George JOHNSON *v.* STATE of Arkansas

CR 76-222   546 S.W. 2d 719

Opinion delivered February 28, 1977
(Division II)

CRIMINAL LAW — PREJUDICE — PROOF. — It is not prejudice per se to
   bring a defendant into the courtroom handcuffed, and the
   Supreme Court cannot presume prejudice in the absence of any
   proof.

Appeal from Jefferson Circuit Court, *Randall L. Williams*,
Judge; affirmed.

James O. Fels, for appellant.

Bill Clinton, Atty. Gen., by: *Gary Isbell*, Asst. Atty. Gen.,
for appellee.

DARRELL HICKMAN, Justice. George Johnson was con-
victed in the Circuit Court of Jefferson County of escaping
from the Department of Corrections. The only issue on
appeal is Johnson's allegation that he should have been
granted a mistrial because he was brought into the courtroom
before the jury handcuffed.

Before the trial started, Johnson's attorney notified
the trial judge of the fact that Johnson was brought into the
courtroom in handcuffs before the jury. There was no
hearing held and this simple fact was presented to the judge.
The judge ruled that he could find no prejudice and de-
nied the motion for a mistrial.

Normally, a defendant should not be brought into a
courtroom handcuffed. However, such an act is not prej-
udicial *per se*. In this case, the defendant was charged with
being an escapee from the penitentiary; he was an inmate at
the time of the trial. All of this would become known to the
jury during trial. There is nothing in the record to indicate
what impression may have been made on the jurors, and on
these facts, we cannot presume prejudice. *McCoy* v.
Wainwright, 396 F. 2d 818 (5th Cir. 1968).

In order to justify a new trial, the error must appear to have seriously affected the fairness of the trial. Johnson did not offer any proof of prejudice and we can find no abuse of discretion by the trial judge in denying the motion for mistrial. See *Barksdale* v. *State*, 255 Ark. 272, 499 S.W. 2d 851 (1973), and *Gregory* v. *United States*, 365 F. 2d 203 (8th Cir. 1966).

Affirmed.

We agree. HARRIS, C.J., and FOGLEMAN and ROY, JJ.