

No. 31765 – *State of West Virginia v. Denver A. Youngblood, Jr.*

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OF WEST VIRGINIA

Starcher, J., dissenting:

I concur fully with Justice Davis’s well-reasoned separate opinion on the evidentiary issue, but I dissent and write separately on another issue: the use of a stun belt.

On the stun belt issue, the majority essentially concludes that any error by the trial court in allowing the use of the stun belt was harmless. I would apply a strict standard and would presume both harm and reversible error from the use of a stun belt without proper procedures first being used by the court to evaluate its propriety.

Stun belts are fearful and exceptionally coercive devices that should be used only in the most extraordinary situations, and only after the most thorough procedures by the court. The leading cases on the use of stun belts are *U.S. v. Durham*, 287 P.3d 1297 (2002) and *People v. Mar*, 52 P.2d 95 (Cal. 2002). I believe that this Court would adopt the holdings of these cases. It would probably behoove circuit courts, prosecutors, and defense counsel to cleave to these cases’ teachings.

Accordingly, I dissent.