

PRESENTED AT**The Car Crash Seminar**

August 15-16, 2024
Austin, Texas

PROVING CAUSATION AND SUFFICIENCY OF EVIDENCE:
HOW TO AVOID “REVERSE AND RENDER”

Hon. Gisela D. Triana, Panelist
Hon. Manpreet Singh, Panelist
Judy Kostura, Author

Hon. Gisela D. Triana
Third Court of Appeals of Texas
Austin, TX

Hon. Manpreet Singh
Harris County Civil Courthouse
Houston, TX

Author Contact Information:
Judy Kostura
Sorrels Law
2901 Bee Cave Road, Suite L
Austin, TX 78746
Judy@SorrelsLaw.com
512.328.9099



Place 6

Prior to being elected to the Texas Third Court of Appeals in 2018, Justice Gisela D. Triana had served on every level of Texas trial courts. She comes to the Third Court with over 23 years of experience on a trial bench, in both criminal and civil courts. Most recently, Justice Triana served for 14 years as the 200th District Court Judge, presiding over hundreds of cases involving complex civil cases. Before that, Justice Triana served as a Travis County Court at Law Judge. In that Court of criminal jurisdiction, she is recognized for stabilizing the Court's docket and disposing of a massive backlog. Justice Triana has also served as a City of Austin Municipal Court Judge and as a Travis County Justice of the Peace.

Justice Triana began her legal career as a prosecutor in the Travis County Attorney's Office, where her work included representing victims of domestic violence and later served as the Director of the Trial Division in that office. Justice Triana also served as a Staff Attorney in the Texas Secretary of State's Election Division and ran her own private law firm, Hanco & Triana, focusing on criminal and family law.

Justice Triana's service to our community also extends beyond her years of work on the bench. She has participated in Austin Lawyers and Accountants for the Arts, Volunteer Legal Services, Legal Line, the Pro-Bono College, Habitat for Humanity, Special Olympics, the Children's Justice Act Task Force, Travis County Juvenile Board, Travis County Child Protective Services Board, Austin Recovery, and Chaired Middle Earth (helping homeless youth in Travis County).

In 1985, Justice Triana graduated magna cum laude from The University of Texas at San Antonio. She graduated in 1988 from The University of Texas School of Law and has conducted training sessions for judges all over Texas on legal matters such as emergency protective orders, arraignment, magistration, and legal procedures. She has been a faculty member of The University of Texas International Office's U.S. Law Program, which instructs foreign judges and lawyers on United States Law.

When not busy at work, Gisela is a soccer mom who devotes her time and energy to raising, and enjoying tremendously, her five children ranging in ages from 16-29.



Judge Manpreet Monica Singh

Civil Court at Law No. 4

5th Floor of the Harris County Civil Justice Center

About Manpreet Monica Singh

Judge Manpreet "Monica" Singh was born, raised, and educated in Houston, and earned her bachelor's degree from University of Texas at Austin and her JD from South Texas College of Law. Before her election to Harris County Civil Court at Law #4 in 2022—making history as Texas' first Sikh Judge—she was a practicing attorney for 21 years. In 2010 she was runner-up for the Houston Young Lawyers Association Most Outstanding Attorney. The South Asian Bar Association honored her with their Distinguished Member Award in 2017. Judge Singh has served on the Board of Directors of the ACLU of Texas, the Texas Lyceum, and the Sikh Coalition. She is a Chapter Representative for the exclusive American Board of Trial Advocates and has taught numerous CLEs topics for University of Texas and the State Bar of Texas- an organization that also awarded her the Texas Diversity Champion Award in 2018. Judge Singh is a recipient of the national Passion of Excellence Award and a graduate of the Harvard Leadership Program, the FBI Citizens Academy and of Leadership Houston. She served as a member of Houston Mayor Sylvester Turner's Transition Team and as a liaison with the Department of Homeland Security. She enjoys reading, traveling, and being ignored by her teenage boys.

Judy Kostura

Partner



Main: 713-496-1100

Direct: 512-328-9099 x 1

Fax: 512-328-4132

Email: judy@sorrellslaw.com

Profile | www.sorrellslaw.com

5300 Memorial Dr. Suite 270 Houston, TX 77007

THE COMMISSIONER'S HOUSE AT HERITAGE SQUARE
2901 Bee Cave Road, Suite L, Austin, Texas 78746



Licenses: Texas Supreme Court: 1980; Western District, Federal Court: 1988

Legal Practice: Sorrels Law www.sorrellslaw.com Personal Injury Practice

AV Rating by Martindale-Hubbell (highest ranking for competence and ethics)

Experience: Trucking and Commercial Vehicle Collisions, Automobile Collisions, Premises Liability, Wrongful Death, Burn Injuries, DWI Injuries, Attack by Vicious Animals, Subrogation and Liens, Insurance Bad Faith, Medical Provider Representation on Deposition and Subpoena Disputes

Author: Personal Injury Form Book for West Publishing Co.

CLE presentations to: American Assn of Justice, Texas Trial Lawyers Assn, UT School of Law, State Bar of Texas, University of Houston Law School, South Texas College of Law, Texas Advanced Paralegal Seminar, Capital Area Trial Lawyers Assn, Austin Bar Assn, South Plains Trial Lawyer Assn., Texas Academy of Family Law Specialists; Houston Trial Lawyers Assn.

CLE topics: Subrogation and Liens; Effective Demand Letters to Maximize Damages; Medical Records Privilege and Ethics of Redacting Medical Records; Sufficiency of the Evidence on Appeal; Client Communications; *In re North Cypress* Webinar; Tex. Civ. Prac. Rem. Code 18.001 Affidavits

Course Director: State Bar of Texas Advanced Personal Injury Seminar, 2024

Course Director: State Bar of Texas Advanced Civil Trial, 2023

Course Director: State Bar of Texas Advanced Evidence & Discovery, 2016

Course Director: State Bar of Texas Advanced Personal Injury Seminar, 2013

Course Director: State Bar of Texas Damages Seminar, February 2011

Professional Affiliations: Life Fellow, Texas Bar Foundation

Texas Trial Lawyers Assn: Board of Directors; Executive & Nominating Committees (2005-2006) (2017-2018), Vice President of CLE (2018); Committees (various): CLE, Communications, Budget

Capital Area Trial Lawyers Association (President 1999-2000, Executive Committee through 2015)

Travis County Bar Association, Board of Directors (1995-1998)

State Bar of Texas Continuing Legal Education Committee (2022-2025)

Lawyer Referral Service Board of Trustees through 2018 (Chair 1995-1998)

Pro Bono College of Law, over 100 hours of Pro Bono Public Service (various)

Professional Honors: Texas Trial Lawyers Assn Lifetime Achievement Award 2023

State Bar of Texas Gene Cavin Award for Continuing Education 2022

Texas Watch Champion of Justice 2019

Texas Monthly Super Lawyer 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024

Texas Monthly Top 50 Texas Women & Texas Monthly Top 50 Central/W. Texas 2016

Texas Monthly Top Women Attorneys in Texas 2021

Texas Trial Lawyers Assn Resolution of Appreciation for Legis. Contributions 2013

Scott Ozmun Trial Lawyer of the Year Capital Area Trial Lawyers Assn 2011

John Howie Spirit of Mentorship Award Texas Trial Lawyers Association 2006

Million Dollar Advocates Forum; National Trial Lawyers Top 100

PROVING CAUSATION AND SUFFICIENCY OF EVIDENCE:
HOW TO AVOID “REVERSE AND RENDER”

Table of Contents

1. The Jury is the Finder of Fact as Guaranteed by Federal and State Constitutions.	1
2. The Courts’ Different Roles in Accepting or Rejecting the Jury’s Findings.	1
a. Legally Insufficient and Factually Insufficient Evidence.	1
b. The Courts of Appeals and Texas Supreme Court have Defined, Unique Roles.	3
3. Has the Texas Supreme Court Changed the Rules for Appellate Review?	4
4. Selected Examples from the Texas Supreme Court.	5
a. <i>Universal Services Co., Inc. v. Ung</i> , 1995	5
b. <i>Jelinek v. Casas</i> , 2010	7
c. <i>Rodriguez-Escobar v. Goss</i> , 2013	9
d. <i>Service Corp. Intern. v. Guerra</i> , 2011	10
e. <i>Reyes v. City of Laredo</i> , 2010	12
f. <i>City of San Antonio v. Rodriguez</i> , 1996	14
g. <i>Coca-Cola Co. v. Harmar Bottling Co.</i> 2006	15
h. <i>Whirlpool Corp. v. Camacho</i> , 2009	17
i. <i>Wal-Mart v. Merrell</i> , 2010	19
j. <i>U-Haul Intern., Inc. v. Waldrip</i> , 2012	20
k. <i>Kia v. Ruiz</i> , 2014	22
l. <i>Guarda USA, Inc. v. Control Solutions, Inc.</i> , 464 S.W.3d 338 (Tex. 2015)	23
m. <i>Genie Industries, Inc. v. Matak</i> , 462 S.W.3d 1 (Tex. 2016)	25
n. <i>Gunn v McCoy</i> , 554 S.W.3d 645 (Tex. 2018)	27
5. Selected Examples from Recent Court of Appeals opinions.	27
a. <i>Katy Springs & Mfg., Inc. v. Favalora</i> , 476 S.W.3d 579 (Tex. App. 2015)	27
b. <i>Lara v Bui</i> , No. 01-21-00484-CV (Tex. App. Houston [1 st Dist.] Feb. 28, 2023)	31
c. <i>Castro v. Schlumberger Tech. Corp.</i> , No. 04-21-00420-CV (Tex. App. – San Antonio, May 31, 2023)	31
d. <i>Rankin v. Hernandez</i> , 14-22-00565-CV (Tex. App. – Houston [14 th] Oct 17, 2023)	32
6. Supreme Court of the United States: <i>Tolan v. Cotton</i> , 2014	32
7. Retained vs Non-Retained and Required Disclosures: the Line Blurs.	34
a. <i>Johnson v. Friesen</i> , No. 22-3335 (8 th Cir. Aug. 18, 2023)	34
b. <i>Mahar v. National Railroad Passenger Corp.</i> 2022 WL 1102221 (U.S.Dist.Ct. E.D., La 04/13/2022)	35
8. Non-Economic Damages: The Exception, not the Norm, in Tort Law?	36
a. <i>Gregory v. Chohan</i> (Tex. June 2023)	36
b. <i>Noe v. Velasco</i> (Tex. May 10, 2024)	36
c. Tex. Civ. Prac. & Rem. Code § 41.001(12)	36

9. Discovery of Medical Records if Experts Designated (or Not) for Mental Anguish	
Damages	37
a. <i>In re Richardson Motorsports, Ltd.</i> , Tex. May 10, 2024	37
b. <i>In re Williams Brothers Construction Co., Inc., and Luis Flores</i> , (Tex. App. Houston [14 th Dist.] May 24, 2024)	38
10. Criticism by legal scholars.	39
a. Phil Hardberger, <i>Juries Under Siege</i>	39
b. Seven law professors’ amicus curiae brief	43
c. David Anderson, <i>University of Texas, 2007 Judicial Tort Reform</i>	43
11. Conclusion.	45
12. Appendix.	45
a. Basic information about the Texas court system.	45
b. Glossary.	46

PROVING CAUSATION AND SUFFICIENCY OF EVIDENCE:
HOW TO AVOID “REVERSE AND RENDER”
AUGUST 15-16, 2024

*"Predict the future? It's hard enough to predict the past!"
Attributed to Steven Pinker regarding social scientists*

1. **The Jury is the Finder of Fact as Guaranteed by Federal and State Constitutions.**

The constitutional right of trial by jury is meaningless if juries are not allowed to be the finder of fact. Both the United States Constitution and Texas Constitution guarantee the right to trial by jury. The 7th amendment to the United States Constitution promises this right for all cases worth at least \$20.00:

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

The right to trial by jury is guaranteed in two sections of the Texas constitution:

THE TEXAS CONSTITUTION

ARTICLE 1. BILL OF RIGHTS

That the general, great and essential principles of liberty and free government may be recognized and established, we declare: ...

Sec. 15. RIGHT OF TRIAL BY JURY. The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency.

ARTICLE 5. JUDICIAL DEPARTMENT

Sec. 10. TRIAL BY JURY. In the trial of all causes in the District Courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury; but no jury shall be empaneled in any civil case unless demanded by a party to the case, and a jury fee be paid by the party demanding a jury, for such sum, and with such exceptions as may be prescribed by the Legislature.

2. **The Courts' Different Roles in Accepting or Rejecting the Jury's Findings.**

a. Legally Insufficient and Factually Insufficient Evidence.

Of course, the jury's role as fact-finder is not absolute, and the litigants can appeal when the evidence does not support the jury's verdict. Opinions describe the balancing act judges must employ in accepting or rejecting the jury's finding, paying attention to whether the challenge is to the legal sufficiency [alleging that there is no evidence or that the evidence does not even rise

to a scintilla of evidence, and is therefore insufficient as a matter of law] or to the factual sufficiency, and also paying attention to who has the burden of proof:

It is well established that jurors are the sole judge of the credibility of the witnesses and the weight to be given to their testimony. See *City of Keller v. Wilson*, 168 S.W.3d 802, 819 (Tex. 2005). Jurors are free to credit one witness's testimony and disbelieve another's, and appellate courts cannot overturn a jury's verdict merely because we might reach a different result. *Id.*

Therefore, to give proper deference to the jury's role as factfinder, we assume that the jury resolved all conflicts of credibility in favor of its verdict, crediting favorable evidence if a reasonable juror could, and disregarding contrary evidence if a reasonable juror could have disbelieved it. *Id.*

"In reviewing the **legal sufficiency** of the evidence, we view the evidence in the light most favorable to the judgment" *AutoZone, Inc. v. Reyes*, 272 S.W.3d 588, 592 (Tex. 2008).

Evidence is legally insufficient if it would not enable a reasonable and fair-minded person to reach the verdict under review. See *City of Keller*, 168 at 827. **When an appellant challenges the legal sufficiency of the evidence supporting an adverse finding of fact for which the opposing party had the burden of proof, the appellant must demonstrate that there is no evidence, or merely a scintilla of evidence, to support the adverse finding.** See *id.* By contrast, **when an appellant attacks the legal sufficiency of an adverse finding on an issue for which he has the burden of proof, he must demonstrate that the evidence establishes that issue as a matter of law.** *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001) (per curiam).

In a **factual-sufficiency review**, appellate courts must examine the evidence that both supports and contradicts the jury's verdict in a neutral light. See *id.* We still defer to the jury's implicit determinations of credibility and weight to be given to the evidence. See *Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 761 (Tex. 2003). Therefore, **when a party brings a factual-sufficiency challenge to a jury finding for which the party did not have the burden of proof, we consider and weigh all of the evidence and set aside the verdict only if the evidence that supports the finding is so weak as to make the verdict clearly wrong and manifestly unjust.** *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *Pitts & Collard, L.L.P. v. Schechter*, 369 S.W.3d 301, 312 (Tex. App.—Houston [14th Dist.] 2011, no pet.). Similarly, **when a party attacks the factual sufficiency of an adverse finding of fact for which he has the burden of proof, he must demonstrate on appeal that the adverse finding is against the great weight and preponderance of the evidence.** *Dow Chem.*, 46 S.W.3d at 242.

City of Austin v. Chandler et al, NO. 03-12-00057-CV (Tex. App. – Austin) February 7, 2014, emphasis mine

The San Antonio Court of Appeals, analyzed, on December 4, 2013, the distinction between an appeal based on legal sufficiency and factual insufficiency:

"When reviewing a legal sufficiency challenge, we review the evidence in a light most favorable to the trial court's judgment and indulge every reasonable inference to support

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Proving Causation and Sufficiency of Evidence: How to Avoid "Reverse and Render"

Also available as part of the eCourse

[Car Crash Trial Tactics \(2024\)](#)

First appeared as part of the conference materials for the 2024 The Car Crash Seminar session

"Proving Causation and Sufficiency of Evidence"