

JURY SELECTION AND CHARGING ISSUES IN CRIMINAL CASES

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JURY SELECTION

“The voir dire process is designed to insure, to the fullest extent possible, that an intelligent, alert, disinterested, impartial, and truthful jury will perform the duty assigned to it.”

Armstrong v. State, 897 S.W.2d 361, 363 (Tex. Crim. App. 1995) (per curiam).

AN ATTORNEY'S ROLE IN JURY SELECTION

- Shuffling the Panel
- Questioning the Panel
- Striking Prospective Jurors

AN ATTORNEY'S ROLE IN JURY SELECTION

Striking Prospective Jurors: Challenges for Cause

- Grounds for Cause : TEX. CODE CRIM. PROC. ANN. art. 35.16
- Article 35.16(a)(2), (3), & (4) are absolute disqualifiers
- All other grounds are forfeitable

AN ATTORNEY'S ROLE IN JURY SELECTION

Striking Prospective Jurors: Denial of Challenges for Cause

1. identify the juror with specificity;
2. use every peremptory strike;
3. ask for additional peremptory strikes; and
4. identify the objectionable juror
5. before the panel is sworn.

AN ATTORNEY'S ROLE IN JURY SELECTION

Striking Prospective Jurors: Peremptory Challenges

- A strike for any reason
- within the parameters of the Equal Protection Clause
 - *Batson v. Kentucky* = race
 - *J.E.B. v. Alabama* = gender

AN ATTORNEY'S ROLE IN JURY SELECTION

Peremptory Challenges & Equal Protection Clause Objections

- *Prima facie* showing of purposeful discrimination;
- Race- or gender-neutral explanation;
- Trial court decides whether purposeful discrimination shown.

AN ATTORNEY'S ROLE IN JURY SELECTION

General Suggestions

- Educate
- Listen
- Record answers
- Have a problem with that?

JURY INSTRUCTION

The trial judge shall deliver to the jury a written charge distinctly setting forth the law applicable to the case.

TEX. CODE CRIM. PROC. ANN. art. 36.14

AN ATTORNEY'S ROLE IN JURY INSTRUCTION

Instructions that should be present in the charge:

- Abstract
- Application

Based on:

- Type of Offense
- Evidence Admitted

AN ATTORNEY'S ROLE IN JURY INSTRUCTION

Instructions that cannot be present in the charge ...

- opinions on evidentiary weight,
- summation of testimony,
- discussion of facts, or
- argument ...

AN ATTORNEY'S ROLE IN JURY INSTRUCTION

... Except for when they can be:

1. Law directs a certain degree of weight or significance
2. Legislature expressly requires attention called
3. Admissibility contingent on predicate facts decided by jury*

AN ATTORNEY'S ROLE IN JURY INSTRUCTION

3. *Admissibility contingent on predicate facts decided by jury

Example: Voluntariness of Statement

General voluntariness instruction

General warnings instruction

“Specific” Exclusionary-rule instruction

AN ATTORNEY'S ROLE IN JURY INSTRUCTION

Lesser-Included Offenses

- Two-prong test
- Requests by Defense

Williams v. State, No. PD-0477-19, 2021 WL 2132167,
(Tex. Crim. App. May 26, 2021)

- Requests by Prosecution

AN ATTORNEY'S ROLE IN JURY INSTRUCTION

Defenses, Affirmative Defenses, & Non-Defenses

Mistake of Fact

Insanity

Mistake of Law

Entrapment

Duress

Intoxication

Justifications

Public duty

Protection of Property

Necessity

Self-defense

“Others”

AN ATTORNEY'S ROLE IN JURY INSTRUCTION

Article 38.23 Instructions

Required when:

1. The evidence raises an *issue of fact*;
2. that is *affirmatively contested*; and
3. *material* to the lawfulness of obtaining the evidence.

AN ATTORNEY'S ROLE IN JURY INSTRUCTION

Appropriate Instructions on Defensive Issues

- Found in the Penal Code, derived from Code
- Typically, “confession and avoidance”
- Credibility of evidence raising the defense not an issue

AN ATTORNEY'S ROLE IN JURY INSTRUCTION

Instructing on Multiple Defensive Issues

- Each viewed independently
- Every issue raised by the evidence