

IN THE SUPREME COURT OF TEXAS

=====
No. 07-0541
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TXI TRANSPORTATION COMPANY, ET AL., PETITIONERS,

v.

RANDY HUGHES, ET AL., RESPONDENTS

=====
ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE SECOND DISTRICT OF TEXAS
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Argued October 16, 2008

JUSTICE WAINWRIGHT, concurring in part and dissenting in part.

The vehicle accident in this case occurred in the gravel truck's eastbound lane when the westbound Yukon sport utility vehicle crossed the center line of the highway. This is undisputed. All five eyewitnesses in three separate vehicles who spoke to the question, some from better vantages than others, testified that they never saw the gravel truck in the westbound lane. Yet the claimant's expert opined that the gravel truck driver caused the accident. He allegedly crossed into the westbound lane, forced the Yukon to move into the eastbound lane in a defensive maneuver, and then returned to the eastbound lane to cause the collision. The expert reviewed and discussed physical evidence in the form of gouge marks on the road, collision damage to both vehicles, brake mark angles, and speed and braking information from the Yukon's black box. I have serious concerns about the admissibility of the expert's causation testimony because, among other reasons,

the expert has not sufficiently addressed the eyewitness testimony. *See, e.g., Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 243 (1993) (holding that expert testimony is not admissible when it is not supported by sufficient facts or when the evidence in the case contradicts or otherwise renders the opinion unreasonable); *see also TXI Transp. Co. v. Hughes*, 224 S.W.3d 870, 923, 927–29 (Tex. App.—Fort Worth, pet. granted) (Gardner, J., dissenting) (addressing the eyewitness testimony and other reasons to exclude the expert’s opinion). I respectfully concur in part and dissent in part, joining only Section III of the Court’s opinion.

Dale Wainwright
Justice

OPINION DELIVERED: March 12, 2010