No. 120133

IN THE
SUPREME COURT OF ILLINOIS

In the Matter of BENNY M., Alleged to Be a Person Subject to Involuntary Administration of Psychotropic Medication. PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellant, v. BENNY M., Respondent-Appellee.	On Appeal from the Appellate Court of Illinois, Second Judicial District, No. 2-14-1075 There on Appeal from the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois, No. 2014 MH 103 The Honorable ROBERT VILLA, Judge Presiding.

BRIEF OF PETITIONER-APPELLANT

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE CASE

This appeal involves a proceeding for the involuntary administration of psychotropic medication to a person committed to a mental health facility after being found unfit to stand trial on felony charges of aggravated battery against his mother. The circuit court granted the petition for involuntary medication. On appeal, respondent did not contest the sufficiency of the evidence to support that judgment. Respondent did challenge the circuit court's decision to have him physically restrained during the second day of his trial, although his trial counsel did not dispute the sufficiency of the evidence to justify those restraints, request specific findings by the circuit court, or object to the absence of such findings.

The appellate court reversed the involuntary medication order. Ruling, as a matter of first impression, that the standards governing the physical restraint of a criminal defendant announced in *People v. Boose*, 66 Ill. 2d 261 (1977), apply to civil commitment proceedings, the appellate court held that the circuit court failed to comply with these standards because it did not independently assess the grounds for restraining respondent and did not make explicit findings supporting its decision. The appellate court also held that these errors required reversal of the circuit court's medication order because respondent might have been prejudiced by them, either because his physical restraints interfered with his ability to communicate with his counsel or because they caused the circuit court to be biased against him.

ISSUES PRESENTED FOR REVIEW

1. What rules principles and rules govern a circuit court's decision whether to physically restrain a respondent in a civil action for involuntary commitment or treatment under the Mental Health Code.

2. Whether the appellate court incorrectly concluded that the circuit court failed to independently determine whether respondent should be physically restrained.

3. Whether the appellate court wrongly held that the circuit court erred by not making explicit findings concerning its reasons for deciding to physically restrain respondent, where his trial counsel did not request such findings or object to their absence, and the record indicates the circuit court's reasons for that decision.

4. Whether the appellate court improperly held that the circuit court's supposed errors regarding its decision to physically restrain respondent required reversal of its involuntary medication order.

STATEMENT OF FACTS

Background

After being found unfit to stand trial on felony charges of aggravated battery against his mother, respondent was involuntarily committed to the Elgin Mental Health Center Forensic Treatment Program ("Elgin"). (R 11-13, 120-21.) He was about 32 years old at the time. (R 25, 99, 121.) Before his admission, respondent was unemployed for more than a decade even though he wanted to work, and he was mostly homeless, although his mother occasionally allowed him to stay with her during inclement weather. (R 13-14, 101.)

Following respondent's admission to Elgin, he took court-ordered psychotropic medication and improved to the point that he regained fitness to stand trial on the criminal charges against him and was transferred to the Cook County Jail. (C 2, 4; R 12, 70-72.) There, he refused his medication, was again found unfit to stand trial, and was transferred back to Elgin. (R 12, 14, 16.)

Circuit Court Proceedings

This proceeding to require respondent to take psychotropic medication pursuant to section 2–107.1 of the Mental Health and Developmental Disabilities Code, 405 ILCS 5/2–107.1 (2014), was filed on August 26, 2014. (C 2-7.) It was the second such proceeding for respondent, and the medication order in the first proceeding expired the day before the first day of trial in this case. (C 16-17.)

The bench trial in this case was conducted over two days, separated by a two-week continuance. (C 28-30.) At the first day of the trial, on September 5, 2014, respondent was physically restrained when he was transported to and from

the courtroom, but not during the trial. (C 2; R 117-18.) On that day, respondent did not interrupt the proceedings. (R 100-01.)

Dr. Luchetta, a treating psychiatrist at Elgin, testified that respondent suffered from a schizoaffective disorder, which she explained is a serious mental illness involving symptoms of psychosis and a mood disorder with impairment in interpersonal or occupational functioning. (R 5-6, 69.) Respondent's symptoms included delusional beliefs. (R 6-7.) He denied having any mental illness and believed he could improve and be released without medication, and then would be able to return to live in his mother's house, get a job, and have a girlfriend. (R 8, 15, 77, 163.) He also had auditory hallucinations, which included hearing voices, and he believed that unidentified people were "torturing" him, including by labeling him with a psychiatric condition he believed he did not have. (R 7, 15-16, 24-25, 78-79, 111-12.)

Dr. Luchetta also testified that respondent suffered from "erotic mania which has gone beyond erotic mania" to the point of hypersexual behavior. (R 47, 83.) On at least half a dozen occasions he ran after and kissed female staff and interns, greatly disturbing them. (R 48, 84.) Dr. Luchetta described one occasion when respondent grabbed and kissed a young psychology student. (R 86.) She also described an incident when a student was finishing a fitness group and respondent "placed his arms around her arms so that she couldn't move," "attempted to kiss her on her face," and made "contact with his lips." (R 86.) Asked whether she personally saw such conduct, Dr. Luchetta testified: "I have seen it happen." (R 84.) Asked further whether she witnessed the particular

incident she just described, she responded: "I would have to look at which specific date. I'm sorry. There were so many." (R 86.) After Dr. Luchetta explained that some female staff members at Elgin had been raped, she was asked whether respondent had ever engaged in that type of behavior, and she responded: "He got close. He started." (R 48.) The first day of trial concluded after Dr. Luchetta's direct examination. (R 59, 63.)

When the trial resumed on September 19, 2014, respondent had not been taking psychotropic medication for 16 days. (R 124.) At the beginning of the hearing, he was physically restrained, with cuffs around his wrists and ankles and a belt around his waist. (R 11, 58.) His counsel requested that the restraints be removed, and the circuit court inquired whether "there was any reason for that now in the courtroom." (R 63.) The security officer stated that respondent was "listed as high elopement risk." (*Id.*) The officer offered to provide the supporting documentation on the patient transport checklist, which the trial judge said he would like to review. (*Id.*) The trial judge commented that he had no reason to "doubt the veracity" of this information and asked respondent's counsel whether she had previously had a chance to review it. (R 63-64.) She responded that she had not. (R 64.) Respondent's counsel did not dispute either the admissibility of this information or its factual sufficiency to support the conclusion that respondent was a flight risk. Nor did she ask that it be made a part of the record. Respondent then interrupted, stating: "[W]here am I going to go? I'm trapped." His counsel told him to "[b]e quiet," but he continued: "I said I wanted to be here, and I was willing to even be present in this crap. This

is kind of interesting. I mean I can laugh about it, too. I have a sense of humor." (*Id.*) The court then denied the request, stating: "I will leave him in custody in the shape he is in now." (*Id.*)

Respondent's counsel then asked whether at least respondent's right hand could be released so he could take notes. (R 65.) Before she could complete her request, he interrupted: "Do you think I am going to take the pen or something and try to stab someone with it?" (*Id.*) The court commented that there had to be a "balance" between security and respondent's "ability to participate," and, despite respondent's interruption, asked his counsel whether she felt "that he is unable to participate in the court proceedings . . . with his hands restrained?" (R 65-66.) She responded that this was the case "with his right hand restrained." (R 66.) The court then asked respondent whether he was right-handed. (R 65-66.) He did not directly answer, but said he would try to use his left hand as well because "people tend to try different things, have to learn how to write with both" in case "one hand is hurting . . . or for some reason, like if someone loses their hand . . . through amputation." (R 66.) The court said it would consider the request "[i]f there is a need to take notes," and respondent interjected: "I'm speaking, which is even better." (*Id.*)

The court invited respondent's counsel to begin her cross-examination of Dr. Luchetta, and respondent again interrupted:

> I don't have paper and pencil. This doesn't make sense. People are saying I'm crazy and acting out. I disagree. So talk to myself, in my head, so either everybody or nobody —

(R 67.) The court denied the request to remove the cuff on respondent's right

hand. The court also advised respondent, "please listen to your counsel," and then added:

> I understand you might be a little frustrated at the moment, but I don't want to have you removed from here. The best thing for you to do would be to participate. I understand there is [sic] some limitations at this point. If there is a need for you to be writing down some notes or things of that nature, I will consider it at that time.

(*Id.*) The court continued:

> I'm trying to do the best to balance both the security information given to me and your ability to participate. Don't frustrate that by not following your attorney's instructions to allow her to participate in this process without interruption. Let her ask the questions she needs to; okay?

(*Id.*)

Neither at the time of this exchange, nor any time later during the circuit court proceedings, did respondent's counsel object to the admissibility or sufficiency of the evidence to support the imposition of physical restraints on respondent or the procedure the circuit court followed in ruling on that issue, including the absence of express findings stating the court's basis for that ruling.

Respondent's counsel proceeded with her cross-examination of Dr. Luchetta. (R 68.) She testified that respondent stopped taking his medication when the initial medication order expired 16 days earlier, and that he was deteriorating. (R 68-70).

Respondent interrupted to inquire whether he could ask a few questions, and, after his counsel told him to be quiet, admitted he "may have been inappropriate." (R 70). The trial judge responded: "It's more that it's interrupting to

your attorney who is here to represent your interests and doing the best she can. Please allow her to continue for your benefit." (*Id.*)

Dr. Luchetta described respondent's transfer to the Cook County Jail after he was found fit and his retransfer to Elgin when he was "noncompliant" with his medication and again found unfit to stand trial on the criminal charges against him. (R 70-72.) After she said respondent was again under her care, he interjected: "Care? I call it mistreatment." (R 72.) The court admonished respondent: "Mr. [M.], absolute last warning. I will not give you another warning. The next conversation I have with you will be asking security to remove you from the courtroom." (*Id.*) Respondent briefly interrupted again, but his counsel resumed her examination. (*Id.*)

Dr. Luchetta elaborated on the symptoms and diagnosis of respondent's condition and the medications he had been given, including ones she had stopped prescribing as a result of unwanted side-effects. (R 72-89.) During her recross-examination by respondent's counsel, respondent interrupted multiple times, prompting an exchange between him and the court in which it offered him one last opportunity to stay in the courtroom if he agreed not to interrupt further. (R 99-101.) After respondent made several nonresponsive comments, the court said it would allow him to remain to demonstrate that he could control himself. (R 100-01.)

Called as a witness by the People, respondent denied having the mental illness his doctors diagnosed. (R 106). He also described some of the alternative treatments he engaged in, including exercise and other activities. (R 107-08.)

Asked whether he grabbed and kissed one of the people working at the facility in July, he denied that he put his hands on her "in any manner, in any respect." (R 108-09.) Respondent asked the court whether he could demonstrate what happened, which the court allowed, and he then stood up to do so, explaining that he approached a woman working at the facility, leaned in, and gave her a "peck" on her left side where his lips "barely even touched her." (R 108-10.)

Asked where he would live if he left Elgin, respondent gave a rambling answer that did not identify any location and then, commenting on the definition of a home, continued:

> I mean people go to work, people go to school. Nowadays, you don't even know what — what is what, where school is located, where's work, what people, what their actual, you know, job is, or what —

(R 112-13.)

Asked about his participation in less restrictive treatments, respondent volunteered a comment about his physical restraints, saying they were "very restrictive." (R 117.) He did not state that they caused him any pain or physical discomfort. (R 117-20.) He then testified that, other than when he was being transported to and from court, he was not required to have restraints. (R 117-19.)

Respondent called as a witness a woman employed as a security therapy aid at Elgin. (R 131-32.) She described coping mechanisms that respondent engaged in after discontinuing his medication and recounted a recent argument between him and another recipient of mental health services. (R 134-37.) She said they were both "in each other's face . . . , and then Benny kind of withdrew from him."

(R 136-37.) During a discussion with counsel about an evidentiary objection, respondent interrupted, and the court cautioned him not to "talk over the lawyers." (R 138.)

During the People's closing argument, respondent again interrupted the proceeding. (R 144.) Commenting that respondent "almost made it to the end," the trial court advised him that he would be asked to leave the next time it had to stop the proceedings. (*Id.*) Respondent nonetheless continued, stating "I'm laughing when I'm — " and "It's crazy," and the court asked that he leave the courtroom. (*Id.*)

Respondent's counsel then asserted, "he's been complaining about the shackles the whole hearing." (*Id.*) The court responded: "I have not heard that." (*Id.*) Respondent's counsel said, "He's been complaining to me." And the court replied:

> I have heard him complain about the language that's being used to describe people. I have heard him interrupt and criticize or comment on what Dr. Luchetta has testified to. I have not heard that. I have heard out[-]loud comments unrelated to the shackles.

(*Id.*) The court added: "And none of those items have ever been a problem for me." (*Id.*) Respondent's counsel said: "But he has had to stand up because he's been in pain." (R 144.) The trial court then addressed respondent, who interrupted, saying, "I was talking about the peck I gave on the cheek." (R 145.) The court then said, "See what I mean? That's not shackle related." (*Id.*)

Respondent continued describing the kissing incident: "I did not use my hands. I was trying to, like, I was trying to grab her." (R 145.) He then turned

to the security officer, accused her of tightening his physical restraints, which she denied, and asked whether she would take them off. (*Id.*) She said she could not do so but offered to "fix them up" and "see what I can do." (*Id.*) He replied, "I don't need you to take hold of my arm. I need you to take these damn cuffs off. My feet first, hopefully." (*Id.*) After the court invited the People to continue their closing statement, respondent declared:

> This is why I'm suffering and deteriorating. I mean look at this. I'm walking like a cripple, and I'm not. As soon as I'm out of here, I will probably be back to being an athlete again, but I mean a little bit of pain, for sure, which I'm not going to be able to take medication for.

(R 145-46). Respondent was then outside the courtroom for several minutes while the parties concluded their closing arguments. (R 146-66.)

Much of the closing arguments focused on whether respondent's condition had deteriorated, including after he stopped taking medication. (R 147-49, 162.) His counsel acknowledged that "[t]here has been a deterioration, absolutely, from the person who was before you two weeks ago and today," but she did not attribute this to respondent's being physically restrained. (R 162.) The trial judge, commenting on respondent's "presence and behavior," said he had a "visceral memory of his behavior between the two time periods." (*Id.*)

Addressing respondent's mental state, his counsel contended that the People's evidence — including his comments that the facility staff was torturing him, and that he believed he did not have a mental illness and wanted a job and a girlfriend — did not show mental suffering, but instead were "all evidence of natural desires of a young man of his age." (R 163.) She also commented on

respondent's testimony about not being required to wear shackles "anywhere else in this facility," and then added: "I don't know that it's part of the record when he stood up, but he stood up several times because he indicated that he was having cramps . . . ." (R 163-64.) The court responded, "I'm certain that those comments are not part of the record. I would have possibly addressed them if he had made them or you had made them on his behalf directly to me." (R 164.) His counsel then said: "I apologize. I should have." (*Id.*)

On October 3, 2014, the trial court announced its ruling, finding that each of the elements required to administer involuntary medication was established by clear and convincing evidence. (R 180-85.) Among other things, the court found that respondent's "outbursts in the courtroom with a significant amount of animosity and argumentativeness" were "symptomatic of the suffering element." (R 181-82.) During the trial judge's announcement of his ruling and recitation of the evidence and reasons supporting it, and despite several warnings by the court, respondent engaged in a series of disrespectful and profanity-laced interruptions, and, after concluding the oral pronouncement of its judgment, the court finally asked him to leave. (R 179-87.) Respondent filed a timely notice of appeal on October 28, 2014. (C 34; R 191.)

Respondent's Appeal

In his appeal, respondent did not challenge the sufficiency of the evidence to support the finding that he was subject to involuntary medication. Apart from addressing whether a mootness exception justified consideration of his appeal, respondent raised a single issue: whether he was denied a fair trial on the ground

that "the trial court did not conduct an inquiry into whether shackles were warranted." (Resp. App. Br. at 1, 6.)

After concluding that the case satisfied the mootness exception for issues of public interest (A 5-7, ¶¶ 14-19),[1] the appellate court reversed the circuit court's judgment based on its conclusion that the circuit court violated the standards governing the imposition of physical restraints. (A 2, 7-10, ¶¶ 1, 20-39.) Specifically, the appellate court, adopting the standards for criminal cases announced by this Court in *People v. Boose*, 66 Ill. 2d 261 (1977), held that the circuit court erred because it (1) did not make an "independent assessment" of the grounds for restraining respondent, but instead "deferred to the assessment" of security officials, and (2) "did not explicitly make any findings supporting" its decision to restrain respondent. (A 9, ¶ 30.) Further finding that respondent might have been prejudiced from being physically restrained, the appellate court held that these errors required reversal of the circuit court's involuntary medication order. (A 9-10, ¶ 31.) The appellate court did not find that the evidence was insufficient to support the circuit court's judgment requiring respondent to be involuntarily medicated, or even that the evidence was close on the issue. Nor did it find that the evidence submitted to the court was insufficient to sustain its order requiring respondent to be physically restrained. (A 9, n.2.)

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[1] In the appellate court, the People agreed that the case satisfied the exception for issues that are capable of repetition but evading review. (Peo. App. Br. at 18-20.) In this Court, they also agree that this appeal satisfies the public interest exception. (See below at 16, n.2.)

Treating the matter as one of first impression, the appellate court held that although proceedings for involuntary commitment or involuntary medication under the Mental Health Code are civil in nature, they are subject to the same standards and procedures that this Court announced in *Boose* for criminal proceedings. (A 8-9, ¶¶ 25, 29.) Applying *Boose*, the appellate court then held that the circuit court committed error because it "did not place on the record its reasons for keeping the respondent shackled." (A 8, ¶ 27.) The appellate court held that the circuit court also erred because it did not "exercise[] its discretion in deciding that the respondent should remain shackled," but instead failed to "engage[] in any independent assessment" of the matter and just "deferred to the assessment of the security officer and person who prepared the patient transport document." (A 9, ¶¶ 28-30.)

The appellate court also rejected the People's argument that respondent was not prejudiced by the errors it found. The court ruled that the People had to "prove, beyond a reasonable doubt, that the shackling complained of did not contribute to the judgment." (A 10, ¶ 35.) Concluding that the People did not meet this burden, the appellate court found that respondent may have been prejudiced in his ability to participate in the presentation of his defense, stating:

> [T]he trial court's refusal to allow the unshackling of the respondent's right hand unquestionably prevented him from writing notes for his attorney. Moreover, the respondent's comments indicate that being in shackles agitated him, decreasing his ability to focus on the proceedings. Indeed, his complaints about the shackles were the cause of his eventual removal from the courtroom.

(A 10, ¶ 36.) The appellate court also held that respondent's physical restraints "might have" resulted in "prejudice in the eyes of the fact finder," stating:

> [T]he trial court stated that its decision to order further medication of the respondent rested in part on the respondent's "outbursts in the courtroom" displaying animosity. These outbursts were related in part to the shackling.

(*Id.*)

ARGUMENT

I. Summary of Argument

The appellate court's statement of the substantive standards and procedural rules governing a trial court's determination whether to impose physical restraints on a respondent in a civil proceeding for involuntary commitment or treatment is correct in many, but not all, respects.[2] The appellate court erred, though, in its application of those standards and rules to the facts of this case.

As is the case with respect to criminal defendants, physical restraints may be imposed on a respondent in a civil proceeding under the Mental Health Code only upon a showing of a risk of flight, physical harm to others, or disruption of the proceeding. Whether to impose restraints is a decision within the trial court's discretion. A trial judge may not delegate this decision to security officials, but must itself evaluate the relevant information and determine whether it justifies a restraint on the respondent's liberty. The circuit court also must give the respondent the opportunity to contest that information and offer reasons why restraints are unnecessary. In addition, the reasons for a decision to impose restraints should be clear from the record.

An error by the trial court in applying these principles may be forfeited for purposes of review by the complaining party's failure to object to the error in the circuit court. *People v. Hyche*, 77 Ill. 2d 229, 241 (1979); see also *People v. Allen*,

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[2] The parties agree that this the appeal satisfies the "public interest" exception to mootness, which is justified in part on the desirability of an authoritative determination of the relevant issues to provide future guidance to public officers. See *In re Alfred H.H.*, 233 Ill. 2d 345, 355 (2013).

222 Ill. 2d 340, 352 (2006); *In re Mark P.*, 402 Ill. App. 3d 173, 176-77 (4th Dist. 2010). Whether an error that is preserved for appeal justifies reversal of the court's judgment on the merits depends on the nature of the error, the extent to which it prejudiced a specific right or interest of the appellant, and the relationship between that prejudice and the outcome of the case. See *People v. Delvillar*, 235 Ill. 2d 507, 522 (2009); *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497, 513 (1989); *Fried v. Polk Bros.*, 190 Ill. App. 3d 871, 883 (2d Dist. 1989).

In its application of these substantive standards and procedural rules, the appellate court erred in three respects. First, it incorrectly concluded that the circuit court abdicated its judicial responsibility to decide itself whether to impose physical restraints on respondent. Taken as a whole, the record shows that the circuit court did not simply delegate to security officials the responsibility to decide the issue, but instead accepted as credible the information it received from them — the sufficiency of which respondent's counsel did not dispute — and specifically recognized the need to balance the relevant security concerns with respondent's right to participate in the proceeding.

Second, the appellate court incorrectly concluded that the circuit court erred by not formally stating its reasons on the record. Those reasons — relating to respondent's high flight risk, which apparently arose after he stopped taking his medication one day before the first trial date two weeks earlier — were clear from the record. Stating them explicitly on the record was an unnecessary formality whose omission could not have prejudiced respondent.

Finally, the appellate court erred by holding that the circuit court's claimed errors regarding its decision to physically restrain respondent warranted reversal of the judgment requiring involuntary medication. It was respondent's burden to establish prejudice affecting the outcome of the case, not the People's burden to prove its absence, much less to do so beyond a reasonable doubt. Respondent did not meet this burden.

II. Standard of Review

The rules that govern a circuit court's decision whether to physically restrain a respondent in a civil proceeding for involuntary commitment or treatment involve questions of law, subject to *de novo* review. *Hawthorne v. Village of Olympia Fields*, 204 Ill. 2d 243, 254-55 (2003). That standard encompasses both constitutional principles, *id.*, and rules adopted by this Court pursuant to its constitutional authority over judicial proceedings in this State, see Ill. Const. Art. VI, § 16; *People v. Drum*, 194 Ill. 2d 485, 488 (2000).

A trial court's decision to impose physical restraints on a respondent in an involuntary commitment or treatment case is subject to review under an abuse of discretion standard. *People v. Boose*, 66 Ill. 2d 261, 267 (1977); see also *Allen*, 222 Ill. 2d at 365; *People v. Kelley*, 2013 IL App (4th) 110874, ¶ 26 (post-conviction hearing); *In re A.H.*, 359 Ill. App. 3d 173, 182 (1st Dist. 2005) (proceeding for termination of parental rights).

III. Courts Should Physically Restrain Respondents in Mental Health Proceedings Only When Justified by a Valid Need in the Case, But a Violation of the Rules for Imposing Such Restraints Does Not Always Require Reversal of the Court's Judgment.

The large majority of cases addressing challenges to physical restraints arise out of criminal proceedings. See *Boose*, 66 Ill. 2d at 264-65; see also *Deck v. Missouri*, 544 U.S. 622, 626-32 (2005); see generally *Annotation: Propriety & Prejudicial Effect of Gagging, Shackling, or Otherwise Physically Restraining Accused During Course of State Criminal Trial*, 90 A.L.R.3d 17, § 11[a] (1979 and Supp.) (hereinafter "*Propriety of Restraining Accused*"). Those cases recognize several rights implicated by such restraints, including the defendant's constitutional right to a presumption of innocence, to participate in his own defense, to adequate representation by counsel, and to a fundamentally fair proceeding. *Deck*, 544 U.S. at 630-31; *Boose*, 66 Ill. 2d at 265, 269. Needlessly restraining the defendant also impairs the dignity of the judicial process. *Deck*, 544 U.S. at 631-32; *Illinois v. Allen*, 397 U.S. 337, 344 (1970); *Boose*, 66 Ill. 2d at 265.

As the appellate court recognized, some of these interests, including the protections of the Fifth and Sixth Amendments for criminal defendants, do not apply to civil commitment and treatment proceedings. (A 7-8, ¶¶ 24-25.) See also *A.H.*, 359 Ill. App. 3d at 181-82. But respondents in such cases do retain liberty interests, see *In re Splett*, 143 Ill. 2d 225, 230 (1991), as well as the right to a fair trial, protected by due process, *Arvia v. Madigan*, 209 Ill. 2d 520, 540 (2004); cf. *A.H.*, 359 Ill. App. 3d at 182 (holding that due process requires that civil action to terminate parental rights be "fundamentally fair") (citation and internal

quotation marks omitted). In addition, the Illinois legislature has given such respondents a statutory right to counsel, with whom they must be able to communicate effectively. 405 ILCS 5/3–805 (2014); cf. *A.H.*, 359 Ill. App. 3d at 182 (noting statutory right to counsel in action to terminate parental rights). And in civil cases against such individuals, it is important to maintain the dignity of the judicial proceedings. *In re T.J.F.*, 248 P.3d 804, 812 (Mont. 2011) (Nelson, J., concurring); cf. *A.H.*, 359 Ill. App. 3d at 182 (recognizing that interest in termination of parental rights case). In light of those interests, this Court should rule that a respondent in an involuntary commitment or treatment proceeding may be physically restrained at trial only when there is a legitimate justification to do so, supported by a competent factual basis that the respondent has had an opportunity to contest.

This Court has recognized a similar right for criminal defendants, both in jury and non-jury cases. *Boose*, 66 Ill. 2d at 265-67 (jury); *In re Staley*, 67 Ill. 2d 33, 37 (1977) (non-jury adjudicatory hearing in juvenile delinquency proceeding); see also *Allen*, 222 Ill. 2d at 346-47 (extending *Boose* principles to use of electronic stun belt). The rights retained by respondents in involuntary commitment and treatment proceedings under the Mental Health Code likewise entitle them not to be indiscriminately restrained in court. See *Mark P.*, 402 Ill. App. 3d at 176-77 (holding that right not to be physically restrained in court applies to involuntary commitment proceeding); see also *T.J.F.*, 248 P.3d at 810 (holding that physical restraints may not be imposed in involuntary commitment case without showing of need for them); *In re F.C. III*, 2 A.3d 1201, 1222 (Pa. 2010) (requiring showing

of need for physical restraints in proceeding to commit juvenile to involuntary drug abuse program); see generally *Davidson v. Riley*, 44 F.3d 1118, 1122 (2d Cir. 1995) (recognizing general right of party to civil litigation not to be physically restrained without legitimate justification). This Court may also recognize a similar protection in the exercise of its authority over the conduct of judicial proceedings to maintain their dignity and promote the uniform administration of justice in the lower courts in this State. Ill. Const. Art. VI, § 16.

The policy against physically restraining respondents in involuntary commitment and treatment cases is not absolute, but may be outweighed when restraints are justified to avoid a risk of flight, physical harm to others, or disruption of the proceedings. See *Boose*, 66 Ill. 2d at 266; *A.H.*, 359 Ill. App. 3d at 183; see also *Davidson*, 44 F.3d at 1124. The trial court must determine in each case, based on the relevant circumstances, whether such restraints are justified. See *Boose*, 66 Ill. 2d at 268.

Any decision to impose restraints must be based on credible information, although that information need not be of the type that would be admissible in the liability phase of the case. *State v. Tolley*, 226 S.E.2d 353, 368 (N.C. 1976); *State v. Moen*, 491 P.2d 858, 860-61 (Idaho 1971); *Propriety of Restraining Accused*, 90 A.L.R.3d 17, § 11[e]. The respondent must be given the chance to evaluate and contest that information and to present argument against imposing restraints. *Boose*, 66 Ill. 2d at 266; *Allen*, 222 Ill. 2d at 348; *Tolley*, 226 S.E.2d at 368-69. After evaluating that information, the court must balance any legitimate security concerns against the respondent's right to communicate with his counsel and to

participate in the proceeding. *Woods v. Thieret*, 5 F.3d 244, 247 (7th Cir. 1993); *Tyars v. Finner*, 709 F.2d 1274, 1284 (9th Cir. 1983). Factors the circuit court may consider include:

> The seriousness of the present charge against the [respondent]; [respondent's] temperament and character; his age and physical attributes; his past record; past escapes or attempted escapes, and evidence of a present plan to escape; threats to harm others or cause a disturbance; self-destructive tendencies; the risk of mob violence or of attempted revenge by others; the possibility of rescue by other offenders still at large; the size and mood of the audience; the nature and physical security of the courtroom; and the adequacy and availability of alternative remedies.

Boose, 66 Ill. 2d at 266-67 (citation and quotation marks omitted); see also *Allen*, 222 Ill. 2d at 347-48; *A.H.*, 359 Ill. App. 3d at 182-83.

The decision whether to impose physical restraints in a particular case is committed to the discretion of the trial court. *Boose*, 66 Ill. 2d at 266; see also *Allen*, 222 Ill. 2d at 348; *People v. Kelley*, 2013 IL App (4th) 110874, ¶ 26 (post-conviction hearing); *A.H.*, 359 Ill. App. 3d at 182. Because such a decision requires the exercise of discretion, circuit courts may not apply a blanket policy of imposing physical restraints or delegate to others, including security officials, the responsibility to decide whether physical restraints should be imposed in an individual case. See *Boose*, 66 Ill. 2d at 268; *Allen*, 222 Ill. 2d at 348-49; *A.H.*, 359 Ill. App. 3d at 183; see also *Davidson*, 44 F.3d at 1123-24 ("If the court has deferred entirely to those guarding the prisoner, however, it has failed to exercise its discretion."); *Woods*, 5 F.3d at 248; *People v. Mendola*, 140 N.E.2d 353, 356 (N.Y. 1957); see generally *In re R.W.S.*, 728 N.W.2d 326, 331 (N.D. 2007)

(surveying cases in which court simply deferred to security officials); *Bowers v. State*, 507 A.2d 1072, 1095-96 (Md. App. 1986) (Eldridge, J., dissenting) (same); *Propriety of Restraining Accused*, 90 A.L.R.3d 17, § 11[a].

The circuit court's reasons for ordering restraints should be clear from the record. *Boose*, 66 Ill. 2d at 266, 267; see also *Staley*, 67 Ill. 2d 33, 38 (1977). Ideally, the trial judge should state them for the record, but doing so is not indispensable where the record is nonetheless clear as to the reasons. *People v. Wilkes*, 108 Ill. App. 3d 460, 464 (4th Dist. 1982); see also *Boose*, 66 Ill. 2d at 266, 267.

Consistent with the rule in civil cases generally, a respondent asserting that the circuit court committed reversible error in connection with a decision to impose physical restraints has the burden of establishing that the error resulted in material prejudice, in the sense that it likely affected the outcome of the case. See *Delvillar*, 235 Ill. 2d at 522; *Adkins*, 129 Ill. 2d at 513 (citing *Nehring v. First Nat'l Bank*, 143 Ill. App. 3d 791, 805 (2d Dist. 1986)); *Welsh v. Jakstas*, 401 Ill. 288, 294 (1948); *Fried*, 190 Ill. App. 3d at 883; *Matter of Wellington*, 34 Ill. App. 3d 515, 519 (1st Dist. 1975) (involuntary commitment proceeding); *Kyowski v. Burns*, 70 Ill. App. 3d 1009, 1018 (1st Dist. 1979); see also *Palmer v. Hoffman*, 318 U.S. 109, 116 (1943) (stating similar rule for federal courts). Whether such an error justifies reversal of the circuit court's judgment depends on the nature of the error, including the interest affected, and whether it likely affected the outcome of the case. See, e.g., *F.C. III*, 2 A.3d at 1221-22; *T.J.F.*, 248 P.3d at 220; *Mendola*, 140 N.E.2d at 356 (holding that any error in connection with procedure for determining physical restraint issue did not support reversal where evidence

justified imposing restraint); *Moen*, 491 P.2d at 861 (same); *Mark P.*, 402 Ill. App. 3d at 177 (holding that circuit court's failure to exercise discretion regarding physical restraint of respondent in involuntary commitment proceeding was harmless where it could not have affected outcome of case).

Like other claims of error, an objection to the imposition of physical restraints, or to the procedures followed by the circuit court in ordering them, may be forfeited if it is not timely asserted in the circuit court. *Allen*, 222 Ill. 2d at 352; *People v. Hyche*, 77 Ill. 2d 229, 241 (1979); *Mark P.*, 402 Ill. App. 3d at 177; *Tolley*, 226 S.E.2d at 371-72; see generally *Propriety of Restraining Accused*, 90 A.L.R.3d 17, § 16.

The appellate court in this case failed to recognize that a trial court's responsibility to explain a decision to maintain physical restraints does not always require that its reasons be explicitly announced, but may be satisfied if those reasons are nonetheless clear from the record. See, e.g., *Boose*, 66 Ill. 2d at 266, 267; *Wilkes*, 108 Ill. App. 3d at 464. Even more significant, the appellate court incorrectly held that any error by a circuit court regarding the imposition of physical restraints is reversible error, regardless of the specific nature of the error and the interests affected, unless the People establish the *absence* of prejudice *beyond a reasonable doubt*. (A 10, ¶ 35.)

IV. The Appellate Court Erred by Reversing the Circuit Court's Involuntary Medication Order Based on Its Mistaken Evaluation of the Circuit Court's Decision to Restrain Respondent.

A. The Record Does Not Provide any Ground to Contest the Factual Basis for the Circuit Court's Decision to Impose Physical Restraints on Respondent.

As an initial matter, the People note that the appellate court did not hold, and there is no basis in the record to claim, that the circuit court's decision to physically restrain respondent was factually unjustified. Respondent attempted to make this argument in the appellate court. (Resp. App. Br. at 9-10; Resp. App. Reply Br. at 2-4.) As the appellate court noted, however, the documentary information on which the circuit court relied in making that determination was not included in the record. (A 9, ¶ 30 n.2.) And it is well established that it is the appellant's duty to include in the record any materials relevant to support a claim of error, and that in the absence of a complete record the reviewing court must presume that the action taken by the trial court had a sufficient factual basis, with any doubts arising from omissions in the record resolved against the appellant. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319 (2003); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). That principle precludes respondent, who failed to include the patient transport document in the record, from maintaining that the information in it was factually insufficient to sustain the circuit court's physical restraint order, or that this ruling was substantively unjustified in light of the available information. Thus, the only issues on appeal relate to the circuit court's alleged noncompliance with the other requirements for the entry of such orders and the consequences of any such noncompliance.

B. The Appellate Court Incorrectly Found That the Circuit Court Did Not Itself Determine Whether to Impose Physical Restraints on Respondent and Instead Simply Delegated That Responsibility to Security Officials.

The record, taken as a whole, does not support the appellate court's conclusion that the circuit court abdicated its judicial responsibility to decide itself whether respondent should be physically restrained, and instead delegated that decision to security officials. The appellate court correctly observed that, in light of the liberty interests involved and the courts' ultimate authority over judicial proceedings, any decision to physically restrain a party must be made by the court, not by security officials or other persons. (A 9, ¶ 30.) The appellate court wrongly concluded, however, that the circuit court violated this principle.

Many of the cases finding a violation of the trial court's duty to decide itself whether to physically restrain a party involved application of a blanket policy that the court adopted or accepted without question, or situations where the court treated the matter as being within the responsibility of administrative officials. See *Boose*, 66 Ill. 2d at 268 (quoting *People v. Duran*, 545 P.2d 1322, 1329 (Cal. 1976)); see also *Allen*, 222 Ill. 2d at 348-49; *Davidson*, 44 F.3d at 1120 (holding that trial court improperly deferred to judgment of security officials where it said, "It's up to the officers who are with you. I'm not going to do anything different than they advise."); *Woods*, 5 F.3d at 248; *Davis v. State*, 195 S.W.3d 311, 315-16 (Tex. App. 2006); *Propriety of Restraining Accused*, 90 A.L.R.3d 17, § 11[a]. Thus, for example, in *A.H.* the appellate court, applying the *Boose* analysis in an action to terminate parental rights, found error where the "trial judge simply deferred

to the sheriff" by stating, "I don't tell the security officers how to run their business." 359 Ill. App. 3d at 182-83.

In this case, by contrast, the circuit court never stated that it considered the issue to be one for the security officials to decide. Nor did it adopt a position of blind deference to the security officials' wishes. On the contrary, by examining the evidence submitted by the security officer to justify keeping respondent in physical restraints and by making sure that respondent's counsel also had the opportunity to review it, the circuit court made clear that it was not simply deferring to the wishes of the security personnel.

The circuit court's exercise of its responsibility to decide the issue is not changed by its comment that it had no reason to "doubt the veracity" of the information on the patient transport document submitted to it by the security officer. Relying on information from non-judicial officials is not the same as delegating the decision to those officials and abdicating the court's ultimate judicial responsibility. See, e.g., *United States v. Samuel*, 431 F.2d 610, 615 (4th Cir. 1970) (holding that trial court, in exercising discretion whether to restrain a party, "may rely heavily on the Marshal's advice"); *Commonwealth v. Brown*, 305 N.E.2d 830, 834 (Mass. 1973) (holding that trial court "may attach significance to the report and recommendation of an official charged with custody").

The conclusion that the circuit court made this decision itself, rather than delegating it to others, is reinforced by its consideration of respondent's counsel's request that respondent's right hand be freed so he could take notes. Instead of rejecting that request out of hand, the court specifically considered it, stating that

it had to strike a "balance" between the security concerns reflected in the information provided by the security officer and respondent's ability to participate in the proceeding and communicate with his counsel. (R 65, 67.) Striking such a balance is the opposite of simply delegating the issue to security officials or uncritically deferring to their preferences.

In reaching the opposite conclusion, the appellate court placed excessive emphasis on the trial judge's comment, made in connection with the request that respondent's right hand be freed, that "[t]here's obviously got to be a balance of *whatever security feels is necessary* and his ability to participate." (A 9, ¶ 28, emphasis added by appellate court).) The appellate court evidently interpreted this comment to mean that the circuit court was not itself deciding whether to keep respondent restrained. That interpretation is unwarranted.

When the record is viewed as a whole, it is clear that the circuit court was not delegating to the security personnel the responsibility to decide the restraint issue, but was assuming that responsibility itself. The trial judge's exercise of that responsibility was confirmed promptly after he made the above-quoted remark, when he said, "I'm trying to do the best to balance both the security information given to me and your ability to participate," and also stated, "If there is a need for you to be writing down some notes or things of that nature, I will consider it at that time." (R 67.)

C. The Appellate Court Wrongly Held That the Circuit Court Erred by Not Stating on the Record its Reasons for Ordering Respondent Physically Restrained.

The appellate court also wrongly held that the circuit court erred by failing to make explicit findings in support of its order requiring respondent to be physically restrained during the second day of his trial. In the circumstances of this case, that holding exalts form over substance for no valid purpose.

First, by not objecting during the trial to the lack of express findings by the circuit court, respondent forfeited the issue. Even constitutional errors can be forfeited if they are not of such a magnitude as to deprive a party of a fair trial, and that principle applies to claimed errors relating to a respondent being physically restrained in court. *Allen*, 222 Ill. 2d at 352; see also *Hyche*, 77 Ill. 2d at 241 (holding that defendant forfeited any error by failing to object to appearance in handcuffs); *Mark P.*, 402 Ill. App. 3d at 177 (holding that claim of failure to follow *Boose* hearing procedures, including specification of factual basis for ruling, was forfeited where "counsel did not request a factual basis for the trial court's refusal to order removal of the restraints," and "a *Boose* hearing was not requested below"); see generally *Propriety of Restraining Accused*, 90 A.L.R.3d 17, § 16; cf. *People v. Casillas*, 195 Ill. 2d 461, 489 (2000) (holding that defendant forfeited claim of error based on circuit court's failure to make specific finding on sentencing factor).

In *Allen*, after the circuit court required a criminal defendant to be physically restrained without conducting a *Boose* hearing, this Court held that the defendant's failure to object at the time amounted to a forfeiture of the issue, and

that the error did not satisfy the strict standards to establish "plain error." *Id.* at 353-54; see also *People v. Strickland*, 363 Ill. App. 3d 598, 603 (4th Dist. 2006) (surveying Illinois cases addressing forfeiture of objection to physical restraints and application of plain error doctrine).[3]

The same principle applies with even greater force here, where the circuit court's supposed error lies not in its *substantive* decision to restrain respondent, but in its failure to comply with the ancillary *procedural* requirement of stating on the record its reasons for doing so. Although respondent initially objected to being physically restrained, he did not object to the sufficiency of the information that was then submitted to justify that restraint. He also neither requested nor objected to the absence of, a *statement of reasons* for the circuit court's order that he be restrained, which is the error on which the appellate court justified its reversal. Respondent thus forfeited any claim of error based on that omission.

In any event, the appellate court incorrectly ruled that the circuit court committed error by not expressly stating on the record its reasons for restraining respondent. Trial courts are not generally required to announce the reasons for their rulings, even though doing so may facilitate appellate review. *Golf Trust of Am., L.P. v. Soat*, 355 Ill. App. 3d 333, 337 (2d Dist. 2005); *American Wheel & Eng'g Co. v. Dana Molded Prods., Inc.*, 132 Ill. App. 3d 205, 212 (4th Dist. 1985);

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[3] Plain error review of forfeited issues, which is typically applied only in criminal appeals, may also be applied in civil cases in rare situations where an egregious error denies a party a trial that meets minimal standards of fundamental fairness and represents an affront to the judicial process. *Vanderhoof v. Berk*, 2015 IL App (1st) 132927, ¶ 94; see also *Gillespie v. Chrysler Motors Corp.*, 135 Ill. 2d 363, 375 (1990). That is not the situation here.

Nemeth v. Banhalmi, 125 Ill. App. 3d 938, 959 (1st Dist. 1984). For certain matters, however, this Court has required special findings. See, e.g., S. Ct. Rule 137(d) (requiring court imposing sanctions for pleading signed without good faith basis to set forth with specificity "the reasons and basis" for doing so).

In *Boose*, this Court stated that "[t]he trial judge *should* state for the record his reasons for allowing the defendant to remain shackled." 66 Ill. 2d at 266 (emphasis added). Then, after noting that a reviewing court examines whether such a decision represents an abuse of discretion, this Court added: "It is obvious that *the record should clearly disclose the reason* underlying the trial court's decision for the shackling . . . ." *Id.* at 267 (emphasis added).[4] These statements indicate that a trial court's statement of its reasons is not some mandatory, strict formality that must always be followed for the court's order to be valid, but is instead intended to ensure that the circuit court gave the issue the focused attention it deserves, and to facilitate review on appeal. Cf. *People v. Geiler*, 2016 IL 119095, ¶¶ 19-26 (recognizing that Supreme Court's own rules for certain procedures may be merely directory, in which event noncompliance does not automatically require reversal).

Illinois precedent conforms to that practical view of this requirement. For example, in *People v. Wilkes*, 108 Ill. App. 3d 460 (4th Dist. 1982), the defendant appealed his conviction, complaining only that, after being apprehended following

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[4] Supreme Court Rule 430, adopted by the Court in 2010, partly codifies *Boose* and requires a trial court to make "specific findings" when it imposes physical restraints on a criminal defendant at a hearing to determine "innocence or guilt."

an attempted escape, he was required to appear at trial in shackles and a jail uniform. Rejecting this contention, the appellate court noted that the trial judge "carefully followed the procedural dictates of *Boose*." *Id.* at 464. The appellate court then held:

> The trial judge did omit to state his reasons, other than saying the precautions were "necessary." However, *it is apparent that he was letting the record speak for itself.*

Id. (emphasis added). Thus, in *Wilkes*, the only reason for the physical restraints — a risk of flight — was obvious from the record and therefore did not have to be stated explicitly on the record to ensure that the defendant had an opportunity to contest the matter and to facilitate review.

Similarly, in *Buss* this Court rejected the contention that the defendant's conviction should be overturned because he was shackled during the trial, even though "the circuit court did not state its reasons for requiring shackling at the time it initially denied defendant's motion." 187 Ill. 2d at 217. The Court explained that this omission was "presumably because defense counsel indicated that defendant did not object to leg shackles so long as the jury did not see them," and that the circuit court did provide an explanation when it ruled on the defendant's post-trial motion. *Id.* Thus, in *Buss* as well, this Court did not treat the circuit court's failure to state its reasons on the record at the time of its ruling as a fatal defect. See also *People v. Urdiales*, 225 Ill. 2d 354, 417 (2007) ("Although the court did not initially mention the first *Boose* factor, i.e., the seriousness of the charge against defendant, that consideration must have been obvious to all . . . ."); *Duckett v. Godinez*, 67 F.3d 734, 749 n.7 (9th Cir. 1995) ("The trial court

is not required to state on the record all its reasons for imposing shackles, ... However, the basis for the decision to shackle should be apparent from the record."); *Bowers*, 507 A.2d at 1081 (finding no abuse of discretion where court was familiar with defendant's individual circumstances justifying physical restraint, "[a]lthough we would prefer the bases for the judge's conclusions to have been somewhat more explicitly stated").

In this case, the justification for restraining respondent (high flight risk) was made amply clear on the record. (R 63-64.) Moreover, respondent's counsel never challenged the factual basis for the flight risk, making further elaboration on this factor unnecessary. See *People v. Buss*, 187 Ill. 2d 144, 217-18 (1999) (finding no reversible error in requiring defendant to be shackled where, among other things, "defense counsel was given an opportunity to present reasons why defendant should not be shackled" but merely "indicated that defendant did not object to leg shackles so long as the jury did not see them").

Here, in light of respondent's decision not to contest the factual information that he was a flight risk, there was no need for the circuit court to make specific oral findings on the other potentially relevant factors. The circuit court was not only aware of the felony charges for which respondent was found unfit to stand trial (R 11-12, 120-21), but also could visually observe his age and physical condition, as well as the evident change in his demeanor since the first day of trial two weeks earlier (R 11, 162-63). The trial judge was certainly familiar with the nature and physical security of the courtroom. And he specifically considered whether to impose less restrictive restraints on respondent by removing the cuff

on his right hand, as his counsel initially requested. (R 67.) In these circumstances, including the absence of a jury, it made little sense for the circuit court to consider the remaining factors that *Boose* said are potentially relevant, i.e., "the risk of mob violence or of attempted revenge by others; the possibility of rescue by other offenders still at large; [and] the size and mood of the audience." *Boose*, 66 Ill. 2d at 267.

The appellate court seems to have lost sight of the presumption "that a trial judge knows and follows the law unless the record affirmatively indicates otherwise." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 72; see also *Dep't of Public Works and Bldgs. v. Anastoplo*, 14 Ill. 2d 216, 223 (1958) (applying "presumption that the trial judge has performed his duty and has properly exercised the discretion vested in him"); *Wanner v. Keenan*, 22 Ill. App. 3d 930, 935 (2d Dist. 1974). Indeed, the appellate court itself recognized that the circuit court should not be faulted for failing to follow the "exact analysis" that its "opinion holds for the first time . . . applies in civil proceedings for involuntary commitment or treatment." (A 9, ¶ 29.) Accordingly, any technical departures by the circuit court from the procedures the appellate court prescribed "for the first time" long after the trial (*id.*) cannot be reversible error.

This Court plays a unique role in promoting the uniform administration of justice in the lower courts. But it is inappropriate for the appellate court to announce new procedures, and then reverse the circuit court for failing to follow them. For this reason, the People urge this Court to adopt a requirement like the one governing criminal cases, applicable *prospectively*, for orders to physically

restrain parties in non-criminal cases, including cases under the Mental Health Code, by incorporating that requirement in this Court's official Rules.

D. Any Error in the Circuit Court's Decision That Respondent Be Physically Restrained Did Not Warrant Reversal of the Its Judgment Requiring Involuntary Medication.

Even if the circuit court committed error in connection with its order physically restraining respondent during the second day of his trial, that error did not warrant reversing that court's judgment finding respondent to be a person subject to involuntary medication. As noted above in Section IV. A, respondent cannot contest the factual sufficiency of the evidence on which the circuit court relied in entering that order, so reversal of the circuit court's judgment could be based only on one of its other claimed errors — namely, deferring entirely to the judgment of the security officials or failing to state the court's reasons on the record. But neither claimed error changed the ultimate outcome of the case, and therefore nothing justifies reversal of the circuit court's judgment.

The appellate court held that these errors required reversal unless the People demonstrated "beyond a reasonable doubt" that they did not contribute to the judgment. (A 10.) This ruling, which adopted the harmless error standard for evaluating most constitutional errors in *criminal* appeals, see *People v. Patterson*, 217 Ill. 2d 407, 423-24 (2005), was wrong in two respects. First, it put the burden of proving prejudice on the wrong party by requiring the People to establish the *absence* of prejudice. Second, it imposed an excessively high standard by requiring that this burden be satisfied beyond a reasonable doubt.

A party is entitled to a fair trial, not an error-free one, and errors that do not affect the outcome normally are not grounds for reversal. *Simmons v. Garces*, 198 Ill. 2d 541, 566-67 (2002); *J.L. Simmons Co. ex rel. Hartford Ins. Grp. v. Firestone Tire & Rubber Co.*, 108 Ill. 2d 106, 115 (1985). In addition, as noted above, in a civil case the appellant has the burden of establishing that any error was prejudicial, in the sense that it likely affected the outcome of the case. *Delvillar*, 235 Ill. 2d at 521-22; *Adkins*, 129 Ill. 2d at 513; *Welsh*, 401 Ill. at 294; *Fried*, 190 Ill. App. 3d at 883; *Nehring*, 143 Ill. App. 3d at 805; *Matter of Wellington*, 34 Ill. App. 3d at 519; *Kyowski*, 70 Ill. App. 3d at 1018. Further, the "reasonable doubt" standard does not apply in civil proceedings for involuntary commitment or treatment under the Mental Health Code, which are subject to a "clear and convincing" standard of proof. 405 ILCS 5/3–808 (2014); *In re Stephenson*, 67 Ill. 2d 544, 556 (1977). The appellate court erred, therefore, by applying the wrong harmless error standard. In any event, the People submit that, for the reasons described below, the circuit court's claimed errors in this case were harmless regardless of the applicable standard.

1. Any Improper Deference Given to Security Officials Did Not Affect the Outcome of the Case.

If the circuit court did commit error by deferring entirely to the security officials' judgment, the immediate effect on respondent was to be shackled during the second day of his trial if the circuit court would not have imposed that restraint in the proper exercise of its discretion. But that temporary restraint on respondent's liberty during the trial would justify reversal of the circuit court's

judgment only if it likely affected the outcome of the case. The record does not support such a conclusion.

The appellate court held that respondent might have been prejudiced in two ways: through an inability to communicate with his counsel by writing notes, and as a result of potential bias by the trial judge from seeing respondent in physical restraints. (A 10, ¶ 36.) Neither conclusion is convincing.

Nothing in the record indicates that respondent's inability to take notes interfered in any way with his ability to communicate with his counsel, who was seated next to him during the trial. See *Urdiales*, 225 Ill. 2d at 419 (holding that "denying defendant writing implements . . . would not have affected his ability to communicate with counsel — who was sitting right next to defendant"). When the issue came up and the court asked whether respondent was right-handed, he responded that "speaking . . . is even better." (R 66.)[5] He then repeatedly demonstrated his propensity toward unrestrained oral expression, including, as his counsel confirmed, frequent oral statements to his counsel that were inaudible to the court. (R 144-45, 163-64.)

In addition, the trial judge specifically inquired whether respondent's counsel believed "that he is unable to participate in the court proceedings . . . with his hands restrained," and further made clear that he would revisit the issue "[i]f

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[5] The record does not support the appellate court's statement "that the respondent's attorney had just indicated that the respondent *wished* to be able to take notes." (A 9, ¶ 28, emphasis added.) Respondent's counsel asked only whether his right hand could be freed "so he *can* take some notes, *if* I have any questions or there's [sic] issues that we need to raise." (R 65, emphasis added.)

there is a need for [respondent] to be writing down some notes or things of that nature." (R 65-67.) But respondent's counsel never asked the court to do so, further suggesting that note-taking was not necessary for respondent to be able to communicate with his lawyer. On this record, therefore, nothing supports a finding that respondent was prejudiced by being unable to communicate with his counsel, or that any such limitation denied him a fair trial and likely affected the outcome of the case. See *Urdiales*, 225 Ill. 2d at 419; see also *In re F.C. III*, 2 A.3d at 1222-23 (rejecting claim that physical restraints impeded party's ability to communicate with counsel where "the court specifically considered whether or not [he] could effectively communicate with counsel" and the intermediate court of review "noted that [he] failed to offer any specifics as to how the restraints did in fact interfere with his ability to communicate with counsel"); *Corbin v. State*, 840 N.E.2d 424, 432 (Ind. Ct. App. 2006) (finding no reversible error in physically restraining defendant where "there is nothing in the record to indicate that Corbin's restraints actually prevented him from communicating with counsel"); *State v. Russ*, 709 N.W.2d 483, 485-87 (Wis. App. 2006) (holding that deaf defendant failed to meet burden of establishing prejudice from physical restraints due to asserted impairment of ability to communicate with counsel); *Brown v. State*, 877 S.W.2d 869, 872 (Tex. App. 1994) (noting that "the record contains no indication that Defendant experienced any difficulties communicating with counsel"); cf. *Mark P.*, 402 Ill. App. 3d at 178 (holding that any error in physically restraining respondent was harmless where, *inter alia*, it could not have hampered him in presentation of his defense).

The record also does not support any basis to find that respondent's appearance in physical restraints during the second day of his trial caused the trial court to be unfairly biased against him. It is true that the general rule against imposing physical restraints in court applies both to jury trials and bench trials. *Allen*, 222 Ill. 2d at 346-47; *Staley*, 67 Ill. 2d at 37. But it does not follow that the risk of unfair prejudice, which is only one of the reasons for the general rule against physical restraints, applies equally in both situations.

Trial judges are generally assumed to be able to decide cases impartially, disregarding any improper or irrelevant information. As the Court has explained:

> It is assumed that judges, regardless of their personal backgrounds and experiences in life, will be able to set aside any biases or predispositions they might have and consider each case in light of the evidence presented. . . . It is further assumed that a judge, in a bench proceeding, considers only competent evidence in making a finding.

People v. Tye, 141 Ill. 2d 1, 25-26 (1990); accord *United States v. Zuber*, 118 F.3d 101, 104 (2d Cir. 1997) ("We traditionally assume that judges, unlike juries, are not prejudiced by impermissible factors"). Consequently, as other courts have recognized, the fact that this case was tried to the court, rather than to a jury, significantly reduced any risk of prejudice in the eyes of the factfinder. See, e.g., *F.C. III*, 2 A.3d at 1222 (finding no reversible error from physical-restraint order in involuntary treatment proceeding because "there is no jury" in such cases, and "[t]here is absolutely no indication that the presence of restraints on Appellant biased the judge"); *Williams v. State*, 678 S.E.2d 95, 97 (Ga. App. 2009) (emphasizing that defendant "was tried by the trial judge sitting alone at a bench trial,"

and holding that defendant failed to show any prejudice from being "required to testify while shackled"); see also *United States v. LaFond*, 783 F.3d 1216, 1225 (11th Cir. (2015) (noting distinction between judge and jury and holding that general rule against physically restraining defendant does not apply at sentencing hearing).

In addition, the notion that the circuit court could have been unfairly prejudiced by seeing respondent in physical restraints on the second day of his trial is greatly mitigated, if not eliminated, because the court presumably had seen him in restraints while being transported to and from the courtroom, and, as part of the evidence in the case, already knew that respondent was committed after being found unfit to stand trial on criminal charges and had been ordered involuntarily medicated on a prior occasion. In these circumstances, any incremental prejudice to respondent would have been vanishingly small. See, e.g., *People v. Robinson*, 92 Ill. App. 3d 972, 974 (5th Dist. 1981) (finding that shackling of witnesses "could not have detracted from the fairness of the trial" in case relating to prison incident where each witness testified he was resident of segregation unit, so "[t]he fact that they were shackled was merely another indication of that residency"); see also *Holloway v. Alexander*, 957 F.2d 529, 530 (8th Cir. 1992) (finding no prejudice where "[t]he shackles added nothing to the trial that was not already apparent from the nature of the case"); *Corley v. Cardwell*, 544 F.2d 349, 352 & n.1 (9th Cir. 1976) (finding no prejudice in light of what defendant's own counsel told the jury about him, and stating that "'[n]o prejudice can result from seeing that which is already known'") (quoting *Estelle*

v. Williams, 425 U.S. 501, 507 (1976)); *Brown*, 305 N.E.2d at 834 (emphasizing that "physical restraints . . . could not, we think, have added much if anything to the minds of the jurors beyond what was unavoidably there as the result of the evidence itself"); *Propriety of Restraining Accused*, 90 A.L.R.3d 17, §§ 13[a], 15[b].

It is relevant, too, that there is no suggestion of actual prejudice on the record. To the contrary, the entire proceeding showed that the trial judge proceeded with exemplary fairness and impartiality, focusing on the evidence without being influenced or distracted by other events, including respondent's frequent outbursts, which the court said were never "a problem for me." (R 144.)

The appellate court's contrary suggestion — that "prejudice in the eyes of the fact finder . . . *might* have occurred as well" (A 10, ¶ 36, emphasis added) — both relied on the wrong standard for evaluating claimed prejudice (requiring the People to prove the absence of prejudice, and to do so beyond a reasonable doubt, see above at Section IV. D), and rested on unwarranted speculation, which under any standard is not a valid basis to find prejudicial error, see *People v. Warmack*, 83 Ill. 2d 112, 129 (1980); see also *In re Karen E.*, 407 Ill. App. 3d 800, 811 (1st Dist. 2011); *Ramos v. Pankaj*, 203 Ill. App. 3d 504, 507 (4th Dist. 1990).

The appellate court declared:

> [T]he trial court stated that its decision to order further medication of the respondent rested in part on the respondent's "outbursts in the courtroom" displaying animosity. These outbursts were related in part to the shackling.

(A 10, ¶ 36.) This is not a fair characterization of the record. Critically, respondent never contested the sufficiency of the evidence on which the circuit court

found him to be a person subject to involuntary treatment. Nor could he. As the circuit court summarized, the evidence in this regard was compelling and one-sided. (R 179-86.) In addition, the great majority of respondent's interruptions and outbursts were not related to his being physically restrained. And the trial judge affirmatively stated that, as part of his conduct of the hearing, respondent's outbursts "have never been a problem" for him. (R 144.) Near the end of the hearing, respondent's counsel also made clear that respondent complained to her, but *not* to the court, about the restraints on several occasions, and that she did not relay these complaints to the court. (R 144-45, 163-64.)

Nor does the record support a finding that respondent's physical restraints contributed in any material way to his inability to refrain from interrupting the hearing. His own counsel admitted to the court that "[t]here has been a deterioration, absolutely, from the person who was before you two weeks ago and today." (R 162.)

Respondent's counsel did comment, late in the hearing, that "he's been in pain." (R 144.) But that comment was not brought to the court's attention in a timely manner or supported by any evidence. When respondent testified, he was asked about the physical restraints and made clear that he disliked them, but never said they caused him any pain. (R 117-20, 125-26.) And when respondent's counsel advised the court that respondent said he was in pain, the trial court specifically noted that any discomfort from the physical restraints was never brought to its attention. (R 144-45.) When respondent's counsel raised the issue again in closing argument, the court stated: "I would have possibly addressed

them if he had made them or you had made them on his behalf directly to me," and respondent's counsel responded: "I apologize. I should have." (R 163-64.) For this reason as well, respondent cannot establish prejudicial error warranting reversal of the judgment. See *Brown v. State*, 877 S.W.2d at 872 (noting that "the record contains no indication that . . . the trial court was ever made aware that use of the restraint affected Defendant's mental faculties in any way").

2. The Circuit Court's Failure to State on the Record Its Reasons for Restraining Respondent Did Not Affect the Outcome of the Case.

There is likewise no valid legal basis for the appellate court's holding that the circuit court's asserted error in failing to state on the record its reasons for physically restraining respondent justified reversing its judgment finding respondent to be a person subject to involuntary medication. Even if that omission constituted an error (which the People dispute), it had no effect on the outcome of the case, and therefore cannot support reversal of that outcome.

The requirement of specific findings for a decision to physically restrain a party is not itself mandated by due process, but instead serves a prophylactic function, both to ensure that the trial court gives the matter careful attention and to facilitate review. See *Commonwealth v. Brown*, 305 N.E.2d at 835. Thus, the absence of such findings, without more, cannot establish the type of prejudicial error necessary to reverse the ultimate judgment in the case — especially where, as here, the appellant has not challenged the factual basis for the court's ruling.

In light of the proceedings below, if the case were remanded to the circuit court to state on the record its reasons for physically restraining respondent,

there is little doubt that the court would refer to respondent's flight risk, as described by the security officer and substantiated on the patient transport record. It would be absurd, therefore, to hold that where respondent did not dispute the sufficiency of this information to justify that ruling, the circuit court's judgment that respondent is subject to involuntary medication should now be reversed on the ground that the court did not make express findings concerning the physical-restraint issue when it decided that issue. Not surprisingly, courts have rejected that very notion. See *Mendola*, 140 N.E.2d at 356 (holding that where evidence supported decision to restrain defendant, judgment against him would not be reversed on the ground that the trial court did not follow "the better practice" and "state for the record his reasons"); *Moen*, 491 P.2d at 861 (same, citing *Mendola*); cf. *United States v. Calhoun*, 600 F. App'x 842, 845-46 (3d Cir. 2015) (explaining that, in context of plain error analysis, error in shackling decision must be shown to affect ultimate outcome of proceeding).

CONCLUSION

For the foregoing reasons, the Court (1) should announce in this appeal the standards and rules that govern a circuit court's decision to physically restrain a respondent in a proceeding for involuntary commitment or treatment under the Mental Health Code; and (2) should reverse the judgment of the appellate court and affirm the judgment of the circuit court.

August 17, 2016

Respectfully submitted,

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Supreme Court Rule 341(c) Certificate of Compliance

I certify that this brief conforms to the requirements of Supreme Court Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 45 pages.

Richard S. Huszagh

Appendix

INDEX TO APPENDIX

Illinois Official Reports

Appellate Court

***In re Benny M.*, 2015 IL App (2d) 141075**

Appellate Court Caption	*In re* BENNY M., Alleged to Be a Person Subject to Involuntary Treatment (The People of the State of Illinois, Petitioner-Appellee, v. Benny M., Respondent-Appellant).
District & No.	Second District Docket No. 2-14-1075
Filed	November 2, 2015
Decision Under Review	Appeal from the Circuit Court of Kane County, No. 14-MH-103; the Hon. Robert K. Villa, Judge, presiding.
Judgment	Reversed.
Counsel on Appeal	Laurel Spahn, of Guardianship & Advocacy Commission, of Hines, for appellant. Joseph H. McMahon, State's Attorney, of St. Charles (Lawrence M. Bauer and Diane L. Campbell, both of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court, with opinion. Justices Zenoff and Spence concurred in the judgment and opinion.

OPINION

The respondent, Benny M., appeals from the October 3, 2014, order of the circuit court of Kane County granting the State's petition to subject him to involuntary treatment with psychotropic medication. On appeal, the respondent argues that he was denied a fair trial when the trial court denied his request to remove his shackles during the hearing, without making any findings that such shackling was necessary, and that the appeal falls within exceptions to the mootness doctrine. We agree and reverse.

BACKGROUND

On August 26, 2013, the State filed a petition seeking to involuntarily medicate the respondent for a period of up to 90 days. This was the second such petition. According to Dr. Donna Luchetta, a psychiatrist with the Elgin Mental Health Center, at some point in the past, the respondent had been charged with domestic battery against his mother, but had been found unfit to stand trial. The respondent was assigned to the Forensic Treatment Program at the mental health center. He was medicated and at some point was found fit to stand trial. However, after he was transferred to a jail, he stopped taking his medication and was again found unfit to stand trial.

Dr. Luchetta had diagnosed the respondent with schizoaffective disorder. The petition did not allege that the respondent had behaved in a threatening or violent manner. Rather, it alleged that the respondent was suffering and that his ability to function had deteriorated since the previous order expired and the respondent stopped taking psychotropic medication. Dr. Luchetta testified that the respondent's condition manifested in delusions that he had no mental illness and did not need to take medication. It also made him argumentative. In the past, he had had severe mood swings, ranging from depressive periods when he would remain in bed for days to hyperelation when he would attempt to kiss the psychology interns.

A two-day hearing on the petition was held on September 5 and 19, 2014. On the first day of the hearing, the respondent's shackles were removed upon his arrival in the courtroom. However, on September 19, the respondent's shackles were not removed.

At the start of the hearing on September 19, the respondent's counsel raised the issue of the shackles, asking the court that the shackles be removed. The following colloquy occurred:

> "THE COURT: Is there any objection to that? Is there any reason for that now in the courtroom? For security purposes, is there anything I should know about, or–
>
> THE SECURITY OFFICER: He's listed as high elopement risk.
>
> [RESPONDENT]: I figured that.
>
> THE SECURITY OFFICER: I have documentation if you would like to see that.
>
> THE COURT: I would be happy to, if that's what security is representing to the court. *** I don't think there is any reason to doubt the veracity. I will review them.
>
> (Pause.)
>
> THE COURT: Have you had a chance to review this beforehand?
>
> MS. BLAKE [Respondent's attorney]: No, Judge.

THE COURT: Patient transport checklist.[1]

[RESPONDENT]: I just want to say something. High risk case for elopement, where am I going to go? I'm trapped.

MS. BLAKE: Be quiet.

[RESPONDENT]: I said I wanted to be here, and I was willing to even be present in this crap. This is kind of interesting. I mean I can laugh about it, too. I have a sense of humor.

THE COURT: I will leave him in custody in the shape he is in now. The request is denied."

The hearing then proceeded with the calling of a witness for the resumption of the respondent's attorney's cross-examination. The respondent's attorney requested that the respondent's right hand be unshackled so he could take notes during her cross-examination of the witness:

"MS. BLAKE: Judge I would ask if at a minimum that my client–my client's right hand be–

[RESPONDENT]: Do you think I am going to take the pen or something and try to stab someone with it?

MS. BLAKE: –right hand being taken out so he can take some notes, if I have any questions or there's issues that we need to raise.

THE COURT: There's obviously got to be a balance of whatever security feels is necessary and his ability to participate. Do you feel that he is unable to participate in the court proceedings–

[RESPONDENT]: I haven't participated in a lot of different areas.

THE COURT: –with his hands restrained?

MS. BLAKE: Certainly with his right hand restrained, yes.

THE COURT: Are you right-handed, Mr. M***?

[RESPONDENT]: I use both of my hands.

THE COURT: For writing purposes?

[RESPONDENT]: Writing purposes? I would try to use my left hand as well because I'm not saying most or everyone, but people tend to try different things, have to learn how to write with both.

THE COURT: Okay. I just want to know.

[RESPONDENT]: If one hand is hurting or whatever, or for some reason, like if someone loses their hand–

THE COURT: Here's what we're going to do.

[RESPONDENT]: –through amputation, they may be forced to use their left hand.

THE COURT: If there is need to take notes, I will consider your request.

[RESPONDENT]: I'm speaking, which is even better.

THE COURT: Ms. Blake, whenever you are ready.

[1]Although the court indicated that the document was a patient transport list, the document was not entered into evidence and is not contained in the record on appeal.

MS. BLAKE: Thank you.

[RESPONDENT]: I don't have paper and pencil. This doesn't make sense. People are saying I'm crazy and acting out. I disagree. So talk to myself [*sic*], in my head, so either everybody or nobody–

THE COURT: Mr. M***, please listen to your counsel. I understand you might be a little frustrated at the moment, but I don't want to have you removed from here. The best thing for you to do would be to participate. I understand there is some limitations [*sic*] at this point. If there is a need for you to be writing down some notes or things of that nature, I will consider it at that time. I'm trying to do the best to balance both the security information given to me and your ability to participate."

Over the next few hours as the hearing continued, the respondent made occasional verbal interjections. Sometimes, his comments indicated a desire to participate in his own defense, such as by asking questions or providing information related to the questioning of the witness. On other occasions, the interruptions were in the nature of commentary on the witness's testimony. The trial court admonished him to stay quiet and allow his counsel to represent him and said that he would be removed from the courtroom if he persisted.

The respondent remained in shackles throughout the hearing. Certain comments by the respondent indicated that the shackles were bothering him. For instance, while he was testifying (having been called as a witness by the State), he was asked about whether he had been utilizing nonmedical ("lesser restrictive") treatment options while at the Elgin Mental Health Center. He responded, "Lesser restrictive treatment? How do you define–right now I'm shackled. I got cuffs. I'm–I'm in restraints is another way of putting it." When asked a similar question later, he noted that the shackles were "very restrictive." He testified that he had not been shackled when he was in the mental health center and was only shackled when he was brought to court, and not always then. At the end of the respondent's testimony, when he was told that he could step down from the witness stand, he said, "If I am still able to walk."

When the State began its closing argument, it argued that the court could see for itself the deterioration in the respondent between the first hearing date two weeks earlier, when the respondent was able to sit still without interrupting, and the present day (September 19), when he had more difficulty refraining from making interruptions. After the State began to refer to an incident in which the respondent kissed an intern on the cheek without her consent, the respondent became agitated. The trial court advised the respondent that the next time he interrupted the proceedings the trial court would remove him from the courtroom. The following colloquy occurred:

"[RESPONDENT]: It's crazy.

THE COURT: I will ask him to leave now, please.

MS. BLAKE: Judge, just for the record, he's been complaining about the shackles the whole hearing.

THE COURT: I have not heard that.

MS. BLAKE: He's been complaining to me.

THE COURT: I have heard him complain about the language that's being used to describe people. I have heard him interrupt and criticize or comment on what Dr.

Luchetta has testified to. I have not heard that. I have heard out loud comments unrelated to the shackles.

MS. BLAKE: But he has had to stand up because he's been in pain.

THE COURT: And none of those items have ever been a problem for me."

The respondent then interjected to explain that he had been trying to say something about the "peck on the cheek," and the trial court said, "See what I mean? That's not shackle-related." The respondent then complained that the security officer had "tightened it." The security officer denied doing anything. The respondent asked if the shackles could be removed, and the security officer told him, "No, I cannot take them off of you. Let's go out here, and I'll fix them up for you. I'll see what I can do." The respondent responded, "I don't need you to take hold of my arm. I need you to take these damn cuffs off. My feet first, hopefully." Referring to the basis for the petition to medicate him (his alleged suffering and deterioration), he continued, "This is why I'm suffering and deteriorating. I mean look at this. I'm walking like a cripple, and I'm not." At that point, the respondent was escorted from the courtroom. The transcript does not reflect that he reentered before the hearing concluded.

In her closing argument, the respondent's attorney addressed the State's argument that the court's own observations would support medicating the respondent, arguing that the respondent was frustrated in part because he had been shackled during the hearing that day despite the fact that he was not required to wear shackles anywhere else. She noted that, although the record might not reflect it, the respondent had stood up several times during the hearing and had indicated that he was having cramps. The trial court stated that it was certain that any such complaints were not part of the record, because the court "would have possibly addressed them if he had made them or you had made them on his behalf directly to me." The respondent's attorney apologized for not putting the respondent's complaints on the record each time they were made, saying that she should have done so. After she noted that the respondent had complained to the security officer, the State objected, and the trial court stated that nothing was in evidence. The hearing concluded a short time later.

On October 3, 2014, the trial court granted the petition to subject the respondent to involuntary medication. In stating the reasons for its ruling, the trial court commented that it had taken into account the respondent's "outbursts in the courtroom with a significant amount of animosity and argumentativeness." The respondent frequently interrupted the trial court as it gave its ruling, at one point saying, "I don't want to be chained." Following the hearing, the respondent filed a timely notice of appeal.

ANALYSIS

On appeal, the respondent contends that he was denied a fair trial when the trial court failed to remove the shackles during his hearing, without stating the basis for keeping him shackled. He also argues that, although this appeal is moot, it falls within exceptions to the mootness doctrine. We agree on both points. In explaining why, we begin with the latter point.

Mootness and Exceptions

"An appeal is moot if 'no actual controversy exists or if events have occurred that make it impossible for the reviewing court to grant the complaining party effectual relief.' " *In re*

Marriage of Eckersall, 2015 IL 117922, ¶ 9 (quoting *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 291 (2005)). Although a court generally should not address an issue that is moot, it may do so if one of the recognized exceptions to the mootness doctrine applies. *Id.* Here, the respondent argues that two exceptions apply: the issue involves an event of short duration that is "capable of repetition, yet evad[es] review" (internal quotation marks omitted) (*In re Barbara H.*, 183 Ill. 2d 482, 491 (1998)), and the issue is of public interest (*Marriage of Eckersall*, 2015 IL 117922, ¶ 9).

16 To establish that the first exception applies, the complaining party must show that: (1) the challenged action is of such short duration that it cannot be fully litigated prior to its cessation and (2) there is a reasonable expectation that the same party would be subjected to the same action again. *In re Alfred H.H.*, 233 Ill. 2d 345, 358 (2009).

17 The parties agree that both prongs of this test are met here, and the record supports their assertion. First, the order of involuntary medication was set for 90 days, a duration too short to permit appellate review. As to the second element, the current appeal involves the second petition for the respondent's involuntary treatment and, due to the respondent's ongoing mental health needs and pending criminal charges, it is reasonably likely that the State will file another petition to subject him to the involuntary administration of psychotropic medication. Thus, it is reasonable to expect that in the future the respondent will be subjected to the same action, at which time the same issue of whether he should be shackled during the hearing will again arise. Therefore, we find that the issue is capable of repetition yet evades review. *Id.*

18 We also find that this appeal meets the requirements for the second exception to the mootness doctrine, the public interest exception. "The criteria for application of the public interest exception are: (1) the public nature of the question; (2) the desirability of an authoritative determination for the purpose of guiding public officers; and (3) the likelihood that the question will recur." *In re James W.*, 2014 IL 114483, ¶ 20. As to the first prong, where "the issue was one of general applicability to mental health cases" and would "affect the procedures that must be followed" in mental health proceedings, our supreme court has held that the issue is " 'of a public nature and of substantial public concern.' " *In re Rita P.*, 2014 IL 115798, ¶ 36 (quoting *In re Mary Ann P.*, 202 Ill. 2d 393, 402 (2002)).

19 The second prong of the public interest exception is also met. Although the law is well settled regarding the factors that must be considered when the issue of shackling arises in a *criminal* trial (see, *e.g.*, Ill. S. Ct. R. 430 (eff. July 1, 2010); *People v. Allen*, 222 Ill. 2d 340, 347-48 (2006); *People v. Boose*, 66 Ill. 2d 261, 266-67 (1977)), there is uncertainty regarding whether the same factors must be considered when the proceeding is a *civil* proceeding in which the fundamental rights of the respondent are at issue (see *In re Mark P.*, 402 Ill. App. 3d 173, 176-77 (2010) (reviewing court noted that there was "no precedent" on the question of whether a trial court must consider the factors identified in *Boose* and Rule 430 when the issue of shackling arises in a civil commitment proceeding, but found that it need not answer this question, because the trial court there did not conduct any meaningful consideration of whether the respondent should be shackled but simply adopted the determination of the sheriff's deputies)); see also *In re A.H.*, 359 Ill. App. 3d 173, 182-83 (2005) (it was unclear whether all of the *Boose* factors would apply in a civil proceeding for the termination of parental rights, but reviewing court did not need to resolve that issue as the trial court had "simply deferred to the sheriff" in ruling that the respondent would remain shackled). The

involuntary medical treatment of mental health patients implicates substantial liberty interests (*James W.*, 2014 IL 114483, ¶ 21), and thus it is clearly desirable to provide authoritative guidance regarding the use of shackles in such proceedings. See *id.* Finally, we have already held that the third prong of the public interest exception–the likelihood that the issue will recur–is met here. Thus, review of this appeal is merited under the public interest exception as well as the "capable of repetition" exception.

20 Applicability of *Boose* Factors at a Civil Commitment or Treatment Hearing

21 The respondent next argues that he was denied a fair trial when the trial court failed to remove his shackles during the second day of his involuntary medication hearing. We begin by addressing the factors that must be considered when a respondent requests the removal of shackles at a civil hearing regarding involuntary commitment or treatment for mental illness.

22 *Boose*, the seminal case in Illinois regarding the use of shackles, involved a criminal defendant who was shackled during a hearing before a jury regarding his mental competency to stand trial. *Boose*, 66 Ill. 2d at 264. Although his counsel asked that he be unshackled, the trial court denied the request, solely because of the nature of the charge against him (murder). *Id.* at 265. The jury found him competent. He challenged his subsequent conviction, on the ground that there had been no necessity to restrain him during the competency hearing and his shackles had prejudiced him in the eyes of the jury. The appellate court agreed and reversed the conviction, and the supreme court affirmed. *Id.* at 267-69.

23 The supreme court noted that shackling an accused during criminal proceedings raised three concerns: "(1) it tends to prejudice the jury against the accused; (2) it restricts his ability to assist his counsel during trial; and (3) it offends the dignity of the judicial process." *Id.* at 265. These three concerns implicate different constitutional rights. *A.H.*, 359 Ill. App. 3d at 181. The first, possible prejudice in the eyes of the jury, compromises the presumption of innocence embodied in the fifth amendment to the United States Constitution. *Id.*; U.S. Const., amend. V. The second threatens the sixth amendment right to effective assistance of counsel. *Id.*; U.S. Const., amend. VI. Finally, the third concern arises most strongly from the constitutional right to due process, which requires that any proceeding to deprive a person of a substantial liberty interest must be fundamentally fair. *Id.* at 182; U.S. Const., amend. V. For all of these reasons, the use of shackles or other restraints is presumptively improper during criminal proceedings absent " 'a showing of a manifest need for such restraints.' " *Boose*, 66 Ill. 2d at 265-66 (quoting *People v. Duran*, 545 P.2d 1322, 1327 (Cal. 1976)).

24 Although there are certain important differences between criminal proceedings and civil proceedings for involuntary commitment or treatment, the latter raise many of the same concerns that are present in criminal proceedings. The first concern, the damage to the presumption of innocence, does not come into play in a civil proceeding. However, the interests implicated by the second and third concerns are highly relevant to civil proceedings for involuntary commitment or treatment. Both criminal defendants and respondents in mental health proceedings have a right to the effective assistance of counsel. This right is statutory in origin for mental health respondents, arising from section 3-805 of the Mental Health and Developmental Disabilities Code (405 ILCS 5/3-805 (West 2014)) rather than the sixth amendment. However, in Illinois the same standard applies to both types of proceedings: like defense counsel in a criminal proceeding, the respondent's counsel in a mental health proceeding plays an essential role in ensuring a fair trial, and the effectiveness

of that counsel is evaluated under the analysis in *Strickland v. Washington*, 466 U.S. 668 (1984). *In re Carmody*, 274 Ill. App. 3d 46, 55 (1995); see also *In re James W.*, 2014 IL App (5th) 110495, ¶ 42. Finally, because involuntary confinement and the imposition of medical treatment implicate fundamental liberty interests (see *James W.*, 2014 IL 114483, ¶ 21; *In re C.E.*, 161 Ill. 2d 200, 213-14 (1994)), it is essential that a mental health respondent receive a hearing free from the taint of unnecessary restraints.

25 We find that, although criminal proceedings differ from civil proceedings for involuntary commitment or treatment, the concerns raised by shackling are similarly grave in both types of proceedings. Accordingly, when evaluating a request that restraints be removed during a civil proceeding for involuntary commitment or treatment, courts must apply standards similar to those used in criminal cases. It is impermissible for a trial court, even when no jury is present, to unnecessarily restrain a defendant, for it may hinder the defendant's ability to assist his counsel and "demean[ ] both the defendant and the proceedings." *Allen*, 222 Ill. 2d at 346. "Even in a bench hearing, *** shackling a defendant should be avoided absent special circumstances, *i.e.*, possible harm to others, risk of escape, or disruption of the proceedings." *Mark P.*, 402 Ill. App. 3d at 176. Although the decision to have a defendant remain in shackles is within the trial court's discretion, that decision must be made on a case-by-case basis, and the trial court *must* explicitly state for the record its reasons for not removing a defendant's shackles. *Boose*, 66 Ill. 2d at 266.

26 In *Boose*, the supreme court adopted a set of factors to be considered by the trial court when it receives a request for the removal of shackles or other restraints. Those factors (later incorporated into Rule 430) include the following: " '[t]he seriousness of the present charge against the defendant; [the] defendant's temperament and character; his age and physical attributes; his past record; past escapes or attempted escapes, and evidence of a present plan to escape; threats to harm others or cause a disturbance; self-destructive tendencies; the risk of mob violence or of attempted revenge by others; the possibility of rescue by other offenders still at large; the size and mood of the audience; the nature and physical security of the courtroom; and the adequacy and availability of alternative remedies[, *i.e.*, alternative security arrangements].' " *Id.* at 266-67 (quoting *State v. Tolley*, 226 S.E.2d 353, 368 (N.C. 1976)); see also Ill. S. Ct. R. 430 (eff. July 1, 2010). Of these factors, only a few–the risk of violence, revenge, or rescue by others, and the "size and mood of the audience"–are perhaps unlikely to be present in the setting of a civil proceeding for involuntary commitment or treatment. Other factors–the "charge" against the respondent and his "past record"–are relevant if read broadly to incorporate the mental health context, including the respondent's mental health diagnosis and past record of being able to conform his behavior to peaceable interaction, either in the courtroom or in other settings. (If criminal charges are pending against the respondent, the usual interpretation of these factors in the criminal context may also be considered.) A trial court faced with a request for unshackling during a civil proceeding for involuntary commitment or treatment should consider all of the relevant factors listed above. Where a trial court has taken the applicable *Boose* factors into consideration and has placed on the record the reasons for its decision, that decision to shackle a defendant is reviewed for abuse of discretion. *Allen*, 222 Ill. 2d at 348.

27 Here, the trial court did not place on the record its reasons for keeping the respondent shackled. This in itself was error. *Mark P.*, 402 Ill. App. 3d at 178 (noting "the necessity of a finding, on the record, of some factual basis for the restraints").

28 The State argues that the trial court conducted a thoughtful analysis and properly exercised its discretion in deciding that the respondent should remain shackled. We disagree. The record reflects that the respondent's counsel asked for the shackles to be removed. The trial court asked whether there was any objection. In response, a security officer stated that the respondent was listed as presenting a "high elopement risk" on a patient transport document. The trial court briefly examined the document and asked if the respondent's counsel had seen this document beforehand. She stated that she had not. The respondent interjected his own comments, stating that he wanted to be present at the hearing. The trial court denied the request for unshackling, saying only, "I will leave him in custody in the shape he is in now." Shortly thereafter, the respondent's counsel asked the trial court if the respondent's right hand could be unshackled in order to take notes. The trial court responded, "There's obviously got to be a balance of *whatever security feels is necessary* and his ability to participate." (Emphasis added.) Then, after asking the respondent which hand he wrote with, the trial court stated that it would consider the request "[i]f there [were a] need to take notes," despite the fact that the respondent's attorney had just indicated that the respondent wished to be able to take notes.

29 This record reflects essentially no consideration by the trial court of any of the relevant factors. This opinion holds for the first time that the *Boose* presumption against restraints applies in civil proceedings for involuntary commitment or treatment, and that the *Boose* factors should be considered in deciding whether a respondent must remain shackled. Thus, we do not fault the trial court for failing to apply this exact analysis. However, prior case law already had established that respondents should not be shackled absent special circumstances; had emphasized the need for a particularized determination and the placing of reasons for shackling on the record; and had identified various relevant considerations, including the risk of escape, the possibility of harm to others, and disruption of the proceedings. See *id.* at 176-77. The trial court's decision that the respondent should remain shackled did not accord with these principles.

30 Although the trial court briefly inquired into the risk of escape, upon being told that the respondent was listed on a document as a high elopement risk for transport purposes, it deferred to the assessment of the security officer and person who prepared the patient transport document.[2] The record does not reflect that the trial court engaged in any independent assessment of this factor. This was error. "It is the court's responsibility to determine whether restraints should be imposed, not the sheriff's or his agents'." *Id.* at 177.

31 Similarly, the record does not reflect any consideration by the trial court as to whether shackling was necessary to prevent disruption of the proceedings. Although the record reflects that the respondent was verbally disruptive during the initial inquiry into shackling,

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[2]The State argues that the respondent forfeited any argument regarding the document tendered to the court by the security officer because the document was not admitted into evidence and is not part of the record on appeal. However, the record does contain the trial court's identification of the document as a patient transport list and the security officer's statement that the document listed the respondent as presenting a high risk of escape (a statement that was not contradicted by the trial court, which reviewed the document). This description is sufficient to permit review of the respondent's argument because the actual content of the document is not in question. Rather, the issue is whether the trial court conducted its own assessment of the need for shackles or simply deferred to the security officer and the author of the document.

there is no indication that releasing him from his shackles was likely to worsen these verbal disruptions or result in any physically disruptive conduct. To the contrary, the record suggests that keeping the respondent shackled *increased* the verbal disruptions: the respondent was unable to write notes for his attorney and thus was obliged to speak any comments he wished to have noted, and remaining shackled appears to have increased the respondent's agitation and his propensity to interrupt the proceedings.

32 As to the third factor identified in *Mark P.*, the possibility of harm to others, the trial court does not appear to have considered this factor at all. The underlying petition to medicate the respondent does not provide any support for inferring that such harm was likely: it alleged only that he was suffering and his mental state deteriorating, not that he had exhibited any violent behavior.

33 Because the trial court did not explicitly make any findings supporting shackling and the record demonstrates that the trial court conducted almost no independent assessment of the factors involved in the shackling decision, we find that the trial court abused its discretion in ordering that shackling. *Id.*

34 Harmless Error

35 The State argues that, even if the trial court erred by failing to conduct its own assessment of the necessity of shackling, any such error was harmless. To establish that an error was harmless, the State must prove, beyond a reasonable doubt, that the shackling complained of did not contribute to the judgment. *A.H.*, 359 Ill. App. 3d at 183.

36 In *Mark P.*, this court viewed the trial court's error in handcuffing the respondent as having two potential effects: that of hampering the respondent in the presentation of his defense, and that of prejudicing the trial court. *Mark P.*, 402 Ill. App. 3d at 178. Here, the trial court's refusal to allow the unshackling of the respondent's right hand unquestionably prevented him from writing notes for his attorney. Moreover, the respondent's comments indicate that being in shackles agitated him, decreasing his ability to focus on the proceedings. Indeed, his complaints about the shackles were the cause of his eventual removal from the courtroom. The record also suggests that the second factor, prejudice in the eyes of the fact finder, might have occurred as well: the trial court stated that its decision to order further medication of the respondent rested in part on the respondent's "outbursts in the courtroom" displaying animosity. These outbursts were related in part to the shackling. Thus, the record does not show, beyond a reasonable doubt, that the error did not contribute to the trial court's decision. We conclude that the error was not harmless.

37 CONCLUSION

38 We find that the appeal is not moot, that the trial court abused its discretion by keeping the respondent shackled without considering the relevant factors and placing its reasons on the record, and that this error was not harmless. Accordingly, we reverse the judgment of the trial court.

39 Reversed.

Thomas M. Lastetta
Clerk of the Circuit Court
Kane County, IL

OCT - 3 2014

FILED 043
ENTERED

State of Illiniois
Circuit Court for the 16th Judicial Circuit
KANE County
Order for the Authorized Involuntary Treatment

1/2

In the matter of: **Benny** **14 MH 103**

This matter coming to be heard on the petition of Dr. Donna Luchetta for administration of psychotropic medications.

Judge: Villa
ASA: Lloyd
PD: Blake
Court Reporter: J:11

It is hereby ordered that:

( ) The petition is denied.

( ) The matter is continued until:

(X) The petition is granted, and Benny shall receive psychotropic medications to be administered by Dr. Luchetta + Staff (or designee whose license and credentials permit) in Department of Human Services for a period not to exceed 90 days.

authorized to administer medications under her directions.

The medications authorized to be administered are:

Olanzepine 2.5mg PO/IM/d - 30mg po/Im/d
Lithium 300mg po/d - 2700 mg po/d
Lamotrigine 25mg PO/d - 400 mg po/d (SB)
Lorazepam 0.5 mg po/Im/d - 10mg po/Im/d
Benztropine 0.5mg po/Im/d - 6mg Po/Im/d
Diphenhydramine 25mg po/Im - 300 mg PO/Im/d
Clozapine 6.25 po - 900 mg PO/d
Aripiperazole 2.5 mg PO/Im/d - 45 mg PO/Im/d (SB)

The necessary testing and lab procedures to be authorized are:

EKG, UA, Medication Levels, Blood Cell counts, comprehensive metabolic testing, Scans, Echo sonograms, vital signs, weight, measurements, physical examination

( ) It is further ordered that:

Date: 10/03/2014 Enter: _____ Judge

Notice to Persons Receiving this Order

If you are affected by or interested in this order you should know that:

1. A final order of the court may be appealed. The court must notify the respondent of the right to appeal and the indigent's right to free transcripts and counsel. If the client wishes to appeal and cannot obtain counsel, counsel will be appointed by the court. Notice of appeal must be filed with the clerk of the Court within thirty (30) days of this order.

2. An order authorizing admisnistration of psychotropic medication is valid for no more that 180 days.

3. If the respondent's treatment needs change, then upon proper method of review the court may modify this order.

MHDD-25, EMHC, 011801 ref: 405 ILCS 5, sections 2-107.1, 3-800 et. seq.

A 11

IMAGED 10/06/2014 11:11:04

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

Case No. 14 MH 103

Plaintiff(s)	Defendant(s)
Lloyd	Benny
Plaintiff(s) Atty.	Defendant(s) Atty.
	Blake

Judge Villa | Court Reporter Jill | Deputy Clerk

A copy of this order ☐ should be sent ☐ has been sent

☐ Plaintiff Atty. ☐ Defense Atty. ☐ Other _____

Thomas M. Hartwell
Clerk of the Circuit Court
Kane County, IL
OCT - 3 2014
FILED 043
ENTERED
File Stamp

ORDER 2/2

Ziprasidone 10mg po/Im 1d – 160 mg po/Im 1d
Fluphenazine 0.5 mg po/Im 1d – 40 mg po/Im 1d
Fluphenazine Decanoate 12.5 mg Im – 50 mg/Im 1-4 weeks
Risperidone .5mg po 1d – 16 mg po/Im 1d
Paliperidone 39 mg/Im – 234 mg/Im 1-4 weeks
Amantidine 20 mg/ po/Im 1d – 400 mg po/Im 1d
Benztropine .5 mg po/Im 1d – 6 mg po/Im 1d
~~Lithium~~
Oxcarbazepine 300 mg po 1d – 2400 mg po/Im
Valproic Acid 250 mg po 1d – 4000 mg po 1d

Date: 10-3-14 ☐ Yes - Disposal ☐ No - Disposal Judge: _____

Table of Contents to Record on Appeal

Common Law Record
(one volume)

Reports of Proceedings
(one volume)

Certificate of Filing and Service by Mail

The undersigned, an attorney, certifies that on August 17, 2015, he caused the foregoing Brief of Petitioner-Appellant to be filed by mail with the Clerk of the Supreme Court of Illinois, and one electronic copy and three hard copies to be served by e-mail and by postage-prepaid first class mail, respectively, to:

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Richard S. Huszagh