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## THE BASSETT BULLETIN™

### JURY SELECTION: VOIR DIRE QUESTIONS MAY NOT SEEK TO GAUGE THE JURORS' POSSIBLE VERDICT

The Supreme Court of Texas recently held, in *Hyundai Motor Co. v. Vasquez*, that allowing voir dire questions seeking to preview whether evidence is outcome determinative in the jurors' minds is solely within the trial courts' discretion. Simply put, the trial court gets to decide whether a voir dire question is improper because it merely seeks to preview the verdict.

The Texas Legislature has disqualified from jury service anyone who has a bias or prejudice in favor of, or against, a party in the case. The purpose of voir dire examination is to protect the right to a fair and impartial trial, by exposing possible improper jury biases and prejudices that may form the basis for the statutory disqualifications.

"Bias" is the inclination toward one side of an issue, rather than to the other. In order for a prospective juror to be disqualified, it must appear that the juror's state of mind leads to the natural inference that he or she will not act with impartiality.

"Prejudice" is involved when a prospective juror's views on an issue equates to prejudgment, and ultimately results in the inability to see beyond his or her own preconceived notions. In essence, "bias" relates to a person's inclinations in a matter, while "prejudice" is associated with a person's prejudgment of an issue from the very start of the process.

Accordingly, attorneys are constantly trying to push the envelope during voir dire examination, in an attempt to zealously represent their client and uncover hidden biases and prejudices from the prospective jury panel. The last thing an attorney wants is for someone with a bias or prejudice, or some sort of agenda, to make it to the jury and not give their client an opportunity for a fair fight in the courtroom.

In this particular case, the trial court had gone through two prospective jury panels and was trying to seat a jury during the voir dire examination of a third panel. In this case, a four year-old girl died in a low-speed traffic collision, after the passenger-side airbag in her aunt's Hyundai deployed with enough force to break her neck. The Plaintiffs sued Hyundai contending that Hyundai had misplaced the airbag. The Plaintiffs' attorney wanted to ask the prospective jurors of the third jury panel whether the fact that there was no seatbelt used would pre-depose them, regardless of what the other evidence would have been before them, against the Plaintiffs' case.

The trial court felt that this line of questioning improperly sought to gauge what the prospective jurors' verdict would be, and thus did not allow the line of questioning to proceed. The Supreme Court of Texas affirmed the decision and held that the trial court did not abuse its discretion in not allowing the question to be asked.

The Supreme Court of Texas was not comfortable with questioning that previewed relevant evidence and asked prospective jurors whether such evidence was outcome determinative. At the heart of the Supreme Court's position is the well established policy that it is improper to ask jurors what their verdict would be if certain facts were proved. In this particular case, the question isolated a single fact material to the case. Specifically, it addressed the fact that the young girl did not wear a seatbelt.

Our justice system is set up with the understanding that fair and impartial jurors are able to reach a verdict based on *all* of the evidence presented to them. Fair and impartial jurors do not, and should not, reach a verdict based on bias or prejudice. Accordingly, voir dire inquiries to prospective jurors should only address each individual's biases or prejudices, and not their opinions about specific pieces of evidence. It is improper for a trial court to allow a voir dire question that allows counsel to test or illicit the weight the prospective juror would place on certain evidence that may surface during the trial.

In conclusion, the Supreme Court of Texas is comfortable with voir dire inquiries into juror's biases and prejudices that will aid counsel and the trial court's determination of whether jurors are disqualified by statute. Further, the Supreme Court of Texas believes that appropriate voir dire inquiries into bias and prejudice should provide sufficient insight to allow counsel to thoughtfully exercise its preemptory strikes. Such questioning, that gets to the root of prospective jurors' biases and prejudices, will be allowed, but counsel may not try to illicit answers from the prospective jurors that would essentially preview a juror's verdict.

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