VOIR DIRE IN TEXAS AFTER THE CORTEZ AND HYUNDAI DECISIONS

Prior Texas case law has provided little guidance regarding the character and scope of voir dire examinations and the permissible questions that a litigator may ask of the venire panel. The purpose of voir dire is to ensure that one receives a fair and impartial trial. TEX. GOV'T CODE ANN. §62.105 (Vernon 1988). For that reason, Texas courts provide preemptory challenges and challenges for cause to enable parties to discover any bias or prejudice that potential jurors might have. *Babcock v. Northwest Memorial Hosp*., 767 S.W.2d 705, 708 (Tex. 1989).

There are very few rules pertaining specifically to requirements of voir dire questioning. Rules 221 to 235 of the Texas Rules of Civil Procedure give details into the jury selection process, but provide minimal guidance as to proper questioning of venire members. The Government Code merely states that a potential juror may be disqualified if he or she possesses a bias or prejudice in favor of or against a party in the case. TEX. GOV. CODE ANN. §62.105 (Vernon 1988). Since rules applicable to voir dire questioning are limited, the trial judge must look to Texas case law to determine what types of questions an attorney may ask in voir dire. The Texas Supreme Court has recently handed down two decisions that will likely change the way voir dire examinations are handled.

The first case, *Cortez v. HCCI-San Antonio, Inc*., 159 S.W.3d 87 (Tex. 2005), concerns the individual questioning of a venire panel member and whether or not a potential juror who has admitted some form of bias can be rehabilitated. Here, a lawyer asked a panel member, who was an insurance adjuster, if his occupation would cause him to have a bias and if he felt like he was "starting out ahead?" *Id.* at 90. The venire member admitted that he had seen law suit abuse before and questioned if some of these types of claims were truthful, but went on to state with regards to the specific case at hand that he was "willing to try" to listen to the facts presented and decide the case in a fair and impartial manner. *Id.* The trial court denied the plaintiff's motion to strike for cause. *Id.* The Texas Supreme Court agreed, holding that a juror cannot be disqualified just because he or she admits that the defendant is "starting out ahead". *Id.* at 94.

The court went on further by stating that there are no magic disqualifying words and that venire members are not necessarily disqualified when they confess bias, so long as the rest of the record reveals that that is not the case. *Id.* "The relevant inquiry is not where jurors start but where they are likely to end. An initial leaning is not disqualifying if it represents skepticism rather than an unshaken conviction." *Id.* In *Cortez*, the "leaning" question followed an extensive and emotional statement of the facts by the plaintiff's attorney. The court left open the possibility that a "leaning" question might be a basis for a strike for cause if it occurred before the statement of the facts. *Id.*

The holding in *Cortez* rejects the long-standing rule that once a venire member states that he or she is biased, no further questions can be asked and that no ability to rehabilitate exists. *See, e.g., State v. Dick*, 69 S.W. 3d 612, 620 (Tex. App.—Tyler 2001, no pet.). Now it would seem that if a potential juror commits to a position that displays a

legal bias or prejudice, then opposing counsel is permitted to ask further questions. The Supreme Court saw no reason to limit further questioning given that it might aid in clarifying a bias or proving that a bias does not actually exist. *Cortez*, 159 S.W.3d at 92. Accordingly, trial courts now have the discretion to refuse disqualification of a potential juror who at first glance appears to express bias or prejudice.

The second Supreme Court case, *Vazquez v. Hyundai Motor Co*., 189 S.W.3d 743 (Tex. 2006), deals with the parameters for questions that a lawyer may properly ask a venire panel on case specific issues. This was an automobile defect case brought against Hyundai by the parents of Amber Vazquez, who was killed when the passenger side air-bag of a Hyundai automobile deployed in a low impact collision. *Id.* at 747. Amber Vazquez was not wearing a seatbelt at the time of the accident. *Id.*

In the first two attempts to seat a jury, the trial court allowed the plaintiffs' attorney to begin voir dire by asking venire members whether the fact that Amber was not wearing her seatbelt would determine the verdict. *Id.* The two juries were dismissed because the judge allowed multiple for cause challenges as a result of venire members' responses to the plaintiffs' question. During the third voir dire, the judge allowed general questions about personal seatbelt use, but prohibited questions that exposed that Amber was not wearing her seat belt at the time of the accident. *Id*.

The jury was thereafter selected and eventually returned with a verdict in favor of Hyundai. The San Antonio court of appeals, sitting en banc, reversed and remanded the case, holding that the Vazquezes were entitled to determine which potential jurors were biased based solely on the fact that Amber was not wearing a seatbelt when she was killed. *Hyundai Motor Co. v. Vazquez*, 119 S.W. 3d 848 (Tex. App.—San Antonio, 2003)(en banc). The Texas Supreme Court reversed the court of appeals, holding that the trial court has discretion to refuse to allow questions revealing whether potential jurors would give specific evidence great or little weight. *Hyundai Motor Co. v. Vazquez*, 189 S.W.3d 743, 753 (Tex. 2006).

> Depending on the circumstances, a trial judge may choose to hear jurors' responses before deciding whether an inquiry pries into potential prejudices or potential verdicts, but if the question reaches for the latter, a trial court does not abuse its discretion in refusing to allow it. If the trial court allows a question that seeks a juror's view about the weight to give relevant evidence, then the juror's response, without more, is not disqualifying.

Id. at 755. In view of this holding, appellate courts have already begun affirming trial courts rulings refusing to allow questions that ask potential jurors for their reactions or opinions as to certain evidence. *See, e.g., In re Commitment of Barbee*, 2006 WL 1043203 (Tex.App.—Beaumont, 2006).

In the past, the majority of the questions asked in voir dire were intended to discover how a potential juror would weigh particular pieces of evidence. After the

Cortez and *Hyundai* decisions, some courts may permit these types of questions, while others may not. But as the law currently stands, the answers to these questions are prohibited from being the sole basis for a strike for cause.