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⌘ Vol. 25, No. 9, March 13, 2017

Case Name: [Emanuel D. Hayes v. The State of Texas](#)

- OFFENSE: Aggravated Robbery
- COUNTY: Harris
- C/A CASE No. 01-15-00982-CR
- DATE OF OPINION: March 7, 2017 OPINION: [Radack, CJ.](#)
- DISPOSITION: Conviction Affirmed
- TRIAL COURT: 178th D/C; Hon. David Mendoza
- LAWYERS: [Sarah Wood](#) (Defense); [Dan McCrory](#) & [Jessica Caird](#) (State)

(Background Facts): On November 6, 2013, six young people -- appellant, Darion Amos, "Marcus," "Zae," and two girls -- knocked on the door of 78-year-old Richard Chandler, forced their way into his apartment when Chandler opened the door, and stole several items, including a computer tablet, keys to a truck, and a gold ring that Mr. Chandler usually wore. During the home invasion, Chandler was knocked unconscious and sustained bruises and swelling of his face, ear, and brain. He was taken to Ben Taub Hospital, where he remained for several weeks. After being released from Ben Taub Hospital, Chandler spent several months in a rehabilitation facility. While he had suffered some degree of dementia before the home invasion, Chandler's dementia accelerated afterward. He never recovered his ability to communicate with his family and became very combative. In her victim impact statement, Chandler's daughter stated that he died in 2015 when he "went into the kitchen to get something to drink and wound up drinking a plumbing solution." She felt like Chandler would still be alive today if he had not been assaulted. A few days after the aggravated robbery of Chandler, appellant and Darion Amos were arrested at the scene of another burglary in the same apartment complex. When police searched appellant's car, they found several items that had been stolen from Chandler's apartment, such as the truck keys, an Android tablet, and Chandler's gold ring. Both appellant and Amos were charged with aggravated robbery in connection with the home invasion of Chandler.

⌘ 65 [Challenges to Prosecution / Absence of Defendant](#): Amos pleaded guilty on February 18, 2015, and his case was reset for a PSI hearing. Appellant pleaded guilty on June 5, 2015, and his case was also reset for a PSI hearing. Neither defendant was adjudicated guilty at the time of their pleas. On October 6, 2015, the trial court called both appellant's and Amos's cases for a joint PSI hearing. Both appellant and Amos were present, along with their separate counsel. At the hearing, a single exhibit containing PSI materials regarding both defendants was entered into evidence as Exhibit 1 in each of the defendant's cases. The State then called two witnesses, Chandler's daughter and ex-wife, who testified about the effect the crime had on their family. The State then rested its punishment case against both defendants. Amos's counsel then called Samantha Amos, who testified on behalf of her son. Before her testimony, the trial court noted, "Let the record reflect this is in regard to the Amos case. After Ms. Amos's testimony, the trial court adjourned the hearing until the next day. Ms. Amos testified that she had warned her son about hanging around with appellant. The next day, the trial court called Amos' case, but not Appellant's. Amos testified and that the

break-in was Appellant's idea. He testified that "Marcus" pushed Chandler to the floor, although Appellant was the one who knocked on the door. Appellant's trial counsel, though present during Amos's testimony, did not participate in the hearing. When the PSI hearing was called in Appellant's case, he testified that the "lick" was Marcus' idea and that Marcus pushed Chandler to the ground and later admitted beating Chandler. Having found both appellant and Amos guilty, the trial court then stated, "Now, that I've heard all of the evidence, I'm going to sentence [appellant] and Mr. Amos on the same date. Mr. Amos has a court date about two weeks from now. At that time I will impose a sentence." When the trial court convened for sentencing, both Amos and Appellant were sentenced to confinement for 16 years. On appeal, Appellant contends that the case should be reversed because he "was not present during part of the punishment proceeding in which his co-defendant testified against him and there was no waiver."

Holding: Because this trial commenced as a joint trial on October 6, 2015 and concluded as a joint trial on October 30, 2015, we conclude that the interim dates -- October 7th and October 9th -- were also portions of the joint trial. As such, appellant has the right to complain about his absence from the courtroom on October 7, 2015. *** [Just as] the Court of Criminal Appeals found it illogical to require a non-English-speaking defendant to assert his right [in [Garcia v. State](#), 149 S.W.3d 135 (Tex.Cr.App. 2004)](see [§§](#), [Vol. 12, No. 12](#); 03/29/2004), we also find it illogical to require a defendant who is not present in the courtroom to assert a right to be present that he may not even know he has. *** Therefore, we conclude that when the trial court sees that a defendant is not present in court for his trial, absent a waiver by the defendant, the trial court has an independent duty to secure the defendant's presence in the courtroom even absent a request by the defendant's attorney. This Sixth Amendment right to be present for trial to confront witnesses is a category two [right under [Marin v. State](#), 851 S.W.2d 275 (Tex.Cr.App. 1993)], and cannot be forfeited by counsel's failure to assert it on a defendant's behalf. *** Because there is nothing to show that appellant waived his right to be present at the October 7, 2015 hearing, either by consent or misconduct, the trial court erred in not taking affirmative steps to secure his presence.

Holding (Harm Analysis): [There] is no evidence, either at the PSI or in the testimony of either Amos or appellant, that Amos was the person who pushed Chandler. Nevertheless, the trial court gave both Amos and appellant identical 16-year sentences. Thus, it is clear that the trial court did not find appellant more culpable than Amos, even considering Amos's testimony from the day that appellant was not present in court. *** Similar to [Adanandus v. State](#), 866 S.W.2d 210 (Tex.Cr.App. 1993), we cannot "envision how [the defendant's] presence could have furthered his defense," because there is "no evidence that appellant had any information, not available to the attorneys or the court, regarding any of the matters discussed at the [hearing]." *** The trial court had before it both Amos's and appellant's version of the events of the robbery. In fact, the trial court had multiple versions of the events of the robbery through both defendants' testimony and their statements in the PSI. Appellant points to nothing that he could have presented that was not already in evidence, or how, had the trial court heard the same, his punishment would have been less than Amos's. For this reason, we conclude that appellant's presence at the October 7th hearing would not have furthered his defense, thus his presence does not bear a reasonably substantial relationship to his opportunity to defend.