Model Case Briefs: *Gadson*

Both Opinions

1) Basics
   a) Gadson ex rel. Gadson v. ECO Services
   b) Citations: See individual opinions (below)
   c) Importance: Introduces negligence and caselaw
   d) Court: Two levels of state appeals court
   e) Law: South Carolina law
2) Facts
   a) Basic: Teenager thrown from speeding pickup owned by trash company
   b) Material facts
      i) Joseph Jenkins is employed by ECO to drive its pickup trucks.
      ii) Instead of returning truck, Joseph drives to various destinations with several acquaintances.
      iii) The group eats.
      iv) Joseph's cousin John buys one or two wine coolers.
      v) John shares the wine coolers with another passenger.
      vi) Joseph drives the group to a river.
      vii) An hour later John drives back with Starr Gadson and others in the back of the pickup truck.
      viii) John suddenly speeds up to 80 mph and loses control of the truck.
      ix) Gadson is thrown from the truck and injured.
   c) These facts were established at trial
3) Procedural history
   a) Parties
      i) Starr Gadson, by her Guardian ad Litem Kathy Gadson
         (1) Plaintiff
         (2) Respondent at the Court of Appeals of South Carolina
         (3) Respondent at the Supreme Court of South Carolina
      ii) John Jenkins
         (1) (Absent) defendant at the Court of Appeals of South Carolina
      iii) Joseph Jenkins
         (1) Defendant
         (2) Appellant at the Court of Appeals of South Carolina
         (3) Petitioner at the Supreme Court of South Carolina
      iv) ECO Services
         (1) Defendant
         (2) Appellant at the Court of Appeals of South Carolina
   b) Claims
      i) Negligence claim against John Jenkins for crashing truck (succeeds at trial level and is not appealed)

ii) Negligent entrustment claim against Joseph Jenkins for letting John drive truck (succeeds at trial level and at Court of Appeals but ultimately fails at Supreme Court)
iii) Negligent entrustment claim against ECO for letting Joseph Jenkins drive truck (succeeds at trial level but fails at Court of Appeals and is not appealed)

c) History
   i) Gadson brings all three claims in South Carolina court.
   ii) John fails to appear.
   iii) "The jury return[s] a general verdict against all three defendants" and finds, in special interrogatories, that:
      (1) "ECO entrusted its vehicle to [Joseph] Jenkins
      (2) "ECO was negligent in entrusting its vehicle to [Joseph] Jenkins
      (3) "ECO's negligence proximately caused the plaintiffs' injuries
      (4) "John was the driver of the vehicle
      (5) "John's negligence proximately caused the plaintiffs' injuries
      (6) "[Joseph] Jenkins was not the driver of the vehicle
      (7) "[Joseph] Jenkins was negligent in entrusting the vehicle to John. It awarded Gadson $50,000 in actual damages." Court of Appeals Opinion.
   iv) ECO and Joseph Jenkins move for directed verdict and judgment notwithstanding the verdict (JNOV)
   v) Trial court denies motions as "untimely."
   vi) ECO and Joseph Jenkins appeal to the South Carolina Court of Appeals.
   vii) Court of Appeals reverses and remands.
   viii) Trial court reconsiders and denies motions on the merits.
   ix) ECO and Joseph Jenkins appeal again to the Court of Appeals.
   x) Court of Appeals affirms in part (Joseph Jenkins) and reverses in part (ECO)
   xi) Joseph Jenkins appeals to the South Carolina Supreme Court.
   xii) South Carolina Supreme Court reverses and remands.
d) Current disposition: See below

South Carolina Court of Appeals Opinion

1) Basics
   a) Gadson ex rel. Gadson v. ECO Services (S.C. Ct. App. 2005) – per curiam
   b) No. 2005-UP-130, 2005 WL 7083475 (S.C. Ct. App. Feb. 18, 2005)
   c) Importance: See above
   d) Court: State intermediate appellate court
   e) Law: South Carolina law
2) Facts: See above
3) Procedural history: See above. Defendants ECO and Joseph are asking the intermediate appellate court to reverse the trial court's judgments against them (including jury verdicts).
4) Issues
   a) This opinion concerns negligent entrustment: what are its elements (issue 1), did the jury reasonably conclude that these elements were satisfied for the claim against ECO (issue 2), and

did the jury reasonably conclude that these elements were satisfied for the claim against Joseph (issue 3)?

b) Issue 1: What constitutes negligent entrustment in South Carolina?
   i) Holding: Restatement (Second) of Torts § 308 states the elements for a negligent entrustment claim in South Carolina.
   ii) Rules
      (1) "The theory of negligent entrustment provides: 'the owner or one in control of the vehicle and responsible for its use who is negligent in entrusting it to another can be held liable for such negligent entrustment."' Am. Mut. Fire Ins. Co. v. Passmore, 275 S.C. 618, 622, 274 S.E.2d 416, 418 (1981) (quoting 19 A.L.R.3d 1175, 1192).
      (2) "It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others." Restatement (Second) of Torts § 308 (1965).
      (3) The South Carolina Supreme Court previously declined to adopt § 308 in a case where the plaintiff alleged that the defendant enabled plaintiff's own tortious conduct (first-party negligent entrustment claim). See *Lydia v. Horton*, 355 S.C. 36, 39 (2003).
   iii) Application of rules to facts
      (1) Whereas Lydia involved a claim of first-party negligent entrustment, Gadson involves a claim of third-party negligent entrustment.
      (2) Supreme Court has not precluded adoption of § 308 in the context of a claim of third-party negligent entrustment.
   iv) Court of Appeals therefore opts to adopt § 308.
   v) Plaintiff is probably pleased (because this is a broad rule). ECO and Joseph might not be.

c) Issue 2: Did the jury have sufficient evidence to reasonably conclude that defendant ECO had negligently entrusted its vehicle to its employee Joseph Jenkins?
   i) Holding: An employer's knowledge of an employee's attendance problems and unauthorized use of a vehicle does not establish the employer's actual or constructive knowledge that the employee would use the vehicle dangerously.
   ii) Rules
      (1) "It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others." Restatement (Second) of Torts § 308 (1965).
      (2) "The test for legal sufficiency of the evidence in South Carolina is 'whether the evidence serves to prove a fact or permits an inference of fact that would enable an ordinarily intelligent mind to draw a rational conclusion therefrom in support of the right of the plaintiff to recover.' *Mahaffey v. Ahl*, 264 S.C. 241, 248, 214 S.E.2d 119, 122 (1975)."
      (3) "'If a party knows of an available witness on a material issue and such witness is within his control and if without satisfactory explanation he fails to call him, the jury may draw

the inference that the testimony of the witness would not have been favorable to such party.'" *Duckworth v. First Nat'l Bank*, 254 S.C. 563, 576, 176 S.E.2d 297, 304 (1970).

iii) Application

(1) The *Duckworth* presumption does not apply, because Joseph Jenkins was no longer employed by and hence no longer controlled by ECO.

(2) ECO knew that Joseph Jenkins had attendance problems at work and may have known that Joseph Jenkins had used ECO's vehicle without authorization.

(3) Joseph Jenkins' driving record contained no violations, accidents, or suspensions over the three-year period prior to the accident.

(4) Jury therefore lacked sufficient evidence to conclude that ECO knew or should have known that Joseph Jenkins would use its vehicle dangerously.

iv) Trial court therefore erred in denying ECO's motions for directed verdict and JNOV.

v) ECO is presumably pleased (because they win). Plaintiff is not pleased. Joseph might not be pleased (because he loses a codefendant).

d) Issue 3: Did the jury have sufficient evidence to reasonably conclude that defendant Joseph Jenkins had negligently entrusted ECO's vehicle to John?

i) Holding: *It is reasonable to conclude* that if a defendant knows that a person has been drinking and is of questionable character, then that defendant also knows or should know that this person's driving is likely to be dangerous.

ii) Rules

(1) "'It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.'" Restatement (Second) of Torts § 308 (1965).

(2) "The test for legal sufficiency of the evidence in South Carolina is 'whether the evidence serves to prove a fact or permits an inference of fact that would enable an ordinarily intelligent mind to draw a rational conclusion therefrom in support of the right of the plaintiff to recover.' *Mahaffey v. Ahl*, 264 S.C. 241, 248, 214 S.E.2d 119, 122 (1975)."

(3) "[A]s to facts that were peculiarly within defendant's knowledge, the defendant's unexplained failure to testify raises an inference that his testimony, if it had been submitted, would have been unfavorable to his position[]." *Gadson* (summarizing *McCowan v. Southerland*, 253 S.C. 9, 12, (1969)).

iii) Application

(1) "[Joseph] Jenkins knew that John had been drinking alcoholic beverages."

(2) "[Joseph] Jenkins was apparently familiar with John's character, because he was John's cousin."

(3) "[B]ecause [Joseph] Jenkins did not testify on his own behalf, the jury was permitted to infer that any testimony would have been unfavorable."

(4) Accordingly, "the record supports the inference that [Joseph] Jenkins knew or should have known that John's use of the vehicle was likely to cause harm."

iv) Accordingly, the trial court did not err in denying [Joseph] Jenkins' motions for directed verdict and NJOV.

v) Plaintiff is pleased. Joseph is not.

5) Outcome
   a) Judgment: Court of Appeals reverses trial court's denial of ECO's motions for directed verdict and JNOV and affirms trial court's denial of Joseph Jenkins' motions for directed verdict and NJOV.
   b) ECO is pleased; Joseph is not. Plaintiff is probably mixed (because she loses against the defendant that likely has the most resources but keeps her award against Joseph).
   c) The parties likely appeal.
6) What do you think? *(This is for you to answer!)*

South Carolina Supreme Court Opinion

1) Basics
   a) Gadson ex rel. Gadson v. Eco Services, 648 S.E.2d 585 (S.C. 2007)
   b) Opinion by Burnett, J. – joined by Toal, C.J., Moore, J. and Maddox, acting justice; Concurrence in a separate opinion by Pleicones, J.
   c) Importance: See above
   d) Court: State intermediate appellate court
   e) Law: South Carolina law
2) Facts: See above
3) Procedural history: See above. Defendant Joseph is asking the high court to reverse the trial court's judgments against him (and, accordingly, the intermediate appellate court's decision).
4) Issues
   a) This opinion concerns negligent entrustment, including its elements (issue 1) and whether a jury could reasonably conclude they were satisfied (issues 2 and 3). The opinion also addresses two issues related to the evidence on which a jury could base a conclusion: the significance of a familial relationship (issue 4) and the consequences of a failure to testify (issue 5).
   b) Issue 1: What constitutes negligent entrustment in South Carolina?
      i) Holding: Negligent entrustment in South Carolina requires that the defendant knows or should know that "the driver was either addicted to intoxicants or had the habit of drinking."
      ii) Rules
         (1) "[T]he elements of negligent entrustment are: (1) knowledge of or knowledge imputable to the owner that the driver was either addicted to intoxicants or had the habit of drinking; (2) the owner knew or had imputable knowledge that the driver was likely to drive while intoxicated; and (3) under these circumstances, the entrustment of a vehicle by the owner to such a driver. *Jackson v. Price*, 288 S.C. 377, 342 S.E.2d 628 (Ct. App. 1986)."
         (2) "It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others." Restatement (Second) of Torts § 308 (1965).

(3) "One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them." Restatement (Second) of Torts § 390 (1965)

iii) Application
(1) *Jackson* properly states the claim of negligent entrustment in South Carolina

iv) The Supreme Court declines to adopt Restatement (Second) of Torts §§ 308 & 390

v) Concurrence in Separate Opinion (Pleicones, J.)
(1) Under the *Jackson* rule, a defendant who lets someone drive her car knowing the driver to be drunk does not commit negligent entrustment as long as that defendant does not have actual or constructive knowledge that the driver is "a habitual drinker or addicted to alcohol."
(2) This is an illogical loophole.
(3) The court should adopt Restatement (Second) of Torts §§ 308 & 390 to preemptively address this loophole.
(4) Regardless, there is no negligent entrustment in this case because "there is no evidence that petitioner knew or should have known that John Jenkins was likely to operate the vehicle in a manner which created an unreasonable risk of harm."

vi) Since this appears to narrow the meaning of negligent entrustment, Joseph is probably tentatively pleased and Gadson is probably tentatively displeased.

c) Issue 2: Could a jury reasonably conclude that Joseph Jenkins knew or should have known that John "was either addicted to intoxicants or had the habit of drinking"?

i) Holding: Drinking before driving does not imply a habit of drinking and driving.

ii) Rules
(1) "[T]he elements of negligent entrustment are: (1) knowledge of or knowledge imputable to the owner that the driver was either addicted to intoxicants or had the habit of drinking; (2) the owner knew or had imputable knowledge that the driver was likely to drive while intoxicated; and (3) under these circumstances, the entrustment of a vehicle by the owner to such a driver. *Jackson v. Price*, 288 S.C. 377, 342 S.E.2d 628 (Ct. App. 1986)."

iii) Application
(1) Court of Appeals applied an incorrect test for negligent entrustment.
(2) Under the proper test, no reasonable jury could find that Joseph Jenkins knew or should have known John "was either addicted to intoxicants or had the habit of drinking."

iv) Court of Appeals therefore erred in affirming verdict against Joseph Jenkins.

v) Concurrence: This is the element to which the concurrence objects.

vi) Joseph is again pleased, and Gadson is displeased.

d) Issue 3: Could a jury reasonably conclude that Joseph Jenkins knew or should have known that John was actually intoxicated?

i) Holding 1: Evidence that a defendant knew that a person consumed one or two wine coolers before driving is not sufficient for a jury to reasonably conclude that the defendant knew that the person was intoxicated.

ii) Rules

(1) "[T]he elements of negligent entrustment are: (1) knowledge of or knowledge imputable to the owner that the driver was either addicted to intoxicants or had the habit of drinking; (2) the owner knew or had imputable knowledge that the driver was likely to drive while intoxicated; and (3) under these circumstances, the entrustment of a vehicle by the owner to such a driver. *Jackson v. Price*, 288 S.C. 377, 342 S.E.2d 628 (Ct. App. 1986)."

iii) Application

(1) Court of Appeals applied an incorrect test for negligent entrustment.

(2) John had one or two wine coolers before driving.

(3) Drinking one or two wine coolers (apparently) does not constitute intoxication.

(4) No reasonable jury could have concluded that John was intoxicated while driving.

iv) Therefore, under the proper test, no reasonable jury could find that Joseph Jenkins knew or should have known that John was likely to drive while intoxicated.

v) Concurrence: The concurrence agrees there was insufficient evidence for a reasonable jury to find that Joseph Jenkins "knew or should have known that John … was likely to" drive dangerously.

vi) Joseph is again pleased, and Gadson is displeased.

e) Issue 4: Did the Court of Appeals properly conclude that Joseph Jenkins "knew John would cause harm simply because John was [his] cousin"?

i) Holding: A defendant does not have knowledge of a person's habits simply because that person is a relative.

ii) Rules: None cited by either court.

iii) Application

(1) Court of Appeals provided no authority for its assertion.

(2) Court of Appeals erred in so concluding.

f) Issue 5: Did the Court of Appeals properly apply an evidentiary inference to the failure of John to testify?

i) Holding: A plaintiff who presents no evidence relevant to her claim cannot meet her burden of proof solely by relying on the inference that a defendant who did not testify would have testified adverse to his position.

ii) Rules

(1) "The failure of a defendant to testify raises an inference that his testimony, if it had been submitted, would have been unfavorable to his position. *See, e.g., Crocker v. Weathers*, 240 S.C. 412, 126 S.E. 335 (1962)."

(2) "The burden of proof is on the plaintiff to establish the negligence of the defendant." *Ross v. Paddy*, 340 S.C. 428, 433, 532 S.E.2d 612, 614 (Ct. App. 2000).

iii) Application

(1) Gadson provided no evidence of negligent entrustment.

(2) Any inference about John's testimony would be insufficient to meet Gadson's burden.

iv) Court of Appeals erred in applying the inference.
v) Joseph is again pleased, and Gadson is displeased.

g) Summary
i) For the reasons noted above, the jury did not have sufficient evidence to reasonably conclude that defendant Joseph Jenkins had negligently entrusted ECO's vehicle to John.
ii) The Court of Appeals erred in concluding otherwise.
iii) Query: Which of these holdings are necessary to the judgment? Which are sufficient? Which are alternate holdings (where one but not both are necessary)?

5) Outcome
a) Judgment: Supreme Court reverses Court of Appeals' affirmation of trial court's denial of Joseph Jenkins' motions for directed verdict and JNOV and remands.
b) Joseph (or, more likely, his insurance company) is presumably pleased at the outcome (though perhaps not at the length of litigation to decide it). Gadson is very definitely not pleased (for lots of reasons).
c) This is effectively the end of the litigation. It is is a matter of state law now settled by the highest court with no opportunity for another trial.

6) What do you think? *(This is for you to answer!)*