IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00570 COA

DYLON TACKETT A/K/A DYLON TACKET A/K/A JIMMY DYLON TACKETT — **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

DATE OF JUDGMENT:	04/22/96
TRIAL JUDGE:	HON. WILLIAM R. LAMB
COURT FROM WHICH APPEALED:	CHICKASAW COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	GARY LEE CARNATHAN
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: BILLY L. GORE
DISTRICT ATTORNEY:	LAWRENCE L. LITTLE
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	AGGRAVATED ASSAULT: SENTENCED TO SERVE A TERM OF 20 YRS IN THE MDOC, 4 YRS OF THIS SENTENCE ARE HEREBY SUSPENDED UPON THE GOOD BEHAVIOR OF THE DEFENDANT, LEAVING 16 YRS TO SERVE
DISPOSITION:	REVERSED AND REMANDED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE THOMAS, P.J., COLEMAN AND HINKEBEIN, JJ.

THOMAS, P.J., FOR THE COURT:

Dylon Tackett appeals his conviction of aggravated assault raising the following issues as error:

I. WHETHER DYLON TACKETT RECEIVED A FAIR TRIAL BY A FAIR AND

IMPARTIAL JURY.

II. WHETHER THE CIRCUIT COURT ERRED IN DENYING DYLON TACKETT'S MOTION FOR A NEW TRIAL.

Finding merit in Tackett's assertion, we reverse and remand.

FACTS

Dylon Tackett was at a gas station in Okolona, Mississippi when he walked up to a car and asked to buy some crack. Tackett took the crack from the driver of the car and put it in his mouth to taste it and see if the crack was real. Tackett's statement to police was that the driver of the car pulled a gun on Tackett and told him to get the crack out of his mouth. Tackett then gave the man twenty dollars for the crack. As the driver of the car was leaving, Tackett pulled out a gun and shot through the window. Tackett was indicted and found guilty of aggravated assault.

One week after the jury verdict, Tackett filed a motion for a new trial alleging that he was denied the benefit of a fair and impartial jury. Attached to the motion for a new trial was the *ex parte*affidavit of Melissa Rea, Tackett's girlfriend. The affidavit stated the following:

1) Melissa Rea has a child born out of wedlock with Dylon Tackett.

2) Alma J. Staten is Melissa's natural aunt, and she was a member of Tackett's jury.

3) Staten knows that Tackett is the father of Melissa's child.

4) On at least one occasion, Staten has indicated to Melissa that "Dylon Tackett would not be good for her and would hurt her and she should not have anything to do with him."

5) Tackett, to Melissa's knowledge, does not know Staten.

During the hearing adjudicating the merits of Tackett's motion for a new trial, Melissa testified that she has a child with Tackett. Melissa also stated that Juror Staten is her aunt and that Juror Staten is aware that Tackett is the father of Melissa's child. Melissa testified that Juror Staten told her two weeks prior to trial that Tackett wasn't a good person and that Melissa should leave him alone. Further, Melissa testified that Tackett did not know Juror Staten, although Melissa and Tackett have talked about Juror Staten's remarks about Tackett. Melissa did not attend Tackett's trial, and it was after the trial when she looked over the jury list that she noticed Juror Staten's name.

Juror Staten was not called to testify at the post-trial hearing. At the close of the hearing, the trial court summarily denied Tackett's motion for a new trial, stating simply that Tackett had not met the burden of proof required to order a new trial. Tackett appeals the trial court's ruling denying his motion for a new trial.

I.

WHETHER DYLON TACKETT RECEIVED A FAIR TRIAL BY A FAIR AND IMPARTIAL JURY.

II.

WHETHER THE CIRCUIT COURT ERRED IN DENYING DYLON TACKETT'S MOTION FOR A NEW TRIAL.

During voir dire, the trial court asked, "Are any of you such close friends or do you have such a close social or business relationship with . . . Mr. Tackett . . . whereby you feel that might affect your ability to be fair and impartial in the trial of this case?" One juror raised her hand, and she was further questioned by the judge. During voir dire conducted by defense counsel, the following was stated and asked:

> I take it then from the standpoint none of y'all have a problem with me in any type of bias or prejudice or anything like that that would affect me in representing Dylon Tackett; is that correct? Y'all can nod your head. It will be okay. How about Dylon Tackett? Dylon, stand up. Be seated. Dylon is my client, and the defendant in this case. Do any of y'all know Dylon? . . . Does anybody know Dylon or his family?

To this inquiry, three jury members raised their hands and were further questioned by defense counsel. Defense counsel then questioned them further regarding their relationship with Tackett and his family. Counsel asked each if they could be fair and impartial, and try the case on the evidence presented, and each responded that they could. There was no further response from any other juror. Juror Staten, according to the undisputed post-trial evidence, knew Tackett, had a personal bias against Tackett, and knew that he was the father of her niece's child.

Voir dire examination is often the most crucial crucible in forgoing our primary instrument of justice: the fair and impartial jury. Like a fine suit of clothes, a jury must be tailored to fit, and court and counsel examine prospective jurors under settled rules tending toward that fit. When offering challenges for cause and challenges peremptory, parties and their lawyers must rely on the objective candor and responsiveness of prospective jurors, and nothing turns on who asks the question, so long as it was clearly worded.

***Myers v. State*, 565 So. 2d 554, 558 (Miss. 1990)** (citing *Brown v. State*, 529 So. 2d 537, 539 (Miss. 1988); ***Caldwell v. State*, 381 So. 2d 591, 592 (Miss. 1980)).**

> The seminal case on this issue is ***Odom v. State*, 355 So. 2d 1381 (Miss. 1978)**. In *Odom*, this court held that failure to respond to a question in *voir dire* does not warrant a new trial unless the trial court determines that the question propounded to the juror was 1) relevant to the voir dire examination, 2) unambiguous, and 3) such that the juror had substantial knowledge of the information sought to be elicited. ***Id.* at 1383.** If the trial court answers these three inquiries in the affirmative, then the court determines whether prejudice to the defendant could be inferred. If so, then a new trial is ordered. A trial judge's decision on whether the jury was fair and impartial should not be disturbed "unless it appears clearly that [the decision] is wrong." ***Id.***

***Fleming v. State*, 687 So. 2d 146, 148 (Miss. 1997)** (citations omitted).

In applying the *Odom* analysis to the case *sub judice*, the question was certainly relevant to the voir dire examination and Juror Staten, based on the undisputed testimony, had substantial knowledge of

the information sought to be elicited. The State contends that the second prong of *Odom* was not met. The State argues that the questions asked by Tackett's counsel during voir dire were limited to Juror Staten actually knowing Tackett and not just knowing about Tackett. The State argues "[e] veryone knows 'of' certain people or 'about' certain people who they have never actually met and do not know on a personal basis." Therefore, the State asserts that Juror Staten was neither deceitful nor untruthful when she failed to respond. However, we find this argument ludicrous based on Melissa Rea's sworn affidavit and testimony that Juror Staten had told Melissa that "Dylon Tackett would not be good for her and would hurt her and she should not have anything to do with him." Clearly, Juror Staten had a bias toward Tackett. Had Tackett known Juror Staten was on the jury panel, she surely would have been struck for cause by either the trial court or by counsel for Tackett. Prejudice is presumed where a party shows that a juror withheld substantial information or misrepresented material facts, and where a full and complete response would have provided a valid basis for challenge for cause. ***Myers,* 565 So. 2d at 558.**This is grounds for reversal on appeal. ***Id.***

> Where, as a matter of common experience, a full and correct response would have provided the basis for a peremptory challenge, not rising to the dignity of a challenge for cause, our courts have greater discretion, although a discretion that should always be exercised against the backdrop of our duty to secure to each party trial before a fair and impartial jury.

Id.

As stated previously, voir dire examination is often the most crucial crucible in foregoing our primary instrument of justice: the fair and impartial jury. ***Myers,* 565 So. 2d at 558.** Juror Staten did not respond to questions asked during voir dire, where her truthful response would have revealed her kinship to Melissa and her bias toward Tackett. At least that is the only conclusion that can be gleamed from the record. Had the State called Juror Staten to rebut the affidavit and testimony of Rea and the testimony of Tackett, the trial court might have reasonably found otherwise.

The facts in this case indicate that Tackett was denied a fair and impartial jury based on Juror Staten's presence on the jury, and thus, Tackett was denied a fair trial. This case is reversed and remanded for a new trial.

THE JUDGMENT OF THE CHICKASAW COUNTY CIRCUIT COURT IS REVERSED AND REMANDED FOR PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. ALL COSTS ARE ASSESSED TO CHICKASAW COUNTY.

BRIDGES, C.J., McMILLIN, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.