IN THE COURT OF APPEALS 10/29/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00418 COA

TERRY LOUIS LANDINGHAM

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. HENRY ROSS

COURT FROM WHICH APPEALED: ATTALA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

JAMES H. POWELL III

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: W. GLENN WATTS

SPECIAL ASSISTANT ATTORNEY GENERAL

DISTRICT ATTORNEY: DOUG EVANS

NATURE OF THE CASE: CRIMINAL (FELONY)

TRIAL COURT DISPOSITION: AGGRAVATED ASSAULT: SENTENCED TO SERVE 14 YRS IN THE CUSTODY OF THE MDOC; PAY RESTITUTION TO EDWARD ALSTON IN THE AMOUNT OF $1,450.00 WITHIN 1 YEAR OF RELEASE

BEFORE THOMAS, P.J., KING, AND MCMILLIN, JJ.

MCMILLIN, J., FOR THE COURT:

Terry Louis Landingham has appealed his conviction by a jury in the Circuit Court of Attala County of the crime of aggravated assault. His sole ground for reversal of his conviction is that, on the morning of his trial, he was brought into the courtroom in handcuffs in the presence of some or all of the members of the venire. He claims that these events violated his common law right to be tried free from all shackles when in court in the presence of the jury.

The proof indicates that the defendant, in handcuffs only and without leg shackles, was brought into the courtroom in anticipation of the commencement of his trial. He traveled a path that took approximately three or four seconds to a chair where he was seated with his back to the venire members where a railing over three feet high separated him from the venire seating area. Shortly thereafter, the handcuffs were unobtrusively removed in a manner that, the court found, would have been out of the view of the potential jurors. Prior to trial commencing, defense counsel moved for a mistrial or a continuance based upon these events. Instead, the trial court permitted a limited voir dire of the venire panel to determine if any potential jurors observed anything they thought was "unusual" in the way the defendant was brought into the courtroom. Three jurors responded affirmatively and were further questioned outside the presence of the other panel members. Each verified that they had seen the defendant in handcuffs. The trial court excused each of these venire persons.

Defense counsel requested that the remaining panel be further voir dired on the specific issue of whether they had also observed the defendant in handcuffs. The trial court declined, indicating that he was of the opinion that this would merely unduly emphasize the incident and inform potential jurors of the occurrence who would not otherwise have known of it.

We conclude that these events do not require a reversal of the defendant’s conviction in this case. The law in our State has made it quite clear that every technical violation of the common law rule regarding unshackling defendants during trial does not constitute ground for reversal of a conviction. In a case substantially similar to this one, "the deputy sheriff brought [the defendant] into the courtroom in handcuffs in the presence of the members of the special venire. The handcuffs were immediately removed from [the defendant] at the request of his counsel." *Rush v. State,* 301 So. 2d 297, 300 (Miss. 1974). In that case, the supreme court declined to reverse Rush’s subsequent conviction because of this incident, stating that "the failure, through an oversight, to remove handcuffs from a prisoner for a short time or any technical violation of the rule prohibiting shackling, not prejudicial to him, is not ground for reversal." *Id.* at 300.

There is no indication in the record that Landingham’s brief appearance before the venire panel was anything other than an oversight, quickly and quietly corrected. Out of an abundance of caution, the trial court took actions beyond those indicated in *Rush* by removing all those jurors who claimed to have seen anything "unusual" in the manner of Landingham’s entrance. Such inquiry was, certainly, not precise in identifying those potential jurors who saw Landingham in handcuffs, since there is the possibility that other venire members may not have considered a prisoner in handcuffs to be an

"unusual" occurrence and, therefore, failed to respond to the voir dire inquiry. However, anything more specific would have deprived the defendant of the benefit of the fact that most potential jurors apparently saw nothing by explicitly pointing out as a fact a circumstance that they had failed to observe. It must be remembered that *Rush* does not suggest the necessity of removing any jurors who may have actually made such an observation. Rather, the emphasis of *Rush* is on the nature of the incident and its reasonable potential to unfairly prejudice the defendant in the eyes of potential jury members who, on the facts of *Rush*, apparently did briefly observe the handcuffed defendant.

We conclude that this brief incident, either unobserved by most of the venire members or found unremarkable by those who might have seen Landingham in handcuffs for the briefest of

moments, was not so prejudicial to his right to a fair trial as to require this Court to reverse this conviction.

THE JUDGMENT OF THE ATTALA COUNTY CIRCUIT COURT OF CONVICTION OF THE CRIME OF AGGRAVATED ASSAULT, SENTENCE OF FOURTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, AND ORDER TO PAY RESTITUTION IN THE AMOUNT OF $1,450.00 TO EDWARD ALSTON IS AFFIRMED. THIS SENTENCE IS TO BE SERVED CONSECUTIVELY WITH ANY OTHER SENTENCE PREVIOUSLY IMPOSED. COSTS OF THIS APPEAL ARE ASSESSED TO ATTALA COUNTY.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.