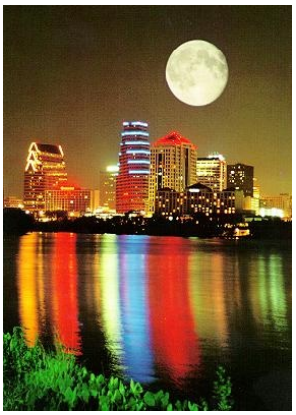

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Vol. 12, No. 26, July 5, 2004

Case Name: John Bustamonte Mendez v. The State of Texas

- OFFENSE: Murder
- COUNTY: Taylor
- COURT OF APPEALS: Eastland 2001
- C/A CITATION: 42 S.W.3d 347
- C/A RESULT: Conviction Affirmed
- CCA. CASE No. PD-0817-01
- DATE OF OPINION: June 30, 2004
- DISPOSITION: Court of Appeals Affirmed
- OPINION: Womack, J. VOTE: 9-0
- TRIAL COURT: 10th D/C; Hon. B.J. Edwards
- LAWYERS: Richard Anderson (Defense); James Eidson (State)

214 Guilty Pleas / Withdrawal of Plea (Before Jury): Appellant was accused of shooting and killing his 16 year old former girlfriend. He pled guilty in front of a jury and was the last witness at trial. Despite his guilty-plea, he testified that, after the deceased left him, he became enraged when she "made taunting telephone calls to him." He said that "I did not mean to shoot her. I was going to scare her, as drunk as I was, and I hit her." He also said that "I didn't intentionally walk in there to go shoot her right in the head and kill her." At the court below, Appellant claimed that, despite the lack of a request to withdraw his guilty plea, the trial court erred in not sua sponte ordering the guilty plea withdrawn. The Court of Appeals held that, absent any request to change the plea, the trial court was not required to take sua sponte action (see , Vol. 9, No. 15; 04/16/2001).

Holding: Appellant did not waive his right to trial by jury, but he did waive his right to a plea of not guilty. It is not suggested that there was any error in the proceedings leading up to, and including, his plea of guilty. His strategies were to seek a verdict of second-degree murder by proving that he acted under the immediate influence of sudden passion arising from an adequate cause, and to prove that his punishment should be mitigated by voluntary intoxication that amounted to insanity. His attention was specifically called to the inconsistency between his plea of guilty and his testimony about lack of intent or knowledge. The inconsistency between his testimony and the other evidence has not escaped us. Appellant did not ask to withdraw his plea. If it had been in his interest to do so, he would have known it. It is reasonable to put on such a defendant the requirement of timely seeking, in one way or another, to withdraw the plea of guilty. Appellant not having done so, he may not complain for the first time on appeal that the trial court did not do it for him.

Comments: (Karyl Anderson Krug) Did Sam Houston Clinton write this? The same thing could have been said in about two pages. (David A. Schulman) I think everyone missed the boat here.

The Court says that Appellant's strategy was to convince the jury that he acted under a "sudden passion," a/k/a "voluntary manslaughter." Since 1994, the voluntary manslaughter instruction has been a punishment instruction. Therefore, I don't think that testimony that supports a voluntary manslaughter conviction such as "I didn't intentionally walk in there to go shoot her right in the head and kill her . . .," is in any way inconsistent with guilty plea in a murder case. Thus, even if Appellant had asked to withdraw his plea, the trial court would have been justified in refusing the request.