

IN THE COURT OF APPEALS
THE SECOND APPELLATE DISTRICT OF TEXAS

TXI TRANSPORTATION COMPANY,
RICHARDO REYNA RODRIGUEZ, AND
AURELIO MELENDEZ

VS.

NO. 02-04-00242-CV

RANDY HUGHES, INDIVIDUALLY AND
AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF SHILOH HUGHES;
CLINT ROYSE, INDIVIDUALLY AND
NEXT FRIEND OF JAGR ROYSE AND
AS PERSONAL REPRESENTATIVE FOR
THE ESTATE OF AFTON HUGHES
ROYSE, ET AL

R E P O R T E R ' S R E C O R D
(TRIAL DAY NO. 7, May 13, 2004)
(VOLUME 11 OF 15)

APPEARANCES

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On the 13th day of May, 2004, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable John H. Fostel, Judge
presiding, held in Decatur, Wise County, Texas:

Proceedings reported by Computerized
Stenographic Method and Computer Aided Transcription.

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NO. 03-05-379

RANDY HUGHES, Individually)
and as Personal Representative)
for the ESTATE OF SHILOH)
HUGHES; CLINT ROYSE,)
Individually and as Personal)
Representative for the ESTATE)
OF AFTON HUGHES ROYSE; and as)
Next Friend of JAGR ROYSE;)
WILLIE WATKINS; Individually)
and as Personal Representative)
for the ESTATE OF JOYCE)
WATKINS; SHIRLEY RITCHEY;)
CAROLYN LARGENT; BETTY GENTRY)
and JOHNNY WATKINS)
Plaintiffs,)

IN THE DISTRICT COURT

OF WISE COUNTY, TEXAS

VS.)
TXI TRANSPORTATION COMPANY;)
AURELIO MELENDEZ; and RICARDO)
REYNA RODRIGUEZ)
VS.)
WILLIE WATKINS, Individually)
and as Personal Representative)
for the ESTATE OF KIMBERLY)
WATKINS HUGHES)

271st JUDICIAL DISTRICT

(TRIAL DAY NO. 7, May 13, 2004)

On the 13th day of May, 2004, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable John H. Fostel, Judge
presiding, held in Decatur, Wise County, Texas:

Proceedings reported by Computerized Stenographic
Method.

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L E G E N D

"Uh-huh" is an affirmative response while
"Huh-uh" is a negative one.

Words, phrases and/or spellings are underscored
to emphasize that, while they may be incorrect as they are
transcribed in their underscored state, the Court Reporter has
transcribed them exactly as the speaker uttered them.

1 P R O C E E D I N G S

2 (Proceedings continued on the
3 13th day of May, 2004.)

4 -----
5 (Proceedings held outside presence and/or
6 hearing of the jury.)

7 THE COURT: All right. Back on the record
8 in this cause.

9 This note you brought me --
10 (To the Bailiff.) Raise your right hand.

11 THE BAILIFF: (The Bailiff complied.)

12 THE COURT: Do you swear to tell the truth,
13 the whole truth, and nothing but the truth?

14 THE BAILIFF: I do.

15 THE COURT: What did the jury tell you when
16 they gave you that note?

17 THE BAILIFF: They told me that that was
18 just a joke.

19 THE COURT: All right. And you delivered
20 it to me?

21 THE BAILIFF: Yes, sir.

22 THE COURT: Also, I want in their order for
23 lunch, if you have to get it, too, if we can put that
24 in.

25 THE COURT REPORTER: I will. I'll get it

1 back.

2 THE COURT: You can mark that as a note
3 from the jury.

4 MR. HURD: And I'm right, Sheriff Woods,
5 that it was about 10:35 when that -- 10:30 --

6 THE BAILIFF: That's about --

7 MR. HURD: A.M.?

8 THE BAILIFF: Yes, sir.

9 MR. BOYD: Same time as the lunch order?

10 THE BAILIFF: Yes, sir.

11 MR. HURD: On Thursday, May 13th?

12 THE BAILIFF: Yes, sir.

13 MR. HURD: Okay.

14 (Jury Note Exhibit Nos. 2, 3, & 4 marked
15 for identification.)

16 (Lunch break.)

17 THE COURT: Let the record reflect that the
18 attorneys and the clients are present in the courtroom.

19 The jury is not present.

20 It's my understanding the jury has reached
21 a verdict; is that correct?

22 THE BAILIFF: They have, your Honor.

23 THE COURT: Very well. Would you bring
24 them in, please?

25 (Open court, jury present.)

1 THE COURT: Thank you. You all can be
2 seated.

3 Very well. Back on the record in this
4 case. Let the record reflect the attorneys, their
5 clients are present in the courtroom and the jury is
6 present in the courtroom.

7 Ladies and gentlemen of the jury, the Court
8 has been informed by the Bailiff that you have reached a
9 verdict. I would ask the Foreman; is that correct?

10 THE FOREPERSON: Yes, sir.

11 THE COURT: If you would, please, hand the
12 verdict form to the Bailiff for delivery to the Court
13 for inspection.

14 The Court does note that this verdict was
15 signed by the Presiding Juror, alone. Is this the
16 unanimous verdict of the entire jury?

17 THE FOREPERSON: Yes, sir.

18 THE COURT: Very well. The Court will then
19 read the verdict.

20 (Reading.)

21 "Question No. 1: Did the negligence, if
22 any, of those named below proximately cause the
23 occurrence in question?

24 "Answer 'Yes' or 'No' for each of the
25 following:

1 "Ricardo Rodriguez: 'Yes.'

2 "TXI Transportation Company: 'Yes.'

3 "Kimberly Watkins Hughes: 'No.'

4 "Question No. 2: Did the negligence of any
5 of those named below proximately cause the occurrence in
6 question?

7 "Aurelio Melendez: "Yes."

8 "Question No. 3: For each person or
9 company found by you to have caused the occurrence in
10 question, find the percentage caused by:

11 "Ricardo Rodriguez: 50 percent.

12 "Aurelio Melendez: 25 percent.

13 "TXI Transportation Company: 25 percent.

14 "Question No. 4: What sum of money, if
15 paid now in cash, would fairly and reasonably compensate
16 Jagr Royse for his injuries, if any, resulting from the
17 occurrence in question?

18 "Reasonable expenses of necessary medical
19 care from the past: \$11,967.96.

20 "Physical pain sustained from the past:
21 \$2,500.00.

22 "Mental anguish sustained from the past:
23 \$2,500.00.

24 "Mental anguish sustained from the future:
25 \$0.00.

1 "Pain and mental anguish: \$5,000.00.

2 "Question 7: What sum of money, if paid
3 now in cash, would fairly and reasonably compensate
4 Clint Royse for his damages, if any, resulting from the
5 death of his wife, Afton Hughes Royse?

6 "Pecuniary loss sustained in the past:
7 \$36,000.00.

8 "Pecuniary loss in reasonable probability
9 that would be sustained in the future: \$1,800,000.00.

10 "Loss of companionship in society sustained
11 in the past: \$50,000.00.

12 "Loss of companionship and society that in
13 reasonable probability will be sustained in the future:
14 \$1,514,000.

15 "Mental anguish sustained in the past:
16 \$100,000.00.

17 "Mental anguish in reasonable probability
18 will be sustained in the future: \$500,000.00.

19 "Loss of companionship and society
20 sustained in the past: \$0.00.

21 "Loss of companionship and society in
22 reasonable probability will be sustained in the future:
23 \$0.00.

24 "Mental anguish sustained in the past:
25 \$100,000.00.

1 "Mental anguish that in reasonable
2 probability will be sustained in the future:
3 \$100,000.00.

4 "Question No. 9: What sum of money, if
5 paid now in cash, would fairly and reasonably compensate
6 Clint Royse for his damages, if any, resulting from the
7 death of his unborn child, Twin B?

8 "Loss of companionship and society
9 sustained in the past: \$0.00.

10 "Loss of companionship and society that in
11 reasonable probability will be sustained in the future:
12 \$0.00.

13 "Mental anguish sustained in the past:
14 \$100,000.00.

15 "Mental anguish that in reasonable
16 probability will be sustained in the future:
17 \$100,000.00.

18 "Question 10: What sum of money, if paid
19 now in cash, would have fairly and reasonably
20 compensated Shiloh Hughes?"

21 All right. Question No. 8 as to Twin A,
22 the figures that I read \$0.00 on companionship and
23 society, in the past and in the future; mental anguish
24 in the past and the future: \$100,000.00 in each blank.

25 And Question No. 9 for Twin B, again:

1 "Loss of companionship and society
2 sustained in the past: \$0.00; in the future: \$0.00.

3 "Mental anguish in the past: \$100,000.00.

4 "Mental anguish in the future:
5 \$100,000.00.

6 "Question No. 10: What sum of money, if
7 paid now in cash, would fairly and reasonably compensate
8 Shiloh Hughes for his damages, if any, as a result of
9 the occurrence in question?

10 "Funeral and burial expense: \$7,471.00.

11 "Pain and mental anguish: \$5,000.00.

12 "Question 11: What sum of money, if paid
13 now in cash, would fairly and reasonably compensate
14 Randy Hughes for his damages, if any, resulting from the
15 death of his son, Shiloh Hughes?

16 Loss of companionship and society sustained
17 in the past: \$100,000.00.

18 "Loss of companionship and society that in
19 reasonable probability will be sustained in the future:
20 \$1,000,000.00.

21 "Mental anguish sustained in the past:
22 \$150,000.00.

23 "Mental anguish that in reasonable
24 probability will be sustained in the future:
25 \$500,000.00.

1 Question 12: What sum of money, if paid
2 now in cash, would fairly and reasonably compensate
3 Randy Hughes for his damages, if any, resulting from the
4 death of his daughter, Afton Hughes Royse?

5 "Loss of companionship and society in the
6 past: \$100,000.00.

7 "Loss of companionship and society in the
8 future: \$1,000,000.00.

9 "Mental anguish sustained in the past:
10 \$150,000,00

11 "Mental anguish that in reasonable
12 probability will be sustained in the future:
13 \$500,000.00.

14 "What sum of money, if any paid now --"
15 Question 13.

16 "-- now in cash, would have fairly and
17 reasonably compensated Joyce Watkins for her damages, if
18 any, as a result of the occurrence in question?

19 "Funeral and burial expenses: \$8,012.25.

20 "Pain and mental anguish: \$5,000.00.

21 "Question No. 14: What sum of money, if
22 paid now in cash, would fairly and reasonably compensate
23 Willie Watkins for his damages, if any, resulting from
24 the death of his wife, Joyce Watkins?

25 "Pecuniary loss sustained in the past:

1 \$40,000.00.

2 "Pecuniary loss that in reasonable
3 probability will be sustained in the future:

4 \$280,000.00.

5 "Loss of companionship and society
6 sustained in the past: \$80,000.00.

7 "Loss of companionship and society that in
8 reasonable probability will be sustained in the future:

9 \$1,250,000.00.

10 "Mental anguish sustained in the past:

11 \$100,000.00.

12 "Mental anguish that in reasonable
13 probability will be sustained in the future:

14 \$250,000.00.

15 "Question 15: What sum of money, if paid
16 now in cash, would fairly and reasonably compensate
17 Shirley Ritchey for her damages, if any, resulting from
18 the death of her mother, Joyce Watkins?

19 "Loss of companionship and society
20 sustained in the past: \$30,000.00.

21 "Loss of companionship and society that in
22 reasonable probability will be sustained in the future:

23 \$200,000.00.

24 "Mental anguish sustained in the past:

25 \$20,000.00.

1 "Mental anguish that will be sustained in
2 the future: \$50,000.00.

3 "Question 16: Carolyn Largent for her
4 damages, if any, resulting from the death of her mother,
5 Joyce Watkins?

6 "Loss of companionship and society
7 sustained in the past: \$30,000.00.

8 "Loss of companionship and society in the
9 future: \$200,000.00.

10 "Mental anguish in the past: \$20,000.00.

11 "Mental anguish in the future: \$50,000.00.

12 "Question 17: What sum of money, if paid
13 now in cash, would fairly and reasonably compensate
14 Betty Gentry for her damages resulting from the death of
15 her mother, Joyce Watkins?

16 "Loss of companionship and society in the
17 past: \$30,000.00.

18 "Companionship and society in the future:
19 \$200,000.00.

20 "Mental anguish sustained in the past:
21 \$20,000.00.

22 "Mental anguish that in reasonable
23 probability will be sustained in the future:
24 \$50,000.00.

25 "What sum of money --"

1 Question 18.

2 "-- if paid now in cash, would fairly and
3 reasonably compensate Johnny Watkins for his damages, if
4 any, resulting from the death of his mother, Joyce
5 Watkins?

6 Loss of companionship and society sustained
7 in the past: \$30,000.00.

8 "Companionship and society that in
9 reasonable probability will be sustained in the future:
10 \$200,000.00.

11 "Mental anguish sustained in the past:
12 \$20,000.00.

13 "Mental anguish sustained in the future:
14 \$50,000.00.

15 "Question 19: What sum of money, if paid
16 now in cash, would fairly and reasonably compensate
17 Kimberly Watkins Hughes for her damages, if any, as a
18 result of the occurrence in question?

19 "Medical expenses: \$91,250.26.

20 "Funeral and burial expenses: \$7,795.75.

21 "Pain and mental anguish: \$5,000.00.

22 "What sum of money --"

23 Question 20.

24 "What sum of money, if paid now in cash,
25 would fairly and reasonably compensate Willie Watkins

1 for his damages, if any, resulting from the death of his
2 daughter, Kimberly Watkins Hughes?

3 "Loss of companionship in society sustained
4 in the past: \$40,000.00.

5 "Loss of companionship and society that in
6 reasonable probability will be sustained in the future:
7 \$550,000.00.

8 "Mental anguish sustained in the past:
9 \$80,000.00.

10 "Mental anguish that in reasonable
11 probability will be sustained in the future:
12 \$100,000.00.

13 "Question 21: Do you find by clear and
14 convincing evidence that the death of Afton Hughes Royse
15 resulted from gross neglect attributed to TXI?

16 "Answer: Yes.

17 "Question 22: Do you find by clear and
18 convincing evidence that the death of Afton --"

19 THE COURT REPORTER: 23?

20 THE COURT: This is 22.

21 THE COURT REPORTER: I'm sorry.

22 THE COURT: (Reading.) "Question 22: Do
23 you find by clear and convincing evidence that the death
24 of Afton Hughes Royse resulted in gross neglect?

25 "Answer: Yes.

1 "Question 23: What sum of money if paid,
2 if any, should be assessed against TXI and awarded to
3 Clint and Jagr Royse as exemplary damages for the death
4 of Afton Hughes Royse?

5 "Answer: \$7,500,000.

6 "Question 24: How do apportion the
7 exemplary damages between Clint Royse and Jagr Royse?

8 "Clint Royse: 50 percent.

9 "Jagr Royse: 50 percent."

10 Would anyone like to inspect the verdict
11 form?

12 MR. BOYD: No, your Honor.

13 MR. HURD: No.

14 THE COURT: Very well.

15 MR. HURD: We would like to poll the jury,
16 though, your Honor. We would like to have the jury
17 polled.

18 THE COURT: Very well.

19 There has been a request that the jury be
20 polled.

21 What I will do at this time is, beginning
22 with the juror immediately on my right, if you would
23 stand: The question to each of you is: "Is that your
24 verdict?"

25 All right. You can stand at this time.

1 THE JUROR: My verdict is --

2 THE COURT: Is that your verdict?

3 THE JUROR: Yes.

4 THE JUROR: Yes.

5 THE JUROR: Yes.

6 THE JUROR: Yes, sir.

7 THE JUROR: Yes, sir.

8 THE JUROR: Yes.

9 THE JUROR: Yes, your Honor.

10 THE JUROR: Yes, sir.

11 THE JUROR: Yes, sir.

12 THE JUROR: Yes, sir.

13 THE JUROR: Yes, sir.

14 THE JUROR: Yes, sir.

15 THE COURT: Thank you.

16 Anything further?

17 MR. HURD: No, your Honor.

18 MR. BOYD: We have nothing, your Honor.

19 THE COURT: Very well.

20 You all bear with me a second here.

21 All right. (Reading.) "Ladies and

22 gentlemen of the jury, at this time your duty as jurors
23 has been completed.

24 "At the beginning of the trial, I did give
25 you a number of instructions, which I expected you to

1 follow throughout the trial.

2 "At this time, I'm going to release you
3 from all of the instructions that I have previously
4 given you. However, I do have one final instruction.

5 "The Court has previously instructed you
6 that you should observe strict secrecy during the trial
7 and during your deliberations on this case, and that you
8 should not discuss this case with anyone except other
9 jurors during your deliberations.

10 "I'm now about to discharge you.

11 "After you're discharged, you will be
12 released from secrecy. You will then be free to discuss
13 the case and your deliberations with anyone. However,
14 you are completely free not to discuss the case and your
15 deliberations, if you wish.

16 "Now, after you are discharged, it is
17 lawful for the attorneys or other persons to question
18 you to determine whether any of the standards of jury
19 conduct that I've given you in the course of this trial
20 were violated, and to ask you to give an affidavit to
21 that effect.

22 "You are free to discuss or not to discuss
23 these matters, and to give or not to give an affidavit.
24 It's entirely up to you.

25 "And I will say further, these -- certainly

1 these attorneys that are in this court courtroom, I have
2 never had any problem and don't expect that they would
3 disobey any of your wishes in that regard. Truth of the
4 matter is, I've never had any problem with that.

5 "I will tell you, though, that if anyone
6 should persist in asking you questions that you don't
7 want to answer, then you just get in touch with me and
8 we'll make sure that that stops.

9 "Attorneys, oftentimes, as you might
10 imagine, after the case would like to find out what your
11 take was on certain evidence, what your thought process
12 might have been during that. They do that simply to
13 find out --

14 "It's kind of like reviewing how you did in
15 a football game or something, reviewing a game film to
16 see what they did right and what they may have done
17 wrong, or something like that, or how you viewed the
18 evidence. That's perfectly legal and there's nothing
19 wrong with it. But you don't have to talk to anybody,
20 if you don't want to."

21 The rest of my script just simply says,
22 "Thank you for your service. You're free to go."

23 I will add a little bit more. I know
24 you've been here a long time and worked very hard.

25 I told the panel the first day, and I know

1 you heard me, that I can't conduct my business here
2 unless people such as yourselves are willing to come to
3 the courthouse, answer your call to jury service, and to
4 participate in this process.

5 We cannot operate without people such as
6 yourselves willing to come out of your every day life
7 and come down here to the courthouse and make these
8 decisions.

9 Sometimes, in some cases, the Court is
10 asked not only to do the job that you saw me do, but I
11 also have to do the job that you've done. I do it,
12 because that's my job, but I would much rather have 12
13 people, such as yourselves, come in here through this
14 process, each of you with no ax to grind, and no -- no
15 reason to be here, except for jury service, and to
16 answer these questions and to hear these cases and make
17 these decisions, and you have done that, and you have
18 served well.

19 You have been a part of government and you
20 should be proud that you have served. I appreciate it.

21 If you need an excuse for your employer,
22 you can find one on the first floor in the District
23 Clerk's office.

24 If you have any questions about your jury
25 service that you would like to talk to me about, my

1 office is open. You're welcome to come by. There are
2 things we can change, but a lot of things we can't
3 change about the system, but if you've got any
4 suggestions in that regard, we would certainly like to
5 hear them.

6 At this time your service is over. If you
7 would take your badge off. I know those are great
8 souvenirs. A lot of people out there want them. If
9 you'll leave those in your chair, I would appreciate it.

10 And all I can tell you other than that, is
11 thank you very much.

12 You're free to go.

13 -----

14 (END OF PROCEEDINGS)

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1 STATE OF TEXAS)

2 COUNTY OF WISE)

3 I, Jeffery M. Goodwyn, Official Court Reporter
4 in and for the 271st District Court of Wise County,
5 State of Texas, do hereby certify that the above and
6 foregoing contains a true and correct transcription of
7 all portions of evidence and other proceedings requested
8 in writing by counsel for the parties to be included in
9 this volume of the Reporter's Record, in the
10 above-styled and numbered cause, all of which occurred
11 in open court or in chambers and were reported by me.

12 I further certify that this Reporter's Record
13 of the proceedings truly and correctly reflects the
14 exhibits, if any, offered by the respective parties.

15 *I further certify that the total cost for the
16 preparation of this Reporter's Record is \$ _____ and
17 was paid/will be paid by _____.

18 WITNESS MY OFFICIAL HAND this the _____ day
19 of _____, _____.

20

21

22 _____
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