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MEMORANDUM

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**TO:** JUDGES TRYING CRIMINAL CASES  
**FROM:** DEBORAH SELDEN AND INTERNS JOSH SCHNEIDER, PETER CHICKRIS, AND MARY MARTIN  
**SUBJECT:** 10/01/08 COURT OF CRIMINAL APPEALS OPINIONS  
**DATE:** 10/10/08  
**CC:** JACK THOMPSON

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***Vega v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1615-06, 10/01/08].**

HOLCOMB, J., *delivered the opinion of the Court, in which KELLER, P.J., and MEYERS, PRICE, WOMACK, JOHNSON, HERVEY, and COCHRAN, JJ., joined. KEASLER, J., concurred in the result.*

**FACTS:** A jury convicted defendant of capital murder and aggravated assault and sentenced him to life in prison for the murder charge and 30 years imprisonment for the aggravated assault charge. On appeal, the State conceded that punishing defendant for both capital murder and aggravated robbery under the facts of this case was prohibited by the Double Jeopardy Clause was error. Finding the evidence factually insufficient to convict defendant of capital murder, the court of appeals reversed the conviction. Holding that it was irrelevant to factual sufficiency review that the jury was improperly instructed on the law of parties, the Court of Criminal Appeals vacated and remanded the case to the court of appeals to assess the factual sufficiency of the evidence to support defendant's capital murder conviction as a party to the offense.

**EVIDENCE—FACTUAL SUFFICIENCY**

An appellate court assesses the factual sufficiency of the evidence to support a conviction by the elements of the offense as defined by the hypothetically correct jury charge for the case. ***Vega v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1615-06, 10/01/08].**

**EVIDENCE—FACTUAL SUFFICIENCY—HYPOTHETICALLY CORRECT CHARGE**

A hypothetically correct jury charge is one that: 1) accurately sets out the law; 2) is authorized by the indictment; 3) does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability; and 4) adequately describes the particular offense for which the defendant was tried. ***Vega v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1615-06, 10/01/08].**

#### **EVIDENCE—FACTUAL SUFFICIENCY**

If a hypothetically correct jury charge for a case would authorize the jury to convict on alternative theories of liability, then the reviewing court must deem the evidence sufficient if it is sufficient under any of the theories of liability. *Vega v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1615-06, 10/01/08].

#### **DEFINITION--PARTY—LIABILITY**

A defendant is criminally responsible for an offense committed by another if he is acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense. *Vega v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1615-06, 10/01/08].

#### **CONSPIRACY—PARTY LIABILITY**

If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, despite having no intent to commit the felony, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy. *Vega v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1615-06, 10/01/08].

*Walter v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1929-06, 10/01/08].

COCHRAN, J., *delivered the opinion of the Court, in which* PRICE, WOMACK, JOHNSON, *and* HOLCOMB, JJ., *joined*. MEYERS, J., *concurred in the result*. HERVEY, J., *filed a dissenting opinion in which* KELLER, P.J., *and* KEASLER, JJ., *joined*.

**FACTS:** A jury convicted defendant of capital murder and sentenced him to life imprisonment. The trial court admitted hearsay statements made by a co-defendant that defendant was solely responsible for the killings. The court of appeals found the co-defendant's whole statement was admissible as being against penal interest and affirmed the trial court. The Court of Criminal Appeals disagreed, finding that the trial court abused its discretion in admitting the entire statement. The Court of Criminal Appeals reversed the case and remanded to the court of appeals for a harm analysis.

#### **EVIDENCE—HEARSAY RULE —GENERALLY**

Generally, the hearsay rule excludes any out-of-court statement offered to prove the truth of the matter asserted. *Walter v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1929-06, 10/01/08].

#### **EVIDENCE—HEARSAY—FOUR DANGERS—27 EXCEPTIONS**

The four hearsay dangers are 1) faulty perception, 2) faulty memory, 3) miscommunication, and 4) insincerity. Like most rules, however, there are exceptions – specifically 27 exceptions. Most of these hearsay exceptions are statements made in situations in which the hearsay dangers are either absent or minimal. As such, the exceptions are deemed to carry sufficient, independent, circumstantial guarantees of trustworthiness. *Walter v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1929-06, 10/01/08].

#### **EVIDENCE—HEARSAY—EXCEPTIONS—RATIONALE**

The exceptions to the hearsay rule are meant to minimize the hearsay dangers of faulty perception, faulty memory, miscommunication, or insincerity. Of the twenty-four exceptions listed under evidentiary rule 803, most can be categorized as unreflective statements, reliable documents, or reputation evidence. They involve situations in which people normally would not have the opportunity or motive to create a falsehood or shade the truth. *Walter v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1929-06, 10/01/08].

#### **EVIDENCE—HEARSAY—STATEMENTS AGAINST INTEREST**

The hearsay exceptions for statements against pecuniary, penal, or social interest stem from the commonsense notion that people ordinarily do not say things that are damaging to themselves unless they believe they are true. If the declarant, however, does not recognize the disserving nature of his statement when it is made, his statement indicates ignorance, not trustworthiness. Such statements are not admissible. *Walter v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1929-06, 10/01/08].

#### **EVIDENCE—HEARSAY—STATEMENTS AGAINST PENAL INTEREST--REVIEW**

The required understanding of interest is framed in objective terms: Would a reasonable person have understood that what he said was against his interest? The aim is to know how the speaker conceived his interests, but, absent better evidence, the court may attribute to him the interests a reasonable person in his situation would have. *Walter v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1929-06, 10/01/08].

#### **EVIDENCE—HEARSAY—STATEMENTS AGAINST INTEREST**

There is a two-step foundation requirement for admissibility of a statement against penal interest. The trial court must determine 1) whether the statement, considering the totality of the circumstances, subjects the declarant to criminal liability and the declarant is aware of this fact; and 2) whether there are sufficient corroborating circumstances that clearly indicate the trustworthiness

of the statement. *Walter v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1929-06, 10/01/08].

**EVIDENCE—HEARSAY—PENAL INTEREST—THREE CATEGORIES**

There are three categories of statements against penal interest: 1) statements that only inculcate the declarant; 2) statements that inculcate equally both the declarant and a third party; and 3) statements that inculcate the declarant and a third party but shift the blame to minimize the speaker's culpability. *Walter v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1929-06, 10/01/08].

**EVIDENCE—HEARSAY—MIXED STATEMENTS AGAINST PENAL INTEREST**

A confession, conversation or narrative, even a short one, might mix together all three types of statements. The fact that a statement is self-inculpatory does make it more reliable; but the fact that a statement is collateral to a self-inculpatory statement says nothing at all about the collateral statement's reliability. In such circumstances, collateral statements should be excluded as hearsay. A trial court may not just assume that a particular statement is self-inculpatory merely because it is part of a fuller narrative that is, in its entirety, self-inculpatory. *Walter v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1929-06, 10/01/08].

**EVIDENCE—HEARSAY—PENAL INTEREST- “BLAME SHIFTING”**

An admission against a co-defendant declarant's interest can be admissible against the defendant so long as it is sufficiently against the declarant's interest to be reliable. However, “blame-shifting” statements that do not inculcate the speaker and the defendant *equally* are inadmissible under Rule 803. *Walter v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1929-06, 10/01/08].

**EVIDENCE—HEARSAY—“BLAME SHARING” V. “BLAME SHIFTING”**

Both statements that are directly against the declarant's interest and collateral “blame-sharing” statements may be admissible under Rule 803(24), if corroborating circumstances clearly indicate their trustworthiness. “Blame-shifting” statements that minimize the speaker's culpability are not, absent extraordinary circumstances, admissible under the rule. *Walter v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1929-06, 10/01/08].

**EVIDENCE—HEARSAY—MIXED STATEMENTS AGAINST PENAL INTEREST**

No statement against penal interest is admissible “unless corroborating circumstances clearly indicate the trustworthiness of the statement” is a sufficient guard against the use of unreliable “blame-sharing” statements. The trial judge is obligated to parse a generally self-

inculpatory narrative and weed out those specific factual statements that are self-exculpatory or shift blame to another. The gold of self-incriminating words cannot carry with it the dross of self-exculpatory ones. *Walter v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1929-06, 10/01/08].

**EVIDENCE—HEARSAY—STATEMENTS TO FAMILY V. LAW ENFORCEMENT**

Statements to friends, loved ones, or family members normally do not raise the same trustworthiness concerns as those made to investigating officers because there the declarant has an obvious motive to minimize his own role in a crime and shift the blame to others. *Walter v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1929-06, 10/01/08].

**EVIDENCE—HEARSAY—MIXED STATEMENTS--PENAL INTEREST**

Out-of-court statements from a co-defendant that are against the declarant's penal interest but also inculcate the defendant are viewed with some suspicion. That suspicion is lessened when the speaker makes no distinction between his conduct and that of the defendant-where there is absolute equality. *Walter v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1929-06, 10/01/08].

**EVIDENCE—HEARSAY—MIXED STATEMENTS--PENAL INTEREST--REVIEW**

A trial court abuses its discretion if it admits a narrative statement *in toto* without examining each fact asserted in the narrative to assess whether that fact was directly self-incriminating or, at a minimum shared blame equally. *Walter v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1929-06, 10/01/08].

*Huffman v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

KELLER, P. J., *delivered the opinion of the Court, in which PRICE, KEASLER, HERVEY, HOLCOMB, AND COCHRAN, JJ., joined.* MEYERS, J., *filed a concurring opinion.* WOMACK, J., *filed a concurring opinion.* JOHNSON, J., *filed a concurring opinion.* COCHRAN, J., *filed a concurring opinion in which PRICE, JOHNSON, AND HOLCOMB, JJ., joined.*

**FACTS:** A jury convicted defendant of failing to stop and render aid and sentenced him to twenty years imprisonment and a \$10,000 fine. The court of appeals found error, but no egregious harm, and affirmed. The State and defendant petitioned for discretionary review. Holding that failing to stop, failing to return, and failing to remain are simply alternate methods of committing the offense of failure to stop and render aid, rather than separate offenses, the Court of Criminal Appeals affirmed.

### **JURY CHARGE—DISJUNCTIVE—FAILURE TO STOP / RENDER AID--UNANIMITY**

Charging the jury in the disjunctive with respect to various statutory methods of committing the offense of “failure to stop and render aid” does not result in a violation of the constitutional requirement that a jury's verdict be unanimous. *Huffman v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

### **FAILURE TO STOP / RENDER AID—VARIOUS STATUTORY METHODS**

The various statutory methods for committing the offense do not constitute separate offenses, but are merely alternate means of committing the same offense. Consequently, the court's charge may properly present the jury with the different statutory methods of failure to stop and render aid in the disjunctive. *Huffman v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

### **JURY CHARGE—DISJUNCTIVE--HOMICIDES—ALTERNATE METHODS OF COMMISSION**

With respect to homicide offenses, different legal theories involving the same victim are simply alternate methods of committing the same offense. The CCA has approved a jury charge that disjunctively alleged two different capital murder theories with respect to the same victim: murder in the course of an aggravate sexual assault and murder in the course of a robbery. *Huffman v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

### **JURY CHARGE--DOUBLE JEOPARDY—MANSLAUGHTER / INTOXICATION MANSLAUGHTER**

In the manslaughter / intoxication manslaughter context, double jeopardy protections may be invoked, not only by the *Blockburger* “same elements” test, but by other considerations as well. These considerations include 1) “whether the offense provisions are contained within the same statutory section, 2) whether the offenses are phrased in the alternative, 3) whether the offenses have a common focus (i.e. whether the ‘gravamen’ of the offense is the same) and whether that common focus tends to indicate a single instance of conduct. *Huffman v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

### **JURY CHARGE—INJURY TO A CHILD—CONDUCT—OMISSION/COMMISSION**

In the injury to a child context, whether separate legal theories comprise separate offenses depends upon whether the theories differ with respect to the result of the defendant's conduct. The essential element or focus of the injury to a child statute is the result of the defendant's conduct-injury to child-and not the possible combinations of conduct that cause the result. The Double Jeopardy Clause, however, prohibits the State from obtaining two injury to a child convictions for a

death that resulted from both an act and an omission. *Huffman v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

**JURY CHARGE—INJURY TO A CHILD—CONDUCT—OMISSION/COMMISSION**

Injury to a child is a “result of conduct” offense and different types of injuries (being results) are “elemental” and jury unanimity is required as to the type of injury inflicted on the child.

*Huffman v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

**JURY CHARGE—ELEMENTS REQUIRING UNANIMITY--DETERMINATION**

To determine what elements the jury must unanimously find beyond a reasonable doubt, a court should return to eight-grade grammar techniques to parse the statute. At a minimum, these are: the subject (the defendant); the main verb; and the direct object if the main verb requires a direct object (i.e., the offense is a result-oriented crime). Generally, adverbial phrases, introduced by the preposition “by,” describe the manner and means of committing the offense. They are neither the gravamen of the offense, nor elements on which the jury must be unanimous. *Huffman v.*

*State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

**JURY CHARGE—CREDIT CARD ABUSE—NATURE OF CONDUCT—ONE CRIME**

Credit card abuse is a nature of conduct crime, which can be committed in a number of ways, including: 1) stealing a credit card, 2) receiving a credit card owned by another, knowing the card it had been stolen, and acting with intent to use it, and 3) presenting a credit card with intent to obtain a benefit fraudulently, knowing that the use was without the effective consent of the cardholder. A defendant's constitutional right to a unanimous verdict requires that the jurors unanimously agree upon the commission of any one of these criminal acts. A handy, though not definitive, rule of thumb in such a case is to look at the statutory verb defining the criminal act. That verb is generally the criminal act upon which all jurors must unanimously agree. *Huffman v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

**JURY CHARGE—SEX OFFENSES—NATURE OF CONDUCT—SEPARATE CRIMES**

Sex offenses are nature of conduct crimes, and different types of conduct specified in the various statutes should be charged as separate offenses and separately prosecuted. Aggravated sexual assault is a conduct-oriented offense in which the legislature criminalized very specific conduct of several different types. *Huffman v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

### **JURY CHARGE—INDECENCY / CHILD—DIFFERENT CRIMES / TIMES—SEPARATE CRIMES**

Two different types of conduct described by the offense of indecency with a child occurring at two different times are separate offenses. A jury charge that uses a disjunctive submission of these two types of conduct violates a defendant's right to jury unanimity. *Huffman v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

### **JURY CHARGE—INDECENCY / CHILD—SAME TIME / DIFFERENT CRIMES—SEPARATE CRIMES**

Different types of conduct proscribed by the indecency with a child statute are different offenses, even if they occurred during the same transaction. Unlike murder, injury to a child, and criminal mischief where the result is the focus, the conduct is the focus of the definition of sexual contact. *Huffman v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

### **FOCUS OF OFFENSE—UNIT OF PROSECUTION—RESULT V. NATURE OF CONDUCT**

The focus or gravamen of an offense seems to be one of the best indicators of the allowable unit of prosecution prescribed by the legislature. If the focus of the offense is the result—that is, the offense is a “result of conduct” crime—then different types of results are considered to be separate offenses, but different types of conduct are not. If the focus of the offense is the conduct—that is, the offense is a “nature of conduct” crime—then different types of conduct are considered to be separate offenses. *Huffman v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

### **FOCUS OF OFFENSE—UNIT OF PROSECUTION—MIXED ELEMENTS—CAPITAL MURDER**

Some offenses, such as capital murder, may contain both result of conduct and nature of conduct elements, and the question becomes which aspect of the statute predominates, or possibly whether both aspects are equally important for determining the separateness of offenses. *Huffman v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

### **FOCUS OF OFFENSE—UNIT OF PROSECUTION—CIRCUMSTANCES SURROUNDING CONDUCT**

If “circumstances surrounding the conduct” is the focus of the offense, then under a focus-based approach to determining separateness of offenses, different types of conduct could establish alternate methods of committing the same offense rather than different offenses, so long as the circumstances surrounding the conduct are the same. *Huffman v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

### **UUMV--CIRCUMSTANCES OFFENSE—FOCUS--CULPABLE MENTAL STATE**

Unauthorized use of a motor vehicle is a “circumstances” type offense, and the culpable mental state of “knowingly” must apply to those surrounding circumstances. Since operating another's motor-propelled vehicle is not criminal by its very nature this offense is not a “nature of

conduct” type offense. Nor is it a “result” type offense since the statute does not prohibit any specific result of such operation. What makes the conduct unlawful is that it is done under certain circumstances, i.e., without the owner's permission. *Huffman v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

**JURY CHARGE--FAILURE TO STOP / RENDER AID—SEPARATE VICTIMS—SEPARATE CRIMES**

A separate prosecution for failure to stop and render aid can occur for each individual injured in the accident the defendant fails to aid. Because separate victims result in separate offenses for double jeopardy purposes, they also result in separate offenses for jury unanimity purposes. *Huffman v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

**FAILURE TO STOP / RENDER AID—UNIT OF PROSECUTION--EACH VICTIMS**

Failure to stop and render aid is a “circumstances surrounding the conduct” offense, with the circumstances being an accident and victims. The prescribed unit of prosecution is “each victim, each accident.” *Huffman v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

**JURY CHARGE—DISJUNCTIVE--FAILURE TO STOP / RENDER AID—ALTERNATE METHODS**

“Failing to stop,” “failing to return,” and “failing to remain” are simply alternate methods of committing the same offense. A disjunctive jury charge does not violate a defendant’s right to a unanimous verdict. *Huffman v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-1539-07, 10/01/08].

*Klein v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-502-06, 10/01/08].

HERVEY, J., *delivered the opinion of the Court, in which* KELLER, P.J., MEYERS, KEASLER, and HOLCOMB, JJ., *joined*. PRICE, J., *filed a concurring and dissenting opinion in which* WOMACK, JOHNSON, and COCHRAN, JJ., *joined*. COCHRAN J., *filed a dissenting opinion in which* PRICE, WOMACK, and JOHNSON, JJ., *joined*.

**FACTS:** A jury convicted defendant of eight counts of aggravated sexual assault of a child (his daughter) and sentenced him to ten years imprisonment on count 1 and ten years community supervision on the other seven counts. The court of appeals entered a judgment of acquittal on counts 1-6 and reversed and remanded for a new trial on counts 7 and 8 after finding: 1) the evidence to be legally insufficient to support defendant’s convictions on counts 1-6, and 2) that the trial court reversibly erred in admitting the complainant’s prior out of court statements to investigators that defendant sexually abused her. On State’s PDR, the Court of Criminal Appeals found the evidence was legally sufficient to establish that defendant committed separate sexual assaults on at least four separate occasions, and that the victim's out-of-court statements to school

counselor, to investigator from Child Protective Services, and police investigator, that she had been sexually abused by defendant, were admissible as nonhearsay prior consistent statements. The Court of Criminal Appeals reversed the judgment of the court of appeals and remanded the case for further proceedings.

**EVIDENCE—LEGAL SUFFICIENCY—STANDARD OF REVIEW**

The legal-sufficiency appellate standard of evidentiary review requires the reviewing court to view the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Klein v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-502-06, 10/01/08].

**EVIDENCE—HEARSAY--OUT OF COURT STATEMENTS—REBUTTAL—FABRICATION**

In relevant part, Rule 801 of the Rules of Evidence provides that a declarant's out-of-court statement is not hearsay if the declarant testifies at trial and is subject to cross-examination concerning the statement, and the statement is “consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive.” *Klein v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-502-06, 10/01/08].

**EVIDENCE—LEGAL SUFFICIENCY—STANDARD OF REVIEW**

A trial court's evidentiary rulings are reviewed on appeal under abuse of discretion standard. *Klein v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-502-06, 10/01/08].

**EVIDENCE—CONFLICTING--LEGAL SUFFICIENCY—STANDARD OF REVIEW**

The rules of evidence permit the admission of a prior consistent statement to rebut a charge of “recent fabrication *or* improper influence or motive;” often, conflicting evidence alone is sufficient to trigger this exception to the hearsay rule. *Klein v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-502-06, 10/01/08].

**EVIDENCE—ERRONEOUS ADMISSION—NO LATER OBJECTION**

If a court errs by overruling an objection to evidence, such error is harmless when other such evidence is received without objection, either before or after the complained-of ruling. Furthermore, if evidence comes in without objection or limitation, it becomes part of the general evidence in the case, and the jury may use it for any purpose. *Klein v. State*, \_\_\_ S.W.3d \_\_\_ (Tex. Crim. App. 2008) [PD-502-06, 10/01/08].