

IN THE COURT OF APPEALS 6/27/95

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00938 COA

THOMAS CHATMAN a/k/a THOMAS

J. CHATMAN 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: GEORGE F. WEST, JR.

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: JOLENE M. LOWRY

DISTRICT ATTORNEY: ALONZO STURGEON

NATURE OF THE CASE: CRIMINAL: COUNT I, JAIL ESCAPE; COUNT II, AGGRAVATED
ASSAULT UPON A POLICE OFFICER; COUNT III, ROBBERY

TRIAL COURT DISPOSITION: GUILTY: SENTENCED TO FIVE (5) YEARS ON COUNT I,
THIRTY (30) YEARS ON COUNT II, AND FIFTEEN YEARS (15) ON COUNT III TO BE
SERVED CONSECUTIVELY

BEFORE BRIDGES, P.J., BARBER AND DIAZ JJ.

DIAZ, J., FOR THE COURT:

Thomas Chatman was tried and convicted in the Circuit Court of Adams County for jail escape, aggravated assault upon a police officer, and robbery. Chatman was sentenced to five years for jail escape, thirty years for aggravated assault upon a police officer, and fifteen years for robbery to be served in the custody of the Mississippi Department of Corrections. Chatman was found not

guilty on a charge of grand larceny. Chatman timely filed a notice of appeal. Upon review, we find no reversible error and affirm.

ISSUES

The issues presented by Chatman on appeal are: whether the trial court erred in not granting his motion for a change of venue, whether the trial court erred in not granting a directed verdict, and whether the sentencing was abusive and arbitrary.

STATEMENT OF THE FACTS

On June 20, 1993, Thomas Chatman was incarcerated in the Adams County jail. One of the jailors on duty that evening was Deputy Todd Brewer of the Adams County Sheriff's Office. As Brewer was making his rounds Chatman began to fake an illness. Against procedure Deputy Brewer entered the restricted area of the jail without proper backup in order to assist Chatman. Once inside, Chatman took Brewer's ball point pen and held it to Brewer's neck as a weapon. Four other prisoners joined Chatman; they proceeded to threaten Brewer's life in order to escape from the jail. By using threats against Brewer the five were able to take Brewer's keys and money and escape in his vehicle. Chatman fled the state of Mississippi and was apprehended two days later in Dwight, Illinois. He was later extradited to Mississippi.

DISCUSSION

A. CHANGE OF VENUE.

An appellant can show that it was virtually impossible to obtain an impartial jury due to prejudicial publicity. *Harris v. State*, 537 So. 2d 1325, 1328 (Miss. 1989). In *Harris*, the court said that proof of such publicity raises a presumption that the jury was prejudiced. This presumption is rebuttable, however, and the government may demonstrate from voir dire that an impartial jury was actually impaneled. If the government succeeds in doing so, the conviction will stand despite appellant's showing of adverse pretrial publicity. *Harris*, 537 So. 2d at 1328-29. On this issue, the trial court's decision will not be disturbed where the sound discretion of the trial judge in denying change of venue was not abused. *Id.* at 1328 .

At times, there may be an irrebuttable presumption that an impartial jury cannot be obtained, however, considering the totality of the circumstances, the requisite elements are not met in this case. The elements that would serve as an indicator to the trial court as to when the presumption is irrebuttable are:

- 1) Capital cases based on considerations of a heightened standard of review;
- 2) Crowds threatening violence towards the accused;
- 3) An inordinate amount of media coverage, particularly in cases of
 - a) serious crimes against influential families
 - b) serious crimes against public officials
 - c) serial crimes
 - d) crimes committed by a black defendant upon a white victim
 - e) where there is inexperienced trial counsel.

White v. State, 495 So. 2d 1346, 1349 (Miss. 1986).

When considering change of venue, the trial court will consider the totality of the circumstances. *Id.* In *White v. State*, four of the elements were found, one of that being excessive media coverage; nevertheless, the Supreme Court did not find that was enough evidence to indicate an irrebuttable presumption existed that the accused could not get a fair trial. *Id.* at 1349.

On the present case, the only element present based on appellant's brief is that the appellant was African-American and the deputy was Caucasian. The appellant argues that there was excessive media coverage, however, based on the voir dire questions, it is apparent that the jury members were not affected by what they had been exposed to and would be able to render a fair and impartial verdict. Applying the criteria above, there is not sufficient evidence to find an irrebuttable presumption. Where there is conflicting evidence on whether or not the defendant can receive a fair trial or not, the opinion of the trial judge will be given deference. *Burrell v. State*, 613 So. 2d 1186, 1190 (Miss. 1993). The record here supports the trial judge's findings that an impartial jury was impaneled.

B. MOTION FOR DIRECTED VERDICT

Motions for directed verdict and JNOV challenge the sufficiency of the evidence. The standard of review on judging the sufficiency of the evidence on the motion for directed verdict is articulated in *Christian v. State*, 456 So.2d 729 (Miss., 1984):

[it] requires that we accept as true all the evidence favorable to the state, together with reasonable inferences arising therefrom , to disregard the evidence favorable to the defendant, and if such evidence would support a verdict of guilty beyond a reasonable doubt, the trial court's denial of the motion must be affirmed.

Id. at 734.

Chatman argues that there was not enough credible and substantial evidence in the record to support the verdict; however, Mississippi law states:

(1) Whoever escapes or attempts by force or violence to escape from any jail in which he is confined, or from any custody under or by virtue of any process issued under the laws of the state . . . pursuant to lawful arrest, shall ,upon conviction, if the confinement or custody is by virtue of any arrest on the charge of felony, or conviction of a felony, be punished by imprisonment in the penitentiary not exceeding five (5) years to commence at the expiration of his former sentence or confinement . . .

Miss. Code Ann. § 97-9-49(1) (1972).

Applying this statute to the facts in the case at bar, we find that this issue is without merit. The elements needed to prove the offense of escape are: (1) the knowing and voluntary departure of a person (2) from lawful custody (3) with intent to evade the due course of justice. *Miller v. State*, 492 So. 2d 978, 981 (Miss. 1986). Chatman was lawfully incarcerated at the Adams Country jail facing felony charges. In order to get the deputy's attention, Chatman feigned an illness while the deputy was making his rounds. When the deputy opened the cell to try to remove Chatman to the holding cell downstairs, Chatman turned around and pinned the deputy against the wall, while grabbing his ball point pen and using it as a weapon. Chatman managed to escape with four other inmates taking deputy Brewer's money, keys and vehicle. Chatman was found two days later in Illinois. The evidence presented at trial must be considered in the light most favorable to the appellee. The law requires giving the appellee the benefit of all favorable inferences that may be drawn from the evidence. Applying the standard set out in *Christian v. State*, to the facts of the case at bar, the trial court did not err in refusing to grant a directed verdict.

C. ABUSIVE OR ARBITRARY SENTENCING

Section 97-3-75 of the Mississippi Code states that every person convicted of robbery shall be punished by imprisonment in the penitentiary for a term not more than 15 years. Miss. Code Ann. §97-3-75 (1972). Section 97-3-7 states that an aggravated assault on a law enforcement officer carries the penalty of a fine of \$5,000 or by imprisonment for not more than 30 years or both. Miss. Code Ann. § 97-3-7 (1972). Section 97-9-49 of the Code provides that the escape of prisoners who are in custody by virtue of felony charge, will be punished by imprisonment in the penitentiary not exceeding 5 years to commence at the expiration of the former sentence. Miss. Code Ann. § 97-9-49 (1972). A trial court will not be held in error or held to have abused discretion if the sentence imposed is within the limits fixed by statute. *Johnson v. State*, 461 So. 2d 1288, 1292 (Miss. 1984). The sentence imposed upon Chatman is within the statutory guidelines, therefore it is not abusive or arbitrary.

The judgment is affirmed.

THE ADAMS COUNTY CIRCUIT COURT JUDGMENT OF CONVICTION OF COUNT I, JAIL ESCAPE; COUNT II, AGGRAVATED ASSAULT UPON A POLICE OFFICER, AND COUNT III, ROBBERY WITH SENTENCE OF FIVE (5) YEARS ON COUNT I, THIRTY (30) YEARS ON COUNT II, AND FIFTEEN YEARS (15) ON COUNT III TO BE SERVED

CONSECUTIVELY IS AFFIRMED. COSTS ARE TAXED TO ADAMS COUNTY.

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