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.	)	On Appeal from the Appellate Court of Illinois, Second Judicial District, No. 2-14-1075
PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellant, v. BENNY M., Respondent-Appellee.	)	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.

REPLY BRIEF OF PETITIONER-APPELLANT

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ARGUMENT

I. Summary of Argument

Having granted the People's petition for leave to appeal, the Court should not dismiss this appeal as moot. Respondent successfully argued in the appellate court that although his appeal was technically moot, it satisfied two mootness exceptions: for questions of public importance, and for issues that are capable of repetition but evade review. In an about face, respondent now maintains that neither exception applies in this Court, requiring dismissal of the appeal. That position is contrary to relevant precedent. Neither mootness exception ceases to apply if a party invoking them prevails at the first level of review. Instead, both exceptions apply with equal if not greater force when a case reaches this Court, regardless of who prevailed in the appellate court.

On the merits, the People agree that the appellate court correctly identified several standards that should govern the use of physical restraints in civil proceedings for involuntary commitment or treatment. Under these standards, the use of physical restraints in a courtroom is not *per se* unconstitutional or reversible error. But such restraints may be imposed only when justified by a risk of flight, physical harm to others, or disruption of the proceeding. The court may not delegate to security officials the decision whether to impose restraints, but must itself determine whether they are justified based on the circumstances of the particular case. And the respondent must have the opportunity to contest any information supporting the use of restraints, and to offer reasons why they are

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unnecessary. The appellate court erred, however, by holding that "the trial court *must* explicitly state for the record its reasons for not removing a defendant's shackles." (A 8, ¶ 25, emphasis in original.)

The appellate court also erred in its review of the circuit court's application of the governing principles. It incorrectly held that the circuit court merely deferred to security officials, rather than deciding itself whether respondent should be restrained, and that it also violated the requirement that its reasons for imposing restraints be clear from the record. In addition, where respondent did not object to the absence of a formal statement of the circuit court's reasons, the appellate court wrongly held that he did not forfeit any objection to the absence of such a statement. The appellate court further erred by holding that noncompliance with any of the applicable principles mandates reversal of the circuit court's judgment unless the People establish beyond a reasonable doubt that the error was harmless, and by holding that the circuit court's alleged noncompliance with these standards materially prejudiced respondent.

II. This Appeal Should Not Be Dismissed as Moot.

After invoking two mootness exceptions and persuading the appellate court to take his appeal even though it was technically moot, respondent now insists that these exceptions — for questions of public importance, and for issues that are capable of repetition but evade review — no longer apply, and that the People's appeal, which the Court allowed, must be dismissed. Respondent offers no authority for this position, which is without merit.

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Respondent's mootness arguments have two aspects. First, he argues that at every level of review the appellant must satisfy a *procedural* burden to show that the elements of a mootness exception apply, and that although he sustained that burden below, the People have not done so in this Court. (Resp. Br. at 7-8, 10, 12.) Second, he argues that, as a *substantive* matter, neither mootness exception held applicable by the appellate court still applies in this Court. (*Id.* at 8-12.) Neither argument is persuasive.

Of course, parties cannot require a court to decide a moot case by stipulating that a mootness exception applies. But when a party successfully argues in the appellate court that a mootness exception applies, judicial estoppel prevents that party from later taking the opposite position. *Kunde v. Prentice*, 329 Ill. 82, 87-88 (1928) (declaring that a party "will not be allowed to take one position in the appellate court and then take an opposite and contrary position in this court"); see also *People v. Caballero*, 206 Ill. 2d 65, 80 (2002) ("the doctrine estops a party from playing fast and loose with the court") (citation and internal quotation marks omitted). That doctrine applies here. Thus the People, who in this Court did not dispute the appellate court's rulings on the mootness exceptions on which respondent relied below, justifiably assumed that he would not turn around and argue here that those rulings are wrong. This assumption is particularly reasonable because, if this Court ruled that neither exception applied, the normal outcome would be to vacate the appellate court's judgment in respondent's favor. See *In re Commitment of Hernandez*, 239 Ill. 2d 195, 205 (2010). In these circum-

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stances, therefore, the Court should reject respondent's procedural argument based on who has the burden here to show that a mootness exception applies.

Substantively, too, respondent's claim that no mootness exception applies at this stage of the case is not well taken. Again, he is judicially estopped to argue that the appellate court's rulings are incorrect — except to the extent that intervening events may have changed the analysis. Respondent nonetheless maintains that, even without such a change in circumstances, a mootness exception does not automatically continue to apply when a case reaches a different level of review, but instead depends on who is seeking review, or, as respondent puts it, "the current complaining party." (Resp. Br. at 7, 11.) He is wrong. Mootness and its exceptions depend on whether the *controversy* satisfies the relevant criteria, not *who* is seeking review. Cf. *In re A Minor*, 127 Ill. 2d 247, 255 (1989) (explaining that principal reason why courts do not decide moot cases is that they lack "concrete adverseness" necessary for considered judicial evaluation) (citation and internal quotation marks omitted). Thus, the ability to invoke a mootness exception is not a private right, like standing to sue or to appeal, that may be asserted, or not, by one party to a case. If that were true, one party, after receiving a favorable ruling in the appellate court, could deny this Court the ability to review that ruling, however wrong it might be.

Tellingly, respondent has not pointed to a single decision holding that any mootness exception ceases to apply once the party that initially invoked it obtains a favorable ruling on the merits. If anything, the case law is to the contrary. In

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People v. Jones, 215 Ill. 2d 261, 267 (2005), the Court held that the collateral consequences exception to mootness, based on the prospect that the *defendant* could suffer such consequences despite having completed his sentence, supported the *State*'s appeal from the appellate court's reversal of his conviction. *Jones* approvingly cited the United States Supreme Court's holding in *Minnesota v. Dickerson*, 508 U.S. 366 (1993), where the Court granted the State's petition to review the Minnesota Supreme Court's judgment in the defendant's favor, reversing his sentence of two years' probation. The defendant argued that the case was moot because he had completed his probation, resulting in dismissal of the original charges. The Court rejected this argument, holding that "a live controversy remains" because reinstatement of the record of his charges "would carry collateral legal consequences" against him. 508 U.S. at 371 n.2. See also *In re Lance H.*, 2014 IL 114899, ¶¶ 12-14 (finding public interest exception to apply in *State*'s appeal from appellate decision in involuntary commitment case because, among other things, resolution of disputed issue "will be of aid to respondent in the event he should require further treatment, and to persons similarly situated"). Relevant precedent thus refutes respondent's contention that whether mootness exceptions apply depends on which party to a controversy invokes them.

Nor is there anything unique about the mootness exceptions on which respondent relied in the appellate court that justifies a different conclusion here. Application of the mootness exception for issues that are capable of repetition yet avoid review depends on the characteristics of the controversy. See *In re Alfred*

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H.H., 233 Ill. 2d 345, 358-60 (2009). It is true that, for this exception to apply, there must be a reasonable possibility that the same party would be subject to the same action again. *Id.* at 358. But no case holds that this circumstance supports the exception exclusively when that party invokes it.

Arguing that the exception no longer applies because he "now has his resolution" from the appellate court (Resp. Br. at 12), and it is the People who seek further review in this Court, respondent places heavy reliance on language in some cases stating that the exception requires a reasonable expectation that "the *same complaining party* would be subjected to the same action again." (*Id.* at 11, quoting *Alfred H.H.*, 233 Ill. 2d at 358, emphasis added.) But that shorthand reference to what a litigant challenging a disputed action must show to establish the exception on appeal cannot fairly be read to make it available just to that party. Under the reasoning in *Jones* and *Dickerson*, a mootness exception does not depend on which party chooses to invoke it. Otherwise, it would become a "one-way ratchet," allowing review only until one party prevailed and then denying further review, including in this Court.

The same analysis applies with even greater force to the mootness exception for questions of significant public interest. Having convinced the appellate court that this exception applied, respondent now attempts to minimize the legal issues in this appeal, describing them as involving little more than "sufficiency-of-the-evidence review." (Resp. Br. at 9.) But the appellate court itself said this case presented a question of first impression concerning the standards governing the

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use of physical restraints in civil mental-health proceedings. (A 9, ¶ 29.) And on that question, the "need for an authoritative determination for the future guidance of public officers," *In re Lance H.*, 2014 IL 114899, ¶ 13, is best satisfied by a resolution from this Court. See *In re Shelby R.*, 2013 IL 114994, ¶ 23 ("For the same reasons that review by the appellate court was appropriate, review by this court is also appropriate."); *In re Rita P.*, 2014 IL 115798, ¶ 40 (same).

III. The Appellate Court Incorrectly Held that the Circuit Court Committed Reversible Error by Delegating to Security Officials the Decision Whether to Restrain Respondent, and by Not Stating on the Record Its Reasons for that Decision.

The appellate court's holding that the circuit court committed reversible error is incorrect in several respects. It wrongly held that the circuit court erred by not making an independent assessment of the need to restrain respondent, and by not formally stating for the record its reasons for that decision. The appellate court also misdefined and misapplied the standards for determining when either type of error warrants reversal of a judgment.

A. The Trial Court's Responsibility to Decide Whether to Restrain a Respondent.

1. The Circuit Court Itself Decided that Respondent Should Be Restrained.

Abundant precedent establishes that the decision whether to restrain a party in court must be made by the trial judge based on the circumstances of a particular case, and not delegated to security officials, such as by following a blanket security policy or simply deferring to their wishes. See, e.g., *People v. Boose*, 66 Ill. 2d 261, 268 (1977) (quoting *People v. Duran*, 545 P.2d 1322, 1329

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(Cal. 1976)); see also Peo. Br. at 22-23, 26-27. But that is not the same as relying on information from security officials as the basis for the court's own decision to impose restraints. (See Peo. Br. at 27.) And in this case the record plainly establishes that the trial judge, while crediting and relying on the information provided by the security officer, made the ultimate decision himself, instead of delegating it to someone else.

Urging this Court to conclude that the trial judge gave "blind deference" to security officials (Resp. Br. at 16), respondent not only disregards critical parts of the record, but also fails to give the circuit court's decision the presumption of correctness it deserves. It is presumed that a circuit court acted in conformity with the law, and where the record does not affirmatively establish the contrary, a reviewing court must resolve reasonable doubts, including on disputed fact issues, in favor of the trial court's rulings. *Tolbird v. Howard*, 43 Ill. 2d 357, 359-60 (1969); *Union Drainage Dist. No. 5 v. Hamilton*, 390 Ill. 487, 493-94 (1945); *Village of Cary v. Jakubek*, 121 Ill. App. 3d 341, 345-46 (2d Dist. 1984). Those principles are relevant here.

Respondent's brief overlooks the many instances in the record indicating that the trial judge did not simply delegate the restraint issue to security officials, but instead evaluated that issue based on the circumstances presented. When respondent's counsel first objected to his being physically restrained in the courtroom, the trial judge asked whether there was any objection to removing the restraints, and whether there was any security concern. (R 63.) After being told

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by the security officer that respondent, who had stopped taking his psychotropic medication two weeks earlier, presented a "high elopement risk," the court asked to see the supporting documentation, a patient transport checklist. (*Id.*) The judge commented that he did not think there was any reason to doubt its "veracity," and he asked respondent's counsel whether she had had the opportunity to examine it. (R 63-64.) She said she had not, and the court then stated for the record the name of the document: "Patient transport checklist." (*Id.*) The hearing transcript does not affirmatively show that respondent's counsel actually examined the checklist,[1] but it does show that she did not dispute its admissibility or evidentiary sufficiency or request further evidentiary proceedings on that issue. (*Id.*) After an outburst by respondent, prompting his counsel's statement "Be quiet," the circuit court ruled, "I will leave him in custody in the shape he is in now." (R 64.)

When respondent's counsel asked that his right hand be unrestrained "so he can take some notes, if I have any questions or there's issues that we need to raise," the court indicated a need to "balance" the security concern identified and respondent's ability to participate. (R 65.) The court also asked whether respondent's counsel felt "that he [was] unable to participate" in the proceedings. (*Id.*) Over his interruptions, she said that might be a problem, and the court asked respondent if he was right-handed. (*Id.*) He gave a rambling, non-respon-

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[1] The record does not support respondent's assertion that the trial judge "did not tender the document to . . . Benny's counsel . . . for review." (Resp. Br. at 2.)

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sive answer (e.g., "if someone loses their hand . . . through amputation, they may be forced to use their left hand"), and the court ruled: "If there is a need to take notes, I will consider your request." (R 66.) Respondent interjected: "I'm speaking, which is even better." (*Id.*) The court then 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. I'm trying to do the best to balance both the security information given to me and your ability to participate.

(R 67.) Respondent's counsel did not subsequently express any need for him to take notes.

The evident conclusion from these proceedings is that the trial court itself decided whether respondent should be restrained, and did not simply delegate that decision to security officials. Yet respondent insists that the circuit court "abdicated control of its courtroom to an unidentified transporting security officer," engaged in a "wholesale delegation of its authority," and gave "blind deference to the transporting officer." (Resp. Br. at 15-16.) In support of that contention, which effectively disregards the tenor of the actual proceedings, respondent offers several supporting arguments, none of which is persuasive.

Specifically, respondent asserts that the circuit court did not independently evaluate the restraint issue because (1) it "relied on only one factor — Benny's elopement risk"; (2) security officers "cannot be considered impartial"; (3) the trial court did conduct any "additional inquiry"; and (4) "there was no evidence" to support the court's ruling because it "did not file or admit this [transport]

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checklist as evidence." (Resp. Br. at 15-16.) These arguments fall short. The first two factors go to the weight of the evidence considered by the court (to which respondent made no objection in the circuit court), not whether the court itself made the decision. The third factor similarly reflects respondent's decision not to dispute the evidence offered to justify his restraint, which did not have to meet traditional admissibility standards. (See Peo. Br. at 21.) And the fourth factor similarly indicates respondent's apparent intention not to challenge the sufficiency of that evidence on appeal. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984) ("[A]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant."); *Flynn v. Vancil*, 41 Ill. 2d 236, 241 (1968). Nor, in any event, does the absence of the transport checklist from the record logically support the conclusion that the trial judge considered it controlling regardless of any other circumstances presented.

2. Respondent Has Not Established that the Circuit Court's Alleged Delegation of the Restraint Issue Constituted Reversible Error.

Even if the appellate court validly concluded that the circuit court did not make an independent assessment of the need to restrain respondent, it incorrectly held that this amounted to reversible error. Given respondent's failure to object to the sufficiency of the evidence to support restraining him, and his further failure to include in the record the document supporting that action, it is questionable whether the trial judge would have reached a different decision if he had conducted the type of independent evaluation the appellate court said he failed

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to undertake. But even assuming the trial court would have reached a different result, its actions were not reversible error.

a. *Standards for Finding Reversible Error*

Respondent does not dispute that the "harmless error" standard applied by the appellate court here — under which the People have the burden to establish beyond a reasonable doubt that any error did not affect the outcome — applies to criminal appeals alleging constitutional errors, not to other types of errors, or to civil appeals generally. (See Peo. Br. at 35-36; Resp. Br. at 34.) Nor does he point to a single case squarely addressing the issue and holding that this standard should apply to civil proceedings for involuntary commitment or treatment. He just advocates adoption of that standard, stating, "parties in regular civil cases are not typically subject to shackling, do not face loss of their liberty, nor are those cases decided under the higher clear-and-convincing burden of proof." (Resp. Br. at 26.) But these concerns do not justify the major departure from settled principles that respondent urges.

Respondents in involuntary commitment and treatment cases are not (and should not be) "typically subject to shackling." And even though criminal cases mandate a higher standard of proof and implicate liberty interests, defendants pursuing appeals in such cases still have the burden to prove actual prejudice from non-constitutional errors, *People v. Delvillar*, 235 Ill. 2d 507, 522 (2009), and from any errors resulting from ineffective assistance of counsel, *People v. Ganus*, 148 Ill. 2d 466, 471 (1992). Requiring respondents in civil mental-health cases to

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establish prejudice from alleged errors also makes sense because they have the best access to relevant information and incentive at the time to disclose it, making it particularly difficult for the People to "prove a negative" on appeal. See *State v. Russ*, 709 N.W.2d 483, 485-87 (Wis. App. 2006) (analyzing relevant considerations and holding that defendant had burden to prove prejudice from claimed inability to communicate with counsel). By contrast, imposing on the People the duty to *disprove* prejudice would encourage respondents not to disclose at trial all information relevant to that issue, thereby depriving the court and the People of the opportunity to evaluate and contest it, and then to argue on appeal that the People cannot demonstrate the lack of prejudice.

In any event, under any standard of review a finding of prejudicial error must be based on probable inferences, not speculation. *People v. Warmack*, 83 Ill. 2d 112, 129 (1980). Here, however, the appellate court's finding of prejudice fails to reflect the substance of the proceedings and relies on unwarranted conjecture.

b. *Claimed Inability to Communicate with Counsel*

Respondent's contention that he was materially prejudiced by not being able to communicate with his trial counsel is unconvincing. Although the trial court said it would reconsider the restraint issue "[i]f there is a need to take notes," respondent declared, "I'm speaking, which is even better." (R 66-67.) He never subsequently expressed a need or desire to take notes, and instead communicated orally with his counsel in a manner not audible to the trial judge. (R 144-45, 163-64.) This affirmatively shows the absence of any prejudice. See *In re*

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Mark P., 402 Ill. App. 3d 173, 178 (4th Dist. 2010) (finding any error harmless where evidence that respondent "could not move his arms or his legs cannot be construed to mean that the restraints hindered his ability to participate in the hearing to his prejudice"); see also Peo. Br. at 37-38.

Respondent nonetheless asserts in conclusory fashion that his inability to take notes may have jeopardized his defense of the case, stating, "had the court not prevented Benny from communicating with his counsel by writing, . . . , he could have provided helpful information to her." (Resp. Br. at 29-30.) But such conjecture, devoid of all specifics, cannot establish actual prejudice. *In re F.C. III*, 2 A.3d 1201, 1222-23 (Pa. 2010); see also Peo. Br. at 38. Respondent also maintains that because he could not take notes, "the only option he had was to communicate verbally, causing repeated interruptions of the proceedings." (Resp. Br. at 29.) Again, the record does not support this characterization of events. Despite the court's invitation, respondent never indicated a need to take notes. And the record is clear that although he repeatedly interrupted the proceedings with inappropriate, and frequently nonsensical, comments, he also made private comments to his counsel that the court could not hear. (R 144-45, 163-64.)

c. *Claimed Prejudice of Trial Judge*

The record does not support respondent's contention that his restraints caused the trial judge to be prejudiced against him. (Resp. Br. at 40-41.) In support of this contention, he asserts that "the court made a quick decision to keep him shackled with no justification." (*Id.* at 34.) As described above,

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that assertion is patently wrong. If anything, the trial judge showed exemplary patience and impartiality. Moreover, considering the fact that the trial court knew the nature of the criminal charge against respondent, for which he was found unfit to stand trial, and was aware that he had been transported to the courtroom in restraints on both occasions, the suggestion that it was swayed by seeing respondent in restraints during the second day of trial is implausible.

There is likewise no merit to respondent's speculative claim that he was prejudiced because his restraints "caused him agitation" and "physical pain," leading to uncontrollable outbursts that unfairly prejudiced the trial judge. (Resp. Br. at 30-34.) When asked about his restraints during his testimony, respondent said he disliked them and that they constrained his movements, but he did not say they caused him any pain. (R 117-20, 125-26.) During closing arguments, his counsel did say he had complained to her about pain from the restraints. (R 144-45, 163-64). But the fact that he did so at a volume below what the court could hear, while loudly commenting on other matters, belies the suggestion that any actual pain somehow materially interfered with his defense. In addition, respondent's counsel did not complain about any pain until after all the evidence was admitted, thereby preventing the trial judge — who had indicated a willingness to reconsider the restraint issue if circumstances warranted — from taking any corrective action during the trial. Respondent therefore should not be able to claim on appeal that he was prejudiced by such pain during the trial.

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Nor does the record, read as a whole, support respondent's contention that his restraints, as opposed to his psychological condition, were the cause of his uncontrolled behavior, unfairly prejudicing the trial court against him. (Resp. Br. at 33.) The medical testimony established that when respondent stopped taking his medication, his behavior deteriorated significantly. (R 5-8, 15-18, 24-25, 69, 77-79, 90, 111-12, 163.) Even respondent's own counsel admitted that "[t]here has been a deterioration, absolutely, from the person who was before you two weeks ago and today." (R 162.) And respondent's frequent interruptions of the proceedings — often expressing bizarre and disassociated ideas — were not related to his restraints. (R 144.)

The trial court observed, and had the opportunity to make credibility determinations about, the evidence concerning respondent's symptoms and their cause, as well as respondent's own description of his condition and the effect of his restraints. Dr. Luchetta, a treating psychiatrist, testified that respondent suffered from a schizoaffective disorder (a serious mental illness with symptoms of psychosis and mood disorder, with impairment in interpersonal functioning) and had auditory hallucinations and delusional beliefs, including that he did not have any mental illness and that people were "torturing" him. (R 5-8, 15-16, 24-25, 69, 77-79, 111-12, 163.) During closing arguments, the State's Attorney explained that respondent's own testimony, in which he denied anything wrong with kissing an unwilling student intern, was evidence of his disorder. (R 143.) When respondent interrupted, the court again admonished him, but he continued

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to interrupt — "I'm laughing . . ."; "It's crazy" — and the court then asked him to leave. (R 144.)

During the ensuing exchange in which respondent's counsel said he had been complaining about his shackles, and the court observed that, unlike his many interruptions, none of those complaints was audible, respondent returned to the subject of his interaction with the intern, stating: "I was trying to, like, I was trying to grab her." (R 145.) Respondent then falsely accused the security officer of tightening his restraints, and when the officer denied this but offered to adjust them, respondent declared:

> I don't need you to take hold of my arm. I need you to take these damn cuffs off. My feet first, hopefully.
>
> . . .
>
> 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). Thus, the trial court had ample opportunity to evaluate respondent's own claim that his physical restraints, not his diagnosed schizoaffective disorder, were the reason he was "suffering and deteriorating."

At the next hearing, the court announced it ruling, over respondent's frequent interruptions — e.g., "People are trying to control my life"; "This is not even a courtroom. What the hell is this?" (R 181, 183). It specifically found that he was suffering from a "serious mental illness" and, since he stopped taking his

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medication, had "deteriorated back down to . . . where he cannot otherwise be restored to fitness." (R 181-82.) The court added that the symptoms of this mental illness included respondent's belief that "he is being tortured and otherwise his day to day interaction here is causing him to suffer," as well as his "outbursts in the courtroom with a significant amount of animosity and argumentativeness." (R 180-81.)

Thus, with reasonable doubts resolved in favor of the decision by the circuit court, who had the benefit of observing events in the courtroom, the record amply supports the conclusion that respondent's restraints were not the *cause* of his bizarre courtroom behavior, but the *consequence* of his mental illness and refusal to take medication for it.

Nor is there any merit to respondent's contention that the trial court's description of his interruptions "as 'outbursts' itself shows the court expressed prejudice against [him]." (Resp. Br. at 33.) Characterizing these interruptions as "outbursts" hardly shows prejudice. And when, during closing arguments, the trial judge again admonished respondent not to interrupt the proceedings, the judge specifically observed that he had heard numerous out-loud comments on various topics "unrelated to the shackles," and that "none of those items have ever been a problem for me." (R 144.)

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B. The Trial Court's Claimed Failure to State on the Record Its Reasons for Restraining Respondent.

1. The Circuit Court Did Not Improperly Fail to State the Reasons for Its Decision to Restrain Respondent.

Relying on this Court's decision in *Boose*, the appellate court held that in a mental-health proceeding the trial court "*must*" state on the record its reasons for restraining the respondent. (A 8, ¶ 25, emphasis in original, citing *Boose*, 66 Ill. 2d at 266.) That reliance is misplaced. In the relevant passage 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). It also stated that, because a trial court's decision on this issue is reviewed for an abuse of discretion, "the record *should* clearly disclose the reason underlying the trial court's decision for the shackling." *Id.* at 267 (emphasis added). Neither statement supports the appellate court's elevation of that principle to an unqualified obligation to make express findings on the record.

While the constitution forms part of the foundation for the general rule against using physical restraints in a courtroom, except in limited circumstances (see Peo. Br. at 19-20), it does not also require trial courts to describe those circumstances on the record. And while it is certainly better practice for a court to announce its reasons for requiring restraints, so at to facilitate appellate review, requiring that practice is a departure from the principles governing trial court decisions generally (*id.* at 30-31). The appellate court erred, therefore, in holding that this procedural step is obligatory, rather than a commendable means

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to advance the functional objectives of ensuring proper attention to the relevant considerations and promoting meaningful review. See *People v. Wilkes*, 108 Ill. App. 3d 460, 464 (4th Dist. 1982).[2]

2. The Reasons for the Circuit Court's Decision Are Clear on the Record.

Respondent nonetheless contends that the trial court's reasons to restrain him are not clear on the record. (Resp. Br. at 18-21.) He is mistaken. The sole reason offered for restraining respondent was that he was a high flight risk. (R 63.) Presented with the document substantiating that concern, the trial judge said he did not have any reason to doubt its veracity, but asked respondent's counsel whether she had seen it. (R 63-64.) After advising that she had not previously seen it, she did not dispute its admissibility, did not contend that it was insufficient to justify restraining respondent, and did not offer any reasons why, despite this evidence, he should not be restrained. (R 64.)[3] She also did not ask the court to explain its ruling. In these circumstances, therefore, there can be no doubt about why the court ruled that respondent should be physically restrained.

Respondent's additional arguments against this conclusion just take issue with the factual basis for restraining him. (Resp. Br. at 18-21.) But that is not

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[2] Respondent contends that *Wilkes* is distinguishable because it "was decided . . . before this Court codified *Boose* in 2010 with [Supreme Court] Rule 430." (Resp. Br. at 17.) But Rule 430, by its terms, applies only to criminal trials.

[3] Respondent's assertion that "[t]he trial court also gave no opportunity to [his] counsel to present reasons why his shackles should be removed" (Resp. Br. at 24) misdescribes the record, which does not show any desire by respondent's counsel to do so.

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an issue in this appeal (see *id.* at 6), and respondent forfeited it in any event when he did not challenge the sufficiency of the evidence to establish that he was a flight risk or request that the patient transport checklist setting forth that evidence be included in the record. See *Flynn*, 41 Ill. 2d at 241 ("If the error assigned presents questions of the sufficiency of the evidence to support the verdict and judgment, then all the evidence must be preserved in the record, or it will be presumed that it was sufficient.").[4]

3. The Absence of Explicit Reasons on the Record for the Circuit Court's Decision to Restrain Respondent Is Not Reversible Error.

Regardless of the governing standard, any departure from it did not amount to reversible error. First, respondent forfeited the issue. He does not dispute that, in the trial court, he never asked for a formal specification of the court's reasons for keeping him restrained. And there can be little doubt that if he had made such a request, the court would have provided those reasons. In these circumstances, any error in this regard was forfeited. See *Mark P.*, 402 Ill. App. 3d at 176-78 (finding forfeiture where "counsel did not request a factual basis for the trial court's refusal to order removal of the restraints"); see also

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[4] In any event, respondent's various arguments in this regard — e.g., that "no one explained" the transport checklist's basis for describing him as a flight risk; that any risk of escape during transport did not logically continue when he reached the courtroom; and that he was not alleged to present a threat of physical harm to others (Resp. Br. at 18-21) — improperly ask this Court to substitute its judgment for that of the circuit court and to reweigh the evidence based on arguments and information that were not presented to the trial judge, and are hardly compelling.

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People v. Allen, 222 Ill. 2d 340, 352 (2006); *People v. Hyche*, 77 Ill. 2d 229, 241 (1979). Respondent also does not, and cannot, claim a reasonable excuse for failing to request a statement of the trial court's reasons, or objecting to the lack of such a statement. The appellate court's opinion in *Mark P.*, on which respondent relied below (Resp. App. Br. at 7-8), was issued well before the trial in this action and specifically held that the respondent in that case forfeited any objection to the trial court's failure to specify its reasons for restraining him. 402 Ill. App. 3d at 176-78. No different result is justified here.

Disputing any forfeiture, respondent argues that "[o]nly the trial court is at fault if it relied on a document to keep Benny in shackles, but then did not make the document part of the court file." (Resp. Br. at 22.) But forfeiture of an issue for appellate review applies regardless of who had the burden of proof at trial. See, e.g., *Redlin v. Village of Hanover Park*, 278 Ill. App. 3d 183, 193 (1st Dist. 1996). Thus, even if the circuit court's duty were as respondent claims, that does not excuse him from failing to meet his own obligation to perfect his claimed basis for appeal. See *Foutch*, 99 Ill. 2d at 392; *Flynn*, 41 Ill. 2d at 241.[5]

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[5] Respondent also seems to suggest that he should not be found to have forfeited this issue because "[t]he State, as the representative of all the people, including Benny, had a duty to assure that Benny was not wrongly restrained . . . ." (Resp. Br. at 18.) That contention is equally unsound. In light of "the significant conflicts of interest that would arise" and "place the State in an untenable position in an adversarial proceeding," this Court has rejected the notion that counsel for the People have a duty both to prosecute mental health cases and to advocate the interests of the respondent, who is "represented by his own counsel." *Lance H.*, 2014 IL 114899, ¶ 37.

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Second, even if this Court holds that a trial court has an obligation to state its reasons for restraining a party in a civil mental-health proceeding and that respondent's forfeiture of this issue should be excused, it should hold that the circuit court's failure to follow this procedure did not require reversal of its involuntary medication order. Respondent does not, and reasonably could not, claim that any duty to state such reasons on the record is mandatory (in the sense that noncompliance automatically prevents entry of a valid judgment for the People) because noncompliance with that duty would generally injure the interests it is intended to protect. See *In re Rita P.*, 2014 IL 115798, ¶¶ 41-68 (holding that Section 3–816(a) of Mental Health Code requiring "a statement on the record of the court's findings of fact and conclusions of law" for order of involuntary commitment or treatment is directory, not mandatory); see generally *People v. Geiler*, 2016 IL119095, ¶¶ 16-18; *In re James W.*, 2014 IL 114483, ¶¶ 35-40. Indeed, where the reasons for restraining a respondent are clear, mandating reversal of a subsequent judgment simply because the court did not make those reasons explicit would disserve the interests of justice, not promote them.[6]

Of course, if a trial court has a non-mandatory duty to state on the record its reasons for restraining a respondent in a civil mental-health proceeding, a respondent may still seek reversal if noncompliance with that duty leads to an unfavorable outcome. In this case, however, respondent does not even attempt

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[6] Even procedural requirements that are mandatory, rather than directory, are subject to forfeiture. See *In re Custody of Sexton*, 84 Ill. 2d 312, 319 (1981); see also *Dolan v. United States*, 560 U.S. 605, 610-11 (2010).

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to make such a showing, and neither he nor the appellate court attributed any specific prejudice to the circuit court's failure to state its reasons to restrain him.

CONCLUSION

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

August 21, 2017

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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 words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 6,293 words.

/s/ *Richard S. Huszagh*

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Certificate of Filing and Service

I certify that on August 21, 2017, I electronically filed the foregoing Reply Brief of Petitioner-Appellant with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system.

I also certify that the other participant in this appeal, named below, is not a registered service contact on the Odyssey eFileIL system, and that on August 21, 2017, I served her by sending an e-mail to her designated e-mail address with a copy of the foregoing Reply Brief of Petitioner-Appellant attached.

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Under penalties as provided by law pursuant to section 1–109 of the Illinois Code of Civil Procedure, I further certify that the statements set forth in this Certificate of Filing and Service are true and correct to the best of my knowledge, information, and belief.

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