

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. SJC-13899

COMMONWEALTH OF MASSACHUSETTS,
APPELLEE,

V.

WALTER ESTERAS,
APPELLANT.

ON APPEAL FROM A JUDGMENT OF THE
MIDDLESEX COUNTY SUPERIOR COURT

**BRIEF FOR AMICI CURIAE THE NATIONAL ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS AND THE BOSTON BAR ASSOCIATION
IN SUPPORT OF RESPONDENT-APPELLANT WALTER ESTERAS**

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CORPORATE DISCLOSURE STATEMENTS

Pursuant to Supreme Judicial Court Rule 1:21, the National Association of Criminal Defense Lawyers (“NACDL”) represents that it is a nonprofit organization that does not issue any stock or have any parent corporation, and no publicly held corporation owns stock in it.

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TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENTS.....	2
TABLE OF AUTHORITIES.....	4
STATEMENTS OF INTEREST OF AMICI CURIAE.....	6
RULE 17(C)5 DECLARATION.....	8
ISSUE PRESENTED.....	9
SUMMARY OF ARGUMENT.....	10
STATEMENT OF THE CASE AND FACTS.....	11
ARGUMENT.....	12
I. Visible shackling during the civil commitment of sexually dangerous persons requires a case-specific justification.....	12
a. <u>Shackling during the penalty phase of a criminal trial must be specific to the defendant.....</u>	<u>12</u>
b. <u>The <i>Deck</i> principles apply to the civil commitment of sexually dangerous persons.....</u>	<u>14</u>
c. <u>The <i>Hoff</i> decision aligns with established precedent and principles of Massachusetts law.....</u>	<u>17</u>
II. The Commonwealth must prove that the visible shackling of Mr. Esteras was harmless error beyond a reasonable doubt.....	23
CONCLUSION.....	24
CERTIFICATE OF COMPLIANCE.....	27
CERTIFICATE OF SERVICE.....	28

TABLE OF AUTHORITIES

Federal Cases

<i>Claiborne v. Blauser</i> , 934 F.3d 885 (9th Cir. 2019).....	22, 23
<i>Coffin v. United States</i> , 156 U.S. 432 (1895).....	17
<i>Deck v. Missouri</i> , 544 U.S. 622 (2005).....	passim
<i>Holdbrook v. Flynn</i> , 475 U.S. 560 (1986).....	24, 25
<i>Zant v. Stephens</i> , 462 U.S. 862 (1983).....	13

State Cases

<i>Commonwealth v. Brown</i> , 364 Mass. 471 (1973).....	21
<i>Commonwealth v. Bruno</i> , 432 Mass. 489 (2000).....	21
<i>Commonwealth v. Chase</i> , 26 Mass. App. Ct. 578 (1988).....	23, 24
<i>Commonwealth v. Copson</i> , 444 Mass. 609 (2005).....	18
<i>Commonwealth v. Healy</i> , 15 Mass. App. Ct. 134 (1983).....	17, 18
<i>Commonwealth v. Otmishi</i> , 398 Mass. 69 (1986).....	19, 20
<i>Idris I. v. Hazel H.</i> , 100 Mass. App. Ct. 784 (2022).....	24
<i>In re Hoff</i> , 830 N.W.2d 608 (N.D. 2013).....	passim
<i>Kligler v. Att’y Gen.</i> , 491 Mass. 38 (2022).....	18
<i>State v. Ghylín</i> , 250 N.W.2d 252 (N.D. 1977).....	20
<i>State v. Moe</i> , 581 N.W.2d 468 (N.D. 1998).....	19

Williams v. Steward Health Care Sys., LLC, 480 Mass. 286 (2018)...22

State Statutes

M.G.L.A. c. 276 App., § 1-1, Art. 3.....18

M.G.L.A. ch. 123A.....20

N.D.C.C. ch. 25-03.3.....20

STATEMENTS OF INTEREST OF AMICI CURIAE

NACDL is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of many thousands of direct members, and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of justice. NACDL files numerous amicus briefs each year in the United States Supreme Court and other federal and state courts, seeking to provide amicus assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole.

The BBA, with approximately 15,000 members, traces its origins to meetings convened by John Adams, who provided *pro bono* representation to the British soldiers prosecuted in connection with the Boston Massacre and went on to become our nation's second

president. The BBA's mission is to facilitate access to justice for all, advance the highest standards of excellence for the legal profession, foster a diverse and inclusive professional community, and serve the community at large. The BBA's interest in this case relates most strongly to its belief that the primary concerns of a criminal justice system should be to both promote public safety and ensure fair treatment for all people. In pursuit of this goal, it has a long history of advocating for policies that support the fair and impartial administration of justice in Massachusetts.

RULE 17(c)(5) DECLARATION

No party or party's counsel authored this brief in whole or in part; no party, party's counsel, or any person contributed money to fund the preparation or submission of this brief. Neither amici curiae nor its counsel represents or has represented one of the parties in the present appeal or in another proceeding involving similar issues. Nor were they a party or represent a party in a proceeding or legal transaction that is at issue in the present appeal.

ISSUE PRESENTED

Did the visible shackling of Mr. Esteras absent a case-specific justification and over objection, during jury selection and trial on a petition to civilly commit him as a sexually dangerous person violate Federal and State due process protections?

SUMMARY OF ARGUMENT

Absent a case-specific finding, the visible shackling of Mr. Esteras violated due process under both federal and Massachusetts law.

In *Deck v. Missouri*, the United States Supreme Court held that visible shackling during the penalty phase of a criminal trial requires an essential state interest specific to the defendant. Shackles communicate to the jury, as a matter of common sense, that the defendant is dangerous, and thereby undermine the presumption of innocence and the dignity of the judicial process.

The Supreme Court of North Dakota applied *Deck* with equal force to the civil commitment of sexually dangerous persons. *In re Hoff* requires that trial courts in North Dakota make case-specific findings that restraints are needed during civil commitment proceedings of sexually dangerous persons.

Massachusetts law and procedure reflect the same commitment to due process expressed in *Deck* and *Hoff*. This Court should extend to the civil commitment of sexually dangerous persons the prohibition against visible shackling absent a case-specific need.

STATEMENT OF THE CASE AND FACTS

Amici curiae adopt the statement of the case and facts presented in Appellant-Respondent's brief.

ARGUMENT

I. Visible shackling during the civil commitment of sexually dangerous persons requires a case-specific justification.

- a. Shackling during the penalty phase of a criminal trial must be specific to the defendant.

The United States Supreme Court has determined that due process requires a case-specific justification for the use of visible shackles during the penalty phase of a criminal trial. *Deck v. Missouri*, 544 U.S. 622, 632 (2005).

In *Deck*, the petitioner was convicted of capital murder following a jury trial. *Id.* at 624. During the guilt phase, the petitioner wore leg braces that were not visible to the jury. *Id.* The sentencing proceeding was also held before a jury, however, the petitioner was visibly shackled with leg irons, handcuffs, and a belly chain. *Id.* at 625. Counsel for the petitioner objected, arguing that being shackled in front of the jury will lead to the belief that the petitioner is violent today. *Id.* (emphasis added). The objection was overruled, and the petitioner was sentenced to death. *Id.*

On appeal, the Supreme Court considered whether the principles prohibiting visible shackling during the guilt phase also apply to the penalty phase of a capital case. *Id.* at 630. The Supreme

Court noted that prejudice is an unquantifiable concept and a reviewing court cannot discern from the record the prejudicial impact on jurors. *Id.* at 635. Therefore, the Court concluded that the Constitution also forbids the use of visible shackles during the penalty phase of a criminal trial absent a case-specific determination; “that is to say, it should reflect particular concerns, say, special security needs or escape risks, related to the defendant on trial. *Id.* at 633.

Shackles, justified or not, are inherently prejudicial because they communicate to a jury, “as a matter of common sense,” that the court authorities consider the accused a danger to everyone in the court room. *Id.* at 633. Shackles present to the jury a foregone conclusion that the justice system already determined that the defendant needs to be separated from his or her community. *Id.* at 630; *see Zant v. Stephens*, 462 U.S. 862, 900 (1983) (REHNQUIST, J., concurring in judgment) (character and propensities of the defendant are part of a “unique, individualized judgment regarding the punishment that a particular person deserves”).

At sentencing, a jury is no longer deciding between guilt and innocence, however, it is still imposing a severe sanction. *Deck*, 544 U.S. at 632. The inherent prejudice of shackling undermines the

factfinder’s ability to weigh all relevant considerations accurately and independently. *Id.* at 633 (finding that visible shackles “almost inevitably affect[] adversely the jury’s perception of the character of the defendant.”). Visible shackling that is not specific to the defendant, therefore, affronts the dignity and decorum of a judicial proceeding and its objectives—the respectful treatment of defendants and due respect for the gravity of any deprivation of individual liberty. *Id.* at 631.

As such, courts must justify the visible use of shackles with an essential state interest specific to the defendant on trial, regardless of the phase of the criminal trial. *Id.* at 624.

b. The *Deck* principles apply to the civil commitment of sexually dangerous persons.

The Supreme Court of North Dakota has applied *Deck* to commitment proceedings of a sexually dangerous individual. *In re Hoff*, 830 N.W.2d 608, 615 (N.D. 2013). Mr. Hoff was convicted of gross sexual imposition and committed to the North Dakota State Hospital as a sexually dangerous person. *Id.* at 609. After Mr. Hoff completed his criminal punishment, a hearing was held on his petition for discharge from civil commitment. *Id.* He arrived in the courtroom wearing handcuffs tethered to his waist and an ankle chain. *Id.*

Following the hearing, he was committed for an indefinite time period. *Id.* at 613.

On appeal, the Supreme Court of North Dakota concluded that the deprivation of liberty in the civil commitment of a sexually dangerous person is in many ways worse than in a criminal proceeding because the period of commitment is indefinite. *Id.* at 612. It applied the same legal principles articulated in *Deck* that militate against the routine use of restraints: (1) the respondent is entitled to be free from restraint unless the government meets its burden of proof that the respondent is a sexually dangerous individual, and (2) that judges must maintain a dignified judicial process that includes the respectful treatment of the individual in consideration of the importance of the legal issue being decided, “and the gravity with which Americans consider any deprivation of an individual’s liberty.” *Id.* at 613.

Applying those factors to Mr. Hoff, the Court determined that, at a minimum, a request to remove restraints requires the trial court to analyze factors specific to him. *Id.* The Court rejected consideration of his prior record, stating “[i]f the existence of prior convictions were sufficient to shackle civil committees, then virtually all would appear

in shackles because [the statute] requires that committed individuals have previously engaged in ‘sexually predatory conduct.’” *Id.*

Here, the trial court informed the parties that Mr. Esteras would remain handcuffed and shackled throughout trial *based on courtroom security policy*. It made no finding that the restraints were required. Counsel for Mr. Esteras objected, arguing that the visible restraints would prejudice the jury against Mr. Esteras. After the first venire panel was released, defense counsel renewed her objection. She again noted that visible shackles assailed Mr. Esteras’s dignity and indicated to the jury that his dangerousness was a foregone conclusion.

The trial judge consulted court security and ordered that Mr. Esteras’s handcuffs be removed, but his ankle shackles would remain. Defense counsel requested that the record includes her objection and observation that the foot shackles remained visible to each juror as they entered and exited the courtroom. Despite counsel’s request, Mr. Esteras remained shackled throughout trial through the verdict, absent any finding specific to his history or propensity.

Much like *Hoff*, counsel for Mr. Esteras informed the judge that he had no history of flight or violence against the public. No expert opined that he had a propensity for violent outbursts. At best, the

record reflected that Mr. Esteras had been convicted of sexual assault and detained at the Massachusetts Treatment Center. Nevertheless, the court relied on the courtroom security policy for civil commitment proceedings of sexually dangerous persons.

- c. The *Hoff* decision aligns with established precedent and principles of Massachusetts law.

The *Hoff* decision embodies the fundamental presumption of innocence until proven guilty. *Hoff*, 830 N.W.2d at 613. This Court has held that “[t]he principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.” *Commonwealth v. Healy*, 15 Mass. App. Ct. 134, 136 (1983), citing *Coffin v. United States*, 156 U.S. 432, 453 (1895).

The presumption communicates to the jury that guilt or innocence must be determined solely on the basis of the evidence introduced at trial, and not on grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial. *Healy*, 15 Mass. App. Ct. at 137. This presumption and the reasonable doubt standard are the primary guarantees of a fair

fact-finding process; therefore, courts must avoid conduct which negates the purpose of either principle. *Id.*

When enforcing those principles, the Supreme Judicial Court of Massachusetts applies the same standards adhered to in a Federal due process analysis; that said, the Massachusetts Declaration of Rights may demand broader protection for fundamental rights than the Federal Constitution. *Kligler v. Att’y Gen.*, 491 Mass. 38, 60 (2022). In this instance, diligent research reveals that the Supreme Court of North Dakota is the only other state court to consider whether the due process principles expressed in *Deck* apply to the civil commitment of sexually dangerous persons.

This Court has previously relied on the reasoning of the Supreme Court of North Dakota when applying constitutional protections to criminal defendants. For example, in *Commonwealth v. Copson*, this Court held that the defendant’s *pro se* motion for a speedy trial was insufficient under article III of the Interstate Agreement on Detainers because the motion was not accompanied by the requisite certificate of inmate status or the information called for therein. 444 Mass. 609, 618 (2005); *see also* M.G.L.A. c. 276 App., § 1-1, Art. 3.

This Court adopted North Dakota's reasoning that the certificate requirements "allow[] the prosecutor to make a rational decision whether to prosecute and the State may, for example, decline to prosecute upon learning the prisoner is already serving a lengthy sentence elsewhere on a more serious charge." *Copson*, 444 Mass. At 622, citing *State v. Moe*, 581 N.W.2d 468, 471 (N.D.1998) (certificate requirement mandatory, not directory).

In *Commonwealth v. Otmishi*, this Court considered whether public policy is served by exempting from punishment intoxicated drivers who choose to stop their automobiles. 398 Mass. 69, 71 (1986). This Court acknowledged that the issue was "well answered" by the Supreme Court of North Dakota, which held as follows:

[The defendant] argues that to sustain convictions of [operating] a vehicle while intoxicated in cases where the defendant has voluntarily stopped his vehicle off the road after realizing his inability to drive safely is to discourage such behavior in the future. He argues that convictions under these circumstances will encourage drivers aware of their impaired driving capability to continue driving rather than risk conviction ... should they pull off the highway to await other transportation.

While we believe such behavior should be encouraged, the real purpose of the statute is to deter individuals who have been drinking intoxicating liquor from getting into their vehicles, except as passengers.... One who has been drinking intoxicating liquor should not be encouraged to test his driving ability on the highway, even for a short

distance, where his life and the lives of others hang in the balance.

Id. at 71-72, citing *State v. Ghylin*, 250 N.W.2d 252, 255 (N.D.1977).

Relying on North Dakota's analysis, this Court concluded that the Commonwealth had introduced sufficient evidence for a trier of fact to conclude that the defendant had driven under the influence and, therefore, rejected his public policy argument. *Otmishi*, 398 Mass. at 72.

As to the civil commitment of sexually dangerous persons, both the Massachusetts and North Dakota statutes allow the state to commit a person who has a history of sexually offending conduct and a mental abnormality or similar condition that causes a likelihood of reoffending. *See* M.G.L.A. ch. 123A; N.D.C.C. ch. 25-03.3.

Chapter 123A, however, offers greater protections than North Dakota's statute. It provides for the right to a jury trial and requires evidence beyond a reasonable doubt. *See* M.G.L.A. ch. 123A § 14. The presence of a jury underlines the need for protection from the prejudice that likely would result from visible shackling of a person that may be considered sexually dangerous. Jurors do not hold the same ability as a judicial officer to distinguish courtroom security

from the ultimate legal issue. *See Deck*, 544 U.S. at 633 (“[T]he use of shackles can be a ‘thumb [on] death’s side of the scale.’”).

This Court has previously considered the constitutionality of chapter 123A and concluded that civil commitment proceedings under the statute present a potential deprivation of liberty so great that they mandate due process protections. *See Commonwealth v. Bruno*, 432 Mass. 489, 502 (2000). The right to freedom from physical restraint is fundamental to the fairness of a judicial proceeding. Any impingement on that right must serve an important government interest. *Id.* at 503. Restraint on an individual’s freedom must be done in narrowly-circumscribed situations. *Id.*

To that end, this Court has already relied on the principles set forth in *Hoff* and *Deck* to caution judges against delegating to an official charged with the custody of prisoners the decision to shackle a defendant in a criminal proceeding. *See Commonwealth v. Brown*, 364 Mass. 471, 475 (1973) (“These displays tend to create prejudice in the minds of the jury by suggesting that a defendant is a bad and dangerous person whose guilt may be virtually assumed; they may interfere with a defendant's thought processes and ease of

communication with counsel; intrinsically they give affront to the dignity of the trial process.”).

Extending these principles to civil commitment proceedings involving sexually dangerous persons aligns with this Court’s ruling that civil commitment should utilize the least restrictive means of control over the individual whose liberty is at stake. *See Williams v. Steward Health Care Sys., LLC*, 480 Mass. 286, 293 (2018) (“Thus, a psychiatric civil commitment should involve the least burdensome or oppressive controls over the individual that are compatible with the fulfillment of the dual purposes of our statute, namely, protection of the person and others from physical harm and rehabilitation of the person.”).

This is especially true where the civil commitment of a sexually dangerous person hinges on the jury’s determination of dangerousness. *See Claiborne v. Blauser*, 934 F.3d 885, 890 (9th Cir. 2019). There, a state prisoner litigating a section 1983 excessive-force claim was visibly shackled throughout a three-day jury trial without any case-specific justification. *Id.* at 894. The Ninth Circuit held that the shackling required a new trial because the plaintiff’s “dangerousness and flight risk were central issues at the trial,” and the

shackles therefore risked deciding, by implication, the very question the jury was asked to answer. *Id.* at 895.

The parallel to an SDP proceeding is exact: in both cases, the litigant's dangerousness is not incidental to some other claim, but is the central and, in a chapter 123A case, the *only issue the jury must decide*. If unjustified shackling in a civil suit about a single incident of alleged excessive force compromises the jury's independent judgment, so, too, and even more so, will unjustified shackling in a proceeding whose sole purpose is to adjudicate dangerousness.

II. The Commonwealth must prove that the visible shackling of Mr. Esteras was harmless error beyond a reasonable doubt.

At trial, counsel for Mr. Esteras informed the court by an offer of proof that the shackles remained visible to the jury from venire through verdict. The Commonwealth argues that counsel's statements were not an offer of proof because she was not seeking to admit evidence, therefore, no offer of proof was required to assist the trial court in ruling on the admissibility of evidence. That argument however finds no support in Massachusetts law.

An offer of proof is required to preserve the right to appellate review. *See Commonwealth v. Chase*, 26 Mass. App. Ct. 578, 581 (1988) ("An offer of proof may assist the trial judge in making the

correct ruling. And the presence of an offer of proof in a record on appeal enables an appellate court to determine whether an error was made and, if so, how harmful it was to the defendant.”). The trial court is not required to accept or make a finding based on the offer of proof. *Id.* It is simply a way to preserve the issue.

Even if counsel’s statements are not considered an offer of proof, her repeated objections about the visibility of the shackles sufficiently preserve the claim of error. *See Idris I. v. Hazel H.*, 100 Mass. App. Ct. 784, 790 (2022) (“Illustrative of this point is the repeated but unsuccessful efforts by the defendant’s attorney to make an offer of proof. Moreover, no specific words are required to preserve a claim of error. In the circumstances of this case, we deem the claims of error preserved”).

As such, the burden is not on Mr. Esteras to prove whether jurors were influenced by the shackles. *Deck*, relying on *Holdbrook v. Flynn*, 475 U.S. 560, 568 (1986), ruled that shackles are “*inherently prejudicial*” and the defendant need not separately demonstrate actual prejudice to establish a due process violation; the prejudicial effect of shackling cannot be shown from a trial transcript. *Deck*, 544 U.S. at 635 (emphasis added). A juror’s subjective perceptions and

reactions are unknowable and unprovable after the fact, even by any means the law permits a party to use. *Id.* Mr. Esteras is therefore not required to prove actual prejudice because the court's inquiry turns on whether shackles present an unacceptable risk of prejudicial effect. *Holbrook*, 475 U.S. at 570.

Contrary to the Commonwealth's argument, the jury's knowledge of Mr. Esteras's criminal history and detention at the Massachusetts Treatment Center does not reduce the risk that visible shackles will encourage a jury to conclude that Mr. Esteras is dangerous. As explained in *Hoff*, the moment defense counsel objected to the use of visible shackles, the trial court should have engaged in an analysis of factors specific to Mr. Esteras. *See Hoff*, 830 N.W.2d at 613. No such finding was made. Therefore, it is the Commonwealth's burden to prove beyond a reasonable doubt that the shackling did not contribute to the verdict obtained. *Deck*, 544 U.S. at 623.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that this Court hold that the visible shackling of a respondent in a civil commitment proceeding under ch. 123A absent a case-specific finding of necessity violates due process under the Fourteenth Amendment to the United States Constitution and Article 12 of the Massachusetts Declaration of Rights.

Moreover, because the Commonwealth cannot prove beyond a reasonable doubt that the error was harmless, *amici* respectfully request that this Court vacate the judgment of commitment against Mr. Esteras and remand the matter for a new trial.

CERTIFICATE OF COMPLIANCE

Undersigned hereby certifies that this brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Rule 17 (brief of an amicus curiae) and Rule 20 (form and length of briefs, appendices, and other documents). I further certify that this brief complies with Rule 20's length limit in that it was prepared in 14-point *Times New Roman* font using Microsoft Word for Windows and, according to Microsoft's word count tool, contains 3,495 non-excluded words.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 21, 2026, the within amicus curiae brief was filed electronically using the e-file MA platform through which transmittal of courtesy copies for counsel for the parties was requested, and additional copies were served on counsel for the parties by email at ruthgreenberg44@gmail.com and jessica.langsam@mass.gov.

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