

IN THE COURT OF APPEALS 12/17/96

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00783 COA

CHARLES ANTHONY FLOYD

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 WAYNE MCKENZIE

COURT FROM WHICH APPEALED: FORREST COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

JEFFREY BRADLEY

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: SCOTT STUART

DISTRICT ATTORNEY: GLENN WHITE

NATURE OF THE CASE: CRIMINAL- BURGLARY OF OCCUPIED

DWELLING

TRIAL COURT DISPOSITION: GUILTY- CT 1 BURGLARY OF OCCUPIED DWELLING IN
THE NIGHTTIME ARMED WITH DEADLY WEAPON; HABITUAL OFFENDER; 25 YRS
WITHOUT PAROLE; CT'S 2 & 3 ATTEMPTED ARMED ROBBERY; EACH CT 38 YRS
WITHOUT PAROLE; CT 2 CONSECUTIVE CT 1; CT 3 CONSECUTIVE CT'S 1 & 2

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

DIAZ, J., FOR THE COURT:

Charles Anthony Floyd (Floyd), was convicted in the Forrest County Circuit Court of one count of burglary of an occupied dwelling with a deadly weapon, and two counts of attempted armed robbery. Floyd was sentenced to serve twenty-five (25) years without parole for the first count as an habitual offender, and thirty-eight (38) years without parole for each of the two counts of attempted armed robbery. Aggrieved from this judgment, Floyd appeals to this Court asserting the sole issue that the trial court erred in denying his motion for a mistrial based on his claim that the jury verdict was not unanimous. Finding no reversible error, we affirm.

FACTS

On April 20, 1994, the Hattiesburg Police Department received an emergency 911 call from Candace Rouse. Apparently a man broke into the house where she lived with her mother, sister, and nephew. Candace hid in a closet with her nephew, while her mother and sister were in the living room with the Appellant, Floyd. Holding a tire tool, Floyd demanded money from Rita and Ginger Rouse, Candace's mother and sister. When the women told Floyd that they had no money, he demanded to see their purses. Finding no money in either of the women's purses, he kept demanding money, while getting angrier and hitting the tool in the palm of his hand. Floyd asked if the women had a savings account. Rita then told him that he could take the VCR. As Rita and Ginger helped him unhook the VCR, the police arrived. When the police arrived, Floyd attempted to escape through the back door. The two women ran out through the front door. Unable to escape through the back door, Floyd was forced to run through the front door when he was arrested.

DISCUSSION

Floyd argues that the verdict was defective because one of the jurors had a question about the intent to use the deadly weapon. The Court pulled the juror aside and the following questions ensued:

By the Court: Ms. Gray, is that your verdict?

Ms. Gray: Yes, sir, but I have something.

Court: Let me---

Gray: That's my verdict.

Court: That's all we need to know at this point in time.

Ms. Gray comes around.

Court: Okay. You indicated you obviously had--

Gray: The first agreement that we voted on, the weapon, I need some clarification on it, I just don't think I understand. Some clarification on entering the house with the intent to use a deadly weapon.

Pause in proceedings.

Court: Now tell me again, when I asked you was that your verdict, you said yes, and you said you had a question.

Gray: Yes, but that is my verdict.

Court: That is your verdict and there is no mistake about that.

Gray: There's no mistake about that.

Court: What was your question?

Gray: I really don't understand- what I'm trying to get over, I really didn't quite understand him going into the house with intent to use a deadly weapon for bodily harm. Am I pointing that out right? I didn't quite, I didn't think that was the intention but I was wrong.

Court: When you say that, you did vote that, didn't you?

Gray: Yes, I voted it.

Court: And that was your verdict?

Gray: Yes, sir. It was my verdict.

Court: Were you coerced by any of the jurors?

Gray: No.

Court: Did you vote something against your own will and belief?

Gray: No, sir.

Floyd argues that the trial judge should have granted a mistrial because one of the jurors had a question about whether or not the tire tool was a deadly weapon. Therefore, he argues that the State did not meet its burden of proof. We do not find that from the colloquy that was had with the juror in question. From the above, it is apparent that the juror had a question as to whether Floyd intended to use the tire tool, in this case, to cause bodily harm.

Floyd was indicted for one count of burglary of an occupied dwelling armed with a deadly weapon, and two counts of attempted armed robbery. The State was not required to prove intent to cause bodily injury in any of the three counts with which Floyd was charged. Furthermore, the lower court followed the proper procedure prescribed by our supreme court as to whether the verdict was unanimous. Upon the jury reaching a decision, the judge should ask whether the verdict was the verdict of each member of the jury. *Edwards v. State*, 615 So. 2d 590, 599 (Miss. 1993). This procedure was followed by the court below. This Court must presume that each juror answered truthfully when polled individually. *Edwards*, 615 So. 2d at 599. In the present case, Ms. Gray was questioned thoroughly as to whether that was her verdict. Her only question was whether Floyd had the intent to cause bodily injury with the deadly weapon. Intent to cause bodily injury is not an element of any of the charges that Floyd faced in this case. Therefore, the lower court did not err in denying a mistrial. Finding no merit to this appeal, we affirm the judgment.

THE JUDGMENT OF CONVICTION IN THE FORREST COUNTY CIRCUIT COURT OF COUNT ONE: BURGLARY OF AN OCCUPIED DWELLING WITH A DEADLY WEAPON AS AN HABITUAL OFFENDER AND SENTENCE OF TWENTY-FIVE (25) YEARS WITHOUT PAROLE, COUNT TWO: ATTEMPTED ARMED ROBBERY AS AN HABITUAL OFFENDER WITH SENTENCE OF THIRTY-EIGHT (38) YEARS WITHOUT PAROLE, AND COUNT THREE: ATTEMPTED ARMED ROBBERY AS AN HABITUAL OFFENDER WITH SENTENCE OF THIRTY-EIGHT (38) YEARS WITHOUT PAROLE IN THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS

AFFIRMED. EACH SENTENCE IS TO RUN CONSECUTIVELY TO THE OTHERS. COSTS OF THIS APPEAL ARE TAXED TO FORREST COUNTY.

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