.⁴ A 2008 study on PTSD among veterans of the wars in Iraq and Afghanistan found the prevalence of PTSD to be 13.8% in the 1,938 participants.⁵

¹ American Psychiatric Association. (2013). *Diagnostic and statistical manual of mental disorders: DSM-V* Washington, DC: American Psychiatric Association.

² Kessler, R.C., Berglund, P., Delmer, O., Jin, R., Merikangas, K.R., & Walters, E.E. (2005). Lifetime prevalence and age-of-onset distributions of DSM-IV disorders in the National Comorbidity Survey Replication. *Archives of General Psychiatry*, 62(6): 593-602.

³ Kulka, R.A., Schlenger, W.A., Fairbanks, J.A., Hough, R.L., Jordan, B.K., Marmar, C.R.,... Cranston, A.S. (1990). *Trauma and the Vietnam War generation: Report of findings from the National Vietnam Veterans Readjustment Study*. New York: Brunner/Mazel.

⁴ Kang, H.K., Natelson, B.H., Mahan, C.M., Lee, K.Y., & Murphy, F.M. (2003). Post-Traumatic Stress Disorder and Chronic Fatigue Syndrome-like illness among Gulf War Veterans: A population-based survey of 30,000 Veterans. *American Journal of Epidemiology*, 157(2):141-148.

⁵ Tanielian, T. & Jaycox, L. (Eds.). (2008). *Invisible Wounds of War: Psychological and Cognitive Injuries, Their Consequences, and Services to Assist Recovery*. Santa Monica, CA: RAND Corporation.

Dr. Graves testified that Mr. Belew's PTSD, major depression, and substance abuse significantly contributed to the incident that led to his criminal charges. Unfortunately, this combination of disorders is not unusual, especially for military veterans like Mr. Belew. Depression is a common co-occurring condition with PTSD. A study of trauma survivors in a hospital emergency room found a lifetime prevalence of depression among 78.4% of individuals with PTSD.⁶ As reported in *Invisible Wounds of War: Psychological and Cognitive Injuries, Their Consequences, and Services to Assist Recovery*,⁷ a study of veterans of the wars in Iraq and Afghanistan, two-thirds of the veterans with PTSD also have major depression.

Studies have also established that PTSD and substance abuse are common co-occurring disorders, particularly among veterans. Men with PTSD are five times more likely to have a substance use disorder than the general population.⁸ The National Comorbidity Study estimated that 22% of individuals with PTSD had a lifetime prevalence of substance use disorders.⁹ Similarly, data from U.S. Department of Veterans Affairs outpatient clinics indicates that 21.7% of veterans with PTSD are dually diagnosed with a substance use disorder.¹⁰ The National

⁶ Kessler, R. C., Sonnega, A., Bromet, E., Hughes, M., & Nelson, C. B. (1995). Posttraumatic stress disorder in the National Comorbidity Survey. *Archives of General Psychiatry*, 52, 1048–1060.

⁷ Tanielian, T.L., & Jaycox, L.H. (Eds.). (2008). *Invisible wounds of war: Psychological and cognitive injuries, their consequences, and services to assist recovery*. Santa Monica, CA: RAND Corporation.

⁸ Helzer, J.E., Robins, L.N. & Mcevoy, L. (1987). Post-traumatic stress disorder in the general population: Findings of the epidemiologic catchment area survey. *New England Journal of Medicine*, 317, 1630-1634.

⁹ Kessler, R. C., Sonnega, A., Bromet, E., Hughes, M., & Nelson, C. B. (1995). Posttraumatic stress disorder in the National Comorbidity Survey. *Archives of General Psychiatry*, 52, 1048–1060.

¹⁰ Petrakis, I. L., Rosenheck, R., & Desai, R. (2011). Substance Use Comorbidity among Veterans with Posttraumatic Stress Disorder and Other Psychiatric Illness. *American Journal On Addictions*, 20(3), 185-189.

Vietnam Veterans Readjustment Study found that 22.2% of Vietnam-era veterans with PTSD were also diagnosed with alcohol abuse/dependence, and 6.1% with drug abuse.¹¹

PTSD, especially when co-occurring with depression or substance abuse, has been tied to behavior that may cause an individual to become involved in the criminal justice system. Studies have found increased levels of aggression among veterans with PTSD, especially for individuals who also have symptoms of depression.¹² Indeed, an important update to the definition of PTSD in the new DSM-5 was the inclusion of aggressive, reckless, or self-destructive behavior as a symptom of PTSD.

All of this information flatly contradicts the trial court's statement that Mr. Belew was using his PTSD as an "excuse" for his behaviors. Mr. Belew has a serious condition that significantly contributed to his actions on the night that he committed his crime. Instead of dismissing this evidence as an "excuse," the trial court should have afforded it appropriate mitigating weight pursuant to R.C. 2929.12(C)(4).

2. The Trial Court Improperly Disregarded Mr. Belew's Suicide Attempt.

After dismissively noting Mr. Belew's PTSD, the trial judge stated: "These offenses are extremely serious, Mr. Belew, these officers could have been killed, because you intended to kill them." (Tr. p. 69.) This statement shows that the trial court again failed to appreciate the mitigating evidence provided through Dr. Graves' report and testimony, which explained that

¹¹ Kulka, R. A., Schlenger, W. E., Fairbank, J. A., Hough, R. L., Jordan, B. K., Marmar, C. R., Weiss, D. S. (1988). *Contractual Report of Findings from the National Vietnam Veterans' Readjustment Study: Volumes 1-4*. North Carolina: Research Triangle Institute.

¹² Taft, C. T., Vogt, D. S., Marshall, A. D., Panuzio, J., & Niles, B. L. (2007). Aggression among combat veterans: Relationship with combat exposure and symptoms of posttraumatic stress disorder, dysphoria, and anxiety. *Journal of Traumatic Stress, 20*(2), 135-145.

Mr. Belew's actions were consistent with a desire to commit "suicide by cop"—not an intent to kill the officers.

Suicide is a significant public health problem in Ohio. In 2010, 1,420 Ohioans died by suicide.¹³ According to the Centers for Disease Control and Prevention, suicide is a leading cause of death for Ohioans 10-64 years of age and the second leading cause of death for young Ohioans 15-24 years of age.¹⁴ Suicides in Ohio outnumber homicides two to one, and in 2010 more Ohioans died from suicide than from motor vehicle crashes.¹⁵ Between 2000 and 2010 the death rate from suicide in Ohio has increased by 27% from 9.5 per 100,000 persons in 2000 to 12.1 per 100,000 in 2010.¹⁶

Overall, males in Ohio are four times more likely to die by suicide compared to females. Between 2000 and 2010 suicide rates in Ohio for both males and females have increased. The suicide rate for males has increased by more than 18% from 16.9 to 20.0 per 100,000 persons; whereas the rate for females has increased by 45% from 3.3 to 4.8 per 100,000 persons.¹⁷

Suicide among those who serve in our Armed Forces and among our veterans has been a matter of national concern. The Centers for Disease Control and Prevention (CDC) estimates that veterans account for approximately 20% of the deaths from suicide in America. Service personnel and veterans are at increasing risk of self-harm. Research indicates that suicide, PTSD, and Traumatic Brain Injury (TBI) rates are increasing alarmingly among veterans. The

¹³ Falb M., Beeghly, B.C. (2013). *The Burden of Injury in Ohio 2000-2010*. Violence and Injury Prevention Program, The Ohio Department of Health: Columbus, OH.

¹⁴ Centers for Disease Control and Prevention. (2013) *WISQAURS: Leading cause of death, Ohio 2010*.

¹⁵ Ohio Department of Health, Vital Statistics.

¹⁶ Ohio Department of Health, Vital Statistics

¹⁷ Ohio Department of Health, Vital Statistics

VA estimates that a veteran takes his or her own life every 80 minutes – 6,500 suicides per year. In 2012, it was estimated that Ohio had over 800,000 veterans.

Since Vietnam, a disturbing trend seen in veterans is a suicide rate that is higher than the general population. Veterans of all ages and conflicts are committing suicide at the rate of twenty-two per day.¹⁸ According to the U.S. Veterans Administration's Suicide Prevention and Application Network, sixty percent of all veterans who commit suicide are veterans who were not receiving treatment for their PTSD or TBI.

There is a direct causal link between PTSD and TBI and suicide attempts. A number of studies have examined the role of war zone trauma and suicide attempts and suicide, particularly in Vietnam-era veterans. Some of these have shown a relationship between combat experience and suicide, with veterans suffering from PTSD at a higher risk for suicide than those who do not have PTSD.¹⁹ It is significant to note that in the VA's Suicide Data Report, the second-most common method of suicide was found to be "intentional self-harm by unspecified means," which accounted for 11.5% of all events and would include "suicide by cop" events.

"Suicide by cop" (SBC) is a term used by law enforcement and others to describe an incident in which an individual engages in behavior which poses an apparent risk of serious injury or death with the intent to precipitate the use of deadly force by law enforcement personnel toward that individual.²⁰ The phenomenon has been described in news accounts since 1981 and in scientific journals since 1985.²¹ The first scientific study of SBC examined all

¹⁸ Janet Kemp, RN PhD and Robert Bossarte, PhD, *Suicide Data Report, 2012*, U.S. Department of Veterans Affairs, Mental Health Services, Suicide Prevention Project, November, 2012

¹⁹ Timothy A. Bullman and Han K. Kang, *Posttraumatic Stress Disorder and the risk of traumatic death among Vietnam Veterans*, *J. Nerv. Ment. Dis.* November, 1994:604

²⁰ Mohandie K, Meloy JR, *Clinical and forensic indicators of suicide by cop*, *J. Forensic Sci* 2000;45:384-9.

²¹ Zandt, Clinton R. "Suicide by Cop." *National Center for the Analysis of Violent Crime*

shooting cases handled by the Los Angeles County Sheriff's Department from 1987 to 1997.²² The study determined that 13% of all fatal officer involved shootings and 11% of all officer involved shootings, fatal and nonfatal, were SBC. The researchers found that 98% of the suspects were male, 65% had drug or alcohol problems, 63% had a known psychiatric history, and 65% had verbally communicated their suicidal intent. In addition, 48% had guns, most of which were loaded and operative. To provoke officers to shoot them, 50% pointed their firearms at officers. A separate study confirmed this same percentage of suspects who pointed their firearms at officers.²³

Another study analyzed 240 full text newspaper articles from 1980 to 1985 representing 18 metropolitan areas in the United States to obtain a broad sample of accounts of police shootings in which potential cases of SBC could be found.²⁴ The authors found probable or possible suicide motivation in 16% of the 240 incidents.

In a more recent study in 2009, researchers analyzed data from more than 90 North American police departments in the United States and Canada.²⁵ 92% of the incidents in the overall sample involved the deployment of deadly force. 36% of the 707 cases in the sample were categorized as SBC. The median age of all SBC subjects was 35. 95% of the subjects were male and 62% had a confirmed or probable mental health history. SBC subjects were armed with weapons during 80% of the incidents. Of those that were armed, 60% possessed a firearm

²² Hutson HR, Anglin D, Yarbrough J, Hardaway K, Russell M, Strote J, et al. Suicide by cop. *Ann. Emerg. Med.* 1998;32:665-9.

²³ Homant RJ, Kennedy DB, Real and perceived threat in police officer assisted suicide. *J. Crim. Justice* 2000; 28:43-52.

²⁴ Kennedy DB, Homant RJ, Hupp RT. Suicide by cop. *FBI Law Enforcement Bull.* 1998; August 21-7.

²⁵ Kris Mohandie, Ph.D., J. Reid Meloy, Ph.D., A.B.P.P., and Peter I. Collins, M.C.A., M.D., F.R.C.P.(C), Suicide by Cop Among Officer-Involved Shooting Cases. *J. Forensic Sci.*, March 2009, Vol. 54, No. 2.

which was loaded and operational. 81% of the incidents were apparently unplanned and spontaneous. Suicidal communications by the subject at any point prior to or during the incident occurred in 87% of the cases. 95% of the subjects were non-compliant with law enforcement and 98% demonstrated a behavioral threat. 36% of the subjects were under the influence of alcohol at the time of the incident.

All of the available research confirms that SBC is a recognized phenomenon, that it is a form of suicide that occurs when individuals want to die but do not want to kill themselves, and that the actions of Mr. Belew are consistent with the research indicators of SBC. Suicidal individuals can threaten, injure and kill others in their quest to commit suicide. Most SBC subjects are armed, many with a loaded and operational firearm, as in Mr. Belew's incident.

Feelings of hopelessness, desperation and rage usually occur in some combination in persons who commit suicide. If the person attempting suicide believes, like Mr. Belew, that taking his life exposes weakness or cowardice, SBC is a way out.²⁶ Mr. Belew put himself in a position where a police officer was forced to shoot him.

With the return of hundreds of Ohio veterans from Iraq and Afghanistan, incidents like those involving Mr. Belew may unfortunately be on the rise. Mr. Belew's actions are not to be condoned but they do need to be understood for what they are—a probable attempt by a man to end his life. The trial court disregarded Dr. Graves' explanation of Mr. Belew's actions, stating that Mr. Belew intended to kill the police officers. This conclusion is not supported by the record, and the trial court's failure to consider Mr. Belew's circumstances contravenes the requirement of R.C. 2929.12(C)(4).

²⁶ Laurence Miller, *Suicide by Cop: Causes, Reactions, and Practical Intervention Strategies*, *International Journal of Emergency Mental Health*, Vol. 8. No. 3, pp. 165-174.

B. Public Policy Supports The Consideration Of Mental Illness And Suicide Attempts As Mitigation, Especially When Connected To Veteran Status.

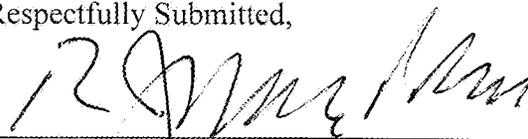
As a catalyst for the establishment of veterans courts and other specialized dockets, this Court has recognized that veteran status, mental illness, and substance abuse are important factors to consider when an individual is involved in the criminal justice system. This case demonstrates the importance of these factors, and the need for this Court to guide trial courts in their consideration of mitigating evidence in felony sentencing.

The 129th Ohio General Assembly furthered this public policy interest when it enacted House Bill 197. That bill, which became effective March 22, 2013, amended R.C. 2929.12 and R.C. 2929.22 to require courts to consider the offender's military service and any "emotional, mental, or physical condition that is traceable to the offender's service in the armed forces of the United State and that was a contributing factor in the offender's commission of the offense or offenses." Although these amendments will benefit veterans who are sentenced after March 22, 2013, trial courts were required to consider such evidence prior to the enactment of H.B. 197 because R.C. 2929.12(A) directed courts to "consider any other factors that are relevant to achieving [the] purposes and principles of sentencing [set forth in R.C. 2929.11]." The trial court in this case failed to do so, and instead used Mr. Belew's mitigating evidence to sentence Mr. Belew to an unduly harsh twenty-seven years in prison for an incident that physically injured only himself.

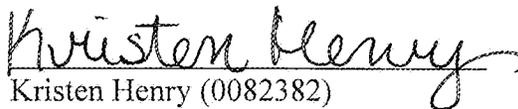
IV. CONCLUSION

For these reasons, *amici* respectfully request that this Court reverse the decision of the Court of Appeals and remand to the trial court for resentencing.

Respectfully Submitted,



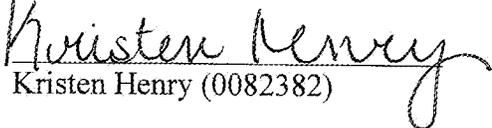
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served via Regular U.S. Mail, postage prepaid, upon the following on this the 7th day of October, 2013.


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