

Case No. 19-7496

In The
SUPREME COURT OF THE UNITED STATES

GARRY DEAN STRONER

Petitioner

Vs.

LORIE DAVIS, DIRECTOR, TDCJ-CID

Respondent

On Rehearing Of This Honorable Court's Denial
Of Petitioner's Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR THE REHEARING OF THIS HONORABLE COURT'S ORDER
DENYING PETITIONER'S PETITION FOR A WRIT OF CERTIORARI

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PRO SE LITIGANT

ISSUE PRESENTED TO GRANT THE REHEARING

The Petitioner prays this Honorable Court will exercise Its great power of supervision and GRANT THE REHEARING of Petitioner's writ of certiorari for any of the following intervening circumstances:

1. This Honorable Court has long held that visible shackling is forbidden during a defendant's jury trial. Truly, this Honorable Court should rehear Petitioner's second question of his writ of certiorari because the lower courts, in the Fifth Circuit should not be allowed to violate this Court's precedential authority when it orders three uniformed officers, without a justifiable cause, (and one non-uniformed officer) to surround the Petitioner while he testified during the guilt-innocence phase in order to temporarily replace Petitioner's visible shackles that was exposed to the jury. Cf. Deck v. Missouri, 554 U.S. 622, 125 S.Ct. 2007 (2005); Holbrook v. Flynn, 475 U.S. 560, 106 S.Ct. 1340 (1986); & Riggins v. Nevada, 504 U.S. ___, 112 S.Ct. 1810 (19__).
2. In the alternative, in the interest of justice, this Honorable Court should grant the rehearing on Its own motion on any issue that this Honorable Court sees just, and/then order Petitioner to brief the Court's desired issue at bar.

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In The
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GARRY DEAN STRONER,

PETITIONER

Vs.

LORIE DAVIS, DIRECTOR, TDCJ-CID,

RESPONDENT.

PETITION FOR THE REHEARING OF THIS HONORABLE COURT'S ORDER
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I. INTRODUCTION:

A petition for the rehearing of this Honorable Court's order denying Petitioner's petition for a writ of certiorari is being presented in good faith and not for delay. Sup. Crt. R. 44.2. This Petition for the rehearing is limited to intervening circumstances of a substantial or controlling effect. Id. This Honorable Court should grant the rehearing because this Court should reaffirm this Court's long standing precedent that lower courts in the fifth circuit have deviated from. Additionally, this Honorable Court should instruct the fifth circuit that it is not okay to surround the Petitioner, without a justifiable cause, with three uniformed officers and one non-uniformed officer in order to temporarily replace the exposed shackles while Petitioner testifies on his own behalf.

II. JURISDICTION:

This Honorable Court has jurisdiction to grant the rehearing of this Court's order denying Petitioner's petition for a writ of certiorari because the order was handed down on March 30, 2020. Therefore, the Petitioner's rehearing is being filed on or before April 24, 2020. Sup. Crt. R's. 41 & 44.2.

III. A JURY'S DETERMINATION OF GUILT OR INNOCENCE ON THE EVIDENCE ADDUCED AT TRIAL THEREFORE SHACKLING OFFENDS DUE PROCESS.

The central purpose of a criminal trial is to decide the factual question of the Petitioner's guilt or innocence. Delaware v. Van Arsdall, 475 U.S. 673, 681, 106 S.Ct. 1431, 1436 (1986). This Honorable Court has long held that "the Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial." Deck v. Missouri, 544 U.S. 622, 629, 125 S.Ct. 2007 (2005).

The Petitioner argues that the trial court erred and denied the Petitioner's right to the presumption of innocence, due process, and a fair trial, by ordering three uniformed (and one non-uniformed) officers to surround the Petitioner to temporarily replace his shackles while he testified. RR4, 6-7. Counsel objected to the fact that it gave the appearance of the Petitioner's guilt. Id. While it is true that one non-uniformed officer was sent across the courtroom, three uniformed officers remained around the Petitioner. Id. The trial court overruled the objections and

concluded that the extra security is for "security purposes." Id. Truly, the sole reason for three uniformed officers to surround the Petitioner is due to Counsel's request that Petitioner be permitted to testify without shackles. id.; United States v. Banegas, 600 F.3d 342, 345 (5th Cir. 2010)(As shackling is considered "inherently prejudicial," the trial court must state its reasons for shackling outside of the presence of the jury.). After Petitioner testified, he was reshackled and sent back to the defense's table. RR4, 6-7. It is substantially controlling that "[W]hen no reasons are given by the trial court, and it is not apparent that shackling is justified, the [Petitioner] need not demonstrate actual prejudice on appeal to make out a due process violation; rather, the burden is on the government to prove "beyond a reasonable doubt that the shackling error complained of did not contribute to the verdict obtained." If the government cannot bear its burden, the conviction must be vacated and the case remanded for a new trial. Banegas, 600 F.3d at 345-346. Therefore, rehearing should be granted because, not only did the government fail to bear its burden, the lower court's erroneous decision to surround the Petitioner with three uniformed officers to temporarily replaced his shackles denied due process.

IV. NORTHERN DISTRICT COURT'S ERRONEOUS RELIANCE ON SUPREME COURT AUTHORITY AND ITS SUBSTANTIAL AND CONTROLLING EFFECT.

The Northern District relied on Holbrook v. Flynn, [475 U.S. 560, 106 S.Ct. 1340 (1986)], and United States v. Nicholson [846 F.2d 277 (5th Cir. 1988)]. See Appendix B, Pgs. 14-15, attached to Petitioner's certiorari.

The Northern District Court held that, "the record support the Magistrate Judge's conclusion that the trial court (1) overruled defense counsel's objection regarding the number of officers in the courtroom, citing "a security issue," (2) moved one of the officers to the other side of the courtroom, (3) noted that there were three uniformed officers in the courtroom and one non-uniformed officer who was in charge of the jury; and (4) explained that it had requested the extra security when counsel asked that Petitioner be permitted to testify without shackles. See Adopting order, Pg. 1-2. Therefore, the presence of three uniformed officers during Petitioner's testimony was not inherently prejudicial as the jurors were unlikely to assume anything other than that the officers present was reflective of the normal official concern for the safety and order of the proceedings. Appendix b, Pgs. 14-15, attached to Petitioner certiorari.

Rehearing should be granted because the Fifth Circuit is not justified to hold that the jury may have not been influenced by having uniformed officers surround the Petitioner while he testified. This is not okay. Equivalently, Court's cannot routinely place defendants in shackles or other physical restraints visible to the jury during the guilt-innocence phase. Deck v. Missouri, 544 U.S. 622, 125 S.Ct. 2007, 2014 (2005).

Truly, the Fourteenth Amendment to the United States Constitution guarantees criminal defendants the right to a fair trial. See U.S. Const. Amend. XIV; Deck v. Missouri, 544 U.S. 622, 629-34, 125 S.Ct. 2007 (2005)(The appearance of a defendant in shackles before a jury ... violate[s] the [Petitioner's] Fifth and Four-

teenth Amendments right to due process). In 1991, the highest Court of Texas reasoned that the use of restraints [shackles or to be surrounded by three uniformed officers while one testified in the guilt-innocence phase] cannot be justified based on a general appeal to the need for courtroom security or simple reference to the severity of the charged offense. See Long v. State, 823 S.W.2d 259, 283 (Tex.Crim.App. 1991). In 2005, the United States Supreme Court agreed with the rationale. See Deck, supra, 554 U.S. at 629-34, 125 S.Ct. 2007. In Deck, the United States Supreme Court held that visible shackling [or surrounding Petitioner with three uniformed officers while he testified] "can interfere with the accused's ability to communicate with his lawyer," ability to participate in his own defense (including the ability to testify on his own behalf), and affront[s] the dignity and decorum of judicial proceedings that the judge is seeking to uphold." Deck, supra, 554 U.S. at 630-31, 125 S.Ct. 2007. (citations omitted). In other words, the United States Supreme Court noted that the law of the land has been long forbidden routine use of visible shackles [or surrounding one that testifies] during the guilt-innocence phase of one's trial. id. For this reason, the Supreme Court concluded that visible shackling [or surrounding one that testified] undermines the presumption of innocence and the related fairness of the fact-finding process. Id.

Rehearing should be granted because a reasonable jurist will find the lower courts resolution debatable because the lower courts have misapplied the factual basis between Petitioner's case and the holding in Holbrook v. Flynn, 475 U.S. 560, 160 S.Ct. 1240

(1986). In Holbrook, he has four uniform troopers sitting quietly in the front row of the spectators section of the courtroom, providing some distance from the accused. Contrarily, even though one non-uniformed officer was sent across the courtroom, three uniformed officers surrounded Petitioner while he testified on his own behalf excluding any distance from Petitioner, and this giving the appearance that Petitioner is violent and guilty. In Holbrook, the trial judge overruled respondent's objection, primarily on the basis of voir dire, responses from the jury selection would not affect respondent's ability to receive a fair trial. Thus, the trial court in Petitioner's case, the jury was never questioned on whether surrounding Petitioner while he testified would affect their ability to remain impartial and fair. Truly, the trial court in Petitioner's case only overruled the objection because it was for security reasons, and to temporarily replace the Petitioner's routine shackling. Accordingly, the Court in Holbrook could not find an unacceptable risk of prejudice in the spectacle of four such officers quietly sitting in the first row of a courtroom's spectator section, involving five different defendants. In Holbrook, the defendant was never shackled, Petitioner on the other hand, was shackled, surrounded by three uniformed officers while he testified, and then placed back into shackles after he testified.

Rehearing should be granted because this Honorable Court should find that surrounding Petitioner with three uniformed officers (while he testified during guilt-innocence phase) unmistakably indicates the need to separate the Petitioner from the community at

large; therefore, branding the jury, in their eyes, with an unmistakable mark of guilt. Axiomly, surrounding Petitioner to temporarily replace shackles and then shackle Petitioner back, causes a controlling effect of injustice that this Court should rehear and stop. Again, this Honorable Court should exercise Its power of supervision to entertain this ground on rehearing.

V. NORTHERN DISTRICT COURT'S ERRONEOUS RELIANCE ON FIFTH CIRCUIT AUTHORITY AND ITS SUBSTANTIAL AND CONTROLLING EFFECT.

Additionally, the Petitioner argues that the lower courts resolution is debatable because the lower courts have misapplied the holding in United States v. Nicholson, 846 F.2d 277 (5th Cir. 19-88). In Nicholson, he has previously attacked and severely injured his own counsel. Nicholson threatened to burn and kill people, and had several outbursts in the current trial with threatening and vulgar language. See Nicholson, 846 F.2d at 278-279. To the contrary, in Petitioner's case, Petitioner never threatened anyone, never used vulgar language of any kind in the courtroom, and never caused any kind of outburst in his trial. In other words, the Petitioner never gave the trial court any justifiable reason to order uniformed officers to surround Petitioner while he testified, muchless to restrain Petitioner with routine shackling. The trial court in Nicholson, ordered him to be restrained by non-visible leg irons, and had three united states deputy marshals, being in plain clothes to accompany Nicholson. However, the trial court in Petitioner's case, took a more severe measure than that of the trial court in Nicholson. Truly, there is no legitimate reason why the trial court should order three officers in uniforms

to surround Petitioner, while he testifies and his behaviour is calm and collect throughout trial.

The trial court in Nicholson is completely justified to restrain Nicholson because of his unpredictable violent behaviour that he exhibited. Nevertheless, when the Petitioner's behaviour is completely calm and collect, the trial court is not justified for ordering three uniformed officers to surround Petitioner in order to temporarily replace his routine shackling. Accordingly, citing a security reason without more is not a proper justification for what the trial court did; therefore, the trial court abused its discretion. Deck, 554 U.S. at 630-31, 125 S.Ct. 2007. Truly, this Honorable to properly address the issue and warrant a just decision.

VI. WITHOUT A JUSTIFIABLE CAUSE, THE SHACKLING OF PETITIONER THEN SURROUNDING PETITIONER WITH OFFICER'S WHILE HE TESTIFIES, AND RETURNING HIM BACK TO SHACKLES IS INHERENTLY PREJUDICIAL.

Rehearing should be granted because the lower courts decision is completely debatable for holding that three uniformed officers surrounding Petitioner while he testified is not inherently prejudicial. The lower court fails to take account of Holbrook's statement that shackling is inherently prejudicial, 475 U.S. 568, 106 S.Ct. 1340, a view rooted in [The United States Supreme] Court's belief that the practice will often have negative effects that cannot be shown from a trial transcript. See Deck, supra, 544 U.S. at 623, 125 S.Ct. at 2009 (quoting Riggins v. Nevada, 504 U.S. at 137, 112 S.Ct. 1810 (1992)). Not only did the lower courts fail to take this statement in account; but also, it failed to

take account of the fact that surrounding the Petitioner with three uniformed officers while he testified was to temporarily replace the petitioner's visible and routine shackling Id.

Thus, "[w]here a court, without adequate justification, orders the defendant to wear shackles visible to the jury, the defendant need not demonstrate actual prejudice to make out a due process violation." Deck, 554 U.S. at 623, 125 S.Ct. at 2009. In Petitioner's case, the trial court asked for extra security since counsel made a request to have Petitioner testify without shackles, and also because its a security issue. RR4, 6-7. The trial court did not refer to Petitioner being an escape risk or even a threat to courtroom security; nor explained why shackles and extra security was necessary during the guilt phase of Petitioner's trial. Therefore, the trial court is without adequate justification, and proving the prejudice being inadequate. Nevertheless the state must prove beyond a reasonable doubt that the shackling [or surrounding the Petitioner with three uniformed officers] did not contribute to the verdict obtained. Cf. Deck, 554 U.S. at 623, 125 S.Ct. at 2009 (quoting Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824); United States v. Banegas, 600 F.3d 342, 346 (5th Cir. 2010) (When the government does not bear this burden proof, the conviction must be vacated and the case remanded for a new trial.).

Rehearing should, therefore, be granted because the lower courts in the fifth circuit failed to require the prosecution to their burden of proving that surrounding the Petitioner with three uniform officers, to temporarily replace routine shackling, did not contribute to the conviction obtained. Id. Axiomly, the Petitioner

argues that inherit prejudice is visible. The jury was an all woman jury. The prosecutor was a woman. The Petitioner was accused of kidnapping his own wife, in their own home, unlawfully restraining her, and physically abusing her. The Petitioner was visibly shackled before the jury during the guilt-innocence phase of trial, then as soon as the Petitioner decides to testify, the court orders extra security (i.e. surrounded Petitioner with three uniform officers) while he testified.

In other words, as soon as Petitioner gets close to the jury, only a dangerous and guilty person needs to be surrounded by uniformed officers to protect the all woman jury. But, Petitioner is not a dangerous and guilty person that would need to be surrounded by uniformed officers while he testifies. Truly, in a normal courtroom setting, the witness stand is right next to the jury as oppose to the defense's table being across the courtroom and away from the jury. Cf. Nicholson, 846 F.2d at 278-79. And, inherent prejudice is compounded in Petitioner's jury note. The jury note said: "Please explain what happens if we can't come to an unanimous decision." See Jury note during guilt-innocence phase in the Clerk's record. Axiomly, the jury had a serious doubt about whether Petitioner was guilty. Nevertheless, they reasoned that because the trial court took such great measures to protect them, Petitioner must be too dangerous, too violent to be let out on the street; therefore, they convicted the Petitioner. the Prosecution never provided beyond a reasonable doubt that surrounding the Petitioner with officers, to replace shackles while he testified, did not contribute to hsi verdict obtained. Thus, the lower courts never

made the prosecution explain why the extra security and shackles would be justifiable or even necessary.

Taken together, rehearing should be granted because this Court should reaffirm this Court's long standing precedent that lower courts in the fifth circuit have deviated from. Truly, this Honorable Court should instruct the fifth circuit that it is not okay to surround the Petitioner, without a justifiable cause, with three uniformed officers and one non-uniformed officer in order to temporarily replace the exposed shackles while Petitioner testifies on his own behalf. Id.; Deck, 544 U.S. at 623, 125 S.Ct. at 2009; Banegas, 600 F.3d 342, 346.

VII. IN THE ALTERNATIVE...

In the alternative, the Petitioner seeks this Honorable Court (in the interest of justice) to rehear Petitioner's writ of certiorari on the Court's own motion. And, if this Honorable Court wishes for Petitioner to brief any other question or argument, not presented in this Petition, than Petitioner respectfully requests for this Court to order Petitioner to address any other issue this Honorable Court sees fit to apply to justice.

VIII. CONCLUSION AND PRAYER:

Because of the substantial and controlling effect this Honorable Court will have by correcting the lower courts in the fifth circuit, as explained herein, this Petition for Rehearing should be granted. In the alternative, and in the interest of justice, this Honorable Court should grant rehearing on Its own motion.

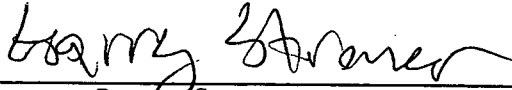
Respectfully Submitted,



Garry Dean Stroner
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Pro se litigant.

IX. INMATE DECLARATION:

I, Garry Dean Stroner, TDCJ No. 01777671, being incarcerated in the TDCJ-CID Coffield Unit in Anderson County, Texas, declares that the foregoing is true and correct under the penalty of perjury. Executed on this day of April 22, 2020.



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