STATE OF LOUISIANA

VERSUS

SIDNEY KRISTOPHER SMITH

NO. 17-KA-296

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT
PARISH OF ST. CHARLES, STATE OF LOUISIANA
NO. 15,184, DIVISION "D"
HONORABLE M. LAUREN LEMMON, JUDGE PRESIDING

November 15, 2017

HANS J. LILJEBERG
JUDGE

Panel composed of Judges Marc E. Johnson,
Robert M. Murphy, and Hans J. Liljeberg

AFFIRMED

HJL
MEJ
RMM

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Joel T. Chaisson, II
Louis G. Authement

COUNSEL FOR DEFENDANT/APPELLANT,
SIDNEY KRISTOPHER SMITH

Bruce G. Whittaker

LILJEBERG, J.

Defendant, Sidney Kristopher Smith, appeals his conviction for manslaughter. For the following reasons, we affirm defendant's conviction and sentence.

PROCEDURAL HISTORY

On June 19, 2015, a St. Charles Parish Grand Jury indicted defendant with the second degree murder of Warren Sanders, a violation of La. R.S. 14:30.1. Defendant pleaded not guilty on July 8, 2015.

Prior to the start of voir dire on October 17, 2016, the parties informed the trial judge that approximately thirty to forty members of the jury venire were in the courtroom when deputies escorted defendant into the courtroom secured in handcuffs and shackles. The record indicates defendant was immediately removed from the courtroom. Defendant moved for a mistrial asserting that his presence in restraints in front of the venire was likely to have a prejudicial effect on his case and his presumption of innocence. The trial court denied defendant's motion for a mistrial after questioning the attorneys regarding the number of prospective jurors present, how long defendant was in the courtroom, and how far into the courtroom defendant walked before he was removed from the courtroom.

On October 17-19, 2016, the case was tried before a twelve-person jury that found defendant guilty of the responsive verdict of manslaughter. The trial court sentenced defendant on December 20, 2016, to thirty-two years in the Department of Corrections.[1] Immediately following sentencing, defendant filed a motion for appeal which was granted by the trial court on the same day.

[1] Although the trial court did not state that defendant's sentence was to be served at hard labor, "a sentence committing a prisoner to the Department of Corrections is necessarily at hard labor." *State v. Lawson*, 04-334 (La. App. 5 Cir. 9/28/04), 885 So.2d 618, 621, fn. 2, *writ denied*, 05-244 (La. 12/9/05), 916 So.2d 1048.

FACTS

On the evening of April 18, 2015, Detective Jason Tiliakos of the St. Charles Parish Sheriff's Office responded to a call regarding a shooting on the Eastbank of St. Charles Parish. Upon arrival, Detective Tiliakos observed a distraught woman pacing on East Terrace Street and a male, later identified as the victim, Warren Sanders, lying in a nearby ditch. Detective Tiliakos further observed that the man sustained multiple gunshot wounds, including one to the back of his head. He also observed a tan hat on the shoulder of the roadway near the victim's unresponsive body.

The distraught woman was identified as Lacie Gloud. According to Ms. Gloud, she was in an on-and-off relationship with Mr. Sanders for the past eight and a half years. Approximately one year prior to the shooting, Ms. Gloud met defendant and became romantically involved with him, while still dating Mr. Sanders. According to Ms. Gloud, Mr. Sanders was unaware of her relationship with defendant, but defendant knew of her relationship with Mr. Sanders and never indicated his disapproval. It appeared to her that the men remained friendly with one another.

On April 18, 2015, Ms. Gloud and her children were at defendant's house. They had been there for a week lending support to defendant as he grieved the loss of his aunt. During that time, Ms. Gloud stated that defendant was "sad" and recalled that he told her that "he would catch a body," meaning, "someone was going to get hurt." Later that evening, Mr. Sanders telephoned Ms. Gloud and told her he was at her house. Mr. Sanders asked Ms. Gloud to leave defendant's house and come home. When Ms. Gloud advised defendant that she was going home with her children to meet Mr. Sanders, defendant suggested that she tell him to pick her up from his house instead. Ms. Gloud rejected defendant's suggestion as

disrespectful, causing defendant to become upset. Ms. Gloud then proceeded to pack her belongings in preparation to leave.

Before Ms. Gloud finished packing, defendant left his house wearing a tan and green-colored hat. Ms. Gloud followed defendant and observed him reach into his car and then walk down the street. Ms. Gloud walked out into the street and saw Mr. Sanders' vehicle down the street and defendant walking quickly towards it. As defendant was approaching, Mr. Sanders called Ms. Gloud, but before she was able to warn him that defendant was approaching his car, the phone disconnected. Ms. Gloud then began walking down the street with her children and yelling at defendant to stop. Despite her pleas, defendant continued to approach Mr. Sanders' vehicle and she heard defendant tell Mr. Sanders to get out his neighborhood. Mr. Sanders replied that he did not want any trouble, and defendant responded by saying, "you would say that, when I got a gun in your face."

During this exchange, Mr. Sanders was in his vehicle, while defendant stood outside. Moments later, Mr. Sanders exited his vehicle, at which time Ms. Gloud heard the first gunshot. Ms. Gloud explained that defendant was standing in front of the car door and that when Mr. Sanders opened it, the door pushed defendant backwards. Ms. Gloud stated Mr. Sanders and defendant were within inches of one another when she heard the first gunshot, followed by several more gunshots a few seconds later. Defendant then walked back up the street towards Ms. Gloud, attempted to kiss her, and remarked "I guess you don't love me anymore," before proceeding back to his house. Ms. Gloud noticed that when defendant approached her, he was no longer wearing his hat.[2]

[2] Ms. Gloud identified the hat in evidence as the same hat worn by defendant on the night of the shooting. Defendant could not be excluded as a contributor of the DNA found in the hat recovered at the scene.

Ms. Gloud then walked down the street to Mr. Sanders' vehicle and called his name. She could not find Mr. Sanders and thought he ran to her house; so she put her children in his car and drove them back to her house. At her house she found defendant's friend, Kenny King, and told him defendant and Mr. Sanders argued and defendant "shot behind" Mr. Sanders. Ms. Gloud and Mr. King then walked back to the scene of the shooting, stopping first to look for defendant at his mother's house. Defendant was not there and Ms. Gloud told defendant's mother about the shooting. Ms. Gloud and Mr. King then continued to look for Mr. Sanders, and they found him lying unresponsive in a ditch next to where he parked his vehicle at the time of the shooting.[3]

Corporal Lance Richards of the St. Charles Parish Sheriff's Office testified that he obtained a statement from Ms. Gloud. Corporal Richards found her to be very nervous and distraught. Based on his interview with Ms. Gloud, Corporal Richards developed defendant as a suspect. An arrest warrant was issued, and defendant was apprehended after he turned himself in to the police approximately twenty-four hours after the shooting.

Dr. Richard Tracy, an expert in the field of forensic pathology, performed the autopsy on the victim. He noted that the victim sustained two gunshot wounds—one to the left side of his chest and one to the back of his head. The manner of death was classified by medical expert, Dr. Brian Brogle, as a homicide.

DISCUSSION

On appeal, defendant first contends the trial judge erred in denying his motion for mistrial based on prejudice he suffered as a result of being handcuffed and shackled in the presence of prospective jurors prior to voir dire. He argues his

[3] Mr. King, a close friend of defendant, corroborated Ms. Gloud's testimony, testifying that on the night of the shooting he was at Ms. Gloud's house with her sister. Mr. King was unaware that a shooting had occurred until Ms. Gloud retrieved him and brought him to the residence of defendant's mother located a few blocks away. After speaking with defendant's mother, Mr. King and Ms. Gloud left and began walking along East Terrace Street, where they observed the victim in a nearby ditch. Ms. Gloud called 9-1-1, while Mr. King proceeded back to the house where defendant's mother resided to inform her of what he witnessed.

appearance before the jury in handcuffs and shackles hindered his presumption of innocence and right to a fair trial.

The State argues that there is no evidence to establish that any of the prospective jurors actually observed defendant in restraints for the brief period of time he was in the courtroom or whether any of the potential jurors who may have observed the restraints were ultimately selected to serve on the jury. The State contends that the trial court correctly denied defendant's motion for mistrial, and further notes that adequate voir dire ensured defendant's presumption of innocence remained intact.

La. C.Cr.P. art. 775 provides that a mistrial shall be ordered upon motion of the defendant "when prejudicial conduct in or outside the courtroom makes it impossible for the defendant to obtain a fair trial, or when authorized by Article 770 or 771." The incident defendant complains of is not one of the mandatory grounds for mistrial enumerated in La. C.Cr.P. art. 770.[4]

"A mistrial is a drastic remedy and, except in instances in which a mistrial is mandatory, is warranted only when trial error results in substantial prejudice to defendant, depriving him of a reasonable expectation of a fair trial." *State v. Smith*, 04-340 (La. App. 5 Cir. 10/26/04), 888 So.2d 280, 285. "Whether a mistrial should be granted is within the sound discretion of the trial court and the denial of

[4] La. C.Cr.P. art. 770 provides:

> Upon motion of a defendant, a mistrial shall be ordered when a remark or comment, made within the hearing of the jury by the judge, district attorney, or a court official, during the trial or in argument, refers directly or indirectly to:
>
> (1) Race, religion, color or national origin, if the remark or comment is not material and relevant and might create prejudice against the defendant in the mind of the jury;
>
> (2) Another crime committed or alleged to have been committed by the defendant as to which evidence is not admissible;
>
> (3) The failure of the defendant to testify in his own defense; or
>
> (4) The refusal of the judge to direct a verdict.
>
> An admonition to the jury to disregard the remark or comment shall not be sufficient to prevent a mistrial. If the defendant, however, requests that only an admonition be given, the court shall admonish the jury to disregard the remark or comment but shall not declare a mistrial.

a motion for mistrial will not be disturbed absent an abuse of that discretion." *Id.* The standard to judge whether a mistrial should have been granted is whether the defendant "suffers such substantial prejudice that he has been deprived of any reasonable expectation of a fair trial." *State v. Smith*, 433 So.2d 688, 696 (La. 1983); *State v. Cushenberry*, 407 So.2d 700 (La. 1981).

"Ordinarily, a defendant before the court should not be shackled or handcuffed or garbed in any manner destructive of the presumption of his innocence and of the dignity and impartiality of judicial proceedings." *State v. Wilkerson*, 403 So.2d 652, 659 (La. 1981). However, the mere fact that the defendant appeared in handcuffs before a jury does not, in and of itself, constitute a basis for reversal of his conviction. *State ex. rel. Cockerham v. Butler*, 515 So.2d 1134, 1137 (La. App. 5 Cir. 1987). Courts are hesitant to find that the momentary use of shackles or handcuffs for the limited purpose of transporting an accused mandates a mistrial. Rather, the defendant must show that jurors viewed him in restraints and that this resulted in prejudice to the defendant which affected the verdict. *Wilkerson, supra*; *Cockerham, supra; State v. Cleveland*, 25,628 (La. App. 2 Cir. 1/19/94), 630 So.2d 1365, 1370.

In *Wilkerson, supra*, trial was adjourned for the day. Before the jury was able to file out of the courtroom, a member of the sheriff's office handcuffed the defendant and his co-defendant. More than half of the jury passed within three or four feet of the defendant and, as the defendant argued, saw that he was handcuffed. On this basis, defense counsel moved for a mistrial. The Louisiana Supreme Court affirmed the denial of the motion for mistrial. 403 So.2d at 659. It stated that the defendant's apparent disregard for the authority and lives of police officers would suggest some security measures were in order. It noted that the defendant and his co-defendant were not handcuffed during trial but solely for purposes of transport to and from the courtroom. It found that, under the

circumstances, the possibility that on one occasion several jurors may have seen the defendant in handcuffs did not appear to have so prejudiced the defendant as to warrant relief on appeal. *Id.*

In *State v. Logan*, 07-739 (La. App. 5 Cir. 5/27/08), 986 So.2d 772, 786, *writ denied*, 08-1525 (La. 3/13/09), 5 So.3d 117, the defendant filed a motion for new trial arguing that his right to due process was violated when a juror viewed him wearing shackles during the trial. A deputy testified at the hearing that a juror may have seen the defendant in shackles while he was being transported from the courtroom to the jail. This Court found that the trial court did not abuse its discretion by denying the motion for new trial on the basis of one juror inadvertently observing the defendant in shackles and handcuffs. *Id*. at 788-89. This Court noted the defendant was only shackled and handcuffed for purposes of transport to and from the courtroom, and not during the trial, and that the juror may not have seen the defendant in restraints. *Id*. at 789. This Court found that, even assuming the juror did see the defendant in restraints, the brief incident did not appear to have so prejudiced the defendant as to warrant relief on appeal. *Id*.

Also, in *State v. Smith*, 504 So.2d 1070 (La. App. 1st Cir. 1987), *writ denied*, 520 So.2d 423 (La. 1988), the defendant moved for a mistrial when it was brought to the court's attention that several jurors witnessed defendant leaving the courtroom in handcuffs and shackles during the trial. In denying the defendant's motion, the trial court reasoned that to ensure courtroom security, it required the defendant be shackled and handcuffed at certain times, particularly when being transported between jail and the courtroom. The defendant objected to the court's ruling and requested the court admonish those jurors who actually saw defendant in shackles and handcuffs to disregard same. The trial court refused the defendant's request, opining that the admonishment would merely aggravate the situation and raise the curiosity of the other jury members.

On appeal, the defendant argued that his presence before certain members of the jury in handcuffs and shackles may have prejudiced the jury and thus deprived him of a fair trial. In upholding the defendant's conviction, the First Circuit agreed with the trial court, finding there was no showing that the use of restraints prejudicially affected the accused and thus did not warrant the overturning of his conviction. *Id.* at 1078. It further reasoned that there was no showing that the jurors were influenced by seeing the defendant in restraints, nor that they could not render a fair and impartial verdict based on the evidence. *Id.*

Lastly, in *State v. Nelson*, 46,915 (La. App. 2 Cir. 2/29/12), 86 So.3d 747, 751-52, the Second Circuit found the trial court did not abuse its discretion by denying the defendant's motion for mistrial on the basis that it was possible that a member of the jury venire might have seen the defendant sitting in the courtroom in shackles on the morning that jury selection commenced. The record contained no evidence that any of the prospective jurors actually saw the defendant in restraints. Further, the court noted that the defendant was not shackled or handcuffed during trial. Accordingly, the court reasoned that the only evidence of potential prejudice was the fact that there were three seats in which prospective jurors could possibly have been afforded a view of the defendant's legs during the time period in which he was restrained. *Id.* The court further noted that there was no evidence that those prospective jurors actually served on the jury. *Id.*

During voir dire in the instant matter, the jury members selected for the panel stated an ability to presume defendant's innocence. Furthermore, even if some members of the venire saw defendant in restraints, there was no showing made that these prospective jurors actually served on the jury.[5] Additionally, even

[5] According to the record, approximately thirty to forty members of the venire were filing into the courtroom at the time defendant was brought into the courtroom in restraints. The minute entry from the first day of trial indicates that a total of ninety potential jurors were present when the venire was polled in open court.

assuming defendant's restraints were in fact observed by prospective jurors ultimately selected, a momentary observation does not automatically mandate a mistrial or reversal. We find no indication in the record that defendant's brief appearance in restraints prejudiced defendant to the extent that it effected the verdict. Therefore, the trial court did not abuse its discretion in denying defendant's motion for mistrial.

Defendant also argues on appeal that the trial court erred in prohibiting defense counsel from directly questioning the prospective jurors during voir dire about observing the defendant in restraints. Defendant claims that such questioning would have aided in the determination of whether their possible observation would impact their ability to give defendant the benefit of the presumption of innocence. Such prohibition, defendant argues, denied him his constitutional right to full voir dire, essential to the intelligent exercise of peremptory and cause challenges.

In response, the State maintains that the trial court did not restrict the parties' ability to question any juror who may have expressed a concern over defendant's presumption of innocence, and as such, defendant was permitted to conduct a full and complete voir dire.

Although an accused in Louisiana has the right to full voir dire examination of prospective jurors, the scope of the examination during voir dire shall be within the discretion of the trial court. La. C.Cr.P. art. 786. Because the right to full voir dire examination has a constitutional basis, wide latitude should be given to the defendant to test prospective jurors' competency and impartiality. La. Const., art. 1, §17; *State v. James*, 431 So.2d 399, 403 (La. 1983), *cert. denied*, 464 U.S. 908, 104 S.Ct. 263, 78 L.Ed.2d 247 (1983). "The accused's right to intelligently exercise cause and peremptory challenges may not be curtailed by the exclusion of non-repetitious voir dire questions which reasonably explore the juror's potential

prejudices, predispositions or misunderstandings relevant to the central issues of the particular case." *State v. Duplessis*, 457 So.2d 604, 606 (La. 1984).

A trial judge in a criminal case does have discretion to limit voir dire examination "as long as the limitation is not so restrictive as to deprive defense counsel of a reasonable opportunity to probe to determine a basis for challenges for cause and for the intelligent exercise of peremptory challenges." *Id.* On review, an examination of the entire voir dire must be made to determine whether the trial court abused its discretion. *Id.*

Based on our review of the entire record, defendant's voir dire was not unduly restricted. While the trial court advised the parties not to ask the prospective jurors specific questions as to whether they observed defendant in shackles and handcuffs so as to limit drawing additional attention to the issue, the trial court acknowledged that the issue could be explored during the discussion of the concept of defendant's presumption of innocence, if jurors expressed any reservations on this issue. The record indicates that during voir dire, the trial court addressed the law regarding the presumption of innocence and the prospective jurors indicated their ability to accept the law. The State and defense counsel questioned the prospective jurors in detail regarding defendant's presumption of innocence and whether they believed defendant, at that time, had committed any crime. The record does not contain any further requests by defendant to explore the issue of whether a prospective juror observed him in restraints in the courtroom based on the prospective jurors' responses to questions regarding the presumption of innocence.

Accordingly, we find the trial court did not abuse its discretion as it did not unduly restrict defendant's voir dire examination.

ERROR PATENT DISCUSSION

The record was reviewed for errors patent, according to La. C.Cr.P. art. 920; *State v. Oliveaux*, 312 So.2d 337 (La. 1975); and *State v. Weiland*, 556 So.2d 175 (La. App. 5 Cir. 1990). The following matter is presented for the panel's review.

Neither the transcript nor the minute entry indicates that the trial court advised defendant of the applicable prescriptive period for post-conviction relief. It is well-settled that if a trial court fails to provide an advisal, pursuant to La. C.Cr.P. art. 930.8, the appellate court may correct this error by informing the defendant of the applicable prescriptive period for post-conviction relief. *See State v. Neely*, 08-707 (La. App. 5 Cir. 12/16/08), 3 So.3d 532, 538, *writ denied*, 09-0248 (La. 10/30/09), 21 So.3d 272; *State v. Davenport*, 08-463 (La. App. 5 Cir. 11/25/08), 2 So.3d 445, 451, *writ denied*, 09-0158 (La. 10/16/09), 19 So.3d 473. Accordingly, we advise defendant by way of this opinion that no application for post-conviction relief, including applications which seek an out-of-time appeal, shall be considered if filed more than two years after the judgment of conviction and sentence has become final under the provisions of La. C.Cr.P. arts. 914 or 922.

AFFIRMED

FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **NOVEMBER 15, 2017** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

17-KA-296

E-NOTIFIED
29TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE M. LAUREN LEMMON (DISTRICT JUDGE)
LOUIS G. AUTHEMENT (APPELLEE)

MAILED
BRUCE G. WHITTAKER (APPELLANT)
ATTORNEY AT LAW
LOUISIANA APPELLATE PROJECT
1215 PRYTANIA STREET
SUITE 332
NEW ORLEANS, LA 70130

HON. JOEL T. CHAISSON, II (APPELLEE)
DISTRICT ATTORNEY
TWENTY-NINTH JUDICIAL DISTRICT COURT
POST OFFICE BOX 680
HAHNVILLE, LA 70057