IN THE SUPREME COURT OF FLORIDA

SUN STATE FORD, INC.,

Petitioner,

vs.

CASE NO.: SC04-157
Lower Tribunal No.: 5D02-2807

LAVERICA BURCH, as Parent and Natural Guardian of NY`JAE AALIYAH MILES, and REGINA PACE, as Parent and Natural Guardian of AKEIA D. MILES, jointly as Co-Personal Representatives for the Estate of AARYON MILES, and WILLIE GENE BEAUFORD, JR., individually,

Respondents.

RESPONDENT'S JURISDICTIONAL REPLY BRIEF

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STATEMENT OF THE CASE AND FACTS

Respondents, **LAVERICA BURCH as Parent and Natural Guardian of NY`JAE AALIYAH MILES, and REGINA PACE, as Parent and Natural Guardian of AKEIA D. MILES, jointly as Co-Personal Representatives for the Estate of AARYON MILES** respectfully request that this Court affirm the Fifth District Court of Appeals' reversal of summary judgment on the basis that: 1) there is no direct and express conflict with existing law and that 2) the rule of law regarding the dangerous instrumentality doctrine is clearly provided in the case of *Orefice v. Albert*, 237 So. 2d 142, 145 (Fla. 1970).

The facts of this case are as follows: On June 28, 1999, the decedent, Aaryon Miles ("Miles") provided Teresa Rene Wilson ("Wilson") and Bridgette Lee ("Lee") with a ride from a local nightclub. Willie Gene Beauford, Jr. ("Beauford"), who had driven them to the nightclub, followed the vehicle driven by Miles after perceiving what he believed to be an altercation between the three individuals. Concerned for their safety, Beauford followed in a vehicle owned by Petitioner, Sun State Ford, Inc. and rented to his sister, Carla Lewis. Mrs. Lewis had given Beauford her express consent to utilize this rented vehicle.

While driving, Beauford closely followed Miles' vehicle. Consequently, Miles became fearful of Defendant Beauford's actions. Miles accelerated his speed and took evasive action to get away from Beauford who continued to follow Miles closely, causing Miles' vehicle to crash. Miles died in the automobile crash and the passengers in his vehicle, Wilson and Lee, were severely injured.

The trial court found that the owner of vehicle was not vicariously liable under the dangerous instrumentality doctrine and granted summary judgment in favor of the Petitioner. The Fifth District Court of Appeal reversed this ruling holding that the dangerous instrumentality doctrine is not limited to the negligent operation of a vehicle and that reckless driving or other intentional misconduct by an operator does not terminate liability under the dangerous instrumentality doctrine. The court further stated that whether Beauford pursued the vehicle in a manner intended to inflict physical injury was a jury question precluding summary judgment.

SUMMARY OF ARGUMENT

This Court should not grant jurisdiction in this case as no direct and express conflict exists. Petitioner's assertion that the Fifth District's decision in the instant case directly and expressly conflicts with the First District's decision in *Caetano v. Bridges*, 502 So. 2d 51 (Fla. 1st DCA 1987); the Third District's decision in *Sun Chevrolet, Inc. v. Crespo*, 613 So. 2d 105 (Fla. 3d DCA 1993) and this Court's decision in *Orefice v. Albert*, 237 So. 2d 142 (Fla. 1970) is in error. Each of these cases were decided on completely dissimilar facts but ultimately led to the same conclusion. The First District in *Caetano* and the Third District in *Sun Chevrolet* each held that the court erroneously granted summary judgment where there was a disputed issue of fact as to whether the operator of the motor vehicle in question was negligent or intentionally sought to injure the plaintiff. Similarly, the Fifth District in the instant case held that summary judgment was improper where a disputed issue of material fact existed as to the operator's negligence and intention with regard to the accident in

question and whether his actions could be imputed to the owner of the vehicle.

Furthermore, this Court in *Orefice v. Albert* stated the prevailing rule of law under the dangerous instrumentality doctrine, holding that any use or misuse of a motor vehicle by a bailee imputes vicarious liability upon the owner of that vehicle. *See Orefice v. Albert*, 237 So. 2d 142 (Fla. 1970), citing *Susco Car Rental System of Florida v. Leonard*, 112 So. 2d 832, 835-836 (1959); Accord, *Thomas v. Atlantic Associates, Inc.*, 221 So. 2d 100 (Fla. 1969). Therefore, this Court should not grant jurisdiction as no express or direct conflict exists between the holding of the instant case and the holdings of other District Courts of Appeal on this issue. Moreover, the rule of law regarding the dangerous instrumentality doctrine has already been clearly provided by this Court in the case of *Orefice*. *See Id.* at 145.

ARGUMENT

I. THE FIFTH DISTRICT'S DECISION DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE FIRST DISTRICT'S DECISION IN *CAETANO V. BRIDGES*, THE THIRD DISTRICT'S DECISION IN *SUN CHEVROLET, INC. V. CRESPO* NOR THE PRINCIPLE SET FORTH BY THIS COURT IN *OREFICE V. ALBERT*.

The Fifth District in the instant case ruled that Florida's Dangerous Instrumentality Doctrine applies not only when an operator is negligent but also when he is involved in intentional misconduct, unless the operator makes weapon-like use of the vehicle with the intent to cause physical harm. This holding does not conflict with the First District's holding in *Caetano v. Bridges*, 502 So.2d 51(Fla. 1st DCA 1987).

The facts of *Caetano* are clearly distinguishable from the case at bar. In *Caetano v. Bridges*, 502 So. 2d 51 (Fla. 1st DCA 1987), the defendant borrowed her father's car and went hunting for her boyfriend. She found him in a local bar drinking with two women. She sat and waited in the parking lot for him to depart. As he was leaving, her boyfriend held both women's hand. Upon seeing this, the defendant grew angry and decided to run him down. Though she failed to hit him, she did severely injure one of the women in his company. Consequently, the First District held that because the evidence was clear that she intended to injure her boyfriend but was in dispute as to whether the defendant intended to injure the plaintiff, summary judgment was inappropriate. *Id.* at 53.

Unlike *Caetano*, in the instant case Beauford stated unequivocally in his

deposition that he had no intent to injure any of the occupants of Mr. Miles vehicle. Further, Beauford was not hunting down an unfaithful mate but merely pursuing the vehicle to ascertain whether the occupants were safe. In the instant case, the Fifth District held that the motives of Beauford in chasing the car were unclear and as such a grant of summary judgment was improper. Similarly, in *Caetano,* the First District held that though it was clear that the defendant intended to injure her boyfriend, her intent with regard to the plaintiff was unclear. As such, a grant of summary judgment in *Caetano* was premature.

Notwithstanding the distinguishable facts yet similarity of results, the issue in both of these cases is the degree to which "intentional misconduct" absolves the owner of these vehicles of liability for the actions of his bailee. Under Florida's dangerous instrumentality doctrine, "the owner of a vehicle is liable to third persons for its negligent operation by anyone whom it has been entrusted, even if the bailee grossly violates the owner's express instructions concerning its use." *See Caetano v. Bridges,* 502 So. 2d 51, 52-53 (Fla. 1st DCA 1987).

The doctrine is clear that these actions would not prevent the owner from being liable for the actions of his bailee. The owner is free of liability only in cases of intentional misconduct which is not foreseeable. *See Caetano v. Bridges,* 502 So. 2d 51, 53 (Fla. 1st DCA 1987) *citing Southern Cotton Oil Co. v. Anderson,* 86 So. 629 (Fla. 1920). In the instant case, it is foreseeable that an individual would attempt to rescue those he believes may be in imminent harm; danger begets rescue. Defendant Beauford merely attempted to rescue the young ladies that he had taken from one

nightclub to another. Conversely, in *Caetano*, the defendant expressed an intent to run down her boyfriend who was hand in hand with the plaintiff in that case. Under the transferred intent doctrine, her intent to injure her boyfriend would then apply to the plaintiff in that case. As the intent to injure her boyfriend would transfer to the injury actually inflicted upon the plaintiff in *Caetano*, the court could have reasonably concluded that the owner was not liable. However, in the instant case since Beauford lacked the intent to inflict bodily injury upon any of the occupants of the vehicle driven by Miles, the dangerous instrumentality doctrine should not be construed to absolve the owner of vicarious liability in this case.

Furthermore, in establishing the dangerous instrumentality doctrine, this Court clearly evidenced an intent to hold owners of vehicles liable even if the vehicle is used in a manner that is outside of the scope of the owner's express consent. In *Southern Cotton Oil Co. v. Anderson,* 86 So. 629, 630 (Fla. 1920), this court stated that the responsibility of [an] owner of an automobile extends to its use by one with his knowledge or consent. An automobile operated upon the public highways being a dangerous machine, its owner is responsible for the manner in which it is used, and his liability extends to its use by anyone with his knowledge or consent. *Id.* Thus, holding owners liable solely for the negligent operation of the vehicle was clearly not the intent of this Court when establishing the dangerous instrumentality doctrine.

Based on the foregoing, the Fifth District's decision in the case at bar does not expressly and directly conflict with the First District's decision in *Caetano* since in both instances the courts ruled that an owner is liable not only for the negligent

operation of a vehicle but also if the bailee grossly violates the owner's express instructions concerning its use. *Caetano v. Bridges*, 502 So. 2d at 52-53 (Fla. 1st DCA 1987). Moreover, this Court in establishing the Dangerous Instrumentality Doctrine never expressed an intention to limit its application to mere negligence on the part of the operator.

Next, there is no express and direct conflict between the instant case and *Sun Chevrolet Inc. v. Crespo*, 613 So. 2d 105 (Fla. 3d DCA 1993). In *Sun Chevrolet*, the operator claimed that the accident resulting in decedent's death was due to a sudden unexplained movement of his vehicle for which he was not responsible. *See Sun Chevrolet Inc. v. Crespo*, 613 So. 2d 105, 106 (Fla. 3d DCA 1993). As a result, the Third District held that summary judgment was improperly granted because there was a genuine issue of material fact as to whether the operator was negligent. *Id.* Sun Chevrolet's vicarious liability was contingent upon a finding that the operator of the vehicle was at least negligent. Since the negligence of the operator was in dispute, the Third District's grant of summary judgment holding Sun Chevrolet liable was improper. Thus in arriving at its holding, the Third District did not express an intention to limit the vicarious liability of an owner to the negligent operation of the vehicle but expressed that at a minimum negligence on the part of the operator would have to be proven in order to hold an owner liable for the actions of his bailee. It is undisputed that at the very least the doctrine requires some negligent action on the part of the operator to hold the owner liable for the actions of those whom he entrusted. Consequently, *Sun Chevrolet Inc. v. Crespo*, 613 So. 2d 105 (Fla. 3d DCA 1993),

contrary to Petitioner's assertion, does not conflict with the Fifth District's decision as it, like the opinion expressed in the Fifth District, also requires at the very least a modicum of negligence on the part of the operator to hold the owner vicariously liable for the bailee's actions. Therefore, as the Fifth District's decision also requires that at a minimum Beauford's actions constitute negligence in order to hold the owner liable, it does not expressly and directly conflict with the Third District's holding in *Sun Chevrolet*.

II. THE RULE OF LAW REGARDING THE DANGEROUS INSTRUMENTALITY DOCTRINE IS CLEAR AS PROVIDED IN THE CASE OF *OREFICE V. ALBERT* AND THE FIFTH DISTRICT COURT OF APPEALS' HOLDING IS CONSISTENT WITH THE RULE OF LAW ON THIS POINT.

Finally, the Fifth District's holding in the instant case does not expressly and directly conflict with this Court's holding in *Orefice v. Albert*, 237 So. 2d 142 (Fla. 1970). In *Orefice v. Albert*, this Court held that a mother whose husband was co-owner of a plane that crashed and caused the death of her son could not bring suit against the other co-owner for his death. *Id.* at 145. This holding fails to express an intention on the part of this Court to limit vicarious liability of owners who entrust their vehicles to another solely to situations in which the operator is negligent. The quoted language in petitioner's brief asserting that "(a co-owner) is liable only if the operator was negligent under the circumstances" is not a statement of law espoused by this Court. *Id.* at 144. It was merely an attempt by this Court to express why an airplane

is a dangerous instrumentality and why a co-owner would be liable for its misuse. Further, the court noted that the logical rule, and, we think, the prevailing rationale of the cases, is that when control of such a vehicle is voluntarily relinquished to another, only a breach of custody amounting to a species of conversion or theft will relieve an owner of responsibility for its use or misuse. *See Orefice v. Albert*, 237 So. 2d 142, 144-145 (Fla. 1970), citing *Susco Car Rental System of Florida v. Leonard*, 112 So. 2d 832, 835-836 (1959); Accord,

Thomas v. Atlantic Associates, Inc., 221 So. 2d 100 (Fla. 1969). Thus, this Court recognized that any use or misuse by an operator of a vehicle entrusted to him required that the owner be held liable unless a conversion or theft resulted. Notwithstanding, the holding of the instant case and that of *Orefice v. Albert*, 237 So. 2d 142 (Fla. 1970) are not expressly and directly in conflict since they are based upon two dissimilar holdings and as such are not grounds for this court to exercise jurisdiction.

CONCLUSION

The Fifth District's holding that the dangerous instrumentality applies even when an operator is involved in intentional misconduct, thereby making the owner of the vehicle vicariously liable for the operator's actions was consistent with the holdings in the cases of Caetano v. Bridges, Sun Chevrolet, Inc. v. Crespo and Orefice v. Albert. Accordingly, this Court should deny Petitioner's request for jurisdiction as no express and direct conflict exists.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded via U.S. Mail this ____ day of March, 2004 to **Warren Kwavnick, Esquire**, Cooney, Mattson, Lance, Blackburn, Richard & O'Connor, P.A., P. O. Box 14546, Fort Lauderdale, Florida 33302, *Counsel for Appellant, Co-Defendant Beauford*; **Lucinda A. Hoffman, Esq.**, Holland & Knight, LLP, 701 Brickell Avenue, Suite 3000, Miami, FL 33131, *Counsel for Florida Defense Lawyers Association & Appellee, Sun State Ford*, and **Marisa I. Delinks, Esq.,** Hinshaw and Culbertson, LLP, Southtrust Bank Building, One East Broward Boulevard, Suite 1010, Fort Lauderdale, Florida 33301, *Counsel for Respondents*.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that this Respondent's Jurisdictional Reply Brief complies with Rule 9.210, Fla. R. App. P. and is typed in Times New Roman 14-point font.

_____

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