



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

LORRAINE BUJANDA,	§	No. 08-16-00122-CR
	§	
Appellant,	§	Appeal from
	§	
v.	§	County Criminal Court at Law No. 1
	§	
THE STATE OF TEXAS,	§	of El Paso County, Texas
	§	
Appellee.	§	(TC # 20140C13317)
	§	

CONCURRING OPINION

The State contends, and the Majority accepts, that:

- Ms. Bujanda's erratic driving in a construction zone, namely crossing over into Mr. Varela's lane sideswiping car in a construction zone is consistent with someone who is intoxicated; that,
- fleeing the scene of the collision evidences consciousness of guilt of driving while intoxicated; that,
- almost hitting two more cars as she drove onto Horizon and then onto North Loop was consistent with intoxicated driving.

I disagree. The essential meaning of *Hanna* is that there must be evidence that the offense caused the injury or damage; that is to say, that the intoxicated driving was the nexus, the

proximate cause and the cause in fact or, stated another way, the “but for” of the damage. I believe we are asked to accept the *post hoc ergo propter hoc* fallacy of finding an earlier event caused a later event merely because it occurred first. As the axiom goes, correlation does not imply causation. Suspicion has not been and is not legally sufficient to support a finding of legal causation.” *Guevara v. Ferrer*, 247 S.W.3d 662, 668 (Tex. 2007). And, as noted in *Hanna*, “proof of the defendant’s intoxication is not equivalent to proof of causation.” *See Hanna*, footnote 57.

I do believe that the Complaint Affidavit that is contained in the Clerk’s Record and was available and noticeable to the Trial Court does provide the nexus, or the “but for” cause. And for that reason, I concur with the result.

August 31, 2018

DAVID WELLINGTON CHEW, Senior Judge

Before McClure, C.J., Palafox, J., and Chew, C.J. (Senior Judge)
Chew, C.J. (Senior Judge), sitting by assignment
Chew, C.J. (Senior Judge), concurring