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Price Ainsworth

and

Randy Howry

Price Ainsworth
Law Offices of Price Ainsworth, P.C.
3821 Juniper Trace
Austin, Texas 78738
price@ainsworth-law.com
512-233-1111
512-472-9157 fax

Randy Howry
Howry Breen & Herman, LLP
1900 Pearl Street
Austin, Texas 78705
rhowry@howrybreen.com
512-474-7300

STORY TIME:
VOIR DIRE, OPENING STATEMENTS AND CLOSING ARGUMENTS IN A CAR WRECK CASE

By: Price Ainsworth

Law Offices of Price Ainsworth, P.C.
3821 Juniper Trace, #210
Austin, Texas 78738
price@ainsworth-law.com
(512) 233-1111
(512) 472-9157 fax

Randy Howry
Howry Breen & Herman, LLP
1900 Pearl Street
Austin, TX 78705
rhowry@howrybreen.com
(512) 474-7300

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I. VOIR DIRE

A. OVERVIEW

Selecting a jury can be the most challenging and most important aspect of the trial process. A jury of favorable peers may overlook some gaps in the evidence while an unfavorable jury may reject even the best case. The process of jury selection has been affected by both court decisions and community values in recent years. The trial lawyer is afforded less time to interrogate the venire panel; venirepersons that voice their opinions may be rehabilitated; and venirepanels are increasingly made up of people with very strong beliefs about issues presented in a personal injury car wreck case. This paper will attempt to analyze the current voir dire process from both legal and practical (how-to) standpoints.

B. THE LAW REGARDING VOIR DIRE

1. The Texas Constitution guarantees the right to trial by a fair and impartial jury. Tex. Const. art. I, § 15.

> Voir dire examination protects the right to an impartial jury by exposing possible improper juror biases that form the basis for statutory disqualification. Thus, the primary purpose of voir dire is to inquire about specific views that would prevent or substantially impair jurors from performing their duty in accordance with their instructions and oath.

Hyundai Motor Co. v. Vasquez, 189 S.W.3d 743, 749 (Tex. 2006). Allowing the intelligent use of peremptory strikes is also a purpose of voir dire. *Id*.

2. Scope and Limitations

The extent of voir dire questioning is limited to the sound secretion of the trial court. *Texas Emp. Ins. Ass'n v. Loesch*, 538 S.W.2d 435, 440 (Tex. Civ. App. 1976). However, "[a] broad latitude should be allowed to a litigant during voir dire examination," and a "court abuses its discretion when its denial of the right to ask a proper question prevents determination of whether grounds exist to challenge for cause or denies intelligent use of peremptory challenges." *Babcock v. Nw. Mem'l Hosp.*, 767 S.W.2d 705, 709 (Tex. 1989).

The court may place reasonable limitations on the time allowed for voir dire. *Tamez v. State*, 27 S.W.3d 668, 672 (Tex. App.—Waco 2000, pet. ref'd). Most cases "in which the trial court's restriction of voir dire was found unreasonable involved limitations of less than an hour," but "each case must be examined on its own facts." *Id*. at 673. Appellate courts look at three factors to determine if a trial court abused its discretion by imposing a particular time limit on voir dire. *McCoy v. Wal-Mart Stores, Inc.*, 59 S.W.3d 793, 797 (Tex. App.—Texarkana 2001, no pet.). The three factors are "1) whether a party's voir dire examination reveals an attempt to prolong the voir dire; for example, whether the questions were irrelevant, immaterial, or

unnecessarily repetitious; 2) whether the questions that were not permitted were proper voir dire questions; and 3) whether the party was precluded from examining veniremembers who served on the jury." *Id.*

Trial courts may limit questions when they are "duplicitous or repetitious" or "where the venireman has already stated his position clearly and unequivocally." *Dinkins v. State*, 894 S.W.2d 330, 345 (Tex. Crim. App. 1995). Texas also expressly prohibits the mention either directly or indirectly of the existence of liability insurance. *See Dennis v. Hulse*, 362 S.W.2d. 308, 309 (Tex. 1962).

3. Challenges for Cause

"A challenge for cause is an objection made to a juror, alleging some fact which by law disqualifies him to serve as a juror in the case or in any case . . ." Tex. R. Civ. P. 228. Section 62.105 of the Texas Government Code enumerates juror disqualifications. Of particular interest here, a person is disqualified to serve as a juror in a particular case if he "has a bias or prejudice in favor of or against a party in the case." Tex. Gov't Code Ann. § 62.105(4) (West).

a. Bias and Prejudice Defined

The Texas Supreme Court has defined bias and prejudice, saying "[b]ias, in its usual meaning, is an inclination toward one side of an issue rather than to the other, but to disqualify, it must appear that the state of mind of the juror leads to the natural inference that he will not or did not act with impartiality. Prejudice is more easily defined for it means prejudgment, and consequently embraces bias; the converse is not true." *Compton v. Henrie*, 364 S.W.2d 179, 182 (Tex. 1963). Furthermore, "the statutory disqualification of bias or prejudice extends not only to the litigant personally, but to the subject matter of the litigation as well." *Id*.

The Texas Supreme Court stated additionally, in *Cortez v. HCCI-San Antonio, Inc.*, that "the relevant inquiry is not where jurors *start* but where they are likely to *end* [emphasis original]. An initial 'leaning' is not disqualifying if it represents skepticism rather than an unshakeable conviction." *Cortez ex rel. Estate of Puentes v. HCCI-San Antonio, Inc.*, 159 S.W.3d 87, 94 (Tex. 2005).

In *Cortez*, a veniremember, who worked as an insurance adjuster, said that "his experience might give him 'preconceived notions,'" that he "would feel bias," "that he had seen 'lawsuit abuse ... so many times,'" and that "the defendant was 'starting out ahead.'" *Id.* at 90. He also stated that he "was 'willing to try' to listen to the case and decide it on the law and the evidence." *Id*. The trial court denied the challenge for cause. The court of appeals affirmed. The Texas Supreme Court also affirmed because challenges for cause do not "turn on the use of 'magic words'" and "veniremembers are not necessarily disqualified when they confess 'bias,' so long as the rest of the record shows that is not the case." *Id.* at 93. But, "veniremembers may be disqualified even if they say they can be 'fair and impartial,' so long as the rest of the record shows they cannot." *Id*.

In a medical malpractice case, a veniremember was a defense attorney who "defend[ed] healthcare operations." *Hafi v. Baker*, 164 S.W.3d 383, 384 (Tex. 2005). During voir dire, he

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