
IN THE
Supreme Court of the United States

GOODYEAR LUXEMBOURG TIRES, S.A.,
GOODYEAR LASTIKLERI T.A.S. AND
GOODYEAR DUNLOP TIRES, FRANCE,

Petitioners,

v.

EDGAR D. BROWN AND PAMELA BROWN,
CO-ADMINISTRATORS OF THE ESTATE OF
JULIAN DAVID BROWN, AND KAREN M. HELMS,
ADMINISTRATRIX OF THE ESTATE OF
MATTHEW M. HELMS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
NORTH CAROLINA COURT OF APPEALS

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Where Petitioners claim certiorari should be allowed to demonstrate that the “stream of commerce” theory can be used only in analyzing cases of specific jurisdiction, as opposed to general jurisdiction, have Petitioners presented compelling reasons to grant the writ where the North Carolina trial court never engaged in a stream of commerce analysis and Respondents have repeatedly and clearly stated in their appellate briefs that no stream of commerce analysis should be used?

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STATEMENT

This is a wrongful death case filed in the state courts of North Carolina involving two 13-year-old boys, Matthew Helms of Jacksonville, N.C., and Julian Brown of Charlotte, N.C. Both boys were youth soccer players who were killed in a bus wreck near Paris, France. The boys had traveled to France as part of a trip arranged for players considered the best under age 14 youth soccer players in North Carolina.

The complaint alleges that on April 18, 2004, as they were on a bus headed to the airport in Paris to return home, one of the bus' Goodyear tires failed when its plies separated. The bus driver lost control of the bus and it overturned, killing both boys.

The initial suit named the company responsible for the trip, among others, as defendants. Plaintiffs later learned that a French criminal negligent homicide investigation, conducted after the wreck, found that one of the bus tires was defective and a cause of the wreck. Plaintiffs amended their complaint, filing suit in North Carolina against several defendants, including Goodyear Tire & Rubber Co. and three subsidiary foreign corporations – Goodyear Lastikleri TAS, a Turkish company; Goodyear Luxembourg Tires SA; and Goodyear Dunlop Tires France (hereinafter the Goodyear foreign defendants). Plaintiffs alleged that the three subsidiaries designed, manufactured and distributed the defective tire, and that they breached express and implied warranties.

The Goodyear foreign defendants filed motions to dismiss for lack of personal jurisdiction, alleging that each of the foreign Goodyear corporations lacked the requisite minimum contacts and could not reasonably anticipate being haled into court in North Carolina.

The parent company, defendant Goodyear Tire & Rubber Co., which had previously stated in affidavits that its three foreign subsidiaries did not do any business in North Carolina, later admitted in discovery that the companies manufactured at least 44,000 tires shipped for sale into North Carolina in the previous three years.

The trial court found that the Goodyear foreign defendants, through their connection with their U.S. parent company and sales here, had sufficient continuous and systematic contacts with North Carolina to be subject to personal jurisdiction in the state. In particular, the court analyzed the quantity of the defendants' contacts with North Carolina, the nature and quality of those contacts, the interest of North Carolina in the cause of action and the convenience of the parties. Pet. App. 36a. The court determined that "Exercise of general jurisdiction over the defendants comports with Due Process and does not offend traditional notions of fair play and justice." *Id.* The trial court did not perform a "stream of commerce" analysis, and never mentioned that phrase.

From that order, defendants appealed to the N.C. Court of Appeals, which unanimously upheld the trial court's order. The North Carolina Supreme Court refused the defendants' petition for discretionary review and denied their appeal.

REASONS FOR DENYING THE PETITION

I. Respondents Are Not Using The “Stream Of Commerce” Theory To Demonstrate General Jurisdiction.

Petitioners’ sole reason for contending that this court should grant *certiorari* is because they believe the state court erroneously applied the stream of commerce theory of personal jurisdiction to a case involving general jurisdiction. Pet. 1-2.

In this case, however, the trial court did not perform a stream of commerce analysis in concluding general personal jurisdiction was proper. Instead, it found facts from the evidence, conducted a constitutionally correct analysis and concluded that jurisdiction was appropriate. There is not even a hint in the court’s order that it considered the stream of commerce theory.

Rather than a battle over the question of whether the “stream of commerce” applies to a general jurisdiction case, plaintiffs have *repeatedly* stated in their appellate briefs that they are not attempting to apply the stream of commerce theory to this case. For example, in their brief to the N.C. Court of Appeals, plaintiffs wrote:

The “stream of commerce” doctrine states that a manufacturer that injects a single item into the stream of commerce, without directing it at the forum state, but knowing it might reach the forum state, may be sued in the forum state if the product injures someone there.

This is not the test plaintiffs are attempting to apply. Instead, our courts have stated that general jurisdiction may be asserted over a defendant when the cause of action is unrelated to defendant's activities in the forum "as long as there are sufficient 'continuous and systematic' contacts between defendant and the forum state.

Plaintiffs' brief to N.C. Court of Appeals, p. 30 (*emphasis added*).

In their brief to the N.C. Supreme Court, plaintiffs stated:

Plaintiffs are not asserting there are minimum contacts with defendants on a 'stream of commerce' claim, in which the defendants had nothing to do with where their product eventually ended up. Instead, plaintiffs are alleging that the defendants are part of a highly targeted, integrated worldwide effort to design, manufacture, market and sell their tires in the United States, including North Carolina. Those thousands of tires sold here are not incidental contacts, but instead are calculated and deliberate efforts to take advantage of the North Carolina market for tires.

Plaintiff's brief p. 21 (*emphasis added*).

Far from attempting to apply the stream of commerce notion to this case, one of the headings of plaintiffs' brief to the N.C. Court of Appeals was: "Defendants' 'Stream Of Commerce' Arguments Are Misdirected In That They Refer To A Doctrine That Does Not Apply In This Case." Plaintiffs' brief p. 24.

Nonetheless, petitioners claim that *certiorari* should be allowed to decide a dispute over whether the stream of commerce applies to cases of general jurisdiction.

Instead of raising that issue, this case is one in which the trial court found facts from the evidence and to those facts applied a constitutionally correct analysis of whether the court could exercise jurisdiction. The N.C. Supreme Court ultimately concluded that the trial court was correct and denied the defendants' appeal and request for discretionary review.

Nowhere in the trial court's analysis did it use the term "stream of commerce" and nowhere did it perform such an analysis.

Since this case ultimately is an appeal of the trial court's order, we should assess that order more closely to ensure that the court's review was constitutionally appropriate.

II. The Trial Court's Assessment And Order Were Constitutionally Correct.

The issue before the trial court was one of personal jurisdiction in which both sides presented evidence, including affidavits, expert testimony, photographs and depositions. The trial court, therefore, was required to act as fact finder, determining the credibility of the evidence presented to it.

The trial court, as fact finder in personal jurisdiction cases, is permitted to make judgments regarding the credibility of the evidence and of the witnesses, and under North Carolina law, those judgments cannot be disturbed on appeal, as long as they are supported by competent evidence in the record. *See Deer Corp. v. Carter*, 117 N.C. App. 314, 629 S.E.2d 159 (2006) (where it appeared the trial court believed one party over another witness regarding jurisdictional evidence, the appeals court is “not free to revisit questions of credibility or weight that have already been decided by the trial court.” *Id.* at 324, 629 S.E.2d 267, *citing Banc of America Securities LLC v. Evergreen Intern*, 169 N.C. App. 690, 695, 611 S.E.2d 179, 183 (2005)).

In assessing the evidence, the trial court found many facts demonstrating defendants' continuous and systematic ties with North Carolina.

In *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984), this court stated: “When a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum, the State has been said to be

exercising ‘general jurisdiction’ over the defendant.” *Id.* at 414 n. 9. General jurisdiction is appropriate where the defendant’s contacts with the forum state are “continuous and systematic,” the court said. *Id.* at 416.

In this case, the trial court examined the evidence, and found that the Goodyear foreign defendants had both continuous and systematic ties to the forum state.

In reviewing the evidence before the trial court, the N.C. Court of Appeals noted that much of the evidence in the case was undisputed by the defendants. “Defendants do not dispute that the majority of the trial court’s findings of fact are supported by adequate evidentiary support.” Pet. App. 11a.

The evidence reviewed by the court showed that the foreign Goodyear defendants manufactured the tire at issue, which was written entirely in English, with warnings and directions, and U.S. Department of Transportation markings to allow it to be sold in the United States. They included a U.S. code listing load and pressure ratings set by the U.S. Tire and Rim Association, and a “Safety Warning,” written in English that conforms to the warnings found on all tires sold in the United States. Pet. App. 24a.

The court found that the three foreign Goodyear companies manufactured a total of more than 44,000 tires sold in North Carolina during a 3-year period, and found that that number might be substantially higher, given that Goodyear failed to answer 30(b)(6) deposition questions authorized by the court. Pet. App. 5a, 33a.

The trial court specifically found that “The defendants knew or should have known that tires they manufactured were shipped to the United States through their Goodyear parent and affiliated companies and sold in North Carolina on a continuous and systematic basis.” Pet. App. 6a-7a. The court also found that the defendants are all subsidiaries of Goodyear in the United States and have “additional abundant ties to the United States.” Pet. App. 7a.

The trial court, having reviewed all of the evidence, concluded as a matter of law that “The defendants have continuous and systematic ties with the State of North Carolina.” Pet. App. 9a. This is exactly the test that the *Helicopteros* Court approved for cases involving general jurisdiction.

III. The Trial Court And The N.C. Court Of Appeals Conducted An Extensive Analysis To Ensure That Traditional Notions Of Fair Play And Substantial Justice Were Not Offended By An Exercise of Jurisdiction.

In reviewing the trial court’s opinion, the N.C. Court of Appeals stated that personal jurisdiction cannot be exercised over a defendant “unless the defendant has had certain ‘minimum contacts’ with the forum state such that ‘traditional notions of fair play and substantial justice’ are not offended by maintenance of the suit.” Pet. App. 11a., *citing Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

The trial court used a five-part test, authorized by North Carolina courts, to aid in this analysis. The

factors to be considered are: (1) the quantity of the contacts, (2) the nature and quality of the contacts, (3) the source and connection of the cause of action to the contacts, (4) the interest of the forum state, and (5) convenience. Pet. App. 34a-35a, *Fraser v. Littlejohn*, 96 N.C. App. 377, 383, 386 S.E.2d 230, 234 (1989).

The trial court found that these factors all weighed in the favor of the plaintiffs, and that the exercise of jurisdiction comported with Due Process.

Taking these factors in turn:

a. Quantity of the contacts. The three foreign Goodyear defendants admitted that some 44,000 tires they have manufactured or designed were sent to this state for sale. (Goodyear Lastikleri, 5,906 tires; Goodyear Luxembourg Tires SA, 6,402 tires; Goodyear Dunlop Tires France SA, 33,923 tires). Those tires “come in on a regular basis,” according to Goodyear’s 30(b)(6) designee. (Dep. Kramer, p. 21).

b. The nature and quality of the contacts. In this case, the contacts are not fleeting, such as mere phone calls into the state, or advertisements in national publications that happen to reach North Carolina. Instead, defendants are attempting to sell as many tires as possible in North Carolina. Defendants purposefully and intentionally send tires from their subsidiary foreign manufacturers, importing them into the United States and selling them in the North Carolina market.

The Court of Appeals stated:

According to the trial court's findings, the distribution chain through which tires manufactured by Defendants were shipped into the United States and, eventually, into North Carolina, was "a continuous and systematic process" rather than a sporadic or episodic one. As a result, the trial court's findings indicated that, through a regular process employed within the Goodyear organization, a substantial number of tires manufactured by the Defendants were imported into the United States and distributed to various entities in North Carolina.

Pet. App. 26a.

Goodyear sells tires from these defendants in North Carolina on a continuing basis, through a highly integrated structure, and is doing so today. In conducting this business, "the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws . . ." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

"Thus where the defendant deliberately has engaged in significant activities within a State, or has created continuing obligations between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by the benefits and

protections of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-476 (1985) (citations omitted).

Defendants' contacts with the state were found to be both continuous and systematic. They do business in North Carolina by repeatedly selling thousands of tires within the state to the state's citizens. Those sales are admitted to have taken place on a regular basis over the previous three years.

The nature and quality of the contacts with North Carolina supported the trial court's finding of general jurisdiction.

c. The source and connection of the cause of action to the contacts. General jurisdiction permits the exercise of jurisdiction over a defendant even when the cause of action is completely unrelated to the source of the contacts.

In this case, however, there is a very significant nexus between the contacts with North Carolina and the cause of action. The defendants' contacts with North Carolina consist of thousands of tires they manufacture being shipped to North Carolina and sold to its residents, generating hundreds of thousands of dollars in revenue. Thousands of the defendants' tires are being used on thousands of vehicles today in North Carolina.

It is foreseeable to those defendants that one or more of their tires might fail, injuring a North Carolina

resident, and the defendants might have to defend a lawsuit here.

This court held in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, that a manufacturer or distributor who places an item in the stream of commerce, even indirectly, while attempting to serve a market, it is subject to suit in that market.

If the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.

World-Wide Volkswagen at 297-98.

Overall, the test is this: whether “the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.” *Id.* at 297.

In this case, the very tire at issue, although sold in France, was designed and manufactured by the defendants so that it could be sold in the United States.

Robert C. Ochs is a registered professional engineer with 25 years of experience working in the tire industry, including the European tire industry. He worked for Michelin Tire in France in a number of positions, including Director of Product Analysis. Mr. Ochs traveled to France and personally examined the tire involved in this wreck. He stated in his affidavit that the tire involved in this wreck was designed, manufactured and marketed for sale worldwide, including sale in the United States and North Carolina. Pet. App. 24a.

He noted that the information on the tire was written entirely in English and it contained a serial number required by the U.S. Department of Transportation for tires sold in the United States. *Id.* The tire contained additional U.S. Department of Transportation markings that were placed there to allow the tire to be sold in the United States. *Id.*

Markings on the tire at issue contained information showing that it was manufactured as qualified for sale in the United States, Mr. Ochs stated. The tire also has a U.S. code listing load and pressure ratings that conform to United States standards set by the Tire and Rim Association, the standardizing organization for the tire industry in the United States. *Id.* It contains a "Safety Warning," written in English, that conforms to the warnings found on every tire for sale in the United States. *Id.* The tire was manufactured and labeled in such a way as to allow it to be sold in the United States, including North Carolina, he concluded. *Id.*

Not only could the defendants reasonably anticipate being haled into court in North Carolina for the sale of one of their tires – they could have been haled into court in North Carolina for the sale of this very tire, were it not for a happenstance of distribution which sent the tire to France instead of North Carolina. Therefore the source and connection of the cause of action to the contacts is very strong.

d. Interest of the forum state. Protection of children is part of the public policy of North Carolina. In this case, two 13-year-old North Carolina residents were killed when a tire manufactured by defendants failed, causing the bus they were riding in to crash. North Carolina has an interest in protecting its citizens – especially its minor citizens who cannot protect themselves – and allowing them a forum for the redress of grievances. As the N.C. Supreme Court stated: “It is generally conceded that a state has a ‘manifest interest’ in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.” *Tom Togs, Inc. v. Ben Elias Industries Corp.*, 318 N.C. 361, 367, 348 S.E.2d 782, 787 (1986).

e. Convenience. The Court of Appeals found that the convenience factor favors the plaintiffs. It stated that:

Requiring Plaintiffs, who have no ties to France, to litigate their claims in the French courts would impose a considerable burden on them. Although there is no question but that requiring Defendants to defend an action in the General Court of Justice would be

burdensome as well, that burden is alleviated to some extent by the fact that Defendants have corporate affiliates in the United States with business interests in North Carolina, a fact which is simply not true of Plaintiffs.

Pet. App. 26a-27a.

The foreign subsidiaries of Goodyear are represented by the same counsel representing the U.S. Goodyear defendants, so there is little inconvenience involved for the defendants.

In sum, the trial court weighed all of the five factors to determine whether allowing jurisdiction would comport with traditional notions of fair play and substantial justice and found that all five favored the plaintiffs.

IV. The N.C. Court Of Appeals' *Dicta* References To Stream Of Commerce Are Not Dispositive.

In the lower court decision, the N.C. Court of Appeals in *dicta* does discuss the stream of commerce theory in relation to the case. However, the court made clear that it was not adopting that analysis in its ruling but was determining the case based upon the defendants' extensive business presence in North Carolina markets.

Although the N.C. Court of Appeals discusses the question of whether that theory can be used to support jurisdiction in a general jurisdiction case, the court ultimately did not adopt such a theory, but instead based

its decision on well settled notions of minimum contacts sufficient to allow general jurisdiction.

Specifically, the Court ultimately bypassed that matter and focused on the proper issue: “Instead of adopting a general rule precluding the use of stream of commerce analysis to support a finding of general personal jurisdiction, we believe that the real issue is the extent to which Defendants’ products were, in fact, distributed in North Carolina markets.” Pet. App. 28a.

This is consistent with a constitutionally appropriate general jurisdiction analysis, in which the quantity and quality of the contacts are analyzed, instead of permitting a single instance of placing an item into the stream of commerce to potentially be enough for jurisdiction to attach.

Further, the court stated that had only a small number of tires been sold in North Carolina, it might be inclined to agree with the defendants – an indication that the court was not applying a stream of commerce theory but again is conducting a proper constitutional analysis.

The court said: “Although we might agree with Defendants’ contention in the event that the record demonstrated that only a few tires reached North Carolina through a limited distribution process, that is not the situation here. Instead, the trial court’s findings reflect that thousands of tires manufactured by each of the Defendants were distributed in North Carolina as the result of a highly organized distribution process that involved Defendants and other Goodyear affiliates. Thus,

we believe that, on the facts of this case, sufficient basis exists to support a finding of general personal jurisdiction under N.C. Gen. Stat. § 1-75.4(1)d and the due process clause.” Pet. App. 28a.

In essence, the North Carolina courts decided that if these foreign defendants are deliberately shipping thousands of tires into North Carolina for sale, they might reasonably expect to be haled into court in North Carolina when a tire designed for the U.S. market fails, and North Carolina residents are killed. And if, through their exploitation of the North Carolina tire market, they could reasonably expect to be haled into court in North Carolina for the death or injury to a North Carolinian because of a faulty tire, it was not unreasonable to allow jurisdiction for two North Carolinians killed by a faulty tire that was designed and manufactured so that it could be sold in the U.S. market.

Consider, to use a contemporary example, a Chinese company sending thousands of dangerous toys into North Carolina and other U.S. states. A child from North Carolina, while traveling in Canada, is injured by a toy from this company, but the toy was purchased in Canada. Once the child returns home to North Carolina, why shouldn’t the plaintiffs be able to file suit on the child’s behalf in North Carolina, instead of going to the expense of attempting to litigate long distance in Canada or China? The Chinese company was deliberately taking advantage of the North Carolina market, and could reasonably expect be haled into court in North Carolina because of the dangerous toys it was selling here. The fact that the toy was actually sold somewhere else does not affect that Chinese company’s expectation that it could be sued in North Carolina for these defective toys.

Ultimately, the analysis is one of fundamental fairness. There must be sufficient minimum contacts between the nonresident defendant and our state “such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

In this case, a wholly owned subsidiary of a U.S. company on a continuous and systematic basis manufactured a particular product – tires – which was sold by the thousands in North Carolina as part of a the company’s world-wide marketing and distribution effort. Fair play and substantial justice are not offended by allowing those companies to be haled into court in the state when one of those same products proves fatally defective.

SUMMARY

Plaintiffs are not asserting there are minimum contacts with defendants under a “stream of commerce” theory. Instead, plaintiffs allege and the court found that that the defendants are part of a highly targeted, integrated world-wide effort to design, manufacture, market and sell their tires in North Carolina. Those thousands of tires sold in North Carolina are not incidental contacts, but instead are calculated and deliberate efforts to take advantage of the North Carolina market.

Ultimately, based on its findings of fact, the trial court performed a constitutionally proper analysis of the evidence and concluded as a matter of law as follows:

1. The defendants have continuous and systematic ties with the State of North Carolina.

2. The defendants' activities in North Carolina are substantial.

3. The quantity of the defendants' contacts with North Carolina; the nature and quality of those contacts; the source and connection of the cause of action to the contacts; the interest of North Carolina in this cause of action and the convenience of the parties, all weigh in favor of the exercise of general jurisdiction over the defendants.

4. Exercise of general jurisdiction over the defendants comports with Due Process and does not offend traditional notions of fair play and justice.

Pet. App. 35a-36a.

Whether the trial court was correct depends on the evidence it examined and the specific facts it found. But the trial court applied the proper tests to determine whether the exercise of jurisdiction would comport with Due Process. Its ruling does not raise any contested issues regarding constitutional interpretation. Nor does it raise any compelling reason for this court to review that decision.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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