

Case No. DC-19-07035

Josie Viola Lemell,)	In the District Court of
)	
Plaintiff,)	
)	
v.)	Dallas County, Texas
)	
Joenika Sharday Brown,)	
)	
Defendant.)	162nd Judicial District

**Reply in Support of Plaintiff Josie Lemell's
Traditional Motion for Summary Judgment**

Now comes, Plaintiff Josie Lemell ("Lemell"), through her undersigned attorney, and for Lemell's Reply in support of her Motion for Traditional Summary Judgment against Defendant Joenika Sharday Brown ("Brown") on the issue of liability, shows the Court the following:

I. Plaintiff Lemell's Summary Judgment Motion is uncontroverted.

Plaintiff's summary judgment motion is uncontroverted because Brown's counter-affidavits are incompetent and therefore fail to create a fact issue. Accordingly, the Court must grant Plaintiff's Summary judgment Motion. See Republic National Leasing v. Schindler, 717 S.W.2d 606, 607 (Tex.1986) (affirming trial court's finding that plaintiff's summary judgment affidavit was readily controvertible and defendant's failure to present summary judgment evidence warranted judgment for plaintiff); Kimble v. Aetna Cas. and Sur. Co., 767 S.W.2d 846 (Tex. App. 1989) (affirming summary judgment for plaintiff/counter-defendant insurer upon finding evidentiary record presented uncontroverted affidavits).

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A. Plaintiff Lemell's Reconstruction Engineering Expert Brent Munyon's conclusions that Lemell had reasonable clearance from approaching traffic, that Brown was speeding, never turned, never applied her brakes and caused the collision are all uncontroverted and the Court should therefore issue an order granting Plaintiff Lemell a summary judgment.

Plaintiff's reconstruction engineer expert Brent Munyon concluded that Brown caused the collision. See Plaintiff's Exhibit 1. Munyon opined that Lemell had reasonable clearance from approaching traffic when she turned left toward Wintergreen and that Brown was speeding and took no evasive action to avoid the collision, such as slowing or turning her steering wheel. Id.

Underlying Brent Munyon's opinion is digital data which his firm A&M Forensics and Engineering, Inc. retrieved from Brown's automobile. Id. at pp. 7. Said data showed Brown was driving 68-72 miles per hour when she collided with Lemell, while 40 was the speed limit. Id. Because Brown was driving so fast, Brown reached Lemell's automobile much faster than Brown would have had Brown been obeying the law. Id. Brown's attorney Randall Meredith attended the inspection during which Brent Munyon's firm secured digital data from Brown's car, providing Brown with equal access to retrieve Brown's digital data.

Engineer Brent Munyon's opinion satisfies the material element of causation for Plaintiff Josie Lemell's negligence claim. And because Brent Munyon's conclusions are uncontroverted, summary judgment is immediately warranted. See Tex. R. Civ. P. 166(a)c; Anderson v. Snider, 808 S.W.2d 54, 55 (Tex.1991) ("an expert's affidavit can support summary judgment if the subject matter is such that a fact finder would be guided solely by the opinion of the testimony of experts if the evidence is clear, positive, direct,

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otherwise credible and free from contradiction and inconsistencies, and could have been readily controverted.”); See Fitzgerald v. Caterpillar Tractor Co., 683 S.W.2d 162, 163-65 (Tex. App. 1985) (finding lay plaintiff’s own affidavit incompetent to create a fact issue on product defect claim where defendant presented the counter-affidavit of an uncontroverted licensed engineer).

Plaintiff’s engineering expert Brent Munyon’s conclusion that Brown caused the May 5, 2019 collision because she was speeding is clear, positive, credible, consistent, and free from contradiction. Brown offers no controverting expert, the Court having stricken her designation of Officer Tyrone Melton as a liability expert and Brown otherwise provides no competent testimony to controvert Brent Munyon. See Tex. R. Civ. P. 166a(c) (“A summary judgment may be based on [...] subject matter concerning which the trier of fact must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted); Anderson v. Snider, 808 S.W.2d 54 (Tex. 1991) (holding after an expert witness presents legally sufficient evidence in support of a motion for summary judgment, the opposing party must produce other expert testimony to controvert the claims).

Defendant Joenika Brown’s deposition testimony and Officer Melton’s deposition and corresponding Report are incompetent summary judgment evidence—neither witness is an expert or accident reconstructionist. Accordingly, Brent Munyon’s uncontroverted expert opinion that Brown caused the collision because she was speeding and failed to take evasive action shows summary judgment on the issue of liability is immediately warranted.

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B. Brent Munyon's opinions and conclusions are reliable.

Defendant Brown never noticed her Motion to Strike Plaintiff's liability expert Brent Munyon. However, Brown incorporated her Motion to Strike Brent Munyon into her summary judgment opposition. As her response, Lemell submits that because Brent Munyon's opinions and conclusions are reliable, the Court should deny Brown's Motion to Strike him as an expert.

Rule 702 of the Texas Rules of Evidence, titled "Testimony by Experts," provides, "[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue." See Tex. R. Evid. 702.

A two-part test governs whether expert testimony is admissible: (1) the expert must be qualified and (2) the testimony must be relevant and based on a reliable foundation. See Helena Chem. Co. v. Wilkins, 47 S.W.3d 486, 499 (Tex. 2001).

In determining reliability, the trial court "should undertake a rigorous examination of the facts on which the expert relies, the method by which the expert draws an opinion from those facts, and how the expert applies the facts and methods to the case at hand." See Mack Trucks, Inc. v. Tamez, 206 S.W.3d 572, 579 (Tex. 2006).

1. Foundation of Brent Munyon's opinions.

Brent Munyon lists, in his Report, the following 15 items, including a scene inspection, as the information forming the foundation of his opinions:

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1. Texas Peace Officer's Crash Report #17059600.1/2019217585, dated 05/05/2019;
2. Google earth aerial image;
3. Google earth street view;
4. VinLink™ for 2011 Honda Civic;
5. Expert AutoStats® for 2011 Honda Civic;
6. VinLink™ for 2009 Ford Escape;
7. Expert AutoStats® for 2009 Ford Escape;
8. Bosch CDR download data for 2009 Ford Escape;
9. Show Cause Order;
10. State of Texas Subpoena;
11. Photographs received from attorney;
12. Deposition of Josie Viola Lemell;
13. Deposition of Officer Tyrone Melton;
14. A&M Forensic and Engineering, Inc. vehicle inspection of 2009 Ford Escape on 10/04/2019;
15. A&M Forensic and Engineering, Inc. scene inspection on 02/11/2019 and
16. A&M Forensics and Engineering, Inc. reconstruction.

See Plaintiff's Exhibit 1 at p. 2.

Brown's failure to acknowledge some of the materials forming the foundation of Brent Munyon's opinions fails to advance her effort to survive summary judgment.

2. Brent Munyon's calculations are well-founded and reliably based on math and science.

Brent Munyon made calculations and applied principles of physics. See Exhibit 1 at pp. 3-7.

For example, he measured the collision scene. Id. He also applied Newton's Laws of Motion and the mathematical relationship of Newton's Laws. Id. He calculated vehicle parameters. Id. He calculated scene parameters. Id. He calculated to determine speed, time, and distance relationships. Id.

And Brown's speed in the moments before impact is not the product of an "exaggerated assumption" by Brent Munyon. Rather, Brent Munyon based his conclusion about Brown's speed on a Bosch CDR data download from Brown's automobile. See Exhibit 1 at pp. 6-7. Through her Counsel Randall Meredith, Brown attended the inspection during which Brent Munyon secured the Bosch CDR data download from

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