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## Ford Motor Company v. Montana Eighth Judicial District

Maddie Rudge

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# *FORD MOTOR COMPANY V. MONTANA EIGHTH JUDICIAL DISTRICT*

MADDIE RUDGE

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## INTRODUCTION

This Supreme Court decision stems from two unrelated suits brought against Ford Motor Company (“Ford”).<sup>1</sup> The first case stems from a car accident in Montana.<sup>2</sup> Markkaya Gullett was driving her 1996 Explorer in Montana, her home state, when the tread separated from a rear tire.<sup>3</sup> The car crashed and Gullett died at the scene.<sup>4</sup> Her estate sued Ford in Montana state court.<sup>5</sup> The second case stems from a car accident in Minnesota.<sup>6</sup> Adam Bandemer was a passenger in his friend’s 1994 Crown Victoria driving in the state of Minnesota.<sup>7</sup> After rear-ending a snowplow, Bandemer’s airbag failed to deploy, and he suffered serious brain damage.<sup>8</sup> Bandemer sued Ford in Minnesota state court.<sup>9</sup>

In both cases, Ford moved to dismiss for lack of personal jurisdiction.<sup>10</sup> Ford argued the state courts only had personal jurisdiction “only if the company’s conduct in the State had given rise to the plaintiff’s claims.”<sup>11</sup> Ford further contended that the causal link only existed if the “company had designed, manufactured, or-most likely-sold in the State the particular vehicle involved in the

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1. Ford Motor Co. v. Montana Eighth Jud. Dist. Ct., 141 S. Ct. 1017 (2021).
  2. *Id.* at 1023.
  3. *Id.*
  4. *Id.*
  5. *Id.*
  6. *Id.*
  7. *Id.*
  8. *Id.*
  9. *Id.*
  10. *Id.*
  11. *Id.*

accident.”<sup>12</sup> Neither case could make that showing.<sup>13</sup> The Explorer was designed in Michigan, manufactured in Kentucky, and originally sold in Washington.<sup>14</sup> The Crown Victoria was designed in Michigan, manufactured in Canada, and originally sold in North Dakota.<sup>15</sup> Both vehicles came to their respective states through consumer resales and relocations.<sup>16</sup> Thus, Ford argued that neither Montana nor Minnesota had jurisdiction over their respective cases.<sup>17</sup>

The Montana and Minnesota Supreme Courts rejected this argument, finding that Ford “purposefully availed” themselves to each state.<sup>18</sup> Both states highlighted that Ford marketed and advertised in their state; had thousands of dealerships in their state; and specifically sold the particular vehicle involved in the accident in its respective state.<sup>19</sup> In Montana, the court found that Ford’s conduct in Montana was related to the accident in suit because Ford encourages “Montana residents to drive Ford vehicles”, so when that driving causes an in-state injury, the claims are connected enough to Ford’s activities to support jurisdiction.<sup>20</sup> The Minnesota Supreme Court came to an identical conclusion on similar grounds.<sup>21</sup>

## I. ISSUE

The issue in this case is if Ford is subject to personal jurisdiction in each of these cases.<sup>22</sup> The Court applies a minimum contacts test to determine if a State has specific jurisdiction.<sup>23</sup> To apply the test, the Court looks at the relationship between the defendant’s conduct, the forum State, and the plaintiff’s claim.<sup>24</sup> The Court has previously considered the connection between the defendant’s conduct and the forum State and the connection between the forum State and the

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12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* (quoting *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 395 Mont. 478, 491 (2019)).

21. *Id.* at 1023-24.

22. *Id.* at 1024.

23. Scott Dodson, *Personal Jurisdiction, Comparativism and Ford*, 51 STETSON L. REV. 187, 189 (2022).

24. *Id.*

plaintiff's claim.<sup>25</sup> In *Walden v. Fiore*, the Court held that a defendant's conduct must be connected to the forum State by more than just the plaintiff.<sup>26</sup> In *Bristol-Myers Squibb Co. v. Superior Court of California*, the Court held that specific jurisdiction requires that the claim directly arise out of the forum State.<sup>27</sup>

However, the Court had yet to discuss the connection between the defendant's conduct and the plaintiff's claim.<sup>28</sup> The legal test for the connection between the defendant's conduct and the plaintiff's claim is that the claim "must arise out of or relate to" the defendant's conduct.<sup>29</sup> While other cases have established that "arise out of" suggests causality, this is the first case that addresses what other kinds of conduct might also establish the necessary relationship between conduct and claim to establish specific jurisdiction.<sup>30</sup>

## II. DEVELOPMENT OF SPECIFIC JURISDICTION

A state court's power to exercise jurisdiction is limited by the Fourteenth Amendment's Due Process Clause.<sup>31</sup> In *International Shoe Co. v. Washington*, the Court held that, in order for tribunal to have authority over the suit, the defendant must have such "contacts" with the forum State that maintaining the suit there is "reasonable, in the context of our federal system of government," and "does not offend traditional notions of fair play and substantial justice."<sup>32</sup> To define the "contacts" with the forum state, the Court looks at the "defendant's relationship to the forum state."<sup>33</sup> This led to the court recognizing two types of personal jurisdiction: general and specific.<sup>34</sup>

A forum State may exercise general jurisdiction over a defendant if they are "essentially at home" in the forum State.<sup>35</sup> For

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25. *Id.* at 190-91.

26. *Id.* at 190 (citing *Walden v. Fiore*, 571 U.S. 277, 291 (2014)).

27. Dodson, *supra* note 23, at 191 (citing *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773, 1787 (2017)).

28. Dodson, *supra* note 23, at 191-92.

29. Dodson, *supra* note 23, at 191-92 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)).

30. Dodson, *supra* note 23, at 192.

31. U.S. CONST. amend. XIV, § 1 ("No state shall . . . deny to any person within its jurisdiction the equal protection of the law.")

32. 326 U.S. 310, 316-17 (1945).

33. *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773, 1779 (2017).

34. *See Goodyear Dunlop Tire Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

35. *Id.*

corporations, this has been defined as their place of domicile (its place of incorporation and its principal place of business).<sup>36</sup> Neither Montana nor Minnesota have general jurisdiction over Ford.<sup>37</sup> Ford is incorporated in Delaware and its principal place of business is Michigan.<sup>38</sup>

A forum State may exercise specific jurisdiction over a defendant if the company “purposefully avails itself of the privilege of conducting activities within the forum State”<sup>39</sup> and the plaintiff’s claims “arise out of or relate to the defendant’s contacts” with the forum.<sup>40</sup> The plaintiff must prove that the defendant deliberately reached out to the forum state<sup>41</sup> and the contact was not “random, isolated, or fortuitous.”<sup>42</sup> However, as previously stated, these contacts alone are not enough to subject the defendant to the forum state’s jurisdiction.<sup>43</sup> There must be an affiliation between the defendant’s contacts with the forum state and the underlying controversy, which occurred within the forum state.<sup>44</sup>

### III. ANALYSIS OF *FORD*

Ford does not argue that it has “purposefully avail[ed] itself of the privilege of conducting activities” in both Montana and Minnesota.<sup>45</sup> Ford’s argument is that neither suit is sufficiently connected to Ford’s activities in the State, despite the accidents occurring in the chosen forum States.<sup>46</sup> They contend that there must be a causal link between the activities and the suits.<sup>47</sup> Therefore, specific jurisdiction would be limited to the State in which Ford sold the particular vehicle or the

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36. *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014).

37. *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021).

38. *Id.*

39. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

40. *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773, 1780 (2017) (quoting *Daimler*, 571 U.S., at 127); see, e.g., *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985); *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984); *International Shoe v. Washington*, 326 U.S. 310, 319 (1945).

41. *Walden v. Fiore*, 571 U.S. 277, 285 (2014).

42. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984).

43. *International Shoe*, 326 U.S. at 316-17.

44. *Goodyear Dunlop Tire Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

45. *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1026 (2021) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

46. *Id.*

47. *Id.*

State(s) in which Ford designed or manufactured the particular vehicle.<sup>48</sup> Since neither of the vehicles in question were sold by Ford in the chosen forum States, nor were they designed or manufactured there, then neither Montana nor Minnesota has personal jurisdiction over Ford in these suits.<sup>49</sup>

Causation can be a link used to connect the defendant's activities within the forum State and the suit.<sup>50</sup> However, Supreme Court Justice Kagan clarifies that it is not the only connection that can be found to establish specific personal jurisdiction.<sup>51</sup> In *Daimler*, the Supreme Court noted that the suit must "arise out of *or relate to* the defendant's contacts within the forum."<sup>52</sup> While the "arise out of" asks for causation, the "or relate to" suggests that other relationships can be found to support specific jurisdiction.<sup>53</sup> However, Justice Kagan clearly states that "[t]hat does not mean anything goes" and that "the phrase 'relate to' incorporates real limits, as it must adequately protect defendants foreign to a forum."<sup>54</sup>

Although the Court does not establish limits as to the relationship needed for specific personal jurisdiction, Justice Kagan notes that the relationship in this case is sufficient as it is nearly identical to a relationship proposed in *Worldwide Volkswagen v. Woodson*.<sup>55</sup> In *Worldwide Volkswagen*, the Court held that an Oklahoma court could not assert jurisdiction over a car dealer from New York just because a car it sold later caught fire in Oklahoma.<sup>56</sup> While this sounds similar to both cases here, the Court made sure to differentiate between the dealer's position from Audi and Volkswagen (the car's manufacturer and nationwide importer, respectively).<sup>57</sup> The Court specifically noted that if Audi and Volkswagen's business deliberately extended into Oklahoma, then Oklahoma's courts could hold the companies accountable there, even if the vehicle in question was not made or sold in Oklahoma.<sup>58</sup> While this scenario is only dicta in *Worldwide Volkswagen*, it has appeared in several other decisions by the

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48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014)).

53. *Id.*

54. *Id.*

55. *Id.* at 1027.

56. *Id.*

57. *Id.*

58. *Id.*

Supreme Court.<sup>59</sup> *Keeton* utilized that example to show that a corporation “must reasonably anticipate being haled into [a State’s] court[s]” to defend actions based on products causing injury there, when the corporation has “continuously and deliberately exploited [that State’s] market.”<sup>60</sup> Furthermore, in *Daimler*, the Court used the Audi/Volkswagen hypothetical as a “paradigm case of specific jurisdiction.”<sup>61</sup> To “illustrate” specific jurisdiction’s “province”: A California court would exercise specific personal jurisdiction “if a California plaintiff, injured in a California accident involving a Daimler-manufactured vehicle, sued Daimler [in that court] alleging that the vehicle was defectively designed.”<sup>62</sup> Substituting Daimler with Ford, and California with Montana and Minnesota turns the “illustrative” case into these two cases.<sup>63</sup>

Analyzing under the traditional specific jurisdiction test, there is no denying that Ford “purposefully availed” themselves to both states’ markets.<sup>64</sup> Ford uses billboards, TV, radio, and print to advertise their vehicles to people in both Montana and Minnesota.<sup>65</sup> Both models in these cases are available for sale, both new and used, dealers throughout both states (36 dealerships in Montana and 84 dealers in Minnesota).<sup>66</sup> These dealers also regularly maintain and repair Ford cars and Ford distributes replacement parts to its own dealers and independent auto shops in both Montana and Minnesota.<sup>67</sup> Next, the Court looks at the relationship between Ford’s conduct in the States and its relationship to the claims in the cases.<sup>68</sup> Each suit alleges that the car accident was caused by the plaintiff’s defective Ford vehicle.<sup>69</sup> It is already established that Ford advertised, sold, and serviced both car models in their respective States, for many years.<sup>70</sup> Thus, there is a “strong relationship among the defendant, the forum, and the

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59. *Id.*

60. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 (quoting *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 297-98 (1980)).

61. *Ford*, 141 S. Ct. at 1027-28.

62. *Id.* at 1028 (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 127, n. 5 (2014)).

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*



litigation,” which is the “essential foundation” of specific jurisdiction.<sup>71</sup>

However, Ford argues that there is one complication that prevents specific jurisdiction in both cases.<sup>72</sup> Ford sold these particular vehicles outside of the forum States, with consumers later selling them to the plaintiffs.<sup>73</sup> Therefore, Ford contests that plaintiffs’ claims do not relate to the activity Ford conducts within the forum States.<sup>74</sup> First, the Court notes that this is another plea by Ford for an exclusively causal test, which is inconsistent with current case law.<sup>75</sup> Second, the assumption that the plaintiff’s purchase of the vehicle was not related to Ford’s activities within the forum State is not clear.<sup>76</sup> The plaintiff’s may have never purchased the car if not for the ads Ford ran in local media, or that there are Ford dealers or other auto shops available to service the vehicle.<sup>77</sup> While neither plaintiff has to prove the reasoning behind their purchase, it shows that there is a relationship between the vehicles in each case and Ford’s activities within each forum State.<sup>78</sup>

The Supreme Court also considers if it is fair to subject a defendant to the jurisdiction of the forum State.<sup>79</sup> The Court found it fair in both cases to subject Ford to jurisdiction in Montana and Minnesota.<sup>80</sup> Ford does a lot of business in both States, allowing Ford to “enjoy the benefits and protection of [their] laws.”<sup>81</sup> This includes contract enforcement, property defense, and effective market formation.<sup>82</sup> Therefore, it is reasonable that Ford be treated to both Montana and Minnesota jurisdiction in each case.<sup>83</sup>

Finally, the Court holds that Montana and Minnesota have significant interests at stake in each respective case.<sup>84</sup> These are residential plaintiffs seeking redress from an out-of-state defendant

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71. *Id.* (quoting *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)).

72. *Id.* at 1029.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

82. Ford, 141 S. Ct. at 1029.

83. *Id.*

84. *Id.* at 1030.

for an in-state injury.<sup>85</sup> Each State has an interest in providing a convenient forum for their residents and enforcing their own safety regulations.<sup>86</sup> Meanwhile, the States in which the vehicles were first sold (Washington and North Dakota), have little interest in each case.<sup>87</sup> In each case, both parties are out-of-state residents, and the injury occurred out-of-state.<sup>88</sup> Moving these suits to Washington and North Dakota would undermine the Due Process Clause's "jurisdiction-allocating function."<sup>89</sup>

Justice Kagan made sure to distinguish *Ford* from both *Bristol-Myers* and *Walden*.<sup>90</sup> When looking at *Bristol-Myers*, Justice Kagan emphasized that the reason the forum did not have jurisdiction was because there was no connection between the forum State and the nonresident plaintiffs' claims.<sup>91</sup> However, in *Ford*, the plaintiffs were residents of the forum State and the claim stemmed from accidents occurring in the forum State.<sup>92</sup> *Walden* had little to do with *Ford* because *Walden* challenges specific jurisdiction under the purposeful availment prong.<sup>93</sup> Justice Kagan made the distinction that while the plaintiffs' contacts with the forum cannot create the defendant's contacts with the forum, that does not mean that the plaintiff's contacts are meaningless in the assessment of the relationship between the defendant, forum, and claims.<sup>94</sup>

#### IV. IMPLICATIONS OF *FORD*

The Court's holding was a step in the right direction in expanding the scope of personal jurisdiction. However, some questions still remain in its application. The Court has instituted a relatedness test to connect the defendant's contacts within the forum State with the plaintiff's claims, but gave no guidelines to apply the test.<sup>95</sup> Justice Kagan insisted "the phrase 'relate to' incorporates real limits," but the

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85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. Jeremy Jacobson, *Getting "Arising Out of" Right: Ford Motor Company and the Purpose of the "Arising Out of" Prong in the Minimum Contacts Analysis*, 97 N.Y.U. L. REV. 315, 351 (2022).

91. *Id.*

92. *Ford*, 141 S. Ct. at 1031.

93. *Id.*

94. Jacobson, *supra* note 89, at 351.

95. Jacobson, *supra* note 89, at 352.

Court did not issue any sort of guidance as to those limitations because *Ford* was commonsensical.<sup>96</sup>

A month after the Court's decision in *Ford*, the relatedness standard had been tested in lower courts over thirty times.<sup>97</sup> District courts in the Third, Ninth, and Eleventh Circuits have seemingly abandoned their previous causation-only approaches.<sup>98</sup> However, in the Eleventh Circuit, plaintiffs litigating a suit concerning the drug Zantac petitioned the court to reverse its decision to deny personal jurisdiction under the "but for" causation standard rejected in *Ford*.<sup>99</sup> The court denied the motion, noting that Justice Kagan stated "[t]he phrase 'relate to' incorporates real limits, as it must to adequately protect defendants foreign to a forum."<sup>100</sup> There is no evidence as to whether the court was simply rephrasing its "but for" standard, or applied a new "relatedness" test.<sup>101</sup> Meanwhile, in the First and Seventh Circuits, the test already accounted for a general "nexus between [plaintiffs'] claims for relief and defendants' forums-based activities", so the existing precedent survived.<sup>102</sup> The Sixth's Circuit test uses the phrase "arising under," but it has interpreted it to mean "relates to", so *Ford*'s effect remains "unclear."<sup>103</sup>

This new relatedness standard also leaves an important, modern issue for the lower courts to solve: how to apply specific jurisdiction in light of the internet.<sup>104</sup> Since this case did not raise an issue regarding an internet vendor, the Court did not address how to apply specific jurisdiction to a defendant who sold the plaintiff a product online.<sup>105</sup> In *Ford*, Justice Kagan proposed a similar hypothetical, "so consider, for example, a hypothetical offered at oral argument. '[A] retired guy in a small town' in Maine 'carves decoys' and uses 'a site on the

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96. Jacobson, *supra* note 89, at 352 (quoting *Ford*, 141 S. Ct. at 1026).

97. Jacobson, *supra* note 89, at 352-53.

98. Andrew Tauber & Lauren Gailey, "What Goes" for Personal Jurisdiction After *Ford Motor Co.*?, Washington Legal Foundation (July 13, 2021), <https://www.wlf.org/2021/07/13/wlf-legal-pulse/what-goes-for-personal-jurisdiction-after-ford-motor-co/>.

99. Alison Frankel, *Zantac Generics Plaintiffs Hope SCOTUS Ford Decision Rescues Claims Against Brand-Name Makers*, Reuters (Apr. 27, 2021, 4:57 PM), <https://www.reuters.com/article/us-otc-zantac/zantac-generics-plaintiffs-hope-scotus-ford-decision-rescues-claims-against-brand-name-makers-idUSKBN2CE2NX>.

100. Jacobson, *supra* note 89, at 353.

101. Jacobson, *supra* note 89, at 353.

102. Tauber & Gailey, *supra* note 97.

103. Tauber & Gailey, *supra* note 97.

104. Jacobson, *supra* note 89, at 353.

105. Jacobson, *supra* note 89, at 353.

Internet' to sell them.”<sup>106</sup> Similarly, social media poses its own specific jurisdiction issues.<sup>107</sup> A person can post defamatory comments about a person in another state on social media.<sup>108</sup> This is an intentional tort just like battery, or trespassing with the only difference being that the commentator never stepped foot in the forum.<sup>109</sup> Should the injured party not be able to bring suit in the State they reside in, just because the tort occurred over the internet?<sup>110</sup> These are just several modern specific jurisdiction issues that the Court still needs to answer.

### CONCLUSION

The Court made the right decision in holding that Ford had specific personal jurisdiction in both Montana and Minnesota. The Court has finally addressed the relationship between the defendant's conduct within the forum State and the plaintiff's claims. In both cases, the accidents involved in the products liability claims occurred within the forum States, and Ford did not contest that it had “purposefully availed” itself to litigation in both forum States.<sup>111</sup> However, Ford did not design, manufacture, or sell the particular vehicles involved in the accidents in the forum State.<sup>112</sup> Therefore, Ford argued that the lack of a causal relationship between the defendant's conduct in the forum States and the plaintiff's claims meant there was no specific jurisdiction.<sup>113</sup> A unanimous court rejected this argument, arguing that there must be a sufficient relationship between the defendant's conduct in the forum State and the plaintiff's claim, but it does not have to be strict causation.<sup>114</sup> This has created uniformity within the circuit courts, however it has still left many specific jurisdiction questions unanswered. For example, the Court failed to provide any guidance to determine what constitutes a sufficient relationship to meet specific jurisdiction. The

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106. Ford Motor Co. v. Montana Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1029 n.4 (2021).

107. Gregory C. Cook & Andrew R. D'Entremont, *No End in Sight? Navigating the “Vast Terrain” of Personal Jurisdiction in Social Media Cases After Ford*, 73 ALA. L. REV. 621, 622 (2022).

108. *Id.* at 635.

109. *Id.*

110. *Id.*

111. Ford, 141 S. Ct. at 1026.

112. *Id.* at 1023.

113. *Id.* at 1026.

114. *Id.* at 1033.

Court has also continued to evade addressing modern commerce concerns, particularly internet vendors and social media.

