

# 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

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

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**Argued on April 6, 1999**

JUSTICE HECHT, joined by JUSTICE OWEN, concurring.

I join fully in the Court's opinion and write only to comment on the scope of Rule 327(b) of the Texas Rules of Civil Procedure and Rule 606(b) of the Texas Rules of Evidence. I agree with the Court that by the phrase, "the jury's deliberations", the rules refer to the time after the case is submitted to the jury and not before. I cannot agree with JUSTICE ABBOTT that a jury begins its deliberations, within the meaning of these rules, from the moment the venire is sworn or at any time before it is charged. Hence, I join the Court's conclusion that neither rule precludes consideration of one juror's testimony concerning his conversation with another juror during a break in the trial before the case was submitted to the jury. But I believe, for reasons that this case illustrates, that the Court's Advisory Committee should consider whether the rules should be amended to apply not just to jury deliberations, as Rule 606(b) does, or "the course of deliberations", which should include

intermissions in those deliberations, as Rule 327(b) does, but to all post-submission evidence of intra-jury statements and actions (not outside influences) that occurred after the jury was seated and sworn.

It is one thing to permit a juror to call another juror's misconduct to the court's attention prior to submission of the case to the jury. The trial court may be able to resolve the matter without a mistrial, perhaps by an admonition to the jury, by excusing a juror, or by replacing a juror with an alternate. But if the assertion of misconduct does not come until after the case is submitted, the opportunity to remedy it is gone. More importantly, to allow one juror to attack another juror's pre-submission conduct is too great an encouragement of post-trial trials of the jury. The accusing juror's motives may be more suspect than they would have been during the trial. In this case, for example, Frederick did not join in the verdict. If he thought Maxwell's hallway comment showed that she was biased or that she had not been forthcoming during voir dire, why did he not call the matter to the court's attention at the time instead of waiting until he knew that he and she disagreed on the result in the case? Has his disagreement with the verdict colored his view of what Maxwell said to him over coffee? Frederick could answer, no doubt, and Maxwell could give her side of it, but I question whether jurors should be put on trial after deliberations have begun. To examine and cross-examine jurors during deliberations or after a verdict is rendered concerning any misconduct that allegedly occurred during the trial, except as to outside influences, is a significant burden on

citizens who give of their time to serve as jurors with little benefit to the process. Jurors come to decide disputes, not to be drawn into them.

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Nathan L. Hecht  
Justice

Opinion delivered: June 29, 2000