

STATE OF SOUTH CAROLINA  
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM MARION COUNTY  
Court of Common Pleas  
D. Craig Brown, Circuit Court Judge

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Appellate Case No. 2019-000476  
Lower Court Case No. 2010-CP-33-852

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FRED HALCOMB, JR., #311091,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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**PETITION FOR WRIT OF CERTIORARI**

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**ATTORNEY FOR PETITIONER.**

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## QUESTIONS PRESENTED

### **I.**

Whether the PCR court erred in concluding that the prosecution did not violate Brady v. Maryland, 373 U.S. 83 (1963), by failing to disclose an interview conducted by the State's investigator Dale Long of potential witness Vander McCray?

### **II.**

Whether the PCR court erred in concluding that the Petitioner's right to a fair trial was not violated by the heightened police presence inside and outside of the courtroom during his trial?

### **III.**

Whether the PCR court erred in concluding that defense counsel was not ineffective for failing to object to the heightened police presence during trial?

### **IV.**

Whether the PCR court erred in concluding that defense counsel was not ineffective for failing to object to the use of a stun belt on the Petitioner throughout the course of the trial?

## STATEMENT OF THE CASE

The Petitioner, Fred Halcomb, Jr., was charged in Marion County for murder. On August 29-September 1, 2005, the Petitioner proceeded to trial on this charge jointly with his co-defendant Luzenski Cottrell. The Petitioner was represented at this proceeding by G. Scott Bellamy, Esquire. At the conclusion of the trial, the jury found the Petitioner guilty as charged. The Honorable J. Michael Baxley, presiding circuit judge, sentenced the Petitioner to life imprisonment.

The Petitioner timely appealed his conviction and sentence to the South Carolina Court of Appeals. He was represented on appeal by Robert Michael Dudek, then-Deputy Chief Appellate Defender. In a published opinion, the Court of Appeals affirmed the Petitioner's conviction and sentence. State v. Halcomb, 382 S.C. 432, 676 S.E.2d 149 (Ct. App. 2009). This Court subsequently denied certiorari on April 8, 2010.

On October 12, 2010, the Petitioner filed an Application for Post-Conviction Relief with the Marion County Clerk of Court. An evidentiary hearing into the matter was convened on May 29-30, 2018, before the Honorable Craig D. Brown, presiding circuit judge. On February 14, 2019, the PCR court filed an Order of Dismissal which denied relief on all of the Petitioner's claims. On March 22, 2019, the Petitioner served his Notice of Appeal from Judge Brown's order.

Notice of appeal was timely served and filed. The Petitioner now seeks a writ of certiorari.

## STATEMENT OF FACTS ADDUCED AT TRIAL

The murder charges in this case were brought against the Petitioner and his co-defendant Luzenski Cottrell following the death of the victim, Jonathan Love. At trial, the State's theory was that Cottrell killed Love at the Petitioner's direction following Love's botched arson attempt of the home belonging to an individual named Brett.

The evidence against the Petitioner largely came from his ex-girlfriend Dianne Lawson. According to Lawson, in December 2002, she heard the Petitioner and Cottrell discussing the plan to conduct the arson. App. p. 218, lines 10-23. The Petitioner wanted Cottrell to bring Love with him "to burn their house down, to kill them." App. p. 218, line 24-p. 219, line 3. Later, Cottrell left and Lawson heard the Petitioner discussing how to conduct the arson over the phone. App. p. 223, line 20-p. 224, line 7. After several conversations, the Petitioner and Lawson left to see how successful the arson had been; when the Petitioner realized that the arson had not been successful, the Petitioner became "very upset" and stated that the victim "was a liability." App. p. 226, line 21-p. 227, line 4.

A few days later, Lawson left with the Petitioner to a remote location in Marion County where they met the victim and Cottrell digging a deep, rectangular hole. App. pp. 232-234. The Petitioner and Lawson walked back to their vehicle; after some time, Cottrell and the victim came back as well for a smoke break and Lawson saw the Petitioner hand Cottrell a firearm. App. pp. 236-239. Cottrell and the victim then left the vehicle in the direction of the hole and Lawson heard gunshots. App. p. 239, lines 14-21. The Petitioner then walked in that direction as well and was gone for an hour. App. p. 239, lines 21-24. The Petitioner and Cottrell then returned to the vehicle, but the victim did not. App. p. 239, lines 24-25.

The victim's body was recovered in May 2003. See App. pp. 458-467. According to Dr. Allan Bennett, the forensic pathologist who conducted the autopsy of the victim, the victim died as a result of multiple gunshot wounds to the head and chest. App. p. 312, lines 1-6.

The Petitioner did not present any evidence at trial, nor did Cottrell. The Petitioner's primary defense was that Lawson was not credible and that Cottrell acted alone in killing the victim. Despite this defense, the jury convicted the Petitioner as charged.

## ARGUMENT

### **Standard of Review**

The Sixth and Fourteenth Amendments to the United States Constitution guarantee every criminal defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In order to prove a claim of ineffective assistance of trial counsel, the moving party must show that defense counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial. Id. In other words, the petitioning party must show that but for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. Id.

On appeal, a PCR court's factual findings will be upheld if there is any evidence of probative value supporting them. Cherry v. State, 300 S.C. 155, 386 S.E.2d 624 (1989). A PCR court's legal findings are not afforded any deference and questions of law are reviewed *de novo*. Smalls v. State, 422 S.C. 174, 180-181, 810 S.E.2d 836, 839-840 (2018). "The appellate court will reverse the PCR court only where there is either no probative evidence to support the decision or the decision was controlled by an error of law." Edwards v. State, 392 S.C. 449, 455, 710 S.E.2d 60, 64 (2011).

- I. **The PCR court erred in concluding that the prosecution did not violate Brady v. Maryland, 373 U.S. 83 (1963), by failing to disclose an interview with potential witness Vander McCray.**

#### A. How the Issue Arose Below

In the Petitioner's Final Amended Application for Post-Conviction Relief, he alleged that the State violated his right to due process by "fail[ing] to disclose a report of interview of Vander

McCray conducted by Dale Long who, upon information and belief, was the investigator for the Fifteenth Circuit Solicitor's Office during the pendency of the underlying matter." App. p. 755. McCray was a jailhouse informant against the Petitioner's co-defendant Luzenski Cottrell, who was charged with multiple murder offenses in several counties.<sup>1</sup> On March 11, 2004, well over a year prior to the Petitioner's trial, McCray gave a statement to Investigator Dale Long with the Fifteenth Circuit Solicitor's Office that

LUZENSKI had given approximately one-ounce of marijuana to Jonathon Love, which LOVE used and never paid for. MCCRAY stated LUZENSKI acted friendly towards LOVE so he would not be afraid. LUZENSKI then lured LOVE to an area in Marion County and had him to dig a grave for someone he was going to kill. MCCRAY reported that Luzenski admitted he shot LOVE in the head and chest once LOVE had dug the grave. MCCRAY stated LUZENSKI admitted that only he and LOVE were present when LOVE was murdered.

App. p. 1135.

At the PCR hearing, defense counsel testified that he was not provided McCray's statement to Investigator Long prior to or during trial. App. p. 1113, line 25-p. 1114, line 4. Neither prosecutor could recall providing McCray's statement to Investigator Long to defense counsel. See App. p. 925, lines 20-21 (Humphries); p. 1043, lines 15-16 (Hembree). Defense counsel further testified that he "would have liked to have had the opportunity to at least investigate" McCray's information regarding Cottrell. App. p. 1080, lines 10-12.

The PCR court denied relief on this claim. While the PCR court found that "Investigator Long's report of his interview with McCray was not disclosed," the PCR court concluded that relief was not warranted because the Petitioner could not show that "the statement was material in

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<sup>1</sup> Cottrell was ultimately sentenced to death for the murder of a police officer in Horry County. See State v. Cottrell, 421 S.C. 622, 809 S.E.2d 423 (2017).

that there is any reasonable probability it would lead to useful evidence or affect the outcome of the trial.” App. pp. 1199-1200. Specifically, the PCR court found that

The statement itself represents an out of court statement by Investigator Long as to an out of court statement by McCray, as to alleged admissions by Cottrell. McCray did not testify at this hearing, so this Court would need to speculate on whether McCray would have truly provided testimony that was exculpatory to Applicant and that such testimony would be credible. This Court could not possibly know on the evidence presented if McCray was indicating Applicant [sic] was alone because the others were back at the car, or if Cottrell, as filtered through McCray, was claiming to be truly all alone in Marion County.

App. p. 1200. The Petitioner now claims that these findings were clearly erroneous, and that certiorari should be granted to review them.

#### B. Discussion

“[W]hen the State withholds from a criminal defendant evidence that is material to his guilt or punishment, it violates his right to due process of law in violation of the Fourteenth Amendment.” Cone v. Bell, 556 U.S. 449, 469 (2009). There are “three components or essential elements of a Brady[v. Maryland, 373 U.S. 83 (1963)] prosecutorial misconduct claim: ‘The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently, and prejudice must have ensued.’” Banks v. Dretke, 540 U.S. 668, 691 (2004) (quoting Strickler v. Greene, 527 U.S. 263, 281-282 (1999)). Stated differently, a Brady claim “is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment.” Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (internal footnote omitted). “The prejudice inquiry requires” a reviewing court to determine if the suppressed evidence “is ‘material’ to [the defendant’s] guilt.” Wolfe v. Clarke, 691 F.3d 410,

424 (4th Cir. 2012). “[E]vidence is ‘material’ within the meaning of Brady when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.” Cone, 556 U.S. at 469-470.

Here, the Brady elements are readily established. It is unquestioned that McCray’s information was in the possession of the prosecution and that it was not turned over to the defense prior to trial. Furthermore, the evidence is favorable for the Applicant as it is potentially exculpatory, given that it can be readily interpreted as an admission by the Applicant’s co-defendant that he acted alone in killing the victim. Finally, the evidence is material for largely the same reason. The Applicant’s entire defense rested on the premise that Cottrell acted alone in killing the victim and that the Applicant did not participate in the killing at all. See generally App. App. p. 185, lines 6-11 (“[T]he State’s theory is that my client wanted Mr. Love dead because of the botched arson. This statement is clearly in contradiction to that. And Mr. Cottrell had his own reasons personal to him as to why Mr. Love should be killed”); p. 581, lines 6-12 (“And I ask you to start at presumption of innocence and look and see if the State compiled the evidence ... piece by piece by piece by piece here against my client, Fred Halcomb, that he was out there, that he participated and aided and assisted and conspired and did all those things what evidence says he did that.”) Certainly, an admission that the Applicant’s co-defendant did precisely what the Applicant contended he did can be nothing less than material evidence. Consequently, the PCR court clearly erred in concluding that the statement was not material.

The PCR court also erred in dismissing this claim because it would have to speculate as to what McCray would have testified to at trial. As this Court has recently held, a PCR applicant need not necessarily present the testimony of a witness at the PCR hearing if it is clear from other sources what testimony would have been given at trial. See Martin v. State, \_\_\_ S.C. \_\_\_, \_\_\_

S.E.2d \_\_\_, Op. No. 27900 (S.C. Sup. Ct. filed July 17, 2019) (holding that defense counsel was ineffective for failing to elicit testimony from the PCR applicant's mother establishing an alibi based on a statement from her in defense counsel's possession). McCray's potential testimony is not speculative: he would have testified that Cottrell killed the victim while they were alone and only after Cottrell had lured the victim to the location where he was shot. In other words, he would have corroborated the Petitioner's central defense that Cottrell, acting alone, lured the victim to the location where Cottrell killed him. There can be no evidence more material than evidence that supports the heart of the defense. This is particularly true given that the State's case against the Petitioner rested largely on the credibility of a single witness: Dianne Lawson. Consequently, the Petitioner respectfully submits that the PCR court's findings are clearly erroneous and should be reversed by this Court. Certiorari is warranted to review this claim.

- II. The PCR court erred in concluding that the Petitioner's right to a fair trial was not violated by the heightened police presence inside and outside the courthouse during the Petitioner's trial.**
- III. The PCR court erred in concluding that defense counsel was not ineffective for failing to object to the heightened security presence at trial.<sup>2</sup>**

A. How the Issues Arose Below

In the Petitioner's Final Amended Application for Post-Conviction Relief, the Petitioner alleged that "the presence of uniformed law enforcement officers branded him with an unmistakable mark of guilt and conveyed the impression that Applicant was a dangerous individual." App. p. 757. The Petitioner also alleged that "Trial Counsel failed to object to the presence of the uniformed law enforcement officers in the courtroom and at the courthouse." App. p. 757. By way of general background, the Petitioner's trial was conducted at the Marion County Courthouse, which is a one-courtroom courthouse with only two entrances, one at the front and one at the rear of the first floor of the building. Potential jurors are left to congregate outside the courthouse's back door prior to jury selection. App. p. 994, lines 15-21. Once selected, they enter and exit out of the back door. App. p. 994, line 22-p. 995, line 8.

In support of this allegation, the Petitioner presented a significant amount of evidence during the PCR hearing regarding the police presence in and around the courthouse during his trial. In general, officers from Horry County, Marion County, and the South Carolina Department of Corrections were in the courthouse and officers from Florence County were likely in the

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<sup>2</sup> These allegations are presented conjunctively as the parties and PCR court below appeared to address the heightened security claim both in terms of a free-standing due process claim as well as a claim of ineffective assistance of counsel. Compare App. p. 1187 ("[B]ased on the evidence presented, this Court does not believe it impacted Applicant's ability to receive a fair trial") with p. 1187 ("This Court finds Applicant has not established that counsel's performance was deficient in this regard.") In an abundance of caution, the Petitioner has alleged error as to both methods of presentation of this claim.

courthouse. App. p. 996, lines 3-14. More specifically, the Petitioner was transported to and from the courthouse every day of the trial by at least five Horry County officers in a three-vehicle convoy. App. pp. 949-952. Eight to ten officers from Marion County were assigned to security detail for the trial. App. p. 999, line 17-p. 1000, line 1. Officers remained stationed outside the courthouse, including an officer who had what appeared to be an assault rifle. App. p. 1005, line 18-p. 1007, line 4. All told, approximately fifteen to twenty officers were present in the courtroom during the trial. App. p. 1008, lines 12-24. The prosecution even referenced the significant amount of police presence during its closing argument. See App. p. 555, lines 22-24 (“What kind of people could cause a witness in a protected courtroom with armed deputies all around, what kind of people could inspire such fear.”)

Despite the heightened police presence, defense counsel did not make any motion with regard to the number of officers in the courtroom. He testified at the PCR hearing that there were more police officers “than normal” inside the courtroom. App. p. 1093, lines 18-23. He further testified, however, that he did not make a motion because he did not find it unduly prejudicial. App. p. 1094, lines 2-17.

The PCR court denied relief on these claims, finding that “heightened security was warranted” because “Applicant and co-defendant collectively were accused of three murders and an attempted arson that seemed to be an attempted murder, they both had contacts with the criminal elements of their county and, as Senator Hembree points out, Applicant had the ability to recruit people for his criminal plans.” App. p. 1187. The PCR court then found that “the security provided during trial was not inherently prejudicial” and that defense counsel was not ineffective for failing to object to the heightened security presence during trial. App. p. 1187. The Petitioner now

contends that these findings are clearly erroneous, and that certiorari should be granted by this Court.

### B. Discussion

“When a courtroom arrangement is challenged as inherently prejudicial, the question is whether there is ‘an unacceptable risk ... of impermissible factors coming into play.’” State v. Tucker, 324 S.C. 155, 175, 478 S.E.2d 260, 270-271 (1996) (quoting Holbrook v. Flynn, 475 U.S. 560, 570 (1986)). “Under this standard, a Holbrook claim is difficult to establish, and a reviewing court must assess ‘the scene presented to jurors and determine whether what they saw was so inherently prejudicial as to pose an unacceptable threat to the defendant’s right to a fair trial.’” Hill v. Ozmint, 339 F.3d 187, 199 (4th Cir. 2003) (quoting Holbrook, 475 U.S. at 572).

In this case, it is important to note the physical structure and layout of the courthouse and courtroom, particularly from the perspective of a juror. Upon arrival at the courthouse, a juror would have gone through security where numerous armed officers, including at least one armed with an assault rifle, stood guard. That juror would then go to the one courtroom in the courthouse and observe a trial where at least fifteen to twenty visible and armed officers stood watch over the trial. That juror would have had to know that all of the police officers in and around the courtroom, and the courthouse in general, were there for one purpose—this specific trial—as no other court activity could take place at the Marion County Courthouse while this trial unfolded.

Under these circumstances, the increased police presence at the Applicant’s trial was highly prejudicial. No reasonable juror could have come to the courthouse and not been unduly influenced by the extreme measures the authorities took to ensure the security of the courthouse. Every moment of the juror’s experience, from the juror’s entry to the courthouse, to observing the trial, to leaving the courthouse, would have been done under an atmosphere dominated by police

officers. There can be no question as to the adverse effect this would have had on the juror's mind as to the Petitioner's guilt. Consequently, it is overwhelmingly likely that "what the [jurors] saw was so inherently prejudicial as to pose an unacceptable threat to the defendant's right to a fair trial." Holbrook, 475 U.S. at 572. See Woods v. Duggar, 923 F.2d 1454 (11th Cir. 1991) (finding a Holbrook violation where dozens of prison officers observed a murder trial). Accordingly, under these circumstances, a Holbrook violation occurred.

Additionally, and for largely the same reasons, defense counsel was ineffective for failing to object to the increased police presence at trial. Just as a juror would have experienced the heightened security at trial, so too should defense counsel have noticed how many officers were present in and around the courtroom and courthouse. Defense counsel should have also known how likely it would be that the jurors would draw an adverse inference of his client's guilt based on the number of officers present. Given that the law on the matter—Holbrook—is well established, defense counsel's performance was clearly deficient when he failed to make an objection pursuant to Holbrook in an effort to lessen the security presence at trial. Furthermore, defense counsel's deficient performance prejudiced the Petitioner for the same reasons outlined above: a Holbrook violation occurred. Accordingly, the Petitioner respectfully submits that the PCR court's findings on this matter were clearly erroneous and that certiorari is warranted to review them.

**IV. The PCR court erred in concluding that defense counsel was not ineffective for failing to object to the placement of a stun belt on the Petitioner during the trial.**

A. How the Issue Arose Below

In the Petitioner's Final Amended Application for Post-Conviction Relief, he alleged that defense counsel was ineffective for failing to object to the placement of a stun belt on the Petitioner throughout the course of the trial. App. p. 757. During the PCR hearing, Horry County Sheriff Phillip E. Thompson testified that he made the decision to place the stun belt on the Petitioner. App. p. 958, lines 21-23. Defense counsel testified that he knew that the Applicant was to be equipped with a stun belt, that the stun belt was not visible to the jury, and that the stun belt did not adversely affect the Applicant's ability to communicate with him during trial. App. pp. 1094-1095. He further testified that he did not consider making a motion regarding the stun belt. App. p. 1096, lines 10-12. At the time of trial, the Sheriff's Department did not have an official policy regarding the deployment of stun belts, though they developed on in the year following the Applicant's trial. App. p. 958, lines 4-17. For his part, the Petitioner testified that he did not testify because he was afraid that the stun belt would accidentally go off if he moved while testifying. App. p. 872, line 12-p. 873, line 7. He also had been told by Cottrell that a stun belt had accidentally discharged during Cottrell's prior trial in Horry County. App. p. 838, line 21-p. 839, line 10.

The PCR court denied relief on this claim, finding that "case law at the time of trial did not required [sic] the trial court to make a finding of a special need for non-visible restraints such as a stun belt." App. pp. 1188-1189. The PCR court further concluded that

[T]he stun belt was not visible to the jury. This Court also rejects Applicant's claims that he was impeded in any manner from assisting his attorneys and is concerned about the lack of candor in Applicant's testimony on the subject. This Court finds credible the testimony of the prosecutors and trial counsel on this matter and finds Applicant was able to assist his trial counsel. This Court also

rejects Applicant's claim that the stun belt contributed to Applicant's decision to not testify. ... This Court finds Applicant's testimony on the subject is simply not credible.

App. pp. 1189-1190. Based on these findings, the PCR court concluded that defense counsel was not ineffective and that "requiring Applicant to wear the stun belt was not unreasonable and did not have any effect of Applicant's ability to receive a fair trial." App. p. 1190. The Petitioner now contends that certiorari is warranted to review these findings.

### B. Discussion

The Petitioner alleges that defense counsel was ineffective for failing to object to the placement of a stun belt on his person during the course of his trial by the Horry County Sheriff's Department. "[T]he Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial." Deck v. Missouri, 544 U.S. 622, 629 (2005). In Gonzalez v. Pliker, 341 F.3d 897 (9th Cir. 2003), the Ninth Circuit concluded that "[t]he use of stun belts, depending somewhat on their method of deployment, raises all of the traditional concerns about the imposition of physical restraints." 341 F.3d at 900. Similarly, the Eleventh Circuit has concluded that "stun belts plainly pose many of the same constitutional concerns as do other physical restraints, though in somewhat different ways." United States v. Durham, 287 F.3d 1297, 1306 (11th Cir. 2002). The Eleventh Circuit further set forth the requirements for a trial court to follow before ordering the placement of a stun belt on a criminal defendant:

[A] decision to use a stun belt must be subjects to at least the same close judicial scrutiny required for the imposition of other physical restraints. Due to the novelty of this technology, a court contemplating its use will likely need to make factual findings about the operation of the stun belt, addressing issues such as the criteria for triggering the belt and the possibility of accidental discharge. A court will also need to assess whether an essential state interest is

served by compelling a particular defendant to wear such a device, and must consider less restrictive methods of restraint.

Id. at 1306-1307 (internal citations, quotations, and footnote omitted).

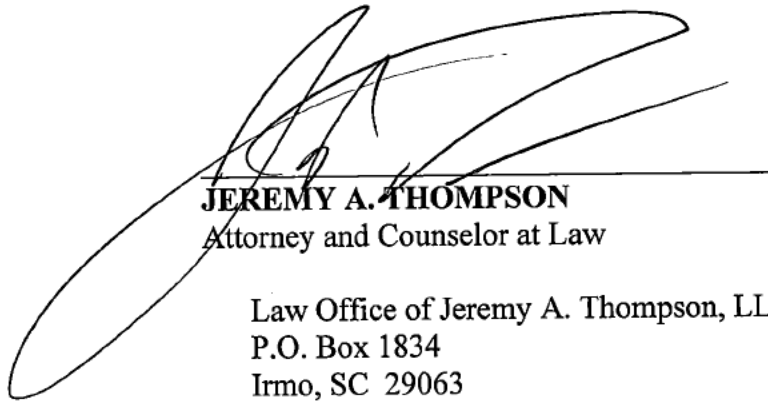
In this case, defense counsel's performance was clearly deficient. Defense counsel, by his own concession, did not object to the placement of the stun belt on the Petitioner, nor did he even consider making such a motion. It was imperative for defense counsel to make such a motion as only the trial court could determine whether or not the use of the stun belt was appropriate. See Gonzalez, 341 F.3d at 902 ("The record clearly demonstrates that the trial court failed to adhere to the relevant constitutional standards ... [because] the decision to force the defendant to wear the stun belt during trial was not made by the Court in the first instance; it was made by correctional officers.") While the PCR court concluded that defense counsel's performance was not deficient because "case law at the time of trial did not required [sic] the trial court to make a finding of a special need for non-visible restraints such as a stun belt," even the cases cited to by the PCR court noted that the trial judge ordered the placement of the stun belt. See Earhart v. Konteh, 589 F.3d 337, 347 (6th Cir. 2009) ("Earhart next argues that the district court erred by failing to grant the writ because the state trial court's ruling requiring him to wear a stun belt at trial violated ... the due process clause of the Fourteenth Amendment"); Mungo v. United States, 987 A.2d 1145, 1149 (D.C. Ct. App. 2010) ("[A]ppellants now argue that the trial court plainly erred in directing or permitting use of the belts without making findings on the record to justify use of the devices"); Commonwealth v. Lopez, 578 Pa. 545, 553, 854 A.2d 465, 469 (2004) ("[T]he trial judge ordered appellant wear a stun belt.") In this case, unlike those relied upon by the PCR court, the trial judge did not address the stun belt because defense counsel made no motion to determine its propriety. This lack of action constituted deficient conduct.

Furthermore, the Petitioner was prejudiced by the requirement that he wear a stun belt throughout the course of the trial. There was no overwhelming need for the stun belts to be utilized, particularly given the significantly heightened police presence in the courthouse, as described above. It is thus reasonably likely that the trial judge would have refused to require the Petitioner to wear a stun belt, particularly if the trial judge had been made aware of the accidental discharge of a stun belt in Cottrell's prior trial. Moreover, the Petitioner testified at the PCR hearing that his ability to communicate with his attorney was negatively impacted as was his decision not to testify at trial. Given the lack of findings regarding the need for the stun belt, both at trial and by the PCR court below, as well as the clear impact the placement of the stun belt had on the Petitioner, the Petitioner respectfully submits that he has demonstrated that he was prejudiced by defense counsel's deficient conduct. Certiorari is warranted to review this claim.

CONCLUSION

For the reasons stated, the Petitioner asks this Court to grant the petition and to allow full briefing on these issues.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'J. Thompson', is written over a horizontal line.

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This 21<sup>st</sup> day of July, 2019.