No. 20-701

IN THE

Supreme Court of the United States

JAMES CALVERT,
Petitioner,

vs.

STATE OF TEXAS
Respondent.

On Petition for Writ of Certiorari to the
Texas Court of Criminal Appeals

RESPONDENT'S BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTIONS PRESENTED

1. Does the Sixth Amendment require trial courts to override a defendant's *Faretta*[1] rights?

2. Does the Eighth Amendment require a new trial where the State introduces marginally relevant future-dangerousness evidence, even if harmless?

3. Does a court deputy's activation of a defendant's shock cuff outside the presence of the jury constitute structural error, requiring a new trial?

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[1] *Faretta v. California*, 422 U.S. 806 (1975).

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BRIEF IN OPPOSITION

Petitioner James Calvert requested to represent himself in his capital murder trial. After a forensic psychiatrist found he was competent to do so, the trial court accepted his waiver of counsel. Calvert represented himself through approximately fifty pretrial hearings, voir dire, and roughly three weeks of the jury trial. Although not his best advocate, he demonstrated an understanding of case law and the trial process. He also engaged in obstructionist conduct and defied the trial court's orders, which ultimately led to the revocation of his pro se status and to a court deputy's activation of his shock cuff during a jury recess.

Calvert claims that the trial court violated his Sixth and Eighth Amendment rights and that the deputy's activation of the shock cuff was structural error. But in each case, the purported violations assume facts the record refutes. And in each case, his arguments are based in his personal sense of justice, which cannot be reconciled with this Court's precedent. The petition should be denied.

STATEMENT OF THE CASE

I. FACTS OF THE CRIME

Calvert married Jelena in 2004, and within four years, they had two children together. *See* 129 RR 133; State Ex. 27. Over the course of their marriage, Calvert threatened to kill Jelena, and she became increasingly fearful that he would. 129 RR 38–40. They divorced in 2010. 129 RR 132–33; State Ex. 27.

In 2012, Jelena sought and obtained a change in custody, allowing her to move with the children to

Houston. 128 RR 185–87; 129 RR 135. Twelve days later, after a series of phone calls and text messages from Calvert, Jelena told four people she was afraid Calvert was going to hurt her. 128 RR 142, 145; 129 RR 38–50, 83–84; 132 RR 143–69, 184; 135 RR 115–16. Shortly thereafter, she was murdered. *See* 129 RR 65; 132 RR 142, 171–76; 137 RR 23; 158 RR 165.

The evidence showed that someone broke into Jelena's home,[2] and shot her six times in front of her then-four-year old son, *see* 128 RR 54–65; 132 RR 135; 153 RR 73; 158 RR 16–40—in the back, then after she fell, in the abdomen, arm, and, finally, the back of the head. 158 RR 110. Within minutes of the gunshots, a man who looked like Calvert was seen leaving her home carrying their son. 132 RR 73–83; 137 RR 23–35.

Calvert fled with his son, stopping at McDonald's restaurants along the way, to connect to WiFi to search Jelena's murder and related Amber Alerts. 138 RR 144–81; 139 RR 163–66; 159 RR 120–39; State Ex. 147. That evening, Calvert engaged the police in a high-speed chase in West Monroe, Louisiana. 139 RR 111–14, 145–47; 140 RR 22, 180–81; 141 RR 82–89, 120; 142 RR 90; State Exs. 149, 151, 157 164 & 165.

When the police finally caught Calvert, they removed the loaded murder weapon from his lap and physically extracted him from his car. 139 RR 164–66; 140 RR 168–69; 141 RR 89–96; 148 RR 97–98, 100–05, 113–14. Another fully loaded pistol was found on the floorboard in front of his son, and four more guns in the

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[2] 132 RR 109; 153 RR 71.

trunk. 140 RR 21; 141 RR 38–39, 96; 149 RR 40–45, 55–65, 72–76, 96–97, 129–30; 150 RR 46–47, 132, 133, 135, 138, 148, 153, 170, 179; 153 RR 90–92. Jelena's phone was also was also found in his car. 128 RR 153, 155; 142 RR 110; 153 RR 91.

II. PUNISHMENT EVIDENCE

A. THE STATE'S PUNISHMENT CASE

The State called twenty-four witnesses, twenty-two of whom testified to Calvert's character.

Thirteen Smith County jail employees testified about their experiences with Calvert. They described him as "irate and combative,"[3] "manipulative,"[4] "controlling,"[5] "difficult,"[6] "disrespectful,"[7] "aggressive,"[8] "verbally abusive,"[9] "non-compliant,"[10] "high risk,"[11] and "dangerous."[12] They supported their characterizations of him with specific experiences: For example, Calvert actively resisted officers' attempts to move him, requiring them to carry him. 162 RR 46, 70, 74, 78–80,

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3 162 RR 45; 163 RR 64.

4 162 RR 105, 131, 147; 163 RR 63.

5 162 RR 129, 131, 150; 163 RR 64; 164 RR 164, 174, 196.

6 162 RR 142; 163 RR 63, 65.

7 162 RR 148; 163 RR 27, 61, 64; 164 RR 215.

8 164 RR 208.

9 162 RR 70.

10 162 RR 70, 143; 164 RR 196, 208; 162 RR 102; 164 RR 164.

11 162 RR 102.

12 162 RR 105, 143; 163 RR 66; 164 RR 237.

87–88, 103–04. He kicked his leg brace at a deputy, so that it hit the deputy. 164 RR 198–201. Calvert called the officers racial slurs and other names, got in their faces, threatened them, and ordered them around. 162 RR 69, 74, 88–98; 163 RR 10, 12–13, 36, 52–55, 64, 98; 164 RR 176–77, 190, 198–201, 224. He stole court exhibits. 163 RR 12. He had his family members send packages that appeared to be from Amazon, allowing him to bypass the jail's search policies. 164 RR 134–35. He was caught with a handcuff key and a razor blade, along with other dangerous contraband. 162 RR 29–34, 36–37, 101–02. On cross-examination, though, defense counsel elicited from jail personnel that Calvert did not assault anyone while awaiting trial. *E.g.*, 162 RR 114, 122; 163 RR 18, 82–83.

The State also called two of Calvert's ex-girlfriends and his first ex-wife. Calvert's ex-girlfriends testified generally to his controlling nature and misogyny. 165 RR 38–43; 167 RR 97–114. Calvert's ex-wife, Deidre ("Dee Dee") Adams, described him as "extremely intelligent" but "controlling" and "manipulative," with "an explosive temper." 165 RR 91. Dee testified that Calvert threatened to kill her while holding a gun to her head and beat her until she could not move. 165 RR 100–02, 112–13.

Calvert's sister, Debbie Campbell, testified that she believed her brother was dangerous, 166 RR 94. She described him as "very intelligent, . . . controlling and manipulative." 166 RR 89. She was concerned he was going to "lose it" and "shoot people" before he did. 167 RR 54. Calvert called Debbie once, threatening to shoot his first ex-wife, Dee and her family if they stepped foot

on his lawn. Calvert also made veiled threats to Debbie based on her decision to testify in his family proceedings, suggesting that Debbie would not see her nephew again or that something would happen to her sick husband. 166 RR 86; 167 RR 34.

Three of Calvert's acquaintances who befriended Jelena when she moved to Tyler also testified. They observed Jelena to be afraid of Calvert early on and tried to help her escape. *See e.g.*, 166 RR 52–54; 166 RR 56; 167 RR 130–31.

The State also called two mental health experts, Drs. Edward Gripon and Michael Arambula. Dr. Gripon observed Calvert's personality to be controlling, excessive, overly organized, rigid, and defiant. 167 RR 196. Because personality characteristics are often cemented by eighteen years of age, the doctor explained that Calvert's would likely follow him. 167 RR 201–02. The doctor also spoke to Calvert's history of, and treatment for, depression and anxiety, 167 RR 170–71, but explained that neither affected his ability to control his behavior. Dr. Arambula's conclusions were similar. 168 RR 17–126. He testified that Calvert had a severe personality pathology that would present special risks wherever he went. 168 RR 41–42.

Finally, the State called Warden Stephen Bryant and retired prison guard David Logan to testify to the prison environment and the opportunity for violence therein. Warden Stephen Bryant testified generally about the prison system and where Calvert would be housed in if he received a life sentence. 164 RR 65–73. Logan testified that attacks on prison guards were frequent and spoke of one he endured. 164 RR 12–13.

After an inmate managed to free himself from his handcuffs, 164 RR 25–26, he stabbed Logan in the eye with a pencil leaving Logan disabled and blind in that eye, 164 RR 28.

B. CALVERT'S CASE IN MITIGATION

In mitigation, Calvert called his first cousin, Jason Calvert, 169 RR 10. He and Calvert were very close as children and continued their relationship as adults. 169 RR 13–16. Jason testified that Calvert was a "great" father, 169 RR 18, albeit "ornery" like all the Calvert men. 169 RR 30.

III. THE JURY INSTRUCTIONS AND VERDICT

Before submitting the special issues, the trial court twice instructed the jury to consider Calvert's circumstances and character to the extent that it mitigated against the death penalty. 171 RR 7, 11. Still, the jury found Calvert would probably commit acts of violence posing a continuing threat to society and no mitigating evidence warranted a life sentence. 171 RR 157–58. The trial court sentenced Calvert to death. 171 RR 166–67.

IV. CALVERT'S SELF REPRESENTATION

A. CALVERT'S WAIVER OF COUNSEL

Jeffrey Haas and Jason Cassel were appointed to represent Calvert in November and December 2012. CR 22. About three months after his appointment, Haas moved to withdraw, CR 79–80, and at a hearing on the motion, he described his and Calvert's strategic disagreement over pursuing an insanity defense and whether to file for change of venue. 5 RR 9–12. The court

denied the motion to withdraw and advised against representing himself. 5 RR 28. Haas and Cassel remained counsel. *See* 5 RR 24–29.

A year later, Haas again advised the court that Calvert wished to proceed pro se, and Calvert again confirmed. 12 RR 3–4. The court appointed Dr. Mitchell Dunn to examine Calvert to determine whether he had the ability to knowingly, intelligently, and competently waive his right to counsel. 12 RR 5–10; 2 Supp. CR 119. Calvert participated in the evaluation and stated he understood it was "to make sure he [didn't] have a serious mental illness that might incapacitate [him] to represent [him]self." 2 Supp. CR 119. Based on an almost-three-hour interview and Calvert's mental health history, Dr. Dunn concluded Calvert did not have any such illness:

> Although Mr. Calvert has suffered from symptoms of a major depressive disorder, current symptoms secondary to that illness do not have a significant impact on his day-to-day functioning. In addition, symptoms of mental illness do not appear to be impacting his reasoning with regard to making a decision to represent himself.

See 160 RR 23 (quoting Dr. Dunn's report). Dr. Dunn reported that Calvert wanted to represent himself to have "more flexibility of doing what [he wants] to do." 2 Supp. CR 125. Finally, Dr. Dunn opined "to a reasonable degree of psychiatric certainty that [Calvert was] competent to waive his right to counsel and to represent himself." 2 Supp. CR 125.

At a subsequent hearing on his request to proceed pro se, Calvert expressed his dissatisfaction with Haas's management of his case—this time, complaining about the team of investigators and the failure to investigate issues he wanted to pursue. 13 RR 6–8. Haas agreed that his and Calvert's relationship was strained because Calvert "ha[d] ideas of what he want[ed] to do, how he want[ed] to do it and when he want[ed] to do it that [Haas] . . . disagree[d] with." Haas explained to Calvert:

> You know the things you're wanting me to do, when to do it, how to do it, I'm not going to do. And if you want these things done, then you're either going to have to find other counsel who will do it, which I seriously doubt, or you can act as your own counsel, and if you're your own counsel you can have total control over the things you want to do and how.

13 RR 15. The trial judge asked Calvert and counsel whether "an effort could be made to see if any of the[] matters could be resolved" so Calvert could pursue "some other course" besides representing himself. 13 RR 47. Calvert declined. 15 RR 36–51.

The judge reviewed the indictment and elicited Calvert's acknowledgement that he understood the charges against him. 14 RR 5–8. In response to the judge's admonishments and questioning, Calvert showed his understanding and familiarity with the sentencing process (including the special issues); pretrial motions (including grounds for suppression); the jury selection process (including challenges for cause and peremptory strikes and the disadvantages he would

face during the process); the definition of mitigating evidence; the types of experts that could testify at the sentencing phase; the appeal process; the writ process; his responsibility for drafting jury charges; and the high degree of "trial ability," qualifications, and experience generally required for an attorney to defend a capital case. 14 RR 9–54.

The judge reviewed the process of cross-examining expert witnesses, advising Calvert that defense counsel knew how to do it. 14 RR 33, 38. The judge repeatedly emphasized Calvert would have to make proper objections in order to keep inadmissible testimony out. 14 RR 33–36. The judge noted that Calvert would be responsible for finding experts and other witnesses and having them available to testify. 14 RR 39–42. The judge emphasized the disadvantages that Calvert would face as an incarcerated pro se defendant, as opposed to defense counsel who could "do all that." 14 RR 43. Calvert reiterated that he understood. 14 RR 43.

Based on Dr. Dunn's report, the judge's own communications with Calvert, and defense counsel's representations, the trial judge concluded that Calvert was competent to waive his right to counsel and represent himself. *See* 14 RR. Trial on the merits was scheduled to begin eighteen months later.

B. PRETRIAL PROCEEDINGS

For security reasons, Calvert wore a leg brace that limited his mobility during some of the pretrial proceedings. *See* 38 RR 57. At a hearing on October 2, 2014, Calvert requested that the trial court utilize a shock cuff at trial instead of the leg brace. 38 RR 142–45. The trial court granted his request. 38 RR 143.

Though not explained in the record, it appears Calvert wore a shock cuff and a leg brace during trial. Pet. App'x 17a.

Transport to and from jail was during pretrial proceedings was problematic. On one occasion, Calvert got in officers' faces and yelled at them, calling one a racial slur and the other stupid. He kicked his leg brace off so that it hit one of the officers. On another occasion, Calvert refused to be handcuffed when it was time to return to jail, grabbing counsel table and stiffening his arms. *See* 162 RR 103–04, 122–23, 134–35. Unable to move his arms, officers activated his shock cuff. 164 RR 206. Calvert yelled and broke his hold on the table but continued resisting and fighting while four officers worked together to handcuff and transport him. When Calvert returned to jail, he declined to visit the medical clinic, stating he "was okay" and "[didn't] think [he] needed to." Pet. App'x 17a–18a. Thereafter, Calvert goaded one of the deputies about activating the shock cuff during the trial, "I hope wearing this shock bracelet that I don't do anything in court to make you shock me." 164 RR 172.

"Pretrial proceedings [also] became extremely protracted and difficult." App. Brief 11. Calvert stole courtroom exhibits. 70 RR 14, 23, 27, 63, 66–69, 88, 97, 122–30; 132 RR 7–11. He disregarded, defied, and/or argued with court orders. *E.g.*, 54 RR 26–29; *cf.* 118 RR 10–16. He abused his lap top privileges and then repeatedly complained about his loss thereof. 39 RR 51–64, 146–70, 181–214; 40 RR 43–118; 41 RR 17–71; 43 RR 9–91. He filed multiple untimely and unwarranted motions for recusal. 37 RR 22, 48–49, 72, 75, 79, 96, 102–

04, 110–12, 126, 168. He lied to the court that the State had altered exhibits or failed to serve him. *E.g.*, 30 RR 119–21. He disrespected the judge, 66 RR 84–85 ("I'm done with you, Skeen."), and he refused to answer the court's questions, 64 RR 39–48. Exasperated with Calvert's defiance, disrespect, and obstructionist conduct, the court admonished him that he would lose his right to represent himself if he continued. *E.g.*, 66 RR; 67 RR; 70 RR.

C. THE TRIAL

Calvert intended to drag the trial out, *see* 146 RR 194–99, and he did. He made constant objections to disrupt the State's presentation of evidence. *E.g.*, 148 RR; 149 RR; 150 RR. He repeatedly re-urged motions and reasserted objections that the court had clearly denied and overruled again and again. *E.g.*, 151 RR 9–11; 154 RR 27-30, 39–40; 155 RR 43, 140, 145, 149

Calvert intended to introduce error into the proceedings, *see, e.g.*, 25 RR 119; 169 RR 92–93, 99, and he certainly tried to do so. When the State agreed to withdraw evidence based on Calvert's motions to exclude, he turned around and attempted to introduce that very evidence to suggest that the State was hiding it. *E.g.*, 152 RR 77–78, 112–16; 153 RR 10–11; 155 RR 64–85. He raised issues in front of the jury after explicitly being ordered not to. *E.g.*, 146 RR 196–201; 154 RR 41–43; 155 RR 149. He disregarded the court when it sustained the States objections. 152 RR 77; 155 RR 66–67. He misrepresented what the evidence he had would show to suggest the State had tampered with it. *E.g.*, 155 RR 11–13, 171–72. He falsely asserted that the court reporters were "under investigation." 154 RR 29–

30. He falsely accused a witness of planting evidence. 155 RR 51, 189. He repeatedly misrepresented that he had not received discovery when the record showed he had. *E.g.*, 151 RR 81–82; 152 RR 132–33; 153 RR 110-20; 154 RR 9–19, 34, 36-39; 155 RR 183.

Whether he intended it or not, Calvert's disrespect for the trial court never ceased. He refused to answer the court's questions. 147 RR 74–80. He refused to stand when the court instructed him to do so. 147 RR 45, 73; 151 RR 104, 119, 143; 152 RR 60; 155 RR 145, 148, 163, 178, 221. He told the trial court that it did not do what it explicitly said that it just did. 151 RR 47; 154 RR 39–41. And he repeatedly argued with and interrupted the court. 151 RR 89; 154 RR 15–16.

After about three weeks of enduring Calvert's trial behavior, the judge conducted a hearing outside of the jury's presence. The judge asked Calvert where he was going in his last cross-examination. 155 RR 221. Despite repeated admonishments to stand up when addressing the court, Calvert responded from his chair. The court instructed Calvert to stand up, and three times, deputies urged him to follow the court's order. 155 RR 221. When Calvert refused, a bailiff activated the shock cuff on his ankle, to which Calvert responded, "I'm sure the Court very much enjoyed that." 155 RR 221.

At that point, the judge terminated Calvert's pro se status:

> [F]or all the reasons this Court's gone over, all the admonishments I've given you . . . . I have warned you . . . . [Y]our right to represent yourself is not just terminated on that type [of] disrespect for this Court, it's

> terminated on everything I've put up with from you right up through the last set of admonishments I've given you. . . . [Y]our right to represent yourself, based on all your conduct, all the admonishments I've given you, right up to right now, your right to represent yourself is terminated.

155 RR 222–224. The trial court reappointed Jeff Haas and Jason Cassel as counsel. The next morning, September 16, the court continued the case until September 28 to give counsel time to prepare for trial. 156 RR 12–13. When the judge informed the jury of the new schedule and explained that defense counsel would be representing Calvert when trial resumed, Calvert interjected, "And the jury should know that was not voluntary." 156 RR 13. The judge told him to be quiet and sit down, but Calvert interrupted two more times to reiterate his disagreement. 156 RR 13–14.

V. COMPETENCY HEARING

On September 24, 2015, Haas moved for an informal inquiry into Calvert's competency to stand trial. The trial judge held a hearing on the motion on September 30th. 160 RR. Defense counsel highlighted poor decisions Calvert made while representing himself as evidence that he lacked a rational understanding of the proceedings. 160 RR 13–16. The State called Drs. Arambula and Gripon. Dr. Arambula reviewed Calvert's medical records and found that, over the past two decades, Calvert's depression was mild to moderate, never serious. And during the first two weeks of the trial, Dr. Arambula did not observe Calvert to have any elements of depression, nor any conduct consistent with

irrational thinking due to mental illness. 160 RR 49–55. To the contrary, the doctor observed that Calvert "had sufficient skills to try to strategize, recognized what he was up against and, in turn, try to defend himself." 160 RR 61. Dr. Gripon agreed. 160 RR 78–79.

The trial court found Calvert competent to stand trial. 160 RR 109. It went on to clarify that its decision to terminate his pro se status had nothing to do with his competency to represent himself at trial. 160 RR 113, 116. The trial went on, with Haas and Cassel as counsel.

VI. DIRECT APPEAL

On direct appeal, Calvert challenged the trial court's rulings and asked the Court of Criminal Appeals (CCA) to limit this Court's holdings. Pertinent here, he asserted that (1) the trial court violated due process when it allowed him to be shocked during trial for his failure to maintain proper decorum, App. Brief 45–56; (2) the CCA should limit *Faretta*'s holding to say that it does not apply to defendants in capital cases, 58–61; (3) the trial court erred when it found him competent to waive counsel despite his obsessive compulsive personality disorder, 61–74; (4) the trial court committed reversible error and violated the Eighth Amendment when it admitted the State's evidence of prison violence during the punishment phase of his trial, 190–200. The CCA rejected his claims for reasons discussed in detail below.

REASONS TO DENY THE PETITION

I. CALVERT FAILS TO JUSTIFY A GRANT OF WRIT OF CERTIORARI.

At the outset, Calvert fails to provide justification for granting a writ of certiorari. He does not allege a circuit split. And while he calls his issues important and alleges a conflict amongst state courts of last resort, the cases he relies upon undermine his allegations on both. This Court's precedent provides clear answers to the questions he poses, and state and circuit courts are applying it without issue. What remains is Calvert's implied disagreement with the CCA's factual findings and complaints about this Court's precedent as it stands. Driven by *his* perception of his trial and *his* perception of justice, he asks this Court to review and summarily reverse the CCA because (1) it declined to interpret *Edwards*'s permissive holding as mandatory; (2) it declined to expand the Eighth Amendment's individual sentencing requirement to exclude evidence; and (3) it declined to add a new category of structural error for a claim amenable to harmless error analysis. With no courts on his side, the only conflict he poses is between him and the Court. Not the type of conflict that warrants review, *see* Sup. Ct. R. 10(a)–(c), this Court should deny Calvert's petition. And if not for that reason, there are more below.

II. CALVERT'S SIXTH AMENDMENT RIGHTS WERE NOT VIOLATED WHEN HE EXERCISED HIS *FARETTA* RIGHTS.

Calvert argues that the trial court's acceptance of his waiver of counsel violated his Sixth Amendment right to counsel because he was mentally ill and unable

to represent himself in his capital case. Pet. 14–23. From there, he argues that *Edwards*'s rationale does not allow state courts to honor such waivers. 14–19. Finally, he urges the Court to grant certiorari based upon a conflict amongst the states in their interpretation of *Edwards*. Pet. 20–23. But his factual allegations are refuted by the record, his legal arguments by the Court's precedent, and the purported conflict by the cases he cites (and many more).

A. THE CCA PROPERLY APPLIED *EDWARDS* WHEN IT REJECTED CALVERT'S CLAIM.

Calvert claimed in the CCA that the trial court violated his Sixth Amendment rights when it allowed him to represent himself. App. Brief 58–89. The CCA rejected his claim for several reasons. Among them was that the record contained "no evidence that [he] was incompetent to exercise his right to self-representation." Pet. App'x 46a. Also pertinent, the lower court rejected Calvert's contention that *Edwards* requires trial courts to override *Faretta* rights, explaining that it only gives them permission to do so. Pet. App'x 45a.

Calvert bypasses the CCA's factual findings, replacing the doctors' and the trial court's assessments of his mental health with allegations that appear to be based on a different trial. Citing a few objections and cross-examinations, Calvert calls his trial a "continual demonstration of [his] bizarre behavior before the jury." *See* Pet. 14. From there, he faults the CCA for declining to interpret *Edwards* to *require* the trial court to override his *Faretta* rights, as a personality-disordered defendant in a capital murder trial. *See* Pet. 6, 14–17.

1. *FARETTA* AND ITS PROGENY

The Sixth Amendment does not "compel a defendant to accept a lawyer he does not want." *Faretta*, 422 U.S. at 833. Thus, the defendant who does not want to accede to counsel "full authority to manage and conduct [his] trial" is not forced to do so. *Taylor v. Illinois*, 484 U.S. 400, 418 (1988). The Sixth Amendment protects his right to represent himself, *Faretta*, 422 U.S. at 807, entitling him to preserve actual control over the case he presents to the jury, *McKaskle v. Wiggins*, 465 U.S. 168, 178 (1984). Although his decision to do so is "usually" harmful to his case, it must be honored. *See id.* at 177 n.8.

The right to self-representation, like others, is not absolute. *Edwards*, 554 U.S. at 171. A defendant can forfeit his right to self-representation by "deliberately engag[ing] in serious and obstructionist misconduct." *Faretta*, 422 U.S. at 834 n.46. And a defendant can only elect self-representation by "knowingly and intelligently" waiving his corresponding right to counsel. *Id.* at 835. The competence required to waive counsel, however, is not high. *Godinez v. Moran*, 509 U.S. 389, 399 (1993). That a defendant has no legal knowledge or makes for a poor advocate does not bear on his competency. *Id.* at 400. If he is competent enough to stand trial, he is competent enough to waive counsel. *Id.* at 399 (citing *Dusky v. United States*, 362 U.S. 402 (1960). While states remain free to adopt more demanding standards, their decision to do so remains a matter of choice, not constitutional dictate. *Id.* at 402. Where a state so chooses, the Constitution permits its trial courts to override a defendant's waiver—and foist

counsel upon him—if severe mental illness renders him incompetent to conduct trial proceedings by himself. *Edwards*, 554 U.S. at 177–78.

2. *EDWARDS* IS PERMISSIVE.

Calvert's complaint is that the CCA interpreted *Edwards*'s holding as permissive. He argues that the case's permissive holding contravenes the Sixth and Fourteenth Amendments. *See* Pet. 14, 17. He explains that *Edwards*'s rationale for permitting a state to override a schizophrenic defendant's right to self-representation "make[s] clear that a state *must* do so" under the circumstances here. Pet. 17. Hardly.

To be sure, circuits that have confronted the question unanimously disagree with Calvert: "Under *Edwards*, the 'Constitution *may* . . . allow[] the trial judge to block [the defendant's] request to go [at] it alone, but it certainly did[not] require it.'" *United States v. Berry*, 565 F.3d 385, 391 (7th Cir. 2009); *United States v. Tucci-Jarraf*, 939 F.3d 790, 796 (6th Cir. 2019); *United States v. Fields*, 761 F.3d 443, 467 (5th Cir. 2014); *United States v. Bernard*, 708 F.3d 583, 590 (4th Cir. 2013); *United States v. Turner*, 644 F.3d 713, 724 (8th Cir. 2011); *United States v. DeShazer*, 554 F.3d 1281, 1290 (10th Cir. 2009); *United States v. Ferguson*, 560 F.3d 1060, 1070 n.6 (9th Cir. 2009); *United States v. Posadas-Aguilera*, 336 Fed. App'x 970, 975–76 n.5 (11th Cir. 2009); *United States v. VanHoesen*, 450 Fed. App'x 57, 61 (2d Cir. 2011).

Even under *Edwards*, a trial court's discretion to override a defendant's waiver of counsel is not absolute. "Severe mental illness" appears to be the condition precedent. *See Berry*, 565 F.3d at 391. Certainly, the

right cannot be denied because a defendant lacks legal knowledge or otherwise makes a poor advocate. *See Faretta*, 422 U.S. at 834 n.4. And this Court repeatedly cabined its holding in *Edwards* with phrases like "mental derangement," "gray-area defendant," "borderline competent criminal defendant," and, of course, "severe mental illness." 554 U.S. at 171, 173–175. Edwards, after all, suffered from a schizophrenia.

Calvert has a personality disorder. While he suggests that his prolific objections turned his trial into a spectacle of his mental illness, *see* Pet. 14, two forensic psychiatrists who observed him at trial did not think so, 160 RR 49–57, 85–88. In fact, Drs. Arambula and Gripon testified that Calvert's behavior and self-advocacy was inconsistent with, even contrary to, symptoms associated with serious mental illness. 160 RR 49–57, 87–88. Their evaluations were consistent with Dr. Dunn's pretrial evaluation. 2 Supp. CR 125. Rather than rebutting the experts' contemporaneous assessments, Calvert directs the Court to a few awkward objections and cross-examinations. *See* Pet. 8 Awkward advocacy, though, is not a symptom of mental illness. It is what self-representation looks like in the normal case. *Cf. Faretta*, 422 U.S. at 834.

Contrary to Calvert's allegations, his trial court did not turn a blind eye to his mental illness and the impact thereof. *See* Pet. 19. It required him to undergo independent psychiatric evaluation, 5 RR 3–4, and only accepted his waiver after he was determined "competent to waive counsel *and to represent himself on a case of capital murder* for which the State is seeking the death penalty." 2 Supp. CR 117. Because Calvert was not

severely mentally ill, deranged, or even borderline competent, *Edwards* was not implicated, meaning the trial court did not even have discretion to override his *Faretta* rights. *See* 554 U.S. at 173–75. But if there were any doubt, the trial court made its observations explicit: Calvert's behavior at trial did not raise questions about his competency "to handle his case." 160 RR 113, but instead demonstrated that he "ha[d] the capacity, . . . to engage in a reasoned choice of legal strategies and options. . . ." 160 RR 116.

Notwithstanding, Calvert asks the Court to make *Edwards*'s permissive holding mandatory—that is, to require trial courts to inquire as his did, or better yet, to require trial courts to override *Faretta* for defendants like him. *See* Pet. 19. But absent severe mental illness, it is unclear what Calvert's mandatory version of *Edwards* would even look like. Would trial courts be required to override the rights of defendants with personality disorders? Or just the disrespectful ones? Perhaps those with anxiety during their trial? Treated depression? Too much zeal? The answer is obvious: This Court should decline to adopt a mandatory standard for the same reason it declined to do so in the first place: Trial courts are in the best position to assess a defendant's mental health and any impact it may have on his trial. *Edwards*, 554 U.S. at 175–77. Sitting in that position, Calvert's trial court thoroughly considered the issue.

Framed as a mental health issue, Calvert's claim has very little to do with mental health. He decided to represent himself because he wanted "total control" of the presentation of his case. 15 RR 11–16; *see also* 2

Supp. CR 123–25; *McKaskle*, 465 U.S. at 178. Convicted anyway, he seeks a new version of *Faretta* whose rights inure exclusively to the wise. He explains that the right to counsel is essential and counsel ensures a fair trial and is less burdensome on trial courts. *See* Pet. 16. He is not wrong about either, but defendants enjoy the constitutional right to represent themselves notwithstanding—according to this Court, centuries of history, the Sixth Amendment, and the personal autonomy that forms "the lifeblood of the law." *Faretta*, 422 U.S. 812–834. That Calvert's decision was unwise in the way *Faretta* predicted it would be is not grounds to override *Faretta*. *See* 422 U.S. at 834.

Nor does the charge Calvert faced justify the change in law he seeks. *United States v. Davis*, 285 F.3d 378, 384–85 (5th Cir. 2001) (holding right to self-representation applies in capital proceedings); *Silagay v. Peters*, 905 F.2d 986, 10007–08 (7th Cir. 1990) (same); *see also Lehhard v. Wolff*, 44 U.S. 807, 808–09 (Marshall, J., dissenting) (1979) (discussing defendant's waiver of counsel during capital murder trial); *Burton v. Davis*, 816 F.3d 1132, 1141–47 (9th Cir. 2016) (reviewing trial court's denial of defendant's *Faretta* rights in capital murder trial); *Simpson v. Battaglia*, 458 F.3d 585, 597 (7th Cir. 2006) (reviewing trial court's appointment of standby counsel in capital murder trial); *Nelson v. Alabama*, 292 F.3d 1291 (11th Cir. 2002); *Townes v. Murray*, 68 F.3d 840, 845–46 (4th Cir. 1995) (finding valid trial court's *Faretta* inquiry in capital murder case); *Cook v. Schriro*, No. 97-cv-00146-RCB, 2006 WL 842276 (D. Ariz. Mar. 28, 2006) ("Neither *Faretta* nor any subsequent ruling by the United States Supreme Court limits the Sixth Amendment's right to self-

representation to non-capital cases."); *Duncan v. United States*, No. 2:17-cv-00091-EJL, 2019 WL 1320039 (D. Idaho Mar. 22, 2019); *Lay v. Trammell*, 2015 WL 5838853, *23 (N.D. Okla. Oct. 7, 2015) (holding "that a criminal defendant may represent himself at all phases of a capital trial").

The right of self-representation is not contingent upon the complexity of litigation. Although Calvert was professionally unqualified to manage his case (or any other), "the competence required . . . is the competence to waive the right, not the competence to represent [one]self." *Godinez*, 509 U.S. at 399. Where—as here—the defendant is not suffering from a mental illness rendering him incompetent to conduct trial proceedings, his "ability to represent himself has no bearing upon his competence to choose self-representation." *Id.* at 400. While it is difficult to imagine a capital case in which self-representation is the wiser choice, a defendant's autonomy trumps judicial paternalism. And where the stakes are high, a defendant's autonomy should be held even higher. For whether the defendant or the judge is unwise, it is the defendant who faces the penalty—alone. *See Faretta*, 422 U.S. at 834; *Edwards*, 554 U.S. at 186–89 (Scalia, J., dissenting).

Nothing about the CCA's denial of Calvert's claim conflicts with this Court's precedent. Calvert's mischaracterization of the trial as a spectacle of his mental illness—when the record indicates it was not—underscores the need for trial court discretion in the first place. This Court should decline Calvert's request to rescind that discretion.

B. THE STATES' APPLICATION OF *EDWARDS* IS NOT A "CONFLICT."

Calvert argues that this Court's review is necessary to "resolve a conflict" among the states based on their misinterpretation of *Edwards*. Pet. 20–23. He asserts that the states are in "hopeless disarray" because some have adopted standards more elaborate than *Dusky*, while others have not. *See* Pet. 20–23. But, according to this Court, that it precisely what the Constitution permits. *See Edwards*, 554 U.S. at 177–78; *Godinez*, 509 U.S. at 402. The states' application of their own constitutionally-permissible standards is more federalism than a conflict requiring judicial intervention.

Calvert blames *Edwards* for the federalism. *See* Pet. 20. But in fact, states have been applying their own competency-to-waive-counsel standards since before 1975. *Faretta*, 422 U.S. at 813 & n.9 & 10 (citing state court constitutions conferring right to self-representation and state court decisions applying same); *see also Godinez*, 509 U.S. at 396 n.6. And in 1993, this Court approved, provided the standards do not fall below *Dusky*'s floor. *Godinez*, 509 U.S. at 402 ("While psychiatrist and scholars may find it useful to classify the various kinds and degrees of competence, and while *States are free to adopt competency standards that are more elaborindiate than the Dusky formulation*, the Due Process Clause does not impose these additional requirements.") (emphasis added). In 2008, this Court reviewed one such standard. It found Indiana's heightened standard constitutionally permissible, but, notably, declined to adopt the State's proposed standard

as a mandatory constitutional one. *Edwards*, 554 U.S. at 178. Instead, the Court left the standard and the inquiry where it was: with the states and their trial judges. Recognizing the erratic nature of mental illnesses, the Court explained that trial judges are best suited to make "fine-tuned mental capacity decisions, tailored to the individualized circumstances of a particular defendant." 554 U.S. at 175–77. Thus, a Nevada judge can honor the waiver of a depressed defendant, and an Indiana judge can override that of a schizophrenic one. *Compare Godinez*, 509 U.S. 389, *with Edwards*, 554 U.S. at 167–69.

Overlooking *Edwards*'s rationale, Calvert advocates for a mandatory standard to alleviate the "hopeless disarray" that is trial court discretion. Substantiating his hyperbole, he implies that Texas trial courts are bound to honor the *Faretta* rights of severely mentally ill defendants despite their apparent inability to represent themselves. *See* Pet. 20–23. But that is not the case. Even in Texas, trial courts maintain discretion to deny self-representation based on severe mental illness. *Chadwick v. State*, 309 S.W.3d 558 (Tex. Crim. App. 2010) (applying *Edwards*). And even in Texas, trial courts do. *E.g.*, *id.* (upholding trial court's denial of mentally ill defendant's request to proceed pro se where mental illness rendered him incompetent to proceed pro se, but not incompetent to stand trial); *In re JG*, Nos. 04-13-00825-cv & 04-13-00827-cv, 2014 WL 4627599 (App Ct.—San Antonio, Sept. 17, 2014) (same); *Randle v. State*, No. 10-19-00183-CR, 2020 WL 4518599 (Ct. App.—Waco Aug. 5, 2020) (same); *accord Lewis v. State*, 532 S.W.3d 423, 431 n.4 (Tex. Crim. App. 2016) ("The discretion of the trial court to deny self-representation

based on severe mental illness is well-established."); *cf. Davis v. State*, 484 S.W.3d 579 (Tex. App.—Fort Worth 2016) (reversing trial court where record did not support its determination that defendant had capacity to waive counsel and represent himself). Calvert's trial court did not because mental illness was not impacting his ability to represent himself. *See e.g.*, 160 RR 113, 116; 2 CR 125; *accord* 160 RR 61, 78–79.

Still, Calvert argues that *Edwards*'s permissive holding creates a disparity in justice between Texas and states whose legislatures have adopted heightened standards. Pet. 23. But he provides no empirical evidence to prove it, and his case offers little in the way of anecdotal support. In fact, his own sampling of cases tends to undermine his disparate-justice theory. In South Carolina, Oklahoma, and Maryland—where *Dusky* governs—defendants whose competency was not at issue were permitted to represent themselves. *See State v. Barnes*, 753 S.E.2d 545, 550 (S.C. 2014); *Stewart-Bey v. State*, 96 A.3d 825, 833 (Md. Ct. Spec. App. 2014); *Mathis v. State*, 271 P.3d 67, 72 (Okla. Crim. App. 2012). In Rhode Island, Michigan, and the District of Columbia—where heightened standards apply—the results were the same. *Williams v. United States*, 137 A.3d 154 (D.C. 2016) (finding trial court properly honored defendant's waiver where there was no sign of mental illness); *State v. Cruz*, 109 A.3d 381, 391 (R.I. 2015); *People v. Brooks*, 809 N.W.2d 644, 654–55 (Mich. Ct. App. 2011).

The fact is "gray area" defendants, competent enough to stand trial but not enough to represent themselves, are few. In Indiana, we know of a

schizophrenic defendant who fell into that category. *See Edwards*, 554 U.S. at 168–70. In Texas, we know of a few more. *Chadwick*, 309 S.W.3d at 563; *In re JG*, 2014 WL 4627599, at *3–4; *Randle*, 2020 WL 4518599, at *5; *Davis*, 484 S.W.3d at 581–82. But even in the states whose legislatures require their trial courts to apply heightened standards, defendants with personality disorders and/or depression do not typically fall into the "gray area" category. *E.g.*, *United States v. McKinney*, 737 F.3d 773, 778–79 (D.C. 2013) (upholding trial court's decision to honor a defendant's waiver of counsel, despite depression and personality disorder); *Loor v. State*, 240 So.3d 136, 140 (Dist. Ct. App. 3d 2018); *State v. McCullah*, 829 N.W.2d 191 (Iowa Ct. App. 2013); *State v. Brown*, 365 N.W.2d 867 (Wis. 2015) (upholding trial court's decision to honor waiver of depressed defendant). As it turns out, *Edwards* could not have saved Calvert from himself in Texas, or anywhere.[13]

From Calvert's sampling of cases, one thing is apparent: states are applying *Edwards*. There is no conflict, no disarray—just *Edwards*. This Court should decline to use its resources to rebuke state courts doing what it told them to do.

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[13] It is true that some states appear to afford trial courts discretion to override *Faretta* based on grounds other than mental illness. But in Calvert's sampling of cases, only *one* trial court utilized its discretion to do so. *See Shorthill v. State*, 354 P.3d 1093, 1109 (Alaska Ct. App. 2015). In the others, appellate courts remanded cases to the trial courts instructing them to apply a heightened standard. From the undersigned's review, it appears as though the heightened standards did not change the outcome in the trial courts.

III. THE EIGHTH AMENDMENT'S INDIVIDUALIZED-SENTENCING REQUIREMENT WAS SATISFIED.

Calvert asks this Court to grant certiorari because, during the punishment phase of trial, the State introduced specific evidence of the opportunity for prison violence through guard David Logan's testimony. He argues that the jury's consideration thereof violates the Eighth Amendment's individualized-sentencing requirement because Logan's testimony was not about him. Pet. 23–26. He omits that testimony from twenty-two other witnesses was, but perhaps it does not matter. The Eighth Amendment does not support his claim in any event.

A. THE CCA PROPERLY APPLIED THIS COURT'S PRECEDENT.

In the CCA, Calvert asserted that the trial court erred in admitting Logan's testimony and that the jury's consideration thereof violated the Eighth Amendment's individual sentencing requirement. App. Brief 190–200. The CCA found the evidence's admission erroneous but harmless, explaining that Logan's testimony was but "a small part of the State's lengthy punishment case," whose "overwhelming focus was on [Calvert's] behavior and prison conditions." Pet. App'x 147a–52a. The CCA rejected Calvert's Eighth Amendment claim because this Court has never "applied the individualized-sentencing requirement [to] assay[] the admissibility of future dangerousness evidence." Pet. App'x 152a (citing *Jurek v. Texas*, 428 U.S. 262, 271 (1976)). Calvert does not contend that the CCA is incorrect about that (it is not) but says that its denial of his claim "directly conflicts" with this Court's precedent anyway. Pet. 24.

He argues that the CCA "ignored" the requirement to ensure "the jury is able to render an individualized sentencing determination." Pet. 25. But if anyone is ignoring the law, it is him.

The Eighth Amendment's individualized-sentencing requirement is satisfied when a defendant can present, and a jury is able to consider, mitigating evidence. *E.g.*, *Kansas v. Marsh*, 548 U.S. 163, 171 (2006); *Jones v. United States*, 527 U.S. 373, 381 (1999); *Blystone v. Pennsylvania*, 494 U.S. 299, 207 (1990). Calvert presented mitigating evidence, and his jury was instructed to consider it. 169 RR 10–107; 171 RR 7, 11.

The individualized-sentencing requirement is what it purports to be: an affirmative requirement that ensures juries may consider a defendant's mitigating evidence. It does not excise any "sort" of testimony, nor does it prohibit the jury from considering same. *See* Pet. 26. While Calvert insists that the requirement does excise and prohibit, he identifies no court that has applied it as such. *See* Pet 23–26. If the absence of support is not enough to refute Calvert's contention, this Court's jurisprudence on the issue is: The Eighth Amendment does not "establish a special 'federal code of evidence' at capital sentencing proceedings." *Kansas v. Carr*, 577 U.S. 108, 123 (2016) (citing *Romano v. Oklahoma*, 512 U.S. 1 (1994)). Indeed, the Amendment is inapposite where "the defendant's claim is, at bottom, that the jury considered evidence that . . . clouded [its] consideration of mitigating evidence." *Id.* For claims such as Calvert's—that *one* witness's testimony rendered the jury unable to consider the testimony of *twenty-two* others—the Eighth Amendment provides no

relief. The CCA did not ignore a requirement but declined to apply an inapplicable one.

Calvert reverts to a parade of horribles. If the Eighth Amendment does not prohibit the admission of "this sort" of evidence, he warns, it could be considered relevant to future dangerousness in "every capital case." Pet. 26. He is not wrong that prison violence evidence may be considered relevant; it is. *Cf.* App. Brief 195 (accepting the relevance of prison violence evidence). The State often presents evidence to show violence in prison is possible, and defendants often present evidence to show it is rare. The adversarial process leaves the jurors to sort through and assess the reliability of that evidence. *See Barefoot v. Estelle*, 463 U.S. 880, 901 (1983), overturned on other grounds. Calvert chose not to call an expert to counter Logan's testimony at trial. His failure to utilize the adversarial process does not undermine efficacy of the process, and it certainly does not justify the global intervention he now seeks. *See id.*

There are safeguards beyond the adversarial process, too. Contrary to Calvert's warning, declining to accept his version of the Eighth Amendment does not mean David Logan will tell "every" capital murder jury of his injury. *See* Pet. 26. The Rules of Evidence provide a means for excluding such evidence, and if they fail, a defendant may have a claim in due process. *See Carr*, 577 U.S. at 123. That is, if he can show that the complained-of evidence was "unduly prejudicial" in a way that rendered his trial "fundamentally unfair." *Id.* (quoting *Payne v. Tennessee*, 501 U.S. 808, 825 (1991) (internal quotations omitted). Calvert cannot show either, *see* Pet. App'x 151a, so asks the Court to invoke

the Eighth Amendment in circumstances it said it would not, *see Carr*, 577 U.S. at 123. It should decline (again).

IV. THE COURTROOM DEPUTIES' ACTIVATION OF CALVERT'S SHOCK CUFF OUTSIDE THE JURY'S PRESENCE IS NOT STRUCTURAL ERROR.

As noted above, courtroom deputies activated Calvert's shock cuff on two occasions, both outside of the jury's presence. Calvert says nothing about the first (or the way he goaded the deputies about shocking him thereafter) but complains that the second constitutes structural error, entitling him to a new trial. Pet. 27–32. He asserts that the due process violation here fits "squarely and comfortably within the doctrine of 'structural' error." Pet. 28. But his understanding of the doctrine appears to be informed, at least in part, by cases that have nothing to do with it. Pet. 29–30 (citing *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *Rochin v. California*, 342 U.S. 165; *United States v. Booker*, 728 F.3d 535 (6th Cir. 2013).

A. THE CCA'S HARMLESS ERROR ANALYSIS CONFIRMS THAT THE ERROR IS NOT STRUCTURAL.

In the CCA, Calvert claimed that the deputies' activation of his shock cuff violated due process and was structural error. App. Brief 45–52. The CCA agreed that the incident violated due process but denied relief because the error was neither structural nor harmful. Pet. App'x 15a–25a.

Calvert argues that the CCA was wrong to apply the harmless error standard. But again, he fails to identify any court that has found such error structural.

And again, he argues that it simply must be because justice demands it. *See* Pet. 28. If this error is not treated as structural, he warns, trial judges will continue to shock defendants with impunity. Pet. 27–28. He rewrites the facts of his case to support his call for justice, alleging that the trial court "cho[se] to administer [the] electric shock" because "[Calvert] forgot to stand when addressing the court." Pet. 31. Neither is true, but even if the judge so chose, and even if shocked for forgetfulness, overturning Calvert's conviction—unaffected by the incident—is not necessary to deter shocking during judicial proceedings. If this Court assumes with Calvert that judges intentionally violate the Constitution to the extent that they are able (stopping only when the risk of being overturned becomes too great), *but see Withrow v. Larkin*, 421 U.S. 35, 47 (1975), structural error is not the only way to stop them. Criminal prosecutions already serve that purpose. *See* Pet. 31. And in any event, deterring judicial conduct is not a rationale for structural error.

"[A] structural error 'def[ies] analysis by harmless error standards.'" *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1907 (2017) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 309–10 (1991)). *Id.* For some such errors, the "effect of the violation cannot be ascertained." *Id.* at 108 (judicial bias). For others, the applicable right "protects interests that do not belong to the defendant." *Id.* at 1910 (public trial). And for others, the harm analysis would negate the right itself. *See id.* at 1908 (self-representation) (explaining that violation of *Faretta* rights would make conviction less likely). In each instance, application of the harmless error standard is

illogical. *See Sullivan v. Louisiana*, 508 U.S. 275, 280 (1993).

Missing this prerequisite, Calvert says little about whether the incident is amenable to analysis under the harmless error standard. *See* Pet. 30 n.4. Instead, he directs the Court to language from the doctrine's purpose, to suggest that it establishes a hierarchy of rights, for which structural error insulates the most important. *See* Pet. 28–29. He discusses errors that undermine the judicial process and the public perception thereof and places deputy shocking in that category. Pet. 29–31. But Calvert misses the mark. Structural error is not conscience-shocking error. It is error that defies analysis under the harmless error standard. *E.g.*, *Weaver*, 137 S. Ct. at 1907; *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1909–10 (2016) (interested appellate judge's failure to recuse himself from appellate panel structural because effect of error difficult to ascertain); *Sullivan*, 508 U.S. at 281–82 (deficient reasonable doubt instruction structural error because error not amenable to harmless error analysis). And while Calvert is correct that the doctrine's purpose is to "ensure insistence on certain basic, constitutional guarantees" affecting a trial's framework, Pet. 28 (quoting *Weaver*, 137 S. Ct. at 1907), the referenced guarantees are those the harmless error analysis would swallow. Calvert's is not one.

The harmless error standard applies seamlessly here, as seen in the CCA's analysis:

> There are two primary ways in which a shock cuff's activation may adversely affect the fairness of a trial. The

first is the negative effect on jurors' impartiality and the presumption of innocence—implicating the Fifth Amendment. The second is the negative effect on the defendant's ability to confer with counsel and otherwise participate in his defense—implicating the Sixth Amendment. Neither applies here.

There is no evidence that the shock cuff's activation had a negative effect on the jurors' impartiality or the presumption of innocence. The jurors were not present.

. . .

Further, the record contains no evidence that the shock cuff's activation affected [Calvert's] ability to confer with counsel and participate in his defense.

. . . [Calvert] was no more than momentarily incapacitated by the activations of the shock belt. And the record of this case does not indicate that [Calvert] was anxious or distracted by the possibility of another shock. After the first pretrial activation, [Calvert] continued to resist and fight the transport guards, and then repeatedly refused offers for medical treatment, stating that he was "okay." Thereafter, he very actively and consistently participated in his defense. And after the second midtrial activation, coming nearly a year later, [Calvert] continued arguing with the judge. . . .

> On this record, we conclude that the shock cuff's activation outside the jury's presence did not affect the jurors' impartiality, nor [Calvert's] presumption of innocence, nor [Calvert's] ability to be present at trial and participate in his own defense. We are confident beyond a reasonable doubt that the error did not contribute to the conviction or punishment.

Pet. App'x 22a–25a.

The error's effect on Calvert's conviction is ascertainable: There was none. The harm analysis is not obscured by the interests of other parties, as Calvert's due process rights protect his interests, and his alone. And finally, the harm analysis is not illogical, the deputy's activation of the shock cuff does not make Calvert's conviction less likely. The harm analysis works, and so it applies. *See Weaver v.*, 137 S. Ct. at 1907. This Court should decline Calvert's petition for review, along with his request for summary reversal.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

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