

IN THE SUPREME COURT OF FLORIDA

Case No: SC05-8
4DCA Case No. 4D03-2485

USA TRUCK, INC.,

Defendant/Petitioner,

v.

JORGE ADOLPHO GALVEZ, ET AL.

Plaintiff/Respondent.

PETITIONER'S JURISDICTIONAL BRIEF
On Review From The Fourth District Court of Appeal

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STATEMENT OF THE CASE AND FACTS

All of the following facts are found on the face of the district court decision under review. A fatal automobile accident occurred when the car in which the plaintiffs were riding was hit from behind by Defendant's tractor-trailer. USA Truck, Inc. ("USA Truck"), the Defendant/Petitioner, appealed consolidated final judgments entered after bifurcated liability and damages trials. The Fourth District affirmed the final judgments, stating in relevant part:

We find no error in the trial court's order directing a verdict on the defendant's seatbelt defense as to plaintiff Von Pineda. *See Zurline v. Levesque*, 642 So. 2d 1169 (Fla. 4th DCA 1994) (holding that the seatbelt defense should not have been submitted to the jury where there was no evidence that failure to wear a seatbelt caused or contributed substantially to producing the plaintiff's damages).

886 So. 2d at 244.

SUMMARY OF ARGUMENT

Both *Burns v. Smith*, 476 So. 2d 278 (Fla. 2d DCA 1985) and *Houghton v. Bond*, 680 So. 2d 514 (Fla. 1st DCA 1996) hold that expert testimony is not necessary to support a seatbelt defense in rear-impact cases such as this one where impact-related injuries occur. The Fourth District, in the opinion under review, reached an opposite conclusion on the same facts. Indeed, the Fourth District rested its holding on its own prior precedent in *Zurline v. Levesque*, 642 So. 2d 1169 (Fla. 4th DCA 1994), which on its face aligns itself with *State Farm Mut. Auto. Ins. Co. v. Smith*, 565 So. 2d 751 (Fla. 5th DCA 1990) and recognizes a conflict with the *Burns* holding. Thus, as there is an express and direct conflict on this point of law among the First and Second Districts on the one hand, and the Fourth and Fifth Districts on the other hand, this Court has jurisdiction to review this case.

Not only does this Court have jurisdiction to review this case, so too should it exercise its discretion to do so. The legal issue involved is important to practitioners across the State. In this case, the conflict identified affects the way lawyers proceed in all trials, as lawyers will be forced to hire experts to protect against a directed verdict even when the facts of the case would indicate in some districts that no expert is needed. A bright line rule for rear-impact cases such as this one is needed.

ARGUMENT

The Court Has Jurisdiction To Review This Case

The decision of the district court expressly and directly conflicts with decisions from the First and Second District Courts of Appeal. This Court has jurisdiction to review the case pursuant to article V, section 3(b)(3) of the Florida Constitution.

The Fourth District's authority for its decision below was a single citation to its own earlier opinion in *Zurline v. Levesque*, 642 So. 2d 1169 (Fla. 4th DCA 1994). The Fourth District, in a parenthetical, stated that *Zurline* stands for the proposition that "the seatbelt defense should not have been submitted to the jury where there was no evidence that failure to wear a seatbelt caused or contributed substantially to producing the plaintiff's damages." 886 So. 2d at 244. Of course, the Fourth District's own recitation of the facts of this case give enough information for a jury to draw the inference that the failure to wear a seatbelt caused Plaintiff's injuries: "This case arises out of a fatal automobile accident which occurred when the car in which the plaintiffs were riding was hit from behind by the defendant's tractor-trailer." *Id.* at 243-44.

That is exactly the point of the Second District's opinion in *Burns v. Smith*, 476 So. 2d 278 (Fla. 2d DCA 1985), a case that *Zurline* expressly refuses to follow, instead choosing to follow the Fifth District's approach in *State Farm Mut.*

Auto. Ins. Co. v. Smith, 565 So. 2d 751 (Fla. 5th DCA 1990).

Explaining that the *Burns* decision from the Second District does not require expert testimony to prove the causal relationship between the nonuse of a seatbelt and a plaintiff's injuries, the Fourth District's *Zurline* opinion states as follows:

the Second District rejected a plaintiff's contention that testimony from an accident reconstruction expert was needed to testify about the causal relationship between the nonuse of a seatbelt and the injuries sustained. Noting that under the circumstances present in the case of the plaintiff being thrown from his seat in the car and receiving head and neck injuries, the court stated, "we do not believe it was beyond the province of the jury that 'the failure to use an available and operational seat belt produced or contributed substantially to producing at least a portion of plaintiff's damages.' "

642 So. 2d at 1170 (citation omitted).

Then, explaining that the *Smith* decision from the Fifth District does not treat the establishment of the causal relationship between the nonuse of a seatbelt and a plaintiff's injuries as being within the province of the jury, the Fourth District's *Zurline* opinion states that, "[d]isagreeing with the Second District, the [Fifth District] thought that the specific dynamics of seatbelts in various automobile scenarios were not matters within the common understanding of juries, 'or for that matter judges'" *Id.* (citation omitted).

The *Zurline* court then concluded by ruling that, "We agree with the Fifth District's analysis of this issue and apply it to this case." *Id.* at 1171. In doing so, the Fourth District recognized a conflict between the Second and Fifth Districts,

and sided with the Fifth District on this point of law. Then, in the case under review, the Fourth District relied upon the *Zurline* opinion for its result. So, it too is in conflict with the Second District's *Burns* opinion.

Moreover, since *Zurline* issued in 1994, the First District has entered the fray. In *Houghton v. Bond*, 680 So. 2d 514 (Fla. 1st DCA 1996), the First District explained that, in cases where the plaintiff sustains an impact-related injury, expert testimony is not required. *Id.* at 523. Thus, in *Houghton*, the court reversed a directed verdict on the defendant's seat belt defense because there was evidence that the plaintiff's injuries were caused when he was thrown forward into the dashboard. *Id.* at 521.

Express and direct conflict exists among this case, *Zurline*, and *Smith* on the one hand, and *Burns* and *Houghton* on the other hand. This Court has jurisdiction to resolve the conflict.

The Court Should Exercise Its Discretion To Review This Case

Not only does this Court have jurisdiction to review this case, but there are also strong policy reasons why it should exercise its discretion to do so. The conflict identified affects the way lawyers proceed in all trials, as lawyers will be forced to hire experts to protect against a directed verdict even when the facts of the case would indicate that no expert is needed in some districts. In other words, simply to be safe, lawyers will need to hire an expert as to the seatbelt defense,

even when the facts place the case clearly within the province of the jury to infer what caused the plaintiff's injuries. This Court should adopt a bright-line rule for rear-impact cases such as this one.

It remains only to note that this Court exercises its discretion in cases where cases reflecting the correct rule of law and the incorrect rule of law still have precedential effect in the several districts. *See Wainwright v. Taylor*, 476 So. 2d 669, 670 (Fla. 1985) (“Our concern in cases based on our conflict jurisdiction is the precedential effect of those decisions which are incorrect and in conflict with decisions reflecting the correct rule of law”). That is exactly the case here.

CONCLUSION

Express and direct conflict exists. This Court has jurisdiction to review this case and should exercise its discretion to do so.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a true and correct copy of the foregoing jurisdictional brief and the attached appendix have been furnished to:

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I also certify that the jurisdictional brief has been prepared using Times New Roman 14-point type, proportionally spaced.

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APPENDIX

USA Truck, Inc. v. Contreras,
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