In the Missouri Court of Appeals
Eastern District

DIVISION FOUR

STATE OF MISSOURI,	)	No. ED107197
	)	
Respondent,	)	Appeal from the Circuit Court of
	)	of St. Charles County
vs.	)	1611-CR01673-01
	)	
KENOL CELIAN,	)	Honorable Ted C. House
	)	
Appellant,	)	Filed: February 25, 2020

Kenol Celian appeals the judgment of the Circuit Court of St. Charles County entered after a jury found him guilty of the class B felony of unlawful use of a weapon. He contends the trial court abused its discretion by allowing the State during voir dire to present in explicit detail the facts of the case and to ask questions of prospective jurors in a manner that prejudiced him by predisposing the venire panel to react in a particular way favorable to the State to the anticipated evidence.

REVERSED AND REMANDED.

DIVISION IV HOLDS: The trial court abused its discretion by allowing the State during voir dire to describe in depth what it believed its evidence would be and how that evidence inculpated Celian in the sequence of events for which he was charged with unlawful use of a weapon, and then to ask whether the prospective jurors agreed that if those particular facts were shown, what Celian did was a "big deal" and he should be held accountable for the described conduct.

Generally, argument or "a presentation of the facts in explicit detail" during voir dire is inappropriate. *State v. Clark*, 981 S.W.2d 143, 146 (Mo.banc 1998) (citing *State v. Antwine*, 743 S.W.2d 51, 58 (Mo.banc 1987)). Similarly, the parties may not attempt to elicit a commitment from jurors how they would react to hypothetical facts. *Id.* (citing *State v. Jones*, 749 S.W.2d 356, 359 (Mo.banc 1988)); *State v. Jolliff*, 867 S.W.2d 256, 260 (Mo.App.E.D. 1993) ("It is reversible error for an attorney during voir dire to attempt to obtain from the venire a commitment or pledge to act in a specific way if certain facts are elicited or certain contingencies arise at trial."); *Antwine*, 743 S.W.2d at 59 ("The State may not hypothesize a set of facts and then ask the prospective jurors how they would vote under those facts.").

Here, the State in its questioning effectively sought a commitment to its desired verdict—it attempted to precondition the panel members' minds to react in a particular way favorable to the

State to the anticipated evidence, which is an abuse of its privilege to examine prospective jurors. *State v. Womack*, 967 S.W.2d 300, 302 (Mo.App.W.D. 1998) (citing *State v. Garrett*, 627 S.W.2d 635, 642 (Mo.banc 1982)); *State v. Taylor*, 742 S.W.2d 625, 627 (Mo.App.E.D. 1988).

Celian has shown that a real probability exists that he suffered prejudice as a result. Prior to the empaneling of the jury, the State was allowed to put before every venire member the particular facts it believed supported a conviction, and to directly solicit their agreement to reach a certain verdict if those facts were shown. There is too great a risk that the jury, recalling the State's voir dire questioning, felt obligated to give the reaction improperly solicited by the State—no member of the venire panel registered any disagreement with the State, when directly asked to reveal such, that if the particular facts disclosed during voir dire were shown, what Celian did was a "big deal" and he should be held accountable for the described conduct.

Opinion by: James M. Dowd, P.J.

Gary M. Gaertner, Jr., J., and Robin Ransom, J., concur.

Attorney for Appellant: Katharine P. Curry

Attorney for Respondent: Evan J. Buchheim

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