

IN THE COURT OF APPEALS 12/29/95
OF THE
STATE OF MISSISSIPPI
NO. 94-KA-00888 COA

ROBERT LEE WILLIAMS

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. RICHARD T. WATSON

COURT FROM WHICH APPEALED: ADAMS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

PAMELA A. FERRINGTON

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: PAT FLYNN

DISTRICT ATTORNEY: ALONZO H. STURGEON

NATURE OF THE CASE: ATTEMPTED ROBBERY

TRIAL COURT DISPOSITION: CONVICTED AND SENTENCED TO 15 YEARS IN THE
CUSTODY OF THE MDOC AS AN HABITUAL OFFENDER.

BEFORE FRAISER, C.J., KING, AND SOUTHWICK, JJ.

FRAISER, C.J., FOR THE COURT:

Robert Lee Williams was convicted of attempted robbery in the Adams County Circuit Court and sentenced to 15 years in the custody of the Mississippi Department of Corrections as an habitual offender. On appeal, Williams asserts that the presumption of innocence to which he was entitled was irreparably damaged by the trial court's ordering him shackled and gagged during part of voir dire. Because the trial judge was constitutionally permitted to temporarily bind and shackle Williams where Williams had threatened the court and its officers and repeatedly interrupted voir dire, we affirm.

FACTS

Williams was on trial for attempted robbery in the Adams County Circuit Court. Once counsel announced ready for trial, Williams began to shout and interrupt the trial judge. After the third interruption, the trial judge threatened to have Williams bound and gagged. Williams persisted in loudly interrupting the trial court proceedings; consequently, the judge called a recess and met with Williams and counsel for both sides in chambers. The trial judge attempted to placate Williams, but he became increasingly disrespectful and violent. After threatening and cursing the trial judge and counsel, Williams was shackled, gagged, and returned to the courtroom. He remained restrained until the end of voir dire when he was again given a chance by the judge to conduct himself in an acceptable manner, which he did.

DISCUSSION

The principle that there is a presumption of innocence in favor of the accused in a criminal prosecution is "fundamental." *Estelle v. Williams*, 425 U.S. 501, 503-04 (1976). Its enforcement lies at the foundation of the administration of our criminal justice system. *Taylor v. Kentucky*, 436 U.S. 478, 483 (1978). Though not expressly written into the Bill of Rights, the presumption of innocence has long been recognized as the logical corollary of the principle that the prosecution bears the burden of proof beyond a reasonable doubt, a proposition which has been accorded federal constitutional status. *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979). The Mississippi Supreme Court has noted that bringing a prisoner into court in shackles may be a violation of the presumption of innocence. *Hickson v. State*, 472 So. 2d 379, 383 (Miss. 1985). However, a prisoner may be bound and shackled in front of the jury when he is a threat to the security or decorum of the trial court. *Id.*

We emphasize that, in the face of a present threat to security or the order and decorum of the proceedings, the trial judge is not without remedial authority. Rule 5.01 of our Uniform Criminal Rules of Circuit Court Practice provides that:

No conduct interfering with or obstructing the administration of justice shall be tolerated.

See Walters v. State, 391 So. 2d 645, 651 (Miss. 1980). Yet *one on trial for life or liberty may in the presence of the jury be handcuffed or otherwise shackled only by reason of a clear and present danger to order or security.*

Hickson, 472 So. 2d at 383-84 (emphasis added). The United States Supreme Court has held binding and gagging an obstreperous defendant constitutionally permissible. The United States Supreme Court stated:

It is essential to the proper administration of criminal justice that dignity, order, and decorum be the hallmarks of all court proceedings in our country. The flagrant disregard in the courtroom of elementary standards of proper conduct should not and cannot be tolerated. We believe trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case. No one formula for maintaining the appropriate courtroom atmosphere will be best in all situations. We think *there are at least three constitutionally permissible ways for a trial judge to handle an obstreperous defendant* like Allen: (1) bind and gag him, thereby keeping him present; (2) cite him for contempt; (3) take him out of the courtroom until he promises to conduct himself properly.

Illinois v. Allen, 397 U.S. 337, 343-44 (1970).

The trial judge did not err by binding and gagging Williams under Mississippi or United States Supreme Court precedent. The trial judge was very patient. He endured at least nine interruptions in court before he had a private meeting with Williams and counsel for both sides at which Williams became increasingly rude and insulting. The trial judge did not order Williams bound and gagged until he became violent and proved that he would continue to be loud and unruly. Clearly Williams was a clear and present danger to the order or security of the Adams County Circuit Court. Further, the trial judge had the restraints removed as soon as Williams proved he could behave himself, which occurred before opening arguments.

Williams cites authority from other jurisdictions which require a trial judge to threaten a defendant with contempt and to remove them from the trial before resorting to binding and gagging the defendant. William's cited authority is neither the law of the United States nor of Mississippi; therefore, we decline to follow it.

For all of the foregoing reasons, we affirm the verdict of the trial court.

THE JUDGMENT OF CONVICTION OF ROBERT LEE WILLIAMS BY THE CIRCUIT COURT OF ADAMS COUNTY OF ATTEMPTED ROBBERY AND THE SENTENCE OF FIFTEEN YEARS AS AN HABITUAL OFFENDER IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED, WITH ALL COSTS OF THIS APPEAL TAXED TO ADAMS COUNTY.

BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.

