

IN THE COURT OF APPEALS 3/26/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00579 COA

ANTHONY MILLER A/K/A TONY MILLER A/K/A ANTHONY BERNARD MILLER

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. FRANK G. VOLLOR

COURT FROM WHICH APPEALED: CIRCUIT COURT OF CLAIBORNE COUNTY

ATTORNEY FOR APPELLANT:

GEORGE F. WEST, JR.

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: W. GLENN WATTS

DISTRICT ATTORNEY: G. GILMORE MARTIN

NATURE OF THE CASE: CRIMINAL: DEPRAVED HEART MURDER

TRIAL COURT DISPOSITION: CONVICTION AND SENTENCE TO LIFE IN THE CUSTODY
OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

BEFORE THOMAS, P.J., DIAZ, AND KING, JJ.

KING, J., FOR THE COURT:

Tony Miller was convicted of murder in the Circuit Court of Claiborne County and sentenced to serve a term of life in the custody of the Mississippi Department of Corrections. On appeal, Miller contends that errors of the trial court warrant reversal of the conviction. We find no error and affirm.

FACTS

On September 28, 1993, several students attending Alcorn State University attempted to steal a wooden bench from the porch of Miller's home. As the students stepped onto the porch, Miller's dog began to bark, and Miller peered through a window. Miller saw the students take a wooden chair and bench from the porch. The students fled in a pickup truck and a red Mazda. Prior to fleeing, one of the students dropped the chair and left it in Miller's yard. Miller pursued the students in his van.

The students riding in the pickup truck eluded Miller and returned to the Alcorn State University campus. However, the students in the red Mazda driven by the victim, Leslie Ware Jr., were unable to elude Miller. Miller established a road block by parking his van across both lanes of Highway 61 in Claiborne County. When Ware proceeded to drive around the van on the median, Miller fired a shot from his rifle into the door of Ware's vehicle. The projectile from the rifle pierced Ware's chest. Within hours, Ware died from internal bleeding.

ANALYSIS OF THE ISSUES AND LAW

I.

DID THE TRIAL COURT ERR IN ALLOWING THE STATE TO INTRODUCE INTO EVIDENCE A PHOTOGRAPH DEPICTING THE VICTIM IN A DEMISED STAGE?

Miller argues that the trial court erred by permitting the State to introduce into evidence a photograph of Leslie Ware in a demised state. Miller contends that a dummy or some other form of demonstrative evidence should have been introduced.

Absent a finding that the trial court abused its discretion, photographs of deceased victims have been deemed admissible. *Gossett v. State*, 660 So. 2d 1285, 1293 (Miss. 1995) (photographs depicted victim of multiple shooting); *Alexander v. State*, 610 So. 2d 320, 338 (Miss. 1992) (photograph which depicted open skull of victim); *Hewlett v. State*, 607 So. 2d 1097, 1102 (Miss. 1992) (photographs of charred bodies of victims).

In the instant case, the record indicates that the trial judge viewed the photographs during a motion in limine hearing and excluded a photograph of the victim connected to extensive tubing and life support equipment. The judge also determined that the autopsy photograph, which depicted the victim with one tube was least inflammatory and admissible to show the location of the wound. It

appears that the trial judge carefully weighed the probative value of the photographs against any probable prejudice to Miller; therefore, we are unable to find that the trial judge abused his discretion.

II.

DID THE TRIAL JUDGE ERR IN ALLOWING THE BENCH TO REMAIN IN THE COURTROOM?

Miller argues that the trial judge erred by allowing the wooden bench, which precipitated the chase and subsequent shooting to remain in the courtroom in view of the jurors because the presence of the bench created an indelible impression--Miller valued a bench more than human life. Miller readily admits that no error was committed by the admission of the bench into evidence. If no harm resulted when the bench was admitted into evidence, then arguing that its presence in the courtroom resulted in prejudice begs the question. Thus, we are unable to find any abuse of discretion by the trial judge in allowing the bench to remain in the courtroom. This assignment of error lacks merit.

III.

DID THE TRIAL COURT ERR IN REFUSING TO GRANT MILLER'S MOTION FOR A DIRECTED VERDICT?

When considering a motion for a directed verdict, this Court must consider the evidence introduced in the light most favorable to the State, accepting all evidence introduced by the State as true, together with all reasonable inferences therefrom. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). If there is sufficient evidence to support a guilty verdict, the motion for a directed verdict must be overruled. *Smith v. State*, 646 So. 2d 538, 542 (Miss. 1994) (citations omitted). This Court will reverse only where "reasonable and fair-minded jurors could only find the accused not guilty." *Johnson v. State*, 642 So. 2d 924, 927 (Miss. 1994) (citations omitted).

During the trial, the State called Chris Williams, Tommy Birch, Calvin Brown, and Ronald Howard, who were passengers in the red Mazda driven by Ware. Williams, Birch, Brown, and Howard testified that Miller parked his van across both lanes of travel on Highway 61 and fired a shot into Ware's vehicle when Ware attempted to proceed around the van. Williams, Birch, Brown, and Howard further testified that when Ware's vehicle came to rest, Miller drove off in his van. The testimonies of Williams, Birch, Brown, and Howard together with all reasonable inferences, which may be drawn, sufficiently support the jury's verdict; therefore, the trial judge properly denied the motion for directed verdict.

IV.

WAS THE JURY'S VERDICT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE AND DID PRE-TRIAL PUBLICITY DEPRIVE MILLER OF A FUNDAMENTALLY FAIR TRIAL?

Miller argues that the jury's verdict was against the overwhelming weight of the evidence because the evidence indicates that Miller was guilty of manslaughter. We disagree. When determining whether a jury's verdict is against the overwhelming weight of the evidence, we accept as true the evidence which supports the verdict. *Issac v. State*, 645 So. 2d 903, 907 (Miss. 1994). Reversal is proper only if we are convinced that the trial court abused its discretion in failing to order a new trial. *Id.* Consistent with this standard, we find that the following evidence supports the jury's verdict of depraved heart murder: (1) Miller deliberately fired a round from his hunting rifle into an occupied vehicle; (2) Miller fled the scene after firing the shot and did not offer to provide medical assistance or attempt to ascertain whether the occupants of the vehicle were injured; (3) Miller did not report the shooting; and (4) No evidence suggested that Miller exhibited remorse subsequent to the shooting. Thus, no abuse of discretion occurred when the trial judge denied Miller's request for a new trial.

Finally, Miller argues that he was deprived of a fundamentally fair trial because the jury was prejudiced by pre-trial publicity and media coverage. In support of his position, Miller cites *Fisher v. State*, 481 So. 2d 203, 216-22 (Miss. 1985). *Fisher* is readily distinguishable from the facts of the instant case. In *Fisher*, the defendant moved for a change of venue, which was denied by the trial court. The Mississippi Supreme Court reversed because pre-trial publicity raised substantial doubts regarding whether the defendant would receive a fair trial. In the instant case, the record does not indicate or suggest that Miller requested a change of venue.

In addition to the right to trial by a fair and impartial jury, a defendant also has a right to be tried in the county where the offense was committed. *See* Miss. Const. art. III, § 26. Because Miller did not request a change of venue, we will not find that the court erred when it deferred to Miller's constitutional right to be tried in the county where the offense occurred. This assignment of error also lacks merit.

Because we are unable to find merit in any of the errors assigned by Miller, we affirm the conviction and sentence.

THE JUDGMENT OF THE CIRCUIT COURT OF CLAIBORNE COUNTY OF CONVICTION OF MURDER AND SENTENCE OF LIFE IMPRISONMENT IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO CLAIBORNE COUNTY.

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