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CH. 51
TRIAL PROCEDURES

§51-1
Public Trials

United States Supreme Court

Weaver v. Massachusetts, 582 U. S. ___, 137 S.Ct. 1899, 198 L.Ed.2d 420 (2017) Noting a conflict in authority, the U.S. Supreme Court held that when a violation of the right to a public trial is not preserved and raised on direct appeal, but is instead raised for the first time on collateral review as ineffective assistance of counsel, the defendant is required to satisfy the prejudice requirement of **Strickland**. Here, defendant was unable to show prejudice from the trial court's closure of the courtroom to the public during jury selection.

Where due to a lack of space the trial court closed the courtroom during jury selection to everyone but the prospective jurors, defendant could not establish that he was prejudiced by counsel's failure to object. Although it is possible that potential jurors might have behaved differently had defendant's family been present, there was no evidence or legal argument establishing prejudice in the sense of a reasonable probability of a different outcome had counsel objected to the closure. Similarly, there was no reason to believe that the failure to object to the closing of the courtroom resulted in a fundamentally unfair proceeding. Under these circumstances, defendant failed to satisfy the prejudice requirement of **Strickland**.

Presley v. Georgia, 558 U.S. 209, 130 S.Ct. 721, 175 L.Ed.2d 675 (2010) The federal constitutional right to a public trial rests on two provisions – the Sixth Amendment (which protects the defendant's right to a "speedy and public trial"), and the First Amendment. Jury selection is a stage of the trial at which there are clearly both First and Sixth Amendment rights to a public proceeding. Thus, jury selection can be closed only if there is an overriding State interest that is likely to be prejudiced by an open proceeding, the trial court considers reasonable alternatives to closing the proceeding, and the court makes adequate findings to support the closure.

The court rejected the Georgia Supreme Court's holding that the trial judge need not consider alternatives to closure when it decides *sua sponte* to close *voir dire* to the public. "Trial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials."

The trial court also failed to identify any overriding interest that was likely to be prejudiced unless the public was excluded from *voir dire*. The trial court mentioned only its fear that a veniremember might overhear conversations by members of the public, a "generic risk" that is "inherent whenever members of the public are present during the selection of jurors." The court added, "If broad concerns of this sort were sufficient to override a defendant's constitutional right to a public trial, a court could exclude the public from jury selection almost as a matter of course."

There might be circumstances in which the trial judge could legitimately conclude that threats of improper communication with jurors or safety concerns warrant closing *voir dire*. In such cases, the particular interest at stake and the threat to that interest must be articulated by the judge, along with sufficiently specific findings that a reviewing court can review the propriety of the closure order.

Carey v. Musladin, 549 U.S. 70, 127 S.Ct. 649, 166 L.Ed.2d 482 (2006) The Supreme Court

has never considered whether the conduct of private citizens (i.e., wearing buttons with the decedent's picture at a murder trial) can deny a fair trial.

Press-Enterprise v. Superior Court, 478 U.S. 1, 106 S.Ct. 2735, 92 L.Ed.2d 1 (1986) There is a qualified right of public access to preliminary hearings. Such hearings cannot be closed to the public unless the trial court makes specific, on-the-record findings that "closure is essential to preserve higher values and is narrowly tailored to serve that interest." If the interest involved is the right of defendant to a fair trial, the findings must demonstrate a substantial probability of prejudice from publicity, that closure will prevent such prejudice, and that reasonable alternatives to closure would be inadequate.

Waller v. Georgia, 467 U.S. 39, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984) A defendant's right to a public trial applies to a hearing on a motion to suppress evidence.

Press-Enterprise v. Superior Court, 464 U.S. 501, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984) The guarantee of open proceedings in criminal trials applies to voir dire. Thus, before closing voir dire to the press and public, the trial court must make specific findings that an open proceeding threatens defendant's right to a fair trial and prospective jurors' rights to privacy, and must consider whether alternatives to a closed proceeding are available.

Globe Newspapers v. Superior Court, 457 U.S. 596, 102 S.Ct. 2613, 73 L.Ed.2d 248 (1982) The First Amendment was violated by a state statute requiring that the press and public be excluded during the testimony of minor victims of rape and sexual assault. Although the right of access to criminal trials is not absolute, the press and public may be excluded only in limited circumstances where the State shows such exclusion "is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest."

Chandler v. Florida, 449 U.S. 560, 101 S.Ct. 802, 66 L.Ed.2d 740 (1981) The Federal Constitution does not prohibit all photographic, radio, and television coverage of state criminal trials. Compare, **Estes v. Texas**, 381 U.S. 532, 85 S.Ct. 1628, 14 L.Ed.2d 543 (1965).

Richmond Newspaper v. Virginia, 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980) Before the start of defendant's fourth trial for murder (his conviction after the first trial was reversed on appeal and the second and third trials ended in mistrials), defense counsel moved to close the trial to the public and press. The prosecutor had no objection to the closing, and the trial judge excluded the public and press from the courtroom during trial.

The Supreme Court reversed the exclusion, holding that the public and the press have a right under the First and Fourteenth Amendments to attend criminal trials. Although the Court did not set out the circumstances in which all or part of a criminal trial may be closed, it held that closure was error here because the trial judge made no findings to support the closure, no inquiry was made into alternative solutions, and the trial judge did not recognize the constitutional right of the public and press to attend the trial. "Absent an overriding interest articulated in findings, the trial of a criminal case must be open to the public."

Gannett v. DePasquale, 443 U.S. 368, 99 S.Ct. 2898, 61 L.Ed.2d 608 (1979) The Sixth Amendment confers the right to a public trial only upon a criminal defendant; members of the public have no constitutional right, under the Sixth or Fourteenth Amendments, to attend

criminal trials. Thus, the trial judge properly excluded the press and public from a pretrial proceeding where defendant, the prosecutor, and the trial judge all agreed to the closure to assure a fair trial. The closure here was proper because: the spectators failed to object when the closure motion was made, the trial judge balanced the rights of the public against defendant's right to a fair trial and found that an open hearing would present "a reasonable probability of prejudice" to defendant, and the denial of access was only temporary.

Nixon v. Warner Communications, 435 U.S. 589, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978) Under the First Amendment, the press generally has no right to information about a trial that is superior to the right of the general public. In addition, the Sixth Amendment right to a public trial does not require that any part of a trial be broadcast live or on tape. The requirement of a public trial is satisfied by the opportunity of members of the public and press to attend the trial and report what they have observed.

Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976) The Supreme Court reversed a state court order prohibiting the news media from reporting the existence and nature of confessions or admissions by defendant and other facts "strongly implicative" of the accused, including information obtained in open court. Although the guarantee of freedom of expression is not absolute, a "heavy burden" is imposed before a prior restraint can be issued against the media. Here, the trial court's conclusions concerning the impact of publicity on prospective jurors were speculative and there was no finding that alternative measures would have been insufficient to protect the rights of the accused. In addition, it was unclear that even the prior restraint ordered by the trial court would effectively protect defendant's rights. Finally, the portion of the order restraining publication of facts "strongly implicative" of the accused was unconstitutionally vague and overbroad.

Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968) The Sixth Amendment right to a public trial is applicable to State proceedings.

Illinois Supreme Court

People v. Smith, 2025 IL 130067 The trial court's exclusion of defendant's mother from the courtroom during defendant's jury trial did not amount to a violation of his right to a public trial. Defendant's mother was only temporarily excluded from the start of the trial through the point at which it was determined that she would not be called as a witness. The exclusion of potential witnesses from the courtroom is a common courtroom practice to preclude witnesses from shaping their testimony to conform to that of other witnesses. Such exclusions do not implicate a defendant's right to a public trial. Here, the courtroom remained open to other individuals who were not potential witnesses, and the record demonstrated that other family members were present throughout the trial. Accordingly, defendant was not denied a public trial.

People v. Schoonover, 2021 IL 124832 During a trial for predatory criminal sexual assault, before the minor complainant's testimony, the trial court stated that it would be closing the courtroom to the public, except for the complainant's family members. Defense counsel stated that defendant's family was in the courtroom, and the trial court responded, "Out." The trial court then clarified that, pursuant to 725 ILCS 5/115-11, it would order the courtroom cleared of anyone other than media. The State asked if the complainant's grandmother could stay, and the court ruled she could stay. The defense did not object. As the courtroom was being

cleared, the State obtained permission for two more family members to stay, while the defense stayed silent.

The Appellate Court found plain error, holding that the trial court failed to comply with section 115-11's requirement that it determine whether any excluded spectators have a direct interest in the case. This infringed on defendant's right to a public trial, and amounted to second-prong plain error. The Supreme Court, with one justice dissenting, reversed the Appellate Court and affirmed defendant's conviction.

Section 115-11 states that, during a minor's testimony in certain sexual assault cases, the trial court may exclude from the courtroom any spectators "who, in the opinion of the court, do not have a direct interest in the case, except the media." The record here did not reflect that the trial court violated the statute. Although the defense mentioned family members, it never established those family members had a direct interest in the case.

The defendant argued that the statute imposes an obligation on the trial court to determine whether any excluded spectator has a direct interest in the case, which the trial court violated when it summarily excluded the family members mentioned by defense counsel. The Supreme Court majority rejected this argument. The statute requires the trial court to form an opinion as to who should be excluded, but it does not require an express exercise of discretion. The statute did not require the court to inquire into the identities of the ousted spectators, particularly where the record does not show that those cleared from court were the family members mentioned by the defense.

Nor did the closure violate defendant's sixth amendment right to a public trial. According to United States Supreme Court precedent, the constitution places no restrictions on courtroom closures as long as the media is not excluded. Here, the trial court allowed the media to stay, and therefore the defendant's sixth amendment rights were adequately preserved.

Justice Neville, in dissent, would have affirmed the Appellate Court because the burden should be on the trial court, not defendant, to protect the right to a public trial. The dissent also would have found that admission of the press did not adequately preserve community members' first amendment right to a public trial.

People v. Radford, 2020 IL 123975 Citing space concerns in a high-profile case with a large venire, the trial court closed the courtroom to all public spectators during jury selection, except for two people chosen by each party. Defendant did not object, and participated in the process by naming his two representatives. The Supreme Court rejected his claim on appeal that plain error occurred because his right to a public trial had been denied.

There was no clear error, and the trial court's decision did not affect the integrity of the judicial process. The United States Supreme Court has held that a courtroom closure over a defendant's objection violates the right to a public trial. It has not clearly held that error occurs when a defendant acquiesces to the closure. A contemporaneous objection is particularly important when challenging a courtroom closure, because without an objection the trial court has no opportunity to provide a detailed record of its reasoning for the closure.

Regardless, the trial court did not conduct a secret trial free from public scrutiny. Two members of the public represented each party. And dozens of venirepersons were able to observe voir dire and act as the eyes and ears of the public.

In dissent, Justice Neville argued that the majority had understated the importance of an audience to a criminal trial, particularly for minority and poor defendants. These audiences can not only affect the proceedings, but glean information relevant to the election of judges and state's attorneys. Justice Neville disagreed that a venire could act as a stand-in for this particular type of audience. He also disagreed with making the right to a public

trial dependent on defendant's objection, as the question of issue preservation should be resolved separately in the plain error analysis.

People v. Holveck, 141 Ill.2d 84, 565 N.E.2d 919 (1990) Ch. 38, ¶115-11 (725 ILCS 5/115-11) permits a trial judge to exclude from the courtroom, during the testimony of a sex offense victim under 13 years of age (now 18 years of age), all persons other than the media who do not have a direct interest in the cause. The trial judge did not err by invoking ¶115-11 during the testimony of five- and six-year-old complainants where the jury was informed of the reasons for the closure, the judge based his decision on the effects on young children of testifying in the presence of a large number of people, and the judge considered the interests of both defendant and the witnesses. See also, **People v. Falaster**, 173 Ill.2d 220, 670 N.E.2d 624 (1996) (order excluding persons with no direct interest in the case, under §115-11, is not subject to U.S. Supreme Court precedent governing closure of trial to media and public).

People v. Kirilenko, 1 Ill.2d 90, 115 N.E.2d 297 (1953) "It is a fundamental concept both under our constitution and our criminal code that a defendant in a criminal proceeding has a right to a public trial . . . at every stage of which he has the right to be present and in every part of which he has a right to participate."

Illinois Appellate Court

People v. Smith, 2023 IL App (1st) 181070 Defendant was arrested for murder and, because he was a juvenile, his mother was allowed into the interrogation room. After a brief recorded discussion between defendant and his mother, defendant invoked his right to counsel and no interrogation ensued.

Before trial, defendant's mother was placed on the State's witness list, and therefore she was part of the motion to exclude witnesses from the courtroom. Defendant objected, noting that it was unlikely she would be called as a witness where no statement was given. The State maintained that she was a potential witness to the circumstances of defendant's time at the station, and the court agreed to exclude her from the courtroom until the State decided whether or not to call her. She was ultimately excluded for jury selection, opening statements, and the State's case in chief.

The appellate court found a violation of defendant's right to a public trial. The right to a public trial can be curtailed by an overriding interest, such as the need to keep witnesses from hearing trial testimony. But in this case the State failed to show there was a reasonable probability that defendant's mother would be a witness. The State's only explanation for including her on its witness list was that she might testify to events at the police station, but the court could think of nothing relevant or admissible that she could offer in a case where defendant invoked the right to counsel immediately. Regardless, the entire event at the station was recorded, and if it were somehow admissible, defendant's mother still wouldn't be a necessary witness. Finally, there was no justification for excluding her for the entirety of the trial where she could have easily been excluded for any discussion about the events at the station.

Because a violation of the right to a public trial is structural error, a new trial was required.

People v. Bartels, 2022 IL App (3d) 190635 Defendant's right to due process was not violated by the trial judge's viewing of admitted evidence outside of the presence of the parties. A defendant has the right to be present at all critical stages of the proceedings

against him. That right is not absolute, however, and the right is not violated where defendant's absence would not impact his ability to defend himself. Whether a defendant's due process right has been violated is reviewed *de novo*.

Here, defendant's presence while the court played digital evidence would not have contributed to his defense. The in-chambers viewing of evidence is not a critical stage, and accordingly defendant's presence could be waived by counsel. Defendant himself made no objection when the process was discussed in court. Defendant would not have been able to participate in any manner while the court reviewed the evidence, even if he had been present. Further, defendant's presence would not have impacted his decision whether to testify because, in making that decision, defendant already knew the content of the evidence that the court was viewing in chambers.

People v. Potts, 2021 IL App (1st) 161219 A trial court has discretion to hear an untimely motion for new trial, filed while a motion to reconsider sentence is pending, because the court still has jurisdiction over the case generally. Such discretion furthers the judiciary's interest in resolving cases efficiently and accurately.

The trial court did not err in denying defendant's request to issue a protective order and conduct closed courtroom proceedings on defendant's claim that a newly discovered witness had come forward with exonerating evidence. According to defense counsel, the witness was well-known in the community and feared for his safety if he was identified. The witness came forward two days after defendant had been sentenced, which was nearly nine years after the murder in this case. He claimed to have seen the victim with another man on the date of her murder in an area near where her body was later discovered.

The public has a first amendment right of access to criminal proceedings, and defendant has a personal sixth amendment right to insist on a public trial. However, there is no constitutional right to private proceedings. On rare occasions, the public's right of access must yield to other considerations. A generic allegation that a witness is afraid, without more, is inadequate to overcome the constitutional presumption of openness.

People v. Smith, 2020 IL App (3d) 160454 The trial court violated defendant's right to a public trial when, during jury selection, the court ordered spectators, including defendant's parents, out of the courtroom. The court made no record as to why the courtroom had to be closed. This error was not objected to, and the Appellate Court refused to find the failure to object excusable under **Sprinkle**. But the court did find second-prong plain error and reversed for a new trial.

People v. Groebe, 2019 IL App (1st) 180503 Defendant was not denied her right to a public trial where a video of her traffic stop and field sobriety tests was viewed by the judge in chambers, alone, during a recess. The video was properly admitted into evidence in the courtroom during defendant's bench trial, and defendant did not object to the court's watching the video in chambers. The right to a public trial does not extend to the viewing of exhibits by the public.

Although defendant did not specifically argue that the private viewing of the video violated her right to be present at a critical stage of the proceedings, the court considered that issue in light of defendant's citation to **People v. Lucas**, 2019 IL App (1st) 160501, where the Appellate Court found that defendant's right to be present was violated where the court watched a video in chambers with the attorneys present but not the defendant. That procedure denied defendant the ability to assist her defense and negatively impacted her decision whether to testify.

Here, the Court held that even if defendant was denied her right to be present, her absence did not cause the proceeding to be unfair or result in the denial of an underlying substantial right. The arresting officer testified to the details of the traffic stop and FSTs and was subject to cross-examination on those subjects. And, defense counsel argued that the video contradicted the officer's testimony. Thus, the Appellate Court declined to find that defendant's presence during the viewing of the video would have contributed to the fairness of the proceedings.

People v. Schoonover, 2019 IL App (4th) 160882 The trial court erred when it removed defendant's family from the courtroom. Under section 115-11 of the Code of Criminal Procedure, the court has discretion to exclude all persons from the courtroom when the minor victim of a sex crime is testifying, except the court may not exclude the media or those with a direct interest in the case. The Appellate Court held that, before excluding defendant's family members, a trial court must make an express finding that they do not have a direct interest in the outcome of the case.

Here, even though defendant didn't explain which family members were excluded by the court's order, or establish that the family members had a direct interest in the case, the trial court failed to exercise discretion by seeking the answers to these questions once defendant objected to the exclusion of his family. The Appellate Court further found that despite defendant's failure to include the issue in a post-trial motion, second-prong plain error applied. Violations of section 115-11 are presumptively prejudicial because errors affecting defendant's right to a public trial are structural.

In re Manuel M., 2017 IL App (1st) 162381 Both the federal and Illinois constitutions guarantee a defendant the right to a public trial, including the right to appear and participate in person or by counsel at all stages of the proceedings involving substantial rights. U.S. Const. amend. VI; Ill. Const. 1970, art. I, §8. The denial of a defendant's right to a public trial constitutes a structural error and necessarily renders the trial fundamentally unfair or an unreliable means of determining guilt of innocence. When such errors occur, automatic reversal is required.

Police officers have a qualified privilege from disclosing surveillance locations in criminal proceedings. In deciding whether the privilege applies, courts must balance the public interest in keeping the location secret against the defendant's right to test the credibility of the witness through cross-examination. In making its decision, the trial court may conduct an *in camera* examination of the officer out of the presence of defendant and his counsel.

Here, a police officer testified that he went to a surveillance location near a park and using binoculars observed defendant flashing gang signs at passing cars, causing them to swerve into oncoming traffic and creating a dangerous situation. The officer then drove to the park, arrested defendant, and while patting him down recovered a gun.

On cross-examination, defense counsel asked the officer to disclose the exact surveillance location. The State objected that disclosing the location would endanger officer safety. Defendant and his counsel were excluded from the court's *in camera* examination of the officer, but the prosecution was allowed to be present. The trial court ascertained the exact surveillance location, and the prosecutor questioned the officer and argued that the location should be kept secret. The trial court ruled that the officer did not need to reveal his surveillance location.

The *in camera* examination of the surveillance officer should have taken place outside the presence of both the State and the defense. And the *in camera* proceeding should have

been limited to disclosure of the exact location of the surveillance. Any testimony or argument addressing the public interest to be protected by nondisclosure should have been made in open court. Allowing the State to examine the officer in a proceeding outside the presence of defendant and his counsel violated defendant's right of confrontation and his right to a public trial.

People v. Evans, 2016 IL App (1st) 142190 The Sixth Amendment right to a public trial extends to *voir dire* of prospective jurors. A violation of the right to a public trial is a structural error which requires automatic reversal without any showing of prejudice. An error may be designated as structural only if it renders the trial fundamentally unfair or unreliable as a means of determining guilt or innocence.

To justify closing a proceeding to the public, there must be an overriding interest that is likely to be prejudiced if the hearing is open, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closure, and the court must make adequate findings to support the closure.

Here, defendant's step-grandmother was removed from the courtroom during *voir dire*. The judge stated that because there were 45 prospective jurors there was a shortage of seats in the courtroom, and that it was impossible to separate the grandmother from the prospective jurors.

The Appellate Court assumed that avoiding juror contamination is an overriding interest, but found that excluding the grandmother from the proceedings was not necessary to protect that interest. There was no evidence that the grandmother had attempted or would attempt to communicate with prospective jurors, and defense counsel stated that he had instructed the grandmother not to communicate with the jury pool. Under these circumstances there was no specific threat of jury contamination sufficient to justify closing the proceeding.

Also, the second reason for barring the grandmother - that there were a limited number of seats available in the courtroom - carried even less weight. Having 45 potential jurors sit in the courtroom at one time is solely a matter of logistics and convenience, and does not affect the fairness of the trial. Many courtrooms are undersized, but "even in a cramped physical space" trial courts can deal with space limitations in ways that do not burden the right to a public trial. For example, potential jurors can be called into the room in smaller groups, the grandmother or a potential juror could have been asked to stand until a seat became available, and the jurors and the grandmother could have been instructed not to interact.

Defendant's conviction was reversed and the cause remanded for a new trial.

People v. Goods, 2016 IL App (1st) 140511 The federal constitution guarantees a public trial as a restraint on the possible abuse of judicial power. But the presumption of openness may be overcome where closure is essential to preserve higher values.

At his sentencing hearing, defendant asked to present certain mitigating evidence regarding his cooperation with the State *in camera* since he feared for his safety if he were to be labeled a "snitch." The trial court denied the request, stating that it could not hear such evidence *in camera* unless there was a statute permitting it.

In a case of first impression in Illinois. the Appellate Court held that the trial court erred in not allowing defendant to present his mitigation *in camera*. A defendant should be allowed to present mitigation *in camera* when he shows good cause for doing so. Here defendant's concern for his safety showed good cause. The trial court was essentially asking

defendant to choose between his safety and his ability to present mitigation. Defendant was thus denied a fair hearing.

People v. Jones, 2014 IL App (1st) 120927 The right to a public trial is not absolute and can be infringed when necessary. In addition, a temporary closure may be so trivial that it does not violate the Sixth Amendment. This "triviality standard" is not a harmless error analysis, however. Instead, it examines the trial court's actions and the effects of the closure to determine whether Sixth Amendment protection was denied.

Plain error did not occur where *voir dire* of three veniremembers occurred in chambers, outside the presence of the public and the defendant. First, Supreme Court Rules 431 and 234 grant the trial court discretion to conduct *voir dire* outside the presence of other jury members. Second, because access to *voir dire* was not requested by defendant, the news media, or the public, the procedure merely prevented other members of the *voir dire* panel from hearing the responses. The right to a public trial does not require that all veniremembers hear other veniremembers' answers.

Also, one of the prospective jurors requested an *in camera* discussion, and there was nothing in the record to indicate that the trial was in any way unfair due to the brief *in camera* questioning, especially since all three of the prospective jurors questioned *in camera* were excused from the jury. Because any closure was trivial, no Sixth Amendment violation occurred.

People v. Lawrence, 268 Ill.App.3d 327, 644 N.E.2d 19 (1st Dist. 1994) At defendant's trial for murder and concealment of a homicidal death, the trial court interrupted the State's rebuttal argument to announce that it had inadvertently turned off the microphone that transmitted the proceedings to the gallery, which was separated from the courtroom by a heavy glass barrier. Defendant's failure to object or ask that the State repeat its argument waived any claim that the Sixth Amendment had been violated.

People v. Garrett, 264 Ill.App.3d 1089, 637 N.E.2d 615 (1st Dist. 1994) At defendant's trial for criminal sexual assault and aggravated criminal sexual abuse of the daughter of his live-in girlfriend, the State moved to exclude defendant's parents from the courtroom while the 15-year-old complainant testified, claiming that the complainant's "emotional well-being" would be adversely affected by their presence. The trial judge expressed skepticism as to the prosecutor's claims, but concluded that "based on your representation" the motion should be granted.

The trial judge erred. The right to a public trial may be abrogated only in "rare" cases where there is an "overriding interest." Closure must be both essential and "narrowly tailored to serve that interest." Where the State claims such an "overriding interest," the trial court must decide whether the interest is legitimate and whether closure is essential to protect it. The trial court must also consider whether reasonable alternatives to closure would sufficiently protect the interest, and the failure to consider reasonable alternatives renders a closure order void.

Also, the exclusion was not justified under Ch. 38, ¶115-11 (725 ILCS 5/115-11), which allows the trial court to exclude persons who do not have a "direct interest" in the proceedings. In light of the presumption of innocence, the parents of a defendant have at least as "direct" an interest in a case as does the family of a complainant.

People v. Taylor, 244 Ill.App.3d 460, 612 N.E.2d 543 (2d Dist. 1993) Exclusion of

defendant's family members from courtroom during voir dire, because trial court did not want to take chance that a spectator might make a prejudicial comment, violated defendant's Sixth Amendment right to a public trial.

Although protecting the jury venire from prejudice might qualify as an overriding interest, there was no evidence that such an interest would be prejudiced if defendant's siblings were present. Instead, the trial judge indicated that he regularly excluded defendants' family members from trials to exclude any possibility of prejudice. Such a practice cannot overcome the presumption that a trial is to be open to the public, especially where there is no supporting evidence in the particular case at bar.

The appropriate remedy was to remand the cause for a new trial without requiring defendant to show any specific prejudice. See also, **People v. Willis**, 274 Ill.App.3d 551, 654 N.E.2d 571 (1st Dist. 1995) (trial court failed to make sufficient findings to justify exclusion of defendant's family; closure could not be justified by threats against and payments to a witness, because the trial court was not aware of that evidence when closure was ordered).

People v. Latimore, 33 Ill.App.3d 812, 342 N.E.2d 209 (5th Dist. 1975) Defendant's right to a public trial was not violated by order excluding all spectators except the news media and persons with a "specific interest" during rape victim's testimony.

People ex rel. Woodward v. Oliver, 25 Ill.App.3d 66, 322 N.E.2d 240 (2d Dist. 1975) The right to a public trial is not infringed by in camera discussions.

§51-2
Defendant's Right to be Present

§51-2(a)
Generally

United States Supreme Court

Portuoendo v. Agard, 529 U.S. 61, 120 S.Ct. 1119, 146 L.Ed.2d 47 (2000) Prosecutorial argument that defendant was the only witness who had been allowed to remain in the courtroom while the other witnesses testified, and that he therefore could "tailor" his testimony to fit the evidence, did not improperly comment on defendant's constitutional rights to attend his trial, confront witnesses, and testify in his own behalf.

Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970) A defendant can lose his right to be present at trial if, after he has been warned that he will be removed if he continues his disruptive behavior, he conducts himself in a manner so disorderly, disruptive, and disrespectful of the court that the trial cannot continue.

Synder v. Massachusetts, 291 U.S. 97, 54 S.Ct. 330, 78 L.Ed.2d 674 (1934) Defendant did not have the right to be present when the jury was taken to view the crime scene. Defendant has the right to be present whenever his presence has a reasonably substantial relation to the fullness of his opportunity to defend against the charges and to confront and cross-examine the witnesses against him. See also, **People v. Devin**, 93 Ill.2d 326, 444 N.E.2d 102 (1982) (defendant's absence from viewing of premises was not error).

Illinois Supreme Court

People v. Brown, 2023 IL 126852 At defendant's trial, jury selection consisted of the court questioning the venire in panels of four and then calling the attorneys up for an off-the-record sidebar conference to exercise challenges. Defendant was not present during those sidebar conferences. Neither defendant nor his counsel objected to this procedure.

Defendant argued on appeal that the jury selection process deprived him of his constitutional right to be present at a critical stage of the proceedings and that his trial counsel was ineffective for failing to object to it. The appellate court affirmed on the basis that defendant had not shown prejudice because he failed to establish that he was not tried by an impartial jury. The supreme court affirmed. Five justices participated in the supreme court's decision. All five agreed as to the outcome, but were divided as to the reasoning behind that outcome.

Both the federal and Illinois constitutions afford criminal defendants the right to be present at all critical stages of the proceedings against them, from arraignment through sentencing. According to **People v. Bean**, 137 Ill. 2d 65 (1990), jury selection is a critical stage at which a defendant has the right to be present.

The lead opinion, authored by Chief Justice Theis and joined by Justice Overstreet, noted the existence of a split in the appellate court regarding whether there is a denial of the right to be present where, as here, the defendant is not excluded from the jury *voir dire* but instead is only excluded from the exercise of challenges. **People v. Spears**, 169 Ill. App. 3d 470 (1988), **People v. Beacham**, 189 Ill. App. 3d 483, and **People v. Gentry**, 351 Ill. App. 3d 872 (2004), all held that the defendants were not denied their right to be present under such circumstances. In conflict with those cases, however, is **People v. Oliver**, 2012 IL App (1st) 102531. In **Oliver**, the court conducted *voir dire* in open court with the defendant present, but then the attorneys and the judge retired to chambers for challenges. The **Oliver** defendant lost his collateral challenge to that procedure because he had not alleged prejudice. But, the **Oliver** court's opinion also stated that "a defendant who has not waived or forfeited his right to be present [from a juror challenge conference] shows that the court has conducted a critical stage of the trial in the defendant's absence, [thus] the defendant has shown a violation of his constitutional rights."

The lead opinion declined to hold that a defendant's constitutional right to be present during *voir dire* extends to the process of challenging potential jurors. It is enough that defendant be present during the questioning of prospective jurors because that is where he may hear their answers, view their demeanor, and offer input to his counsel. To the extent that **Oliver** is inconsistent with that holding, the lead opinion stated that it is overruled.

The lead opinion also concluded that there was no evidence that counsel performed deficiently where defendant was present during jury questioning and there was no indication that counsel did not adequately represent defendant's interest during the sidebar conferences.

Justice Neville specially concurred and specifically disagreed with the conclusion that a defendant does not have a constitutional right to be present during the "challenges" portion of jury selection. He would have held that juror challenges are a critical stage and exclusion of a defendant from those proceedings violates the constitutional right to appear and defend in person. Justice Neville would have overruled **Spears**, **Gentry**, and **Beachem** to the extent they hold otherwise. But, he also concluded that exclusion from the exercise of jury challenges is not a structural error, and thus a defendant who fails to preserve the error must demonstrate prejudice from it. Defendant could not meet that burden here.

Additionally, Justice O'Brien authored a special concurrence, joined by Justice Holder White, disagreeing with the lead opinion's holding that a defendant does not have a right to be present during juror challenges. Justice O'Brien would have found deficient performance where defendant's counsel agreed to a procedure which deprived defendant of his right to be present, but she would have affirmed on the basis that defendant was unable to establish prejudice.

Justices Cunningham and Rochford took no part in the decision.

People v. Johnson, 238 Ill.2d 478, 939 N.E.2d 475 (2010) The second prong of the plain error rule was not satisfied where defendant failed to object when the trial court responded to a jury question without notifying the parties. Although criminal defendants have a general right to be present at every stage of the trial, the right to be present is not itself a substantial right under the Illinois or federal constitutions. Instead, it is a lesser right intended to secure substantial rights such as the right to confrontation, the right to present a defense, or the right to an impartial jury. Because the defendant failed to show that any of these underlying substantive rights had been violated, responding to the note in the absence of defendant or his counsel was not such a serious error as to affect the fairness of the trial or the integrity of the judicial process.

The court acknowledged that historically, it granted a new trial whenever *ex parte* communication occurred between the trial judge and the jury. In recent years, however, it has moved away from that rule and requires a new trial only if the defendant suffered prejudice. Because the court's response to continue deliberations was well within the court's discretion and was not coercive, no prejudice occurred.

People v. McLaurin, 235 Ill.2d 478, 922 N.E.2d 344 (2009) Plain error did not occur where the trial court responded to communications from the jury in defendant's absence but in the presence of counsel, or when the judge sent a bailiff to deliver a message to the jury.

People v. Stroud, 208 Ill.2d 398, 804 N.E.2d 510 (2004) A guilty plea proceeding may be conducted by closed circuit television only if defendant specifically consents to the procedure after admonishment of the right to be physically present. See also, **People v. Guttendorf**, 309 Ill.App.3d 1044, 723 N.E.2d 838 (3d Dist. 2000).

People v. Lindsey, 201 Ill.2d 45, 772 N.E.2d 1268 (2002) Defendant's appearance by closed-circuit television at his arraignment and jury waiver did not create an unfair proceeding or deny any substantial constitutional right.

725 ILCS 5/106D-1(a) provides that closed circuit television proceedings may be used only if the trial court has adopted rules setting out the types of proceedings that may be so conducted. Courts are cautioned to adopt rules as required by the statute, but no plain error occurred where the failure to adopt formal rules did not deprive defendant of any substantial rights.

People v. Peeples, 205 Ill.2d 480, 793 N.E.2d 641 (2002) Defendant's absence from a portion of jury selection violates due process only if the absence results in denial of a fair trial. To establish a violation of due process, defendant must show that the jury which convicted him was prejudiced. Although three of the fifteen jurors questioned outside defendant's presence ultimately sat on the jury, the record contained no indication that they were prejudiced.

People v. Lofton, 194 Ill.2d 40, 740 N.E.2d 782 (2000) Defendant is entitled to attend a hearing on a 725 ILCS 5/115-10 motion to admit hearsay statements by the child victim of specified sexual offenses.

People v. Nielson, 187 Ill.2d 271, 718 N.E.2d 131 (1999) Although defendant has a constitutional right to attend his capital sentencing hearing, that right can be knowingly and voluntarily waived. By confirming on at least four occasions that he did not want to attend the hearing and by threatening to disrupt the proceedings if forced to remain, defendant waived his right to be present. 725 ILCS 5/115-4.1(a), which holds that the trial in a capital case may proceed in defendant's absence if the State certifies that it will not seek a death sentence, refers only to defendants who absent themselves before trial.

People v. Bull, 185 Ill.2d 179, 705 N.E.2d 824 (1998) Because there was no reason to believe that defendant was tried, convicted and sentenced by a jury who was prejudiced against him, no reversible error occurred despite defendant's exclusion from voir dire during the questioning of a juror who, after being selected for the jury, was told by a friend that defendant had "done this before."

People v. Keene, 169 Ill.2d 1, 660 N.E.2d 901 (1995) The Sixth Amendment right to confrontation guarantees only that criminal defendants have the right to confront witnesses at trial. The right to confrontation is not violated by a defendant's absence from a hearing (voir dire of a witness) that takes place outside the jury's presence.

Furthermore, due process requires that a criminal defendant be allowed to attend an out-of-court hearing that "might bear a 'substantial relation' to the defense effort at trial." Although the hearing here concerned the witness's upcoming testimony, it had no "substantial relationship" to the defense effort at trial; defendant could have reviewed the transcript of the witness's *voir dire*, and the evidence that was discussed had been previously disclosed to the defense.

People v. Henderson, 142 Ill.2d 258, 568 N.E.2d 1234 (1990) During jury selection, the trial judge questioned and excused for cause two sworn jurors and one prospective juror. Although defense counsel, the prosecutor and the court reporter were present, defendant was absent. The trial judge erred by conducting the proceedings in defendant's absence.

People v. Martine, 106 Ill.2d 429, 478 N.E.2d 262 (1985) Defendant waived her right to be present where neither she nor defense counsel objected when she was removed from the courtroom during an offer of proof and legal argument. Although there appeared to be no valid reason for defendant to be removed, she was not deprived of the opportunity to hear testimony or confront the witnesses.

People v. Myles, 86 Ill.2d 260, 427 N.E.2d 59 (1981) Defendant was not denied a fair trial where he was excluded from the courtroom during testimony and brought to the doorway (to be identified by a witness) while dressed only in his underwear.

First, defendant was properly removed from the courtroom because he interrupted the State's case and indicated that he did not intend to remain silent. Second, the deputy sheriffs attempted to fully dress defendant before he was taken into the courtroom for the identification, but defendant removed his clothing and resisted attempts to dress him.

People v. Pierce, 56 Ill.2d 361, 308 N.E.2d 577 (1974) Defendant's right to be present at trial was not violated where trial judge refused to respond to a request from the jury.

People v. Davis, 39 Ill.2d 325, 235 N.E.2d 634 (1968) It was constitutionally impermissible to hold a felony trial at which defendant was neither present nor represented by counsel.

People v. Mallet, 30 Ill.2d 136, 195 N.E.2d 687 (1964) A defendant has an absolute right to be personally present at all stages of his trial. This right may be waived by defendant, but not by defense counsel.

People v. Woods, 27 Ill.2d 393, 189 N.E.2d 293 (1963) The right of a defendant to be present at trial is not violated unless the hearings held outside defendant's presence involve "substantial rights." An uncontested motion for a continuance did not require defendant's presence.

People v. Brindly, 369 Ill. 486, 17 N.E.2d 218 (1938) Defendant's presence in court must affirmatively appear from the record. It was improper to conduct important matters of procedure, such as swearing in the jury, in defendant's absence.

Illinois Appellate Court

People v. Covalt, 2025 IL App (5th) 220346 Defendant argued that the trial court erred in admitting two out-of-court statements by child witnesses who testified against him at his trial for child pornography. The appellate court found that the invited error doctrine applied, because counsel stipulated to their admission. Defendant in turn argued that his attorney was ineffective, because his attorney did not object when the trial court, in a bench trial, reviewed the exhibits in chambers, outside of defendant's presence. Defendant argued he had a right to be present at this critical stage in the proceeding.

The appellate court, without ruling on the propriety of the trial court's act, rejected the claim on prejudice grounds. Defendant failed to establish how his presence would have affected the admission of the evidence or the outcome of the trial. Both witnesses testified at trial and were subject to cross-examination. And while defendant argued in his reply brief that the content of the videos may have altered his decision not to testify, this argument was forfeited because it was not included in his opening brief.

The appellate court did agree with defendant that the counsel's failure to object to several examples of "prior bad acts" and other crime evidence was unreasonable. These included allegations in prior DCFS cases, use of opiates, other compromising photographs of young girls, text messages indicating defendant was a pedophile, a young friend of his stepdaughter's repeatedly calling defendant creepy and observing defendant touching her breasts and the stepdaughter's allegations of sexual abuse.

However, in a bench trial, defendant could not show prejudice. The trial court was presumed to consider only relevant and admissible evidence. The record does not rebut this presumption where the court never referenced this evidence when finding defendant guilty, and the remaining evidence of guilt was significant.

People v. Turner, 2024 IL App (1st) 211648 As a matter of plain error, the appellate court found that the trial court erred when it removed the *pro se* defendant from the courtroom during jury selection. Generally, a defendant has a constitutional right to be present at any

critical stage of the proceedings against him. A defendant may relinquish that right, however, either by consent or by his or her own misconduct.

Here, the court found that defendant's removal was warranted by his "unrelenting argument and disrespect" during jury selection. But, because defendant was proceeding *pro se*, his removal left him without any representation during jury selection. This violated his constitutional right to due process because defendant was completely deprived of representation during a critical stage of the proceedings.

The State argued that defendant knowingly waived his right to be present where the trial court had warned him previously that he would be removed for misconduct and had, in fact, followed through on having defendant removed from prior proceedings. Thus, he was on notice of the possibility of removal for misconduct when he chose to disrupt the jury selection proceedings. The appellate court rejected that argument. A knowing waiver requires both knowledge that defendant would be removed from the courtroom and also knowledge that removal would leave him without any representation at all. Here, while defendant had been warned of the consequence of removal during prior court proceedings, he was not warned at the jury selection hearing that he could be removed for misconduct during that particular proceeding. And, defendant was never warned that his removal would leave him with no representation at all. Thus, defendant did not knowingly waive his right to legal representation during jury selection. This was structural error, not subject to harmless error analysis. Defendant's conviction was reversed and the matter remanded for a new trial.

People v. Ryan, 2024 IL App (2d) 220076 The trial court committed second-prong plain error when it held defendant's stipulated bench trial over Zoom without obtaining defendant's waiver. Defendant was charged with possessing a weapon without a FOID card, two counts of aggravated UUW, and violation of conditions of bail bond. At a Zoom hearing, the parties provided the court with a stipulation to the facts of the case, which defendant signed. The stipulation indicated that defendant possessed a loaded shotgun, that he did not have a FOID card, and that he was on bond with a condition that he not possess a firearm. The court continued the case, and at a subsequent Zoom hearing, found defendant guilty of all four counts.

The appellate court held that by conducting a stipulated bench trial and entering guilty verdicts remotely, without defendant's explicit consent, the trial court violated his right to be present. Although defendant did not object, the error was reviewable as plain error. First, the appellate court rejected the State's invited error argument, which was based on defendant's statement over Zoom that he agreed to "proceed in this fashion." This comment referred to the stipulated bench trial itself, not to the fact that it would be held remotely. Next, the appellate court found clear and obvious error because the Illinois Supreme Court's emergency order in place at the time of the trial – January of 2022 – allowed for stipulated bench trials to be held remotely only if the trial court made certain findings and obtained the written consent of the defendant. Moreover, a stipulated bench trial and the announcement of guilt are both critical stages, at which a defendant's presence is required.

The error could be reviewed under the substantial rights prong of the plain error doctrine. The court cited **People v. Stroud**, 208 Ill. 2d 398 (2004), which held that physical presence during a guilty plea contributes to the fairness of the proceeding and therefore a remote guilty plea requires a waiver. Although the State sought to distinguish **Stroud** because the instant case involved a stipulated bench trial rather than a guilty plea, the appellate court found no meaningful distinction. By agreeing to a stipulated bench trial, defendant's guilt became a foregone conclusion and he waived his right to cross-examine the witnesses against him, just as in a guilty plea. Therefore defendant's physical presence would

have contributed to the fairness of the proceedings and his absence resulted in an error equivalent to structural error.

On remand, the court instructed that if defendant is re-convicted, only the first count – possession of a firearm without a FOID – can stand. The remaining three counts are based on the same act of possessing a firearm. While the State argued that the charge alleging violation of a bond condition includes an additional act, the court concluded that being on bond is a status, not an act.

People v. Harris, 2023 IL App (1st) 210754 The trial court erred when it conducted sentencing via Zoom without counsel being in the same location as defendant and without obtaining a waiver from defendant. The State conceded error but argued that it did not rise to the level of plain error and thus asserted that no relief was warranted because defendant failed to preserve the issue in the trial court.

The appellate court agreed that it was error for the court to hold defendant's sentencing hearing remotely without obtaining a waiver from defendant. Sentencing is a critical stage requiring a defendant's presence, with counsel, because the outcome affects a substantial right – defendant's freedom. While remote sentencing proceedings were permissible under the Illinois Supreme Court's Covid-19 rule, M.R. 30370, that rule requires a knowing and voluntary written waiver. No waiver was entered here. Further, defendant requested to speak with counsel during the remote sentencing hearing, but the record failed to show that he was provided with a means to privately communicate with his attorney. The remote proceeding violated M.R. 30370 and defendant's constitutional right to due process. Accordingly, it was plain error, and the court remanded for a new sentencing hearing.

However, there was no error in hearing defendant's motion for new trial via Zoom without defendant's waiver. The original version of M.R. 30370 did not require a written waiver, and the amendment adding the waiver requirement was not entered until after the date of the hearing on defendant's motion. Thus, the amended rule did not apply. And, while a criminal defendant has a general right to be present at every stage of his trial, that right does not encompass pre-trial and post-trial motion hearings. In fact, the court was not even required to hear argument from the parties on the motion for new trial. It could have decided the motion without it. The dissenting justice would have found, as a matter of plain error, that the remote procedure deprived defendant of his sixth amendment right to counsel because he did not have the ability to confer privately with counsel during the motion hearing where defendant and counsel were not in the same physical location and not provided a breakout room or other means to communicate with each other.

People v. Bartels, 2022 IL App (3d) 190635 Defendant's right to due process was not violated by the trial judge's viewing of admitted evidence outside of the presence of the parties. A defendant has the right to be present at all critical stages of the proceedings against him. That right is not absolute, however, and the right is not violated where defendant's absence would not impact his ability to defend himself. Whether a defendant's due process right has been violated is reviewed *de novo*.

Here, defendant's presence while the court played digital evidence would not have contributed to his defense. The in-chambers viewing of evidence is not a critical stage, and accordingly defendant's presence could be waived by counsel. Defendant himself made no objection when the process was discussed in court. Defendant would not have been able to participate in any manner while the court reviewed the evidence, even if he had been present. Further, defendant's presence would not have impacted his decision whether to testify

because, in making that decision, defendant already knew the content of the evidence that the court was viewing in chambers.

People v. Rodriguez, 2022 IL App (1st) 200315 The trial court did not err when it viewed a video recording of the complaining witness's interview outside of defendant's presence as part of the hearing on the State's motion to admit the interview under 725 ILCS 5/115-10. A defendant has the right to be personally present at all critical stages of the proceedings against him and at any proceedings where his presence would contribute to the fairness of the procedure. But, that right is not absolute, and a defendant's absence will not constitute error unless it resulted in an unfair proceeding or the denial of an underlying substantial right.

Here, defendant was present in court for the 115-10 hearing, which included the testimony of multiple witnesses. His absence during the court's review of the video did not render the proceeding unfair and did not result in the denial of any substantial right. The video was ultimately played at defendant's jury trial while defendant was present. Accordingly, defendant was able to see and hear the evidence before making a decision about whether to testify in his defense. Further, the record showed that defendant had been afforded an opportunity to review the video with counsel months prior to trial, as well.

People v. Aquisto, 2022 IL App (4th) 200081 The trial court did not err in watching defendant's interrogation video outside of defendant's presence. The video was admitted into evidence at defendant's bench trial, and both defense counsel and the prosecutor were present when the court watched the video. Defense counsel did not object to defendant's absence from the viewing of the video.

The Appellate Court concluded that defendant failed to establish that the viewing of the video was even a "proceeding," let alone a critical stage at which he had a constitutional right to be present. In reaching this conclusion, the court followed the reasoning of **People v. Maniwa**, 2021 IL App (4th) 190796-U, ¶31, where it held that "a trial judge's consideration of already admitted evidence does not constitute a 'hearing' or proceeding."

Further, defendant failed to establish that his presence in chambers during the viewing of his video interrogation would have contributed to the fairness of the procedure. The record did not show that defendant was otherwise prevented from viewing the video himself. And, because the video was of defendant's own interrogation, he would have known what was on it even if he had not viewed it. While defendant was not able to see the judge's body language or facial expressions in reaction to viewing the video, any benefit from such observations would be "but a shadow" and thus there was no violation of defendant's right to be present by the procedure used here.

People v. Martinez, 2021 IL App (1st) 172097 Before trial, the defense agreed the child complainant in a sexual assault case – defendant's daughter – could testify via closed-circuit television. The child would be in the courtroom, while defendant listened to the testimony remotely. The parties also agreed that defendant would listen to the opening statements remotely in order to ensure that the audio and video worked properly. Ultimately, however, defendant could not hear the opening statements. On appeal, he argued a violation of his due process right to be present, and a violation of 725 ILCS 5/106B-5 concerning remote testimony.

The Appellate Court found that defendant had not waived or forfeited the claim by agreeing to the procedure. Defendant did not agree to miss opening statements, he merely agreed to listen to them in a different room. Moreover, he had not been advised of his right

to be present when he assented to the procedure. The Appellate Court therefore chose to liberally construe the principles of waiver in favor of defendant. However, the right to be present is violated only if the defendant's absence results in the loss of an underlying substantial right or an unfair trial. Opening statements do not contain evidence, so his absence did not inhibit his ability to defend himself, or his decision whether to testify.

People v. Edgecombe, 2020 IL App (1st) 171923 The circuit court properly dismissed defendant's post-conviction petition at the second stage. Defendant had alleged his appellate counsel was ineffective for failing to challenge the trial court's decision to read and answer a jury note outside of defendant's presence. The Appellate Court originally remanded for second-stage proceedings after finding an arguable claim. However, the Court now held that the petition failed to meet the higher second-stage standard because it did not make a substantial showing of prejudice.

The jury note asked the court to clarify the second-degree murder instruction. The Appellate Court reiterated its findings from the first-stage appeal, noting the trial court erred when it: (1) failed to combine the instructions relating to this affirmative defense (criminal pattern instructions 7.06 and 24-25.06), per committee comments; (2) reviewed the jury note outside of defendant's presence; and (3) failed to read instructions that would clarify the jury's confusion. However, the petition failed to make a substantial showing of prejudice, as there was not a reasonable probability of a different outcome in light of the overwhelming evidence contradicting defendant's testimony that the victim flashed a gun before defendant fired.

People v. Myles, 2020 IL App (4th) 180652 The trial court did not violate the defendant's right to be present at a critical stage when it privately viewed a recording of the victims' prior interviews, which had been admitted into evidence. Defendant's presence at the video viewing would not have contributed to his opportunity to defend himself against the charges where he had no objection to the court viewing the videos outside of his presence, he saw the videos himself, the witnesses in the videos testified in open court where defendant had the opportunity to confront and cross-examine them, and defendant was aware of all the State's evidence when he decided to testify in his own defense.

People v. Aguilar, 2020 IL App (1st) 161643 Post-conviction petition alleging that defendant was denied his constitutional right to be present when the trial judge pronounced guilt at his bench trial stated the gist of a claim. While defendant was physically present in the courtroom when the judgment was rendered, he had been assisted by an interpreter throughout the proceedings, and the record did not rebut defendant's assertion that no interpreter was present when the judge pronounced him guilty and admonished him about sentencing *in absentia*. The absence of an interpreter was particularly concerning where defendant ultimately was sentenced *in absentia*.

People v. Clayton, 2019 IL App (3d) 170315 Trial court did not abuse its discretion in replacing juror who it believed had been sleeping during portions of the trial. While the judge should have acted on his suspicions about the juror's inattentiveness earlier in the process, it was not error to excuse the juror after he revealed his dismissive views of the evidence that had been presented. Juror's assessment of the evidence was attributable to his inattentiveness. Further, defense counsel's waiver of defendant's presence for the *in camera* questioning and replacement of the excused juror, even if error, did not result in a

constitutional denial of defendant's right to be present where defendant did not allege he was denied an impartial jury.

People v. Groebe, 2019 IL App (1st) 180503 Defendant was not denied her right to a public trial where a video of her traffic stop and field sobriety tests was viewed by the judge in chambers, alone, during a recess. The video was properly admitted into evidence in the courtroom during defendant's bench trial, and defendant did not object to the court's watching the video in chambers. The right to a public trial does not extend to the viewing of exhibits by the public.

Although defendant did not specifically argue that the private viewing of the video violated her right to be present at a critical stage of the proceedings, the court considered that issue in light of defendant's citation to **People v. Lucas**, 2019 IL App (1st) 160501, where the Appellate Court found that defendant's right to be present was violated where the court watched a video in chambers with the attorneys present but not the defendant. That procedure denied defendant the ability to assist her defense and negatively impacted her decision whether to testify.

Here, the Court held that even if defendant was denied her right to be present, her absence did not cause the proceeding to be unfair or result in the denial of an underlying substantial right. The arresting officer testified to the details of the traffic stop and FSTs and was subject to cross-examination on those subjects. And, defense counsel argued that the video contradicted the officer's testimony. Thus, the Appellate Court declined to find that defendant's presence during the viewing of the video would have contributed to the fairness of the proceedings.

People v. Lucas, 2019 IL App (1st) 160501 As a matter of second-prong plain error, defendant was denied due process by not being present when the court viewed a squad car video of her traffic stop. Although the court explained to defendant that because of courtroom video limitations it would view the video in chambers with only defense counsel and the prosecutor present, nothing in the record showed that either the court or defense counsel informed defendant that she had a right to be present. Because waiver is an intentional relinquishment of a *known* right, the Appellate Court declined to find that defendant waived her right to be present.

Defendant's absence from the video viewing affected the fairness of her trial because it limited her ability to view the evidence against her and aid in her own defense. Likewise, the error impacted her fundamental right to testify in her own defense because a defendant must be aware of all of the State's evidence in order to make an informed decision whether to testify.

People v. Lucas, 2018 IL App (1st) 160501 At her bench trial, defendant agreed to the court's watching a video of her traffic stop in chambers, outside of the presence of the parties, because there was no video equipment in the courtroom. Defendant's acquiescence affirmatively waived any due process challenge to her right to be present during the video viewing. Further, the video viewing was not a critical stage of her trial; defendant's presence would not have contributed to her ability to defend herself.

People v. Oliver, 2012 IL App (1st) 102531 The broad right to be present at trial is not itself a substantial right, but is a means to securing the substantial rights of the defendant. Thus a defendant is not denied a constitutional right whenever he is not present at trial, but

only when his absence results in unfair proceedings that deny him his substantial rights. A defendant's absence from jury selection results in a constitutional violation only where it has an effect on the impartiality of the jury selected.

Because defendant's absence did not have the slightest effect on the impartiality of his jury, his exclusion was not error.

People v. Burnett, 385 Ill.App.3d 610, 897 N.E.2d 827 (1st Dist. 2008) There are two lines of authority concerning the absence of defendant and counsel from critical stages of the proceedings. Under **People v. Childs**, 159 Ill.2d 217, 636 N.E.2d 534 (1994) and its progeny, the State has the burden to prove beyond a reasonable doubt that defendant's absence from a critical stage of the proceeding was harmless. By contrast, under **People v. Bean**, 137 Ill.2d 64, 560 N.E.2d 258 (1990) and its progeny, defendant may obtain a new hearing only if he can show that his absence resulted in an unfair proceeding which denied him a substantial right such as the right to confrontation, the right to present a defense, or the right to an impartial jury.

Under either standard, defendant was not entitled to reversal where his motion to reconsider sentence was denied while neither he nor his attorney were present. If the burden was on defendant to show that his constitutional rights were violated, he could not do so where the motion to reconsider raised no factual allegations other than those which had been brought up at sentencing, and merely asked the trial court to reevaluate those factors. On the other hand, if the burden was on the State to establish beyond a reasonable doubt that the error caused no harm, the State meet that burden where the motion to reconsider did not seek to present any new evidence.

People v. O'Quinn, 339 Ill.App.3d 347, 791 N.E.2d 1066 (5th Dist. 2003) Both the Federal and State Constitutions afford defendant the right to attend the trial and all critical stages of the proceedings. The due process right to be present is violated only where defendant's absence results in denial of a fair trial. The relevant question is not whether defendant would have avoided conviction had he been present, but whether his presence would have contributed to his opportunity to defend himself against the charges. The trial court's holding concerning the constitutional right to attend a proceeding is reviewed de novo.

Defendant was not denied a fair trial where he was removed from the courtroom after he spit water at several jurors as they were returning to the courtroom for closing arguments. Defendant was present during the voir dire and at all times during the presentation of evidence, and was removed only for closing arguments.

People v. McDonald, 322 Ill.App.3d 244, 749 N.E.2d 1066 (3d Dist. 2001) Defendant has the right to appear at a "material witness bond hearing" (725 ILCS 5/109-3(d)) if his substantial rights or the fundamental fairness of the hearing would be affected. The State erred by failing to give notice to defendant or his attorney that the State was seeking material witness bonds, but defendant was not prejudiced under the facts of this case.

People v. Williams, 312 Ill.App.3d 232, 726 N.E.2d 641 (1st Dist. 2000) An unfit defendant is entitled to attend a discharge hearing to determine whether the evidence is sufficient to prove him guilty beyond a reasonable doubt.

People v. Stokes, 293 Ill.App.3d 643, 689 N.E.2d 625 (1st Dist. 1997) The trial judge erred by starting voir dire while defendant was absent. Although the right to be present is waived where defendant is wilfully absent from trial, the State failed to present any evidence that

defendant's absence was wilful.

People v. Bennett, 282 Ill.App.3d 975, 669 N.E.2d 717 (3d Dist. 1996) Defendant's federal and State rights to an impartial jury and to be present were violated where 16 of the 29 veniremembers were questioned outside defendant's presence. Defendant could have helped counsel decide whether peremptory challenges should be exercised against any of five members of the petit jury who were questioned in defendant's absence. The trial court's asserted reason for excluding defendant (that there was a security risk) was not sustained by the record.

People v. Escalante, 256 Ill.App.3d 239, 627 N.E.2d 1222 (2d Dist. 1994) As a matter of plain error, a defendant who does not speak English is not "present" for purposes of the Sixth Amendment unless he is assisted by an interpreter.

People v. Collins, 184 Ill.App.3d 321, 539 N.E.2d 736 (1st Dist. 1989) During the hearing on a motion to suppress, defendant Ellis and his codefendants were excused from the courtroom at the suggestion of the trial judge. The judge stated "this is only dealing with legal arguments" and did not inform defendant that any further testimony would be heard. However, after Ellis left, his counsel cross-examined a police officer who had both helped locate Ellis after the crime and obtained an admission concerning the offense. Thus, Ellis was absent from a portion of the hearing that involved his substantial rights. Ellis did not waive his right to be present where he was told that only legal arguments would be heard in his absence. The error was not cured by the presence of defense counsel, because an attorney cannot waive defendant's right to be present.

People v. Smith, 76 Ill.App.3d 191, 392 N.E.2d 682 (2d Dist. 1979) A hearing on whether to grant a jury's request to review transcripts of testimony is not a proceeding that involves defendant's "substantial rights." Thus, it may be held outside defendant's presence. See also, **People v. Saltz**, 75 Ill.App.3d 477, 393 N.E.2d 1292 (2d Dist. 1979) (motion for mistrial and examination of jurors concerning publicity).

People v. Etheridge, 35 Ill.App.3d 981, 343 N.E.2d 55 (3d Dist. 1976) A defendant has the right to be personally present at every stage of the trial, from arraignment to final sentence.

§51-2(b)
Trial Where Defendant Absents Himself

United States Supreme Court

Degen v. U.S., 517 U.S. 820, 116 S.Ct. 1777, 135 L.Ed.2d 102 (1996) Fact that defendant refused to return to jurisdiction to answer criminal charges did not justify trial court's refusal to consider his answer in a related civil forfeiture proceeding.

Taylor v. U.S., 414 U.S. 17, 94 S.Ct. 194, 38 L.Ed.2d 174 (1973) It was proper to proceed with trial in defendant's absence where he failed to return after the lunch recess. The right to be present was effectively waived by defendant's voluntary absence.

Illinois Supreme Court

People v. Hietschold, 2025 IL 130716 Defendant was convicted of aggravated battery at a trial *in absentia*. On appeal, he argued that his conviction had to be reversed and the matter remanded for a new trial because he was not adequately admonished in accordance with 725 ILCS 5/113-4(e). The appellate court agreed because, while he was told that he could be tried in his absence if he failed to appear on the date set for trial, defendant was not specifically admonished that his absence also would waive his right to confront the witnesses against him. The supreme court reversed the appellate court, however, concluding that the court's admonishments substantially complied with the statute.

Section 113-4(e) provides that when a defendant enters a plea of not guilty, the trial court shall advise him that if he fails to appear as required, his absence will constitute "a waiver of his right to confront the witnesses against him and trial court proceed in his absence." The statute is mandatory, such that the admonishments must be given, but, because a defendant has no constitutional right to admonishments, a trial court need only substantially comply with the statute for the admonishments to be sufficient. And, here, even though the court gave only one of the two required admonishments, there was substantial compliance because the admonishment's essence is that the defendant knows he has a right to be present at trial and that trial may proceed in his absence. Because the most important part of section 113-4(e) is that the failure to appear could result in trial *in absentia*, and because defendant was twice admonished about that consequence, there was substantial compliance and thus no reversible error.

People v. Eppinger, 2013 IL 114121 725 ILCS 5/115-4.1(a) provides that where the defendant fails to appear for trial after an initial court appearance and the State affirmatively proves through substantial evidence that the defendant is wilfully avoiding trial, the trial may be held *in absentia*. However, the absent defendant must be represented by retained or appointed counsel.

Section 115-4.1(a) was not intended to apply where a defendant who was in custody and who had elected to waive counsel and represent himself was absent from trial because he refused to leave his cell. The intent behind §115-4.1(a) was to prevent bail jumping and avoid problems of disappearing witnesses and stale evidence. The court concluded that the legislature did not intend to apply §115-4.1(a) to a defendant who is in custody but "essentially boycotts his or her own trial."

Because §115-4.1(a) is inapplicable, the trial court did not err by holding a trial in defendant's absence without first appointing the public defender.

The fact that §115-4.1 regulates trials *in absentia* in some cases does not mean that trials *in absentia* are prohibited in all other cases. Express statutory authority to proceed *in absentia* is not required so long as the trial complies with the federal and state constitutions.

People v. Phillips, 242 Ill.2d 189, 950 N.E.2d 1126 (2011) A defendant has the constitutional right to be present at all stages of his trial, including sentencing. A defendant's voluntary absence from trial may be an effective waiver of this right, and he may be sentenced *in absentia* even if he is not warned that this is a possible consequence of his absence.

In Illinois, a defendant has a statutory right to be admonished as to the possible consequences of his failure to appear. When a defendant appears in court at the time of his arraignment, or is present in court at any time after his arraignment, the court "shall advise him...that if he...is released on bond and fails to appear in court when required by the court that his failure to appear would constitute a waiver of his right to confront the witnesses against him and trial could proceed in his absence." 725 ILCS 5/113-4(e). This admonition

serves as the procedural mechanism to effect a formal waiver of a defendant's right to be present.

Defendant was sentenced *in absentia*, and was never admonished in accordance with §113-4(e). However, he signed a bail bond slip containing the §113-4(e) admonitions, as well as a statement that he accepted these terms and conditions and certified that he understood the consequences of failing to appear for trial as required. Reaching a question that it left open in **People v. Garner**, 147 Ill. 2d 467, 590 N.E.2d 470 (1992), the Illinois Supreme Court found the bond slip insufficient to establish a waiver of defendant's right to be present.

Section 113-4(e) unambiguously requires that the trial court admonish the defendant in open court. An oral admonition is most effective to meet the legislative purpose of §113-4(e) by providing the trial judge with the opportunity to both notify the defendant of his right and obligation to be present at trial, and to verify that he understands this important right and duty. Defendant was required to sign the bond slip as a condition of his release from jail, a far different circumstance than his voluntary relinquishment of a known statutory right in court. There can be no substantial compliance with §113-4(e) when a judge never admonishes a defendant in any way under §113-4(e).

Because defendant was sentenced *in absentia* without compliance with §113-4(e), the court vacated defendant's sentence and remanded for a new sentencing hearing.

People v. Ramirez, 214 Ill.2d 176, 824 N.E.2d 232 (2005) 725 ILCS 5/ 115-4.1(a) authorizes a trial in absentia where: (1) defendant who has made an initial court appearance for a non-capital felony fails to appear for trial, (2) the State affirmatively proves that defendant is willfully avoiding trial, and (3) defendant was either present in open court when the trial date was set or has been sent, by certified mail, a notice of the trial date.

Under existing precedent, the State affirmatively proves that a defendant is wilfully avoiding trial by establishing a prima facie case that defendant: (1) was informed of the trial dates; (2) was advised that failure to appear could result in trial in absentia; and (3) failed to appear for trial when the case was called. Strict compliance with the certified mail requirement is necessary to show that defendant was informed of the trial date.

People v. Smith, 188 Ill.2d 335, 721 N.E.2d 553 (1999) The validity of a ruling to proceed in absentia "must be viewed from the perspective of the court at the time the ruling is made." Where the trial court could not have known that defendant would appear after only a short absence, the fact that defendant appeared a few minutes after trial began was irrelevant to whether the trial court abused its discretion. Where defendant has been admonished of the possibility of a trial in absentia and thereafter fails to appear, a "very strong inference" arises that defendant deliberately elected not to appear.

People v. Garner, 147 Ill.2d 467, 590 N.E.2d 470 (1992) Defendant's in absentia convictions were reversed, because he was not admonished that trial could be held in his absence if he escaped or failed to appear. There is no exception to the admonishment requirement for "experienced criminals" such as defendant.

Defendant did not waive his right to be admonished by voluntarily absenting himself following the arraignment. Where a defendant is present at the arraignment, the trial court's decision "not to admonish him [at that time] . . . is not a failing which should result in a penalty to the defendant."

People v. Partee, 125 Ill.2d 24, 530 N.E.2d 460 (1988) An *in absentia* conviction and sentence is a final and appealable judgment. A motion for a willfulness hearing under ¶115-

4.1(e) (to determine if defendant's absence was willful) is not required before an appeal can be taken.

The admonishments to a defendant under ¶113-4(e) (regarding the possibility of trial *in absentia*) are mandatory. Where the report of proceedings did not show that defendant received the required admonishments, but the common law record noted that he was admonished and the trial judge stated at the post-trial hearing that defendant had been advised of the possibility of trial in absentia, the cause was remanded to determine whether proper admonishments were in fact given.

People v. Flores, 104 Ill.2d 40, 470 N.E.2d 307 (1984) Ch. 38, ¶115-4.1, which provides that in "any criminal trial, where a defendant after his trial commences willfully absents himself from court for a period of 2 successive court days, the court shall proceed with trial," is permissive rather than mandatory.

People v. Polk, 55 Ill.2d 327, 303 N.E.2d 137 (1973) Trial judge did not abuse discretion by declaring mistrial rather than trying defendant in absentia.

Illinois Appellate Court

People v. Rachall, 2026 IL App (4th) 250710 Defendant pled guilty to aggravated battery and violating an order of protection, but failed to appear for sentencing. He was sentenced *in absentia* to five years in prison and over $100,000 in restitution. He filed a late notice of appeal, but since no motion attacking the judgment had been filed, the appellate court dismissed the appeal. Several months later, defendant filed a *pro se* motion challenging the proceedings under 725 ILCS 5/115-4.1(e). Pursuant to this provision, a defendant convicted and/or sentenced *in absentia* must "be granted a new trial or new sentencing hearing if the defendant can establish that his failure to appear in court was both without his fault and due to circumstances beyond his control." After that motion was denied, defendant appealed, challenging the restitution amount.

The appellate court ordered supplemental briefing on the issue of jurisdiction. The court noted that defendant's jurisdictional statement in his brief referenced Rule 604(d), while the argument section of the brief referenced section 115-4.1(g). In supplemental briefing, defendant argued that section 115-4.1(g) authorized review of the sentence. Pursuant to this provision, a defendant whose motion under paragraph (e) has been denied may file a notice of appeal which "may also include a request for review of the judgment and sentence not vacated by the trial court." Defendant argued that his inaccurate jurisdictional statement did not amount to a failure to establish jurisdiction. The appellate court agreed with this position.

The court next considered whether section 115-4.1(g) allows a defendant to appeal not just the ruling on the section 115-4.1(e) motion, but also the judgment and sentence. The language of section 115-4.1(g) specifically states that a defendant may do so, but the court, at the urging of the State, considered whether this reading would violate separation of powers by adding a new avenue for appeal beyond Rule 606(b). Reaffirming **People v. Williams**, 274 Ill. App. 3d 793 (1995), the court concluded that any separation of powers concerns are mitigated by the fact that procedural rulemaking is often shared by the court and legislature, the interest in judicial economy, and a general skepticism of trials *in absentia*.

The court then considered whether substantive review is precluded by the absence of a Rule 604(d) post-plea motion, which is ordinarily a condition precedent to an appeal. The court held that an appeal under section 115-4.1(g) is an appeal from a collateral proceeding,

not a direct appeal from the guilty-plea judgment. Defendant therefore was not required to comply with Rule 604(d) as a condition precedent to review.

Finally, the State argued that defendant's notice of appeal was deficient for failing to include the date of the judgment or the relief requested. The appellate court disagreed. The notice of appeal identified both the sentence and the order denying the section 115-4.1(e) motion. The deficiencies were matters of form that did not prejudice the State.

People v. Lye, 2026 IL App (2d) 250117 The trial court sentenced defendant *in absentia* despite the fact that defense counsel informed the court that defendant was in the hospital with chest pains. The appellate court determined no error occurred because defendant was admonished about his duty to appear, defense counsel offered no actual evidence of the hospitalization, defendant had been on bond for five years without ever missing a court date, and defendant appeared the next day without any sign of health problems. Under these circumstances, defendant failed to show his absence was involuntary.

People v. Hughes, 2025 IL App (4th) 240514 Defendant, who had waived his right to counsel, was removed from the courtroom on multiple occasions during his trial due to his disruptive conduct in front of the jury. On appeal, he argued that the court erred in failing to specifically admonish him that if he was removed from the courtroom he would be completely unrepresented during those portions of the proceedings and that, in the absence of such warnings, the court erred in failing to appoint standby counsel to represent defendant in his absence.

The appellate court disagreed. A defendant generally has a constitutional right to be present at all critical stages of the proceedings, but that right is not absolute. A defendant may waive his right to presence by his own misconduct. Here, the trial court adequately warned defendant that continued misconduct would result in his removal from the courtroom, that trial would proceed in his absence, and that no standby counsel would be provided. And defendant made comments on the record indicating he understood as much. These facts distinguished defendant's case from **People v. Turner**, 2024 IL App (1st) 211648, where the defendant had not been warned that he could be removed and that trial would proceed in his absence. Also, here, defendant was allowed back into the courtroom after his first removal and was allowed to recall and cross-examine the State's witnesses who had testified in his absence.

The appellate court went on to note its disagreement with **Turner**'s suggestion that standby counsel should be appointed for a *pro se* defendant removed from being present at trial due to misconduct or that a court should terminate a defendant's right to proceed *pro se* under such circumstances. Appointing counsel, standby or otherwise, under such circumstances, especially where such a request has previously been refused, would simply reward a defendant for his misconduct. Further, appointing counsel mid-trial would almost certainly necessitate a delay for counsel to prepare and perform effectively.

People v. Turner, 2024 IL App (1st) 211648 As a matter of plain error, the appellate court found that the trial court erred when it removed the *pro se* defendant from the courtroom during jury selection. Generally, a defendant has a constitutional right to be present at any critical stage of the proceedings against him. A defendant may relinquish that right, however, either by consent or by his or her own misconduct.

Here, the court found that defendant's removal was warranted by his "unrelenting argument and disrespect" during jury selection. But, because defendant was proceeding *pro se*, his removal left him without any representation during jury selection. This violated his

constitutional right to due process because defendant was completely deprived of representation during a critical stage of the proceedings.

The State argued that defendant knowingly waived his right to be present where the trial court had warned him previously that he would be removed for misconduct and had, in fact, followed through on having defendant removed from prior proceedings. Thus, he was on notice of the possibility of removal for misconduct when he chose to disrupt the jury selection proceedings. The appellate court rejected that argument. A knowing waiver requires both knowledge that defendant would be removed from the courtroom and also knowledge that removal would leave him without any representation at all. Here, while defendant had been warned of the consequence of removal during prior court proceedings, he was not warned at the jury selection hearing that he could be removed for misconduct during that particular proceeding. And, defendant was never warned that his removal would leave him with no representation at all. Thus, defendant did not knowingly waive his right to legal representation during jury selection. This was structural error, not subject to harmless error analysis. Defendant's conviction was reversed and the matter remanded for a new trial.

People v. Hietschold, 2024 IL App (2d) 230047 Defendant was charged with aggravated battery. He was never arraigned. At his initial appearances, he was advised that he would be required to appear at trial and that if he did not appear, the trial and sentencing could be conducted without him. In his final appearance before trial, the court informed defendant that a failure to appear at trial would constitute a waiver of his right to be present.

Defendant did not appear at trial. His attorney objected to proceeding *in absentia*, because he was never arraigned. Counsel argued that section 113-4(e) admonishments are supposed to be provided at arraignment. The court overruled the objection, finding no prejudice from the lack of an arraignment, and that the warnings defendant received about his failure to appear substantially complied with section 113-4(e). Defendant was tried *in absentia*, found guilty, and sentenced to 42 months' imprisonment.

On appeal, defendant argued he should not have been tried *in absentia* because he had not been arraigned, and the admonishments did not substantially comply with section 113-4(e) because the court failed to inform him that if he does not appear at trial, he would waive his right to confront witnesses and the trial could proceed without him. The appellate court majority reversed.

Before conducting a trial *in absentia*, the defendant has a statutory right to be orally admonished regarding the possible consequences of failing to appear for trial, including both (1) that the trial could proceed in his absence, and (2) that absence from court would waive the right to confront witnesses. Here, the trial court never mentioned the right to confront witnesses. Omission of one of the two components of the statute does not equate to substantial compliance. In so finding, the majority declined to follow **People v. Broyld**, 146 Ill. App. 3d 693, 697 (1986).

The dissent would have followed **Broyld** and other appellate court decisions which suggest that a trial court substantially complies with section 113-4(e) as long as the record shows defendant knew the trial could proceed in his absence.

In re D.W., 2023 IL App (1st) 211006 Respondent was charged at age 17 with aggravated vehicular highjacking and seven other offenses. At arraignment, he received *in absentia* admonishments for only three of the eight cases. All charges were designated as extended juvenile jurisdiction (EJJ), and respondent pled guilty to all eight cases. He was sentenced to the Illinois Department of Juvenile Justice (IDJJ), for a period not to exceed his 21st

birthday. He also received adult sentences of 21 years in prison for three of the cases, and three years in prison for the remaining five cases, all of which would be stayed pending his compliance with the conditions of his juvenile sentence.

Following release from IDJJ, respondent committed another offense during his aftercare term. The State moved to revoke the stay on the eight adult sentences. Respondent was not present for the hearing on the motion to revoke, and his attorney objected to the proceedings, pointing out that no *in absentia* admonishments were given for five of the cases. The court overruled the objection, finding the admonishments were needed only for trial, not for sentencing. It held an evidentiary hearing, found respondent committed the new offense, and revoked the stay on the adult sentences.

The appellate court first rejected respondent's claim that the State failed to provide notice of the proceedings under 705 ILCS 405/5-625. Section 5-625 requires notice to respondent by certified mail, which did not occur here. But the appellate court held that section 5-625 applies to trials, while the hearing on the motion to revoke the stay of the adult sentences at issue here was more comparable to probation revocation proceedings. These are governed by section 5-720, which requires notice only to the opposing party's attorney. Thus, respondent's claim of a lack of notice was without merit.

The appellate court also held, however, that section 5-625's requirements for *in absentia* proceedings – the State most prove that the respondent (1) was advised of the trial date; (2) was advised that failure to appear could result in trial *in absentia*; and (3) did not appear for trial when the case was called – *do* apply to the instant proceedings. Although section 5-625's language is limited to trials, caselaw interpreting the nearly identical adult version of 5-625 has applied the provision to probation revocation proceedings.

While it's true that substantial compliance will generally suffice for *in absentia* admonishments, the court rejected the State's argument that the circuit court substantially complied by providing admonishments on three of the charges. Respondents are typically lay people, and courts cannot assume that they would understand that admonishments applicable to one charge are applicable to all charges. When accepting waivers of rights, courts require a waiver for each charge; admonishments are no different. Because of the lack of admonishments on the five charges, respondents's absence could not be deemed willful under section 5-625, and the proceedings on those five charges should not have occurred in his absence.

Nor was the error harmless. The respondent's non-willful absence from these proceedings is not a quantifiable error. The court rejected the State's attempt to equate the harmless error analysis applicable to absences from second-stage post-conviction hearings, as those proceedings are purely legal. Here, the court heard evidence, and it is unknown whether that evidence may have changed if respondent were present. Thus, the court vacated the orders lifting the stays on five of the adult sentences, while affirming the remaining three adult sentences.

People v. Talidis, 2023 IL App (2d) 220109 Prior to his DWLR trial, defendant's private attorney withdrew over a disagreement about discovery, and defendant moved to proceed *pro se*. The court accepted defendant's waiver of counsel. After six months of continuances so that defendant could file motions, defendant never filed any, and the court appointed standby counsel. Four days later, on the day of trial, defendant refused to participate. The court ordered standby counsel to act as counsel of record. Counsel asked for a continuance to prepare, but the trial court denied the motion, reasoning that an attorney appointed for a defendant tried *in absentia* need not be prepared for trial under 725 ILCS 5/115-4.1(a).

Defendant was found guilty, and on appeal, argued the court erred in denying the request for a continuance.

The appellate court affirmed. It initially determined that section 115-4.1(a), which sets forth the procedures for a trial *in absentia*, including the appointment of counsel, did not apply to defendant. See **People v. Eppinger**, 2013 IL 114121 (section 115-4.1 applies only to defendants not in custody). As such, before reaching the ruling on the continuance, the appellate court first determined whether the court erred in appointing counsel despite defendant's desire to represent himself. The appellate court found a proper termination of the right to self-representation. Defendant intentionally disrupted the trial process, first dragging it out for several months with false assurances of an imminent motion, and then refusing to participate on the day of trial. Appointing counsel at this point was a proper exercise of discretion. For similar reasons, the trial court exercised proper discretion when it appointed standby counsel as the counsel of record.

Nor did the trial court error in denying counsel's request for a continuance. A court's decision to deny a continuance for the preparation of trial is reviewed for an abuse of discretion. Reviewing courts consider several factors, including the movant's diligence, the seriousness of the charges, judicial economy, the complexity of the case, and the reason for counsel's unpreparedness. Here, although counsel acted diligently in requesting the continuance, and only two witnesses would be inconvenienced, other factors supported the denial of the continuance, including the fact that counsel "had at least the lunch break to prepare for defendant's case, which was not complex."

Finally, the court found counsel was not ineffective where she participated in *voir dire*, made objections, moved to suppress evidence, cross-examined witnesses, and argued in opening and closing.

People v. Davis, 2022 IL App (1st) 200467 The Appellate Court reversed the second-stage dismissal of defendant's post-conviction petition. Defendant was tried *in absentia* and convicted. Subsequently, he was sentenced *in absentia*, as well. When he was arrested several months later, he filed a *pro se* motion for new trial and sentencing hearing, as well as a notice of appeal. The court appointed counsel on the motion, and counsel ultimately withdrew it. Defendant then filed another *pro se* notice of appeal. Defendant's appeal was later dismissed due to lack of jurisdiction.

Defendant then filed the post-conviction petition that was the subject of the instant appeal. In his *pro se* petition, defendant alleged, among other things, that trial counsel failed to preserve his right to direct appeal. The Appellate Court agreed that defendant had made a substantial showing of a meritorious claim on this basis.

The record showed that trial counsel had not filed a notice of appeal after defendant was tried and sentenced *in absentia*. And, in his petition, defendant alleged that he told trial counsel he wanted to appeal, an allegation which had to be accepted as true given that the petition was at the second stage of proceedings. While the Appellate Court might have dismissed such an appeal while defendant remained absent, such a dismissal would have been without prejudice and subject to reinstatement upon defendant's request. Instead, the failure to file a notice of appeal resulted in the complete denial of defendant's right to a direct appeal.

The Appellate Court remanded the matter for further post-conviction proceedings in which defendant must show that he either specifically instructed trial counsel to file a notice of appeal, that he demonstrated that he desired to appeal, or that a rational defendant would have wanted to file an appeal because there were nonfrivolous grounds for an appeal.

People v. Hare, 2022 IL App (2d) 190848 Defendant was convicted of domestic battery and sentenced to probation. He violated probation by failing to attend counseling and failing to stay sober. He was sentenced *in absentia* to five years in prison. On appeal, defendant argued that his sentence violated section 40-10(a) of the Substance Use Disorder Act.

Section 40-10(a) provides that if a sentencing court has reason to believe that an eligible defendant suffers from a substance use disorder, it must advise the defendant that he or she may be sentenced to probation. Here, the court did not advise defendant in rendering its sentence.

The Appellate Court first held that the record sufficiently established that defendant had abused alcohol, so the sentencing court had reason to believe that defendant suffered from a substance use disorder. Under normal circumstances, the sentencing court's failure to advise a defendant of the possibility of electing probation and treatment under the Act, where the court has reason to believe that the defendant suffers from a substance use disorder, will result in a remand for resentencing.

Here, however, defendant failed to appear at the sentencing hearing. Although the effect of defendant's absence on section 40-10(a) presents a case of first impression, the Appellate Court found that, in other contexts, the failure to appear has constituted a waiver of rights. For example, **People v. Woolridge**, 292 Ill. App. 3d 788 (1997), held that the failure to appear waives the right to personal notification of the right to appeal as required by Rule 605(b). Similarly, in this case defendant's failure to appear for sentencing waived his right to be advised of any possibility of electing probation and treatment under the Act.

While defendant argued that he did appear for post-sentencing motions and was still not admonished under 40-10(a), the Appellate Court found no error because the admonishment is required only during sentencing. None of defendant's post-sentencing motions resulted in a new sentencing hearing, so the requirements of section 40-10(a) were not triggered.

People v. Addison, 2021 IL App (2d) 180545 The Court rejected the State's assertion that a defendant who is tried *in absentia* waives collateral review of any issue that could have been raised during his original trial proceedings had he appeared. The Post-Conviction Hearing Act provides a separate remedy not contingent upon exhaustion of any other remedy. Further, the bulk of defendant's claims in his petition alleged ineffective assistance of counsel, which usually cannot be resolved during trial, but rather are relegated to direct appeal or collateral proceedings.

Defendant was deprived of the reasonable assistance of appointed post-conviction counsel, despite counsel's filing of a Rule 651(c) certificate, where counsel failed to make routine amendments to defendant's petition to overcome forfeiture concerns. Accordingly, remand was required regardless of whether defendant's underlying claims had merit. The reviewing court should not speculate whether defendant's petition would have been dismissed if counsel had adequately performed his duties under Rule 651(c).

People v. Aguilar, 2020 IL App (1st) 161643 Post-conviction petition alleging that defendant was denied his constitutional right to be present when the trial judge pronounced guilt at his bench trial stated the gist of a claim. While defendant was physically present in the courtroom when the judgment was rendered, he had been assisted by an interpreter throughout the proceedings, and the record did not rebut defendant's assertion that no interpreter was present when the judge pronounced him guilty and admonished him about

sentencing *in absentia*. The absence of an interpreter was particularly concerning where defendant ultimately was sentenced *in absentia*.

People v. Pizarro, 2020 IL App (1st) 170651 The Appellate Court had jurisdiction to review trial and sentencing claims on appeal from a post-trial motion filed under 115-4.1(e) of the Code of Criminal Procedure. Section 115-4.1(e) motions are filed following a trial *in absentia*, and present the issue of whether defendant's absence was willful. Section 115-4.1(g) allows a defendant to file a notice of appeal from the ruling, and during that appeal, the defendant "may also" challenge the underlying conviction and sentence.

Here, defendant's notice of appeal and appellate brief did not mention the 115-4.1(e) motion. He simply stated that he was appealing his convictions and sentences, though he included the motion date as the judgment date. This was sufficient to confer jurisdiction on the court to review the conviction and sentence.

People v. Parada, 2020 IL App (1st) 161987 Defendant could not make a substantial showing of appellate counsel's ineffectiveness where, after defendant fled during trial and was sentenced *in absentia*, counsel filed a notice of appeal but took no further steps to litigate the appeal, and the appeal was dismissed.

Defendant was convicted and sentenced *in absentia* because he fled to California before the end of his trial. His attorney filed a notice of appeal, but after eight months, noting that defendant was a fugitive and that no docketing statement, record, or brief had been filed, the Appellate Court dismissed his appeal. Years later, in a post-conviction petition, defendant alleged ineffective assistance of counsel for failure to complete his appeal. The circuit court dismissed at the second stage and the Appellate Court affirmed. Under the "presumption of prejudice plus" test, counsel is ineffective if the failure to perfect an appeal actually causes the loss of appellate rights. Here, due to the century-old "fugitive dismissal rule," defendant's appeal would have been dismissed whether counsel pursued it or not. Defendant tried to reinstate his appeal upon his return, but it was in the Appellate Court's and Supreme Court's discretion to deny reinstatement, and that denial had nothing to do with counsel's performance.

People v. Johnson, 2019 IL App (4th) 170622 About ten months after being sentenced in absentia, defendant filed a "Motion for Resentencing Consideration," explaining that he missed his sentencing due to hospitalization. The trial court found the motion untimely and refused to consider it.

The Appellate Court reversed. When a motion is filed under section 115-4.1(e) of the Code of Criminal Procedure, a trial court must hold an evidentiary hearing to determine whether defendant's absence from trial or sentencing was his fault or due to circumstances beyond his control. The motion is considered a collateral attack on the judgment, and the statute contains no time limits. Although the motion was not titled properly, the character of a filing is controlled by its contents, not its title, and here the contents of the motion made clear defendant sought relief under section 115-4.1(e). The court remanded for an evidentiary hearing.

People v. Pettigrew, 2018 IL App (4th) 170808 A defendant is entitled to an evidentiary hearing on a motion filed under 725 ILCS 5/115-4.1(e) to show good cause for absence following proceedings *in absentia*. The summary dismissal of a good cause motion without a hearing requires reversal and a remand

People v. Moran, 2018 IL App (3d) 150754 Defendant entered an open plea, failed to appear at his sentencing hearing, and was sentenced *in absentia*. When he was arrested eight years later, defendant filed a motion to vacate or reconsider sentence pursuant to 725 ILCS 5/115-4.1(e). The trial court erred in striking that motion. Defendant filed a notice of appeal within 30 days of the order striking the motion, so the Appellate Court had jurisdiction over the appeal, including the underlying judgment and sentence pursuant to 725 ILCS 5/115-4.1(g). Because the trial court had imposed sentence without receiving a written presentence investigation report, it violated 730 ILCS 5/5-3-1. The Appellate Court vacated defendant's sentence and remanded for new sentencing proceedings with the trial court to receive a properly prepared PSI.

People v. Peters, 2018 IL App (2d) 150650 On the second morning of trial, defendant complained of pain, said he could not get ready for court, and ultimately was brought to the courtroom in a wheelchair. A jail nurse told the court there was no medical support for defendant's complaints, and a prior psychological evaluation had concluded that defendant had a tendency to exaggerate illness. When the court expressed its belief that defendant was faking and was able to come to court, defendant interrupted eight times arguing that he needed to see a doctor. Based on those interruptions, the court ordered him removed. Eight witnesses testified in defendant's absence that morning.

The trial court did not abuse its discretion in holding a portion of the trial in defendant's absence. While a defendant has a constitutional right to be present at trial, defendant's actions after the court found him physically able to attend trial reflected a voluntary decision not to be present. The Appellate Court declined to consider a jail DVD showing that defendant had a hernia and was in pain that morning because the DVD was not before the trial court at the time of its decision, and, the DVD would not have changed the outcome regardless.

People v. Henry, 2016 IL App (1st) 150640 (No. 1-15-0640, 6/30/16)

At his trial for first-degree murder, aggravated battery with a firearm, and unlawful use of a weapon, defendant failed to return to court when the proceedings ended on the first day. Bond was revoked and a warrant was issued for defendant's arrest. The trial continued, and defendant was convicted and sentenced *in absentia*.

Defendant was arrested some three years later, and began to serve the sentence that had been imposed *in absentia*. He then filed a post-conviction petition arguing that trial counsel had been ineffective for failing to investigate and call alibi witnesses at trial.

The State argued that by absenting himself from trial, defendant "chose to forego" his alibi defense. The court rejected this argument, noting that defendant's voluntary absence from trial may waive the rights to be present and confront witnesses but does not waive the right to the effective assistance of counsel. Under Supreme Court Rule 401, a defendant charged with an offense punishable by imprisonment may waive counsel only in open court and only after being properly admonished by the trial court of the consequences of a waiver. Because there was no such waiver in the record, defendant's flight did not waive his right to the effective assistance of counsel.

However, the court went on to find that defense counsel was not ineffective.

People v. Montes, 2013 IL App (2d) 111132 In Illinois, a trial *in absentia* can be conducted only if the defendant was orally admonished regarding the possible consequences of failing to appear in court when required. When a defendant pleads not guilty, the court "shall advise him at that time or at any later date on which he is present that if he escapes from custody

or is released on bond and fails to appear in court when required by the court that his failure to appear would constitute a waiver of his right to confront the witnesses against him and trial could proceed in his absence." 725 ILCS 5/113-4(e). Only substantial compliance with §113-4(e) is necessary to permit trial of an absent defendant.

The court admonished defendant that if he failed to appear at "any scheduled court hearing that would be considered a waiver of [his] right to confront the witnesses against [him] and that hearing could proceed in his absence." While this admonition was not perfect in that the court used the word "hearing" rather than "trial," it substantially complied with the requirements of §113-4(e) and sufficiently informed defendant that if he failed to appear, trial could proceed in his absence.

In addition to the oral admonition, defendant signed a bond form that stated that he must appear at all scheduled court hearings, and that if he failed to do so, trial could proceed in his absence. Written admonitions alone do not satisfy §113-4(e), but the written admonition together with the oral admonition sufficiently informed defendant that trial could proceed in his absence.

People v. Cobian, 2012 IL App (1st) 980535 725 ILCS 5/113-4(e) provides that a defendant who pleads not guilty must be advised that if he escapes from custody or is released on bond and fails to appear when required, the failure to appear will constitute a waiver of the right to confront witnesses and will allow the trial to proceed in his absence. Substantial compliance with the admonition requirement of §113-4(e) is sufficient to allow the trial to proceed *in absentia*.

The court rejected the argument that defendant's admonishments were insufficient because they took place at his arraignment on a previous indictment, which was superceded by an indictment charging the same crime but adding an additional co-defendant. "Regardless of whether the defendant received a warning specifically tied to the indictment that underlay his conviction, he did receive a warning that he could be tried *in absentia* for exactly the same conduct. That is all that is required to meet the purpose of the admonishment statute."

725 ILCS 5/115-4.1(e) authorizes a defendant who was tried *in absentia* to obtain a new trial or sentencing hearing if he can establish that the failure to appear was both not his fault and due to circumstances beyond his control. Illinois case law requires that an evidentiary hearing must be held on a §115-4.1(e) request for a new trial. (See **People v. Brown**, 121 Ill. App. 3d 776, 459 N.E.2d 1175 (2nd Dist. 1984)). Thus, the trial court erred by denying defendant's §115-4.1(e) motion for a new trial without holding an evidentiary hearing. The trial court's ruling was vacated and the cause remanded with instructions to hold an evidentiary hearing on the motion.

People v. Lane, 2011 IL App (3d) 080858 Defendant has a constitutional right to be present at trial, and a statutory right to be admonished of the consequences of his failure to appear at trial. 725 ILCS 5/113-4(e) provides that "[i]f a defendant pleads not guilty, the court shall advise him at that time or at any later court date on which he is present that if he . . . is released on bond and fails to appear when required by the court that his failure to appear would constitute a waiver of his right to confront the witnesses against him and trial could proceed in his absence." Thus, the statutory admonishments are valid only if they are given when defendant pleads not guilty or at a subsequent hearing when defendant is present.

Even if defendant is notified of the trial date and voluntarily fails to appear, he cannot be tried *in absentia* unless he was admonished in accordance with the statute.

Defendant was tried *in absentia*. There were two notations in the common law record that the court gave 113-4(e) admonitions. The first occurred at defendant's first appearance on the date of his arrest. There was no transcript of these proceedings. Because these admonitions were given before defendant entered a not guilty plea, they did not conform to the plain language of the statute.

The second indication in the common law record indicated that 113-4(e) admonitions were given on the date of arraignment. While the common law record is ordinarily presumed to be correct, if the report of proceedings conflicts with the common law record, the report of proceedings controls. Because no 113-4(e) admonitions appeared in the transcript of the arraignment, the court concluded that the record did not show compliance with 113-4(e).

People v. Phillips, 394 Ill.App.3d 808, 917 N.E.2d 110 (1st Dist. 2009) 725 ILCS 5/113-4(e) provides that a defendant who pleads not guilty shall be advised "at that time or at any later court date on which he is present" that if he fails to appear in court while on bond, the failure to appear: (1) constitutes a waiver of the right to confrontation, and (2) allows the trial to proceed in his absence. Section 113-4(e) was not satisfied by a bond slip which had been signed by the defendant and which stated that the failure to appear when required would waive the right to confrontation and allow the trial or sentencing to proceed in defendant's absence. Section 113-4(e) "unambiguously" requires the trial court to admonish the defendant concerning the consequences of failing to appear in court – a printed notice on a bond sheet is not a sufficient substitute for a warning by the trial judge.

The sentence imposed *in absentia* was vacated and the cause remanded for a new sentencing hearing.

People v. McCombs, 372 Ill.App.3d 967, 866 N.E.2d 1200 (3d Dist. 2007) Statute which requires that a defendant tried in absentia be represented by retained or appointed counsel, applies even where defendant waived counsel before he absconded. The statute contains no exception to the counsel requirement where there was a previous waiver, although it does specifically authorize a bench trial in absentia if defendant previously waived a jury.

Where a defendant absconds after waiving counsel, the trial court may conduct a trial *in absentia* only after appointing counsel and providing reasonable time for counsel to prepare.

People v. Gargani, 371 Ill.App.3d 729, 863 N.E.2d 762 (2d Dist. 2007) Trial in absentia was erroneous where defendant was not represented by counsel. 725 ILCS 5/115-4.1(a) provides that an absent defendant "must be represented by retained or appointed counsel."

People v. Phillips, 371 Ill.App.3d 948, 864 N.E.2d 823 (1st Dist. 2007) The trial judge erred by sentencing defendant *in absentia* where it failed to give the admonishment required by 725 ILCS 5/113-4(e), which mandates that a defendant be informed of the possibility of trial and sentencing *in absentia*.

People v. Martinez, 361 Ill.App.3d 424, 857 N.E.2d 479 (2d Dist. 2005) Despite the unavailability of transcripts of relevant hearings, it could be presumed that the trial court announced the trial date in open court and in defendant's presence.

People v. Manikowski, 288 Ill.App.3d 157, 679 N.E.2d 840 (5th Dist 1997) Seven years after he was convicted, defendant filed a post-conviction petition alleging that his

constitutional rights had been violated when he was tried in absentia. Defendant's petition asserted that he boarded a plane in California two days before his trial was scheduled to begin, but the flight was delayed in Arizona due to weather conditions. Defendant called his lawyer, advised her of his travel difficulties, and asked her to obtain a continuance until he could get to Illinois.

Defendant eventually arrived in St. Louis and took a bus to Paducah, which was ten miles from the courthouse where the trial was held. Defendant again called his lawyer, but was told that she was in court. He called again a few hours later, and engaged in a discussion with his lawyer which left him "uneasy." He called his codefendant's lawyer, who informed him that the trial had started two days earlier, that none of defendant's witnesses had been heard, and that deliberations were to begin that afternoon. "[F]earing the outcome of such a trial," defendant fled.

Defendant's refusal to appear for the final stages of trial did not necessarily constitute a wilful absence from trial. Although defendant's decision to flee was "indefensible," the failure to appear once he learned that the trial was nearly over had no bearing on the reasonableness of the trial court's initial decision to hold the trial in absentia. Even had defendant appeared during the final stages of the trial, his earlier absence would not have been cured – "the trial was beyond repair."

Because defendant's failure to appear at the latter stages of trial did not constitute a wilful absence from earlier stages, the trial court erred by dismissing the post-conviction petition. See also, **People v. Johnson**, 293 Ill.App.3d 915, 689 N.E.2d 179 (1st Dist. 1997) (trial court erred by conducting hearing on probation revocation petition where defendant was in hospital cardiac unit; there was no indiction that the hospitalization was due to defendant's voluntary failure to appear); **People v. Stokes**, 293 Ill.App.3d 643, 689 N.E.2d 625 (1st Dist. 1997) (conducting voir dire before defendant arrived).

People v. Hill, 208 Ill.App.3d 887, 567 N.E.2d 626 (2d Dist. 1991) By voluntarily absenting himself after being admonished that the trial could proceed without him, defendant waived his right to be present. The trial judge had discretion to proceed to trial when defendant failed to appear. However, absent a knowing and intelligent waiver, a defendant may not be imprisoned for any offense unless he was represented by counsel at trial.

People v. Rife, 18 Ill.App.3d 602, 310 N.E.2d 179 (4th Dist. 1974) Defendant waived right to be present at sentencing by voluntarily escaping from jail.

§51-3
Physical Restraints – Jail Clothing

United States Supreme Court

Deck v. Missouri, 540 U.S. 1006, 125 S.Ct. 2007, 161 L.Ed.2d 953 (2005) Due process prohibits the use of physical restraints that are visible to the jury during trial, unless the trial court determines that the restraints are justified by a State interest that is specific to the particular trial. Among the factors which may be considered in determining whether restraints are justified are potential security problems and the risk that defendant might attempt to escape. The same restrictions apply to a death penalty hearing.

Here, due process was violated by the use of leg irons, handcuffs and a belly chain upon remand for a new death hearing. First, the record established that the jury saw the restraints worn by defendant. Second, the trial court failed to recognize that it was required

to exercise its discretion in determining whether the restraints should be allowed.

Visible shackling is inherently prejudicial. A sentence imposed at a hearing at which there was unjustified restraint can be affirmed only if the State proves beyond a reasonable doubt that the shackling did not contribute to the verdict.

Holbrook v. Flynn, 475 U.S. 560, 106 S.Ct. 1340, 89 L.Ed.2d 525 (1986) Presence of four armed and uniformed state troopers in the courtroom, to supplement the court security force, was not so inherently prejudicial that defendant was denied a fair trial.

Estelle v. Williams, 425 U.S. 501, 96 S.Ct. 1691, 48 L.Ed.2d 126 (1976) The State cannot, consistent with the Fourteenth Amendment, compel an accused to appear before the jury while dressed in identifiable prison clothes. However, no constitutional violation occurred here, where there was no showing that defendant was compelled to stand trial in jail garb and he failed to object in the trial court.

Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970) Although an obstreperous defendant may be bound and gagged, the sight of shackles and gags might have a significant effect on the jury's feelings about defendant. In addition, such action is an affront to the dignity and decorum of judicial proceedings and reduces defendant's ability to communicate with his counsel.

Illinois Supreme Court

People v. Reese, 2017 IL 120011 The use of physical restraints in court is permitted only where there is a manifest need for them. The decision about whether and how to restrain a defendant is left to the trial court's discretion. Under Illinois Supreme Court Rule 430, the trial court must conduct a hearing to determine whether restraints are necessary, must allow the defendant to be heard, and must make specific findings before permitting the use of restraints.

Here the trial court did not conduct a hearing or articulate any reason for shackling defendant during jury selection. Instead, the court deferred to the Department of Corrections about whether defendant should be shackled. Under these circumstances, "the trial court clearly abused its discretion in allowing defendant to be shackled during jury selection," resulting in a due process violation.

But the Supreme Court found that the due process violation was harmless, since the record showed beyond a reasonable doubt that the error did not contribute to defendant's conviction. During jury selection, the trial court placed skirting around counsel table to block the view of the shackles. Only one prospective juror saw the shackles under the table and he stated that it would not affect his ability to be fair. Additionally, the record shows that defendant, who represented himself, was not hindered in any manner during jury selection. The shackles were removed after jury selection, and the State presented overwhelming evidence of guilt. The shackling error thus did not contribute to defendant's convictions and was harmless.

In re Jonathan C.B., 2011 IL 107750 Under **People v. Boose**, 66 Ill.2d 261, 362 N.E.2d 303 (1977), shackling of a defendant during trial tends to prejudice the jury against the accused, restrict the ability to assist counsel during trial, and offend the dignity of the judicial process. Therefore, a defendant may be shackled during court proceedings only if there is a manifest need for restraint.

Under **In re Stanley**, 67 Ill.2d 33, 364 N.E.2d 72 (1977), the **Boose** rule was extended to juvenile delinquency proceedings although such proceedings do not occur before a jury. Here, the minor argued that the trial judge has a *sua sponte* duty to inquire whenever a child appears in court in shackles, or in the alternative that plain error occurs where a juvenile is shackled for trial without the benefit of a **Boose** hearing.

The Supreme Court concluded that where the only reference in the record to shackling occurred when the minor was called to testify, at which point the trial court stated "[y]ou may take off the shackles," the record did not support the conclusions that the judge was aware that the minor had been shackled throughout the trial or that the shackles were put back on after the minor testified. On these facts, the Court presumed that the trial court acted properly and did not commit error with regard to shackling.

The court reiterated, however, that "if a trial court *is aware or becomes aware* that a defendant, whether adult or juvenile, is shackled, the trial court must conduct a **Boose** hearing to determine whether there is a manifest need for the restraint."

In dissenting opinions, Justices Kilbride, Freeman and Burke found that it "strains credulity" (J. Freeman) to believe that the trial judge learned that the minor was shackled only when the minor testified on the third day of trial. Justice Burke also criticized the majority for ignoring the State's concession that **Boose** error occurred and presuming instead that no error occurred.

People v. Urdiales, 225 Ill.2d 354, 871 N.E.2d 669 (2007) The trial court did not abuse its discretion by ordering that defendant's legs and left arm be shackled. The leg shackles were not visible to the jury, and defendant's left hand was shackled only after an outburst which occurred during a recess.

People v. Allen, 222 Ill.2d 340, 856 N.E.2d 349 (2006) Due process prohibits requiring a criminal defendant to wear an electronic stun belt, without the trial court first determining that use of the belt is appropriate under the circumstances. However, because defendant had not shown that use of the belt denied him a fair trial, the plain error rule did not apply.

People v. Buss, 187 Ill.2d 144, 718 N.E.2d 1 (1999) Under **People v. Boose**, 66 Ill.2d 261, 362 N.E.2d 303 (1977), shackling is generally disfavored because it prejudices the jury against the accused, restricts defendant's ability to assist his counsel during trial, and offends the dignity of the judicial process. However, shackling is permitted where defendant may try to escape or disrupt the proceedings or poses a threat to the safety of the occupants of the courtroom.

Several factors are to be considered in determining whether a defendant may be shackled, including: (1) the seriousness of the charge; (2) defendant's temperament and character; (3) defendant's age, physical attributes, and past record; (4) past escapes or attempted escapes; (5) any evidence of a present plan to escape; (6) any threats to harm others or cause a disturbance; (7) any self-destructive tendencies; (8) any risk of mob violence or attempted revenge by others, (9) the possibility of rescue by offenders still at large; (10) the size and mood of the audience; (11) the nature and physical security of the courtroom; and (12) the adequacy and availability of alternative remedies.

The trial court did not abuse its discretion by requiring defendant to be shackled. The court stressed the need for courtroom security, the extremely serious nature of the charge, and the large audience in the courtroom. In addition, the tables were arranged so the shackling was "never obvious to the jurors," and the jury was removed during conferences so

defendant could hear conversations between the judge and the attorneys.

People v. Hyche, 77 Ill.2d 229, 396 N.E.2d 6 (1979) By failing to object in the trial court, defendant waived any claim of error that on the first day of jury selection he appeared in handcuffs.

In re Staley, 67 Ill.2d 33, 364 N.E.2d 72 (1977) Handcuffing of minor at a juvenile proceeding was improper; there was no reason to believe minor might try to escape or posed a threat to the safety of people in the courtroom. In addition, there was no basis to conclude that handcuffing was necessary to maintain order. Without such a showing, an accused cannot be tried in shackles in either a bench or jury trial.

People v. Boose, 66 Ill.2d 261, 362 N.E.2d 303 (1977) The Supreme Court discussed the reasons why shackling should be avoided, what may justify shackling, and the factors to be considered. The determination is left to the discretion of the trial judge, who should state for the record the reasons for shackling and allow defense counsel an opportunity to respond.

Here, the trial judge abused his discretion by ordering defendant shackled at a competency hearing conducted before a jury. The only reason the judge gave for shackling was the nature of the crime, which is only one factor to be considered and not in itself sufficient justification. See also, **People v. Bennett**, 281 Ill.App.3d 814, 666 N.E.2d 899 (1st Dist. 1996) ("poor security" was not adequate basis for shackling where restraints could have been removed once defendant was in courtroom; defendant did not waive issue where he asked to have shackles removed but raised no other objection; improper shackling is not harmless merely because jury did not see restraints, because defendant's ability to cooperate with counsel and assist in defense was compromised).

Illinois Appellate Court

People v. Ryan, 2023 IL App (2d) 220414 The trial court violated Rule 430 when it allowed defendant to be shackled during trial, without first holding a hearing or making a finding that shackling was necessary. Although the State argued that defendant's failure to request a hearing resulted in forfeiture of the issue for appeal, the appellate court rejected this argument. Under Rule 430, once a defendant has been placed in restraints, "it is the trial court's responsibility to conduct a hearing on the need for restraints. Nothing in the rule's language requires the defendant to request a hearing. A court that blithely ignores that requirement in deference to security personnel risks depriving the defendant of a fair trial." Due to the overwhelming evidence, however, this error was harmless beyond a reasonable doubt.

People v. Taber, 2023 IL App (2d) 220288 The trial court erred in failing to conduct a **Boose** hearing, as codified under Supreme Court Rule 430, before ordering that defendant remain shackled during his discharge hearing. This deprived defendant of the right to due process by denying defendant the opportunity to argue against shackling or to propose alternatives. But, the error was found harmless beyond a reasonable doubt because the record showed that defendant had a history of angry outbursts and courtroom security was short-staffed on the date of defendant's discharge hearing. Further, the record established that defendant was able to communicate with his attorney and the trial court during the proceedings. Accordingly, defendant's not not guilty finding was affirmed.

People v. Owens, 2022 IL App (3d) 190151 At defendant's jury trial, the trial court erred when it ordered defendant to be handcuffed during his cross-examination. Defendant had testified in his own defense, unrestrained, but then became defiant and refused to answer questions during the State's cross-examination, telling the court to send him back to his cell. The court removed the jury and had a conference with the parties, warning defendant that if his conduct continued, he would waive his right to be present for the remainder of the trial. The judge also noted that during the break defendant had been handcuffed by the courtroom deputy, so the court instructed that defendant remain restrained when the trial resumed. Defendant's cross-examination resumed with him seated at counsel table instead of on the witness stand, flanked by deputies, and handcuffed. Defendant refused to answer questions, the parties rested, and the jury ultimately found defendant guilty on some counts and not guilty on others.

On appeal, defendant argued that the trial court erred in failing to conduct a hearing to determine whether shackling was necessary, as required by Illinois Supreme Court Rule 430 and **People v. Boose**, 66 Ill. 2d 261 (1977). The State argued that the record clearly showed the need for shackling. The Appellate Court disagreed, noting that the court simply accepted the deputy's opinion that defendant's attitude had "changed for the worse" and required shackling, rather than exercising its discretion to determine whether the factors enumerated in Rule 430 warranted shackling. Further, there is no authority for the proposition that a hearing is not required simply because the record shows a need for shackling. The absence of a hearing denied defendant due process and was an abuse of the court's discretion.

Because defendant failed to raise a timely objection to the court's shackling decision, however, the issue was forfeited. Defendant asked for reversal because the error was structural or, alternatively, second-prong plain error. The Appellate Court disagreed. A **Boose** error is not structural error because it does not affect the framework of the trial process or render the verdict fundamentally unfair or unreliable. Nor did the error fall under the second prong where it did not affect the integrity of the judicial process. If the jury even knew defendant was handcuffed (he was told to keep his hands under the table, though he was admonished for raising them), they also knew that the shackling was related to his repeated outbursts and not to any presumption of guilt, as he was not shackled at the outset of the trial. Also, there was no indication that the shackling hindered his right to participate in his own defense or consult with counsel. Thus, the error was forfeited and not reviewable as plain error.

People v. Rodriguez-Aranda, 2022 IL App (2d) 200715 The trial court erred when it only partially granted defendant's request to remove his handcuffs in the courtrooms. The trial court, reasoning that defendant was receiving a bench trial rather than a jury trial, insisted that at least one hand remain shackled. However, even when there is no jury, any unnecessary restraint is impermissible because it hinders the defendant's ability to assist his counsel, runs afoul of the presumption of innocence, and demeans both the defendant and the proceedings. Because the Appellate Court was reversing on other grounds, it ordered defendant to be unshackled on remand barring a finding of the need for restraints under Illinois Supreme Court Rule 430.

People v. Gibson, 2021 IL App (1st) 190137 It was error for defendant to remain shackled during the last day of his bench trial where the judge acknowledged that there was no need for defendant to be shackled except for the fact that the courtroom staff did not have the keys to unshackle him. Defendant had been brought to the courtroom in shackles because "the

Sheriff had some issues downstairs" with prisoners from defendant's division; those issues did not involve defendant.

But, the invited error doctrine precluded relief on appeal where defense counsel told the trial court that defendant wanted to move forward with trial that day, even though he was shackled. The Appellate Court rejected defendant's argument that the right to be tried without shackles could only be waived by defendant, not counsel.

People v. Shafer, 2020 IL App (4th) 180343 Before requiring defendant to wear an "electric stun cuff" around his ankle at trial, the court was required to "make specific findings" as to the 10 factors contained in Rule 410. Here, the trial court considered that the cuff would be hidden by clothing – a factor not included in Rule 410 – but made no findings as to the required factors. Defendant objected to the decision, but failed to include the issue in a post-trial motion.

The issue was not forfeited, because it is a constitutional issue that was objected to at trial. **See People v. Almond**, 2015 IL 113817. And although defendant himself told the judge he was "fine" with the cuff, his attorney lodged an objection, and "counsel's response was the response that counted." Thus, the issue could be reached without regard to the plain error doctrine.

The error was harmless, however. The trial court specifically found that the cuff was hidden from the jury's view, and defendant told the court that it did not cause him discomfort. Moreover, the evidence of guilt was overwhelming.

People v. Bell, 2020 IL App (4th) 170804 The trial court erred in ordering the *pro se* defendant to remain shackled at the legs during his jury trial without first holding a hearing in accordance with **People v. Boose**, 66 Ill. 2d 261 (1977), and Illinois Supreme Court Rule 430. The hearing requirement was not satisfied by the court's question to a correctional officer about his ability to control defendant. But, the error was not preserved, and the Appellate Court concluded that defendant failed to establish plain error. The evidence was not closely balanced. And, the error was not so serious that it affected the fairness of the trial where the shackles were concealed from the jury, defendant did not complain about the shackles during his trial, and the record showed that defendant was able to examine witnesses without issue.

People v. Hawkins, 2020 IL App (3d) 160682 In **People v. Kelley**, 2013 IL App (4th) 110874, the Appellate Court held that **Boose**'s presumption against shackling was not violated by defendant's shackling during post-conviction proceedings where the restraints did not impede defendant's ability to assist counsel. In **People v. Rippatoe**, 408 Ill. App. 3d 1061 (3d Dist. 2011), however, the Appellate Court held that **Boose** does apply in post-trial proceedings where a defendant is proceeding pro se. Here, the State conceded it was error to shackle the pro se defendant during second-stage post-conviction proceedings without conducting a **Boose** hearing.

Because the court had not conducted any sort of **Boose** hearing during the original post-conviction proceedings, the Appellate Court found that remand for a retrospective **Boose** hearing would be improper. Instead, the matter was reversed and remanded for new second-stage proceedings.

People v. Williams, 2016 IL App (3d) 130901 In general, the accused should not be shackled during court proceedings. **People v. Boose**, 66 Ill. 2d 261, 265, 362 N.E.2d 303 (1977). However, a defendant may be shackled where there is reason to believe that he may

try to escape or that he might pose a threat to the safety of people in the courtroom, or if shackling is necessary to maintain order during the trial. Whether shackling is necessary is left to the discretion of the trial court, which should state the reasons for its decision on the record and give defense counsel a chance to respond. Although the possibility of prejudicing the jury is one factor to be considered, the reasons for forbidding shackling are not limited to trials by jury.

Due process was violated where there was no indication that the trial court conducted a **Boose** analysis before ordering defendant to remain in shackles during trial. Where the evidence was closely balanced because the case was essentially a credibility contest between defendant and the complainant, the improper shackling constituted plain error.

The court noted a conflict in authority concerning the appropriate remedy where the defendant is improperly shackled during trial, and that some courts have approved holding a retrospective **Boose** hearing. Such a hearing would be inappropriate here, however, because the court failed to conduct any analysis of the necessity for shackling and appeared to have a blanket policy of shackling. In addition, by granting defendant's motion to remove his shackles while testifying, the trial court impliedly decided that the shackles were unnecessary.

People v. Kelley, 2013 IL App (4th) 110874 Under **People v. Boose**, 66 Ill.2d 261, 362 N.E.2d 303 (1977), a criminal defendant may not be shackled during court proceedings unless, after a hearing held outside the presence of the jury, the trial court finds that restraint is necessary. **Boose** does not apply to third stage evidentiary hearings during post-conviction proceedings. Instead, the post-conviction court has discretion to order that a defendant be shackled.

People v. Harding, 2012 IL App (2d) 101011 Shackling the defendant during trial tends to prejudice the jury against the accused, restrict the defendant's ability to assist counsel, and offend the dignity of the judicial process. Thus, shackling is to be avoided unless there is a manifest need for restraint. Illinois Supreme Court Rule 430 provides that restraints may be used only if specific evidence considered on a case-by-case basis shows a manifest need to prevent escape or protect the security of the court or the proceedings.

The trial judge erred by failing to place on the record specific reasons for requiring the defendant to appear in prison attire and shackling defendant's legs and one hand. However, the plain error rule was inapplicable where defense counsel invited the error by stating that defendant's leg shackles could remain, asking that the hand shackles be removed to allow defendant to participate in trial by holding a pen, and accepting an arrangement by which only one of defendant's hands was unshackled. Under the invited error doctrine, a party may not ask to proceed in a certain manner and then contend on appeal that the course of action to which he agreed was erroneous.

People v. Rippatoe, 408 Ill.App.3d 1061, 945 N.E.2d 132 (3d Dist. 2011) Where the cause had been remanded for a new hearing on defendant's *pro se* claim that trial counsel had been ineffective, the trial court committed plain error by failing to conduct a **Boose** inquiry before allowing the proceeding to occur while the defendant was shackled. The failure to conduct a **Boose** hearing constitutes fundamental error which threatens the fairness of the proceeding. The court noted that the defendant testified, questioned a witness, and addressed argument to the court while shackled to the extent that he had extreme difficulty raising his right hand to take an oath before testifying.

In rejecting the State's claim that the shackling did not influence the judge, the court found that shackles necessarily impose physical and mental burdens on a defendant and materially affect the process:

> Where a defendant is forced to appear *pro se*, take an oath, testify, question witnesses, and present his arguments to the court all while shackled, without any consideration by the trial judge of the necessity for the shackles, the integrity of the judicial process is greatly demeaned. There could be no doubt that the defendant's ability to act on his own behalf is severely diminished. Moreover, there can be no doubt that the integrity and dignity of the judicial proceedings was demeaned where one of the participants had to conduct himself throughout the hearing while bound hand and feet for no apparent reason and without even an inquiry into a need to be restrained.

The cause was reversed and remanded for further proceedings, including a determination by the trial judge whether shackling is necessary.

People v. McCarron, 403 Ill.App.3d 383, 934 N.E.2d 76 (3d Dist. 2010) Defendant wore an electronic monitoring device (EMD) on her ankle during her jury trial. She had been ordered to wear the device as a condition of her bond. The EMD was not a physical restraint similar to shackles as it did not interfere with the defendant's ability to participate in her own defense. While the EMD could possibly have a negative effect on the jury's opinion of defendant, that possibility was addressed by the court's admonition to the jury, at the request of the defense, informing the jury that the EMD did not affect the presumption of defendant's innocence.

People v. Harris, 388 Ill.App.3d 1007, 904 N.E.2d 1200 (3d Dist. 2009) Plain error occurred where, without the knowledge of defense counsel or the trial judge, the sheriff required defendant to wear an electronic stun belt at trial. Under Illinois law, the trial court must conduct a hearing before a defendant can be required to wear a restraint during trial.

Defendant was denied a substantial right and a fair trial where his fear that the stun belt might go off "accidentally" caused him to decline to testify, although the trial court had granted a motion in limine to preclude the use of prior convictions as impeachment. The court noted that the State did not rebut defendant's testimony that he was told by a deputy that he could not have a trial unless he signed a consent to wear the stun belt; "[c]onditioning a jury trial upon defendant's written consent to wear a concealed electronic stun belt, without the court's or counsel's knowledge, challenges the integrity of the judicial process."

People v. Johnson, 387 Ill.App.3d 768, 902 N.E.2d 126 (3d Dist. 2009) Restraining defendant during trial is to be avoided, if possible, because of the potential prejudice to the jury, the restriction on defendant's ability to assist his counsel during trial, and the need to afford to defendant the dignity of the judicial process. To justify restraining defendant in the jury's presence, there must be a showing of a "manifest need." Examples of a "manifest need" are evidence that defendant may try to escape or poses a threat to the safety of the people in the courtroom, or that restraint is necessary to maintain order during trial. The "manifest need" standard is intended to permit restraint only in exceptional cases.

The decision to restrain is left to the discretion of the trial court, which may select the physical restraint most suitable in light of all the circumstances. An electronic safety belt is a "restraint" similar to shackles and handcuffs.

The trial court abused its discretion by ordering defendant to be restrained. Defendant was charged with aggravated battery and armed robbery, but there was nothing about the charges which indicated that he was likely to disrupt the proceedings or attempt to escape. Defendant's criminal history showed no greater escape risk than any other felony defendant, and defendant was of slight stature. There was no evidence that defendant planned to be disruptive or attempt to escape, and there were no codefendants at large. In addition, there was no evidence of any self-destructive or violent tendencies on the part of defendant, there were no spectators in the gallery, and viable alternatives were available because deputies could have been used to secure the courtroom.

Defendant's convictions were reversed and the cause remanded for a new trial.

People v. Barney, 363 Ill.App.3d 590, 844 N.E.2d 80 (4th Dist. 2006) Plain error does not necessarily occur where a criminal defendant is shackled during a jury trial without the trial court first holding a hearing under **People v. Boose**, 66 Ill.2d 261, 362 N.E.2d 203 (1977).

People v. Doss, 347 Ill.App.3d 418, 807 N.E.2d 697 (3d Dist. 2004) The trial court committed plain error by requiring defendant to wear shackles at his jury trial for armed robbery. Where the defense theory of the case was one of mistaken identity, the trial court erred by allowing shackling solely because it believed that the jurors could not see the shackles. The trial court abused its discretion by ordering shackling without finding that there were compelling reasons to do so.

People v. Love, 327 Ill.App.3d 313, 763 N.E.2d 829 (4th Dist. 2002) Trial judge did not abuse his discretion by requiring defendant to wear a mask during his trial. Defendant was charged with aggravated battery for spitting on a correctional officer, had a history of spitting and biting, and had threatened to spit on court and correctional personnel.

People v. Fields, 322 Ill.App.3d 1029, 751 N.E.2d 97 (5th Dist. 2001) The trial judge did not abuse his discretion by ordering that defendant wear shackles. Although shackling is not justified merely because defendant is accused of a violent act, defendant was charged with aggravated battery against correctional officers at Tamms Correctional Center and had demonstrated violent tendencies throughout his time in DOC. In addition, the trial court modified its original order and removed the shackles from defendant's hands, thereby reducing the possibility that the jury would be prejudiced.

Similarly, the trial court did not abuse its discretion by ordering that several uniformed guards attend the trial. The trial judge discussed the number of guards with both parties, and attempted to balance defendant's right to a fair trial with the level of protection necessary for security purposes. In addition, there is no absolute limit on the number of uniformed guards in the courtroom during trial.

People v. McCue, 175 Ill.App.3d 762, 530 N.E.2d 271 (3d Dist. 1988) Handcuffing of defendants at a jury trial for escape was proper. Shackling was appropriate because defendants were charged with serious felonies, were aware of courtroom procedures, were physically capable of escaping, had histories of attempting to escape from custody, and had previously acted in concert while attempting to escape.

People v. Johnson, 54 Ill.App.3d 970, 370 N.E.2d 611 (3d Dist. 1977) Defendant, who was in the custody of the Department of Corrections, was not prejudiced because two uniformed correctional officials were allowed to sit behind him during trial. However, the "better

practice" would be to require such guards to wear civilian clothing.

People v. Minish, 19 Ill.App.3d 603, 312 N.E.2d 49 (3d Dist. 1974) Defendant was not prejudiced by being attired in jail clothes; defendant did not object, but attempted to utilize his attire to elicit sympathy from the jury.

§51-4
Right to Present Argument

United States Supreme Court

McCoy v. Louisiana, 584 U.S. ___ , 138 S. Ct. 1500, 200 L. Ed. 2d 821 (2018) A defendant's Sixth Amendment right to the assistance of counsel does not require that he or she surrender complete control over the case to counsel. Where defense counsel determines that the best strategy is to concede defendant's guilt in the hopes of avoiding a death sentence, but the defendant objects and insists on presenting an alibi defense, counsel is forbidden from conceding guilt. The Supreme Court distinguished **Florida v. Nixon**, 543 U.S. 175 (2004), because there the defendant neither objected nor approved of counsel's planned strategy of conceding guilt.

Here, defendant was charged with three counts of first degree murder for which the State was seeking the death penalty. Defense counsel informed defendant of his plan to concede guilt and urge the jury to exercise mercy and reject a death sentence. Defendant, who had maintained his innocence all along, repeatedly objected to counsel's proposed strategy. Nevertheless, counsel conceded guilt, and, after defendant was convicted, argued for mercy at sentencing. The jury imposed a death sentence.

Defendant's autonomy to decide the objective of the defense belongs in the category of rights personal to the defendant, along with the decisions whether to plead guilty, waive his jury trial right, testify in his defense, and forego an appeal. The violation of defendant's right to assert an innocence defense constitutes structural error and is not subject to harmless error review.

Herring v. New York, 422 U.S. 853, 95 S.Ct. 2550, 45 L.Ed.2d 593 (1975) Counsel may not be prohibited from making final summation, even in a bench trial. A state statute allowing the trial judge to deny summation in nonjury criminal cases violated the Sixth Amendment right to the assistance of counsel. See also, **People v. Smith**, 205 Ill.App.3d 153, 562 N.E.2d 553 (1st Dist. 1990).

Illinois Supreme Court

People v. Burnett, 237 Ill.2d 381, 930 N.E.2d 953 (2010) No error occurred where: (1) defense counsel failed to appear for the hearing on a motion to reconsider the sentence, and (2) the trial court denied the motion in counsel's absence.

People v. Withers, 87 Ill.2d 224, 429 N.E.2d 853 (1981) Defendant does not have an unqualified right to orally argue a motion for directed verdict; whether argument is allowed is a matter within the sound discretion of the trial judge. Although a trial judge would likely welcome argument in a long or difficult case, the judge did not abuse his discretion by refusing to hear argument where the charge was uncomplicated, the motion was made immediately after the State rested, and the State's case consisted of only three witnesses and 23 pages of testimony.

People v. Johnson, 45 Ill.2d 38, 257 N.E.2d 3 (1970) Where defendant requested and was allowed to make the final argument to the jury, the trial court did not err in refusing to permit defense counsel to make additional argument.

People v. Williams, 28 Ill.2d 114, 190 N.E.2d 809 (1963) Defense attorney has the right to argue an objection outside the presence of the jury.

People v. McMullen, 300 Ill. 383, 133 N.E. 328 (1921) Trial judge's imposition of a 35-minute time limit for closing argument was unreasonable based upon the nature of the case, the evidence and the time required to make a fair presentation.

Illinois Appellate Court

People v. Comier, 2020 IL App (1st) 170500 Trial court did not err in ruling that defendant would be required to submit to examination by a State expert before he would be permitted to introduce testimony of his own expert that he suffered from mental illness, even though defendant was not raising insanity defense. 725 ILCS 5/115-6 provides that the court shall order defendant to submit to such an examination, on the State's motion, where defendant intends to assert defenses of insanity, guilty but mentally ill, or intoxicated or drugged condition, but also "if the facts and circumstances of the case justify a reasonable belief that the aforesaid defenses may be raised."

Here, the court opined that testimony from defendant's expert would be the equivalent of presenting an insanity defense, warranting examination by a State expert. And, even if such an examination was not required under the circumstances, nothing in the statute prohibits the court from ordering an examination where defendant places his mental status at issue, even if not to the extent of raising a mental status defense. It is well-established that requiring that a defendant submit to such an examination before allowing testimony of a defense expert does not violate defendant's fifth amendment rights.

A dissenting justice disagreed and would have held that the trial court erred in conditioning the admissibility of defendant's expert's testimony on defendant's submitting to a mandatory examination by another expert. The dissent did not believe any of the provisions of Section 115-6 applied here where the defense specifically disclaimed any intent to pursue an insanity defense.

People v. Edwards, 2020 IL App (1st) 170843 The State charged defendant with unlawful use of a weapon by a felon after he was seen in a car with a gun, and the gun was tossed from the car during police pursuit. During deliberations, the jury asked for a definition of "possession." The trial court decided to give the jury the definitional instructions for both actual and constructive possession. Defense counsel objected, arguing that the case had never been about constructive possession and therefore the defense did not have the opportunity to rebut the claim in closing argument. The objection was overruled, defendant was convicted, and defense counsel did not include the issue in a post-trial motion.

Citing **People v. Alexander**, 2019 IL App (3d) 160709, the Appellate Court held that the trial court erred by instructing the jury on a theory of guilt not advanced at trial. The court held that this error violated defendant's constitutional right to closing argument. The error was not forfeited despite it not being raised in a post-trial motion, because under **People v. Cregin**, 2014 IL 113600, a reviewing court should review constitutional errors raised at trial even if not included in a post-trial motion. The error was harmless, however,

because there was sufficient evidence of actual possession, such that the jury did not need to consider constructive possession.

People v. Ramos, 2018 IL App (1st) 151887 Historical cell site analysis report, showing which towers cell phone pinged and at what times, was hearsay. While such cell phone records are frequently admissible as business records, the State did not call a witness to lay a proper foundation and the report was not certified as self-authenticating in accordance with Illinois Rule of Evidence 902(11). A detective's testimony as to the locations where the co-defendant's phone traveled during the relevant period was improperly admitted because it was based on the historical cell site analysis report.

The Appellate Court also held that the trial court erred when it prevented defense counsel from using his annotated copy of the trial transcript during his closing argument. The court's blanket prohibition denied counsel access to his notes and could not be justified by the fact that the transcript had not yet been "certified." This error interfered with defendant's sixth amendment right to counsel, and in this closely balanced case, was not harmless beyond a reasonable doubt.

People v. Faria, 402 Ill.App.3d 475, 931 N.E.2d 742 (1st Dist. 2010) The trial judge did not deny a fair trial by interrupting and challenging defense counsel's closing argument. Although a defendant has a constitutional right to present closing argument, the trial court has broad discretion to limit argument so long as the judge remains attentive, patient, and impartial. Because the trial judge allowed defense counsel to present a full closing argument which presented his theory of the case, the right to make a closing argument was not infringed.

People v. Faint, 396 Ill.App.3d 614, 920 N.E.2d 1247 (3d Dist. 2009) The trial court committed plain error where it pronounced defendant guilty upon denying a defense motion for a directed verdict at the end of the State's evidence, without giving defense counsel a chance to present evidence or a closing argument. "It is hard to imagine a better case in which to apply the second prong of a plain error analysis. We cannot have any confidence in the integrity of the trial court's finding of guilt or the judicial process . . . based on this truncated trial."

The court observed that it would have been difficult for defense counsel to object to the trial court's action - "the record conveys a sense that the judge would not have been receptive to defense counsel's suggestion that the approach adopted by the trial court was improper." Thus, "[c]ounsel adopted a prudent strategy by postponing the confrontation with the judge and electing to set out the error in the written motion for new trial to be considered on another day."

People v. Stevens, 338 Ill.App.3d 806, 790 N.E.2d 52 (1st Dist. 2003) Where the trial court repeatedly interrupted defense counsel, showed impatience by saying "you got about two more minutes" and that counsel "overran the amount of time you took on the case to argue," and showed that it had prejudged the case before counsel completed his argument, the right to make a proper closing argument was denied.

People v. Owen, 299 Ill.App.3d 818, 701 N.E.2d 1174 (4th Dist. 1998) The trial judge has "vast discretion" concerning whether it will hear a motion in limine, and may refuse to consider such a motion at all, "instead requiring that the matter be presented and resolved at trial." But see, **Naperville v. Watson**, 175 Ill. 2d 399, 677 N.E.2d 955 (1997) (motions

in limine are encouraged in criminal cases to exclude collateral or extraneous matters, but must be used cautiously to avoid depriving a defendant of a legally viable defense).

People v. DeRossett, 237 Ill.App.3d 315, 604 N.E.2d 500 (4th Dist. 1992) Supreme Court Rule 235 grants discretion to the trial court to decide whether opening arguments should be made at some point other than at the beginning of the trial, but does not authorize dispensing with arguments altogether.

People v. Kane, 81 Ill.App.3d 641, 401 N.E.2d 1310 (2d Dist. 1980) A trial judge may impose a reasonable time limit on closing argument. Here, no error occurred where the trial judge imposed a one-hour time limit where there was little material evidence and the issues were not complex.

People v. Hampton, 78 Ill.App.3d 238, 397 N.E.2d 117 (1st Dist. 1979) An opening statement should contain an outline of the facts that the party in good faith intends to prove. The opening statement should not be a long narrative or evidentiary recitation, and counsel is not permitted to relate the expected testimony at length. Although the trial court has discretion in regard to the scope and latitude of an opening statement, defendant has the right to present the facts that he intends to prove without unreasonable restrictions.

People v. Moczarney, 65 Ill.App.3d 410, 382 N.E.2d 544 (1st Dist. 1978) Trial court did not violate defendant's right to make a closing argument; defendant did not request such argument and there was no claim of prejudice.

People ex rel. Paul v. Harvey, 9 Ill.App.3d 209, 292 N.E.2d 124 (1st Dist. 1972) Trial court must permit counsel to make record by presenting proper legal arguments for the record.

People v. Diaz, 1 Ill.App.3d 988, 275 N.E.2d 210 (1st Dist. 1971) The right to argue a cause in a criminal case is absolute, although the trial court has discretion to set reasonable limits on how the right shall be enjoyed.

§51-5
Interpreters

Illinois Supreme Court

People v. Santillan, 138 Ill.2d 176, 561 N.E.2d 655 (1990) Statute requiring the county to pay for interpreters (Ch. 38, ¶165-13) is constitutional.

People v. Soldat, 32 Ill.2d 478, 207 N.E.2d 449 (1965) Trial court did not abuse discretion in failing, sua sponte, to provide an interpreter. Although the testimony of the witness was "broken and ungrammatical," it was understandable and its substance clear.

People v. Shok, 12 Ill.2d 93, 145 N.E.2d 86 (1957) Whether to appoint an interpreter is normally within the discretion of the trial court. It is an abuse of discretion to refuse to appoint an interpreter who is necessary for a proper trial. Here, error occurred when defendant was denied an interpreter to assist in the cross-examination of one witness.

Illinois Appellate Court

People v. Resendiz, 2020 IL App (1st) 180821 Defendant alleged in a post-conviction petition that his guilty plea was not knowing and voluntary, because he did not understand English, and his attorney and the interpreter failed to explain "the nature of the plea" or inform him of the need to file a motion to withdraw the plea in order to appeal.

The Appellate Court affirmed the first-stage dismissal. The defendant's allegations were conclusory and lacked even the minimal amount of detail required at the first stage. Defendant failed to state exactly what about the plea he didn't understand. The court noted that defendant copied the allegation verbatim from a prior case, with no added details relevant to the instant case. The allegations were also rebutted by the record, which showed that an interpreter was in court with defendant at every appearance over the course of two years, defendant never complained about the interpreter's capabilities or performance, defense counsel spoke Spanish, and defendant routinely engaged in conversations with the court that illustrated the proceedings were interpreted properly.

People v. Williams, 331 Ill.App.3d 662, 771 N.E.2d 1095 (1st Dist. 2002) Due process and the right to confrontation were violated where the trial court failed to determine the extent of defendant's hearing impairment.

People v. Escalante, 256 Ill.App.3d 239, 627 N.E.2d 1222 (2d Dist. 1994) The trial court erred by starting the trial of a Spanish-speaking defendant in the absence of the court-appointed interpreter. As a matter of plain error, a defendant who does not speak English is not "present" for purposes of the Sixth Amendment unless he is assisted by an interpreter.

People v. Tomas, 136 Ill.App.3d 1054, 484 N.E.2d 341 (5th Dist. 1985) Trial court did not err by appointing a single interpreter to assist the non-English speaking defendants, translate the English testimony into Spanish for defendants, and translate the Spanish testimony to English for the court, jury and counsel. The interpreter sat beside defendants and was available to assist them in consulting with counsel.

People v. DeJesus, 71 Ill.App.3d 235, 389 N.E.2d 260 (2d Dist. 1979) An interpreter's translation of testimony is not hearsay. The interpreter is merely a conduit for testimony and makes no statement of his or her own.

People v. Allen, 22 Ill.App.3d 800, 317 N.E.2d 633 (1st Dist. 1974) Although the trial court has discretion to determine the fitness of an interpreter, the court abused its discretion by appointing a close personal friend of the complainant as the interpreter. In addition, there was some indication that the interpreter may have been involved in the incident.

People v. Starling, 21 Ill.App.3d 217, 315 N.E.2d 163 (1st Dist. 1974) Defendant was denied the right to confrontation by the trial court's appointment of an ineffective and incompetent interpreter. The complaining witness spoke only Spanish, and both defense counsel and the prosecutor complained repeatedly of the interpreter's ineffectiveness.

People v. Delgado, 10 Ill.App.3d 33, 294 N.E.2d 84 (1st Dist. 1973) Although an interpreter is required by statute to take an oath (Ch. 51, ¶47), the issue is waived if no objection is raised at trial.

§51-6
Continuances

Illinois Supreme Court

People v. Walker, 232 Ill.2d 113, 902 N.E.2d 691 (2009) Whether to grant a continuance rests in the sound discretion of the trial court. Where it appears that the refusal of additional time prejudiced the defense, however, the conviction will be reversed. Factors which the trial court should consider in determining whether to grant a continuance include: (1) the movant's diligence, (2) defendant's right to a speedy, fair and impartial trial, (3) the interests of justice, (4) whether defense counsel has been unable to prepare for trial because he or she has been held to trial on another case, (5) the history of the case, (6) the complexity of the matter, (7) the seriousness of the charges, and (8) issues of docket management, judicial economy and inconvenience to the parties and witnesses.

As a matter of plain error, the trial court failed to exercise its discretion in ruling on defense counsel's request for a continuance. First, the record lacked any showing that the trial court considered the relevant factors. Second, there was no pattern of delay occasioned by defendant, defendant had not sought a change of counsel or judge and had cooperated with counsel, and defense counsel immediately informed the trial court that she had miscalendared the trial date and had just discovered her mistake.

In addition, counsel had been on trial the previous two days until 6 p.m. and 7:10 p.m. before another judge, and therefore was unable to prepare for defendant's trial after discovering the calendar error. Counsel repeatedly stated that she was not ready for trial, but the trial court deemed her statements "irrelevant" and held the trial later the same day. The trial judge asked no questions that might have provided information needed to exercise discretion on an informed basis.

People v. Norris, 214 Ill.2d 92, 824 N.E.2d 205 (2005) Supreme Court Rules 504 and 505, which implement a general policy against requiring multiple appearances by defendants charged with traffic offenses, do not guarantee that a traffic defendant will receive a trial on the merits at the first appearance date. Rules 504 and 505 do not preclude a trial court from granting a continuance because the arresting officer failed to appear.

People v. Lewis, 165 Ill.2d 305, 651 N.E.2d 72 (1995) On the day trial was scheduled to begin, the State revealed that it had just learned that one of its witnesses had received psychiatric treatment approximately six years earlier. The defense received the psychiatric records of the witness on the following day, and requested a continuance to have the records examined by a defense expert. The trial court denied a continuance, but noted that the records would take only about five minutes to read and that the defense had time to submit the reports to a doctor of its choice.

Although the State's witness was important, his testimony merely supported evidence that would have provided a sufficient basis for the conviction in any event. For this reason, and because defense counsel cross-examined the witness on the same matters that would have been raised by an independent psychiatric witness, no reversible error occurred.

People v. King, 66 Ill.2d 551, 363 N.E.2d 838 (1977) Trial court did not abuse its discretion in denying defense request for a continuance to locate certain witnesses; counsel already had one week to find the witnesses, and there was no showing that any effort had been made. Furthermore, counsel failed to indicate the identity of the witnesses, the materiality of their

testimony, or the reasonable likelihood they could be found.

People v. Lott, 66 Ill.2d 290, 362 N.E.2d 312 (1977) Where a surprise State's rebuttal witness testified that defendant had admitted the crime, the trial court abused its discretion by denying a continuance for the purpose of obtaining possible witnesses. The testimony was totally unexpected, the defense had filed discovery motions and acted with reasonable diligence, and the surprise testimony had substantial probative value.

People v. Wilson, 29 Ill.2d 82, 193 N.E.2d 449 (1963) Motion for continuance is addressed to sound discretion of the trial court, and cannot be said to have been improperly denied unless it appears that the lack of additional time prejudiced the accused in his defense.

Illinois Appellate Court

People v. Talidis, 2023 IL App (2d) 220109 Prior to his DWLR trial, defendant's private attorney withdrew over a disagreement about discovery, and defendant moved to proceed *pro se*. The court accepted defendant's waiver of counsel. After six months of continuances so that defendant could file motions, defendant never filed any, and the court appointed standby counsel. Four days later, on the day of trial, defendant refused to participate. The court ordered standby counsel to act as counsel of record. Counsel asked for a continuance to prepare, but the trial court denied the motion, reasoning that an attorney appointed for a defendant tried *in absentia* need not be prepared for trial under 725 ILCS 5/115-4.1(a). Defendant was found guilty, and on appeal, argued the court erred in denying the request for a continuance.

The appellate court affirmed. It initially determined that section 115-4.1(a), which sets forth the procedures for a trial *in absentia*, including the appointment of counsel, did not apply to defendant. See **People v. Eppinger**, 2013 IL 114121 (section 115-4.1 applies only to defendants not in custody). As such, before reaching the ruling on the continuance, the appellate court first determined whether the court erred in appointing counsel despite defendant's desire to represent himself. The appellate court found a proper termination of the right to self-representation. Defendant intentionally disrupted the trial process, first dragging it out for several months with false assurances of an imminent motion, and then refusing to participate on the day of trial. Appointing counsel at this point was a proper exercise of discretion. For similar reasons, the trial court exercised proper discretion when it appointed standby counsel as the counsel of record.

Nor did the trial court error in denying counsel's request for a continuance. A court's decision to deny a continuance for the preparation of trial is reviewed for an abuse of discretion. Reviewing courts consider several factors, including the movant's diligence, the seriousness of the charges, judicial economy, the complexity of the case, and the reason for counsel's unpreparedness. Here, although counsel acted diligently in requesting the continuance, and only two witnesses would be inconvenienced, other factors supported the denial of the continuance, including the fact that counsel "had at least the lunch break to prepare for defendant's case, which was not complex."

Finally, the court found counsel was not ineffective where she participated in *voir dire*, made objections, moved to suppress evidence, cross-examined witnesses, and argued in opening and closing.

People v. Ramsey, 2018 IL App (2d) 151071 When a trial court conducts an inquiry into the circumstances of a defendant's motion to substitute counsel and those circumstances

demonstrate that substitute counsel does not stand ready, willing, and able to make an unconditional appearance, the court does not abuse its discretion by denying the defendant's motion. Here, the court did not abuse its discretion in denying a continuance for substitute counsel, as counsel was not ready, willing, and able to enter an unconditional appearance and the trial court reasonably concluded that defendant, through his prior failures to appear and tardiness, was attempting to delay the proceedings.

People v. Martinez, 2011 IL App (2d) 100498 Motions for continuances in criminal cases are governed by 725 ILCS 5/114-4. A continuance may be granted to the State where a material witness is unavailable and the prosecution will be prejudiced by the absence of his testimony. 725 ILCS 5/114-4(c)(2). Subsection (f) provides: "After trial has begun a reasonably brief continuance may be granted to either side in the interests of justice." 725 ILCS 5/114-4(f).

The trial court abused its discretion in denying the State's request for a continuance. Although the State initially agreed to proceed with jury selection, the court was on notice when the case was first called that material witnesses for the State who were under subpoena were absent and might continue to be absent. The State filed a written motion for continuance due to the absence of its witnesses before the jury was sworn. Subsection (f) was thus inapplicable as trial had not yet commenced. Although the case had been pending for years, the State did not file its first motion for continuance until more than three years into the prosecution. The State was solely responsible for only five months of the total 46 months of delay. Because the State subpoenaed its witnesses for all of the trial dates, it was diligent. The court dismissed any defense complaints about delay, because defendant was responsible for most of the delay in the case. The State was not required to accept the court's proposal that it proceed with other witnesses while awaiting its absent witnesses. The scheduling of witnesses and the order in which they are called was up to the State, not the court. It was for the State to decide whether to risk that jeopardy would attach without its material witnesses ever appearing. The interests of justice would be better served by continuing the matter to allow the authorities to compel the presence of the material witnesses by force.

People v. Hillsman, 329 Ill.App.3d 1110, 769 N.E.2d 1100 (4th Dist. 2002) The trial court did not abuse its discretion by denying a continuance so the State could research a speedy trial issue. A defendant who has been in custody for more than 120 days is entitled to discharge on the day of his scheduled trial. In addition, defense counsel had previously announced his intention to move for discharge, placing the State on notice that the issue would be raised.

People v. Morey, 308 Ill.App.3d 722, 721 N.E.2d 200 (2d Dist. 1999) The trial court abused its discretion in a drug case by denying a continuance for defense counsel to secure an informant's testimony. The defense had been diligent in attempting to secure the testimony; the informant was under a defense subpoena. However, the informant, who was present during the State's case-in-chief, left the courthouse despite the subpoena.

Further, the defense was prejudiced. The evidence was close, and the jury's verdict may have been different had defendant been able to present the informant's testimony. Also, the trial judge appeared to be "unduly motivated to finish the trial and to release the jury before the weekend."

Defendant did not waive the issue by failing to present an offer of proof concerning the informant's testimony. Requiring a defendant to present an offer of proof concerning the testimony of a confidential informant is "unrealistic and would burden the defendant with

an insurmountable barrier." Also, the trial judge refused to allow counsel to present an offer of proof, and instead instructed her to rest her case. In addition, counsel told the trial court, as best she could, what she hoped to accomplish by calling the informant. Under these circumstances, the issue was adequately preserved for review.

People v. Davis, 147 Ill.App.3d 800, 498 N.E.2d 633 (1st Dist. 1986) Motion seeking additional time to secure witnesses may be properly denied where there is no reasonable expectation that the witnesses will be available in the foreseeable future.

People v. Johnson, 143 Ill.App.3d 122, 491 N.E.2d 918 (2d Dist. 1986) Trial judge did not abuse discretion by denying defendant's motion for a continuance where the motion was made on the first day of trial.

People v. Reyes, 102 Ill.App.3d 820, 429 N.E.2d 1277 (1st Dist. 1981) After defendant was found guilty, the judge set sentencing for January 23, 1978, but on that date continued the case to January 30. Although the trial court had said that no further requests for continuances would be considered, on January 30 an attorney appeared and requested a continuance because defendant's trial counsel was on trial in federal court. The trial judge refused the request and held the sentencing hearing. The attorney appearing in place of trial counsel stated that she was unfamiliar with the case and had nothing to present in mitigation. The denial of the continuance was an abuse of discretion.

People v. Polk, 70 Ill.App.3d 903, 388 N.E.2d 864 (1st Dist. 1979) Trial judge did not abuse discretion in denying continuance to obtain a certain witness. No explanation was given for the witness's absence; in addition, the defense had not made an adequate attempt to secure the witness's testimony where it merely left a message for the witness to appear.

People v. Jackson, 72 Ill.App.3d 231, 390 N.E.2d 47 (1st Dist. 1979) Trial judge properly denied request for two-hour continuance to locate rebuttal witness - the defense had failed to act diligently to obtain the witness's presence.

People v. Timms, 59 Ill.App.3d 129, 375 N.E.2d 1321 (1st Dist. 1978) Trial judge erred in denying a defense request for a one-day continuance to allow three additional witnesses to testify. The defense had exercised due diligence in attempting to obtain the witnesses, who were not subpoenaed but were family members whom counsel reasonably expected to appear, and the anticipated testimony was material because it corroborated defendant's alibi.

People v. Dalzotto, 55 Ill.App.3d 995, 371 N.E.2d 859 (5th Dist. 1977) Trial court erred in denying defense counsel's request for a continuance to secure certain witnesses. Because two of the witnesses were eyewitnesses, the trial judge erred in holding that their testimony would be immaterial or irrelevant.

People v. Mourning, 27 Ill.App.3d 414, 327 N.E.2d 279 (5th Dist. 1975) Trial court committed reversible error by denying defense motion for continuance for purposes of discovery of witnesses. Although the State disclosed the names of its witnesses on the day before trial, it failed to furnish addresses. It "is inconceivable that one day before trial the State was unaware of the specific address of witnesses it intended to call the following day." The State's "misconduct" prevented the defense from properly preparing for trial.

People v. Jefferson, 35 Ill.App.3d 424, 342 N.E.2d 185 (1st Dist. 1975) The trial judge abused his discretion in denying a continuance where defense counsel explained why she was not prepared for trial and showed that she had exercised due diligence.

People v. Dixon, 26 Ill.App.3d 487, 325 N.E.2d 673 (1st Dist. 1975) Trial court committed reversible error in denying a continuance to public defender to prepare for a probation revocation hearing. The public defender was appointed when the petition was filed, but defendant desired to employ counsel on his own. Seven days later, on the hearing date, the public defender advised the court that defendant wanted more time to employ counsel. The court denied the request and ordered the hearing to proceed without giving the public defender time to prepare.

People v. Simpson, 24 Ill.App.3d 835, 321 N.E.2d 464 (4th Dist. 1974) Trial judge abused discretion in denying continuance for defense to have independent chemical analysis of substance. Although defendant was able to obtain a continuance by waiving his right to a jury trial, that waiver was not voluntary.

People v. Hamilton, 17 Ill.App.3d 740, 308 N.E.2d 216 (4th Dist. 1974) Error to deny continuance and force public defender to trial on the day he was appointed.

People v. Brown, 13 Ill.App.3d 277, 300 N.E.2d 831 (1st Dist. 1973) Error to deny continuance for defense to investigate State's list of 28 witnesses filed 20 days before trial; the State had delayed filing the list for 77 days.

People v. Willis, 6 Ill.App.3d 980, 286 N.E.2d 72 (4th Dist. 1972) Error to deny continuance for defendant to obtain retained counsel in place of public defender, where defendant did all he could to contact such counsel.

People v. Bain, 4 Ill.App.3d 442, 280 N.E.2d 776 (2d Dist. 1972) Error to deny continuance and force student to trial while other student-witnesses were away from school on vacation.

People v. White, 123 Ill.App.2d 102, 259 N.E.2d 357 (5th Dist. 1970) Where during jury selection the State disclosed 17 additional witnesses, the defense was entitled to a continuance so it could talk with the witnesses.

People v. McNeil, 102 Ill.App.2d 257, 243 N.E.2d 576 (1st Dist. 1968) Error to deny continuance where State chose to proceed on indictment other than the one originally selected, giving defendant only one-day notice prior to trial.

§51-7
Post-Trial Motions

Illinois Supreme Court

People v. Segoviano, 189 Ill.2d 228, 725 N.E.2d 1275 (2000) The Court rejected the State's argument that three issues had been waived because defendant's post-trial motion was filed 32 days after the convictions. The issues had been ruled on by the trial court while it had jurisdiction over the case, and involved potential and substantial prejudice to the defense.

People v. Steidl, 142 Ill.2d 204, 568 N.E.2d 837 (1991) Defendant filed a §2-1401 petition based upon the alleged recantations of trial testimony by three State witnesses. The trial court did not abuse its discretion by denying the petition. All three of the witnesses testified at the post-trial hearing that their testimony at trial had been truthful. Furthermore, the conditions under which the recantations were made were less than ideal - one witness's statements were made in response to leading questions, there were several off-the-record conversations, and the court reporter who was present refused to sign an affidavit stating that the defense attorneys did not speak with the witness during the off-the-record conversations. In addition, statements given to defense attorneys by two of the witnesses were suspect because neither witness was represented by counsel and no representative of the State's Attorney's office was present.

People v. Caballero, 102 Ill.2d 23, 464 N.E.2d 223 (1984) A written post-trial motion is important. Defense counsel has an obligation to comply with the statute requiring a written motion, and the prosecutor has an obligation to object to general oral statements made by defense counsel that may be viewed as an oral motion for a new trial.

People v. Kellick, 102 Ill.2d 162, 464 N.E.2d 1037 (1984) Defendant was convicted of murder and sentenced to death. Defendant testified that he went to the crime scene with his father, who killed the victim without defendant's knowledge. In his post-trial motion, defendant presented a statement from a witness who had been across the street from the crime scene and who said that defendant was accompanied by an older male. However, the witness could not identify defendant's father as the companion.

The witness's statement "does not confirm defendant's testimony that this other man was his father." Even had the witness identified the man as defendant's father, there was a substantial amount of other evidence indicating that the father was elsewhere at the time of the murder. Under these circumstances, the trial court did not abuse its discretion by concluding that the statement would not have changed the verdict.

People v. Molstad, 101 Ill.2d 128, 461 N.E.2d 398 (1984) Defendant and five codefendants were convicted of criminal damage to property and aggravated battery arising out of an incident in which several individuals attacked a car with baseball bats and lead pipes. One of the three passengers in the car identified defendant as being involved. No other witness identified him, and he denied having been present.

Before sentencing, defendant's lawyer filed a post-trial motion that included affidavits of the five codefendants, stating that defendant was not present during the incident.

To warrant a new trial on the basis of additional evidence, the evidence must: (1) appear to be of such a conclusive character that it will probably change the result if a new trial is granted, (2) have been discovered since the trial, (3) be such that it could not have been discovered before trial by the exercise of due diligence, (4) be material to the issue, and (5) not merely be cumulative of the evidence offered at trial. Here, defendant was entitled to a new trial:

1. The testimony of the codefendants was newly discovered; the affidavits were not prepared until after trial, and the codefendants did not present the testimony at trial because it would have incriminated them.

2. The testimony could not have been discovered by due diligence, because the codefendants could not have been forced to incriminate themselves.

3. The evidence was material because it went to the ultimate issue in the case —

who was present during the incident.

4. The testimony was not cumulative. "Claiming evidence is cumulative involves a determination that such evidence adds nothing to what is already before the jury".

5. A different result is probable if the trier of fact considers the testimony of the codefendants that defendant was not present.

People v. Yarbrough, 93 Ill.2d 421, 444 N.E.2d 493 (1982) Immediately after the verdict was returned, the trial judge suggested that defendant undergo a polygraph examination. During argument at the hearing on defendant's post-trial motion (claiming, inter alia, that the evidence was insufficient to convict), the trial judge asked the prosecutor if there was any "new evidence subsequent to the trial that would . . . be beneficial to the defendant." The prosecutor replied that "certain investigative procedures were performed subsequent to trial . . . [but] there is no new evidence available to the defendant." The trial judge then denied the post-trial motion.

The trial judge erred by referring to a lie detector test. A defendant is entitled to "an objective and unbiased appraisal of the points he raises in his post-trial motion . . . [and] to have his post-trial motion." Because the trial judge must have had some concern about the sufficiency of the evidence (or he would not have asked about the polygraph), the conviction must be reversed and the cause remanded for a new trial.

People v. Miller, 79 Ill.2d 454, 404 N.E.2d 199 (1980) The trial judge did not err by denying defendant's motion for a new trial after hearing a witness's admission that he, and not defendant, committed the offense. The trial judge could reasonably conclude that the newly discovered testimony was merely cumulative and would not have changed the result of the trial.

People v. Lutz, 73 Ill.2d 204, 383 N.E.2d 171 (1978) A motion in arrest of judgment (Ch. 38, ¶116-2) may be granted where the court lacks jurisdiction or the indictment, information or complaint fails to charge an offense.

People v. Logan, 72 Ill.2d 358, 381 N.E.2d 264 (1978) The alleged perjury of a witness at trial was not newly discovered evidence where defendant would have been aware of the perjury when the witness testified.

People v. Reese, 54 Ill.2d 51, 294 N.E.2d 288 (1973) To warrant the granting of a motion for new trial based on newly discovered evidence, that evidence must be of such conclusive character that it will probably change the result on retrial.

People v. Nash, 36 Ill.2d 275, 222 N.E.2d 473 (1967) Trial court did not err in denying motion for new trial despite a witness's affidavit recanting his testimony against defendant. Recantation by a witness does not necessarily entitle a defendant to a new trial; recanted testimony is very unreliable, and a court will usually deny a new trial motion based on that ground unless it is satisfied that the testimony is true.

People v. Whitehead, 35 Ill.2d 501, 221 N.E.2d 256 (1966) The requirement that a motion for new trial be in writing and list the specific grounds relied upon is waived where the State fails to object to a non-specific oral motion for a new trial. In such a case, defendant is not precluded on appeal from raising any error which might appear in the record, even though that issue was not specified in the oral post-trial motion.

People v. Holtzman, 1 Ill.2d 562, 116 N.E.2d 338 (1954) Motions for new trial based on newly discovered evidence are not favored, and the burden of proof lies with the applicant. Whether such a motion should be granted is left to the discretion of the trial judge, whose ruling will not be disturbed except in a case of manifest abuse.

Newly discovered evidence that discredits, contradicts or impeaches a witness does not afford a basis for a new trial. Newly discovered evidence that shows different facts may justify a new trial if a different result would likely occur at the new trial.

Illinois Appellate Court

People v. Jenkins, 2023 IL App (5th) 210085 Defendant filed a post-trial motion asserting ineffective assistance of counsel. Following a full hearing, defendant's motion was granted and a new trial was ordered by Judge McGlynn. The State then filed a motion to reconsider, which was heard by a different judge because Judge McGlynn had become a federal district court judge. The second judge, Judge Hitzemann, granted the State's motion to reconsider, in part based on his conclusion that the matter was before the trial court for the limited purpose of conducting a **Krankel** hearing and that Judge McGlynn had exceeded the scope of such an inquiry. Judge Hitzemann also concluded that defendant's motion was without merit.

On appeal, defendant argued that Judge Hitzemann erred in granting the State's motion to reconsider. The appellate court agreed. While a successor judge has the power to correct orders he finds erroneous, he must exercise considerable restraint and careful consideration in exercising that power where the prior judge's rulings involved the exercise of discretion.

Here, the appellate court found that because defendant's motion was properly before the court on a **Krankel** remand, Judge McGlynn did not err in granting defendant a new trial. While Judge McGlynn's ruling was predicated, in part, on his conclusion that the State's key witness had presented perjured testimony, consideration of the perjury claim was proper where it arose in the context of defendant's claim of ineffective assistance of counsel related to counsel's failure to investigate and impeach the witness. This was not an improper deviation from the **Krankel** procedure. A judge is not required to ignore evidence of a non-**Krankel** error merely because it is discovered in the course of a **Krankel** hearing. Judge Hitzemann's ruling therefore rested on an error of law – that the issue was not properly considered during **Krankel** proceedings – and "it is always an abuse of discretion to base a ruling on an incorrect view of the law." Accordingly, the appellate court reversed Judge Hitzemann's order granting the State's motion to reconsider and remanded the matter for the new trial that Judge McGlynn originally had ordered.

People v. Potts, 2021 IL App (1st) 161219 A trial court has discretion to hear an untimely motion for new trial, filed while a motion to reconsider sentence is pending, because the court still has jurisdiction over the case generally. Such discretion furthers the judiciary's interest in resolving cases efficiently and accurately.

The trial court did not err in denying defendant's request to issue a protective order and conduct closed courtroom proceedings on defendant's claim that a newly discovered witness had come forward with exonerating evidence. According to defense counsel, the witness was well-known in the community and feared for his safety if he was identified. The witness came forward two days after defendant had been sentenced, which was nearly nine

years after the murder in this case. He claimed to have seen the victim with another man on the date of her murder in an area near where her body was later discovered.

The public has a first amendment right of access to criminal proceedings, and defendant has a personal sixth amendment right to insist on a public trial. However, there is no constitutional right to private proceedings. On rare occasions, the public's right of access must yield to other considerations. A generic allegation that a witness is afraid, without more, is inadequate to overcome the constitutional presumption of openness.

People v. Harris, 2020 IL App (5th) 160454 At the post-trial motion stage, newly discovered evidence warrants a new trial where it was discovered after trial, could not have been discovered prior to trial through the exercise of due diligence, is material and not merely cumulative, and is so conclusive that it will probably change the result on retrial. Here, a witness came forward after trial and said that she saw defendant at the housing project where she lived, and he was there for several hours around the time of the shooting incident in question. That testimony was inconsistent with defendant's own statement, which had been corroborated by another witness, that he had been playing basketball at the victim's residence prior to the shooting. Further, the trial court found the new witness not credible. Accordingly, the court could not conclude that it was probable that the new evidence would change the result at a new trial, and denial of defendant's post-trial motion was not error.

People v. Williams, 2020 IL App (1st) 172118 A trial court may dispose of a motion for new trial based upon newly discovered evidence, so long as the court's decision is not an abuse of discretion. Under **People v. Steidl**, 177 Ill. 2d 260 (1997), newly discovered recantation testimony warrants an evidentiary hearing where there was no physical evidence linking the defendant to the crime, the trial evidence was comprised solely of witness testimony, and all of the key witnesses have recanted. All of those circumstances were present here, and the circuit court abused its discretion in denying defendant's motion without first holding an evidentiary hearing. The Appellate Court reversed and remanded for such a hearing.

People v. Shines, 2015 IL App (1st) 121070 More than 30 days after he had been sentenced, defendant filed a *pro se* letter titled "motion of appeal" in the trial court alleging that counsel had been ineffective. The trial court took no action on the letter. The Illinois Supreme Court eventually granted defendant's motion for supervisory order directing the Appellate Court to allow defendant's letter "to stand as a validly filed notice of appeal."

Defendant argued on appeal that the trial court failed to conduct a **Krankel** hearing on defendant's *pro se* claims of ineffectiveness. The Appellate Court held that since defendant's letter was filed more than 30 days after the final judgment, the trial court no longer had jurisdiction to rule on defendant's claims.

The Appellate Court rejected defendant's argument that the letter was filed within 30 days under the mailbox rule. Under that rule, pleadings are timely filed on the day an incarcerated defendant places them in the prison mail system. Defendant argued that his letter was timely because it was filed on Monday, April 9, and thus with no Sunday mail, it could only be untimely if it had been placed in the prison mail system on Saturday, April 7 and then delivered halfway across the State by Monday, April 9, an impossible scenario.

The mailbox rule, however, does not permit such speculation. Instead, the rule requires a defendant to provide proof of mailing by filing a proof of service with "an affidavit stating the time and place of mailing, the address on the envelope, and the fact that proper postage was prepaid." Since defendant did not file such an affidavit with his letter, he could

not utilize the mailbox rule.

The court refused to take judicial notice of an affidavit, attached as an exhibit to defendant's reply brief, from a paralegal who averred that a manager at the prison where defendant was incarcerated informed her that defendant's letter was mailed on April 3. The court could not properly consider attachments to briefs that were not included in the record. Additionally, the content of the affidavit was entirely hearsay and thus insufficient to establish the date of mailing.

Defendant's letter was therefore not timely filed and the trial court had no jurisdiction to consider his allegations of ineffective assistance of counsel.

People v. Patrick, 406 Ill.App.3d 548, 956 N.E.2d 443 (2d Dist. 2010) The trial court has jurisdiction to consider a successive post-judgment motion where the successive motion is filed within 30 days of the final disposition of preceding post-judgment motion.

Defendant filed a *pro se* motion alleging ineffective assistance of counsel 119 days after the jury's verdict and 40 days after sentencing. But a timely-filed motion to reduce sentence was pending at the time defendant filed his motion. Therefore the court had jurisdiction to consider the *pro se* motion.

People v. Serio, 357 Ill.App.3d 806, 830 N.E.2d 749 (2d Dist. 2005) The trial court has jurisdiction to rule on a successive post-judgment motion that is filed within 30 days after the ruling on a preceding post-judgment motion. Under such circumstances, jurisdiction does not vest in the Appellate Court until the trial court disposes of the successive motion and a timely notice of appeal is filed.

Because defendant's pro se motion alleging ineffective assistance of counsel was filed within 30 days after the denial of defense counsel's motion to reconsider the sentence, the trial court had jurisdiction.

People v. Gilmore, 356 Ill.App.3d 1023, 828 N.E.2d 293 (2d Dist. 2005) The trial judge erred by summarily denying an untimely pro se post-trial motion alleging ineffective assistance of counsel. The trial court has authority to consider an untimely post-trial motion so long as it retains jurisdiction over the cause. Here, the trial court had jurisdiction because a motion to reconsider sentence was pending.

People v. Polk, 349 Ill.App.3d 760, 812 N.E.2d 675 (1st Dist. 2004) Where defendant alleged that his sentence was excessive and that inadequate admonishments precluded him from filing a motion to reconsider the sentence, the cause should be remanded for proper Rule 605(a) admonishments.

People v. Elders, 349 Ill.App.3d 573, 812 N.E.2d 649 (1st Dist. 2004) Although various districts of the Appellate Court have disagreed whether "strict" or "substantial" compliance with Rule 605 is required, the court held that the admonishments here were insufficient to comply even substantially with the rule.

People v. Jones, 349 Ill.App.3d 255, 812 N.E.2d 32 (3d Dist. 2004) Although an appellate court must generally dismiss an appeal when defendant has failed to follow Rule 604(d) by filing a timely motion to reconsider the sentence or to withdraw the guilty plea, the "admonition exception," under which appellate courts may entertain appeals in which the trial court failed to issue proper Rule 605 admonitions, should be applied where there was a

bona fide doubt of defendant's fitness at the time he received the admonitions. "It seems but a small step from an exception for no admonitions at all to an exception for admonishments given to an unfit defendant who cannot understand or comply with them."

People v. Stanbridge, 348 Ill.App.3d 351, 810 N.E.2d 88 (4th Dist. 2004) Although the State asserted on appeal that defendant's motion for new trial had been untimely, and therefore constituted a waiver of the issue raised on appeal, the State forfeited the waiver issue where it chose, in the trial court, to argue the untimely motion on the merits.

People v. Harper, 347 Ill.App.3d 499, 807 N.E.2d 1001 (5th Dist. 2004) Defendant was convicted in a bench trial of first degree murder, and filed a timely post-trial motion. After the motion was denied, new counsel entered the case and moved to reconsider the denial. The motion to reconsider was filed more than three months after trial and alleged several additional grounds, including that new evidence and occurrence witnesses had been discovered.

Although new counsel captioned the motion as one to reconsider, in fact it was a second motion for a new trial raising issues that had not been previously considered. A trial court has discretion to deny leave to file a motion for a new trial that is presented more than 30 days after trial, but also has discretion to consider such a motion. In addition, a trial judge has authority to grant a new trial until such time as defendant is sentenced.

Also, the court rejected the State's argument that because defendant had other avenues for post-judgment or post-conviction review, he suffered no prejudice when the trial court refused to consider his second post-trial motion:

> "This assertion ignores the fact that the safeguards against frivolous petitions may create additional obstacles on the road to reaching a just decision in this case. Giving the trial court discretion to entertain a motion for a new trial when the court retains jurisdiction on other grounds is in line with the purpose of the Code to provide an orderly process for the review of claims that alleviates delay and expense to the judicial system."

People v. Raibley, 338 Ill.App.3d 692, 788 N.E.2d 1221 (4th Dist. 2003) Issues raised on appeal were not waived solely because defendant's post-trial motion was filed more than 30 days after his conviction. By responding to the merits of the motion in the trial court without claiming that the motion was untimely, the State waived any issue of timeliness.

People v. Nestrock, 316 Ill.App.3d 1, 735 N.E.2d 1101 (2d Dist. 2000) The court rejected the State's argument that the Rights of Crime Victims and Witnesses Act (725 ILCS 120/1) and Art. I, §8.1 of the Illinois Constitution (the Crime Victims' Rights Amendment) require that in deciding whether a new trial is required, defendant's rights must be balanced against the victims' rights:

> "This court certainly feels sympathy for the victims' grievous loss. However, as the State well knows, courts must base their decisions on the law, not on sympathy. At the risk of stating the obvious, the Act and the amendment do not alter the fundamental principles on which our legal system is based. Those principles mandate that a conviction based on illegally obtained, inadmissible evidence cannot stand."

People v. Wyatt, 305 Ill.App.3d 291, 712 N.E.2d 343 (2d Dist. 1999) Although a motion to reconsider sentence must be filed within 30 days after sentencing, a court may grant a continuance if required by the interests of justice. Here, defense counsel needed additional time to communicate with defendant, who had been sent to the Department of Corrections, and the trial judge granted a continuance within 30 days after sentencing.

People v. Coleman, 301 Ill.App.3d 37, 704 N.E.2d 690 (1st Dist. 1998) Where laboratory reports indicated that only 7.02 grams of the substance seized from defendant had been tested for heroin, trial counsel was ineffective for stipulating that defendant possessed 70.2 grams of heroin. In addition, the trial court abused its discretion by denying defendant's post-trial motion to vacate the stipulation.

Although stipulations are proper because they tend to promote the disposition of cases, a party may be relieved from a stipulation upon a "seasonably made" application and a clear showing that the stipulated matter is untrue. Here, it would have been appropriate to vacate the stipulation because the defense attorney was ineffective and because, without the stipulation, the State may have lacked evidence to prove an enhanced offense.

People v. Lamb, 265 Ill.App.3d 10, 638 N.E.2d 1203 (2d Dist. 1994) A trial court has discretion to enter an acquittal at the post-trial motion stage, and such an order cannot be appealed by the State. Since the trial court erroneously believed that it had no power to enter an acquittal, and clearly would have done so had it realized its authority, the conviction was reversed outright.

People v. Levesque, 256 Ill.App.3d 639, 628 N.E.2d 272 (1st Dist. 1993) After he was convicted of robbery, defendant filed a pro se motion challenging the effectiveness of defense counsel's representation. The pro se motion was filed thirty-six days after the conviction.

Defendant had been ready to file the motion within thirty days, but acquiesced in the trial judge's request to discuss his complaints with trial counsel before filing the motion. Because the motion would have been timely had defendant been allowed to file it when he first attempted to do so, "it would constitute a grave injustice . . . to hold the defendant, by following the wishes of the circuit court, has waived the issues raised in his post-trial motion."

People v. Villereal, 201 Ill.App.3d 223, 559 N.E.2d 77 (1st Dist. 1990) Defendants were convicted of aggravated battery based on a police officer's testimony that he was attacked by defendants, who took his gun. The officer testified that he grabbed the cylinder of his revolver so that it misfired, causing the firing pin to leave a "dimple" on the back of the cylinder instead of striking the cartridge. Defendants testified that they grabbed the officer's gun after he shot and killed their brother for no reason except that the brother swore. In the course of its deliberations the jury asked for the revolver, which was sent to the jury room.

The post-trial motion alleged newly discovered evidence, and included an expert's affidavit that the "dimple" was merely a manufacturing mark and that the design of the gun prevented the firing pin from striking the cylinder. The trial judge abused its discretion by denying defendant's post-trial motion. The new evidence tended to show that the officer's testimony was at least partially false. In addition, since the jury asked to see the gun during deliberations, it must have considered the officer's testimony about the gun to be important.

People v. Moczarney, 65 Ill.App.3d 410, 382 N.E.2d 544 (1st Dist. 1978) Trial court did not err by refusing to allow argument on defendant's motion for new trial. The trial was short and involved only simple issues.

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