

STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

07-119

STATE OF LOUISIANA

VERSUS

RAPHAEL VALLOT, ET AL.

EZELL, J., dissenting.

I disagree with the majority in finding that RV and Son Trucking should not also be held as a responsible party for the civil forfeiture judgment. I find that there is a preponderance of evidence that RV and Son Trucking had knowledge and participated in a scheme to transport cocaine. As vice-president of the corporation, Dexter was able to use corporate assets to further his interest, which in turn is a financial advantage to his own company.

Tort law has found companies liable for the wrongful actions of a corporate officer when the employment is shown to be employment-rooted, but not necessarily exclusively so, and it should be reasonably incidental to the performance of his official duties. *Miller v. Keating*, 349 So.2d 265 (La.1977). “The fact that the predominant motive of the servant is to benefit himself or a third person does not prevent the act from being within the scope of employment.” *Ermert v. Hartford Ins. Co.*, 559 So.2d 467, 477 (La.1990).

The problem of determining the scope of executive employment often arises in intentional tort cases, in which the court must determine if the executive’s intentional wrongful act is attributable to the employer. While there is no black letter rule on when liability should attach in such situations, this court and others have generally imposed responsibility upon the business enterprise where the conduct in

question was at least partially motivated by an intent to serve the interests of the business.

Id.

As noted by the supreme court in *Ermert*, an assault and attempted murder of the corporation's former vice-president by the corporate president in *Miller* was in large part, although perhaps not exclusively, motivated by the president's desire to improve the company's financial position, so the conduct was found to be within the scope of his employment.

In a forfeiture case in Pennsylvania, the court held that the knowledge of a corporate president's use of a corporate motor vehicle to transport cocaine is properly imputed to the corporation since he had direct control over the vehicle and he himself represented the corporation in executing the vehicle registration and application for title. *Court of Common Pleas of Pennsylvania, Montgomery County, Commonwealth v. One 1978 Porsche Coupe*, 23 Pa. D & C.3d 268 (1981).

The Peterbuilt truck used to transport the drugs was leased by RV and Son Trucking a few months before the transportation of the cocaine began. It had an RV and Son Trucking insignia on it. Dexter, as vice-president of the corporation, altered the truck to facilitate the transport of cocaine. He did so on corporate property during business hours. An employee testified that he was present when the sleeper compartment was altered and that he helped. He was told that it was going to be used to pick up some "dope."

Dexter testified that RV and Son Trucking did not invest any money to purchase the cocaine and that it was not going to profit from the sale of the cocaine. The testimony indicates that it was Dexter who was going to receive the money for transporting the cocaine and that there may have also been a need to repay a debt to Pedro Ramos. However, Dexter's connection with RV and Son Trucking as vice president allowed him the opportunity to utilize the corporation and its assets to

facilitate the transportation of the cocaine and receive a transportation fee which benefitted him as vice president of the corporation.

The specific truck used was leased from Kenneth Washington, the man who introduced Dexter to Pedro, by Raphael Vallot. This specific truck had to be used to transport the cocaine because it had a special license plate that it allowed to travel out of state. None of the other trucks had the apportioned plate.

Clearly, RV and Son Trucking was involved with the scheme to transport the cocaine. The business was used to lease a particular truck. This could have only been arranged by an officer of the corporation. Furthermore, the vice president of the company actually used the employee and facilities of the company to further the endeavor. The vice president of the company was the person driving the leased company truck when it was stopped. The company should be held responsible.