

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2002-KA-0252**
VERSUS * **COURT OF APPEAL**
ALVIN G. PURNELL * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 420-122, SECTION "H"
Honorable Camille Buras, Judge
* * * * *
Judge Dennis R. Bagneris, Sr.
* * * * *

(Court composed of Judge Miriam G. Waltzer, Judge James F. McKay III,
and Judge Dennis R. Bagneris, Sr.)

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AFFIRMED

Defendant, Alvin G. Purnell, was charged by bill of information with possession of a firearm while in possession of crack cocaine, a violation of La. R.S. 14:95(E). Defendant pled not guilty and, after a jury trial, was found guilty as charged. After the appropriate sentencing delays, the trial court sentenced defendant to nine years at hard labor without benefit of probation, parole, or suspension with credit for time served. Defendant now appeals alleging that the trial court erred when it denied his motion for mistrial after he appeared in handcuffs at trial before the jury.

On February 12, 2001, Mr. Purnell was arrested in New Orleans after two plain-clothes police officers in an unmarked police car observed him with what was believed to be a crack pipe. The officers apprehended Mr. Purnell after chasing him on foot. As he turned to put up his hands, the officer observed Mr. Purnell throw a plastic bag over a nearby wall. The officers recovered the bag, which contained fourteen pieces of rock cocaine, and a gun without ammunition. The alleged crack pipe was never recovered.

A review of the record for errors patent reveals none.

On appeal, Mr. Purnell argues that the trial court erred when it denied his motion for a mistrial after he appeared in handcuffs before the jury. Ordinarily, a defendant should not be handcuffed for trial, as this may destroy the presumption of innocence and the dignity of the judicial proceedings. *State v. Wilkerson*, 403 So. 2d 652 (La. 1981). The determination to grant a mistrial lies within the sound discretion of the trial court. *Wilkerson*, 403 So. 2d 652, 659 (La. 1981). A mistrial is a drastic remedy that should only be granted on a showing of substantial prejudice to defendant, which effectively deprives him of a fair trial. *State v. Payne*, 482 So. 2d 178, 181 (La. App. 4 Cir. 1/15/86).

The Louisiana State Supreme Court addressed this specific issue in *Wilkerson*. 403 So.2d at 659. In *Wilkerson*, a sheriff handcuffed the defendant before the jury left the courtroom. *Id.* More than one-half of the jury passed within three or four feet of the defendant. *Id.* The defendant argued that the jury must have seen him handcuffed, and thus, moved for a mistrial. The trial court denied the motion for mistrial. The Louisiana State Supreme Court affirmed, stating that “[u]nder the circumstances, the possibility that on one occasion several jurors *may* have seen the defendant in handcuffs does not appear to have so prejudiced the defendant as to warrant relief on appeal.” [emphasis added] *Id.*

Likewise, in this case, we do not find that the facts of this case so prejudiced Mr. Purnell as to deprive him of a fair trial. A review of the transcript reveals that after a brief recess, Mr. Purnell stood up as the jury entered the courtroom. At that time, defense counsel objected on the grounds that his client was still handcuffed as the jury came back into the courtroom, and he requested a mistrial. The trial judge denied defendant's motion for a mistrial. Specifically, the trial judge stated:

I'm going to deny the motion for mistrial at this time. I can't say that anyone in the jury noticed it, but it was a very, very brief time. Most of the jurors were looking -- their attention was at me here on the bench and not directed towards the audience....

At that time, the trial judge offered to admonish the jury; however, defense counsel declined, arguing that only a mistrial would be appropriate. Again, the trial court denied the motion for a mistrial.

Despite Mr. Purnell's claim that he was forced to appear at trial in handcuffs, we find that Mr. Purnell's exposure to the jury in handcuffs was brief and did not deprive him of a fair trial. Further, we find that the trial court was reasonable in its finding that there was no indication that the jury even noticed Mr. Purnell handcuffed. Thus, we do not find that the trial court abused its discretion in denying defendant's motion for a mistrial. Accordingly, we affirm Mr. Purnell's conviction and sentence.

AFFIRMED