

Baker's Texas Criminal Procedure Handbook

2012 Edition
Part 1

by Lang Baker

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Case notes in this book are generally grouped in a parallel structure across the various procedural subjects. First, there are notes stating rules, contrasted to notes applying the rules to specific fact situations. Then, there are rules relating to presenting the procedural issue (at trial or on appeal) and rules relating the appropriate procedure itself.

In the notes regarding fact situations there are notes where an issue was properly presented or preserved for review versus failure to do so; as to the appropriate procedure there are fact situations where the correct procedure was followed (no error) or not (error, either reversible or not).

From these groupings, the generic case note topics are PRESENTING ISSUE, RULES, NO ERROR, ERROR. If there are a great number of case notes under these topics, they may be further subdivided into topics focusing on particular components of a rule or clusters of similar fact situations. Where a great abundance of case notes produced an elaborate set of case note topics, an OUTLINE OF CASE NOTE TOPICS is included, either at the beginning of a chapter or immediately after the text of the relevant article.

PROVISIONS INCLUDED

The basic contents of this handbook cover the procedural provisions of the Texas Code of Criminal Procedure. Not included are chapters covering evidentiary material, which are included in *Baker's Texas Criminal Evidence Handbook*, and Title 2, relating to costs and fees.

In addition to the statutory chapters from the Code of Criminal Procedure, separate chapters cover Right to Counsel (following Chapter 1), Jury Argument and Jury Charge (following Chapter 36) and Community Supervision (following Chapter 42). Case notes on contempt decisions under Secs. 21.001 and 21.002, Government Code, are with Chapter 11, Habeas Corpus. There you will also find case notes on pre-trial habeas corpus, contempt, mandamus and prohibition. Case notes on Legislative Continuance under Sec. 30.003, Civil Practice and Remedies Code, are located at the conclusion of Chapter 29, Continuance. At the beginning of Chapter 17, Bail, are case notes relating to the Texas Constitution provisions on bail.

Following the Code of Criminal Procedure provisions is the text of those portions of the Texas Rules of Appellate Procedure relating to criminal cases, and at the back of the handbook are selected constitutional provisions relating to criminal procedure. Throughout the handbook are case notes on relevant decisions of the United States Supreme Court.

Special Note on 2011 Legislative Amendments:

The statutory text presented in the 2012 editions of Baker's Texas Handbooks includes text from both before and after amendments by the Regular and 1st Called Sessions of the Texas Legislature in 2011, except that only the post-amendment versions of non-substantive amendments (by Senate Bill 1303) are presented.

Baker's Texas Criminal Procedure Handbook

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* = included in Baker's Texas Criminal Evidence Handbook

CITATION FORM

v S = v State
Ep = Ex Parte
: = S.W.2d or 3d, Texas Supreme Court
/ = S.W.2d or 3d, Court of Criminal Appeals
<#> = S.W.2d or 3d, Court of Appeals
vol. no. 338 or less = S.W.3d

COURTS OF APPEALS

<1>	Houston
<2>	Fort Worth
<3>	Austin
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ABBREVIATIONS

*	indictment or charge set out in opinion
c/w(s)	complaining witness(es)
CCA	Code Construction Act
CCP	Code of Criminal Procedure
Ch	Chapter
circ	circumstantial
co-def	co-defendant
conv	conviction
CS	Civil Statutes
def	defendant
DWI	driving while intoxicated
evid	evidence
fund	fundamental(ly)
insuff	insufficient(cy)
MD	doctor
p/o(s)	peace officer(s)
PC'25	1925 Penal Code
PC'74	1974 Penal Code
poss	possession
pros	prosecution
rev prob	revocation of probation
suff	sufficient(cy)
TDC	Texas Department of Corrections
w/o	without

**Sample pages continue on the next page
with text from another part of the book.**

Def may not use right to jury venire that represents cross section of community to invalidate state's use of peremptory strikes. *Ortiz v S*, 773<4>941.

Def was not tried together with co-def for purposes of 35.15(a), and was entitled to full fifteen peremptory challenges, where trial started as joint trial with co-def but co-def was severed from trial part way through. *Goode v S*, 740/453.

Granting def additional peremptory strikes is discretionary with trial court; in absence of wrongdoing on court's part, no abuse of discretion will be found when the court overrules def's request for additional peremptory strikes after def has exhausted those accorded him by statute; the wrongdoing may occur when the court deprives a def of a peremptory challenge

by improperly overruling a def's challenge for cause and forcing him to use a strike on a juror who is subject to challenge for cause. *Thomas v S*, 701/653. **RULES**

Granting of additional peremptory strikes is up to discretion of trial judge. *Hogue v S*, 711/9.

In 35.15(b) "tried together" includes the jury voir dire; if co-defs are properly joined for trial, voir dire begins and concludes, and no specific harm is demonstrated by the statutorily authorized allocation of peremptory challenges, then def who proceeds to trial with a jury struck by himself, co-defs and the state, regardless of whether the co-defs proceed to trial with him, cannot complain of error. *Rodriguez v S*, 721<14>504.

It was not abuse of discretion to not bring in more panelists for voir dire and deny motion for mistrial when number of panelists dropped below number required for state and def to exercise all of their peremptory strikes and still have 12 remaining, where state volunteered to release four of its strikes and court accepted that offer, which made panel large enough for def to exercise all his strikes. *Wooten v S*, 205<6>89 (2006)

It was not error to deny motion to sever, over claim of denial of peremptory strikes where trial court acted consistently with mandatory language of 35.15(b). *Adams v S*, 180<13>386 (2005)

No merit to contention that the trial court violated def's Sixth Amendment right to an impartial jury and his Fourteenth Amendment rights to due process and equal protection when it denied his motion to postpone the exercise of peremptory challenges in capital case until the completion of voir dire. *Ladd v S*, 3/547 (1999)

It was not error to refuse to allow def to strike panel member after jury was seated but before panel was sworn, on claim def misunderstood list of panel members in making his strikes, where record did not adequately support claim of mistake. To allow def to change peremptory strikes by merely making an unsupported claim of mistake, after learning which panel members were struck by state, would be inequitable. *Meador v S*, 941<13>156 (1996)

It was not error to deny def's motion for mistrial based on claim he was denied four peremptory strikes, where trial began against two defs but after trial began court granted state's motion for continuance of co-def's trial and severed the cases. Def made no objection at that time, and after two witnesses had testified def moved for mistrial claiming he was denied four strikes because he was now being tried alone. Def did not object at time court granted state's motion for continuance, and number of strikes is not a fundamental constitutional right, so objection after trial began was too late. *Williams v S*, 939<11>703 (1997) **NO ERROR**

It was not error to deny additional peremptory strikes where record did not show abuse of discretion in denial of challenges for cause. *Travis v S*, 921<9>559 (1996)

It was not abuse of discretion to deny def's request to use peremptory strike retrospectively on juror in capital case, on claim she was exposed to pretrial publicity after being selected; later questioning* of juror showed trial court could find pretrial publicity had not affected her ability to be fair and impartial. *Beavers v S*, 856/429.

It was not abuse of discretion to deny request for additional peremptory strikes, where no challenges for cause were improperly denied. *Cooks v S*, 844/697.

No error in denying additional peremptory strikes where challenges for cause were properly overruled. *Chapman v S*, 838<7>574.

It was reversible error to deny motion for mistrial, after limiting def to nine peremptory challenges and severing the only jointly tried codef during state's case in chief for express reason of

antagonism and mutually exclusive defenses. *Goode v S*, 740/453. **ERROR**

Art. 35.16. Reasons for Challenge for Cause

(a) A challenge for cause is an objection made to a particular juror, alleging some fact which renders the juror incapable or unfit to serve on the jury. A challenge for cause may be made by either the state or the defense for any one of the following reasons:

1. That the juror is not a qualified voter in the state and county under the Constitution and laws of the state; provided, however, the failure to register to vote shall not be a disqualification;
2. That the juror has been convicted of misdemeanor theft or a felony;
3. That the juror is under indictment or other legal accusation for misdemeanor theft or a felony;
4. That the juror is insane;
5. That the juror has such defect in the organs of feeling or hearing, or such bodily or mental defect or disease as to render the juror unfit for jury service, or that the juror is legally blind and the court in its discretion is not satisfied that the juror is fit for jury service in that particular case;
6. That the juror is a witness in the case;
7. That the juror served on the grand jury which found the indictment;
8. That the juror served on a petit jury in a former trial of the same case;
9. That the juror has a bias or prejudice in favor of or against the defendant;
10. That from hearsay, or otherwise, there is established in the mind of the juror such a conclusion as to the guilt or innocence of the defendant as would influence the juror in finding a verdict. To ascertain whether this cause of challenge exists, the juror shall first be asked whether, in the juror's opinion, the conclusion so established will influence the juror's verdict. If the juror answers in the affirmative, the juror shall be discharged without further interrogation by either party or the court. If the juror answers in the negative, the juror shall be further examined as to how the juror's conclusion was formed, and the extent to which it will affect the juror's action; and, if it appears to have been formed from reading newspaper accounts, communications, statements or reports or mere rumor or hearsay, and if the juror states that the juror feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that the juror is impartial and will render such verdict, may, in its discretion, admit the juror as competent to serve in such case. If the court, in its discretion, is not satisfied that the juror is impartial, the juror shall be discharged;
11. That the juror cannot read or write.

No juror shall be impaneled when it appears that the juror is subject to the second, third or fourth grounds of challenge for cause set forth above, although both parties may consent. All other grounds for challenge may be waived by the party or parties in whose favor such grounds of challenge exist.

In this subsection "legally blind" shall mean having not more than 20/200 of visual acuity in the better eye with correcting lenses, or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

JURY SELECTION: CHALLENGE FOR CAUSE

(b) A challenge for cause may be made by the State for any of the following reasons:

1. That the juror has conscientious scruples in regard to the infliction of the punishment of death for crime, in a capital case, where the State is seeking the death penalty;
2. That he is related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to the defendant; and
3. That he has a bias or prejudice against any phase of the law upon which the State is entitled to rely for conviction or punishment.

(c) A challenge for cause may be made by the defense for any of the following reasons:

1. That he is related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to the person injured by the commission of the offense, or to any prosecutor in the case; and
2. That he has a bias or prejudice against any of the law applicable to the case upon which the defense is entitled to rely, either as a defense to some phase of the offense for which the defendant is being prosecuted or as a mitigation thereof or of the punishment therefor.

OUTLINE OF CASENOTE TOPICS

JURY SELECTION: CHALLENGE FOR CAUSE

- USSC CASES
- PRESENTING ISSUE
- ISSUE PRESERVED
- ISSUE NOT PRESERVED
- RULES ON CHALLENGE FOR CAUSE
- BY EITHER SIDE (subsec (a))
- BY STATE (subsec (b))
- BY DEFENSE (subsec (c))
- NO ERROR IN RULING ON CHALLENGE FOR CAUSE
- subsec (a)(1): qualified voter
- subsec (a)(2): convicted of theft or felony

- subsec (a)(5): disease or defect
- subsec (a)(8): former trial of same case
- subsec (a)(9): bias or prejudice as to def
- subsec (a)(10): formed conclusion
- subsec (a)(11): cannot read or write
- subsec (b)(1): conscious scruples
- subsec (b)(3): bias or prejudice as to law
- subsec (c): defense grounds
- OTHER GROUNDS
- ERROR IN RULING ON CHALLENGE FOR CAUSE

Also see US Supreme Court cases on change of venue in Chapter 31

USSC CASES Right to a jury trial guarantees to def a fair trial by a panel of impartial, "indifferent" jurors; it is not required, however, that the jurors be totally ignorant of the facts and issues involved; it is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. *Irvin v Dowd*, 366 US 717.

It was violation of due process in voir dire in capital case to refuse inquiry into whether a potential juror would automatically impose death penalty upon conv of def. *Morgan v Illinois*, 119 LE2d 492.

Def was denied fair trial by impartial jury where record showed a pattern of deep and bitter prejudice against def throughout the community. *Irvin v Dowd*, 366 US 717.

No denial of fair trial where jury voir dire indicated no such hostility by jurors as to suggest a partiality that could not be laid aside; def failed to show the setting of the trial was inherently prejudicial or the jury selection process permitted an inference of actual prejudice. *Murphy v Florida*, 421 US 794.

Proper standard for determining when a prospective juror may be excluded for cause because of views on capital punishment is whether those views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath; this does not require the juror's bias be proved with unmistakable clarity; deference must be paid to trial judge who sees and hears the juror. *Wainwright v Witt*, 469 US 412, 105 SC 844.

The constitution does not prohibit states from "death qualifying" juries in capital cases, even if "death qualification" in fact produces juries somewhat more conviction-prone than non-death-qualified juries. *Lockhart v McCree*, 476 US 162, 106 SC 1758.

Def was not denied jury selected from fair cross section of community by death qualification of jury; fair cross section requirement applies only to venires, not to petit juries; "Witherspoon-excludables" do not constitute a distinctive group for fair cross section purposes; fact that def's jury was death qualified, even though he did not face death penalty, due to his joint trial with co-def who faced death penalty, did not violate

Vlth Amendment's fair cross section requirement. *Buchanan v Kentucky*, 107 SC 2906.

Erroneous exclusion of prospective juror under Witherspoon-Witt cannot be harmless error; unexercised state peremptory challenge may not be used to render such error harmless. *Gray v Mississippi*, 107 SC 2045.

It was error to deny defense challenge for cause to prospective juror who would automatically vote for death penalty, but error was not reversible where def used peremptory strike so the prospective juror did not sit on the jury; loss of the peremptory strike did not violate constitutional right to an impartial jury. *Ross v Oklahoma*, 108 SC 2273.

It was improper to exclude jurors under 12.31(b) merely because they would be "affected" by the death penalty, meaning they would invest their deliberations with greater seriousness and gravity or would involve themselves emotionally. *Adams v Texas*, 448 US 38.

It was improper to exclude jurors under 12.31(b) because they were unable to state positively whether or not their deliberations would be in any way "affected." *Adams v Texas*, 448 US 38.

Texas does not violate *Witherspoon v Illinois*, 391 US 510, when it excludes prospective jurors who are unable or unwilling to answer penalty questions impartially, but use of 12.31(b) to exclude jurors on broader grounds based on their opinions regarding the death penalty is impermissible. *Adams v Texas*, 448 US 38.

Capital defendants have the right to be sentenced by an impartial jury. The State may not infringe this right by eliminating from the venire those whose scruples against the death penalty would not substantially impair the performance of their duties. Courts reviewing claims of *Witherspoon-Witt* error, however, owe deference to the trial court, which is in a superior position to determine the demeanor and qualifications of a potential juror. On record* in instant case it was error for US court of appeals to find that juror was not substantially impaired. *Uttecht v. Brown* (USSC, No. 06-413, June 4, 2007)

PRESENTING ISSUE When venire members have repeatedly been told of their obligation under the law to consider the full range of punishment for the statutory offense and there is no indication of their confusion, the complaining party need not ask any follow up questions regarding their full and complete understanding of the law to preserve error. *Cardenas v S*, 325/179 (2010)

Where def complained of denial of challenges for cause, and had received two extra peremptory challenges, he was required to show that trial court erroneously denied at least three of his challenges for cause in order to satisfy required showing for harm by demonstrating he was wrongfully deprived of at least one of his statutory peremptory challenges. *Saldano v S*, 232/77 (2007)

Def was not deprived of right to exercise peremptory strike or challenge for cause, when juror (X) who knew one of police officer witnesses (Y) in case was seated, where (1) only inquiry during voir dire regarding any relationship between prospective witness and panel members was identification of witnesses through initials and a last name, (2) defense inquired whether any venire-members had close relationships with peace officers, (3) Y did not know X's name, (4) X did not know Y's occupation, and (5) acquaintance between X and Y was not discovered until mid-trial. *Brown v S*, 183<1>728 (2005)

In reviewing trial court ruling on challenge for cause, appeals court defers to the trial court's ruling on a challenge for cause, because the trial judge was present to observe the demeanor of

the prospective juror and to listen to her tone of voice, and gives particular deference to the trial court when the potential juror's answers are vacillating, unclear or contradictory. *Rousseau v S*, 171/871 (2005)

It was not error to excuse juror, where trial judge stated juror was excused because he twice said he could not be fair, though voir dire did not identify which jurors made which statements. Also, def did not show action caused def to have objectionable jurors or explain why jury selected was not lawfully constituted. *Wilder v S*, 111<6>249 (2003)

It is irrelevant that def's jury was fair and impartial in determining whether he was harmed by the erroneous denial of a defense challenge for cause. Instead, harm from the erroneous denial of a defense challenge for cause focuses on whether a peremptory challenge was wrongfully taken from the defendant. Harm from the erroneous denial of a defense challenge occurs: (1) when a defendant exercises a peremptory challenge on a veniremember whom the trial court should have excused for cause at the defendant's request, (2) the defendant uses all of his statutorily allotted peremptory challenges, and (3) the defendant unsuccessfully requests an additional peremptory challenge which he claims he would use on another veniremember whom the defendant identifies as "objectionable" and who actually sits on the jury. When these conditions are met, this harms a defendant because he had to use a peremptory challenge to remove a veniremember who should have been removed for cause which, in effect, wrongfully deprives the defendant of one of his statutory peremptory challenges. When these conditions are met and a defendant has been granted an additional peremptory challenge, he must show that two of his challenges for cause were erroneously denied in order to show that he was wrongfully "deprived" of the use of at least one of his allotted peremptory challenges. *Newbury v S*, 135/22 (2004)

Where def contended 12 challenges for cause in capital case were erroneously denied, no error was preserved as to two of them because def could have but did not use peremptory challenges to remove those two. Def satisfied the conditions for showing harm from any error in the trial court's denial of his challenges for cause to the other ten venire members except that he must show that at least two (instead of one) of these venire members should have been removed for cause since he received one additional peremptory challenge. *Newbury v S*, 135/22 (2004)

To preserve error on trial court's denial of a challenge for cause, an appellant must: (1) assert a clear and specific challenge for cause; (2) use a peremptory strike on the complained-of veniremember; (3) exhaust his peremptory strikes; (4) request additional peremptory strikes; (5) identify an objectionable juror; and (6) claim that he would have struck the objectionable juror with a peremptory strike if he had one to use. *Allen v S*, 108/281 (2003)

When reviewing a trial court's decision to grant or deny a challenge for cause, appeals court looks at entire record to determine if there is sufficient evidence to support court's ruling and gives great deference to trial court's decision because trial judge is present to observe demeanor of venireperson and to listen to his tone of voice. Particular deference is given when the potential juror's answers are vacillating, unclear or contradictory. *Feldman v S*, 71/738 (2002)

To preserve error on denied challenges for cause, an appellant must demonstrate on the record that: 1) he asserted a clear and specific challenge for cause; 2) he used a peremptory challenge on complained-of venireperson; 3) all his peremptory challenges were exhausted; 4) his request for additional strikes was denied; and 5) an objectionable juror sat on jury. *Feldman v S*, 71/738 (2002)

Def was not harmed by denial of his challenges for cause where def accepted twelfth juror in capital case and did not ask for additional peremptory challenges. *Martinez v S*, 17/677 (2000)

When the trial judge errs in overruling a challenge for cause against a veniremember, the defendant is harmed only if he uses a peremptory strike to remove the veniremember and then suffers a detriment from the loss of the strike. *Cannady v S*, 11/205 (2000)

Where record reflected that def in capital case received two extra strikes in addition to the fifteen he is granted by statute, he did not suffer the loss of two strikes. So for def to demonstrate harm and, therefore, reversible error, he must show that challenges for cause on at least three different veniremembers were erroneously denied. *Cannady v S*, 11/205 (2000)

Where def in capital case was given two additional peremptory strikes in addition to 15 strikes granted by statute, and on appeal def contended he used four peremptory strikes after challenges for cause were improperly denied, he must show three challenges for cause were improperly denied in order to show harm, since the two extra peremptory strikes offset two of the denied challenges for cause. *Rosales v S*, 4/228 (1999)

Because the Code of Criminal Procedure specifically provides for waiver of certain qualifications in criminal cases, those qualifications found in the Government Code which are also contained in 35.16 are waivable under 35.16. *Mayo v S*, 4/9 (1999)

The requirement that a juror be a county citizen is not an absolute requirement that cannot be waived. *Mayo v S*, 4/9 (1999)

To show error in the trial court's grant of a State's challenge for cause, an appellant must show either that the trial court applied the wrong legal standard in sustaining the challenge or that the trial court abused its discretion in applying the correct legal standard. To obtain a reversal because of the error, an appellant must show that the error actually deprived him of a fair and impartial jury. *Ladd v S*, 3/547 (1999)

Appeals court will not disturb trial court's decision to strike for cause absent an abuse of discretion. *Matthews v S*, 960<12>750 (1997)

The requirements for preserving error on allegedly erroneous denial of a challenge for cause are: (1) the voir dire "of the individual venireperson" must be recorded and transcribed; (2) the def must assert "a clear and specific challenge for cause clearly articulating the grounds therefor;" (3) after the challenge for cause is denied by the trial court, def must use a peremptory strike on that juror; (4) all peremptory challenges must be exhausted; (5) when all peremptory challenges are spent, def must request additional peremptory challenges; and (6) def must assert that an objectionable juror sat on the case. *Irvine v S*, 857<1>920 (1993)

As long as the voir dire record reflects that an objection was made either during the voir dire and/or at the time of the trial court's ruling, and that the objection was not abandoned, def will be able to raise on appeal objections to the granting of challenges for cause; contention of state that def had not preserved error by not objecting after state's challenge was granted, without merit, where def had already made known opposition to the challenge. *Zimmerman v S*, 860/89 (1993)

Error in granting state's challenge for cause in a capital case is reversible; it is irrelevant whether the state had peremptory challenges remaining at the conclusion of the voir dire. *Wilson v S*, 863/59 (1993)

Where def was granted two additional peremptory strikes, to demonstrate harm, i.e., reversible error, he must show that challenges for cause on at least three venirepersons were erroneously denied; def failed to establish reversible error where he alleged that only one of his challenges for cause was wrongly denied; any harm from this denial was cured by one of the extra peremptory strikes. *Chambers v S*, 866/9 (1993)

Under TRAP 50(e), def was entitled to new trial where court reporter lost notes of voir dire of capital case juror who was excused on challenge by state; failure of record to show def requested court reporter make such notes was immaterial where court reporter in fact made such notes; contention testimony of venireperson at hearing on motion for new trial revealed challenge for cause was properly granted, without merit, where parties failed to agree that such testimony accurately reflected content of original testimony during voir dire; under TRAP 50(e) def is entitled to new trial unless parties agree on a statement of facts. *Lewis v S*, 844/750.

No harm resulted from ruling on challenge for cause to venireman being considered as alternate juror, where alternate juror selected in case was dismissed from his duties prior to deliberations of jury. *Cooks v S*, 844/697.

Any error in denial of challenge for cause in capital case, on claim panel member could not consider full range of punishment for included offense of murder, was harmless where issue of included offense of murder was not raised in the case. *Soria v S*, 933/46 (1996)

To preserve error from the erroneous denial of a defense challenge for cause, a defendant must show he asserted a clear and specific challenge for cause, he used a peremptory challenge on the complained-of veniremember, he exhausted all his peremptory challenges, and his request for additional peremptory challenges was denied. *Brooks v S*, 990/278 (1999)

ISSUE PRESERVED On complaint of denial of challenges for cause for inability to consider full range of punishment, no merit to state's contention def failed to preserve issue by not asking follow-up questions to confirm panel members were fully aware of law's requirements, where panel had been twice apprised of applicable range of punishment (by judge and by state) before defense voir dire; there was no ambiguity or confusion in how law was explained by either judge or state; when defense posed question to each panel member individually, only two asked for further explanation, which defense gave; it was fair inference that those who did not ask for clarification understood defense question about ability to consider minimum punishment of five years with probation. Absent further questioning by judge or state to clarify each panel member's stated position, judge was required to grant def's challenges for cause. *Cardenas v S*, 325/179 (2010)

No merit to contention def did not preserve for review complaint that jurors could not consider full range of punishment, on claim def did not ensure the jury panel understood the law's requirements and could not overcome their prejudice well enough to follow them, where counsel did explain the law on punishment before asking his question, and under facts of case he was not required to make follow-up questions. *Cardenas v S*, 305<2>773 (2009)

No merit to state's contention that def waived complaint about biased juror by not meeting his burden to ask questions suff to uncover potential bias, where he asked panel if anyone knew a person with complainant's name and whether anyone know a person with complainant's name who might be associated with a robbery case, and juror who ultimately recognized the complainant testified he did not know him by name and that it took "a while" after he testified for him to "put it together." *Lopez v S*, 261<4>103 (2008)

No merit to state's contention that under rule 33.1 def failed to preserve error because he did not obtain a ruling on his objection to trial court granting challenge for cause. An objection after a challenge for cause is sustained is by itself sufficient to preserve error. So long as the objection is made immediately after the challenge is granted, the discharge of the prospective juror from service is tantamount to an adverse ruling on the objection. *Ortiz v S* (Tx.Cr.App, 9/25/02, No. 73,692)

No merit to state's contention def failed to preserve for review challenge for cause because def never challenged juror, where those words did not appear in record, but grounds for challenge and that counsel was challenging panel member were abundantly clear, where after extensive questioning of panel member at the bench trial judge stated "Have your seat. Be overruled." In context trial judge was aware of complaint and

specific grounds. *Harvey v S*, 97<14>162 (2002)

Harm was shown for the erroneous denial of def's challenges for cause where the record indicated that def (1) used a peremptory challenge to remove the venire members, (2) exhausted his peremptory challenges, (3) requested and was denied additional peremptory challenges, and (4) identified two objectionable venire members who sat on the jury and on whom def would have exercised peremptory challenges had he not exhausted his peremptory challenges to correct the trial court's erroneous denial of his challenges for cause. Because def was harmed by the trial court's error, he was entitled to a new trial. *Johnson v S*, 43/1 (2001)

It was error to deny motion for new trial on grounds def was convicted by jury that included a juror disqualified by statute, where jury administrators protected the venire members by according their addresses the confidentiality that 35.29 requires, one juror resided in another county and was absolutely disqualified from service on def's jury, and def discovered that fact only by chance after trial when good cause entitled him to obtain jurors' home addresses to investigate report of possible jury misconduct. *Mayo v S*, 961<2>695 (1998)

Def did not knowingly waive his right to be tried by a jury comprised of 12 citizens of the county where the trial occurred, where jury privacy rule, 35.29, kept prospective jurors' addresses in confidence during voir dire and trial, and def discovered fact on juror was citizen of adjacent county during investigation of motion for new trial. *Mayo v S*, 961<2>695 (1998)

Because legislature did not apply provisions of 44.46 to lack of county-citizen status that is an absolute disqualification under 62.102 Govt Code, there was no necessity for def to show harm from fact his jury included member who was not citizen of county where trial occurred. *Mayo v S*, 961<2>695 (1998)

Denial of challenge for cause was preserved for review where def requested an additional strike and used all strikes. *Laca v S*, 893<8>171 (1995)

Def showed harm in denial of challenge for cause where she exhausted her peremptory strikes, requested an additional challenge, and identified an objectionable juror who actually served on jury. *Sykora v S*, 872<9>323

Where bias or prejudice under 35.16(a)(9) came to light after jury was impaneled, def's motion to quash panel should have been motion for mistrial, but trial court was aware of relief def was requesting, so error was preserved. *Vaughn v S*, 833<5>180.

ISSUE NOT PRESERVED Nothing preserved for review of denial of challenge for cause in capital case where after very short questioning of venire member def simply announced "We challenge," without giving any reason for that challenge or stating whether it was intended as a challenge for cause or a peremptory challenge. *Gardner v S*, 306/274 (2009)

Nothing preserved for review on claims that jurors were excused in violation of *Wainwright v. Witt*, 469 U.S. 412 (1985), where were no trial objections. *Ortiz v S* (Tx.Cr.App, 9/25/02, No. 73,692)

It was not error to deny motion for mistrial on grounds that a juror also served on grand jury that returned indictment in the case, where def failed to make diligent inquiry during jury voir dire, and made no challenge for cause. *Graham v S*, 258<10>201 (2008)

Nothing preserved for review of claim juror was not resident of county, where issue was first raised by motion for mistrial two months after matter was raised by questions asked juror by judge immediately after trial court's announcement of jury's punishment decision. *Fenoglio v S*, 252<2>468 (2008)

Def forfeited right to complain that juror should have been excused because she had served on grand jury that indicted def, where def did not ask specific enough questions to determine whether anyone on the panel had served on the grand jury that indicted him and he did not challenge the venirewoman. Def asked jury panel if any of the panel members had "heard anyone discuss this case or someone say they thought they knew what the facts of the case might be?" and none of the prospective jurors responded. No merit to def's contention that when there is no response to the general question about familiarity about the case, then there is no need to ask more specific questions in order to preserve the error. It is counsel's responsibility to ask questions specific enough to elicit the answers they require. *Webb v S*, 232/109 (2007)

Nothing preserved for review on claim trial court improperly excused jurors for cause on its own motion, where record showed attorneys and trial court worked together to determine who should be struck or dismissed; while court stated it was striking jurors for cause, it was merely working with two experienced attorneys to shortcut process of excusing and removing jurors; all of def's requests to challenge jurors were granted, counsel opposed none of challenges, and counsel affirmatively failed to object to assembled petit jury. *Tamez v S*, 205<12>32 (2006)

Nothing preserved for review on challenge to veniremember X where it was only after parties had exercised strikes and identities of jurors were revealed that def advised court he had used strike on X, requested additional strike, and identified one of chosen jurors as objectionable. *McBean v S*, 167<7>334 (2004)

Nothing preserved for review on complaint of granting challenge for cause where objection at trial (state's question was an improper commitment question) was not same as objection on appeal (venire member was not disqualified as a juror). *Salinas v S*, 166<2>368 (2005)

Def failed to show harm in granting three of state's challenges for cause where def stated ruling let three objectionable jurors on panel, but record failed to identify which jurors were objectionable or demonstrate why jury selected was not lawfully constituted. *Tasby v S*, 111<11>178 (2003)

Def waived complaint that he was denied opportunity to voir dire and challenge venirepersons on their ability to follow the law on punishment, where def failed to properly object or move for a mistrial. Before voir dire court told def that court but not jury would be able to give probation, def elected for court to assess punishment, jury was informed they would not be assessing punishment if def were found guilty; at close of guilt stage court told def he had misinformed def and that if jury found def guilty and made special finding def had used deadly weapon, court

would not be able to give probation, but if jury assessed punishment it could consider probation; court allowed def to change his election for punishment, court and counsel explained that during jury selection punishment was not discussed with jury; upon understanding he would not be able to voir dire jury on probation issue at that point, def elected to have jury assess punishment. *Ponce v S*, 127<1>107 (2003)

Nothing preserved for review on claim of error for sustaining challenges for cause for inability to impose death penalty where was no trial objection when trial court sustained state's challenges. *Simpson v S*, 119/262 (2003)

No merit to contention trial court erred in granting state's challenge for cause in violation of Article 35.16 because state failed to state the reason for its challenge and because the venireperson never said that she could not follow the law. Even assuming that trial court erred in its application of Article 35.16(b)(3), def did not show the error deprived him of a lawfully constituted jury. Without such a showing, reversal is not required. *Feldman v S*, 71/738 (2002)

Def could not complain on appeal of refusal to allow def to examine juror during trial after juror indicated to bailiff that he was being affected as a juror because he knew some of witnesses in case, where def did not use due diligence during jury voir dire to determine whether witnesses expected to testify would cause any prospective juror to be prejudiced or biased. Also, def did not pursue matter by motion for new trial. *Baxter v S*, 66<3>494 (2001)

It was not abuse of discretion to refuse to rule on def's challenges for cause where def made challenges later than court and parties had agreed. Parties made clear agreement that challenges for cause would be made as soon as such challenges became apparent; state adhered to agreement during voir dire, but def did not adhere to agreement and made all her challenges for cause at conclusion of voir dire. *Contreras v S*, 56<14>274 (2001)

Failure to challenge juror for cause on basis of her out-of-county status waived error. *Mayo v S*, 17<2>291 (2000)

Def waived any error on claim juror did not understand English well enough to participate, where def failed to make an initial inquiry into whether members of the panel could understand English. *Abney v S*, 1<14>271 (1999)

Nothing presented for review on granting challenges for cause where def did not object at trial when court granted state's motions to strike. *Ortiz v S*, 993<2>892 (1999)

Nothing presented for review on claim that granting challenge for cause was constitutional error, where def did not object at trial on constitutional grounds. *Ortiz v S*, 993<2>892 (1999)

Assuming error occurred when trial court granted challenge for cause but the excused juror nevertheless remained on the panel, def did not preserve error for appeal where he asked for and was denied an extra peremptory strike to use against that panel member and indicated there were three other people he wished to strike, but did not indicate a specific objectionable juror he would have to accept but for trial court's actions. *Riley v S*, 988<14>895 (1999)

In challenge to literacy of juror, def waived contention as to not asking juror to read charge or require him to express his thoughts in writing, where he made no such request at trial. *Hodge v S*, 896<7>340 (1995)

Nothing presented for review on granting state's challenge for cause where def did not object until after jury was selected and seated in jury box. *Cain v S*, 893<2>681 (1995)

Nothing presented for review in granting challenge for cause where def did not object to trial court's dismissal of those panel members. *Garcia v S*, 887/862 (1994)

Def's failure to object waived any error in granting state's challenge for cause; in capital case, court reviewed merits and found no error. *Butler v S*, 872/227

Denial of challenge for cause was not preserved where defendant did not use peremptory strike on panel member and she ended up sitting on the jury. *Bagheri v S*, 329<4>23 (2010)

Nothing preserved for review of denial of challenge for cause, where def did not use peremptory strike on that panel member, but instead used his peremptory strikes on other panel members and then requested an additional peremptory strike for purpose of striking that panel member, which trial court denied and that panel member served on jury. *Gately v S*, 321<11>72 (2010)

Def did not preserve error on granting challenge for cause for economic hardship, where objection was not made until after trial court had excused panel member; if preserved, challenge for cause was not error, where panel member (in capital case) owned and operated a one-man auto mechanic shop, did not have enough work to hire anyone else full-time or even part-time, and he had to work so many hours to keep the business going that he had no time for hobbies or recreation; he testified that if he served on a jury for seven to 14 days, no one would be at his shop to keep it open and that "it would mean me going broke," and as a result, he would be preoccupied during the trial with concern about his business. *Teague v S*, 864/505 (1993)

No merit to claim of error to grant challenge for cause, where def did not object when trial court granted state's challenge. *Gunter v S*, 858/430 (1993)

Nothing preserved for review where juror in capital case identified by def as objectionable juror he was forced to accept was an alternate juror who did not serve; fact def was informed during selection process that one of originally selected jurors had been in accident and might not serve, but in fact he did serve, did not support claim that error was preserved; def was not forced to accept alternative juror, whom def claimed was objectionable, as a juror. *Rousseau v S*, 855/666.

Where death penalty was not assessed, def could not receive new trial for improper exclusion for cause because of conscientious scruples against death penalty. *McDuffie v S*, 854<9>195.

Contention trial court should not have excused prospective juror under (a)(10) after def waived any objection under that provision, not preserved for review, where neither def nor state exhausted its peremptory strikes. *Madrigal v S*, 852<3>25.

Nothing preserved for review on claim of error in granting state's challenge for cause to prospective juror in capital case who could not distinguish between intentionally and deliberately, where def never clearly informed trial judge he was resisting state's challenge, and made no statement he believed veniremember was qualified. *Kemp v S*, 846/289.

Nothing presented for review on sustaining state's challenge for cause where def failed to object to trial court's ruling. *Goff v S*, 931/537 (1996)

In death penalty jury selection, objection to granting challenge for cause was too late, where challenge for cause was granted, examination of next panel member began, lunch break was taken, everyone returned from lunch break, and then objection was made. *Fuller v S*, 827/919.

Ruling on challenge for cause of prospective juror could not be reviewed on appeal where def presented only partial statement of facts of voir dire of prospective juror; TRAP 50(d) places burden on def to present record suff to show error. *Valanty v S*, 822<2>805.

Nothing preserved for review where def did not establish harm, where he did not request additional challenges or claimed he was being tried by a jury to which he had a legitimate objection. *Alvarado v S*, 822<14>236.

Nothing presented for review where def made no trial objection to trial court excusing prospective jurors on its own motion. *Alvarado v S*, 822<14>236.

It was not error to grant challenge for cause to prospective juror who was beyond last person selected for jury, so she would not have served on jury even if permitted to remain on panel. *Vanderhorst v S*, 821<11>180.

Nothing presented for review on claim that trial court erred in discharging two venirepersons after they were selected to serve on jury panel, where one had been called for active duty in Navy and other had moved out of county, where def did not object when informed of the action and first objected much later. *Knighen v S*, 814<10>813.

Def could not complain of denial of challenges for cause in capital case as to four panel members on whom def did not exercise a peremptory strike (peremptory strikes were exercised after conclusion of individual voir dire). One was struck by state, one was accepted by def to sit on jury, one was accepted by def as alternate juror, and one was not reached when exercising peremptory strikes. *Busby v State*, 253/661 (2008)

Nothing preserved for review of denial of challenge for cause where def did not use a peremptory strike against panel member nor request additional strikes. *Long v S*, 245<1>563 (2007)

ISSUE NOT PRESERVED: DENIAL OF CHALLENGE FOR CAUSE

Nothing preserved for review of claim of error to deny challenge for cause to panel member employed as a prosecutor in district attorney's office, subject to challenge under 35.16(a)(9), where def did not exercise a peremptory strike against that panel member. (But reversed for ineffective assistance of counsel for failure to preserve the issue.) *Morales v S*, 217<8>731 (2007)

Nothing preserved for review of denial of challenges for cause where def did not exercise peremptory strikes against those jurors. *Fulenwider v S*, 176<1>290 (2004)

Nothing preserved for review on denial of challenges for cause where record indicated def did not use peremptory challenges on three who subsequently served on jury, and did not indicate def requested any additional strikes. *Gant v S*, 153<9>294 (2004)

Court of Appeals erred in addressing the merits of def's claim regarding one of his challenges for cause, where def stood mute in the face of the court stating erroneous facts as the basis for the denial and requesting correction if necessary before denying def's request for an additional peremptory strike. Although court of appeals was correct that def fulfilled the steps for preservation of error regarding denial of a challenge for cause, in limiting its preservation analysis to the those procedures it ignored a fundamental principle of error preservation: that the trial court must be made aware of a complaint at a time and in a manner so that it can be corrected. The trial court's ruling was based not on the record but on the judge's erroneous recollection, which was stated on the record explicitly for the parties to correct, if necessary. Defense counsel said nothing to cast doubt on the trial court's recollection of events. The trial court had no obligation to grant def's request for additional peremptory strikes unless def first showed his challenge for cause should have been granted. *Loredo v S*, 159/920 (2004)

Nothing preserved for review on denial of challenge for cause where complaint raised on appeal was not made in trial court. Complaint on appeal was that def was forced to take objectionable juror X because of denial of challenge for cause to Y, and complaint at trial was that def was forced to take objectionable juror X because of denial of challenge for cause to Z. *Haley v S*, 113<3>801 (2003)

Nothing preserved for review on claim that denial of challenge for cause violated def's constitutional rights, where counsel failed to use an available peremptory strike against panel member. (Def used only two of his ten strikes.) *Landers v S*, 110<14>617 (2003)

Nothing preserved for review on claim of error to deny challenge for cause where record showed def made no challenge for cause to that panel member, but only requested an additional peremptory strike (in capital case) to use against her because she was unacceptable to defense. *Escamilla v S*, 143/814 (2004)

Nothing presented for review on denial of challenge for cause where def failed to identify for trial court an objectionable juror that he would have used a peremptory strike against if he had another strike. *Allen v S*, 108/281 (2003)

Nothing preserved for review of denial of challenge for cause where def did not request additional peremptory strikes after exhausting his strikes to remove challenged juror and two others. *Ramirez v S*, 87<4>703 (2002)

Nothing preserved for review on denial of challenge for cause where record did not show def exhausted his peremptory challenges or requested additional challenges. *Allen v S*, 80<6>108 (2002)

No merit to contention was error to deny challenge for cause where def presented peremptory strikes at same time he made the challenge for cause, and none of the strikes were used to remove challenged panel member. *Lopez v S*, 79<7>108 (2002)

No harm shown in denial of challenge for cause where def used strike against the panel member and was given an additional peremptory strike. To show harm def was therefore required to show trial court improperly denied challenges for cause on at least two different panel members, but def asserted only one challenge for cause error, so harm could not be shown. *Johnson v S*, 68/644 (2002)

Nothing preserved for review on claim trial court erred in denying challenges for cause to two venirepersons in capital case where record showed def used only thirteen of his fifteen peremptory challenges. *Mathis v S*, 67/918 (2002)

Nothing preserved for review on denial of challenge for cause where def requested and was denied three additional peremptory strikes, but record did not indicate any of jurors

seated were named by def as someone he would have struck with additional strikes. *Faison v S*, 59<12>230 (2001)

Def could not show he was harmed by denial of challenges for cause against two panel members in capital case, where def was given two extra strikes by trial court. *Wright v S*, 28/526 (2000)

No merit to contention that was error for trial court to refuse challenges for cause made by def against various members of the venire, where def used only thirteen of his fifteen peremptory challenges. A defendant is not harmed by a trial court's erroneous refusal to grant defense challenges for cause if the defendant has failed to exhaust his peremptory challenges. *Rocha v S*, 16/1 (2000)

No harm shown in alleged error denying challenge for cause, where def did not show he exhausted his peremptory strikes and did show he was forced to take an identified objectionable juror. *Long v S*, 10<5>389 (2000)

Nothing presented for review on claim that was error to overrule challenges for cause for veniremembers where def requested no additional strikes after he had exhausted his fifteen peremptory strikes. *Brooks v S*, 990/278 (1999)

Nothing preserved review on denial of challenge for cause where def requested an additional peremptory strike but never complained to trial court of having to tolerate an objectionable juror. *Garcia v S*, 960<13>329 (1997)

Def failed to preserve complaint of denial of challenge for cause where he never asserted a specific challenge for cause for identified venire member on clearly articulated grounds. *Perez v S*, 960<3>84 (1997)

Nothing presented for review by denial of challenge for cause where record did not show def requested any additional peremptory strikes, nor that he informed trial court he was being compelled to go to trial with an objectionable juror. *Turro v S*, 950<2>390 (1997)

Def failed to preserve error on denial of challenge for cause in capital case where def used only 13 of his 15 strikes. *Pondexter v S*, 942/577 (1996)

Nothing preserved for review on denial of challenge for cause in death penalty case where def did not use all peremptory strikes *Green v S*, 934/92 (1996)

Nothing preserved for review on denial of challenge for cause in capital case where def was given an extra peremptory strike. *Dowthitt v S*, 931/245 (1996)

Nothing preserved for review on denial of challenges for cause where def did not identify an objectionable juror seated in case. Naming an alternate juror as objectionable was not suff to preserve issue. *McFarland v S*, 928/482 (1996)

Nothing preserved for review on denial of challenge for cause where def used peremptory strike against her and did not identify objectionable juror sitting on jury against whom would have used that strike until after jury was sworn, which was untimely. Also, record of voir dire was insuff to show merit to challenge for cause where def asked jury panel two questions* together and was unclear whether challenged juror was replying to first or second question. *Credille v S*, 925<14>112 (1996)

Nothing presented for review on denial of challenges for cause where def challenged three denials of challenges for cause but was given five additional peremptory strikes. *Degarmo v S*, 922<14>256 (1996)

No harm shown in denial of challenges for cause where def used only 10 of his 15 peremptory strikes in capital case. *Colella v S*, 915/834 (1995)

Def waived denial of challenges for cause where def did not show he exercised a peremptory strike against those panel members and did not show he had exhausted his peremptory strikes at time he asked for additional strikes, and in fact made that request before he had exercised any peremptory strikes. *Brosky v S*, 915<2>120 (1996)

Nothing preserved for review on denial of additional peremptory strike and denial of challenge for cause where record did not show def used all his peremptory strikes. Def did not make jury strike sheets part of record on appeal and statement of facts did not reflect def asserted all his peremptory strikes were used. *Hernandez v S*, 914<8>218 (1996)

Nothing presented for review on denial of challenge for cause where issue was inadequately briefed. Def did not explain nature of veniremembers' supposed bias and prejudice, did not cite specific pages in record where alleged bias or prejudice was shown, and did not explain why state's efforts at rehabilitation were inadequate. *Alvarado v S*, 912/199 (1995)

Nothing preserved for review on denial of challenges for cause where def did not use all his peremptory strikes. *Lewis v S*, 911/1 (1995)

Nothing preserved for review on claim of denial of challenges for cause in capital case where 11 jurors had been seated when def exhausted his peremptory strikes, his request for three more peremptory strikes was denied, next three panel members were struck by state, and when next panel member was accepted by state, trial judge stated he would be seated as 12th juror unless def showed "why he is an insufficient juror to justify granting an additional challenge," and def made no objection and accepted juror. By failing to identify him as objectionable, def waived right to complain of overruling challenges for cause. *Broussard v S*, 910/952 (1995)

Def did not preserve error under 35.16(a)(10), on denial of challenge for cause based on panel member's conclusion as to def's guilt (where panel member stated that "already some picture of guilt" had been created by the proceedings of the court), where was no evid that panel member's conclusion would have affected his verdict. *Curry v S*, 910/490 (1995)

No harm shown even if was error to deny one challenge for cause where def was given three additional peremptory strikes. *Mason v S*, 905/570 (1995)

Where def was given two additional peremptory strikes and on appeal challenged denial of challenges for cause, appeals court need not address points of error as to two of those denied challenges for cause where it found no abuse of discretion as to ten of the 12 challenged. *Penry v S*, 903/715 (1995)

Nothing preserved for review on denial of challenge for cause where def did not direct appeals court to record, nor assert in his brief, that he complied with requirements for preserving such error. *Clemons v S*, 893<8>212 (1995)

Def failed to preserve error on denial of challenge for cause where he was given additional peremptory strikes that he did not use. *Bigby v S*, 892/864 (1994)

Nothing presented for review on denial of challenges for cause in capital case where def was given suff additional peremptory strikes to preclude review. *Robison v S*, 888/473 (1994)

Nothing preserved for review on denial of challenge for cause where record did not reflect def used all his peremptory strikes. *Gillum v S*, 888<8>281 (1994)

Def could not show harm in denial of challenges for cause where he did not exhaust his peremptory strikes. *Garcia v S*, 887/862 (1994)

Nothing presented for review on claim of error to deny challenge for cause where def did not use peremptory strike on this panel member and after challenge for cause was denied def accepted the panel member. *Coleman v S*, 881/344 (1994)

Nothing preserved for review on denial of challenge for cause, where def did not exercise all his peremptory strikes. *Coble v S*, 871/192

Contention that was error to deny challenge for cause, not addressed because after trial court denied challenge for cause, def did not exercise a peremptory challenge on venireperson although he still had three peremptory challenges left (capital case). *Adanandus v S*, 866/210 (1993)

Nothing presented for review on denial of challenges for cause in capital case, where def did not exhaust his peremptory strikes. *Zimmerman v S*, 860/89 (1993)

Def did not preserve issue of denial of challenges for cause, where he requested additional peremptory challenges, but did not assert he would be trying the case with an objectionable juror against whom he would have exercised a peremptory strike had he had one. *Enos v S*, 859<2>594 (1993)

Def failed to preserve issue of denial of challenge for cause, by failing to assert a clear and specific grounds for challenge, where counsel merely stated, "Your honor, the defense makes a motion to strike." *Irvine v S*, 857<1>920 (1993)

Denial of challenge for cause not preserved where challenged panel member did not sit on jury and def did not point to any juror who did sit that was objectionable to him. *Narvaiz v S*, 840/415.

Denial of challenges for cause not preserved, where def never established he ever had to accept an objectionable juror and after using last peremptory strike he did not request additional strikes. *Jones v S*, 833/118.

Nothing presented for review on complaint of denial of challenge for cause, where record did not show def exhausted peremptory challenges, requested additional strike, or was forced to accept an objectionable juror. *Jones v S*, 852<13>710.

Nothing presented for review on denial of challenge for cause where def was given additional peremptory strikes and record did not show he was ever denied a request for an additional strike, nor that def identified an objectionable juror he claimed he would have struck with peremptory strike. *Nelson v S*, 848/126.

Denial of challenge for cause not preserved where def did not request additional peremptory strike after using strike on challenged prospective juror and exhausting all strikes. *Calderon v S*, 847<8>377.

Any error in denying challenge for cause was cured when def used peremptory strike against challenged veniremember, and was later given additional peremptory strikes. *Kemp v S*, 846/289.

Denial of challenge for cause not preserved for review where def did not exercise peremptory strike (capital case); but issue addressed on merits in interest of justice. *Cantu v S*, 842/667.

Denial of challenge for cause was not preserved where def did not show he used all his peremptory strikes and he never requested an additional peremptory strike. *Chatman v S*, 830<9>637.

Def waived any error where he never made a clear and specific challenge for cause which clearly articulated the grounds for the challenge. *Burton v S*, 830<8>197.

Def did not preserve denial of challenge for cause in capital case where def did not use all his peremptory strikes. *Long v S*, 823/259.

No error preserved on denial of challenges for cause, where def did not request additional peremptory strike and failed to show an objectionable juror was seated. *Randall v S*, 803<2>489.

If it was error to deny challenge for cause, def did not show harm, where record* showed that if def had been given additional peremptory strike, he would have used it on a prospective juror who was stricken by state. *Middlebrook v S*, 803<2>355.

JURY SELECTION - CHALLENGE FOR CAUSE: RULES

No merit to contention 35.16 is unconstitutional on its face, in violation of *Wainwright v. Witt*, 469 U.S. 412 (1985), and that any challenges granted pursuant to that statute must be deemed invalid. Court had previously held [in *Ramos v. State*, 934/358, 366 (1996)] that 35.16 "is a ground for disqualification only to the extent constitutionally permitted by Witt." *Ortiz v S* (Tx.Cr.App, 9/25/02, No. 73,692)

A prospective juror is not subject to challenge for cause simply because he or she does not consider a particular type of evid to be mitigating. *Needum v S*, 184<2>326 (2006)

In the case of a vacillating veniremember, appeals court defers to decision of trial court, which was in a position to actually see and hear the veniremember in the context of the voir dire. *Granadosv S*, 85/217 (2002)

A defendant has a right to not have a particular venire member on the jury if the venire member is challengeable for cause or the defendant exercises one of his peremptory challenges. *Johnson v S*, 43/1 (2001)

In reviewing the trial court's decision to dismiss a venireman upon a sustained challenge for cause, considerable deference is given to the trial court because it is in the best position to evaluate the venireman's demeanor and responses. In reviewing the trial court's action, appeals court asks whether the totality of the voir dire testimony supports the court's finding that the prospective juror is unable to follow the law as instructed and reverse only if a clear abuse of discretion is evident. When the potential juror's answers are vacillating, unclear or contradictory, particular deference is accorded to the trial court's decision. *King v S*, 29/556 (2000)

A trial court does not abuse its discretion for failing to grant a challenge for cause on the basis of a reason not expressly enumerated in Article 35.16. Rather, challenges not based upon a ground specifically enumerated in Article 35.16 are addressed to the sound discretion of the trial judge. *Maldonado v S*, 998/239 (1999)

To show error in trial court granting state's challenge for cause, def must show either (1) trial judge applied wrong legal standard in sustaining the challenge, or (2) trial judge abused discretion in applying the correct legal standard. *Jones v S*, 982/386 (1998)

Def has no substantial right that any particular individual serve on the jury. Def's only substantial right is that the jurors who do serve be qualified. Def's rights go to those who serve, not to those who are excused. *Jones v S*, 982/386 (1998)

Erroneous ruling excusing panel member requires reversal only if record shows the error deprived def of a lawfully constituted jury. *Jones v S*, 982/386 (1998)

A mere error in ruling on a challenge for cause does not violate Art. I, Sec. 10, Texas Constitution. Texas Constitution does not provide greater protection than federal constitution of right to trial by an impartial jury in criminal cases. *Jones v S*, 982/386 (1998)

Courts should be liberal in granting challenges for cause. *Jones v S*, 982/386 (1998)

On its face, 35.16 does not purport to be an exclusive or exhaustive list of challenges for cause. Govt. Code sec. 62.102 may also govern disqualification on a criminal trial juror in appropriate situations. *Mayo v S*, 961<2>695 (1998)

The legislature has absolutely disqualified from jury service all persons who are not citizens of both this state and the county where the jury service occurs. *Mayo v S*, 961<2>695 (1998)

List of grounds for challenge for cause in 35.19 is not exclusive, and a prospective juror may be successfully challenged if facts show the juror is incapable or unfit to serve on the jury. A juror's

failure to truthfully answer questions put to him by the court may support a challenge for cause. Trial court may determine that a prospective juror's failure to truthfully answer a question reflects a lack of credibility which might prevent him from obeying his oath and following his instructions. *Matthews v S*, 960<12>750 (1997)

If voir dire is confused and panel member not clearly challengeable, and panel member states he will meticulously follow the law after it is explained to him, denial of challenge for cause is not abuse of discretion. *Rachal v S*, 917/799 (1996)

A challenge for cause can properly be asserted on grounds not specifically enumerated in 35.16 (e.g. circe that would prevent juror from concentrating and giving full attention to case), where it is based on facts that show prospective juror would be "incapable or unfit to serve on the jury;" such challenge is addressed to sound discretion of trial judge. *Allridge v S*, 850/471.

DISAVOWING language to contrary in other cases: 35.16 is a complete list of challenges for cause; challenges enumerated in 35.16 are, as a matter of law, the only ones which a party may request that a judge rule upon to disqualify a juror, while the judge may, in accordance with 35.03 consider any other excusal factor with or without the prompting of counsel. *Butler v S*, 830/125.

Although challenge for cause should allege facts explaining basis for challenge, where the reason is obvious to court and opposing counsel and there is no indication the parties were unaware of grounds for challenge, facts need not be alleged in making the challenge. *Cooks v S*, 844/697.

RULES: Trial court did not apply an overly restrictive standard when ruling on challenge to panel member for inability to read and write where record showed trial judge's questions* were to assess whether panel members could read and write English well enough to communicate their ideas in writing. *Davila v S*, 252<5>846 (2008)

It was not abuse of discretion to deny motions for mistrial and new trial, on claim that one juror had served on grand jury that indicted def, where trial judge questioned the juror regarding what evidence she remembered from the grand jury and determined that she did not even remember if any evidence was presented and that she was not biased against def. There was no indication that the juror's prior service on the grand jury deprived def of a fair and impartial jury. *Webb v S*, 232/109 (2007)

No merit to claims that, during voir dire, the trial court violated 35.16(a)(10) and 35.17, sec. 2, "by failing to inquire as to whether prospective jurors had already formed an opinion as to appellant's guilt that would influence their actions in rendering a verdict in the case," and that this also violated the Sixth and Fourteenth Amendments to the US Constitution by directly affecting "the determination of whether impartial jurors are impaneled." Statement* included in juror questionnaire to determine whether panel members knew about case was proper. The prosecutor's prefatory remarks during individual voir dire accurately explaining the law to the venire members did not violate the procedures set out in 35.16(a)(10). 35.17, sec. 2, literally permits this information to be conveyed to the venire members, and 35.16(a)(10) does not literally prohibit it. Def did not point to anywhere in the record where the prosecution was permitted to rehabilitate venire members who stated that they had formed a conclusion about def's guilt that would influence their verdict. *Newbury v S*, 135/22 (2004)

A juror who cannot impartially judge the credibility of the witnesses is challengeable for cause for having a bias or prejudice in favor of or against the defendant, 35.16(a)(9). *Feldman v S*, 71/738 (2002)

35.16(a) does not include as one of the 11 grounds for cause, that a member of the venire may have had reset or rescheduled his date and time for appearance for jury duty. No merit to contention that was error to deny challenge for cause to members of panel who had rescheduled their jury duty days. *Singleton v S*, 881<1>207 (1994)

County citizenship (requirement for jury service under Govt. Code sec. 62.102) is a part of the Art. 35.16 requirement that a person be a qualified voter in the county under the constitution and laws of this state in order to be fit to serve as a juror. *Mayo v S*, 4/9 (1999)

Computer print-out of pending criminal cases, used by trial court to determine qualification of prospective juror under 35.16(a)(3), was not inadmissible hearsay, but was admissible under Rule

803(8). No merit to contention it was excludable by 803(8)(B) because based on matter observed by law enforcement personnel, because list was not part of any investigation nor intended for use against def nor even against prospective juror, but was merely a ministerial report of persons with outstanding charges. *Watson v S*, 917<2>65 (1996)

Civil pleading alleging conversion does not constitute a cause for challenge under 35.19 and 35.16(a)(3) for "other legal accusation of theft." *Staley v S*, 887/885 (1994)

A venireman is challengeable for cause under 35.16(a)(9) if he cannot impartially judge the credibility of witnesses. However, this means only that jurors must be open-minded and persuadable, with no extreme or absolute positions regarding the credibility of any witness. Veniremen are not challengeable for cause simply because they would give certain classes of witnesses a slight edge in terms of credibility, because complete impartiality cannot be realized as long as human beings are called upon to be jurors. *Ladd v S*, 3/547 (1999)

Bias exists as a matter of law when venire member (1) admits he is biased for or against a def, (2) admits prejudice against persons who may use intoxicating beverages, when def is charged with an offense involving liquor, (3) admits or demonstrates prejudice towards a racial or ethnic group, (4) admits resentment towards a def because of some prior contact with def, or (5) is related to the state's primary witness. *Morales v S*, 875<2>724

When bias is not established as a matter of law, trial court has discretion to determine whether it actually exists to such a degree that the prospective juror is disqualified and the challenge for cause should be sustained. *Morales v S*, 875<2>724

If subsequent to impanelment but prior to jury's verdict it is discovered that a biased or prejudiced juror was selected without fault or lack of diligence by def, it is an abuse of discretion for trial court not to grant motion for new trial. *Vaughn v S*, 833<5>180.

When the feeling expressed by a prospective juror is one of bias or prejudice in favor of or against the def (as opposed to a bias or prejudice against the law), it is not ordinarily possible for such a juror to be qualified by stating he can lay aside such prejudice or bias. *Smith v S*, 907/522 (1995)

35.16(a)(10) is not intended to address conclusions jurors may draw from facts presented to them during voir dire, but addresses bias obtained before entering courtroom, such as from hearsay, news reports, and rumors. *Harvey v S*, 97<14>162 (2002)

In order for a challenge for cause to be sustained under 35.16(a)(10), the challenging party must show that the veniremember has established in his mind a conclusion as to the guilt or innocence of the defendant and that this conclusion

will influence his verdict. *Cannady v S*, 11/205 (2000)

A prospective juror is not challengeable for cause under 35.16(a)(10) merely because he has heard news reports about the crime or the suspect. *Ladd v S*, 3/547 (1999)

35.16(a)(10) specifically states that once the venireperson affirmatively answers that his conclusion would influence his verdict, "he shall be discharged without further interrogation by

either party or the court." This language only applies to the challenge for cause in subsection 10 and is mandatory in nature; where venireperson stated his belief that def was guilty would influence his verdict, the trial court correctly terminated any further questioning and excused the venireperson. *Coble v. State*, 871/192

Also see notes at 37.071 in this Handbook

A juror who is ultimately guided by his personal beliefs rather than the law is not qualified to sit on a jury. It does not follow, however, that a juror with strong personal beliefs is necessarily biased, that is, incapable of following the court's instructions and the juror's oath. The cases demonstrate that many citizens who, during voir dire, openly confess strong beliefs either in favor of or against capital punishment qualify to sit on capital juries. Thus, a juror need not shed his personal convictions regarding the death penalty at the door to the jury room. A juror must, rather, use the law, the evidence, and the trial court's mandates as his ultimate guides in arriving at decisions as to guilt or innocence and as to punishment. If he possesses an inclination toward or against imposing capital punishment that prevents or substantially impairs his ability to make decisions based on the law and the evidence of the case before him, then the juror is biased. [context of note from juror to trial judge] *Granados v S*, 85/217 (2002)

Constitutional right to trial by an impartial jury is not violated by every error in selection of a jury. Only in very limited circs, when a juror is erroneously excused because of general opposition to the death penalty ("Witherspoon" error), does the exclusion of a juror by an unintentional mistake amount to a constitutional violation. *Jones v S*, 982/386 (1998)

Where potential juror in capital case was not excused because of her opposition to death penalty, but was excused erroneously (because she would be more skeptical of an accomplice witness than witnesses generally, even though she could accept an accomplice's testimony), there was no violation of sixth amendment right to an impartial jury. *Jones v S*, 982/386 (1998)

Any error in granting challenge for cause in alleged violation of Witherspoon was harmless where death penalty was not assessed. *Watkins v S*, 880<12>16 (1993)

A juror may not be challenged for cause based on his views about capital punishment unless those views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath. *King v S*, 29/556 (2000)

Disagreement with legal criteria for death eligibility, without a further showing of consequent inability to follow the law, will not establish basis for challenge for cause. *Howard v S*, 941/102 (1996)

35.16(b)(1) is a ground for disqualification only to the extent constitutionally permitted by Witt. No merit to contentions that it (1) violates right under Sixth Amendment to a fair cross-section of venire, (2) stacks the deck in favor of state, (3) produces a conviction prone jury, (4) denies right to jury nullification, (5) denies equal protection and due process by discriminating against people on basis of religious beliefs, and (6) infects the venire with prejudice against anti-death penalty views. *Ramos v S*, 934/358 (1996)

Party making challenge has burden to establish venireman will be substantially impaired in his ability to follow the law. Demonstrating venireman has conscientious scruples against the death penalty is not alone suff to meet state's burden to show he will be substantially impaired from honestly answering special issues in accordance with the evid. To meet that burden, state should directly ask the question of the venireman, whether his opposition to the death penalty is such as to cause him to answer one of special issues in such a way as to assure a life sentence will be imposed, irrespective of the evid. *Clark v S*, 929/5 (1996)

Potential jurors must be able to set aside their personal preferences and biases to consider as death eligible all those defined as death eligible by 19.03 and 37.071. Potential jurors

may believe what they want regarding the death penalty, including the quantum of evid they will require to impose a death sentence, but may not substitute the legal categories of death eligibility with their personal preferences and biases and thereby place themselves above the law. *Rachal v S*, 917/799 (1996)

Under current version of 37.071 it is arguable that categorical opposition to the death penalty can support a trial court's conclusion that a venireman is "substantially impaired" under *Wainwright v Witt*, at least if that opposition would cause the venireman invariably to answer the special issue under subsection (e) to prevent death penalty. At time of trial in instant case (1988), 37.071(e) was not part of procedure. (Footnote 4, on rehearing.) *Riley v S*, 889/290 (1993)

Unless a veniremember is so irrevocably opposed to capital punishment that he could not follow the law or obey the instructions of the trial court, he is not disqualified from jury service. *Riley v S*, 889/290 (1993)

A veniremember may not be excluded from jury service based solely on his opinion of the death penalty when the record clearly demonstrates he is capable of following the law. *Riley v S*, 889/290 (1993)

Where death penalty was not imposed, def was not entitled to new trial for any violation of *Wainwright v Witt* and *Witherspoon*. *Buffington v S*, 801<4>151.

Under facts of case, from voir dire examination, grounds for state's objection, that juror would be unable to vote for answers that would impose death penalty, were obvious. *Cooks v S*, 844/697.

Before a panel member may be challenged under 35.16(b)(3), the law must be explained to him and he must be asked whether he can follow the law regardless of his personal views. *Jones v S*, 982/386 (1998)

Panel member was not subject to challenge for cause under 35.16(b)(3) where the relevant law was never explained to the panel member. *Jones v S*, 982/386 (1998)

A venireman who categorically refuses to render a guilty verdict on the basis of single eyewitness may only be indicating that his threshold for proof beyond a reasonable doubt is somewhat higher than the minimum the law recognizes as suff. Court was mistaken in *Caldwell v S*, 818/790, to assume that a venireman who will not convict on the basis of one eyewitness is necessarily holding state to a higher burden than required by law. As long as the law permits a range of "reasonable doubt," the individual venireman who says he will hold state to the high end of the range is not requiring anything the law will not tolerate. If the state does not want that venireman on the jury, it is obliged to use one of its peremptory strikes to remove him. Whether a venireman who maintains he would never convict on basis of one eyewitness is subject to challenge for cause depends on the reason he says he would never convict. A venireman who says he could not convict even if he believed the state's only eyewitness and that testimony convinced him beyond a reasonable doubt of def's guilt, can be challenged for cause. Case remanded for reconsideration by court of appeals. *Castillo v S*, 913/529 (1995)

Defs may not challenge for cause, under 35.16(b)(3), potential jurors who are biased against the law upon which the state is entitled to rely. *Morrow v S*, 910/471 (1995)

Where state pleads one mode of committing DWI, it is not entitled to rely on another, non-alleged, mode of committing the same offense as law upon which to base a challenge for cause under 35.16(b)(3). *Hamiln v S*, 902<1>613 (1995)

In pros for aggravated sexual assault of a child, the following question was not an improper commitment question: "I want you to assume that you have found somebody guilty of sexual assault, aggravated sexual assault of a child. They intentionally or knowingly caused the penetration of the sexual organ of the complaining witness, of the victim, by the means of the sexual organ or any other [sic] or with a finger or with touching genital

to genital. . . Could you honestly ever fairly consider on an aggravated sexual assault of a child as little as five years in prison and give probation as an appropriate punishment?" *Cardenas v S*, 325/179 (2010)

Both state and defense are entitled to jurors who can consider the entire range of punishment for the particular statutory offense - i.e., from the maximum to the minimum and all points

RULES:
subsec (b)

RULES:
subsec (c)

in between. Jurors must be able to consider both a situation in which the minimum penalty would be appropriate and a situation in which the maximum penalty would be appropriate. Therefore, both sides may question the panel on the range of punishment and may commit jurors to consider the entire range of punishment for the statutory offense. A question committing a juror to consider the minimum punishment is both proper and permissible. However, counsel veers into impermissible commitment questions when he attempts to commit a veniremember to consider the minimum sentence based on specific evidentiary facts. For example, a party may ask the potential juror if he could consider the minimum of five years' imprisonment in a murder case, but he may not ask if the juror could consider five years in prison in a case in which the State alleged that the defendant "tortured, garroted, poisoned, and pickled" the victim. The nonstatutory manner in which the defendant was alleged to have committed the offense adds evidentiary facts peculiar to the case on trial. That question, because it goes beyond the statutory elements and statutory manner or means, is improper. *Cardenas v S, 325/179 (2010)*

Once a juror expressly admits his bias against a phase of law upon which both the State and defense are entitled to rely, a sufficient foundation has been laid to support a challenge for cause. A juror who states that he cannot consider the minimum punishment for a particular statutory offense is subject to a challenge for cause. The opposing party or trial judge may then examine the juror further to ensure that he fully understands and appreciates the position that he is taking, but unless there is further clarification or vacillation by the juror, the trial judge must grant a challenge for cause if the juror states that he cannot consider the full range of punishment. *Cardenas v S, 325/179 (2010)*

Under 35.16(c)(2) def may properly challenge any prospective juror who has a bias or prejudice against any phase of the law upon which he is entitled to rely. The test is whether the bias or prejudice would substantially impair the prospective juror's ability to carry out his oath and instructions in accordance with law. Before a prospective juror can be excused for cause on this basis, however, the law must be explained to him and he must be asked whether he can follow that law regardless of his personal views. *Feldman v S, 71/738 (2002)*

The proponent of a challenge for cause has the burden of establishing his challenge is proper. The proponent does not meet his burden until he has shown that the venireman understood the requirement of the law and could not overcome his prejudice well enough to follow it. *Feldman v S, 71/738 (2002)*

Article 37.071 sec. 2(c) requires state to prove future dangerousness and "anti-parties" special issues beyond a reasonable doubt. Any veniremember who would automatically answer either of those special issues in the affirmative or who would place the burden of proof on the defense is challengeable for cause under Article 35.16(c)(2) for having a bias or prejudice against a law applicable to the case upon which the defense is entitled to rely. *Feldman v S, 71/738 (2002)*

A venireman who cannot presume the defendant innocent is challengeable for cause under Article 35.16(c)(2) for having a bias or prejudice against the law. *Ladd v S, 3/547 (1999)*

Prospective jurors must be able to accept that, for offense on trial, the minimum legal punishment will be appropriate in some cases and the maximum legal punishment will be appropriate in some cases. Prospective jurors must be able to keep an open mind with respect to punishment until they hear the evidence in the case being tried. And they must be able to keep an open mind as to punishment regardless of whether defendant might be found guilty as a principal or as a party, because the statutory range of punishment for any offense is the same whether defendant is found

guilty as a principal or as a party. *Johnson v S, 982/403 (1998)*

No merit to contention that jurors must be willing to consider the entire range of punishment not just for the crime itself, but for the crime as defendant committed it. *Sadler v S, 977/140 (1998)*

A prospective juror is not subject to challenge for cause based on inability to consider the full range of punishment, so long as he can consider the full range of punishment for the offense as defined by law. *Sadler v S, 977/140 (1998)*

Bias against the law is refusal to consider or apply the relevant law. It exists when a panel member's beliefs or opinions would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and oath. *Sadler v S, 977/140 (1998)*

A prospective juror is not subject to challenge for cause because he will use the facts to determine the punishment. *Sadler v S, 977/140 (1998)*

A veniremember is not subject to challenge for cause merely because he cannot think of a specific fact situation that would support finding on provocation issue favorable to defendant. *Penry v S, 903/715 (1995)*

Mere fact prospective juror acknowledges he believes evidence of voluntary intoxication deserves little or no weight as a mitigating factor does not create a valid challenge for cause. *Banda v S, 890/42 (1994)*

A veniremember who is unwilling to afford a defendant the presumption of innocence is subject to challenge for cause. *Banda v S, 890/42 (1994)*

A person who testifies unequivocally that he could not consider minimum sentence as a proper punishment for included offense of murder is properly subject to challenge for cause. *Banda v S, 890/42 (1994)*

When reviewing a challenge for cause based upon a veniremember's alleged bias against the law, appeals court must determine whether the veniremember's beliefs would prevent or substantially impair him from following the law as set out in the trial court's instructions and as required by the juror's oath. Additionally, it must give great deference to the trial court's ruling on the issue. *Cannady v S, 11/205 (2000)*

Art. 37.071, sec. 2(c), requires the State to prove the future dangerousness and "anti-parties" special issues beyond a reasonable doubt. Therefore, any venireman who would automatically answer those special issues in the affirmative, or who would place the burden of proof on the defense, is challengeable for cause under 35.16(c)(2) for having a bias or prejudice against a law applicable to the case upon which the defense is entitled to rely. *Ladd v S, 3/547 (1999)*

There is no law placing the burden of proof on the State as to the mitigation issue in capital cases, so a venireman is not challengeable for cause simply because he would place the burden of proof on mitigation on the defense. *Ladd v S, 3/547 (1999)*

A venireman cannot be expected to give a definitive answer when asked whether he can follow the law until the law has been adequately explained and the trial court is confident the venireman understands what the law requires. *Lane v S, 822/35.*

When a veniremember states that she can set aside her bias, the trial court's refusal to sustain defendant's challenge for cause will be reviewed in light of all of the answers the veniremember gives; when trial court is faced with a vacillating juror, elements such as demeanor and tone of voice are important factors in conveying the precise message intended, so trial court's decision is accorded great deference. *Mooney v S, 817/693.*

NO ERROR IN RULING ON CHALLENGE FOR CAUSE

It was not abuse of discretion to grant challenges for cause where prospective jurors were not genuinely open minded and persuadable concerning testimony by a child witness and expressed entrenched positions concerning unbelievability of child witnesses. *Moore v S, 54<2>529 (2001)*

It was not error to deny challenge for cause on claim panel member would not answer question of whether he could be fair, where voir dire* showed his answers were unclear and confusing, but he clearly stated several times that he could not give his opinion until he heard the case, and trial court could reasonably conclude he was expressing his intention to follow the law by not forming an opinion until he heard the case. *Stallings v S, 47<1>170 (2001)*

It was not error to excuse prospective juror, over contention trial judge excused panel member on his own motion and then asked prosecutor if she concurred, where voir dire* showed parties understood that judge was asking if anyone wanted to submit the juror for challenge for cause, state replied yes, and judge excused panel member; and defendant made a general objection and did not ask judge to be any more specific as to the action just taken. *Robinson v S, 985<6>584 (1998)*

It was not abuse of discretion to deny challenge for cause in obscenity case for attitude towards homosexuals, where voir dire* showed he could set aside his personal opinions and make decision based on average person standard. *TK's Video v S, 871<2>527*

NO ERROR IN RULING ON CHALLENGE FOR CAUSE**35.16**

It was not abuse of discretion to deny request to make challenges for cause outside presence of venireman being challenged. *Camacho v S*, 864/524 (1993)

Any error in denying challenge for cause for inability to consider intoxication in mitigation of punishment was harmless, where was no evid def was intoxicated when he killed c/w. *Teague v S*, 864/505 (1993)

It was not abuse of discretion to grant challenge for cause for bias in favor of def, where panel member testified she had already formed an opinion in the case, and she felt def was not guilty because black people are often wrongly accused. *Rushing v S*, 962<1>100 (1997)

Heiselbetz v S, 906/500 (1995)

**subsec
(a) (1)**

It was not error to deny motion for new trial because one of jurors was not a qualified voter of county, where she did not realize she actually lived a mile or so in next county, her mailing address was rural route of a town in forum county, she stated in voir dire the town where she lived, defense counsel stated he knew where the town was located, and was no motion to strike for cause. *Rogers v S*, 662<12>13.

It was not abuse of discretion to deny challenge for cause for not being resident of county where panel member testified he maintained a permanent residence in the county where he received his mail, that he voted in the county, and that he intended the county to be his county of permanent residence.

It was not error to grant challenge for cause for prior felony conv where prospective juror had been given probation and period of probation had expired but he had never been back in court and was no showing of an order releasing him from disabilities under 42.12 sec. 20(a). *Wolfe v S*, 917/270 (1996)

It was not error to excuse prospective jurors who had been convicted of misdemeanor theft; 35.16(a)(2) must be read in conjunction with 35.19, which makes it explicit that one who has been convicted of theft is absolutely disqualified from jury service. *Cantu v S*, 842/667.

**subsec
(a) (2)**

It was not abuse of discretion to grant challenge for cause where voir dire* showed panel member had hearing problem. *Nobles v S*, 843/503.

It was not abuse of discretion to deny challenge for cause for health problems, where prospective juror testified to respiratory problems, and stated he had some difficulty hearing, but had it tested in the past year and was told by his doctor it was not serious, and testified he was satisfied he could sit on jury and not be troubled subject to the same illness as everybody else is subject to. *Marras v S*, 741/395.

**subsec
(a) (5)**

It was not abuse of discretion to excuse venire member who was eight months pregnant, birth was due in middle of trial, and statement from her doctor indicated complications of her pregnancy combined with stress of being on jury might lead to complications that would endanger health of her and the baby. *Goodwin v S*, 799/719.

It was not abuse of discretion to sustain challenge for cause to prospective juror who suffered from radiation sickness, arthritis, gout, and high blood pressure, who testified she had recurring periods where she had to remain in bed because of severe pain and nausea, and when these spells occurred she would stay in bed one to two weeks; and testified her arthritis prevented her from sitting for long periods of time without suffering pain; and testified she thought she was unfit for jury service because of her radiation sickness. *Jennings v S*, 748<2>606.

It was not abuse of discretion to grant challenge for cause to prospective juror under 35.16(a)(5), where her voir dire* showed she was unable to comprehend what would be her duties as a juror in a capital case; she was not challenged for her aversion to the death penalty, but for her inability to understand what would be required of her. *Gardner v S*, 730/675.

Juror was not subject to challenge for cause because her husband served on grand jury that returned instant indictment. Husband was not in effect a member of prosecutor's staff by

having served on grand jury. *Courtney v S*, 115<10>640 (2003)

**subsec
(a) (7)**

It was not abuse of discretion to refuse to strike from jury three jurors who after selection for def's jury served on juries on other cases, where the defs were different, prosecution witnesses were different, and the time, place and circs were different; the

record did not show that interim jury service in similar cases occurred. *Kirkland v S*, 786<3>557.

**subsec
(a) (8)**

It was not error to deny challenge for cause on claim panel member could not be fair because she was "shocked" about the possibility that def might be a Satanist and she said that Satanism was "everything contrary to her belief system," where she ultimately stated that she could follow the law, regardless of her personal views. *Davis v S*, 329/798 (2010)

her husband had not discussed the case, that she would have no hesitation to acquit def if state failed to prove its case beyond a reasonable doubt, and that she would "absolutely be fair." *Courtney v S*, 115<10>640 (2003)

**subsec
(a) (9)**

It was not error to deny challenge for cause in capital case where state planned to introduce evid that def became a Satanist while on death row, on claim panel member was biased against def because panel member had a bad experience with an uncle possessed by the devil and he admitted the incident would sway how he would view evidence of Satanism, where he vacillated in his answers but ultimately told trial court that he could set aside his bias and follow the law. *Davis v S*, 329/798 (2010)

It was not error to grant state's challenge for cause under 35.16(a)(9) where panel member indicated her personal bias against Mexican-American men and conceded that her bias would affect her ability to be a fair juror. *Granados v S*, 85/217 (2002)

It was not error to grant challenge for cause for bias or prejudice for or against def where voir dire* showed panel member had known def and his family all his life and equivocated on whether that would affect him. *Garza v S*, 10<13>765 (2000)

It was not error to deny challenge for cause on claim of bias against def, where voir dire* showed panel member was vacillating, equivocating and contradictory, and did say she would not start off police officer witnesses with higher level of credibility, would listen to all evid before deciding credibility, would not relieve state of its burden of proof, and based on what she knew at that time about the case she was not prejudiced against def. *Bell v S*, 233<10>583 (2007)

It was not abuse of discretion to deny challenge for cause under 35.16(a)(9) where prospective jurors for competency trial knew def was a death-row inmate, but assured court they could put aside prior knowledge and render an impartial verdict. *Penry v S*, 903/715 (1995)

It was not abuse of discretion to deny challenge for cause under 35.16(a)(9) where prospective juror for competency trial believed psychiatrists were trying to run a con game by testifying defs are incompetent, but had formed no conclusion as to def's competency. *Penry v S*, 903/715 (1995)

It was not error to grant state's challenge for cause in pros for possession of cocaine, where panel member said she would be very careful in reviewing any evid coming from a police officer due to her pending public intoxication charge and that she thought illegal drugs should be legalized and taxed like other legal substances; she answered yes when asked if she would be biased against the state; and she stated she would be more critical toward officers than before her experience with officer in her case. *Tucker v S*, 183<2>501 (2005)

It was not error to grant challenge for cause for bias in favor of def where voir dire* showed bias was established as matter of law. Panel member repeatedly maintained he would be influenced by his relationship with def's family and asked that he not be placed in that position. His statement to defense that he could set aside his relationship with def's family if absolutely necessary did not overcome the bias he expressed. Even if bias was not conclusively established, trial court ruling was not abuse of discretion *Willis v S*, 936<12>302 (1996)

Juror was not subject to challenge for cause for bias or prejudice, based on fact her husband served on grand jury that returned instant indictment, where juror explicitly testified that she and

It was not abuse of discretion to grant challenge for cause under 35.16(a)(9) where voir dire* indicated panel member had bias

against the state because of a conviction of panel member's in-law and in attempt to determine whether he could set that feeling aside, he never gave an answer less equivocal than "I think ..." or "I guess ..." Smith v S, 907/522 (1995)

It was not abuse of discretion to grant state's challenge for cause where def was on trial for aggravated sexual abuse of child under 14 years of age and panel member had a son accused of aggravated sexual assault of a child under 14 years of age and he unequivocally testified he could not be fair in evaluating state's case because of charge against his son. Mays v S, 904<2>920 (1995)

It was not abuse of discretion to deny challenge for cause where voir dire* showed veniremember had never asserted prejudice against def personally, nor did he express prejudice against individuals who consume alcoholic beverages; rather,

his concern was with drinking and driving, and repeatedly stated he did not think driving after a single drink would cause a problem; this did not show bias or prejudice as a matter of law (pros for DWI). Morales v S, 875<2>724

It was not abuse of discretion to grant challenge for cause where voir dire* showed panel member's statements about police officers and attorneys, which seemed to indicate a slant in favor of def. Perry v S, 864<2>794 (1993)

It was not abuse of discretion to grant challenge for cause to prospective juror whose son had recently been convicted and she was concerned she would project her feelings about her son into the case and did not think she could be a fair juror to the state. Burton v S, 805<5>564.

IT WAS NOT ERROR TO DENY CHALLENGE FOR CAUSE:

: on claim of bias, where voir dire* showed panel member harbored animosity toward those committing offenses charged against def but no bias toward def particularly and that she would not allow her feelings to affect her verdict. Benson v S, 240<11>478 (2006)

: on claim voir dire comments* of prospective juror X showed she could not be fair based on the allegations in the case, where her comments appeared to only confirm that she agreed with "concerns" expressed by panel member Y, and Y had merely indicated she would be inclined to give greater credibility to a child witness put through trauma of a trial (in pros for aggravated sexual assault of a child). That inclination did not support challenge for cause to either X or Y. Tran v S, 221<14>79 (2006)

: on claims of bias, where record failed to establish bias as matter of law. When asked if they could remain fair and impartial regardless of whether state introduced graphic photos of murder victim, jurors gave indefinite answers*, no one unequivocally stated that graphic photos would cause them to be biased against def, and responses did not establish a clear bias towards def or inability to follow the law. Gipson v S, 82<10>715 (2002)

: on claim panel member would not impartially judge credibility of witnesses. He was not subject to challenge for cause because he would tend to believe policemen and doctors slightly more than others. (Record reflected he stated that he would tend to believe the testimony of policemen and doctors slightly more than the testimony of others if the policemen and doctors were testifying about matters within their expertise. The record also reflected that he stated that he would not automatically believe policemen or doctors and that he would listen to all of the evidence before making up his mind about the facts.) Ladd v S, 3/547 (1999)

: where voir dire taken as a whole indicated panel member was not biased against def where panel member's daughter had been molested but panel member said his experience would not affect his ability to be fair and impartial (in pros for aggravated sexual assault of a child). Marx v S, 953<3>321 (1997)

: where voir dire taken as a whole indicated panel member was not biased against def where panel member was acquainted with def and thought he had questionable character, but explicitly stated he could keep his opinion of def's character completely separate and was not biased against him. Marx v S, 953<3>321 (1997)

: where voir dire taken as a whole indicated panel member was not biased against def where panel member taught at c/w's school and initially stated she might be more sympathetic to c/w's testimony, but on further questioning stated she could put her personal knowledge of c/w aside and base decision solely on the evid. Marx v S, 953<3>321 (1997)

: for predisposition against all offenses involving children, a bias against the law, where def at trial conceded he was not biased against the law and maintained he was biased against def, but record did not establish bias against def, and did establish that he was able to set aside any preconceptions. Garcia v S, 887/846 (1994)

: for bias against def, where opinion expressed in voir dire reflected opinion based on certain pretrial publicity, not based on personal knowledge, so it was not bias as a matter of law; and voir dire* showed she was capable of putting aside any opinion and rendering fair verdict based only on evid at trial. Kemp v S, 846/289.

: where voir dire* on finding that panel member harbored no particular bias against def, where he had once been a robbery victim, but bore no bias against def from that experience. Green v S, 840/394.

: on claim veniremembers would tend to favor police officer witnesses, where voir dire* showed they would weigh testimony of police officer on equal footing with other witnesses. Lane v S, 822/35.

: on claim veniremember had predisposition to believe psychiatric witnesses, where voir dire* showed no more than awareness that expert opinion might be useful, but did not indicate belief that experts are per se more credible. Lane v S, 822/35.

: where voir dire* showed prospective juror expressed belief that most defs who go to trial will probably be found guilty, but stated that if selected he would have no predisposition toward def's guilt and could find him not guilty based on evid; he expressed no prejudice toward def or the law involved. Sanchez v S, 813<1>610.

: under 35.16(a)(9) for tendency to believe testimony of police officer, where voir dire* first showed such bias, but later showed she would judge each individual's credibility based on testimony as it related to rest of evid at trial. Montoya v S, 810/160.

subsec (a)(10) It was not abuse of discretion to grant challenge for cause where voir dire* supported trial court's finding that panel member's knowledge of the case would affect her opinion of guilt or innocence of def. Robison v S, 888/473 (1994)

It was not error to discharge prospective juror without allowing def to question him, where venireperson stated that he believed def was guilty and that his belief would influence any verdict he would render in this case. Coble v. State, 871/192

It was not abuse of discretion to excuse veniremember on challenge for cause where she indicated she had heard about murder case in newspapers and discussed in with friends, and had idea it was suicide and she thought that thought might stay in her mind. Mowbray v S, 788<13>658.

Def asked appropriate questions to lay predicate under 35.16(a)(10) even though he did not use precise wording of statute, where he showed veniremember had a belief that there was evid of def's guilt, which was suff to show she had a

conclusion as to def's guilt or innocence, first prong under (a)(10); and def asked her if this belief would have an effect on her deliberations, an inquiry into second prong; but it was not abuse of discretion to deny challenge where she said her beliefs as to evid would not influence her verdict, and she agreed that at voir dire she had no evid of def's guilt and would vote not guilty. Harris v S, 784/5.

No merit to contention trial court erred in not requiring state, as requested by def, to qualify venireperson on 35.16(a)(10) without state first educating venireperson on how to avoid disqualification. 35.16(a)(10) exists to prevent venirepersons from sitting who have made decisions about an individual's guilt or innocence. If at any point during state's questioning it becomes apparent that the venireperson had an opinion as to def's guilt, the trial court could excuse the venireperson for cause. Robison v S, 888/473 (1994)