

IN THE SUPREME COURT OF TEXAS

No. 02-0557

VOLKSWAGEN OF AMERICA, INC., PETITIONER,

v.

ANDREW RAMIREZ, SR., ET AL., RESPONDENTS

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE THIRTEENTH DISTRICT OF TEXAS

Argued April 23, 2003

JUSTICE HECHT, joined by JUSTICE OWEN, concurring.

I join fully in the Court's opinion and add only a brief additional response to the dissent.

In essence, Dr. Edward Cox, who testified as an expert for the plaintiffs, established the following facts: he has a doctorate in theoretical and applied mechanics; he has extensive experience in metallurgy; he owns an electron microscope; and he has used that microscope to examine a wheel bearing on the decedent's vehicle. He then testified that, based on his credentials, his experience, and the tools available to him, the bearing was defective because (1) the adjustment nut was too loose, (2) the car had been cinched down too tightly when it was originally transported for sale, and (3) there were temperature inconsistencies in the manufacturing process. These defects, Dr. Cox

concluded, show that bearing failure did not result from the accident, but caused it. In the dissent's view, Dr. Cox's opinion about what happened is some evidence that it actually did happen.¹

It is not. There is in the evidentiary record one thing, and only one, to connect microscopic thread tearings with loose nuts, false brinell marks on rollers in a bearing assembly with tight cinching in transit, and metal fragments with temperature inconsistencies in the manufacturing process — in other words, to connect Dr. Cox's observations with his conclusions — and that is: Dr. Cox's say-so. Whether his conclusions were valid cannot, on this record, be measured by objective tests that actually associate microscopic conditions with producing causes, or by statistical correlations between such conditions and bearing failures, or by analyses in the professional literature of the science of metallurgy. We have no such evidence. On this record, whether Dr. Cox's conclusions were valid can be measured by one thing, and one thing only: his personal credibility.

Personal credibility may well be a determining factor in assessing the testimony of a fact witness, but we require more of an expert witness, lest a very convincing charlatan in a lab jacket pull the wool over laymen's eyes. We have reiterated that “a claim will not stand or fall on the mere *ipse dixit* of a credentialed witness.”² It is not enough that an expert seem credible. An expert must show that his views have the support of established, objective observations or a well-considered

¹ Post at ____.

² *Coastal Transp. Co. v. Crown Cent. Petroleum Corp.*, 136 S.W.3d 227, 232 (Tex. 2004); *Burrow v. Arce*, 997 S.W.2d 229, 235 (Tex. 1999) (citing *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 726-727 (Tex. 1998) (citing *General Elec. Co. v. Joiner*, 522 U.S. 136, 146, (1997)); *Merrell Dow Pharm., Inc. v. Havner*, 953 S.W.2d 706, 711-712 (Tex. 1997); *Schaefer v. Texas Employers' Ins. Ass'n*, 612 S.W.2d 199, 202-204 (Tex. 1980)).

consensus of at least a substantial segment of the scientific, technical, or specialized community to which he belongs. Dr. Cox did neither.

The dissenting Justices would surely never allow me to testify that I have degrees from distinguished universities, that I have long been interested in aberrant behavior, that I have access to an electron microscope, that I have studied the dissenting Justices' DNA, and that they are, sad truth to tell, extraterrestrials. Even if all of the premises were true (some are not), my colleagues in dissent would have a powerful argument that the only bridge between my credentials, experience, and observations on one side, and my opinions on the other, is my own veracity, which is not enough. Such opinions cannot rest on mere belief convincingly expressed. They provide no support for a proposition over which other experts like myself may disagree, leaving the matter for a jury to decide. Such opinions are no legal evidence at all.

Thus, the dissent is simply wrong when it argues that to disregard Dr. Cox's opinions is to reweigh the evidence. One cannot reweigh evidence that weighs zero. Dr. Cox's opinions rested solely on his own credence. I do not mean for a moment to disparage his credentials, experience, or observations. But the integrity of metallurgical science requires that the assertions of one person, however qualified and experienced, be based in the science itself. The ultimate opinions Dr. Cox expressed in this case are precisely the sort of conclusory opinions that are not legal evidence to support a claim.

Nathan L. Hecht
Justice

Opinion delivered: December 31, 2004