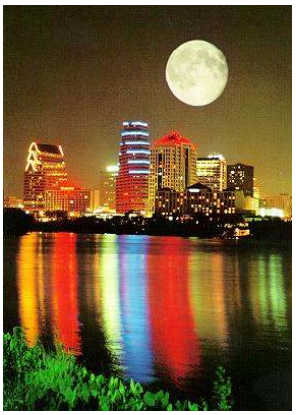

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G&S Vol. 22, No. 30 - July 28, 2014

Case Name: Ryan Matthew Stairhime v. The State of Texas

- OFFENSE: Murder
- COUNTY: Harris
- C/A CASE No. 01-13-0493-CR
- DATE OF OPINION: July 22, 2014
- DISPOSITION: Conviction Affirmed OPINION: Higley, J.
- TRIAL COURT: 177th D/C; Hon. Ryan Patrick
- LAWYERS: Jani Wood (Defense); Carol Cameron & Alan Curry (State)

(Background Facts) Appellant was out with his girlfriend, Kelsey Wright, on July 18, 2010. After seeing texts on Wright's phone that Appellant considered flirtatious, the two got in an argument. The argument escalated and culminated in the parking lot of a Wal-Mart. Wright called her close friend and former boyfriend, Stephen Babb, to pick her up. She crossed the street and waited for Babb at a gas station. When Babb arrived, Wright got in his truck and explained to him what had happened. While the two were talking, Appellant walked up to the truck. Babb rolled down the window, and Appellant reached in, stabbing Babb in the side of the chest. Appellant then fled. Babb got out of the truck and rested on the ground beside the truck. Wright stayed next to him. Babb eventually lost consciousness. He died shortly after arriving at a hospital.

G&S 311.06 Cross-Examination & Impeachment / Extraneous Acts or Offenses: During the State's examination of Wright, the prosecutor questioned her about a plan Appellant developed with her to falsify her statements about what happened prior to the stabbing. Under this plan, Wright agreed to tell Appellant's investigator that Babb had assaulted her while she was in his truck and that Appellant's actions were in response to this. Wright did tell this to Appellant's investigator, but later reverted back to reporting that Appellant had assaulted her and that Babb never did. During the State's examination of Wright about her agreement with Appellant to change her account of events, Appellant objected. Appellant argued that the testimony did not meet the requirements for introducing evidence of a prior inconsistent statement under Rule 613, Tex.R.Evid. Appellant also argued that the testimony was more prejudicial than probative under Rule 403, Tex.R.Evid.

Holding: (Rule 613) The State elicited testimony from Wright about conversations she had with Appellant about changing her account of the events leading up to the stabbing. Wright testified that Appellant was urging her to say that Babb assaulted her so that he could assert the affirmative defense of defense of a third person. *** These statements were made by Appellant and offered against him. *** Accordingly, they constitute an admission of a party opponent. Because they are an admission of a party opponent, they do not implicate rule 613. *** Appellant argues

the testimony was substantially more prejudicial than probative because he asserts the State was attempting to "use the cover of impeachment to place before the jury otherwise inadmissible evidence." Because we have not held that the evidence was otherwise inadmissible, this argument fails.

G&S 312.02 Cross-Examination & Impeachment / Prior Statements: During Appellant's cross-examination of Wright, he attempted to question her about three Facebook posts allegedly posted by her. The State objected to the relevance of the posts, and the trial court sustained the objection. Later, Appellant called O'Brien as a witness. O'Brien had been friends with Wright on Facebook and had obtained the images of Wright's alleged Facebook posts. When Appellant offered the exhibits containing the images of the posts, the State objected on hearsay grounds. The trial court sustained these objections. Appellant argues the exhibit should have been admitted as impeachment evidence against Wright.

Holding: As the State points out, there was already ample evidence in the record of bias. Wright testified that she had dated Babb for two years. Even after dating, they remained friends. Wright testified that she and Babb continued to have a strong relationship. She loved him and considered him one of her best friends. She saw Appellant stab Babb. She stayed with Babb as he slowly lost consciousness and later died. We hold there was evidence of bias in the record without the admission of the alleged Facebook post. Because the Facebook post was cumulative, Appellant was not harmed by its exclusion.

G&S 321.04 Court's Charge / Instructions / Definitions / Application Paragraph: Appellant's theory of the case at trial was self-defense and defense of a third person. During the charge conference, the State sought an instruction on the offense of deadly conduct. Appellant objected to the inclusion of an instruction on deadly conduct. The trial court overruled the objection and granted the State's request. The jury charge includes a definition of deadly conduct in the abstract portion of the charge for the offense of murder. The charge does not, however, apply the offense of deadly conduct to any of the application portions of the charge. On appeal, Appellant argues that failure to apply deadly conduct in any of the application sections caused him egregious harm because "the charge effectively alleged an uncharged offense with a lowered standard of intent and no instructions to the jury on how to consider the defined charge."

Holding: Deadly conduct was correctly defined in the abstract portion of the charge concerning the offense of murder. As Appellant points out, however, the definition of deadly conduct was never applied in any of the application sections in the charge. It was also not necessary to understand in order to implement any of the commands in any of the application paragraphs. Accordingly, there is no reversible error in its inclusion in the charge. *** Appellant argues the extraneous instruction "effectively impl[ied] to the jury that they could find [Appellant] guilty of murder" with a lessened intent standard. There is no support for this argument in the record. The jury was not authorized to convict on a theory that was not present in the application portions of the charge, and we presume the jury understood and followed the instructions in the application portion. *** Because deadly conduct was never applied, the jury was never authorized to use it to determine that Appellant was required to retreat first.

G&S 231 Jury Selection / Voir Dire Questions (Preservation): During voir dire at trial, Appellant's counsel asked the jury some questions about Appellant's right to not testify at trial. The State objected to the form of some of these questions. The trial court sustained the objections and instructed Appellant's counsel to rephrase the questions. Once the jury was selected, the trial court asked the parties, "Does either side have an objection to the panel or as to the jury as selected?" Both Appellant and the State responded, "No, Your Honor." On appeal, Appellant argues the trial court abused its discretion by preventing Appellant from asking the jury questions concerning his right to not testify.

Holding: The State argues Appellant waived any error. We agree. *** Here, at the end of voir dire, the trial court asked, "Does either side have an objection to the panel or as to the jury as selected?"

Both Appellant and the State responded, “No, Your Honor.” We hold Appellant has waived any error related to the conduct of voir dire.

Concurring / Dissenting Opinions: Justice Brown concurred, arguing that the entire voir dire process was not the “matter” waived; instead, only an objection to the seating of the panel was waived.