No. 194

The People &c.,
Respondent,
v.
Emil Best,
Appellant.

Tammy Feman, for appellant.
Joanna Hershey, for respondent.

CIPARICK, J.:

In this appeal, we must determine whether defendant's conviction should be overturned because the trial court restrained defendant during the course of his bench trial without articulating a specific justification for doing so. We hold that the rule governing visible restraints in jury trials applies with

equal force to non-jury trials and that District Court erred in failing to state a basis on the record for keeping defendant handcuffed throughout these proceedings. Based upon our recent holding in People v Clyde (18 NY3d 145 [2011]), however, we conclude that the constitutional error committed here was harmless.

Defendant Emil Best was charged with endangering the welfare of a child (Penal Law § 260.10 [1]) based upon an allegation that he offered a 12-year-old boy $50 to expose his penis. In a written statement wherein defendant waived his Miranda rights, he admitted that he made the alleged offer, although he claimed to have done so in jest. The record reflects that defendant appeared for his Sandoval hearing with his hands cuffed behind his back. At the start of the hearing, defense counsel "request[ed] that [defendant's] handcuffs be removed." District Court "grant[ed] the request to the extent [of asking] the officers to handcuff him in front." Thereafter, defendant waived his right to a jury trial. At the start of trial, defense counsel requested that the court remove defendant's handcuffs and shackles. The court again "direct[ed] that the defendant be handcuffed in front."* On the second day of trial, defense counsel reiterated her request "that [defendant's] handcuffs be removed." Again, the court "direct[ed] the officers to handcuff

*The record does not indicate whether defendant remained shackled.

the defendant in the front." In addition to defendant's written statement, the People offered testimony by the then 14-year-old complainant, who stated that defendant offered him money to expose himself while the two were riding in the backseat of a car. Complainant testified that he felt "violated" by the incident and began counseling as a result of it. District Court convicted defendant. Appellate Term upheld the conviction, rejecting defendant's claim that the trial court erred in ordering that defendant remain handcuffed during the proceedings (People v Best, 31 Misc 3d 141 [A] [App Term 2011]). A Judge of this Court granted defendant leave to appeal (17 NY3d 951 [2011]), and we now affirm on harmless error grounds.

A trial court that restrains a defendant during criminal proceedings must state a particularized reason for doing so on the record. In Deck v Missouri (544 US 622 [2005]), the United States Supreme Court declared that the federal Constitution "forbid[s] routine use of visible shackles during the guilt phase" of a trial and "permits a State to shackle a criminal defendant only in the presence of a special need" (id. at 626). Accordingly, the use of visible restraints must be "justified by an essential state interest . . . specific to the defendant on trial" (id. at 624 [internal quotation marks omitted]), and where the court fails to provide such justification "the defendant need not demonstrate actual prejudice to make out a due process violation" (id. at 635).

Consistent with Deck, we held in Clyde that, as a matter of both federal and state constitutional law, "[a] defendant has the right to be free of visible shackles, unless there has been a case-specific, on-the-record finding of necessity" (18 NY3d at 153; see also People v Cruz, 17 NY3d 941, 944-945 [2011] [holding that the use of leg shackles without an independent judicial determination regarding the need for them violated defendant's constitutional rights under Deck]).

The People contend that the rule of Deck, Clyde and Cruz is inapplicable to defendant's case because he was tried by the court rather than by a jury. We see no basis for such a distinction. In Deck, the United States Supreme Court explained that "[j]udicial hostility to shackling . . . giv[es] effect to three fundamental legal principles" (id. at 630): 1) preserving the presumption of innocence to which every criminal defendant is entitled; 2) ensuring that the defendant is able to participate meaningfully in his or her defense; and 3) maintaining the dignity of the judicial process (see id. at 630-631). The routine and unexplained use of visible restraints does violence to each of these principles, essential pillars of a fair and civilized criminal justice system that are no less implicated when the fact finder is the trial judge rather than a jury.

It is true, as the Appellate Term observed, that "'[u]nlike a lay jury, a Judge . . . is uniquely capable of . . . making an objective determination based upon appropriate legal

criteria, despite awareness of facts which cannot properly be relied upon in making the decision'" (Best, 31 Misc 3d at *1, quoting People v Moreno, 70 NY2d 403, 406 [1987]). Nonetheless, judges are human, and the sight of a defendant in restraints may unconsciously influence even a judicial fact finder. Moreover, the psychological impact on the defendant of being continually restrained at the order of the individual who will ultimately determine his or her guilt should not be overlooked. Nor should we ignore the way the image of a handcuffed or shackled defendant affects the public's perception of that person and of criminal proceedings generally.

Here, District Court articulated no justification, let alone one specific to defendant, for ordering defendant's continual restraint. While such a basis may very well have existed, the court's failure to say so on the record constitutes a violation of defendant's constitutional rights under Deck.

In Clyde, however, we held that constitutional harmless error analysis applies to shackling violations (see 18 NY3d at 148). Applying that analysis here, we conclude that the trial court's omission was indeed harmless. A constitutional error may be harmless where evidence of guilt is overwhelming and there is no reasonable possibility that it affected the outcome of the trial (see id. at 153-154; People v Douglas, 4 NY3d 777, 779 [2005]). Here, defendant's own admission established that he offered complainant, a child, $50 to expose his penis.

Complainant testified to the same facts. Thus, there exists overwhelming evidence that defendant, 31 years old at the time of the alleged crime, knowingly acted in a manner likely to be injurious to complainant's welfare and was, therefore, guilty of endangering the welfare of a child (Penal Law § 260.10 [1]). Given that quantum of evidence, we do not think there is any reasonable possibility that defendant's appearance in handcuffs contributed to District Court's finding of guilt.

Accordingly, the order of the Appellate Term should be affirmed.

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LIPPMAN, Chief Judge (dissenting):

The presumption of innocence for those accused is "the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law" (Coffin v United States, 156 US 432, 453 [1895]). The unwarranted shackling of defendants strikes at the heart of the right to be presumed innocent, and for the reasons that follow, I respectfully dissent.

In a bench trial, the fact-finder determines whether the defendant poses a particular security risk that warrants restraint. Here, the trial judge chose to keep the defendant in shackles throughout his trial despite the lack of any individualized security concerns stated on the record. The District Court's actions intimated that it believed defendant to be a dangerous character who needed to be restrained, which inevitably affected its role as fact-finder before a scintilla of evidence was presented. The use of shackles without record justification in a bench trial presents a scenario with unique dangers, different from the ones addressed in People v Clyde (18 NY3d 145 [2011]) and People v Cruz (17 NY3d 941 [2011]).

We held in People v Buchanan (13 NY3d 1, 4 [2009]) that

"as a matter of New York law . . . it is unacceptable to make a stun belt a routine adjunct of every murder trial, without a specifically identified security reason" and without reaching the constitutional due process issues discussed in Deck v Missouri (544 US 622, 626 [2005]). We determined that ordering a defendant to wear a stun belt without a basis in the record was an egregious error that itself warranted reversal. Here, were it necessary to reach the constitutional issues, I would certainly agree with the majority's view that the present facts comprise a violation of constitutional rights under Deck v Missouri (544 US at 626; see US Const, 5th, 14th Amends). Under our state law framework in Buchanan, having the trier of fact order the shackling of a defendant without an individualized determination of the defendant's security risk is an egregious error that requires a new trial. Not only is a defendant "entitled to appear in court with the dignity and the self-respect of a free and innocent man" (People v Roman, 35 NY2d 978, 979 [1975]), a defendant is entitled to have his case decided by a judge who has due regard for the rights of the accused and the decorum of the courtroom. In a bench trial where the court chooses to keep a defendant in shackles without adequate record justification, the judge prioritizes convenience over the administration of justice. Allowing a defendant to attend his own trial without restraints and to participate in his defense is crucial, and a defendant should not be tried in an undignified atmosphere, stripped of the

presumption of innocence.

The People urge the Court to assume that the unexplained use of handcuffs and restraints will never have an effect on a judge's determination of a defendant's guilt or innocence. To take the People's position is to obviate the need for any harmless error analysis in a bench trial, as they propose that a judge will always be insulated from prejudice on any matter. To make this assumption is to degrade a defendant's right to be presumed innocent. Visible shackles give the impression to any trier of fact that a person is violent, a miscreant, and cannot be trusted (see People v Clyde, 18 NY3d 145, 158 [2011] [Lippman, C.J., (dissenting)] [shackling is "understood to be reserved for the management of dangerous and explosive individuals--persons presumptively predisposed to violent crime"]).

Even if the Court should decide the present case based on a harmless error analysis, as the majority proposes, the People did not prove "beyond a reasonable doubt that the shackling did not contribute to the verdict obtained" (Deck v Missouri, 544 US at 635 [quoting Chapman v California, 386 US 18, 24 [1967] (quotation marks omitted)]). Upon a constitutional harmless error analysis, there has been insufficient showing that the defendant was not prejudiced and that the shackling error did not affect the verdict (see People v Clyde (18 NY3d 145, 153-154 [2011] [considering "the quantum and nature of the evidence

against defendant if the error is excised" and the error's effect on the fact-finder in determining whether an error is harmless]). Here, the improper shackling of defendant without basis in the record cannot have been harmless error because the evidence against defendant was not overwhelming. While the evidence was legally sufficient to convict defendant, there was testimony at trial that in defendant's limited mind, his behavior amounted to nothing more than bantering or teasing. Indeed, the police characterized defendant as "slow in his movement and speech," "timid," and "deficien[t]," and the complainant testified that he never felt scared by the encounter or defendant. There was little indication that the encounter between the complainant and defendant was sexual in nature. Given that defendant's conviction stemmed almost entirely from the, at times, inconsistent testimony of a 12-year-old boy, the evidence was far from overwhelming.

I continue to believe that "[g]iven the very basic interests at stake, and the ease with which they can properly be afforded the judicial consideration they are due, there should be a clear rule that the failure to make a record to justify restraining a defendant at trial will necessitate a new trial" (People v Cruz (17 NY3d 941, 947 [2011] [Lippman, C.J., dissenting]). This rule should be no less imperative in bench trials, where the judge is the sole trier of fact.

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Order affirmed. Opinion by Judge Ciparick. Judges Graffeo, Read, Smith and Pigott concur. Chief Judge Lippman dissents in an opinion.

Decided November 20, 2012