

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	FIFTH JUDICIAL CIRCUIT
)	Civil Action No. 2022-CP-40-000830
BRON CORNETT,)	
)	
)	
Plaintiff,)	
)	
vs.)	
)	
UNITED SERVICES AUTOMOBILE)	
ASSOCIATION D/B/A USAA,)	
)	
Defendant.)	

**ORDER GRANTING
SUMMARY JUDGMENT**

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SC Court of Appeals

On September 19, 2024, the Court heard Defendant United Services Automobile Association’s (“USAA’s”) Motion for Summary Judgment. Present at the hearing were Kennedy Ezekiel, on behalf of the Plaintiff, and Robert Whelan, on behalf of the Defendant. After considering the briefs, authorities, and arguments submitted by both parties, and for the reasons stated below, USAA’s motion is GRANTED.

Facts in the light most favorable to the Plaintiff

The facts presented to the Court were largely undisputed, and are stated below in the light most favorable to the Plaintiff.

A. The Collision

On April 10, 2021, Bron Cornett was driving his Ford Mustang on Two-Notch Road in Columbia, South Carolina. (Complaint ¶ 15). “As Plaintiff Cornett approached a traffic light outside of a shopping center ... a white four-door sedan cut directly into Plaintiff Cornett’s Lane, striking the front of Plaintiff Cornett’s vehicle.” (Complaint ¶ 17). John Kingkade (“Kingkade”), and his wife, Krystal Kingkade, were the driver and passenger, respectively of the white sedan. (Complaint ¶ 29). The collision left a white smudge mark on Cornett’s Ford, and Cornett testified the paint was cracked under and around the smudge mark. Cornett testified he was not injured in

this collision.

B. The 3-mile drive

After the collision, Cornett followed Kingkade's Mercedes for about three miles. During this three-mile drive, the vehicles passed through approximately seven traffic lights, as Cornett "was trying to catch up to [Kingkade] just to get the insurance, license plate, stuff like that." (Cornett Deposition, p., 40:02-06).

C. The Dollar Tree

About-three miles from the accident scene, Cornett "finally caught up to [Kingkade at a traffic light]. That's when I got next to him." (*Id.* 40:23-41:2) Cornett honked to get Kingkade's attention and said "Hey, you hit my vehicle." (*Id.* 44:02-09) Kingkade then turned off of Two-Notch Road and turned into a nearby Dollar Tree parking lot. Cornett followed Kingkade, parking behind him at the Dollar Tree.

The events at the Dollar Tree were captured on video, which video was referenced by both parties in their briefing, and viewed by the Court at the hearing. When the vehicles parked, Cornett's grey Ford was parked behind Kingkade's white Mercedes, with the vehicles facing in the same direction.

D. First Confrontation

In the Dollar Tree parking lot, the vehicles were placed in park, though both vehicles remained running. Upon parking the Mercedes, Kingkade exited his vehicle and walked back toward Cornett's Ford. At approximately the same time, Cornett exited the Ford and stood between the Ford's body and its open driver's side door. The men talked next to the Ford for several seconds. After speaking with Cornett outside of the Ford, Kingkade turned and walked back to the Mercedes, where he took off his shirt.

E. Door Kick

After taking off his shirt next to the Mercedes, Kingkade ran back to the Ford, where he kicked the Ford's driver side door. Cornett was standing behind the door that was kicked, but was not injured by the kick. (*Id.* 52:11-13)

F. Second Confrontation

After Kingkade kicked the Ford's door, he moved away from the Ford and Cornett, in the direction of the Mercedes. Cornett simultaneously walked from behind the Ford's door, away from the Ford and towards Cornett. (Cornett Dep, p. 69:05-06). Kingkade retreated, maintaining a fighting posture. Both men then stood in a fighting posture adjacent to Kingkade's vehicle. However, Cornett decided "F that," and walked back to his Ford, where he stood outside it and through its open window told his girlfriend, Elana Vawter, who was a passenger in the Ford, to call the cops. (*Id.* 69:22-70:06). Vawter called the police about seven times but they never answered. (*Id.* 47:08-19)

G. Third Confrontation

After Cornett retreated to the Ford, Kingkade walked between the Mercedes and the Ford, and walked away from Cornett as he pointed at Cornett and yelled at him. As Kingkade walked away, Cornett left the Ford and chased after Kingkade. In the meantime, Kingkade's wife turned the Mercedes around and parked it two to three car lengths in front of the Ford, with the vehicles now facing each other, and exited the vehicle.

Cornett and Kingkade then confronted each other between the cars, standing inches apart for several seconds, after which, Kingkade disengaged and walked back toward the parked Mercedes. Cornett then followed Kingkade to the Mercedes, and walked toward the rear of the Mercedes where he intended to photograph its license plate.

H. Fourth Confrontation and Assault

According to Cornett, he went behind the car to photograph the license plate when Mrs.

Kingkade “snatched it” out of his hand. (Cornett dep., 53:17-18) During this time, Kingkade continued to hurl racial obscenities toward Cornett and Mrs. Kingkade was also making racial hate speech. (*Id.* 53:19-54:01) Cornett testified he pushed Mrs. Kingkade after she took his phone, and then within a “couple of seconds,” Kingkade “came up behind me and started hitting me and everything.” (*Id.* 55:08-17) Cornett agreed that Kingkade did not push Cornett “into the car or anything like that.” (*Id.* 56:14-25) The Kingkades assaulted both Cornett and Vawter and took both of their cell phones.

I. Aftermath

Following the assault, the assailants “fled the scene in their vehicle,” and threw Cornett and Vawter’s cell phones into the woods, but were ultimately apprehended by law enforcement. (Compl. ¶ 28-29). As a result of Kingkade’s assault behind the Mercedes, Cornett sustained serious injuries to his leg, including a complete anterior cruciate ligament tear, a partial posterior cruciate ligament tear, and dislocated proximal end of his left tibia, all requiring surgical repairs.

J. The Subject Policy

Cornett’s Ford Mustang was insured by an automobile insurance policy issued by USAA, which included uninsured motorist coverage for damages arising “out of the ownership, maintenance, or use” of an uninsured motor vehicle. The Mercedes operated by the Kingkade’s was uninsured at the time of the assault.

Legal Standard

“If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law,” summary judgment is proper. *Traynum v. Scavens*, 416, S.C. 197, 786 S.E.2d 115, 117 (2016). Whether an insurance contract extends coverage to a particular event is a question of law that this Court may decide. *Williams v. Gov’t Emps. Ins. Co.*,

409 SC. 586, 762 S.E.2d 705, 709 (2014).

Analysis

I. USAA is Entitled to Summary Judgment on Plaintiff’s First and Second Causes of Action.

Plaintiff’s causes of action for declaratory judgment and breach of contract seek recovery under his uninsured motorist coverage for injuries sustained in the assault. To recover under an automobile insurance policy’s uninsured motorist coverage, the insured’s damages must “arise out of the ownership, maintenance, or use” of the uninsured motor vehicle. S.C. Code Ann. § 38-77-140 (2015). A three-prong test is used to determine whether an insured meets that requirement: (1) the party seeking coverage must establish a causal connection between the injury and the uninsured vehicle, (2) there is no act of independent significance which breaks the chain of causation, and (3) the uninsured vehicle must have been used for transportation at the time. *Progressive Direct Ins. Co. v. Groves*, 438 S.C. 26, 882 S.E.2d 464, 466 (S.C. 2022) (quoting *State Farm Fire & Casualty Company v. Aytes*, 332 S.C. 30, 503 S.E. 2d 744 (S.C. 1998)).

A. There is no causal connection between the Mercedes and Cornett’s injuries.

To meet the “causal connection” requirement, the plaintiff must show (a) the vehicle was an “active accessory” to the assault, (b) “something less than proximate cause and something more than the vehicle being the mere site of the injury,” and (c) an injury “foreseeably identifiable with the normal use of the vehicle.” *Aytes*, 332 S.C. at 33, 403 S.E.2d at 745–46 (citations omitted); cf. *State Farm Mut. Auto. Ins. Co. v. Bookert*, 337 S.C. 291, 293, 523 S.E.2d 181, 182 (1999) (discussing the test). If plaintiff cannot establish any one of these “*Aytes* requirements,” *Doe v. S.C. State Budget & Control Bd., Off. Of Ins. Servs., Ins. Rsrv. Fund (Doe II)*, 337 S.C. 294, 523 S.E.2d 457, 458 (1999), summary judgment is appropriate. The Court finds that these facts do not satisfy any of the three “causal connection” prongs.

(1) *The Mercedes was not an active accessory to Kingkade's assault on Cornett.*

The Mercedes was neither active, nor was it an accessory to Kingkade's assault of Cornett. At the time of the assault, the Mercedes was parked and no one was inside. All parties to the assault were outside of the vehicle, and they did not make contact with the vehicle during the assault. True, Cornett was photographing the Mercedes's license plate just before the assault, but that does not make the Mercedes either active or an accessory. Only after Cornett photographed the license plate, Mrs. Kingkade stole Cornett's phone, and Cornett pushed Mrs. Kingkade, did the assault occur.

At most, the Mercedes served as transportation to and from the scene of the assault. This does not make it an active accessory. *See, Aytes* at 746 ("the vehicle was not an active accessory" where vehicle used by uninsured motorist who "drove [victim] to an area ... with the expressed intent of killing [victim].") vehicle is not an active accessory to the assault unless it somehow "serve[s] as a launching pad for the assault[.]"; *Travelers Indem. Co. v. Auto World of Orangeburg, Inc.*, 334 S.C. 137, 511 S.E.2d 692, 699 (Ct. App. 1999) (where cars were used to drive to location of shooting, pull to the side of the road, and then leave the scene after the shooting, "the vehicles were not 'active accessories'"); *Holmes v. Allstate Insurance Co.*, 786 F. Supp. 2d 1022 (D.S.C. 2009) (same); *GEICO v. Bland*, No. 2:19-cv-0820, 2019 WL 6463792, at *2 (D.S.C. Dec. 2, 2019) (same); *Progressive Direct Ins. Co. v. Groves*, 438 S.C. 26, 882 S.E.2d 464, 469 (2022) (no causal connection where uninsured vehicle used to drive up next to victim, shoot her, and then drive away).

(2) *The Mercedes was not the "mere site" of Cornett's injuries.*

A plaintiff must show "something more than the vehicle being the mere site of his injuries." *Aytes*, 403 S.E.2d at 745–46 (citations omitted). That is plainly impossible where, as here, no vehicle was the site of the injury. Rather, Cornett was injured when he was standing behind the

Mercedes trying to photograph its license plate. After he was attacked, he “end[ed] up on the ground” with Kingkade on top of him. (Cornett dep., 20:16-18). Kingkade and Cornett did not hit the car, and they “both went straight down” when Cornett was attacked. (*Id.*, 56:14-22). Accordingly, the Mercedes was not the site of Cornett’s injuries.

(3) *Cornett’s injuries were not foreseeably identifiable with a vehicle’s normal use.*

Injuries at the hands of an attacker are not foreseeably identifiable with a vehicle’s normal use. *See, e.g., Wright v. North Area Taxi, Inc.*, 337 S.C. 419, 523 S.E.2d 472 (Ct. App.1999). The mere fact that some kind of injury is foreseeable is not enough—the risk of injury must be related to the use of the vehicle as a vehicle. *Id.* (noting that, even though “the potential for injury to taxi drivers [at the hands of a mugger] is foreseeably identifiable[,]” such a danger is “inherent in the occupation[,]” not in the use of a car as a car) (emphasis added).

Here, Cornett’s injuries are not foreseeably identifiable with a vehicle’s normal use. Cornett’s injuries were not caused by the mechanical force associated with the use of a vehicle—they were caused by human hands and feet. In fact, Cornett’s injuries from hand-to-hand combat are similar to injuries that have occurred for millennia before the existence of the automobile. Cornett testified that when he was cut off or even when he followed Kinkade into the Dollar Tree, Cornett had no idea that he would be assaulted. (Cornett dep, 59:20-04). His injuries do not stem from a car accident and were not foreseeably identifiable with a vehicle’s normal use.

B. Multiple acts of independent significance broke any possible causal chain.

Under *Aytes*’s second factor, a plaintiff must show that no act of independent significance breaks the causal chain between the insured vehicle and his injuries. Here, numerous acts of independent significance broke any causal chain. The first was simply Kingkade’s exiting of the vehicle. South Carolina courts have regularly held that “an assailant’s exiting an insured vehicle prior to injuring another [is] an act of independent significance breaking the causal chain.” *State*

Farm Mut. Auto. Ins. Co. v. Goyeneche, 429 S.C. 211, 224, 837 S.E.2d 910, 916 (Ct. App. 2019); *see also*, *Aytes*, 332 S.C. at 35, 503 S.E.2d at 746 (“[I]f there was a causal link, it was broken when the assailant exited the vehicle.”); *Carraway v. Smith by S.C. Ins. Co.*, 321 S.C. 23, 26, 467 S.E.2d 120, 121 (Ct. App. 1995) (“Smith exited the car and carried on a conversation with a third person for several minutes before the shooting occurred. Even if the use of the car and the shooting were connected, that link was broken by Smith's actions.”); *Travelers Indem. Co. v. Auto World of Orangeburg, Inc.*, 334, S.C. 137, 511 S.E.2d 692, 699 (Ct. App. 1999) (“Assuming arguendo a causal link existed, the causal link was broken when the assailant exited the vehicle being driven by him.”); *see also*, *Nationwide Mut. Fire Ins. Co. v. Jeter*, 2013 WL 3109214, at *5 (D.S.C. June 18, 2013) (“Once Jeter exited the vehicle, any causal connection that might have existed was broken”). Thus, Plaintiff cannot establish the second element of the *Aytes* test due to Kingkade’s exiting of the vehicle.

Additionally, Kinkade’s racially motivated assault was an act of independent significance that broke the causal change. Cornett testified that after Kingkade exited the vehicle his demeanor all of the sudden changed” “and this racist personality came out.” (Cornett dep. 50:16-22).

That's when he took his shirt off, eyes just wide like he was on drugs.
That's exactly what it seemed like. He kicked my door and it was just, he was a whole different person. He didn't seem like the person that I was just talking to at the light. It seemed like him on rabies. It was crazy.

(*Id.* 50:23-51:04) Cornett testified he believed Kinkade’s actions after he exited the vehicle were racially motivated. He testified that Kingkade “was definitely racist. It was racially motivated.” And Cornett agreed that if Cornett had been white, “this would not have happened.” (*Id.* 50:04-12). Clearly, a racially motivated hate crime occurring after the tortfeasor exits the vehicle is an act of independent significance that breaks the causal chain. *See, e.g., Doe v. S.C. State Budget & Control Bd.*, 329 S.C. 214, 494 S.E.2d 469, 472 (Ct. App. 1997) (finding that police officer’s assaults of plaintiffs were acts of independent significance); *Progressive Direct Ins. Co. v. Groves*,

882 S.E.2d at 468 (shooting is an act of independent significance).

Additionally, a plaintiff's own actions may carry independent significance, and Cornett's decision to follow Kingkade for three miles, engage in several confrontations with Kingkade after Cornett began to fear for his safety and after Kingkade disengaged, Mrs. Kingkade's stealing of Cornett's phone, as well as Cornett's pushing of Mrs. Kingkade before the assault, all qualify as acts of independent significance. *Doe v. S.C. State Budget & Control Bd.*, 523 S.E.2d at 458 ("the [plaintiffs'] acceptance of [the officer]'s offers were acts of independent significance which broke any causal link.")

C. The Mercedes was not being used at all, much less for transportation, at the time of the assault.

The third *Aytes* factor also forecloses Cornett's claim for UM benefits. Under *Aytes*, Kingkade's vehicle would have to be "used for transportation at the time of the injury." At the time Kingkade assaulted Cornett, Kingkade's vehicle was parked and stationary. No one was inside the vehicle. Neither Cornett nor Kingkade made contact with the vehicle at the time of the assault. (Cornett dep. 56:14-25). Cornett agreed in sworn testimony the vehicle "was not being used for transportation" and "was not being used at all at the time you were assaulted." (*Id.* 62:18 - 63:07).

Under South Carolina law, a car parked next to an altercation is not being "used for transportation at the time" of injuries resulting from the altercation. In fact, even had the assault taken place inside of the Mercedes, Cornett would fail the *Aytes* factors because using a vehicle for an assault is not a "transportation use" of the vehicle. Numerous cases have so held. In *Aytes*, where the victim was shot while sitting in the passenger seat of the subject automobile, it was held not "being used for transportation at the time of the injury." Additionally, where sexual assaults occurred on the hood of a police cruiser and in the back seat, "the cruiser was not being used for

transportation at the time of the assaults.” *Doe*, 523 S.E.2d at 458; *see also*, *Wright*, 523 S.E.2d at 472 (the vehicle served merely as the situs of shooting as opposed to an instrumentality that furthered the cause of the assailants); *Nationwide Prop. & Cas. Co. v. Lain*, 402 F. Supp. 2d, 644, 650 (D.S.C. 2005) (when an assault occurred after the vehicle had been placed in park, although in the back seat, “at the time of the injury ... the vehicle was not being used for transportation.”)

Because the Mercedes was not being used for transportation at the time of Cornett’s injuries, he is not entitled to uninsured motorist coverage under South Carolina law.¹

II. USAA is entitled to summary judgment as to Plaintiff’s third and fourth causes of action.

Plaintiff’s last two causes of action seek to hold USAA liable for insurance bad faith because “it is clear that Plaintiff Cornett’s injuries were the result of an incident involving an uninsured motor vehicle.” (Compl. ¶ 88)

“Under South Carolina law, an insurer acts in bad faith when there is no reasonable basis to support the insurer’s decision.” *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 594 S.E.2d 455, 462 (2004) (affirming trial court’s decision to grant insurer’s motion for summary judgment on plaintiff’s bad faith claim) (*citing* *Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996)). When there is no coverage for the claim, an insurer cannot have acted in bad faith in refusing to pay the claim. *BMW of North America v. Complete Auto Recon Services*, 399 S.C. 444, 731 S.E. 2d 902 (Ct. App. 2012). Moreover, even if there was coverage, if there is a reasonable ground for the insurer’s decision to deny the claim,

¹ Similarly, Plaintiff’s claim for stacking of coverage fails. Even if the Court were to determine that Cornett’s injuries arose out of the use of *Kingkade*’s vehicle as discussed above, stacking would only be permitted if *Cornett*’s vehicle were involved in the accident. S.C. Code. § 38-77-150. There is no plausible claim that Cornett’s vehicle—which remained parked and stationary for over a minute before the assault—had any involvement in the assault. Accordingly, no stacking is available for the assault.

there is no bad faith. *Helena Chem. Co.*, 594 S.E.2d at 462 (citing *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 415 S.E.2d 393, 397 (S.C. 1992)).

Here, USAA made the determination that a physical assault that occurred outside of a parked and unoccupied vehicle did not arise out of the use of an automobile. As explained above, this determination is well-supported by the law of this state and serves as a reasonable basis to deny the plaintiff's claim. Additionally, USAA retained counsel and obtained and relied upon the advice of counsel in making this decision. Counsel surveyed the law of the state and the facts alleged by plaintiff and concluded there was no coverage.

Because USAA had a reasonable basis for its denial, USAA is entitled to summary judgment on plaintiff's third and fourth causes of action.

Conclusion

For the foregoing reasons, the Court grants USAA's motion for summary judgment as to all of Plaintiff's causes of action.

AND IT IS SO ORDERED.



Richland Common Pleas

Case Caption: Bron Cornett vs United Services Automobile Association , defendant,
et al
Case Number: 2022CP4000830
Type: Order/Summary Judgment

So Ordered

s/ Thomas W. McGee III, Judge Code 2786