

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2020-001007

Joseph Dean, Appellant,

v.

CSX Transportation, Inc., Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the lower court err by separately considering CSX's jurisdiction contacts with South Carolina rather than considering them as a whole?
- II. Did the lower court err in focusing on the location of Dean's residency and injuries to the exclusion of the forum location of CSX's tortious conduct?
- III. Did the lower court err in relying on a general personal jurisdiction case to make a ruling on specific personal jurisdiction?
- IV. Did the lower court err in holding that exercising specific jurisdiction over CSX would be constitutionally unreasonable?
- V. Did the lower court err in considering a "safety suit" filed in another forum in its specific jurisdiction determination?

STATEMENT OF THE CASE

This is an appeal from an order granting a motion to dismiss for lack of specific personal jurisdiction. On April 1, 2020, Appellant Joseph Dean filed a complaint against Respondent CSX Transportation, Inc., ("CSX") under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. § 51, *et seq.*, to recover for personal injuries he sustained while working for CSX. (R. pp. 12-17). On April 15, 2020, CSX filed a motion to dismiss for lack of personal jurisdiction. (R. pp. 18-19). Both parties filed a memorandum and affidavit in support of their positions. (R. pp. 23-31, 38-45).

On June 17, 2020, the Honorable Michael G. Nettles entered an order granting the motion to dismiss for lack of specific personal jurisdiction. (R. pp. 3-10). Dean filed a timely notice of appeal. (R. p. 1).

FACTS

In January 2011, CSX hired Dean, a South Carolina resident, to work as a trainmaster in its Florence Division. (R. p. 32, ¶ 3). The CSX Florence Division is made up of its operations in South Carolina, North Carolina, and Virginia, and is headquartered in Florence, South Carolina. *Id.*

CSX is an international rail-based transportation service that includes traditional rail service and transportation of intermodal containers and trailers. (R. p. 36). Its network of tracks covers 23 states, the District of Columbia, and two Canadian provinces. *Id.* CSX is incorporated in Virginia with its principal place of business in Florida. (R. p. 21).

Within South Carolina, CSX operates almost 1,800 miles of track and employs approximately 1,000 people. (R. p. 35). CSX operates major rail yards in Charleston and Florence, and operates terminals in Charleston, Greenville, and Spartanburg. *Id.* Its Florence Division Headquarters and dispatch center are in Florence. *Id.*

When CSX hired Dean, it sent him to Charleston, South Carolina, for training and first assigned him to work in Greenwood, South Carolina. (R. p. 32). Almost a year later, in 2012, CSX transferred Dean within the Florence Division by assigning him to work in Richmond, Virginia. *Id.* During Dean's time in Richmond, his direct boss was the terminal manager located in Richmond, and his next higher-up boss was the Division Manager, Larry Koster, who was located at the Division Headquarters in Florence, South Carolina. (R. p. 33). Even after his transfer to Richmond, Dean attended meetings at the Division Headquarters in Florence and continued to receive direct work orders from Mr. Koster in Florence, including work assignments in South Carolina. (R. p. 33).

Dean's Injuries

At the time of his injuries, Dean worked the nightshift as a trainmaster at the Richmond rail yard. (R. p. 33). On April 15, 2017, Dean reported to work at 5:30 p.m. to work a shift that should have ended at 6:30 a.m. on April 16. *Id.* Before daylight on April 16, a train derailed at the rail yard. *Id.* The terminal manager was on vacation, so Dean reported the derailment to Larry Koster in Florence, South Carolina, as required. *Id.* Mr. Koster ordered Dean to keep working

(past the end of his usual shift) until the derailment resolved. (R. p. 33). Dean stayed on the job for almost 20 hours. (R. pp. 33-34).

With barely any break or rest, Dean returned to work his next shift at 6:00 p.m. on April 16. (R. p. 33). About eight hours later, around 2:00 a.m. on April 17, Dean suffered injuries while working. *Id.*

While Dean walked through the rail yard to inspect rail cars for safety issues, he saw a broken knuckle blocking a walking area. (R. pp. 13-14). When Dean attempted to move the knuckle to protect his coworkers, he stepped into a hole and felt a painful “pop” in his back. (R. pp. 14, 33). After Dean reported his injury, he drove back to the CSX office. (R. pp. 14, 33). While driving, Dean blacked out due to his exhaustion and pain, and crashed into a telephone pole. (R. pp. 14, 33-34).

Dean suffered severe and disabling injuries to his back, neck, and sternum. (R. p. 14). CSX no longer allowed him to work at the Richmond rail yard and, upon the advice of his counselor, he moved back to South Carolina to be near his support network to cope with his injuries. (R. p. 34).

Dean stated: “Part of the cause of my injuries was having to work many hours without adequate rest. Had Larry Koster not ordered me to remain on duty to complete the derailment work, I would have had normal and adequate rest and I likely would not have been injured as I was.” (R. pp. 33-34).

Counsel was associated shortly before the statute of limitations expired on Dean’s claim against CSX. (R. pp. 80-81). Because “railroads across the country are challenging general jurisdiction and oftentimes specific jurisdiction,” Dean’s counsel contacted CSX’s counsel to ask if CSX would challenge personal jurisdiction in South Carolina. (R. pp. 80-81). CSX’s answer

would be due after the statute of limitations expired. (R. pp. 80-81). When CSX stated it would challenge personal jurisdiction in South Carolina, Dean filed this action in South Carolina and also filed a “safety suit” in Florida to preserve the claim. (R. pp. 50, 81).

South Carolina FELA Action

On April 1, 2020, Dean filed this FELA action against CSX in South Carolina state court. (R. pp. 12-17). Dean alleged CSX’s negligent conduct caused his injuries. The negligence allegations include that CSX failed to “schedule sufficient time off for [him] to adequately rest before resuming his duties,” “provide sufficient training,” and “hire an adequate number of employees.” (R. pp. 14-15).

On April 15, 2020, CSX filed a Rule 12(b)(2), SCRPC, motion to dismiss for lack of personal jurisdiction in South Carolina. (R. pp. 18-19). CSX argued that Dean’s injuries occurred in Virginia and CSX is not “at home” in South Carolina. *Id.* CSX filed an affidavit of Lauren Lamp, a Field Investigations Specialist, who stated only that Dean’s injuries occurred in Virginia and that CSX is incorporated in Virginia with its principal place of business in Florida. (R. p. 21).

On May 22, 2020, Dean filed a memorandum in opposition to the motion to dismiss. (R. pp. 23-31). He argued that specific personal jurisdiction exists in this case but did not contest the absence of general jurisdiction. (R. p. 25). Dean argued that this action relates to CSX’s extensive South Carolina contacts and activities. (R. p. 27). He continuously worked for the CSX Division headquartered in Florence, South Carolina, and his employment included meetings and work assignments in South Carolina such that CSX could reasonably anticipate litigating an action related to his employment in South Carolina. (R. p. 29). The work order that required him to work overtime to the point of exhaustion came from a CSX employee located in Florence, South Carolina. (R. pp. 29-30).

CSX filed a memorandum in support of the motion arguing it did not direct its activities towards a South Carolina resident, its South Carolina activities are not relevant to specific jurisdiction, and Dean can pursue the Florida safety suit. (R. pp. 38-45).

On May 26, 2020, the Honorable Michael G. Nettles held a hearing on the motion. CSX argued that the order from South Carolina directing Dean to stay at work to resolve the derailment is insufficient for specific jurisdiction because it was not directed to a South Carolina resident (Dean lived in Virginia at the time) and the injuries occurred in Virginia. (R. pp. 70-71).

In response, Dean argued that the forum state of the conduct that caused injuries is always a proper basis for specific jurisdiction when a defendant has minimum contacts there related to the action. (R. pp. 66-68, 72-77). Dean noted that CSX did not cite a case where the conduct complained of occurred in the forum state and a court lacked specific jurisdiction. (R. p. 68). Dean filed this action in “the state where the conduct was” and “brought it in South Carolina because the orders came from South Carolina.” (R. pp. 68, 74). Finally, Dean noted that the cases that discuss directing conduct towards a forum resident involve conduct that occurred outside of the forum state, and, in this case, the conduct occurred in South Carolina. (R. pp. 73-74).

On June 17, 2020, the lower court issued an order granting the motion to dismiss without prejudice. (R. pp. 3-11). The lower court relied on an opinion in an alleged similar case—*BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549 (2017)—that addressed general jurisdiction. (R. p. 4). It also held exercising jurisdiction over CSX “in this case in South Carolina would be constitutionally unreasonable” and that Dean still has a remedy in the Florida safety suit. (R. p. 10).

The lower court separated CSX’s jurisdictional contacts into three categories and held each one, standing alone, does not satisfy specific personal jurisdiction. First, the lower court addressed CSX’s business activities and presence in South Carolina. It held CSX’s South Carolina contacts

including rail yards, terminals, almost two thousand miles of tracks, approximately 1,000 employees, and the three-state Division Headquarters that employed Dean “cannot *by itself* subject CSXT to specific personal jurisdiction” in South Carolina. (R. pp. 5-6) (emphasis added).

Second, the court addressed Dean’s employment relationship with CSX. It held that Dean’s hiring in South Carolina, continued work for the Florence Division headquartered in South Carolina, and meetings attended in South Carolina show only the defendant’s relationship with the plaintiff (or a third party), and that, “standing *alone*,” is not sufficient to exercise specific jurisdiction. (R. p. 6) (emphasis added and internal quotation marks omitted).

Third, the lower court addressed the work order that came from the Division Headquarters in South Carolina. It held the order to Dean from his boss in South Carolina to work overtime does not confer jurisdiction because it is a “single phone call” placed by Dean in which Mr. Koster gave a work order to Dean, a Virginia resident. (R. pp. 6-10). The court found that an interstate communication “*alone*” or “by itself” does not confer jurisdiction. (R. p. 7) (emphasis added). It found the work order was not directed towards a South Carolina resident, which is, according to the lower court, “the relevant inquiry” for specific jurisdiction and consistent with South Carolina’s long-arm statute. (R. pp. 8-9).

On July 16, 2020, Dean timely filed a notice of appeal. (R. p. 1).

STANDARD OF REVIEW

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case. The decision of the trial court will be affirmed unless unsupported by the evidence or influenced by an error of law.” *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 88, 666 S.E.2d 218, 221 (2008) (internal citation omitted).

ARGUMENT

The Court is presented with the issue of whether Dean's FELA cause of action arises out of or relates to CSX's contacts with South Carolina. CSX has undisputed extensive contacts in South Carolina and committed tortious conduct in South Carolina that injured Dean. The lower court found this insufficient for personal jurisdiction because Dean resided in Virginia and his injury occurred in Virginia. However, there is no South Carolina or federal case that holds the injury must occur or the plaintiff must live in the forum state for personal jurisdiction to exist. The lower court erred in applying that mechanical legal reasoning rather than considering the particular facts and circumstances of this case.

Specific personal jurisdiction over a cause of action generally arises "from a defendant's contacts with the state [and] is granted pursuant to the long-arm statute." *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 88, 666 S.E.2d 218, 222 (2008). However, "South Carolina's long-arm statute has been construed to extend to the outer limits of the due process clause." *Id.* at 89, 666 S.E.2d at 222. "Because South Carolina treats its long-arm statute as coextensive with the due process clause, the *sole* question becomes whether the exercise of personal jurisdiction would violate due process." *Id.* (emphasis added).

"Due process requires a defendant possess minimum contacts with the forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice" and "he could reasonably anticipate being haled into court there." *Cribb v. Spatholt*, 382 S.C. 490, 499, 676 S.E.2d 714, 719 (Ct. App. 2009) (internal quotation marks omitted). In the particular context of specific jurisdiction, due process requires that "the cause of action arises specifically from a defendant's contacts with the forum." *Coggeshall v. Reprod. Endocrine Assocs.*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007).

In this case, CSX acknowledged it possesses minimum contacts with South Carolina. (R. p. 65). It argued that Dean’s FELA action does not arise out of those contacts because Dean’s injuries occurred in Virginia while he lived in Virginia. In agreeing with CSX’s position, the lower court erred in: (1) separately considering CSX’s jurisdiction contacts rather than analyzing them as a whole, (2) focusing on the location of Dean’s residency and injuries rather than on CSX’s contacts with and conduct in the forum state, (3) relying on a general personal jurisdiction case to rule on specific personal jurisdiction, (4) holding that exercising specific jurisdiction over CSX would be constitutionally unreasonable, and (5) considering the Florida “safety suit” in its determination of whether the exercise of personal jurisdiction over CSX in South Carolina is constitutional. The lower court’s decision is unsupported by the evidence and influenced by numerous errors of law. This Court should reverse.

I. The lower court erred when it separated CSX’s jurisdiction contacts rather than considering them as a whole.

The lower court committed an error of law when it parsed out each of CSX’s specific jurisdiction contacts and considered them separately rather than viewing and considering them as a whole. The court separately analyzed the extent of CSX’s business operations and physical presence in South Carolina, Dean’s employment relationship with CSX, and the work order from Mr. Koster in South Carolina. (R. pp. 5-10). It held that each individual one was insufficient for specific personal jurisdiction. Properly considering these as a whole, this Court should reverse.

“[F]or a state court to exercise specific jurisdiction, the *suit* must arise out of or relate to the defendant’s contacts with the *forum*.” *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1780 (2017) (internal quotation and alteration marks omitted; emphasis in original). Conducting this analysis requires that the Court identify all of a defendant’s contacts and

purposefully availing activities within the forum state so it can determine whether the plaintiff's cause of action arises from or relates to those contacts.

In this case, CSX acknowledged its extensive contacts with South Carolina. (R. p. 65). However, the lower court accepted CSX's attempt to divorce itself from those contacts as being relevant only to general jurisdiction.¹ (R. pp. 65, 5-6). This is contrary to established law that the "inquiry to determine whether the exercise of specific jurisdiction over a party comports with due process" includes "the extent to which the defendant purposefully availed itself of the privilege of conducting activities in the State." *ESAB Group, Inc. v. Zurich Ins. PLC*, 685 F.3d 376, 391-92 (4th Cir. 2012) (internal quotation marks omitted). Contrary to the lower court's holding and CSX's argument, CSX's contacts with South Carolina are relevant and necessary to the specific jurisdiction analysis.

CSX's South Carolina contacts include the Florence Division Headquarters, 1,800 miles of track, 1,000 employees, major rail yards and terminals, and Dean's training and work assignments. (R. p. 35). CSX chose to design a Division that includes three states and to put the headquarters for that interstate division in South Carolina. CSX chose to design its business operations so that an employee located in South Carolina managed and oversaw operations at a Virginia rail yard. CSX chose to hire and train Dean in South Carolina and later transfer him to a

¹ The lower court cited to *Fidrych v. Marriott Int'l, Inc.*, 952 F.3d 124 (4th Cir. 2020), for its holding that CSX's track and employees in South Carolina "cannot by itself subject CSXT to specific personal jurisdiction in this State." (R. pp. 5-6). In *Fidrych*, the Fourth Circuit found some of the defendant's connections to the forum state "not relevant" to specific jurisdiction only *after* it found those activities "have nothing to do with the claims asserted by the Plaintiffs in this action." *Id.* at 139. The lower court in this case did not find that CSX's physical presence in South Carolina has nothing to do with Dean's claims and, therefore, erred in disregarding those contacts. CSX's physical presence includes the Division Headquarters, which CSX designed to control three states' track operations from a South Carolina office. This is directly relevant to Dean's argument that his claims arise out of CSX's business operations in South Carolina.

Virginia rail yard where he was still subject to the authority of a headquarters and boss in South Carolina, to whom Dean was required to report a derailment that occurred in Virginia. CSX purposely and knowingly connected its Virginia operations, including Dean's job, to the Florence Division Headquarters in South Carolina.

The lower court committed an error of law when it separately considered CSX's physical presence and business operations in South Carolina, Dean's employment relationship with CSX, and Mr. Koster's work order from South Carolina. As to all three considerations, the lower court found each one by itself was not sufficient for specific jurisdiction. (R. pp. 5-10). However, none of these considerations operated alone. CSX's presence and headquarters in South Carolina is the controlling authority over Dean's job in Virginia, and the order that came from South Carolina is a cause of Dean's injuries. The lower court erred in accepting CSX's invitation to separate these considerations rather than viewing them as a whole.

Properly considering all of CSX's South Carolina contacts, it is apparent that specific jurisdiction is satisfied because Dean's FELA cause of action arises out of or relates to those contacts. Relatedness is satisfied when there is "an affiliation between the forum and the underlying controversy, principally, an activity or occurrence that takes place in the forum state."² *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1781 (2017) (internal quotation and

² The Supreme Court of the United States used numerous phrases to describe relatedness. *See, e.g., Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) ("[S]pecific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction" (internal quotation marks omitted)); *Helicopteros Nacionales De Colombia v. Hall*, 466 U.S. 408, 414 (1984) (referring to "a controversy [that] is related to or arises out of a defendant's contacts with the forum"); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 780 (1984) (referring to "the relations among the defendant, the forum, and the litigation").

alteration marks omitted) (also referring to a “connection between the forum and the specific claims at issue”).

FELA provides that a railroad “shall be liable in damages to any person suffering injury while he is employed by such carrier . . . for such injury . . . resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier.” 45 U.S.C. § 51. There is “an affiliation between” South Carolina—“the forum”—and Dean’s FELA action—“the underlying controversy”—because Dean works for the CSX Division headquartered in South Carolina and received a direct work order from South Carolina to work past the end of his shift that caused him to work while exhausted and suffer injuries. (R. pp. 32-34). The activity or occurrence of the work order that took place in South Carolina caused Dean’s injuries. *See Fidrych v. Marriott Int’l, Inc.*, 952 F.3d 124, 140 (4th Cir. 2020) (referring to “an activity by the defendant in the forum state” as “one of the most frequent bases for the exercise of specific jurisdiction”). The lower court erred in finding specific personal jurisdiction does not exist in this case.

II. The lower court erred in focusing on the forum of the injury and Dean’s residence rather than the forum of CSX’s tortious conduct.

The lower court erred in accepting CSX’s argument based on the location of the injury and Dean’s residence rather than on the South Carolina location of CSX’s tortious conduct. It reasoned that “[t]o the extent Mr. Koster directed anyone to do anything, his directions were to a citizen of Virginia, not South Carolina. To the extent any injuries occurred, they occurred in Virginia.” (R. p. 9). However, it is the defendant’s contacts and conduct that determine specific jurisdiction.

The work order from South Carolina that directed Dean to work overtime and then show up for his next regular shift is conduct that occurred in South Carolina that gives rise to Dean’s FELA claim. That the injury occurred in another state to a nonresident is not dispositive of specific jurisdiction and does not discount the occurrence of the tortious conduct in the forum.

The Supreme Court of the United States held that the location of the tortious conduct is a proper forum for specific jurisdiction. In *Walden v. Fiore*, 571 U.S. 277 (2014), a Georgia agent for the Drug Enforcement Administration searched two individuals traveling through the Atlanta airport and seized cash from them before they boarded a plane to Nevada. *Id.* at 279-80. While in Georgia, the agent drafted an affidavit to show probable cause for forfeiture of the funds. *Id.* at 280. After the funds were returned, the travelers filed suit in Nevada against the agent, who moved to dismiss for lack of personal jurisdiction. *Id.* at 281. The Supreme Court held Nevada courts lacked specific personal jurisdiction because the relevant tortious conduct occurred in Georgia. “It is undisputed that no part of petitioner’s course of conduct occurred in Nevada. Petitioner approached, questioned, and searched respondents, and seized the cash at issue, in the Atlanta airport.” *Id.* at 288.

Under the circumstances of this case, as in *Walden*, the relevant inquiry is where tortious conduct occurred. “The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant’s conduct connects him to the forum in a meaningful way.” *Id.* at 290. The lower court erred in focusing on Dean’s residency and injuries in Virginia to the exclusion of the location of CSX’s tortious conduct.

Neither the plaintiff’s residence nor the place of injury are dispositive. “[P]laintiff’s residence in the forum state is not a separate requirement, and lack of residence will not defeat jurisdiction established on the basis of defendant’s contacts.” *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 780 (1984) (finding specific jurisdiction existed in an action filed by a nonresident plaintiff). Even when the plaintiff’s injury occurred in South Carolina, our courts have found

personal jurisdiction did not exist.³ See *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 611 S.E.2d 505 (2005) (granting a nonresident defendant’s motion to dismiss for lack of personal jurisdiction when injuries occurred in South Carolina); *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E.2d 835 (Ct. App. 2012) (same). “[W]hat matters most is the *defendant’s* relation to the forum, not the place of the plaintiff’s injury.” *Gulf Oil Ltd. P’ship v. Petro. Mktg. Grp.*, 308 F. Supp. 3d 453, 460 (D. Mass. 2018) (emphasis in original); see also *Hill v. Union Pacific R.R. Co.*, 362 F. Supp. 3d 890 (D. Idaho 2019) (finding personal jurisdiction existed in Idaho when plaintiffs’ injuries occurred in Kansas and Wyoming); *Overfelt v. BNSF Ry. Co.*, 2016 WL 1045477 (D. Kan. 2016) (finding personal jurisdiction existed in Kansas when plaintiff’s injury occurred in Texas).

The South Carolina long-arm statute supports the exercise of personal jurisdiction when the tortious conduct occurs in the forum state. It provides for personal jurisdiction over a defendant “as to a cause of action arising from the person’s: (1) transacting any business in this State; . . . [and] (3) commission of a tortious act in whole or in part in this State.” S.C. Code Ann. § 36-2-803 (2003). CSX transacted business in South Carolina by hiring and training Dean in South Carolina and then requiring him to report the derailment to a South Carolina office and employee, who gave a work order that caused Dean’s injuries. CSX committed a tortious act in whole or in part in South Carolina by inadequately training Dean and ordering him to work overtime and return

³ Similarly, other courts have found specific personal jurisdiction existed as to a nonresident defendant when the injury occurred outside of the forum state. See *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320 (D.C. 2000) (finding personal jurisdiction existed in the District of Columbia over a Maryland corporation for a physical injury that occurred in Maryland where the defendant solicited District of Columbia residents to shop at its Maryland stores); *Carter v. Massey*, 436 F. Supp. 29 (D. Md. 1977) (finding personal jurisdiction existed in Maryland over Delaware defendants for a physical injury that occurred in Delaware).

for his next shift with inadequate rest. The decision to work him to the point of exhaustion was made in South Carolina.

The Court should reverse because, under the circumstances of this case, the occurrence of tortious conduct in the forum state satisfies due process for specific jurisdiction.

The lower court listed three reasons for its finding that the South Carolina work order that caused Dean's injuries does not establish specific jurisdiction: (1) one phone call is insufficient to confer jurisdiction, (2) the inquiry is whether the defendant directed tortious activity toward a forum state resident, and (3) Dean, not CSX, placed the phone call. (R. pp. 7-10). Even if this Court considers those reasons, it should find they are unsupported by the evidence and influenced by legal error.

One phone call

The circumstances of this case are not a random, single phone call. The circumstances are a CSX employee who placed a call to his CSX boss in South Carolina, who CSX knew was working in South Carolina while managing operations at a Virginia rail yard. Dean was required by CSX to report the derailment to Mr. Koster in South Carolina. (R. p. 33). The phone call is the result of CSX's deliberate choices in organizing its business and Dean's job requirements.

The lower court cited to six cases to support its one-phone-call-is-not-enough reasoning. (R. p. 7). Not one of those cases involved a situation, as here, in which the plaintiff alleged that the communication during the phone call is tortious conduct that caused his injuries or that he made a phone call as part of his job requirements.

All of the cases the lower court cited involved situations in which the plaintiff relied on a communication as evidence of the defendant's minimum contacts with the forum state rather than

as evidence of the relatedness between the forum and the litigation.⁴ (R. p. 7) That reasoning is not applicable to this case for at least two reasons. First, the work order given during the phone call in this case is only one of many CSX contacts with South Carolina. Second, Dean did not argue the phone call during which Mr. Koster gave the work order as the sole basis for establishing minimum contacts but, instead, argued it as a way in which Dean's FELA action "arises specifically from a defendant's contacts with the forum" because it caused his injuries. *Coggeshall v. Reprod. Endocrine Assocs.*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007). In other words, it shows the relation of Dean's lawsuit to CSX's South Carolina contacts.

The reason that a single communication is generally not sufficient for specific jurisdiction is that a defendant does not subject itself to the jurisdiction of a forum simply because communication came from or went to that forum. That concern is not implicated in this case. CSX has undisputed extensive contacts with South Carolina.

⁴ See *Bell Paper Box v. Trans. W. Polymers*, 53 F.3d 920, 923 (8th Cir. 1995) (holding "the **contacts** between Trans Western and South Dakota are insufficient to support jurisdiction" and that a phone call "cannot alone provide the **minimum contacts** required by due process" (internal quotation marks omitted)); *Far W. Capital v. Towne*, 46 F.3d 1071, 1076-77 (10th Cir. 1995) (describing plaintiff's argument as "the proposition that the defendant's phone calls, and ten-to-twenty faxes and letters are sufficient to establish **minimum contacts**" (emphasis added)); *DeCusati v. Reiss Eng'g, Inc.*, 2015 U.S. Dist. LEXIS 99834, *5-6 (E.D. Va. 2015) (addressing plaintiff's argument that communications "over email and telephone" are evidence of purposeful availment and holding they "do not form a basis for personal jurisdiction"); *Scansource, Inc. v. Mitel Networks Corp.*, 2011 U.S. Dist. LEXIS 68342, *7-8 (D.S.C. 2011) (addressing plaintiff's reliance on one phone call in South Carolina to discuss settlement of the case and holding that one "call, especially one made for purposes of settlement, is not sufficient to establish specific jurisdiction over a defendant"); *Bolinske v. Herd*, 689 N.W.2d 397, 401-02 (N.D. 2004) (describing plaintiff's argument as the defendant "conducted business in this state by use of the interstate telephone system" and holding "contacts consisting merely of long-distance telephone calls do not satisfy the **minimum constitutional contacts** required by due process" (emphasis added)); *Cimmaron Corp. v. Smith*, 67 P.3d 258, 260-61 (Mont. 2003) (addressing an argument that a defendant's trip to the forum to negotiate an agreement is transacting business within the forum and holding interstate communication "cannot by itself be considered **a contact** for justifying the exercise of personal jurisdiction" (internal quotation marks omitted) (emphasis added)).

Activity directed towards a forum resident

The lower court erred in holding that the “relevant inquiry” is whether the defendant directed tortious activity “toward an in-state South Carolina resident.” (R. p. 8). “[P]laintiff’s residence in the forum state is not a separate requirement, and lack of residence will not defeat jurisdiction established on the basis of defendant’s contacts.” *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 780 (1984).

The Supreme Court already held that the specific jurisdiction analysis “looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” *Walden v. Fiore*, 571 U.S. 277, 285 (2014). In *Walden*, the defendant agent directed conduct at persons “whom he knew had Nevada connections” but the Supreme Court held that insufficient for specific jurisdiction in Nevada. *Id.* at 289. The Court explained that it is improper to attribute “a plaintiff’s forum connections to the defendant and make those connections decisive in the jurisdictional analysis.” *Id.* Here, the lower court improperly focused on Dean’s Virginia residency rather than CSX’s tortious conduct in and contacts with South Carolina.

Dean placed the phone call

That Dean placed the phone call to Mr. Koster is an incorrect focus. The point is not who placed the phone call but that CSX required Dean to make the phone call to South Carolina as part of his job. CSX designed its business operations to require an employee in Virginia to report a derailment to someone at the South Carolina Division Headquarters. (R. p. 33). Dean placed the call in compliance with CSX’s orders. More importantly, Dean’s specific jurisdiction argument does not rely on the occurrence of the phone call itself but on the order given during the phone call that caused him to work overtime to the point of exhaustion that caused his injuries.

III. The lower court erred in relying on a general jurisdiction opinion to hold that specific jurisdiction does not exist.

The lower court erred in relying on *BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549 (2017), as a “clear ruling” on FELA personal jurisdiction with “striking similarities to this case.” (R. p. 4). *BNSF* addressed whether general personal jurisdiction existed. This case involves specific personal jurisdiction. Therefore, the absence of jurisdiction in *BNSF* is not controlling.

In *BNSF*, two railroad employees filed FELA claims against the railroad in Montana state court. 137 S. Ct. at 1553. Neither plaintiff resided in Montana or suffered injury in Montana. *Id.* The railroad did business in Montana but was not incorporated there and did not maintain a principal place of business in Montana. *Id.* The Supreme Court of the United States explained that, “[b]ecause neither [plaintiff] alleges any injury from work in or related to Montana, only the propriety of general jurisdiction is at issue here.” *Id.* at 1558.

The plaintiffs relied on a FELA statute, 45 U.S.C. § 56, and a Montana rule of civil procedure for personal jurisdiction. *Id.* at 1553-54. The Court held that the statute addressed venue and subject matter jurisdiction but not personal jurisdiction. *Id.* at 1555-58. The rule provided for “personal jurisdiction over persons found in Montana.” *Id.* at 1558 (internal quotation marks omitted). *BNSF* did not contest that it was found in Montana because it conducted business there but did contest that exercising personal jurisdiction over it violated due process. *Id.*

The Court considered that “*BNSF* has over 2,000 miles of railroad track and more than 2,000 employees in Montana” and held that such “in-state business” “does not suffice to permit the assertion of general jurisdiction over claims like [plaintiffs’] that are unrelated to any activity occurring in Montana.” *Id.* at 1559.

That *general* jurisdiction did not exist in *BNSF* is not a “clear ruling” applicable to this case or all FELA cases in general. (R. p. 4). The ruling was based on the specific facts of and arguments made in *BNSF*.

BNSF and this case also do not have “striking similarities.” (R. p. 4). This case is brought by an employee who worked for a railroad division headquartered in the forum state and is based on a work order given by a railroad employee in the forum state. In contrast, the only BNSF contacts with Montana were that it conducted business there. The *BNSF* Court specifically noted that, “the business BNSF does in Montana *is sufficient* to subject the railroad to *specific personal jurisdiction* in that State *on claims related to* the business it does in Montana.” 137 S. Ct. at 1559 (emphasis added). Here, CSX’s business conduct in South Carolina is sufficient to subject it to specific personal jurisdiction in South Carolina on Dean’s FELA claim that is related to the business it does in South Carolina.

The lower court erred in relying on *BNSF*, which actually supports the exercise of specific personal jurisdiction in this case.

IV. The lower court erred in finding the exercise of personal jurisdiction over CSX would be constitutionally unreasonable.

The lower court incorrectly held “that any exercise of personal jurisdiction over CSXT in this case in South Carolina would be constitutionally unreasonable.” (R. p. 10). In determining whether “the exercise of jurisdiction is reasonable or fair,” the court considers “the following factors: (1) the duration of the defendant’s activity in this State; (2) the character and circumstances of its acts; (3) the inconvenience to the parties; and (4) the State’s interest in exercising jurisdiction.” *Cribb v. Spatholt*, 382 S.C. 490, 499-500, 676 S.E.2d 714, 719 (Ct. App. 2009). The lower court did not consider these factors, and its failure to do so is reversible legal error.

Consideration of the factors shows that exercising personal jurisdiction over CSX in South Carolina in this case is constitutionally reasonable. CSX has conducted business activities in South Carolina for over seventy years, since 1948 when it registered to do business in South Carolina. (R. p. 37).

The character and circumstances of its acts in South Carolina are significant. It chose to place its Florence Division Headquarters in South Carolina and has spent hundreds of millions of dollars on its South Carolina network and employees. (R. p. 35). As to Dean specifically, CSX hired him as a South Carolina resident, trained him in South Carolina, and always maintained authority over his job responsibilities in a CSX South Carolina office. (R. pp. 32-34). “[T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945).

CSX did not argue any inconvenience to it in litigating this action in South Carolina. The location of its Division Headquarters and the employee who gave the work order in South Carolina favor a finding that it is not inconvenient.

Finally, South Carolina has an interest in exercising jurisdiction over CSX in this case because it committed tortious conduct in the state. *See Cribb v. Spatholt*, 382 S.C. 490, 504, 676 S.E.2d 714, 721 (Ct. App. 2009) (holding “enough business was conducted within the state to warrant adjudication of the suit here”).

The Court should reverse the lower court and find that the exercise of personal jurisdiction over CSX in South Carolina is constitutionally reasonable in this case.

V. The lower court erred in considering the Florida “safety suit.”

The lower court found that dismissing Dean’s action for lack of personal jurisdiction did not leave him “without a remedy” because Dean filed the safety suit “in Florida, where CSXT has its principal place of business.” (R. p. 10). To the extent the lower court’s decision is based on the existence of the safety suit, it is influenced by legal error.

That Florida is an available forum does not mean that jurisdiction in South Carolina is unconstitutional. In a personal jurisdiction analysis, the focus is on the defendant’s conduct and contacts with the forum state, *Walden v. Fiore*, 571 U.S. 277, 285 (2014) (“[I]t is the defendant’s conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him.”), and not the availability of another forum. Whether the plaintiff has filed or may file an action in another state is not relevant to whether it is constitutional to exercise personal jurisdiction over the defendant in the forum state. Stated another way, the existence of a remedy in another state does not negate the constitutionality of exercising personal jurisdiction in the forum state. Otherwise, a defendant could always point to the availability of a forum where it is subject to general jurisdiction.

Neither the lower court nor CSX cited any authority to support the relevance of the existence of an alternate litigation forum. The lower court erred in considering and relying on the safety suit, and this Court should reverse.

CONCLUSION

For these reasons, the Court should reverse the lower court and find specific personal jurisdiction exists over CSX in South Carolina in this case.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Feb 17 2021

SC Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2020-001007

Joseph Dean, Appellant,

v.

CSX Transportation, Inc.,.....Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that the Final Brief of Appellant and Final Reply Brief of Appellant comply with Rule 211(b), SCACR.

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