

# IN THE SUPREME COURT OF TEXAS

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No. 98-1076  
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GOLDEN EAGLE ARCHERY, INC., PETITIONER

v.

RONALD JACKSON, RESPONDENT

=====  
ON PETITION FOR REVIEW FROM THE  
COURT OF APPEALS FOR THE NINTH DISTRICT OF TEXAS  
=====

**Argued on April 6, 1999**

Justice Abbott, concurring.

I concur with the Court's judgment. I write separately because I disagree with the Court's conclusion that the conversation between Frederick and Maxwell is not protected from disclosure by Texas Rule of Civil Procedure 327(b) and Texas Rule of Evidence 606(b).

Rule 327(b) provides:

*A juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict concerning his mental processes in connection therewith, except that a juror may testify whether any outside influence was improperly brought to bear upon any juror.*

TEX. R. CIV. P. 327(b) (emphasis added).

Texas Rule of Evidence 606(b) is virtually identical. It provides:

[A] juror may not testify as to any matter or statement occurring during the jury's deliberations, or to *the effect of anything on any juror's mind or emotions or mental processes, as influencing any juror's assent to or dissent from the verdict or indictment*. Nor may a juror's affidavit or any statement by a juror concerning any matter about which the juror would be precluded from testifying be admitted in evidence for any of these purposes. However, a juror may testify: (1) whether any outside influence was improperly brought to bear upon any juror; or (2) to rebut a claim that the juror was not qualified to serve.

TEX. R. EVID. 606(b) (emphasis added).

These provisions declare that only two categories of information are subject to disclosure: (1) whether an outside influence was brought to bear on a juror, and (2) whether a juror was unqualified to serve. The evident intent of the rules is to exclude from compelled disclosure all other influences on a juror's decision-making process. The scope of the rules' disclosure prohibition is broad and nonexclusive; at a minimum, it includes "*the effect of anything on any juror's mind or emotions or mental processes, as influencing any juror's assent to or dissent from the verdict*" – except to the extent this would involve an outside influence. Maxwell's pre-jury-charge comments to another juror to the effect that she did not believe in "awarding money in stuff like that" and that "we are the ones who end up paying for it" clearly reflect what is on her mind, her emotions, and her mental processes. Her comments, and the thoughts and feelings they reflect, may or may not have had an impact on her decision – or on Frederick's decision – in this case. Whether they did is something that should never be looked into, as mandated by Texas Rule of Civil Procedure 327(b) and Texas Rule of Evidence 606(b).

For similar reasons, I disagree with the Court's narrow interpretation of the word "deliberations." It blinks reality to believe that juror deliberations begin only after the jury charge

is read to them. The normal human reaction is to process information as it is received during the course of a trial. From the moment that voir dire begins through the time that a final verdict is reached, jurors are thinking about – and, hence, deliberating about – all that they have heard and seen. Similarly, it is unrealistic to believe that jurors who must spend eight to ten hours a day together, sometimes for weeks or months, will not make a brief, passing comment to one another about the case on trial. Such comments are part of the deliberative process and should be cloaked with the protection from disclosure provided by Texas Rule of Civil Procedure 327(b) and Texas Rule of Evidence 606(b).

The Court notes the admonitory instruction, approved by this Court, that provides:

Do not even discuss this case among yourselves until after you have heard all of the evidence, the court's charge, the attorneys' arguments and until I have sent you to the jury room to consider your verdict.

Order of the Supreme Court of Texas of July 20, 1996, *amended* January 1, 1971, February 1, 1973, December 5, 1983; *see also* TEX. R. CIV. P. 226a. This, of course, instructs jurors about what they should not do, but it is not a directive establishing what constitutes “deliberations” for purposes of rules 327(b) and 606(b). The instruction certainly falls short of defining “deliberations” as only those discussions that occur after the jury is charged. The same conclusion applies to each of the other rules cited by the Court – Texas Rules of Civil Procedure 282, 283, and 287.

Contrary to the Court, I agree with the court of appeal's statement in *Bailey v. W/W Interests, Inc.* that “[a]ny conversation regarding the case occurring between or among jurors is a part of jury deliberations regardless of the time and place where it occurs.” 754 S.W.2d 313, 316 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1988, writ denied). To the extent that statement is not the law, jurors who sacrifice time at their jobs and with their families just to spend it sitting through sometimes

seemingly endless jury trials will be subject to post-trial inquiry by the losing party to find out if just one juror may have said something about the case prior to the court's charge. I believe that opening the door to such inquiries violates the spirit of our jury system and the letter of Texas Rule of Civil Procedure 327(b) and Texas Rule of Evidence 606(b). Accordingly, I disagree with the Court's conclusion on this issue.

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GREG ABBOTT  
JUSTICE

OPINION DELIVERED: June 29, 2000