**NO. _____**

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**IN THE SUPREME COURT OF THE UNITED STATES**

**October Term, 2022**

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KEVIN BRAZELTON,

*Petitioner*,

v.

State of Tennessee,

*Respondent*.

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# PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE

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Tennessee Supreme Court Case No.: E2019-00992-SC-R3-CD

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## QUESTIONS PRESENTED

In your Petitioner's trial for aggravated robbery in the Criminal Court for Knox County, Tennessee, the trial court over defense objection refused to grant a mistrial when the Petitioner was electrically shocked by a stun belt in front of the jury during the trial, when that stun belt was activated by a courtroom deputy who was not specifically instructed to do so by the trial judge and where the trial judge acknowledged that the Petitioner had merely stood up in order to show respect after an elderly female relative had finished her trial testimony.

**I.**

Were the Petitioner's federal due process rights to a fair trial under both the Fifth and Sixth Amendments to the United States Constitution, as made applicable to the States by the Fourteenth Amendment to the United States Constitution, violated when the Petitioner's request for a mistrial was denied and the jury was then allowed to render a guilty verdict, notwithstanding the highly prejudicial spectacle of the Petitioner being electrically shocked by a stun belt in front of the jury?

**II.**

Were the Petitioner's federal due process rights to a fair trial under both the Fifth and Sixth Amendments to the United States Constitution, as made applicable to the States by the Fourteenth Amendment to the United States Constitution, violated when the trial court delegated the decision to activate the Petitioner's stun belt to a courtroom officer who made the decision to shock the Petitioner in front of the jury, without any direction from the trial court to do so?

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**IN THE SUPREME COURT OF THE UNITED STATES**

**October Term, 2022**

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KEVIN BRAZELTON,

*Petitioner*,

v.

UNITED STATES OF AMERICA,

*Respondent*.

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**PETITION FOR A WRIT OF CERTIORARI**
**TO THE SUPREME COURT OF TENNESSEE**

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## INTRODUCTION

Your Petitioner was convicted in the Criminal Court for Knox County, Tennessee of four counts of aggravated robbery; and was sentenced to 25 years incarceration at a service rate of 85%, concurrent the Petitioner's sentence in another case. The Petition of Kevin Brazelton respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Criminal Appeals for Tennessee, for which review by the Tennessee Supreme Court was timely sought by application for permission to appeal filed pursuant to Tennessee Rule of Appellate Procedure 11. The Tennessee Supreme Court denied the application for permission to appeal the judgment and opinion of the Tennessee Court of Criminal Appeals.

## OPINIONS BELOW

(1) Judgments, *State of Tennessee v. Kevin Brazelton*, No. 107785, Criminal Court for Knox County, Tennessee, June 20, 2018. (Appendix 1, *infra*).

(2) Opinion, *State of Tennessee v. Kevin Brazelton*, No. E2019-00992-CCA-R3-CD, Court of Criminal Appeals for Tennessee, December 13, 2021. (Appendix 2, *infra*).

(3) Order, *State of Tennessee v. Kevin Brazelton*, No. E2019-00992-SC-R3-CD, Supreme Court of Tennessee, April 13, 2022. (Appendix 3, *infra*).

## JURISDICTION

The judgment of the Court of Criminal Appeals for Tennessee was rendered December 13, 2021, affirming the Petitioner's convictions in the Criminal Court for Knox County, Tennessee for aggravated robbery. An application for permission to appeal to the Tennessee Supreme Court, made pursuant to Tennessee Rule of Appellate Procedure 11, was timely filed with the Tennessee Supreme Court, and was denied by Order dated April 13, 2022.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a) and United States Supreme Court Rules 10 and 13.

## CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides as follows:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the United States Constitution provides as follows:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

## STATEMENT OF THE CASE

### Introduction

The issues for which your Petitioner requests review by this Court relate to the constitutionality, pursuant to the Fifth Amendment and Sixth Amendment to the United States Constitution as made applicable to the States by the Fourteenth Amendment to the United States Constitution, of the circumstances under which a stun belt[1] that was worn by the Petitioner during trial, under his clothing, was used to shock him in front of his jury in order to maintain courtroom decorum. Although a mistrial was immediately requested by counsel for the Petitioner, the trial court overruled and denied this request.

A Motion for New Trial and a Renewed Motion to Declare Mistrial (Appendix 4, *infra*) were filed with the trial court; these Motions — which both raised the constitutional propriety of the use of the stun belt at trial — were both denied by the trial court. Thereafter the denial of the Motion for a mistrial was affirmed by the Tennessee Court of Criminal Appeals; and the Tennessee Supreme Court declined further review of the Opinion by the Tennessee Court of Criminal Appeals.

[1] A stun belt is an electronic device that is secured around one's waist or leg, usually under clothing, which is activated remotely and delivers a 50,000-volt electrical shock at 4 milliamps to the wearer in an 8-second cycle that causes incapacitation during the first few seconds and then severe pain. Some of the potential side effects of activation of a stun belt include self-defecation and self-urination, as well as causing the wearer to fall to the ground and, in some cases, causing muscular weakness for approximately 30-45 minutes. Additionally, persons with certain pre-existing medical conditions may have other adverse physical effects from the activation of a stun belt. *See, e.g., Adams v. Bradshaw*, 826 F.3d 306, 311-12 (6th Cir. 2016); *Earhart v. Konteh*, 589 F.3d 337, 341 (6th Cir. 2009); *United States v. Miller*, 531 F.3d 340, 343-44 (6th Cir. 2008); *United States v. Durham*, 287 F.3d 1297, 1305-06 (11th Cir. 2002); *Hawkins v. Comparet-Cassani*, 251 F.3d 1230, 1234 (9th Cir 2001); *Mobley v. Tennessee*, 397 S.W.3d 70, 97-98 (Tenn. 2013); *Morris v. Texas*, 554 S.W.3d 98, 108-10 (Tex. Ct. App. 2018).

## Relevant Facts

### A.

The Defendant was indicted on four counts of aggravated robbery based on alternative theories. (Appendix 1; Appendix 2, at 1). The jury convicted your Defendant of all four counts of aggravated robbery, as charged in the Indictment. (Appendix 1; Appendix 2, at 4). The Defendant was sentenced to an effective sentence of 25 years, with release eligibility of 85%. (Appendix 1; Appendix 2, at 5).

### B.

The relevant facts related to the issue presented in this Application are as follows:

> Soon after the State indicted the Appellant, the trial court appointed first trial counsel to represent him. In January 2017, the trial court granted first trial counsel's motion to withdraw, appointed second trial counsel, and set the Appellant's trial for May 1, 2017. The technical record reflects that the trial court reset the Appellant's trial numerous times but ultimately scheduled his trial for August 14, 2017.
>
> On the day the trial was supposed to begin, the Appellant advised the trial court that he had filed a complaint against second trial counsel with the Board of Professional Responsibility. The Appellant told the trial court that "[t]his woman has not once came to see me to prepare a defense" and that "this woman is not effective." The trial court responded that "[w]e've been through all that," but the Appellant continued to complain about second trial counsel. The trial court repeatedly ordered the Appellant to stop talking, but the Appellant continued to interrupt the trial court. Finally, the following exchange occurred:
>
> DEFENDANT BRAZELTON: Man, [f***] her.
>
> THE COURT: Mr. Brazelton.
>
> DEFENDANT BRAZELTON: [F***] her.
>
> THE COURT: Mr. Brazelton.

DEFENDANT BRAZELTON: [F***] you, too.

THE COURT: Mr. Brazelton --

DEFENDANT BRAZELTON: [F***] all y'all.

DEFENDANT'S MOTHER: Kevin.

THE COURT: -- I'm ordering you to stop talking.

DEFENDANT BRAZELTON: [F***] that, man.

DEFENDANT'S MOTHER: Please, Kevin.

THE COURT: For the fifth time --

DEFENDANT BRAZELTON: What the [f***] y'all want to do, we can do it.

THE COURT: -- I'm ordering you to stop talking.

DEFENDANT'S MOTHER: Kevin, please.

DEFENDANT BRAZELTON: Sitting there like -- what's up?

The trial court ordered that the Appellant be taken "into the dock." As he was being escorted out of the courtroom, the Appellant stated, "[F***] you, too. . . [B]ogus-[a**] lawyer, can't even represent me. [S***]. Bull[s***], man." Even after the Appellant was removed from the courtroom, the trial transcript reflects that he could be heard repeatedly saying, "[F***]."

The State requested that the Appellant be "equipped with a shock belt" under his clothing so that he could be present in the courtroom for trial. The trial court agreed that the Appellant needed to be present and asked if second trial counsel had anything to say about the matter. Second trial counsel responded that the Appellant had "called [her] every name in the book," that his mother also had made "some kind of threats against" her, and that the Appellant was "upset" with her because she did not visit him over the weekend. Second trial counsel said, "I had no intention of doing that after the way that he had talked to me. I was not going to, you know, subject that -- subject myself to that." Second trial counsel stated that she was "ready to go forward" and that "[w]hatever the Court wants to do is fine with me."

The trial court asked that the court officer check on the Appellant to make sure that the Appellant was not hurting himself, and the officer reported that the Appellant was "just walking in circles." The trial court stated that it did not think the Appellant was going to calm down so that he could return to the courtroom and noted that the Appellant had a history of filing complaints against his attorneys "right before trial." The trial court found that the Appellant was "acting in a way to deliberately obstruct the trial." At that point, the Appellant could be heard saying, "[F***] it all. [F***] y'all."

The trial court then considered the State's request that the Appellant wear a stun belt and addressed the concerns raised in Mobley v. State, 397 S.W.3d 70 (Tenn. 2013). The trial court noted that pursuant to Mobley, it was required "to employ the least drastic security measures" and that it was required to consider whether a stun belt was necessary to maintain a dignified judicial process. The trial court found that the jury would be unaware of the stun belt because it would be under the Appellant's clothes and that "with him screaming out the F bomb over and over, there's not much dignity of process at all here." The trial court also considered whether the stun belt was necessary to prevent escape, protect those present in the courtroom, and maintain order. The trial court found that "it is clear that in this case, the defendant is not going to allow the Court to maintain order without the imposition of additional security." The trial court noted that the Appellant's outburst was "at least the second time he's acted out in this fashion, . . . so there is a repetition."

The trial court also noted that a psychological evaluation had never been performed on the Appellant. Second trial counsel advised the trial court that the Appellant's juvenile file showed he had "some history of some issues with impulse control" and "suffered from either ADHD or ADD." The State advised the trial court that a violation of probation had been filed against the Appellant in a previous case and that the person who filed the violation "put something in the record about . . . his anger issues." The trial court ordered that the Appellant receive a psychological evaluation to determine whether he was competent to stand trial and stated, "If he does have some sort of psychological disorder that can be treated with medication and that will keep us from having to dress him up like a hog to try him, I would much prefer to go in that direction." Pending the evaluation, the trial court continued the Appellant's trial to November 7, 2017.

On October 25, 2017, second trial counsel filed a motion to withdraw. The trial court granted the motion on October 30, 2017. On November 20, 2017, the trial court appointed third trial counsel to represent the Appellant. The Appellant finally went to trial on April 24 and 25, 2018.

On the first day of trial, before the Appellant was brought into the courtroom and before jury selection, the trial court stated on the record that the Appellant was evaluated at Helen Ross McNabb and that he was found competent to stand trial. The trial court informed the parties that the court was going to "give him a chance to sit here with no belt, no shackles, no nothing for his entire trial, if he'll just behave." The trial court then stated as follows:

All right. I'm going to have him brought in. He wants to address the Court. And I'm sure he's going to tell me he's got a lawyer coming and he wants it reset; he don't want to go to trial today, which is what he always says. And unless -- if a lawyer comes forward right now ready to try the case today, then there's going to be no reset.

If he starts going off at that point, I'll have him taken into the holding cell and we'll have the belt installed. And I'll bring him back out and try to talk to him and try to convince him to be calm and to help his lawyer conduct the trial. If he continues to go off and scream and everything, at that point, I will have him stunned. The jury won't be in here, but he will know what it feels like. And, hopefully, that will calm him down enough. If he still keeps going off, then I'll probably put him in the cell and turn the [closed circuit] TV on. That's the best we can do.

The State asked if the sheriff's department had explained the stun belt to the Appellant, and a court officer responded, "No, we have not. But we will before that happens."

When the Appellant was brought into the courtroom, he told the trial court that his relationship with third trial counsel was "horrible" and that "I can't even talk to this lady about my trial and what I have going, as far as how I want my trial to be fought." The trial court told the Appellant that "[w]e're going to conduct your trial today, period," and the Appellant requested to represent himself. The trial court denied the request, stating, "It's too late for that. We've been through all that. You're represented by counsel. She knows what she's doing. She can conduct the trial." The Appellant stated that he wanted to "fire this lawyer." The trial court said the Appellant was obstructing the trial and warned the Appellant, "If you don't stop, you're going to be taken back into the holding cell . . . [a]nd we're going to put a stun belt on you. . . . If you continue to do what you're doing . . . you will be stunned." The Appellant continued to argue with and talk over the trial court. The trial court found that the Appellant was making it impossible to try his case and ordered that the deputies take him into the holding cell and "put the stun belt on him." The Appellant repeatedly told the deputies, "Don't put your hands on me." Nevertheless, the Appellant was taken out of the courtroom. When he returned, the trial court stated, "Let the record show that the stun belt has been placed on Mr. Brazelton. Mr. Brazelton has come back into the courtroom and so far is remaining quiet and is behaving himself. As long as he continues to do that, he will not be hurt."

The Appellant did not cause any disruptions during the State's case-in-chief. However, after the Appellant's aunt, Shirley Davidson, testified on his behalf, the following occurred:

> THE COURT: Anything on redirect?
>
> [THIRD TRIAL COUNSEL]: No, Your Honor.
>
> THE COURT: [Ms. Davidson's] excused.
>
> [THIRD TRIAL COUNSEL]: Thank you, sir.
>
> (Defendant was hit with stun belt.)
>
> COURT OFFICER: When I say, "sit," that means sit down.
>
> DEFENDANT BRAZELTON: All right, Cuz. I just want to make sure my grandmother get out the door. I ain't causing no problem.
>
> THE COURT: All right.
>
> [THIRD TRIAL COUNSEL]: Your Honor, may we approach?
>
> THE COURT: Yes.
>
> DEFENDANT'S MOTHER: What in the world?
>
> DEFENDANT BRAZELTON: I was just making sure Nanny get out the door, Momma. I get shocked for no reason.
>
> THE COURT: Let's take the jury out.
>
> DEFENDANT BRAZELTON: I was just making sure she get out the door. I was just making sure she get out the door. I ain't going nowhere. I'm just showing respect for my grandmomma. You know, she's sick.
>
> (Jury left the courtroom.)
>
> THE COURT: All right.
>
> ....

DEFENDANT BRAZELTON: I didn't say nothing. I didn't say nothing.

Third trial counsel moved for a mistrial because the court officer shocked the Appellant in front of the jury, which made the case "too prejudicial" to continue. The State opposed a mistrial and argued that the trial court could instruct the jury to "disregard that."

The trial court stated as follows:

What -- the Court understands what he was doing was simply honoring his grandmother [by] standing as she exited. However, he was not given permission to do that by the Court. He is supposed to remain seated as the witnesses come and go. No one gave him permission to stand. He's under close scrutiny by the deputy because of the outbursts and the problems we've had in the past. And the deputy was under orders that if he failed to obey the deputy's orders, the deputy was to use the stun device. And that's what happened. So nobody's done anything wrong. If we could have avoided it, I certainly would have, but . . .

. . . .

Third trial counsel requested a curative instruction. When the jury returned to the courtroom, the trial court instructed the jury as follows:

I'm going to make just one brief comment and then give you one very brief instruction. What happened earlier in the courtroom has absolutely nothing to do with the merits of this case. It is in no way connected to the evidence or anything that happened at a Kenjo Market or anything that happened at a Kroger store. Just -- the matters involving courtroom security are not matters for you to be concerned with, so just put it out of your mind. It has nothing to do with the determination of whether the defendant is guilty or not guilty of anything. So just put that out of your mind and we will proceed.

The Appellant raised this issue in his motion for new trial. At the hearing on the motion, third trial counsel asserted that the court officer "issued an 80,000 volt electrical shock to Mr. Brazelton in front of the jury" when the Appellant "briefly stood up" as his elderly aunt was leaving the courtroom. Third trial counsel described the incident as "a very startling and, frankly, horrifying event for everybody in the courtroom." She noted that after the incident, the trial court "did not make any observations that Mr. Brazelton was otherwise attempting to flee, that he was otherwise attempting to disrupt the proceedings and, certainly, made no observations that he was trying to threaten anyone at the time that shock was administered." Third trial counsel acknowledged that the Appellant did not have the right to stand up but asserted that it was impermissible to shock him in order to "maintain decorum" or to punish him. The State argued that the court officer ordered the Appellant to sit down and that the Appellant did not do so. The State contended that given the Appellant's previous conduct and defiance of the court

> officer's order to sit down, the court officer was justified in shocking him because he posed a security threat. The State noted that third trial counsel requested a curative instruction, that the trial court instructed the jury to disregard the incident, and that the jury was presumed to have followed the instruction.
>
> The trial court stated that it heard the court officer tell the Appellant to sit down twice, that the Appellant defied the court officer, and that the court officer was "under orders . . . to make sure the defendant absolutely obeyed the instructions or use the stun belt." The trial court found that the Appellant's refusal to sit down "support[ed] the officer's concern that the defendant was beginning to act aggressively and in defiance, and he was, therefore, becoming -- posing a threat in the courtroom." The trial court further found that every effort was made not to use the stun belt but that, under the circumstances, the court officer's use of the stun belt was not improper. The court stated that the Appellant's being shocked was "unfortunate" but that "it was the fault of the defendant that it did happen." Regarding prejudice, the trial court noted that "[t]here was no apparent emotional reaction" from the jury after the incident and denied the Appellant's motion for new trial.

(Appendix 2, at 5-11).

**C.**

In a Motion for New Trial, your Petitioner's attorney raised, *inter alia*, the violation of your Petitioner's due process rights as well as his right to a fair trial, stating in the Motion for New Trial as follows:

> 5. That the trial court erred in failing to declare a mistrial after the defendant was gratuitiously subjected to an 80,000 volt electrical shock in the presence of the jury and during the proceedings of his trial. That the shock was administered by a Knox County Sheriff's Department deputy, Officer Sayen, after the defendant briefly stood up from his seat while an elderly defense witness and relative, Shirley Davidson, was leaving the courtroom in her wheelchair. That Officer Sayen verbally directed the defendant to sit down, and, when the defendant did not instantaneously do so, he was subjected to an electrical shock. That the shock itself caused a loud, crackling noise in the courtroom, followed by the defendant's wailing, shrieks of pain. That the court agreed to the defense request to have the jury leave the courtroom while a mistrial was discussed.
>
> However, the trial court, without making any inquiry of the sitting jurors as to the impact of this spectacle upon their ability to be fair, declared that a mistrial was unnecessary. This incident not only prevented the defendant from having any

> semblance of a fair trial, it impeded his ability to communicate and violated his 14th Amendment due process rights to bodily integrity. Washington v. Glucksberg, 521 U.S. 702, 720 (1997).

In a Renewed Motion to Declare Mistrial, your Petitioner argued through counsel that your Petitioner's "14th Amendment due process right to bodily integrity as a substantive due process right with respect to the use of excessive force by state actors," (Appendix 4, at 2) had been violated by activation of the stun belt on the Petitioner in front of the jury hearing his case and the failure of the trial court to declare a mistrial. In addition to *Washington v. Glucksberg*, the Petitioner cited to *Illinois v. Allen*, 397 U.S. 337 (1970) and to *Morris v. Texas*, 554 S.W.3d 98 (Tex. Ct. App. 2018), pet. discretionary review refused (Tex. Oct. 31, 2018).

Subsequently the Motion for New Trial was denied in its entirety.

**D.**

Your Petitioner now seeks review by the United States Supreme Court to resolve important questions of constitutional law, about which two differing State courts have given different answers: First, does such a criminal defendant have a fundamental due process right to bodily integrity under the Fifth Amendment to the United States Constitution, as well as the right to a jury trial that is free from unfairly prejudicial taint, under the Sixth Amendment to the United States Constitution, when he is electrically shocked by a stun belt in in front of the jury that is determining his guilt? Second, does a criminal defendant have a fundamental due process right to bodily integrity under the Fifth Amendment to the United States Constitution which mandates that a trial court cannot impermissibly delegate to a courtroom officer and allow such courtroom officer to use his or her own independent judgment as to when to administer an electrical shock to a criminal defendant by means of a stun belt, in front of the jury that is determining his guilt?

## REASONS FOR GRANTING THE WRIT

### I. THE TENNESSEE COURT OF CRIMINAL APPEALS VIOLATED YOUR PETITIONER'S FEDERAL DUE PROCESS RIGHTS WHEN IT RULED THAT THE TRIAL COURT PROPERLY DENIED A MOTION FOR MISTRIAL AFTER THE PETITIONER WAS ELECTRICALLY SHOCKED IN FRONT OF THE JURY WITH A STUN BELT, SIMPLY IN ORDER TO MAINTAIN COURTROOM DECORUM AND NOT IN RESPONSE TO A DANGEROUS SITUATION.

The Tennessee Court of Criminal Appeals committed legal error when it determined that the trial court properly refused to grant a mistrial after the Defendant's stun belt was activated by a court officer and the Defendant received a powerful electric shock in front of the jury, as a means of enforcing courtroom decorum and not for a legitimate security purpose. (Appendix 2, at 9-11). This violated your Defendant's rights under Fifth and Sixth Amendments to the United States Constitution as made applicable to the States through the Fourteenth Amendment to the United States Constitution. For the reasons set forth herein, this Court should grant certiorari to review the Opinion of the Tennessee Court of Criminal Appeals.

#### A. Activating A Stun Belt Worn By A Defendant In The Courtroom Is Not An Appropriate Remedy For General Disruption, For Speaking Out Of Turn, Or Otherwise To Enforce Courtroom Decorum.

**1.**

Initially, your Petitioner wishes to make it clear that he is not making any challenge to the placement of a stun belt on his person, under his clothing, at the trial of this cause. Rather, your Petitioner challenges the improper activation of that stun belt in front of the impanelled jury, for violating courtroom decorum.

To put it another way, this case can be thought of as concerned not with the propriety of the placement of a stun belt on a criminal defendant at trial, but with the constitutional implications

of the logical sequellae to that placement of a stun belt on a criminal defendant at trial. In other words: What protections should a criminal defendant be entitled to when that defendant's stun belt is activated during trial, in front of the jury impanelled to hear the defendant's case?

Additionally, your Petitioner tries to make a distinction in this Petition, with the words "placement" and "activation" (or "activate"), so as to avoid any semantic confusion that may be engendered with the phrases "use of a stun belt" or "using a stun belt," that appear in many court opinions. In those court opinions reviewed by counsel for your Petitioner, "using a stun belt" may encompass both the act of placing a stun belt on a defendant, as a means of anticipatory control of that defendant; as well as the act of turning on or activating the electric current in the stun belt in order to render an electric shock to the defendant as a means of actually controlling his/her behavior.

**2.**

The trial court below failed — and the Tennessee Court of Criminal Appeals acquiesced in that failure — to comport with the requirements that exceptional circumstances, or a manifest need, be present before activating the stun belt that was worn by your Petitioner in front of the jury trying his case. *See, e.g., Hawkins v. Comparet-Cassani*, 251 F.3d 1230, 1235, 1240, 1242 (9th Cir. 2001) (stun belts may be activated for security purposes but not to control verbal disruption); *Morris v. Texas*, 554 S.W.3d 98, 112 (Tex. Ct. App. 2018) ("we hold that decorum concerns alone are not enough to justify shocking a defendant multiple times, even outside the presence of the jury"). *See also Adams v. Bradshaw*, 826 F.3d 306, 311 (6th Cir. 2016) (sheriff's deputy stated that stun belts would be activated "if the [Petitioner] embarks on an escape attempt, an assault, or other violent behavior"). When your Petitioner stood out of respect as an elderly female relative

left the stand after testifying at his trial, a courtroom deputy — without instruction or direction from the trial judge at the time your Petitioner stood up — immediately activated the stun belt and delivered a powerful electric shock to your Petitioner. (Appendix 2, at 9-11). Immediately after the electric shock was delivered, and while the jury had been taken out of the courtroom, counsel for your Petitioner moved for a mistrial. (Appendix 2, at 9-10). In response, the trial court stated as follows:

> the Court understands what he was doing was simply honoring his grandmother [by] standing as she exited. However, he was not given permission to do that by the Court. He is supposed to remain seated as the witnesses come and go. No one gave him permission to stand. He's under close scrutiny by the deputy because of the outbursts and the problems we've had in the past. And the deputy was under orders that if he failed to obey the deputy's orders, the deputy was to use the stun device. And that's what happened.

(Appendix 2, at 10). In other words, your Petitioner failed to observe courtroom decorum by standing up without the trial judge's permission; and as a consequence, the courtroom deputy administered an electric shock to him without waiting for any instruction to do so from the trial judge. These comments immediately after the administration of the electric shock indicate that the trial judge understood that there was no courtroom security issue or that your Petitioner was trying to flee or was acting violently; rather, he didn't ask and receive permission to stand, and because of this violation of courtroom decorum he received a 50,000-volt (or more) electric shock.

### B. Because The Trial Court And The Intermediate Appellate Court Disregarded Federal Constitutional Principles That Proscribe The Activation Of A Stun Belt To Enforce Courtroom Decorum, This Court Should Accept Review And Grant The Petition For Writ of Certiorari.

If the ruling of the Tennessee Court of Criminal Appeals is allowed to stand, then no criminal defendant in Tennessee who is forced to wear a stun belt at trial will be safe from arbitrary and capricious activation of that stun belt by a judge or courtroom deputy who wishes to enforce

courtroom decorum. This is especially true when there is no violence, attempt at escape, or attempt to remove the stun belt by a defendant, as in the case at bar. In such a case as this one, the due process rights of criminal defendants to bodily integrity under the Fifth Amendment to the United States Constitution, as well as the rights of criminal defendants under the Sixth Amendment to the United States Constitution to have an impartial jury hear their case — and not a jury tainted by the spectacle of a defendant receiving a 50,000-volt shock from a court officer — are clearly implicated.

Given the gratuitous electrical shock administered to your Petitioner in front of the jury that was deciding his fate, and the likely prejudicial nature of that event on the jury's evaluation of the proof against the Defendant, the due process rights of criminal defendants under the Fifth Amendment to the United States Constitution as made applicable to the States by the Fourteenth Amendment, are clearly implicated. The right of your Petitioner "to a speedy and public trial, by an *impartial* jury of the state and district wherein the crime shall have been committed," as set forth in the Sixth Amendment to the U.S. Constitution (emphasis added) as made applicable to the States by the Fourteenth Amendment thereof, is also clearly implicated.

The Tennessee Court of Criminal Appeals noted that it was "unable to find any Tennessee authority that has addressed a defendant's being shocked by an electronic restraint in the courtroom." (Opinion, at 13). The Tennessee Court of Criminal Appeals in its Opinion has now issued an Opinion that directly conflicts with the applicable rule in Texas as set forth in *Morris v. Texas*, 554 S.W.3d 98 (Tex. Ct. App. 2018). This has set up a situation where the Fifth and Sixth Amendment rights of criminal defendants in Texas with respect to the application of stun belts are essentially denied to criminal defendants who are similarly situated in Tennessee. Because of this divergence among various States of the application of the Fifth Amendment right of due process,

as well as the right to have a criminal trial before a jury that is not unfairly prejudiced by the spectacle of the defendant hit with a 50,000-volt electrical shock in front of it, this Court should accept review and issue a writ of certiorari.

## II. THE TENNESSEE COURT OF CRIMINAL APPEALS VIOLATED THE PETITIONER'S FEDERAL DUE PROCESS RIGHTS WHEN IT IMPLICITLY APPROVED THE DELEGATION OF THE DECISION TO ACTIVATE A STUN BELT IN FRONT OF A JURY TO A COURTROOM OFFICER WITHOUT EXPRESS AUTHORIZATION TO DO SO BY THE TRIAL JUDGE.

The Tennessee Court of Criminal Appeals committed legal error when it determined that the trial court committed no legal error in refusing to grant a mistrial after the stun belt that your Petitioner was wearing was activated, and the Petitioner received a powerful electric shock in front of the jury. (Appendix 2, 8-11). Not only was it a violation of your Petitioner's due process rights to have his stun belt activated, simply for the purpose of compliance with courtroom decorum, however; it was a further violation of your Petitioner's due process rights under the United States Constitution for the trial court to have delegated this responsibility to a courtroom officer, who was allowed to use his — and not the trial judge's — discretion to activate the stun belt.

### A. Due Process Concerns Necessitate Clear Directives For When A Stun Belt May Be Activated By A Courtroom Deputy.

Those courts which have considered the issue of when a stun belt worn by a defendant may be activated have addressed the need for clarity in the situations in which a stun belt may be activated so as to give a 50,000-volt shock to the wearer. For example, in *Hawkins v. Comparet-Cassani*, 251 F.3d 1230 (9th Cir. 2001), the court noted that a defendant would be accorded constitutional due process there was a written policy of the county sheriff to activate a stun belt

that had been placed on a defendant, in a courtroom setting, only after "approval of the Judge hearing the case," and if the following criteria were met:

> The written policy permits activation of the belt (i.e. stunning the wearer) under the following circumstances:
>
> - Any attempt to escape or to assault the Court, courtroom staff, deputies or spectators.
>
> - To prevent any battery or physical injury from being inflicted upon the Court, courtroom staff, deputies or spectators.
>
> - Any attempt to remove the belt or other physical restraints.
>
> - A facially valid court order issued by a Presiding Judge.
>
> The policy requires that warnings be given where and when possible and that the prisoner receive immediate medical treatment after activation of the belt.

*Hawkins*, 251 F.3d at 1235 (internal footnote omitted). When compared to this list, the procedures in the instant case appear to be lacking: at most, your Petitioner was told by the trial judge outside the presence of the jury, after the stun belt had been put on the Petitioner, that if he continued to "obstruct the trial" he would be stunned, (Appendix 2, at 8), and that "[a]s long as he continues to [remain quiet and behave himself], he will not be hurt," (Appendix 2, at 8).

To the extent that the trial judge below made any sort of "facially valid order" to your Petitioner about what behavior would result in an electric shock from the stun belt, it was the somewhat ambiguous direction to "remain quiet and behave himself." (Appendix 2, at 8). Significantly, the trial judge did not reprimand or give another "facially valid order" to the Petitioner again before the Petitioner was administered an electric shock by a courtroom deputy.

A violation of the forewarned behavior was not what caused your Petitioner to receive a 50,000-volt shock in front of the jury, however. Rather, the trial judge observed for the record that the Petitioner "was simply honoring his grandmother [by] standing as she exited. However, he was

not given permission to do that by the Court. . . . No one gave him permission to stand. He's under close scrutiny by the deputy . . . [a]nd the deputy was under orders that if [the Petitioner] failed to obey the deputy's orders, the deputy was to use the stun device. And that's what happened." (Appendix 2, at 10).

So at the time that the Petitioner was administered an electric shock via the stun belt, it was administered by a courtroom deputy who had been earlier told to shock the Petitioner if the Petitioner disobeyed the deputy's orders — not the court's orders. The trial judge's comments immediately after the electric shock to your Petitioner make it clear that the Petitioner was not attempting to escape, not attempting to remove the stun belt, and not attempting to assault or physically injure anyone in the courtroom. These comments also make it clear that the trial judge had delegated to the courtroom deputy the decision whether and when to activate the stun belt, and that the courtroom deputy's decision could be independent of any "facially valid order" made by the trial judge to the Petitioner. This delegation of duties from the trial judge to the courtroom deputy does not comport with those due process protections previously found acceptable in *Hawkins*.

### B. Because The Trial Court And The Intermediate Appellate Court Disregarded Federal Constitutional Due Process Principles That Protect The Petitioner From The Arbitrary And Capricious Activation Of A Stun Belt To Enforce Courtroom Decorum, This Court Should Accept Review Pursuant To A Writ Of Certiorari.

If the ruling of the Tennessee Court of Criminal Appeals is allowed to stand, then no criminal defendant in Tennessee — unlike in Texas — who is forced to wear a stun belt at trial will be safe from arbitrary and capricious activation of that stun belt by a courtroom deputy who has been delegated that responsibility by the trial judge. This is especially true when there is no violence, attempt at escape, or attempt to remove the stun belt by a defendant — merely a violation

of courtroom decorum, as in the case at bar. In such a case as this one, the due process rights of criminal defendants under the Fifth Amendment to the United States Constitution, as made applicable to the States by the Fourteenth Amendment, are clearly implicated.

This Court should accept review in order to secure the settlement of an important question of law — to-wit, whether the trial court's delegation of the determination whether your Petitioner violated a "facially valid order" that would justify rendering a 50,000-volt electric shock to the Petitioner — and grant this Petition for a writ of certiorari to the Supreme Court of Tennessee.

## CONCLUSION

This case presents several important issues involving divergent application by two different States of fundamental due process rights to bodily integrity under the Fifth Amendment to the United States Constitution and the right to a jury trial, free from unfairly prejudicial taint, under the Sixth Amendment to the United States Constitution, in the context of the use of an electric stun belt on a criminal defendant in front of the jury that is determining his guilt.

No material facts of this case are in dispute. This Court can resolve the questions presented, and resolve the disparate and divergent application of due process rights under the Fifth Amendment as well as the differing rights among the States to a jury trial free from unfair prejudice under the Sixth Amendment, by accepting review of this case.

The petition for writ of certiorari should be granted.

Respectfully submitted this 12th day of July, 2022.

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## CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the above and foregoing document has been served upon all counsel of record by placing said document in the United States Mail, with sufficient prepaid first-class postage thereon to cause delivery, to the following:

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This 12th day of July, 2022.

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