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**May 27 2025**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

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APPEAL FROM RICHLAND COUNTY  
In the Court of Common Pleas

The Honorable Thomas W. McGee, III, Circuit Court Judge

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Case No. 2022-CP-40-000830  
Appellate Case No. 2025-000028

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Bron Cornett. . . . . Appellant  
v.

United Services Automobile Association  
D/B/A USAA. . . . . Respondent

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**RECORD ON APPEAL**

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|                            |   |                                    |
|----------------------------|---|------------------------------------|
| 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.                        | ) | <b><u>ORDER GRANTING</u></b>       |
|                            | ) | <b><u>SUMMARY JUDGMENT</u></b>     |
| UNITED SERVICES AUTOMOBILE | ) |                                    |
| ASSOCIATION D/B/A USAA,    | ) |                                    |
|                            | ) |                                    |
| Defendant.                 | ) |                                    |

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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 Kingcade'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 [Kingcade] 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 [Kingcade at a traffic light]. That's when I got next to him." (*Id.* 40:23-41:2) Cornett honked to get Kingcade's attention and said "Hey, you hit my vehicle." (*Id.* 44:02-09) Kingcade then turned off of Two-Notch Road and turned into a nearby Dollar Tree parking lot. Cornett followed Kingcade, 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 Kingcade'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, Kingcade 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, Kingcade 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.<sup>1</sup>

## **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,

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<sup>1</sup> 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

Electronically signed on 2024-10-28 10:34:50 page 12 of 12

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Richland  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP4000830

Bron Cornett  
PLAINTIFF(S)

United Services Automobile Association et al  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion to Reconsider and Defendant's Response to the Motion to Reconsider were received by Judge McGee on 11/13/24. After reviewing all filings and other evidence properly before the Court, Plaintiff's Motion is respectfully denied.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/23/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Richland Common Pleas

**Case Caption:** Bron Cornett vs United Services Automobile Association , defendant,  
et al

**Case Number:** 2022CP4000830

**Type:** Order/Electronic Form 4

So Ordered

s/ Thomas W. McGee III, Judge Code 2786

Electronically signed on 2024-12-23 11:25:02 page 3 of 3

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
Bron Cornett, )  
) )  
Plaintiff, )  
) )  
v. )  
) )  
United Services Automobile Association )  
d/b/a USAA, )  
) )  
Defendant. )  
\_\_\_\_\_ )  
TO THE DEFENDANT ABOVE-NAMED:

IN THE COURT OF COMMON PLEAS  
FOR THE 5<sup>th</sup> JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2022-CP-40 \_\_\_\_\_

**SUMMONS**  
**(Jury Trial Demanded)**

YOU ARE HERBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgement by default will be rendered against you for the relief demanded in the complaint.

Columbia, South Carolina

Respectfully Submitted,

s/Bakari T. Sellers  
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February 15, 2022

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Bron Cornett,

Plaintiff,

v.

United Services Automobile Association  
d/b/a USAA,

Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE 5<sup>th</sup> JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2022-CP-40\_\_\_\_\_

**COMPLAINT**  
**(Jury Trial Demanded)**

**INTRODUCTION**

1. This matter arises out of a motor vehicle accident (“the underlying incident”) that occurred on April 10, 2021. Ultimately, the responsible at-fault driver was determined to be uninsured.

2. Thereafter, Plaintiff Bron Cornett (“Plaintiff,” “Plaintiff Cornett”) sought coverage for his injuries through his uninsured motorist coverage, provided by Defendant United Services Automobile Association (“Defendant USAA”), including cooperating with Defendant USAA through its claim investigation.

3. On November 5, 2021, Defendant USAA issued a denial to Plaintiff Cornett, stating that it would not pay benefits to Plaintiff Cornett because the “injuries do not arise out of the ownership, maintenance, or use of a vehicle.” (See **Exhibit A**, Defendant USAA Letter Denying Coverage, Nov. 5, 2021).

4. Accordingly, Plaintiff Cornett has initiated this action to interpret the terms of his insurance contract, and for damages resulting from Defendant USAA’s (“Defendant USAA”) bad faith denial under Plaintiff Cornett’s uninsured motorist coverage.

**PARTIES**

5. At all times relevant to this complaint, Plaintiff Cornett has been a citizen and resident of Columbia, South Carolina, in Richland County, and a named insured under a policy issued by Defendant USAA, Policy No.56359-0715\_06 (“the Policy”).

6. At all times relevant to this complaint, Defendant United Services Automobile Insurance d/b/a USAA (“Defendant USAA”) has been a privately owned for-profit company offering insurance and investment products to members of the United States military, their spouses, children, and pre-commissioned officers.

7. At all times relevant to this complaint, Defendant USAA has been organized and existing pursuant to the laws of Texas, but has written and issued policies throughout the United States, including South Carolina.

8. At all times relevant to this complaint, the policy at issue in this matter was a South Carolina policy for automobile insurance, and was intended to be interpreted pursuant to the laws of South Carolina.

### **JURISDICTION AND VENUE**

9. This is an action for declaratory judgment arising pursuant to Rule 57 of the South Carolina Rules of Civil Procedure, and S.C. Code Ann. § 15-53-10, *et seq.*, the Uniform Declaratory Judgments Act.

10. In addition, this action seeks redress for Defendant USAA’s bad faith conduct, including its refusal to pay insurance benefits, in violation of applicable South Carolina law.

11. The parties to this action are all citizens of the State of South Carolina, including Defendant, an insurance company.

12. Moreover, the acts and/or omissions giving rise to the underlying incident all occurred in Richland County, and the Policy at issue is a South Carolina automobile insurance policy.

13. Venue and jurisdiction are therefore proper before this court. S.C. Code Ann. § 15-7-70.

### **FACTUAL ALLEGATIONS**

#### *A. The Underlying Incident*

14. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

15. On April 10, 2021, Plaintiff Cornett was driving on Two-Notch Road, a heavily traveled thoroughfare in Columbia, South Carolina.

16. Plaintiff Cornett was traveling with a passenger, Elena Vawter.

17. As Plaintiff Cornett approached a traffic light outside of a shopping center, where the outside lane became a turn lane into the shopping center, a white four-door sedan cut directly into Plaintiff Cornett's Lane, striking the front of Plaintiff Cornett's vehicle.

18. After striking Plaintiff Cornett's vehicle, the white-sedan sped off in front of Plaintiff Cornett, who was now driving behind the white-sedan.

19. Shortly after the initial collision, Plaintiff Cornett signaled to the white sedan to pull over to exchange information.

20. The driver of the white sedan then pulled into the parking lot of a local business.

21. When the vehicles parked, and as Plaintiff Cornett was attempting to exit his vehicle to exchange information, the other driver began to physically assault Plaintiff Cornett's vehicle and then Plaintiff Cornett.

22. Plaintiff Cornett turned to his passenger, Elena Vawter, and asked her to call the police.

23. Meanwhile, Vawter was attempting to take a photograph or video of the white sedan's license tag.

24. To avoid Ms. Vawter's camera, the passenger in the white sedan got behind the wheel and moved the car so that the rear of the vehicle was not visible to Ms. Vawter.

25. After moving the car, the passenger exited and then assaulted Ms. Vawter, grabbing Ms. Vawter's phone.

26. While these events unfolded, the driver of the white sedan and his passenger hurled slurs and racial epithets at Plaintiff Cornett, who is African America, and Elena Vawter.

27. After several minutes, the driver of the white sedan delivered a blow to Plaintiff Cornett's leg, causing Plaintiff Cornett to crumple to the ground.

28. The driver and his passenger then fled the scene in their vehicle prior to police arriving.

29. Ultimately, the driver of the white-sedan and his passenger were apprehended by police, and identified as John Kingkade, and his wife Krystal Kingkade.

30. In her interview with police, Krystal Kingkade admitted that she threw Ms. Vawter's cellphone from the moving vehicle as she and her husband fled the scene in their car.

31. During the police investigation, police relied upon and referenced video footage of the Kingkade vehicle obtained from traffic lights, including video of the initial collision, the two vehicles pulling into a parking lot, Krystal Kingkade's efforts to maneuver the vehicle during the altercation to hide the license tag, and Mr. Kingkade's attempt to flee the scene after disabling Bron Cornett.

32. In addition, through a search warrant, police obtained Mr. Kingkade's cellphone, which revealed what police described as "white supremacist propaganda".

33. Plaintiff Cornett sustained catastrophic injuries to his leg during this incident, including a complete anterior cruciate ligament tear, a partial posterior cruciate ligament tear, and dislocated proximal end of his left tibia, all of which required multiple surgical repairs.

34. In addition, because of the nature and severity of his injuries, Plaintiff Cornett was out of work for months, and still wears a brace to this day. The nerve damage to his left leg may be permanent.

*B.. The Claims Process*

35. Following this incident, Plaintiff Cornett became aware that the Kingkade vehicle was not insured at the time of this accident.

36. In fact, in its coverage evaluation, Defendant USAA determined the Kingkades had previously been insured under a number of policies, but all had lapsed at the time of this accident,

37. Meanwhile, at all times relevant to this complaint, Plaintiff Cornett was insured through a policy issued by Defendant USAA. The Policy covered three vehicles, including uninsured motorist coverage for all three vehicles.

38. To date, Plaintiff Cornett's past medical bills alone total in excess of \$200,000.

39. In addition, Plaintiff lost substantial time from work due to his injuries, and required physical accommodations to return to his previous work for the Department of Veterans Affairs.

40. It is likely that Plaintiff's continued treatment, and potentially irreparable injuries may impact his future earning capacity, and ability to engage in meaningful employment.

41. At only 23 years old, Plaintiff will bear significant future costs related to his injuries, from medical expenses, loss of future earning capacity, time associated with medical treatment, to say nothing of pain and suffering, and other categories of damages.

42. As such, on September 2, 2021, Plaintiff issued a demand for the applicable uninsured motorist coverage policy limits.

43. Upon receipt of the demand, Defendant USAA advised that Plaintiff Cornett would be required to provide a recorded statement, to which Plaintiff obliged on October 6, 2021.

44. During the recorded statement, Plaintiff Cornett once again confirmed that the incident arose out of a motor vehicle collision, and that the use of motor vehicles was fundamental throughout the incident.

45. On October 25, 2021, having heard nothing, Plaintiff inquired into the status of the claim.

46. In response, Defendant USAA, by and through a representative, stated that Defendant USAA was “in the process of reviewing and researching this matter and case law further.” (See **Exhibit B**, Email Correspondence with USAA Claims Representative, Oct. 26, 2021).

47. On October 26, 2021, Plaintiff Cornett extended the deadline for Defendant USAA to respond to Plaintiff’s demand to November 5, 2021.

48. On November 5, 2021, Defendant USAA sent a letter denying Plaintiff Cornett’s claim. (See **Exhibit A**, Letter Denying Coverage, Nov. 5, 2021) (“Denial Letter”).

49. The Denial Letter stated: “Bron Cornett’s injuries do not arise out of the ownership, maintenance, or use of a vehicle.” *Id.*

50. The Denial Letter also cited to the Policy's definition of "occupying," which according to the policy means: "in, on, getting into, or out of." *Id.*

51. Moreover, Defendant USAA does not contend that Plaintiff Cornett is not a covered person under the policy.

52. Part C of the Policy sets forth the uninsured and underinsured coverage provisions.

53. Pursuant to this coverage part, a "Covered person" includes: (1) **"You or any family member."** (2) Any other person **occupying your covered auto.** (3) Any person for damages that person is entitled to recover because of **BI** to which this coverage applies sustained by a person described in 1. *or* 2. Above. (Part C – Uninsured Motorists Coverage/Underinsured Motorists Coverage).

54. In general, reference to **BI**, means (from the Policy standpoint): (1)...bodily harm, sickness, disease, or death; (2) "Bodily Injury" does not include mental injuries such as emotional distress, mental anguish, humiliation, mental distress, or any similar injury unless it arises out of physical injury to some person. (Policy, Definitions)

55. The Policy provides coverage for the following:

**A. UM Coverage**

**1. We will pay damages which a covered person is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of:**

**a. BI sustained by a covered person and caused by an auto accident;  
and**

**b. PD to the property of a covered person.**

**2. The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the uninsured motor vehicle....**

56. The Policy does not include definitions for "accident," or "arising out of."

57. Plaintiff now seeks a determination from this Court related to his right to coverage for this incident under the Policy, and further seeks a determination that Defendant USAA's denial constitutes a bad faith denial of insurance coverage, and for all such corresponding damages.

**FOR A FIRST CAUSE OF ACTION**  
**(Declaratory Judgment)**

58. Plaintiff repeats the preceding paragraphs as though repeated verbatim herein.

59. At all times relevant to this complaint, Plaintiff has been an insured and covered person under the Policy, issued by Defendant USAA.

60. At all times relevant to this complaint, the Policy provided uninsured motorist coverage for bodily injuries sustained by a covered person arising out of the ownership, maintenance or use of an uninsured motor vehicle.

61. While the Policy does not define "accident" or "arising out of," in general, South Carolina has determined that an injury "arises out of" the ownership, maintenance or use of a vehicle if (1) a causal connection exists between the vehicle, and the injury; and (2) no act of independent significant breaks the causal link; and (3) the vehicle is being used for transport at the time of the assault. *See State Farm Mut. Auto. Ins. Co. v. Bookert*, 337 S.C. 291, 293, 523 S.E.2d 181, 182 (1999); *Progressive Direct Ins. Co. v. Groves*, 431 S.C. 203, 211, 847 S.E.2d 114, 118 (Ct.App. 2020).

62. This incident arose out of a collision between Plaintiff Cornett's vehicle, and the Kingkade's vehicle.

63. Following the initial collision, Plaintiff Cornett and the Kingkades drove their vehicles to the same location to, in Plaintiff Cornett's reasonable estimation, exchange insurance information.

64. Plaintiff Cornett and John and Krystal Kingcade were in the same place at the same time due to the use of motor vehicles.

65. John Kingcade began the assault by kicking Plaintiff's car, resulting in damage.

66. When Plaintiff Cornett was assaulted, Krystal Kingcade was still in the Kingcade's vehicle, and purposefully maneuvered the vehicle to avoid detection.

67. Following John Kingcade's assault on Plaintiff Cornett, the Kingkades fled the scene in their motor vehicle, in an attempt to avoid authorities, and threw Elena Vawter's cellphone from the window of a moving vehicle in an effort to destroy evidence of the Kingcade's participation in the assault.

68. S.C. Code Ann. § 15-53-30 provides that:

Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

69. Pursuant to the facts and circumstances of this case, Plaintiff Cornett is entitled to a declaration by this Court that the underlying incident arises out of the ownership, use or maintenance of a motor vehicle.

70. Pursuant to the facts and circumstances of this case, Plaintiff Cornett is entitled to a declaration that this incident is a covered incident under the Policy.

71. Pursuant to the facts and circumstances of this case, Plaintiff Cornett is entitled to a declaration that bodily injury related to this incident is subject to coverage under the Policy.

72. Pursuant to the facts and circumstances of this case, Plaintiff Cornett is entitled to a declaration that Plaintiff Cornett is authorized to stack coverage from multiple vehicles for his bodily injury arising out of the ownership, use or maintenance of an uninsured motorist vehicle.

73. Pursuant to the facts and circumstances of this case, Plaintiff Cornett is entitled to a declaration that Defendant USAA breached its contract with Plaintiff Cornett in failing to provide, and/or denying coverage to Plaintiff Cornett related to his injuries arising out of this motor vehicle accident.

74. As such, Plaintiff requests that this Court declare his rights pursuant to the Policy and for such costs, including attorney's fees as are necessary for this action.

**FOR A SECOND CAUSE OF ACTION**  
**(Breach of Contract)**

75. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

76. At all times relevant to this complaint, the Policy constituted a duly executed and binding contract between Plaintiff Cornett and Defendant USAA.

77. Pursuant to its terms, the Policy provided coverage for bodily injury arising out of accidents with uninsured motorists, when those injuries resulted from the ownership, use, or maintenance of the uninsured vehicle.

78. As set forth herein and above, on April 10, 2021, Plaintiff Cornett sustained grievous bodily injuries resulting from an incident arising out of the ownership, use, or maintenance of an uninsured vehicle.

79. Despite the nature of Plaintiff's injuries, and the facts leading to those injuries, on November 5, 2021, Defendant USAA notified Plaintiff of its refusal to pay benefits under the Policy.

80. Such refusal constitutes a violation of the insurance contract by and between Plaintiff Cornett and Defendant USAA.

81. Plaintiff therefore asks for a declaration that Defendant USAA's refusal to pay benefits constitutes a breach of contract, and further seeks an order from this Court for damages

associated with Defendant USAA's breach of contract, including payment of benefits, as well as for the costs, including attorney's fees, associated with this complaint, and for all such additional damages resulting from this breach of contract as the Court deems proper.

**FOR A THIRD CAUSE OF ACTION**  
**(Breach of the Covenant of Good Faith and Fair Dealing)**

82. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

83. At all times relevant to this complaint, the Policy constituted a duly executed and binding contract between Plaintiff Cornett and Defendant USAA.

84. Pursuant to South Carolina law, every contract contains an implied covenant of good faith and fair dealing that neither party will do anything to injure the rights of the other party to receive benefits under the agreement.

85. Defendant USAA has refused to pay benefits to Plaintiff Cornett for bodily injuries sustained as a result of an incident with an uninsured motorist.

86. On November 5, 2021, Defendant USAA memorialized its refusal to pay benefits in a writing, which was delivered to Plaintiff Cornett.

87. In the letter, Defendant USAA stated that it was declining coverage based upon its determination that Plaintiff's injuries did not arise out of the ownership, use or maintenance of an uninsured motor vehicle.

88. As set forth herein, however, it is clear that Plaintiff Cornett's injuries were the result of an incident involving an uninsured motor vehicle.

89. As such, Defendant USAA's refusal to pay benefits was not reasonable given the facts and circumstances of this case, as well as well settled South Carolina law. *Groves, supra*. See also *State Farm Firs & Cas. Co. v. Aytes*, 332 S.C. 30, 33, 503 S.E.2d 744, 745 (1998).

90. Defendant USAA's refusal to pay benefits proximately caused harm to Plaintiff Cornett in a number of particulars including, without limitation, incurring substantial medical expenses associated with his injuries, failing to provide compensation for future medical injuries, lost wages, loss of earning capacity, and permanent physical damage, as well as resultant consequential damages.

91. Plaintiff therefore seeks damages from this Court for Defendant USAA's violation of the covenant of good faith and fair dealing, including all such actual and consequential damages, as well as any other damages this Court determines in law or equity proximately resulted from Defendant USAA's conduct.

**FOR A FOURTH CAUSE OF ACTION**  
**(Bad Faith)**

92. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

93. As set forth herein, at the time of the incident where Plaintiff Cornett sustained severe and catastrophic injuries, a duly executed contract of insurance existed with Defendant USAA, whereby Defendant USAA was required to pay benefits owed to Plaintiff for injuries arising out of the ownership, use or maintenance of an uninsured motor vehicle.

94. Plaintiff has cooperated with Defendant USAA's requests related to this incident, including by providing materials in Plaintiff Cornett's possession, and submitting to a recorded examination.

95. Notwithstanding Plaintiff Cornett's cooperation, and notwithstanding the information, facts, and circumstances related to this matter, Defendant USAA has nevertheless denied coverage for this incident.

96. Under the circumstances of this case, Defendant USAA's denial was not reasonable, and constitutes bad faith.

97. As a direct and proximate result of Defendant USAA's unreasonable and bad faith denial, Plaintiff sustained significant actual damages, including, without limitation, past and future medical damages, lost wages, loss of future earning capacity, as well as consequential damages.

98. Plaintiff therefore seeks an order from this Court finding that Defendant USAA's conduct constitutes bad faith claims denial, and that Plaintiff is entitled to such actual and consequential damages, as well as all those other damages in law and equity as this Court deems proper, and as were proximately caused by Defendant's conduct.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Cornett now seeks an order from this Court finding in his favor and for the following relief:

a. Declaring that at the time of the underlying incident that is the subject of this complaint, Plaintiff Cornett had a duly executed and valid contract of insurance with Defendant USAA;

b. Declaring that at the time of the underlying incident that is the subject of this complaint, Plaintiff Cornett's duly executed and valid contract of insurance with Defendant USAA provided benefits for bodily injury arising out of the ownership, use, or maintenance of an uninsured motor vehicle;

c. Declaring that Plaintiff's injuries, set forth more specifically in this complaint, were bodily injuries arising out of the use, ownership, or maintenance of an uninsured vehicle;

d. Declaring that Defendant USAA is required to pay benefits under the Policy for Plaintiff Cornett's bodily injuries arising out of the underlying incident;

e. Finding that Defendant USAA breached its contract with Plaintiff Cornett;

f. Finding that Defendant USAA violated its duty of good faith and fair dealing by breaching its contract with Plaintiff Cornett;

g. Finding that Defendant USAA's conduct in this matter constituted bad faith refusal to pay benefits;

h. For all such actual, consequential, and punitive damages as were proximately caused by Defendant USAA's conduct;

i. And for pre- and post-judgment interest, costs, and reasonable attorney's fees, and for such other relief in law and/or equity as this Court deems proper.

Respectfully Submitted,

s/Bakari T. Sellers

Bakari Sellers (S.C. Bar #: 79714 )

Jessica L. Fickling (S.C. Bar #:100161)

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Dated: February 15, 2022

|                            |   |                                    |
|----------------------------|---|------------------------------------|
| 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.                        | ) | <b>ANSWER</b>                      |
|                            | ) | <b>(Jury Trial Requested)</b>      |
| UNITED SERVICES AUTOMOBILE | ) |                                    |
| ASSOCIATION D/B/A USAA,    | ) |                                    |
|                            | ) |                                    |
| Defendant.                 | ) |                                    |
| _____                      | ) |                                    |

Defendant United Services Automobile Association (“USAA”) answers the Complaint of Plaintiff Bron Cornett as follows, with each and every allegation in the Complaint being expressly denied unless admitted or otherwise qualified:

**FOR A FIRST DEFENSE**

1. Answering paragraph 1, USAA admits the incident occurred on April 10, 2021, but otherwise paragraph 1 is denied.
2. Answering paragraph 2, USAA admits Plaintiff sought coverage, otherwise USAA is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.
3. Answering paragraph 3 the letter of November 5, 2021 speaks for itself, and the allegations are denied to the extent they mischaracterize, vary, or contradict the letter.
4. Answering paragraph 4, USAA denies any wrongdoing on its part and otherwise is without knowledge or information as to the truth of the remaining allegations of paragraphs 4 and, therefore, paragraph 4 is otherwise denied.

5. Answering paragraph 5, USAA admits Plaintiff was insured by USAA policy number 01417 82 48U 7107 2, issued to Robert J. Felder Jr. ("the Policy") and admits Plaintiff was a citizen and resident of Columbia, South Carolina at the time of loss, but otherwise paragraph 5 is denied.

6. By way of response to Paragraph 6, USAA admits that it is a reciprocal interinsurance exchange licensed to provide insurance products to its members and otherwise the allegations of Paragraph 6 are denied as stated.

7. Answering paragraph 7, USAA admits that it is a reciprocal interinsurance exchange licensed to provide insurance products to its members in multiple states, including South Carolina, and otherwise the allegations of Paragraph 7 are denied as stated.

8. USAA admits the allegations in paragraph 8.

9. Paragraph 9 contains a legal conclusion to which no response is required.

10. The allegations of paragraph 10 are denied.

11. Answering paragraph 11, USAA admits on the date of loss Plaintiff was a citizen of South Carolina, otherwise paragraph 11 is denied.

12. USAA admits the allegations in paragraph 12.

13. Paragraph 13 contains a legal conclusion to which no response is required.

14. Answering paragraph 14, USAA incorporates by reference the above answers as if repeated verbatim.

15. USAA is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35 at this time.

16. By way of response to paragraph 36, USAA does not contest that the Kingkades were uninsured.

17. By way of response to paragraph 37, USAA refers to the Policy for the terms therein and any allegations of paragraph 37 inconsistent with the Policy are denied.

18. USAA is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 38, 39, 40, and 41 at this time.

19. USAA admits the allegations in paragraph 42.

20. USAA admits the allegations in paragraph 43.

21. Paragraph 44 is denied.

22. Answering paragraph 45, 46, and 47 the email of October 25 and 26, 2021 speak for themselves, and the allegations are denied to the extent they mischaracterize, vary, or contradict the emails.

23. Answering paragraphs 48, 49, 50, and 51 the letter of November 5, 2021 speaks for itself, and the allegations are denied to the extent they mischaracterize, vary, or contradict the letter.

24. Answering paragraphs 52, 53, 54, 55, and 56 the Policy speaks for itself, and the allegations are denied to the extent they mischaracterize, vary, or contradict the Policy.

25. Paragraph 57 is denied.

26. Answering paragraph 58, USAA incorporates by reference the above answers as if repeated verbatim.

27. By way of response to paragraphs 59 and 60, USAA refers to the Policy for the terms therein and any allegations of paragraphs 59 and 60 inconsistent with the Policy are denied.

28. Paragraph 61 contains a legal conclusion to which no response is required.

29. Paragraph 62 is denied.
30. USAA is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 63, 64, 65, 66 and 67.
31. Paragraph 68 contains legal conclusions to which no response is required.
32. Paragraphs 69, 70, 71, 72, 73, and 74 are denied.
33. Answering paragraph 75, USAA incorporates by reference the above answers as if repeated verbatim.
34. Paragraph 76 contains a legal conclusion to which no response is required.
35. By way of response to paragraph 77, USAA refers to the Policy for the terms therein and any allegations of paragraph 77 inconsistent with the Policy are denied.
36. Paragraph 78 is denied.
37. Answering paragraph 79, USAA admits on November 5, 2021 Plaintiff's claim was denied, but otherwise paragraph 79 is denied.
38. Paragraph 80 is denied.
39. Paragraph 81 is denied.
40. Answering paragraph 82, USAA incorporates by reference the above answers as if repeated verbatim.
41. Paragraphs 83 and 84 contain legal conclusions to which no response is required.
42. Answering paragraph 85, USAA admits Plaintiff's claim was denied, but otherwise paragraph 85 is denied.
43. Answering paragraphs 86 and 87 the letter of November 5, 2021 speaks for itself, and the allegations are denied to the extent they mischaracterize, vary, or contradict the letter.
44. Paragraph 88 is denied.

45. Paragraph 89 is denied.
46. Paragraph 90 is denied.
47. Paragraph 91 is denied.
48. Answering paragraph 92, USAA incorporates by reference the above answers as if repeated verbatim.
49. Paragraph 93 contains a legal conclusion to which no response is required.
50. Answering paragraph 94, USAA is without knowledge or information sufficient to form a belief as to its truth at this time.
51. Answering paragraph 95, USAA admits Plaintiff's claim was denied, but otherwise paragraph 95 is denied.
52. Paragraph 96 is denied.
53. Paragraph 97 is denied.
54. Paragraph 98 is denied.
55. USAA denies all allegations of the Complaint including a prayer for relief following paragraph 98, not specifically admitted above.

**FOR A SECOND DEFENSE**

56. Plaintiff's Complaint fails to state, in whole or in part, a legally cognizable claim of relief against USAA and, therefore, some or all of their causes of action should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

**FOR A THIRD DEFENSE**

57. All claims against USAA are subject to and limited by the terms of the USAA Policies, including all conditions, exclusion, definitions, deductibles, and limits of liability.

**FOR A FOURTH DEFENSE**

58. Plaintiff's Complaint fails to state a valid claim for punitive damages. Moreover, Plaintiff's claim for punitive damages is barred or limited under South Carolina law and/or by the procedural and substantive due process guarantees, the guarantees against the taking of property in an arbitrary or irrational manner or without adequate compensation, the guarantees of equal protection of the laws, and the guarantees against undue burden upon commerce set forth in the United States Constitution. Defendant gives notice that it intends to rely upon the protections and limitations set forth in S.C. Code § 15-32-510, 520, 530, and 540.

**FOR A FIFTH DEFENSE**

59. Plaintiff's claims are not ripe.

**FOR A SIXTH DEFENSE**

60. USAA reserves the right to amend and supplement its affirmative defenses to include any applicable defense, whether legal or factual in nature.

WHEREFORE, having fully answered the Plaintiff's Complaint, USAA prays for dismissal of Plaintiff's claims, judgment in its favor, and any other relief as justice so requires.

*(Signature Page Follows)*

WHELAN MELLEN & NORRIS, LLC

By: s/Robert W. Whelan

Robert W. Whelan

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*Attorneys for USAA*

Charleston, South Carolina

March 16, 2022

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| STATE OF SOUTH CAROLINA    | ) |                               |
|                            | ) | COURT OF COMMON PLEAS NONJURY |
| <u>COUNTY OF RICHLAND</u>  | ) |                               |
|                            |   |                               |
| BRON CORNETT,              | ) | TRANSCRIPT                    |
|                            | ) |                               |
| PLAINTIFF,                 | ) | OF                            |
|                            | ) |                               |
| vs.                        | ) | RECORD                        |
|                            | ) |                               |
| UNITED SERVICES AUTOMOBILE | ) |                               |
| ASSOCIATION D/B/A USAA,    | ) |                               |
|                            | ) | 2022-CP-40-830                |
| DEFENDANT.                 | ) |                               |

September 19<sup>th</sup>, 2024

B E F O R E:

THE HONORABLE THOMAS WILLIAM MCGEE, Judge.

A P P E A R A N C E S:

KENNEDY EZEKIEL  
ESQ.  
Attorney for the Plaintiff

ROBERT WILLIAM WHELAN  
ESQ.  
Attorney for the Defendant

Transcribed by Pamela E. Green, from  
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I N D E X

(WHEREUPON, there were no exhibits marked or  
testimony taken during this hearing.)

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P R O C E E D I N G S

THE COURT: All right. The next, next matter I see here is Cornett versus USAA. Looks like a motion for summary judgment.

Do I have counsel for the parties involved in that matter?

MR. WHELAN: Yes, Robbie whelan here for the defendant, Your Honor.

THE COURT: All right. Mr. whelan, good to see you. who---

MR. WHELAN: You too.

THE COURT: who, who do we have on behalf of the plaintiff?

MS. EZEKIEL: Kennedy Ezekiel. I'm here in place of John Alphin.

THE COURT: All right. Ms. Ezekiel, nice, nice to see you too.

All right. I've read the submissions and, and exhibits by, by the parties on this.

Mr. whelan, this looks like that it is your motion. So, I'll be happy to hear from you, sir.

MR. WHELAN: That's correct. Can you hear me okay, judge?

THE COURT: Yes, sir.

1 MR. WHELAN: Okay. Fantastic.

2 So, as Your Honor knows, this is a, a, a motion for  
3 summary judgment on the issue of whether the plaintiff's  
4 injuries suffered in a fight outside of two parked cars  
5 arose out of the use of an automobile for purposes of  
6 uninsured motorist coverage.

7 There are no issues of fact germane to this motion.  
8 In fact, as I recite the facts, I will recite them from  
9 the plaintiff's brief, and if you looked at both briefs, I  
10 think you saw that both party's facts were basically the  
11 same.

12 THE COURT: Yeah.

13 MR. WHELAN: Also the parties both refer to a video  
14 of this incident and that might be one reason that the  
15 parties agree on the facts.

16 They're citations to it in the plaintiff's brief. We  
17 actually put some snippets of it in our brief, and if Your  
18 Honor lets me do some show and tell, I can share my screen  
19 and, and play it. There's about---

20 THE COURT: Sure.

21 MR. WHELAN: There's about one minute and 30 seconds  
22 that elapsed from the time the cars park until the  
23 injuries occur.

24 THE COURT: All right. Let me ask one question  
25 before I get into this. I just want to make sure.

1           Is the dispute from -- is, is the dispute in coverage  
2 related solely to injuries that occurred while the cars  
3 were parked?

4           So -- because I know that what -- wasn't there a --  
5 like kind of a side swipe or some kind of bump or  
6 something before this, before they pulled over---

7           MR. WHELAN: Well, the---

8           THE COURT: ---pulled over and got in a fight?

9           I mean is there any, is there any dispute as to, as  
10 to any property damage or any bodily injury that relates  
11 to anything when the cars -- before the cars stopped  
12 moving and were parked?

13          MR. WHELAN: Yeah, great question, Your Honor.

14          So, the plaintiff describes what happened 3-miles  
15 down Two Notch Road before the fight as a bump that  
16 occurred and paint transfer that occurred as a result of  
17 that bump.

18          I -- at -- there was a property damage claim made for  
19 that bump and I believe a very small amount was, was paid  
20 as -- no, I'm sorry. No amount was paid as a result of  
21 that, that bump, that paint, that paint transfer.

22          THE COURT: Okay. So, USAA denied the property  
23 damage claim on -- that was filed by, by the plaintiff in  
24 this case that related to when they -- when the cars were  
25 moving?

1 MR. WHELAN: Well, not exactly. I don't think there  
2 was ever a claim from the plaintiff for the property  
3 damage that occurred when the bump occurred. So, in, in  
4 fact, Mr. Cornett was not even sure whether the vehicles  
5 touched.

6 And, Your Honor, may I share my screen?

7 It might be helpful to, to --.

8 THE COURT: Yeah, yeah.

9 But first, before I get to that point, I, I just want  
10 to figure out kind of the, the universe of things -- draw  
11 a line around what I'm, what I'm looking at.

12 Ms. Ezekiel, was there ever a property damage claim  
13 filed by your client with USAA?

14 MS. EZEKIEL: I believe there was, judge. Give me  
15 one moment and let me check on that.

16 MR. WHELAN: Might, might I just explain and I'm  
17 sorry it's taking me a while to get to the point?

18 But they're basically three events that happened.  
19 The first is the bump outside of a Wal-Mart and there's a  
20 paint transfer -- you can see in our brief, there's a,  
21 there's a white smudge on a bumper.

22 No claim was ever made to USAA for that smudge.  
23 Mr. Cornett testified in his deposition that, when that  
24 happened, he was not injured and that's at Page 52 of his  
25 deposition. I asked him -- I should of asked you this

1 earlier but you were not injured at all by the vehicles  
2 touching previously. His answer was no, sir. So  
3 that's---

4 THE COURT: Okay.

5 MR. WHELAN: ---the first event, judge.

6 THE COURT: All right.

7 MR. WHELAN: Then, 3-miles down the road, they're,  
8 they're, they're driving and they motion to go to a  
9 parking lot. So, they park at a parking lot.

10 Mr. -- they get out and they talk. Then Mr. Kingkade  
11 goes back to his vehicle, takes off his shirt, and comes  
12 and kicks the door of Mr. Cornett's Mustang.

13 Now, a claim was made for that property damage and a  
14 payment was made after the deductible from -- for a  
15 relatively small amount. I can't remember. I think it  
16 was around \$200.00.

17 THE COURT: All right. So, so that, that property  
18 damage claim was, was paid?

19 MR. WHELAN: Correct.

20 THE COURT: Is, is it -- is that your understanding,  
21 Ms. Ezekiel?

22 MS. EZEKIEL: Yes, Your Honor.

23 THE COURT: Okay. Now, is -- was there ever a, a  
24 property damage claim filed for what's been described as  
25 a, you know, ex -- paint transfer?

1       It sounds like just a very minor thing what -- that  
2 happened at the wal-Mart.

3       was there a property damage claim made for that?

4       MS. EZEKIEL: Are you referencing, referencing when  
5 the car was kicked?

6       THE COURT: No, no. Before that.

7       I think Mr. Whelan said outside of the wal-Mart  
8 before they started driving away, that there was some kind  
9 of a -- I don't know if it was a, a, a small bump. But,  
10 but there was some paint transfer or smudge. Sounds like  
11 a relatively minor thing. But in looking at these three  
12 events, I just want to make sure that I understand this.

13       And so was there ever a, a property damage claim made  
14 for that issue?

15       MS. EZEKIEL: I was under the impression there was.  
16 I apologize. I'm waiting on a response to that.

17       THE COURT: Okay. All right. Well, let's -- let --  
18 so -- but, but as far as the kick in the door, that,  
19 that -- that claim, that property damage claim, has been  
20 paid and resolved.

21       Is that right?

22       MR. WHELAN: That's correct, judge, and that --  
23 that's not an issue.

24       THE COURT: well, hold on. Hold on. I want to, I  
25 want to, I want to hear from Ms. Ezekiel on that issue.

1       Is that, is that your understanding that the claim  
2 related to the kick in the door, after they drove a few  
3 miles down the road, that a claim was filed for that  
4 property damage and that it was paid?

5       MS. EZEKIEL: Yes, Your Honor. I think it was.

6       THE COURT: Okay. All right.

7       Okay. Event number three, Mr. Whelan.

8       MR. WHELAN: And, Your Honor, if I could, just to  
9 stay on event number two, I also asked Mr. Cornett in his  
10 deposition at Page 52 as well, were you injured at all by  
11 the kick in the door and his answer was no, sir.

12       THE COURT: Okay.

13       MR. WHELAN: So, those are event number one, event  
14 number two, and you'll see that the cars park in this, in  
15 this Dollar General parking lot and Mr. Cornett's story,  
16 which are -- we're, we're accepting as true for, for  
17 purposes of this, of this motion is that he followed Mr.  
18 Kingkade for 3-miles to exchange insurance information.

19       You'll see, when the video starts, that the cars pull  
20 up one behind the other and Mr. Kingkade gets out of his  
21 vehicle very quickly and walks to the back of the, of --  
22 he walks back to Mr. Cornett's car. Mr. Cornett stands up  
23 and they talk. Then Mr. Kingkade goes back to his car,  
24 takes off his shirt, comes and karate kicks the, the door.

25       THE COURT: All right.

1 MR. WHELAN: Then Mr. Cornett gets away from the --  
2 his car and chases after Mr. Kingkade. So, they chase  
3 after -- he chases after the, the assailant. He's not  
4 injured at this point and then they do this little kabuki  
5 dance we're all familiar with, all us guys are familiar  
6 with, that they're kind of bowed up to each other and then  
7 Mr. Cornett decides oh, I'm not, I'm not gonna fight the  
8 guy. So, he walks back to, to his car.

9 Your Honor, might I share my, my screen at this  
10 point?

11 THE COURT: Yes, yes. Please.

12 MR. WHELAN: Okay. Are you seeing a, a picture of a  
13 red bumper?

14 THE COURT: Yes, sir.

15 MR. WHELAN: Okay. So, this is Mr. Cornett's red  
16 bumper and you can see -- he has a gray car with a red  
17 bumper and you can see the white smudge, which is the, the  
18 property damage they allege occurred in that first  
19 incident.

20 THE COURT: All right.

21 MR. WHELAN: So that might explain why there was not  
22 a property damage claim made for that smudge. I don't  
23 remember per -- I think they had a \$5.00 -- \$500.00  
24 deductible.

25 THE COURT: Okay.

1 MR. WHELAN: And then, when you -- when we turn the  
2 video on, this will help orient you. This is a still shot  
3 of the video and you can see Mr. Cornett's gray Mustang  
4 parked behind Mr. Kingkade's white Mercedes.

5 THE COURT: Uh-huh. (Affirmative).

6 MR. WHELAN: You'll see Mr. Cornett has a yellow  
7 hat -- I'm color blind. But I think that's a yellow --  
8 yellowish hat and Mr. Kingkade, on Page 5 of our brief,  
9 still has his shirt on and you can see his wife, Mr.  
10 Kingkade's wife, has gotten out of the passenger side of  
11 the Mercedes and walked around to the driver's side.

12 THE COURT: Okay.

13 MR. WHELAN: Then you'll see Mr. Kingkade walking  
14 back to his car, taking off his shirt. He kicks the door.  
15 The, the gentleman, at Page 7 of my brief, are in a  
16 fighting stance. Both of them.

17 Then Mr. Cornett disengages, walks back to his car.  
18 Mr. Kingkade goes back to his car, and then, while  
19 Mr. Cornett is at the Mustang, his car, talking to his  
20 girlfriend telling her to call the police, Mr. Kingkade  
21 walks between the cars, points at Mr. Cornett, and says  
22 something to him. And Mr. Cornett's testimony is that the  
23 entire time the Kingkade's are hurling racial obscenities  
24 at Mr. Cornett.

25 He also testified he thought this was a racially

1 motivated attack and I believe that they have -- are  
2 prosecuting federal hate crime charges against the  
3 Kingkade's.

4 So, after, after Mr. Kingkade walks between the cars,  
5 Mr. Cornett then chases after him. You can see this at 19  
6 minutes and 10 seconds in the video.

7 In the mean time, Mrs. Kingkade turns the Mercedes  
8 around. She drives the Mercedes and points it in the  
9 other direction.

10 At 19 minutes and 27 seconds in this video, the  
11 gentlemen are again squared off between the cars. After  
12 that, Mr. Kingkade disengages, walks back to his car.  
13 This is all very difficult to see in the video. But  
14 Mr. Cornett testified to it. Mrs. Kingkade also gets out  
15 of the Mercedes. So now both occupants are outside of the  
16 Mercedes.

17 Mr. Cornett walks to the back of the white Mercedes  
18 and he testifies that it's his intention to take a  
19 photograph of the Mercedes' license plate.

20 THE COURT: All right.

21 MR. WHELAN: As he's doing that, Mrs. Kingkade  
22 snatches his phone away from him. He's still not injured  
23 and then Mr. Cornett pushes Mrs. Kingkade. After that  
24 push is when Mr. Kingkade assaults Mr. Cornett and the  
25 injuries are sustained.

1 THE COURT: Okay.

2 MR. WHELAN: All right. So, if I could, is the,  
3 is -- does it look like a video is showing on your screen  
4 now?

5 THE COURT: No, I've got the, the circles, the red  
6 circles there. It -- is -- I don't know whether it  
7 matters or not, but is, is, Mr. Cornett, is his car  
8 running at that time or is he---

9 MS. EZEKIEL: Yes, it was.

10 THE COURT: Did he -- okay.

11 MR. WHELAN: The, the test -- yeah, there is  
12 testimony that both vehicles were running.

13 MS. EZEKIEL: They're running the entire time.

14 THE COURT: All right.

15 MR. WHELAN: So let's see here. I'm gonna try again  
16 and see if maybe the video might be showing for you now.

17 THE COURT: How in the world did y'all get this  
18 video?

19 MR. WHELAN: I don't know if it's a Highway  
20 Department video or what but it's a---

21 THE COURT: Oh, okay.

22 MR. WHELAN: ---a (indiscernible) video that was,  
23 that was there. I wasn't out there with a, with a  
24 camcorder.

25 So is it -- it showing for you, judge?

1 THE COURT: Yes, sir, I see -- I mean I, I see -- I,  
2 I, I -- it's still -- but, yes, it looks like a video.

3 Yeah, there you go. Yeah.

4 Okay. So there's Mr., Mr. Kingkade's Mercedes and  
5 there's Cornett right on his heels.

6 MR. WHELAN: Right. We started at about 18:59:30 in  
7 the video.

8 THE COURT: Okay.

9 MR. WHELAN: Let me know if you want me to stop it at  
10 anytime and I will.

11 THE COURT: All right. So he gets out. They start  
12 talking. Everybody's shirts are still on.

13 MR. WHELAN: So far.

14 THE COURT: All right. So they're hollering at each  
15 other. There goes the shirt. Comes back, karate kicks  
16 the door.

17 The testimony is that did not hit him or hurt him?

18 MR. WHELAN: Yeah, the testimony was he was not  
19 injured by the kick to the door.

20 THE COURT: Okay. All right. So now they're kind of  
21 facing off.

22 MR. WHELAN: And then Mr. Cornett walks back to his  
23 car.

24 THE COURT: Okay. So, he goes back and here he comes  
25 in-between the cars shouting.

1       That's when he says that he shouted some kind of  
2 racial insult or something?

3       MR. WHELAN: Yeah, he said that was happening the  
4 whole time.

5       THE COURT: Right. The wife turns the Mercedes  
6 around.

7       MR. WHELAN: Right.

8       THE COURT: He's still jawing. He goes around to  
9 take a picture he says of the license plate.

10      MR. WHELAN: Correct.

11      THE COURT: She gets out, goes back there, does  
12 something to him. He pushes her.

13      MR. WHELAN: Yeah.

14      And so---

15      THE COURT: And then that's where -- and that's -- is  
16 that his -- is that Mr. Cornett's wife?

17      MR. WHELAN: Mr. Cornett's girlfriend has just  
18 exited---

19      THE COURT: Girlfriend.

20      MR. WHELAN: ---exited the car at about---

21      THE COURT: Yeah, yeah.

22      MR. WHELAN: ---19 minutes and 45 seconds in the  
23 video.

24      THE COURT: Okay. So now all four of them are on the  
25 other side of the Mercedes.

1 MR. WHELAN: Correct.

2 And the testimony is that, by this time, I think that  
3 Mr. Cornett has pushed Mrs. Kingkade and then been  
4 attacked by Mr. Kingkade.

5 THE COURT: Okay.

6 MR. WHELAN: So the video goes on for quite some time  
7 but, but I don't believe---

8 THE COURT: Okay.

9 MR. WHELAN: ---any of it's relevant.

10 THE COURT: All right. So, how does this thing wind  
11 up?

12 After they push and pull and fight with each other,  
13 at some point they just both get in their cars and part  
14 ways?

15 MR. WHELAN: So, Mr. Kin -- so, I think the  
16 Kingkade's -- and this hasn't been super developed in the  
17 record, Your Honor. So I'll be kind of vague.

18 But I think the Kingkade's beat up Cornett and his  
19 wife. They steal their phones. They jump in the Mercedes  
20 and they tear -- they flee.

21 THE COURT: Okay.

22 MR. WHELAN: They throw, they throw the phones in the  
23 woods and then a good samaritan might of followed them or  
24 found them somehow. They -- the Kingkade's are arrested.  
25 Their phones are searched. Racist information is

1 supposedly found on the phones and I believe they've been  
2 prosecuted for or are being prosecuted for hate crimes.  
3 But I don't know the status of that.

4 THE COURT: Uh-huh. (Affirmative).

5 MR. WHELAN: Mr. Cornett suffered one or more breaks  
6 to his leg. That's the primary injury that he had. He --  
7 he's had multiple surgeries.

8 THE COURT: All right.

9 MR. WHELAN: And, and so I, I think that's basically  
10 the factual background. It's the plaintiff's position  
11 that this was all one big incident from the bump at  
12 Wal-Mart, 3-miles down the road, the kick in the door, the  
13 back and forth, the engaging, the disengaging, the pushing  
14 of the wife, and then him getting injured and that the car  
15 was used to get to the scene and to, and to leave.

16 We don't think that fits South Carolina law and I'm  
17 happy to, to talk about that if Your Honor pleases.

18 THE COURT: Yes, sir, it's your motion. Go, go, go,  
19 go right ahead.

20 MR. WHELAN: Yeah. Thank you.

21 So there's a, there's a three part test that really  
22 is a six part test in South Carolina because one of the  
23 parts has three parts itself. This isn't a balancing  
24 situation. It's something that the plaintiff has to  
25 establish all six elements.

1 I don't think, think they can establish any of them.  
2 But I think the real easy button here is the last one and  
3 that's that the vehicle -- and here we're looking at Mr.  
4 Kingkade's vehicle. That's the uninsured vehicle at  
5 issue.

6 And so the issue is or the, the, the third of the  
7 three big prongs is was the vehicle used for  
8 transportation at the time of the injury and some of the  
9 cases say at the time of the injury. Some of the cases  
10 say at the time of the assault.

11 Regardless, those -- at the same time here because  
12 the, according to Mr. Cornett's testimony, the only time  
13 he was injured is when he was assaulted after he pushed  
14 Mrs. Kingkade. That factor arose in 1993 with the case of  
15 Canal Insurance Company. That case involved a truck/crane  
16 that could be driven and then used as a crane.

17 It was driven to a location. The crane was used, an  
18 injury occurred, and the Court said yeah, even though you  
19 drove it there, when the injury occurred, this truck  
20 wasn't being used for transportation at the time of the  
21 injury.

22 That element has been used ever since 1993 in the --  
23 all sorts of different contexts. But, for assaults, the  
24 Courts have always said that the vehicle has to be used  
25 for transportation at the time of the assault. That was

1 the case in the Aytes case. It was the case in the Doe  
2 case where the cop was having sex with people in the back  
3 of his car, on the hood of his car.

4 The plaintiff's brief really doesn't deal with this  
5 issue. It seems that they're saying well, the vehicle was  
6 driven to the scene and it was driven away from the scene.  
7 But it wasn't being used for transportation at the type --  
8 at the time of the incident.

9 Many cases say that fleeing the scene in a car  
10 doesn't matter. That's the Groves case, which is the most  
11 recent one from the Supreme Court, 2022. The Bookert  
12 case, Auto World of Orangeburg, Carraway.

13 Also -- I mean most of the cases involve a vehicle  
14 being driven to the scene of an injury. That doesn't  
15 count either. That's not transportation used at the time  
16 of the assault. That's the Canal case, the Groves case,  
17 Aytes, Doe, Auto World of Orangeburg, and Carraway.

18 So, that element's really the easy button here,  
19 judge. I just can not see any way they can get around it.

20 If they could, then the second element is an act of  
21 independent significance. There's a case called --  
22 it's -- I don't know how to pronounce it. But Goyenzche  
23 or something like that. That's the case where the dad  
24 drove to work and left his kid in the, super sad, but left  
25 his kid in the backseat of the car and the kid overheated

1 and died. And the, the Supreme Court said when Mr. --  
2 when, when the driver exited the vehicle, that was an act  
3 of independent significance that broke the chain -- the --  
4 of the car having anything to do with it.

5 THE COURT: I'm sorry, Mr. Whelan. I'm getting  
6 some -- let, let me check my cord. I've had some issues  
7 with this earlier today and I'm -- and, and it fixed it  
8 for a while.

9 Let me, if you don't mind, just stop for one second  
10 and make sure that my cord is not getting unplugged again  
11 and I'll let you start right back.

12 MR. WHELAN: Thank you.

13 (Pause.)

14 THE COURT: Okay. I apologize sincerely for that,  
15 Mr. Whelan. I just got a couple different cords that if  
16 one, one of them goes off, it starts to, it starts to lag.  
17 So I, I, I think I've got that fixed now.

18 I apologize and you had just referenced the case and,  
19 and you're right. It is a sad case. I remember it where  
20 the, the father drove to work, parked the car, got out,  
21 went in, and the, the child in the back passed away and  
22 the Court found -- you were right -- that's where you were  
23 right, right then I believe.

24 MR. WHELAN: Yeah.

25 well, you know, that, that, that, that case actually

1 goes to a few of the elements. But I was talking about  
2 the active independent significance.

3 THE COURT: Right.

4 MR. WHELAN: A lot of these cases happen when  
5 somebody's outside of the vehicle and the cases say hey,  
6 when you exit the vehicle, that breaks the causal chain.

7 Here you had Mr. Kingkade exiting his vehicle. You  
8 have Mr. Cornett exiting his vehicle. You had the taking  
9 off of the shirt, the racist motivations, which  
10 Mr. Cornett testified to.

11 You had Mr. Cornett disengaging from Mr. Kingkade,  
12 then running back after him again. You had Mr. Cornett  
13 pushing Mr. Kingkade's wife and then you have the assault  
14 itself. And I think any one of these things would fit the  
15 Supreme Court's definition of an act of independent  
16 significance.

17 The, the last element, Your Honor, is the first which  
18 is causal connection. That would require the plaintiff to  
19 prove that the vehicle was an active accessory to Mr.  
20 Cornett's injuries.

21 That case, with the, with the, with the poor dad who  
22 left his, his kid in the back talked about it and it said  
23 that the vehicle -- in that case, they found that the  
24 vehicle was an active accessory and the Court said the  
25 vehicle played "an essential and integral part" in the

1 injury because the physical makeup of automobiles and  
2 trucks causes them to trap heat and would of led directly  
3 to the infant's death.

4 Of course, here Mr. Cornett testified that Kingkade's  
5 vehicle was parked when he felt he did not touch the  
6 vehicle. Mr. Kingkade was not touching the vehicle. The  
7 vehicle was not being used at all much less was it an  
8 active accessory at the time of the injury.

9 Also, the plaintiffs have to prove that the injuries  
10 are identifiable with the normal use of a vehicle and, you  
11 know, getting beat up on the side of the road, I mean  
12 maybe that's possible but it's not associated with the  
13 normal use of a vehicle. In fact, Mr. Cornett said, when  
14 he pulled over that day, he had no idea he would be  
15 assaulted.

16 Just what -- just two more things like quickly, Your  
17 Honor. The cases that I've mentioned I believe I've cited  
18 in the briefs or the plaintiffs have.

19 One case I found this morning that I did not cite in  
20 the brief, and I apologize, but it's a case called  
21 Nationwide verse (sic) Brown. It's a Fourth Circuit case  
22 from 1985. That's at 779 F.2d 984 and I didn't find that  
23 cause it's a Fourth Circuit case and I was focusing on  
24 South Carolina law.

25 But actually I was reading the case this morning,

1 Auto world of Orangeburg, and, in that case, the Court of  
2 Appeals said Nationwide versus Brown was "the development  
3 of our law on this topic" again with that case. And, in  
4 fact, Aytes, which set the three part test, cites  
5 extensively to Nationwide verse (sic) Brown. It's also  
6 been cited by Peele versus USAA, State Farm verse (sic)  
7 Bookert, and other cases on this subject.

8 The reason I bring it up is because the facts are  
9 pretty -- are, are -- I think dispel the plaintiff's  
10 counter argument because, in Brown, what happened is you  
11 had a, a, a husband who was a passenger in an automobile  
12 and he grabbed the steering wheel of the, of the car that  
13 was being driven and drove the vehicle into his wife's  
14 car, a separate car.

15 All right. So, there was an accident. Then  
16 Mr. Brown got out of the vehicle and he, he went to the  
17 car and he shot his wife. So, there was an accident and  
18 then -- there was an accident in the car and then there  
19 was an assault and the Fourth Circuit affirmed the  
20 District Court and they said there is no coverage for the  
21 shooting because the shooting did not arise out of the use  
22 of an automobile, an automobile. It's a separate,  
23 separate act for, for the reasons we've discussed. But  
24 they said there could be coverage for what happened in  
25 that collision.

1           And so that's exactly the case we have here. Even  
2 though there was a collision 3-miles down the road, now if  
3 there were injuries caused by that collision, that could  
4 be covered. But the fight 3-miles down the road and then  
5 a minute, minute and 30 seconds after that is not covered.

6           Okay. The last thing for me is that we've also moved  
7 for summary judgment on their cause of action for bad  
8 faith. What I just talked about was breach of contract.

9           As Your Honor, as Your Honor knows, if there's any  
10 reasonable basis for the insurer's decision, there can be  
11 no bad faith and, in fact, the plaintiff has to prove the  
12 lack of a reasonable basis.

13           In this case, I think everything I just said does  
14 support the fact that State Farm does, does have it's --  
15 not State Farm. USA (sic) does have a reasonable basis  
16 for its decision.

17           In fact, we took the unusual step in this case of  
18 waiving the attorney/client privilege and producing the  
19 opinion letter we obtained from Wesley Sawyer at Murphy &  
20 Grantland.

21           If you look at the plaintiff's brief, the only thing  
22 they cite for bad faith, they say we demanded coverage on  
23 September, September the 2<sup>nd</sup> of 2021. USA (sic) asked for  
24 a statement of the insured, which was given just over a  
25 month later on October the 6<sup>th</sup>. USA (sic) asked for about

1 a month to get back to the plaintiffs on their demand  
2 until November the 5<sup>th</sup>. And then attached to our brief is  
3 the opinion letter from Murphy & Grantland that we  
4 received on oh, gosh, about I think November the 2<sup>nd</sup> and  
5 then we sent a denial letter to the plaintiffs on  
6 November, November the 5<sup>th</sup>.

7 So, that timeline, there's no evidence that that  
8 breaches the standard of care or, or, or anything like  
9 that. There's no evidence of -- in the record of that at  
10 all and, in fact, I think the only evidence is that USA  
11 (sic) had a reasonable basis for its decision.

12 Thank you, judge.

13 THE COURT: All right. Thank you, Mr. Whelan.

14 Ms. Ezekiel, you've been very patient. Happy to hear  
15 from you, ma'am.

16 I think you're on, you're on mute.

17 MS. EZEKIEL: I apologize. I am.

18 THE COURT: No worries.

19 MS. EZEKIEL: If you don't mind, I'm gonna start from  
20 the beginning just to, you know, cover all the points from  
21 our prospective.

22 We believe that everything stemming from the accident  
23 forms the continuum of events that resulted from the use  
24 of the Kingkade vehicle, the maintenance of that vehicle  
25 in the form of trading insurance, and the ownership of the

1 vehicle including efforts to conceal its license plate  
2 information.

3 We argued that our client meets all three factors in  
4 South Carolina's test for whether damages arise out of the  
5 uninsured policy. There's a causal connection, the first  
6 prong.

7 The Kingkade's were active accessories to the assault  
8 when Mr. Kingkade bumped plaintiff's vehicle which  
9 resulted in the need to trade information. Mrs. Kingkade  
10 turned her vehicle around as to hide the license plate  
11 from plaintiffs. The plaintiff was forced to walk around  
12 outside his vehicle to the other side.

13 The Kingkade's vehicle and Cornett's were still  
14 running and they were able to (indiscernible).

15 The second prong, the Kingkade vehicle's more than  
16 nearsighted injury as it was the means by which the  
17 Kingkade's caused the initial damages to the plaintiff's  
18 vehicle. Stated differently, the incident would not have  
19 occurred but for the Kingkade vehicle striking the  
20 plaintiff's vehicle.

21 And I know it was mentioned that the vehicles were  
22 driven far. In my -- what I've been told is they were  
23 driven far because the defendants would not pull over.  
24 And so it was not a choice to continue driving.

25 The Kingkade's use of the vehicle in an attempt to

1 conceal their insurance information. But for the Kingkade  
2 vehicle, the Kingkade's would not have been able to make a  
3 quick escape from the incident location.

4 The third prong would be the road rage, which we  
5 would argue is foreseeable. It's a general occurrence  
6 that happens, you know, when people drive.

7 The second factor in the test for the damages arise  
8 out of uninsured policy as there was no active,  
9 independent significance breaking the causal chain.

10 We would like to argue that plaintiff's injuries  
11 arose out of the Kingkade vehicle bumping his vehicle and  
12 plaintiff subsequent attempt to exchange information or  
13 obtain a license plate number was -- he only had to do  
14 that because of the incident.

15 In each of the cases cited, the assailant exited the  
16 vehicle before causing any accident or damage. And so we  
17 would argue that, you know, the damage was caused before  
18 when they had, when they bumped cars.

19 The third factor is the uninsured vehicle must have  
20 been used for transportation, which I know we've gone  
21 over, and we would like to note that we do think it was  
22 being used. It was being used when the original accident  
23 happened. They were both traveling, transporting to a  
24 different location. The vehicles, you know, stopped at a  
25 local business. Both remained on.

1       Mrs. Kingkade was able to use the vehicle for  
2 transportation by driving the vehicle and moving it away  
3 when, when plaintiff was, you know, trying to take a photo  
4 of the license plate. And so obviously it was still  
5 running cause she had to move it then and turn it around  
6 to try to conceal her information and, the Kingkade  
7 vehicle, their attempt to dispose of the evidence  
8 afterwards when they still had our, our client's  
9 cellphones. We think that is an indication as well.

10       In reference to stacking the coverage, plaintiff's  
11 entitled to stack coverage because plaintiff's vehicle was  
12 involved by virtue of the Kingkade's striking the vehicle.  
13 As such, plaintiff's vehicle was involved and entitled to  
14 stack.

15       For the bad faith claim, as we know, an insured acts  
16 in bad faith when there is no reasonable basis to support  
17 the insurer's decision. Plaintiff was insured for  
18 uninsured motorist coverage. Defendant was unresponsive  
19 for a period of time as plaintiff, you know, sent  
20 deadlines on numerous occasions. In the last deadline,  
21 defendant sent a letter denying coverage.

22       THE COURT: What, what deadline is that?

23       MS. EZEKIEL: Give me one moment.

24       THE COURT: No, I mean I -- what, what, what is the  
25 source of the deadline?

1 MS. EZEKIEL: Hold on. I apologize, Your Honor.

2 THE COURT: No, that's okay.

3 I mean is that a deadline from y'all or a deadline  
4 that's required by some -- I mean I, I just -- I don't  
5 know what deadline --.

6 MS. EZEKIEL: Give me one moment. Let me see here.  
7 I think that was a deadline from us.

8 THE COURT: Okay.

9 MS. EZEKIEL: Sorry about that. Yes, Your Honor.

10 THE COURT: No, no. I just wanted to make sure I'm,  
11 I'm, I'm up to speed on that.

12 Okay. Well, let me, let me ask you this though.

13 Other than, other than getting to an -- getting to  
14 the scene of the fight, how was the car kind of an active  
15 accessory to, to the injury as, as some of the cases talk  
16 about?

17 I mean I guess I could see if, if he got out to get  
18 information and, and, and the bad actor, Kingcade, ran him  
19 over or if, if he was getting out to exchange information  
20 and, and he kicked the door in and it broke his leg or  
21 something. But, in this case, it just looks like these  
22 two guys were chasing each other or, or one was chasing  
23 the other, he pulled over, and then got in a fight and the  
24 cars just -- were just used for transportation.

25 They, they were either gonna fight there or they're

1 gonna fight in the Wal-Mart or something else. It wasn't  
2 really involved in the injury itself.

3 I mean how, how do you square that with -- square  
4 this situation with the cases that kind of distinguish the  
5 fact that it's used for transportation and that it's an  
6 injury that is -- let me see what that -- how it -- how  
7 it's used that it's -- an, an injury must be foreseeable,  
8 foreseeably identifiable with the normal use of the  
9 vehicle?

10 This just seems like it was just used for  
11 transportation and not part of the injury.

12 Is that -- am I -- do I have that wrong?

13 MS. EZEKIEL: We would argue that he wouldn't be in  
14 this situation if it were not for the vehicles.  
15 Therefore, they are integral.

16 THE COURT: So, I mean at what, at what point does  
17 that end?

18 I mean if they pulled over and -- I mean I, I, I  
19 guess I'm having a difficult -- it just seems that some of  
20 these cases -- that, that the, that the car itself or the  
21 vehicle itself has to be part of the cause of the injury.  
22 And, and, here, I guess what I'm hearing is this is kind  
23 of a continuum of the, the bump, initial bump, all the way  
24 to the end where the Kingkade's attacked and injured your  
25 clients as opposed to the car -- one -- either of the cars

1 being an active accessory to the injury itself.

2 Is that right?

3 MS. EZEKIEL: Yes, Your Honor, in the sense that --  
4 I, I apologize. State that last part one more time.

5 THE COURT: Yeah.

6 what I heard you say and what kind of -- how, how I  
7 read your, your memo is that, that this isn't a case like  
8 the car traps heat and, and, unfortunately, kills a minor  
9 or someone drives over somebody so that the car is, again,  
10 an active accessory to, to the injury. That -- this is  
11 more of a position that, that it was the continuum, that,  
12 that as soon as these guys hit each other, it -- one, one  
13 thing led to the other, led to the other and but for I  
14 guess that initial contact between the vehicles that this  
15 injury would not have happened.

16 MS. EZEKIEL: Yes, Your Honor. We, we would---

17 THE COURT: Okay.

18 MS. EZEKIEL: We do link the, the injury to the  
19 initial impact.

20 THE COURT: Okay. And how about the, the bad faith  
21 claim?

22 I mean, again, I understand, you know, in, in the  
23 line of where bad faith is in these types of claims is  
24 always -- I've always had a difficult time with, with,  
25 with figuring out where it is.

1 I mean if, if the burden is on the plaintiff to show  
2 that there was no, I guess, no, no good faith or that  
3 there was not good faith or, or -- is, is it just the  
4 timing?

5 Is it just that they didn't get a decision fast  
6 enough?

7 Do you think that there's no good -- that there's no  
8 good faith difference of the state of the law in this case  
9 or tell me exactly what you're basing the bad faith claim  
10 on.

11 MS. EZEKIEL: We're basing the bad faith claim on the  
12 fact that there were -- it was hard to get in touch with  
13 them. They were unresponsive. They kept -- we kept  
14 generously extending deadlines and they, you know, after  
15 the second or third one, they finally came back, you know,  
16 had a denial. It wasn't like they were working with us.

17 THE COURT: Okay. All right. And I, and I apologize  
18 for interrupting. Please, please continue.

19 If you have anything else, I'd -- those were just  
20 some questions that I jotted down after reading the  
21 briefs.

22 MS. EZEKIEL: No, Your Honor. That's basically what  
23 I was gonna tell you -- say.

24 THE COURT: Okay. Thank you, ma'am.

25 Mr. Whelan, it's your motion. I'll give you the last

1 word if you would like.

2 MR. WHELAN: Yeah. Thank you, Your Honor.

3 Just, just on that last point with bad faith, I guess  
4 when I said earlier that we agreed to the facts that the,  
5 the plaintiff stated, we do with respect to the breach of  
6 contract. Absolutely not with respect to bad faith.

7 I know Ms. Ezekiel's new to this case. But I heard  
8 her just say that USA (sic) was hard to get in touch with  
9 and continued to miss deadlines.

10 There is no evidence of that in the record  
11 whatsoever, you know, not only that I've seen. But none  
12 that's been put in the record before, Your Honor. You  
13 know, this case has been going for, for years.

14 They're been multiple witnesses from USA (sic)  
15 deposed and there is no evidence of that because it's not  
16 true. There was a, a unilateral deadline put in a demand  
17 by the plaintiffs to USAA which USA (sic) asked for an  
18 extension for until November 5<sup>th</sup>. The plaintiffs  
19 granted that and that is when USA (sic) got this opinion  
20 letter from Wesley Sawyer and then met that deadline.  
21 That's what the -- that's what I read the plaintiff's  
22 brief to say.

23 And then, I guess, just the last point to respond  
24 about the, the vehicle starting this or them not being in  
25 this situation but for the vehicles. That's the case in

1 all of these cases where the Court find -- found that  
2 there was no coverage. Like the Doe case where the, the  
3 police officer drove the ladies to a remote location to  
4 have sex.

5 The plaintiffs argue well, the only reason this  
6 happened is because he used the vehicle to drive us here  
7 to do it.

8 In the Aytes case, somebody drove his wife to a  
9 remote location to, to kill her and, you know, it -- I  
10 think that, that same factual scenario and that same  
11 argument is made in a lot of these cases and has been  
12 uniformly rejected.

13 The best case for them is the Howser case from '92.  
14 But the Supreme Court has abrogated that case. If you  
15 look at it on Westlaw, it is -- has a giant red flag  
16 because it has been abrogated and the Supreme Court, in  
17 2022, in the Groves case, said that Howser is "an  
18 aberration in our juris prudence." It happened before  
19 Aytes and Aytes changed the legal landscape, which, of  
20 course, gave us this three part test.

21 That's all for me, judge.

22 Thank you very much.

23 THE COURT: All right. Y'all both -- your memos and  
24 the arguments have raised some, some excellent points on  
25 both sides. I'm gon' need to go back and just look at a

1 few of the cases that have been cited and, and argued  
2 about today and I do want to look at the record a little  
3 closer, some of the exhibits that have been, been  
4 referenced.

5 And so what I'm gonna do is, is take that under  
6 advisement. I will let y'all know by, by email in the  
7 coming days. I'm not gon' take long cause I know y'all  
8 need, one way or the other, y'all need to get -- to, to  
9 keep, keep, keep up with the, with the, with the case.

10 So -- but, if you will, give me a few days. I  
11 want -- I just want to check a couple things that I've got  
12 here noted and I will let y'all know of my ruling then.

13 MR. WHELAN: Okay. Thank you so much, judge.

14 MS. EZEKIEL: Thank you, Your Honor.

15 THE COURT: Thank you, Mr. Whelan.

16 Thank you, Ms. Ezekiel.

17

18 \* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Richland County, South Carolina, on the 19<sup>th</sup> day of September, 2024.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 19<sup>th</sup>, 2025

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

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

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The question before the court is whether a physical assault that occurred outside of a parked vehicle arose out of the ownership, maintenance, or use of that vehicle. There is no dispute the vehicle was parked, no one was in the vehicle, and the vehicle was not being used for transportation purposes during the assault. Plaintiff so testified:

**Q. At the time you were assaulted, no one was in Mr. Kingkade's vehicle. True?**

A. Correct.

...

**Q. At the time you were assaulted, the Kingkades' vehicle was not being used for transportation. True?**

A. Correct.

**Q. In fact, it was not being used at all at the time you were assaulted. True?**

A. Correct.

(Deposition of Bron Cornett, Attached as Exhibit A, p. 61:03-05; 63:01-07)

This is fatal to plaintiff's claims because South Carolina law requires plaintiff prove each of three factors to establish his injuries arose out of the ownership, maintenance, or use of an uninsured automobile: (1) 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.** *See, State Farm Fire & Cas. Co. v. Aytes*, 503 S.E.2d 744, 745 (S.C. 1998) (emphasis added).

Thus, even if plaintiff could prove a causal connection between his injury and the assailant's vehicle (he can't), and even if he could prove no act of independent significance broke that causal connection (he can't), his own admissions that the vehicle was unoccupied and not in use show plaintiff cannot possibly prove the third *Aytes* factor.

### **Facts in the light most favorable to the plaintiff**

The following facts are presented in the light most favorable to the plaintiff and are taken directly from the plaintiff's deposition testimony, as well as a video of the incident, which will be made available for viewing by the court and provided for the record in advance of the hearing.

#### **A. The collision**

1. The incident occurred on April 10, 2021, when Bron Cornett was driving his Ford Mustang down Two-Notch Road in Columbia, South Carolina. (Complaint ¶ 15).

2. "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).

3. 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 Dep., 34:1-5)

4. A picture of the smudge mark is at pages 3 and 4 of Exhibit 9 to Cornett's deposition.



5. Cornett was not injured in this collision.

**B. The 3-mile drive**

6. After the collision, Cornett followed Kingcade's Mercedes for about 3 miles. (*Id.* 36:25-37:13).

7. During this three-mile drive, the vehicles passed through seven traffic lights. (*Id.* 35:12-18).

8. During this three-mile drive, Cornett "was trying to catch up to [Kingcade] just to get the insurance, license plate, stuff like that." (*Id.* 40:02-06).

### C. The Dollar Tree

9. 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)

10. Cornett honked to get Kingkade’s attention and said “Hey, you hit my vehicle.” (*Id.* 44:02-09)

11. 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. (*Id.* 49:06-12).

12. The incident was captured on video. Cornett’s grey Ford is parked behind Kingkade’s white Mercedes.



### D. Exiting of the vehicles and first confrontation (18:59:35-18:59:51)

13. At 18:59:35,<sup>1</sup> Kingkade exits his Mercedes and walks back toward Cornett’s Ford.

14. At 18:59:41, Cornett exits the Ford and stands between the vehicle and the driver’s side door.

15. Kingkade’s wife exits the passenger side of the Mercedes and walks around to the driver’s side.

<sup>1</sup> A time stamp is visible in the top left hand corner of the video.



16. The two men talk for several seconds. (Cornett Dep, p. 68:02-03)

**E. Kingkade returns to the Mercedes, removes his shirt and kicks the Ford.**

17. At 4:50, Kingkade walks back to the Mercedes. (*Id.* 68:07-09)

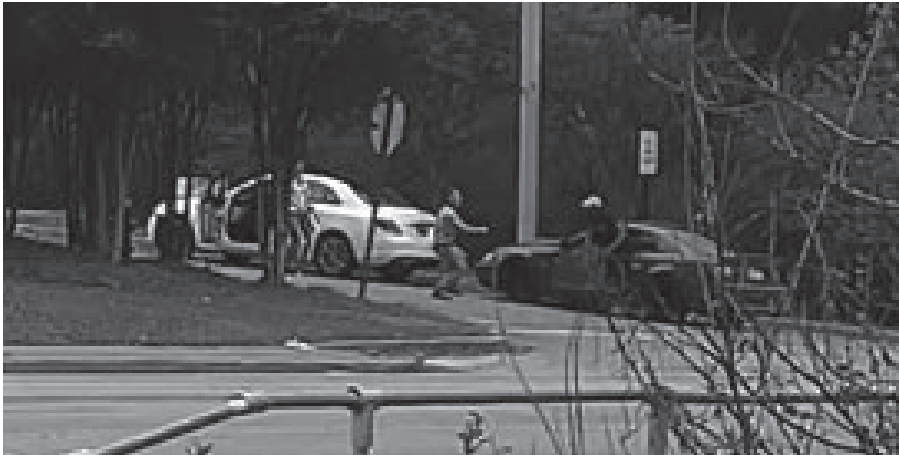


18. While near the Mercedes, Kingkade takes off his shirt.

19. Kingkade walks, then runs back to the Ford where he kicks Cornett's driver side door at 18:59:55.

20. After Kingkade got out of the car and saw Cornett, Cornett agreed "his

demeanor all of the sudden changed” “and this racist personality came out.” (Id. 50:16-22)



21. 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)

22. After Kingkade took off his shirt Cornett became concerned for his safety. (Id. 48:19-49:02.

23. Cornett was not injured at all when Kingkade kicked his door. (Id. 52:11-13)

**F. Second Confrontation: Cornett follows Kingkade to the Mercedes where they square off. (18:59:55-19:00:03)**

24. Cornett then leaves his vehicle and walks towards Kingkade. (Cornett Dep, p. 69:05-06)

25. Kingkade retreats, maintaining a fighting posture.

26. Both men stand in a fighting posture adjacent to Kingkade’s vehicle. (Id. 69:13-70:03)



27. At 19:00:03, Cornett turns his back on Kingkade, and walks back to the Ford.

28. Cornett decided “F that” and told his girlfriend, Elana Vawter, who was a passenger in the Ford to call the cops. (*Id.* 69:22-70:06)

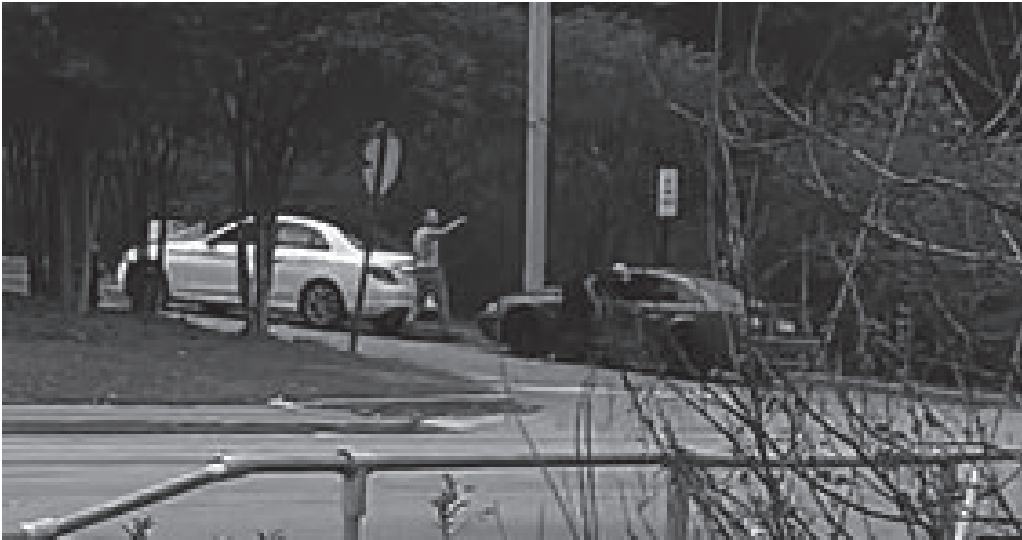
29. Vawter called the police about seven times but they never answered. (*Id.* 47:08-19)



**G. Third Confrontation: Cornett follows Kingkade and they square off between the cars (19:00:09-19:00:27).**

30. At 19:00:09, Kingkade’s wife is in the driver’s seat and Kingkade is walking to the

passenger side of the Mercedes, pointing at Cornett as Kingkade passes between the cars.

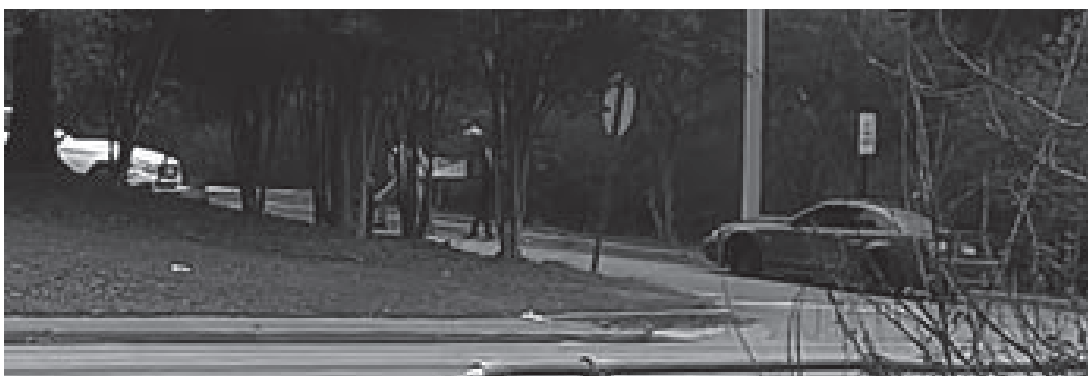


31. At 19:00:10, as Kingkade walks away, Cornett leaves the Ford and chases after Kingkade.



32. Kingkade's wife turns the Mercedes around and parks it two to three car lengths in front of the Ford. (Cornett dep., 70:07-17)

33. Cornett and Kingkade then confront each other between the cars, standing inches apart for several seconds.



34. At 19:00:27, Kingkade disengages and walks back toward the Mercedes.

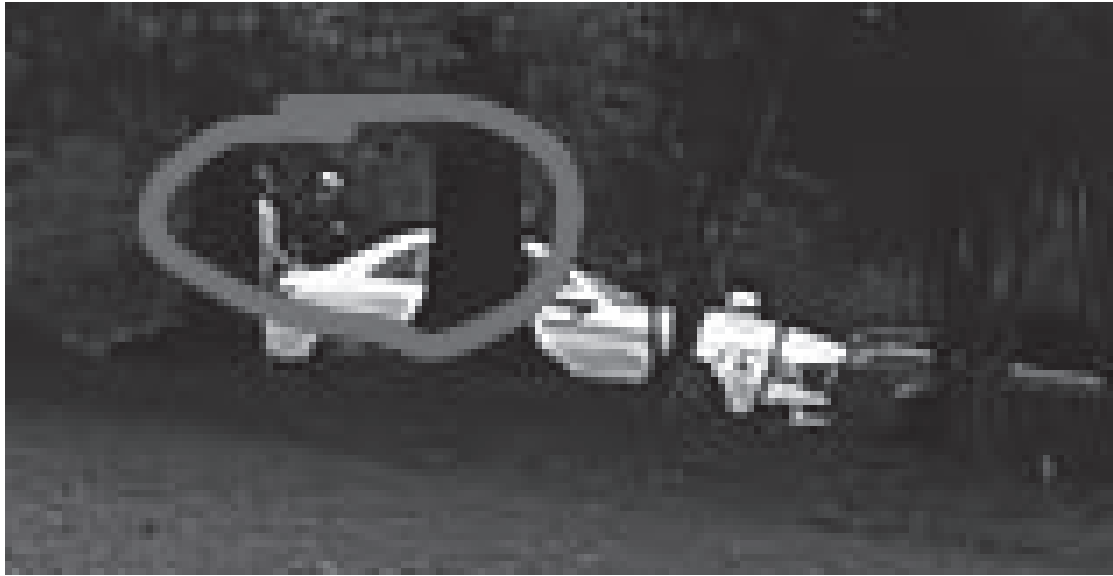
35. At 19:00:31, Kingkade's wife exits the Mercedes.

36. At 19:00:35, Kingkade has returned to the passenger side of the Mercedes, Kingkade's wife is on the driver's side, and Cornett is still between the Mercedes and the Ford.



**H. Fourth Confrontation: Cornett walks towards the rear of the Mercedes before being assaulted.**

37. At 19:00:41, Cornett walks past Kingkade's wife towards the rear of the Mercedes and is approached by Kingkade and his wife.



38. At 19:00:44 a commotion occurs but is obscured by the Mercedes. Vawter exits the Ford and runs towards the others.

39. Cornett testified that he went behind the car to photograph the license plate when Mrs. Kingkade “snatched it” out of his hand. (Cornett dep., 53:17-18)

40. During this time, Kingkade continues to hurl racial obscenities toward Cornett and Mrs. Kingkade was also making racial hate speech. (*Id.* 53:19-54:01)

41. Cornett 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)

42. Kingkade did not push Cornett “into the car or anything like that.” (*Id.* 56:14-25)

43. Following the assault, the assailants “fled the scene in their vehicle” but were ultimately apprehended by law enforcement. (Compl. ¶ 28-29)

### **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*,

786 S.E.2d 115, 117 (S.C. 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.*, 762 S.E.2d 705, 709 (S.C. 2014).

### **Argument**

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

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*, 882 S.E.2d 464, 466 (S.C. 2022) (quoting *State Farm Fire & Casualty Company v. Aytes*). Here, viewed in the light most favorable to Cornett, the evidence does not support even one of the prongs. Summary judgment is appropriate.

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

The third Aytes factor is perhaps the most damning to plaintiff under these facts. 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) The vehicle was not being used at all, and it certainly was not being used for transportation:

##### **Q. At the time you were assaulted, the Kingkades' vehicle was not being used for transportation. True?**

A. Correct.

**Q. In fact, it was not being used at all at the time you were assaulted. True?**

A. Correct.

*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 v. S.C. State Budget & Control Bd., Office of Ins. Services, Ins. Reserve Fund*, 523 S.E.2d 457, 458 (S.C. 1999); *see also, Wright v. North Area Taxi, Inc.*, 337 S.C. 419, 523 S.E.2d 472 (S.C.Ct.1999) (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, USAA must be granted summary judgment.

**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. But Cornett cannot do that because 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.*, 511 S.E.2d 692, 699 (S.C. 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.*, 494 S.E.2d 469, 472 (S.C. 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 464, 468 (S.C. 2022) (Driving and shooting are acts 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 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 457, 458 (S.C. 1999) ("the [plaintiffs'] acceptance of [the officer]'s offers were acts of independent significance which broke any causal link.")

**C. There is no causal connection between the Mercedes and Cornett's injuries.**

Cornett cannot satisfy the "causal connection" requirement because the assault occurred outside of the vehicles, and a racially motivated physical assault in a parking lot is not foreseeably identifiable with the "normal use" of an automobile. 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)*, 523 S.E.2d 457, 458 (S.C. 1999), summary judgment is appropriate.

*(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.

(Cornett dep., 56:14-25) 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.*, 511 S.E.2d 692, 699 (S.C. 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*, 882 S.E.2d 464, 469 (S.C. 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*, 523 S.E.2d at 476. 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). Cornett also had never been kicked or assaulted by someone using an automobile and has never kicked or assaulted someone else while using an automobile (*Id.* 60:05-18) His injuries do not stem from a car accident and were not foreseeably identifiable with a vehicle's normal use.

**D. Additionally, Plaintiff is not entitled to stack coverage.**

Plaintiff also alleges he should be able to stack UM coverages on at home vehicles. However, stacking is only available when the insured's vehicle is “involved in the accident. S.C. Code. § 38-77-160 provides, in part:

If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. **If none of the insured's or named insured's vehicles is involved in the accident**, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage. (emphasis added).

Even if the Court were to determine that Cornett's injuries arose out of the use of *Kingkade's* vehicle as discussed in the previous sections, stacking would only be permitted if *Cornett's* vehicle were involved in the accident. 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.

## **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 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.*, 594 S.E.2d 455, 462 (S.C. 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.*, 466 S.E.2d 727 (S.C. 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*, 731 S.E. 2d 902 (S.C. App. 2012). Moreover, even if there was coverage, if there is a reasonable ground for the insurer's decision to deny the claim, there is no bad faith. *Helena Chem. Co.*, 594 S.E.2d at 462 (*citing Crossley v. State Farm Mut. Auto. Ins. Co.*, 415 S.E.2d 393, 397 (S.C. 1992)).

Here, USAA made the determination that a physical assault that occurred outside of two parked and unoccupied vehicles 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. (See, November 2, 2021 Murphy and Grantland Opinion Letter, Attached as Exhibit B). Counsel surveyed the law of the state and the facts alleged by

plaintiff and concluded there was no coverage:

For the above-stated reasons, Cornett's injuries do not arise out of the ownership, maintenance or use of a vehicle. First, there was no causal connection between the Kingkades' use of their vehicle and Cornett's injuries. The vehicle was not an active accessory to the assault or even the stie of the assault. Moreover, the injuries are not foreseeably identifiable with the normal use of an auto. Even if a causal connection existed, the Kingkade's actions after exiting their vehicle were acts of independent significance that broke any causal connection. Finally, the vehicles were not being used for transportation at the time of the assault.

*Id.*, p. 9-10. 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, USAA should be granted judgment as a matter of law as to all of the plaintiff's causes of action.

WHELAN MELLEN & NORRIS, LLC

By: /s/ROBERT W. WHELAN

Robert W. Whelan

Bar No. 71174

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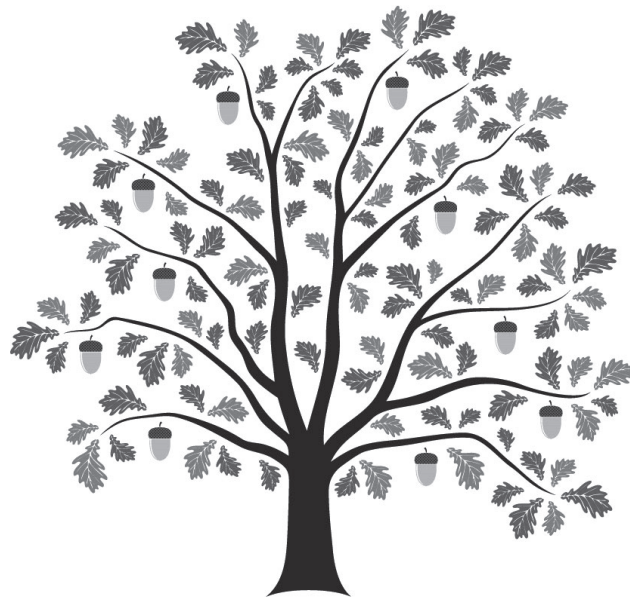
April 8, 2024

# Transcript of the Testimony of

**Bron Cornett**

March 10, 2023

Bron Cornett v. United Services Automobile Association d/b/a  
USAA



**LIVE OAK**  

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STATE OF SOUTH CAROLINA     ) COURT OF COMMON PLEAS  
                                      :  
COUNTY OF RICHLAND         ) CASE NO. 2022-CP-40-00830

BRON CORNETT,                     )  
                                      )  
                  Plaintiff,        )  
                                      )  
              vs.                    )  
                                      ) THE DEPOSITION OF:  
UNITED SERVICES AUTOMOBILE) BRON CORNETT  
ASSOCIATION d/b/a USAA,        )  
                                      )  
                  Defendant.        )  
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DATE:                     Friday, March 10, 2023  
TIME:                     10:04 a.m.  
LOCATION:                  Strom Law Firm, LLC  
                              6923 N. Trenholm Road  
                              Columbia, South Carolina  
REPORTER:                Margaret F. Barnett  
                              Court Reporter and Notary Public

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| <p style="text-align: right;">2</p> <p>1 APPEARANCES OF COUNSEL:<br/> 2 ATTORNEYS FOR THE PLAINTIFF:<br/> 3 STROM LAW FIRM, LLC<br/> 4 BAKARI SELLERS, ESQUIRE<br/> 5 6923 N. Trenholm Road, Suite 200<br/> 6 Columbia, South Carolina 29206<br/> 7 (803) 252-4800<br/> 8 Bsellers@stromlaw.com<br/> 9<br/> 10 ATTORNEYS FOR THE DEFENDANT:<br/> 11<br/> 12 WHELAN MELLEN &amp; NORRIS, LLC<br/> 13 ROBERT W. WHELAN, ESQUIRE<br/> 14 89 Broad Street<br/> 15 Charleston, South Carolina 29401<br/> 16 (843) 998-7099<br/> 17 Robbie@whelanmellen.com<br/> 18<br/> 19<br/> 20<br/> 21<br/> 22<br/> 23<br/> 24<br/> 25</p>                                                                                                                                                                | <p style="text-align: right;">4</p> <p>1 BRON CORNETT<br/> 2 being first duly sworn, testified as follows:<br/> 3 EXAMINATION<br/> 4 BY MR. WHELAN:<br/> 5 Q. Your name for the record, please?<br/> 6 A. Bron J. Cornett, Junior.<br/> 7 Q. Mr. Cornett, have you ever given a<br/> 8 deposition before?<br/> 9 A. No, sir.<br/> 10 Q. The court reporter is typing down what we<br/> 11 say, so for that reason it's important to give yeses<br/> 12 and noes instead of uh-huhs and huh-uhs. We may<br/> 13 remind you of that from time to time. Okay?<br/> 14 A. Yes, sir.<br/> 15 Q. If you need a break at any time, will you<br/> 16 let me know, please?<br/> 17 A. Will do.<br/> 18 Q. If you don't understand one of my<br/> 19 question, will you let me know, please?<br/> 20 A. Yes, sir.<br/> 21 Q. And, do you understand, you've taken an<br/> 22 oath to tell the truth today?<br/> 23 A. Yes, sir.<br/> 24 Q. And can I and the judge and the jury in<br/> 25 this case rely on your testimony today as the truth,</p>                                                                                                                                     |
| <p style="text-align: right;">3</p> <p>1 INDEX TO EXAMINATION<br/> 2<br/> 3 Page<br/> 4 BRON CORNETT<br/> 5 EXAMINATION<br/> 6 By Mr. Whelan 4<br/> 7 Certificate of Reporter 78<br/> 8<br/> 9 INDEX TO EXHIBITS<br/> 10 Defendant's Description Page<br/> 11 No. 1 Automobile Policy Packet<br/> 12 Cornett_USAA_2881-2924 15<br/> 13<br/> 14 No. 2 Complaint 15<br/> 15<br/> 16 No. 3 Incident Report<br/> 17 1st RFP Responses_1-11 17<br/> 18 No. 4 Recorded Statement<br/> 19 Cornett_USAA_1066-1072 33<br/> 20<br/> 21 No. 5 Photographs<br/> 22 Cornett_USA_47-59 36<br/> 23 No. 6 Google Maps 38<br/> 24 No. 7 Diagram by Bron Cornett 63<br/> 25 No. 8 not marked<br/> 26 No. 9 Four photographs 71<br/> 27<br/> 28<br/> 29<br/> 30<br/> 31<br/> 32<br/> 33<br/> 34<br/> 35</p> | <p style="text-align: right;">5</p> <p>1 the whole truth and nothing but the truth?<br/> 2 A. Yes, sir.<br/> 3 Q. Let's start out with your educational<br/> 4 background, please, sir. Just tell me about your<br/> 5 educational background.<br/> 6 A. I graduated from Blythewood High School in<br/> 7 2017. I then went to -- well, I went to Penn Foster a<br/> 8 little bit to continue my education. Finished that,<br/> 9 and that's really about it for my education.<br/> 10 Q. Did you get a degree from Penn Foster?<br/> 11 A. No, sir. No, sir.<br/> 12 Q. So when did you leave there?<br/> 13 A. I left there last year, actually, around<br/> 14 the time -- around August, yeah.<br/> 15 Q. Tell me about your employment background,<br/> 16 please.<br/> 17 A. How far would you like to go back with my<br/> 18 employment background?<br/> 19 Q. I guess, you graduated high school in<br/> 20 2017?<br/> 21 A. Yes, sir.<br/> 22 Q. Where were you working at that time?<br/> 23 A. At that time I was at Jiffy Lube, and then<br/> 24 I went to Kroger, and then I started working at<br/> 25 O'Reilly Auto Parts, and now I'm at Batteries Plus</p> |

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| <p style="text-align: right;">6</p> <p>1 Bulbs.</p> <p>2 <b>Q. What do you do at Batteries Plus Bulbs?</b></p> <p>3 A. A sales associate. I just install bulbs.</p> <p>4 I install car batteries. I fix cellphones, put</p> <p>5 batteries in watches, anything like that.</p> <p>6 <b>Q. Cool. Did you miss work as a result of</b></p> <p>7 <b>your injuries from this assault?</b></p> <p>8 A. Yes, sir.</p> <p>9 <b>Q. How long were you out of work?</b></p> <p>10 A. I want to say, about -- I want to say,</p> <p>11 three to four months, yes, sir.</p> <p>12 <b>Q. Other than those three to four months,</b></p> <p>13 <b>have you had any other breaks in employment or have</b></p> <p>14 <b>you always been working?</b></p> <p>15 A. I have always been working other than --</p> <p>16 other than -- actually, yes, sir, I've always been</p> <p>17 working.</p> <p>18 <b>Q. How far does that go back to? When's the</b></p> <p>19 <b>last time you had a break besides this incident?</b></p> <p>20 A. Probably when I was in high school working</p> <p>21 for Olive Garden. That's really the only time I had a</p> <p>22 break. Because after that, yeah, I just started</p> <p>23 working-working.</p> <p>24 <b>Q. Have you always filed your income taxes?</b></p> <p>25 A. Yes, sir.</p> | <p style="text-align: right;">8</p> <p>1 <b>Q. How old is she?</b></p> <p>2 A. She's 12.</p> <p>3 <b>Q. So just the four of you at Castlebury?</b></p> <p>4 A. Yes, sir.</p> <p>5 <b>Q. Putting this incident aside, have you ever</b></p> <p>6 <b>been involved in any auto accident?</b></p> <p>7 A. Yes, sir.</p> <p>8 <b>Q. How many?</b></p> <p>9 A. About two. Yes, sir.</p> <p>10 <b>Q. Tell me about those.</b></p> <p>11 A. The first one was in my older truck. It</p> <p>12 was a '98 Chevy S10. I got rear-ended and they</p> <p>13 totaled out the truck. The second time, it was in the</p> <p>14 S10 again and I bought it out from the salvage</p> <p>15 company. And I got rear-ended again and that was in</p> <p>16 front of Sandhills on Two Notch.</p> <p>17 <b>Q. Can you give me a year of those accidents?</b></p> <p>18 A. Maybe 2020-ish. 2019.</p> <p>19 <b>Q. All right. Have you ever been -- I</b></p> <p>20 <b>assume, you were driving for both of those incidents?</b></p> <p>21 A. Yes, sir.</p> <p>22 <b>Q. Have you ever been a passenger in an auto</b></p> <p>23 <b>accident?</b></p> <p>24 A. No, sir.</p> <p>25 <b>Q. Putting this incident aside, have you been</b></p>                                                 |
| <p style="text-align: right;">7</p> <p>1 <b>Q. Is the income reflected on those taxes an</b></p> <p>2 <b>accurate reflection of what you've actually earned?</b></p> <p>3 A. Yes, sir.</p> <p>4 <b>Q. Great. Tell me where you live, please,</b></p> <p>5 <b>your residence.</b></p> <p>6 A. Right now I live at 34 Crestmont Drive,</p> <p>7 apartment 412.</p> <p>8 <b>Q. Who lives there with you?</b></p> <p>9 A. Me and my girlfriend.</p> <p>10 <b>Q. Is that Ms. Vawter?</b></p> <p>11 A. Yes, sir.</p> <p>12 <b>Q. How long have you been there?</b></p> <p>13 A. We have been there for eight months now.</p> <p>14 <b>Q. Where did you live before that?</b></p> <p>15 A. I lived at, sorry, it was an apartment</p> <p>16 that my parents started living at just for -- it was a</p> <p>17 short period of time because they were getting a house</p> <p>18 built. I'm not too sure of the address.</p> <p>19 <b>Q. That's okay. Where were you living at the</b></p> <p>20 <b>time of the accident, of the incident?</b></p> <p>21 A. 217 Castlebury Drive.</p> <p>22 <b>Q. And who lived there with you?</b></p> <p>23 A. My parents and my little sister.</p> <p>24 <b>Q. Anybody else?</b></p> <p>25 A. And my little sister.</p>                                                                | <p style="text-align: right;">9</p> <p>1 <b>involved in any fights or assaults either as a</b></p> <p>2 <b>perpetrator, a victim, participant or whatever?</b></p> <p>3 A. No, sir.</p> <p>4 <b>Q. Who is your insurer currently?</b></p> <p>5 A. Progressive.</p> <p>6 <b>Q. And they insure what?</b></p> <p>7 A. My vehicle.</p> <p>8 <b>Q. What vehicle is that?</b></p> <p>9 A. It is a 2010 Nissan Rogue.</p> <p>10 <b>Q. How long have you been insured with</b></p> <p>11 <b>Progressive?</b></p> <p>12 A. I would have to check because it's under</p> <p>13 my parents. It's under my dad. I want to say, he's</p> <p>14 been a member since, I want to say, 2020.</p> <p>15 <b>Q. What other insurers have you had insurance</b></p> <p>16 <b>with besides Progressive?</b></p> <p>17 A. USAA.</p> <p>18 <b>Q. What other insurers besides USAA and</b></p> <p>19 <b>Progressive?</b></p> <p>20 A. I want to say, that's about it.</p> <p>21 <b>Q. When you had your auto accidents you told</b></p> <p>22 <b>me about, who was your insurer at that time?</b></p> <p>23 A. I want to say, USAA was my insurance at</p> <p>24 the time. I've been insured under my parents so I'm</p> <p>25 not familiar with who we were with, but I want to say</p> |

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| <p style="text-align: right;">10</p> <p>1 it was USAA.</p> <p>2 <b>Q. Are you still under your parents' policy?</b></p> <p>3 A. Yes, sir.</p> <p>4 <b>Q. Who owns the Nissan Rogue?</b></p> <p>5 A. I own it, but it's under my dad's name.</p> <p>6 <b>Q. Keep that going as long as you can.</b></p> <p>7 A. Definitely.</p> <p>8 <b>Q. Have you been a part of any insurance</b></p> <p>9 <b>claims besides this incident?</b></p> <p>10 A. Insurance claim-wise, just the accidents</p> <p>11 for my truck when they totaled it out, yes, sir.</p> <p>12 <b>Q. Did you have any role in dealing with the</b></p> <p>13 <b>insurance claim for this incident?</b></p> <p>14 A. What do you mean by that?</p> <p>15 <b>Q. Did you personally ever communicate with</b></p> <p>16 <b>the insurance company?</b></p> <p>17 A. Only when they had me interview, the phone</p> <p>18 interview. That's about it, yes, sir.</p> <p>19 <b>Q. And that's the recorded statement --</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. -- I'm going to ask you about later?</b></p> <p>22 A. Yes, sir.</p> <p>23 <b>Q. So let me ask a cleaner question for the</b></p> <p>24 <b>record. Other than the interview that you gave to</b></p> <p>25 <b>USAA, did you ever speak to anyone from USAA?</b></p> | <p style="text-align: right;">12</p> <p>1 A. Um-hm.</p> <p>2 <b>Q. Do you know what else -- do you know</b></p> <p>3 <b>anything else about USAA's claim handling besides the</b></p> <p>4 <b>fact that they interviewed you?</b></p> <p>5 A. Not to my knowledge.</p> <p>6 <b>Q. Can you tell me anything that you believe</b></p> <p>7 <b>USAA did that was inappropriate?</b></p> <p>8 MR. SELLERS: Object to the form.</p> <p>9 THE WITNESS: Not to my knowledge.</p> <p>10 BY MR. WHELAN:</p> <p>11 <b>Q. And the reason I'm asking you is because</b></p> <p>12 <b>this is my chance to ask you questions.</b></p> <p>13 A. Yes, sir.</p> <p>14 <b>Q. And you have filed a lawsuit against USAA</b></p> <p>15 <b>A. Yes, sir.</b></p> <p>16 <b>Q. And, I understand, you want them to pay</b></p> <p>17 <b>your claim. Right?</b></p> <p>18 A. Yes, sir.</p> <p>19 <b>Q. But I just want to know, are you aware of</b></p> <p>20 <b>anything they did that you are complaining about</b></p> <p>21 <b>besides just not paying your claim?</b></p> <p>22 A. Can you rephrase that question one more</p> <p>23 time, I'm sorry?</p> <p>24 <b>Q. That's okay. Let me see if -- first of</b></p> <p>25 <b>all, I appreciate your telling me when you don't</b></p> |
| <p style="text-align: right;">11</p> <p>1 A. I honestly don't remember, no, sir.</p> <p>2 <b>Q. Were your attorneys handling the</b></p> <p>3 <b>communication with USAA?</b></p> <p>4 A. Yes, sir.</p> <p>5 <b>Q. Putting this incident aside, do you have</b></p> <p>6 <b>any complaints with USAA? Have you ever had any</b></p> <p>7 <b>complaints with USAA?</b></p> <p>8 A. Not to my knowledge, no, sir.</p> <p>9 <b>Q. Do you know why your parents switched</b></p> <p>10 <b>insurers?</b></p> <p>11 A. No, sir.</p> <p>12 <b>Q. Do you have complaints with USAA arising</b></p> <p>13 <b>from this claim? Do you have any complaints with how</b></p> <p>14 <b>they handled your insurance claim?</b></p> <p>15 MR. SELLERS: Object to the form. Please</p> <p>16 answer.</p> <p>17 BY MR. WHELAN:</p> <p>18 <b>Q. You can answer.</b></p> <p>19 A. Can you rephrase the question?</p> <p>20 <b>Q. Yes, sir. You understand an insurance</b></p> <p>21 <b>claim was made on your behalf --</b></p> <p>22 A. Yes, sir.</p> <p>23 <b>Q. -- with respect to your injuries? And</b></p> <p>24 <b>prior to this suit being filed, USAA responded to that</b></p> <p>25 <b>claim and they interviewed you?</b></p>                                                                | <p style="text-align: right;">13</p> <p>1 <b>understand a question, so keep that up.</b></p> <p>2 A. Yes, sir.</p> <p>3 <b>Q. I just want to know if you have any</b></p> <p>4 <b>complaint of anything that USAA did that they</b></p> <p>5 <b>shouldn't have done or didn't do that they should have</b></p> <p>6 <b>done. I'd like you to tell me so I can ask you some</b></p> <p>7 <b>more questions about that.</b></p> <p>8 A. Okay. Not to my knowledge.</p> <p>9 <b>Q. Now, the fellow that, I think, his name is</b></p> <p>10 <b>Kingkade?</b></p> <p>11 A. Yes, sir.</p> <p>12 <b>Q. I don't remember his first name. John</b></p> <p>13 <b>maybe?</b></p> <p>14 A. Yes, sir.</p> <p>15 <b>Q. Have you had any interactions with him at</b></p> <p>16 <b>all since the incident?</b></p> <p>17 A. No, sir.</p> <p>18 <b>Q. Have you filed suit against Mr. Kingkade?</b></p> <p>19 A. Yes, sir.</p> <p>20 <b>Q. What is the status of that?</b></p> <p>21 A. It's ongoing, actually. It's still</p> <p>22 ongoing. Yes, sir.</p> <p>23 <b>Q. Have you provided any testimony of any</b></p> <p>24 <b>type in that case?</b></p> <p>25 A. Yes, sir.</p>                                                                                                   |

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| <p style="text-align: right;">14</p> <p>1 <b>Q. When did that occur?</b></p> <p>2 A. I couldn't give you an accurate date. I</p> <p>3 want to say, around September of last year is when we</p> <p>4 had -- we gave a statement about it.</p> <p>5 <b>Q. Who did you give the statement to?</b></p> <p>6 A. I don't remember his name exactly. I</p> <p>7 couldn't tell you that one.</p> <p>8 <b>Q. But it wasn't your attorneys?</b></p> <p>9 A. Correct.</p> <p>10 <b>Q. Because I don't want to know anything you</b></p> <p>11 <b>talked to your attorneys about privately.</b></p> <p>12 A. Correct.</p> <p>13 <b>Q. I do want to know who you talked to, who</b></p> <p>14 <b>you gave the statement to. Can you tell me where you</b></p> <p>15 <b>were when you gave the statement?</b></p> <p>16 A. He is the one -- I really -- I'm trying to</p> <p>17 remember his name, but he's the one that is</p> <p>18 responsible for basically putting them behind bars.</p> <p>19 And he had me give the statement to him. I gave the</p> <p>20 statement to him. And we rode to the crime scene, I</p> <p>21 showed him everything that happened, and that's about</p> <p>22 it.</p> <p>23 <b>Q. So like a detective or something like</b></p> <p>24 <b>that?</b></p> <p>25 A. Yes, sir.</p> | <p style="text-align: right;">16</p> <p>1 <b>Let me ask you this. I think I already</b></p> <p>2 <b>know the answer. You had nothing to do with the</b></p> <p>3 <b>placing of this insurance?</b></p> <p>4 A. No, sir.</p> <p>5 <b>Q. Nothing to do with the procurement of this</b></p> <p>6 <b>insurance, the requesting of this insurance?</b></p> <p>7 A. No, sir.</p> <p>8 <b>Q. Don't know anything that was said by</b></p> <p>9 <b>either your parents or by USAA when this policy was</b></p> <p>10 <b>purchased?</b></p> <p>11 A. No, sir.</p> <p>12 <b>Q. Don't know anything that was said between</b></p> <p>13 <b>your parents and USAA at any time?</b></p> <p>14 A. No, sir.</p> <p>15 <b>Q. You mentioned earlier you gave a recorded</b></p> <p>16 <b>statement to USAA?</b></p> <p>17 A. Yes, sir.</p> <p>18 <b>Q. Where were you when you gave that</b></p> <p>19 <b>statement?</b></p> <p>20 A. I was at the VA Hospital at the time. I</p> <p>21 was in the parking lot. I gave the statement, and it</p> <p>22 lasted about 30 minutes, I want to say.</p> <p>23 <b>Q. Was your attorney on the line with you or</b></p> <p>24 <b>in the car with you?</b></p> <p>25 A. She was on the other line with me. It was</p>           |
| <p style="text-align: right;">15</p> <p>1 MR. SELLERS: I didn't want to interject</p> <p>2 but that's what -- it's law enforcement, I believe. A</p> <p>3 couple of times we've had conversations with law</p> <p>4 enforcement.</p> <p>5 MR. WHELAN: Awesome. Thank you.</p> <p>6 (Defendant's Exhibit 1 was marked for</p> <p>7 identification.)</p> <p>8 (Defendant's Exhibit 2 was marked for</p> <p>9 identification.)</p> <p>10 BY MR. WHELAN:</p> <p>11 <b>Q. Now, we've marked a few exhibits to your</b></p> <p>12 <b>deposition. What's marked as Exhibit 1 is a Certified</b></p> <p>13 <b>Copy of the subject insurance policy. Have you seen</b></p> <p>14 <b>this document before?</b></p> <p>15 A. No, sir.</p> <p>16 <b>Q. Did you ever read your insurance policy at</b></p> <p>17 <b>any time?</b></p> <p>18 A. No, sir, actually. I was given my</p> <p>19 insurance policy card, but my dad usually handles all</p> <p>20 the insurance.</p> <p>21 <b>Q. You have no reason to dispute that this is</b></p> <p>22 <b>an authentic copy of your insurance policy, do you?</b></p> <p>23 A. No, sir.</p> <p>24 <b>Q. I'm not going to ask you any other</b></p> <p>25 <b>questions about that, then.</b></p>                                                                     | <p style="text-align: right;">17</p> <p>1 a three-way call. Sorry.</p> <p>2 <b>Q. That's okay.</b></p> <p>3 A. Actually, I want to say she actually hung</p> <p>4 up, actually, and they called me, yes, sir, the USAA.</p> <p>5 Sorry, I'm thinking about another time that we were on</p> <p>6 the phone with her.</p> <p>7 <b>Q. Just to be clear, were you ever on the</b></p> <p>8 <b>phone with USAA and your attorney?</b></p> <p>9 A. Not that I can recall right now.</p> <p>10 <b>Q. So you just remember this one conversation</b></p> <p>11 <b>that you had with USAA. Correct?</b></p> <p>12 A. Yes, sir.</p> <p>13 (Defendant's Exhibit 4 was marked for</p> <p>14 identification.)</p> <p>15 BY MR. WHELAN:</p> <p>16 <b>Q. I think Exhibit 4 is a -- yeah, that's</b></p> <p>17 <b>right. If you could look at Exhibit 4. This is a</b></p> <p>18 <b>document Bates-stamped Cornett USAA 1066 through 1072.</b></p> <p>19 <b>This says that there was a recording on October the</b></p> <p>20 <b>6th of 2021. Does that date seem accurate?</b></p> <p>21 A. Yes, sir.</p> <p>22 <b>Q. As far as with when you gave the</b></p> <p>23 <b>interview?</b></p> <p>24 A. Yes, sir.</p> <p>25 <b>Q. I asked you to or I gave you an</b></p> |

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| <p style="text-align: right;">18</p> <p>1 opportunity to look over Exhibit 4 before the<br/>2 deposition began. Does this appear to be an accurate<br/>3 transcription of what you said to USAA?<br/>4 A. Yes, sir.<br/>5 Q. Did you see anything that was inaccurate<br/>6 in what you told USAA?<br/>7 A. No, sir.<br/>8 Q. When you talked to USAA, you did your best<br/>9 to provide true and accurate answers. Right?<br/>10 A. Yes, sir.<br/>11 Q. Going to the incident itself, where were<br/>12 you coming from and where were you going to?<br/>13 A. I was -- I don't remember exactly where I<br/>14 was coming from, but I had my girlfriend in the car at<br/>15 the time, and we were going to go to get ramen. We<br/>16 were going to go downtown to go get ramen, yes, sir.<br/>17 Q. What locale serves ramen downtown?<br/>18 A. What's it called. Menkoi Ramen House.<br/>19 Q. I'm going there for lunch.<br/>20 MR. SELLERS: The most important answer.<br/>21 MR. WHELAN: I saw Bakari perk up when I<br/>22 asked that question.<br/>23 BY MR. WHELAN:<br/>24 Q. I haven't lived here since law school so<br/>25 forgive me if it's a stupid question, but do you live</p>       | <p style="text-align: right;">20</p> <p>1 was cut off. He made contact with my vehicle. He<br/>2 kept going. We thought he was going to originally<br/>3 stop just so we can exchange information, like the<br/>4 normal thing to do. Kept going. We finally caught up<br/>5 at a light. He told me to pull over into the Dollar<br/>6 General parking lot. Pulled over, and that's when<br/>7 everything broke loose.<br/>8 He got out of his vehicle, took his shirt<br/>9 off. His eyes were wide like he was on something. He<br/>10 kicked my door. That's when I got out of my vehicle.<br/>11 I said, "Babe, you know what? F that, call the cops."<br/>12 I started walking around to their vehicle to get the<br/>13 license plate. His wife took my phone out of my hand.<br/>14 I pushed her because she has no reason taking my phone<br/>15 out of my hand. He starts hitting me, and I don't<br/>16 recall everything after that, but I just remember<br/>17 ending up on the ground, my leg and everything, yeah,<br/>18 and him on top of me.<br/>19 Q. Thank you for that, Bron. I'm going to<br/>20 ask you some more detailed questions about that and<br/>21 slow this thing down to slow motion. Okay?<br/>22 A. Yes, sir.<br/>23 Q. I guess, before the incident, do you<br/>24 recall what the weather was like?<br/>25 A. It was pretty sunny.</p> |
| <p style="text-align: right;">19</p> <p>1 or does Ms. Vawter live back the other way, the<br/>2 direction where you were coming from heading downtown?<br/>3 A. At the time she lived in Irmo, yes, and I<br/>4 lived all the way at the 217 Castlebury address.<br/>5 Q. Do you think, most likely, you were coming<br/>6 from one of y'all's houses headed downtown or not?<br/>7 A. No, sir. Because, I want to say, we were<br/>8 coming from a store of some sort, yes, sir.<br/>9 Q. Like a clothes store or a food store or<br/>10 what?<br/>11 A. It could have been a clothes store. I<br/>12 want to say, Academy Sports, yes, sir.<br/>13 Q. This was a Saturday, I think?<br/>14 A. Yes, sir.<br/>15 Q. Were you in a hurry for any reason?<br/>16 A. No, sir.<br/>17 Q. So a leisurely drive?<br/>18 A. Just cruising, yes, sir.<br/>19 Q. Were you angry, upset, calm? Can you<br/>20 describe your emotional state before the accident?<br/>21 A. Before the accident, I was calm. I was<br/>22 happy. Me and my girlfriend were just listening to<br/>23 music and we were just vibing, yes, sir.<br/>24 Q. So, then, what happened?<br/>25 A. Then, the original incident happened. I</p> | <p style="text-align: right;">21</p> <p>1 Q. The traffic conditions heavy, light,<br/>2 medium?<br/>3 A. For Two Notch it was heavy. It was pretty<br/>4 heavy.<br/>5 Q. Were you stopped at a light or how fast<br/>6 were you going when you were cut off?<br/>7 A. I was going 45. I was going the speed<br/>8 limit, yes, sir. And I had to slam on my brakes.<br/>9 Q. You're going 45 miles an hour and you're<br/>10 heading from the Wal-Mart area towards where the<br/>11 Dollar General is?<br/>12 A. Yes, sir.<br/>13 Q. So towards downtown?<br/>14 A. Yes, sir.<br/>15 Q. What lane of travel are you in?<br/>16 A. At this moment I am in the -- how can I<br/>17 explain this. There is two lanes for the Wal-Mart and<br/>18 then there is the turning lane that basically makes it<br/>19 a third lane. They were in the third lane, basically,<br/>20 the turning lane and got out of that lane to go<br/>21 straight. That's when they cut me off and they made<br/>22 contact with my vehicle. So I was in the inside lane<br/>23 right there, the left lane.<br/>24 Q. You're across the street from Wal-Mart,<br/>25 though, right? Wal-Mart is on your left?</p>                                                                                                                                                                                   |

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| <p style="text-align: right;">22</p> <p>1 A. Yeah. Wal-Mart is on the left like you're</p> <p>2 turning in but you can still go straight, though. And</p> <p>3 Wal-Mart is turn to the left and you just go down a</p> <p>4 street, basically, and Wal-Mart is in a little cut in</p> <p>5 the section.</p> <p>6 <b>Q. Are you coming up to a -- are these</b></p> <p>7 <b>turning lanes in front of a traffic light?</b></p> <p>8 A. Yes, sir.</p> <p>9 <b>Q. So the incident happened before you got to</b></p> <p>10 <b>that traffic light where Wal-Mart is?</b></p> <p>11 A. Um-hm. Like, what do you mean by that?</p> <p>12 <b>Q. Well, would you mind, it might help if you</b></p> <p>13 <b>could diagram it? Would you be okay with that?</b></p> <p>14 A. Yeah. This is the turning lane. This is</p> <p>15 the two lanes. We're coming down this lane. They get</p> <p>16 out of the turning lane while we're coming out. I</p> <p>17 slam on my brakes and, boom, they cut us off.</p> <p>18 <b>Q. Do you mind if I hold that for a second?</b></p> <p>19 A. Um-hm.</p> <p>20 <b>Q. So I'm going to put downtown over here.</b></p> <p>21 <b>Okay?</b></p> <p>22 A. Okay.</p> <p>23 <b>Q. Where would the Wal-Mart be?</b></p> <p>24 A. So the Wal-Mart, it would be -- this is</p> <p>25 the light, basically. That's the turn. The Wal-Mart</p> | <p style="text-align: right;">24</p> <p>1 <b>Q. So you're in the inside lane of travel?</b></p> <p>2 A. Yes, sir.</p> <p>3 <b>Q. They're in the turn lane to your left?</b></p> <p>4 A. Left.</p> <p>5 <b>Q. And you're going 45 miles an hour down the</b></p> <p>6 <b>road and all of a sudden they dart in front of you?</b></p> <p>7 A. Yes, sir.</p> <p>8 <b>Q. Did you have any warning that they were</b></p> <p>9 <b>going to do that? Did they have a turn signal on?</b></p> <p>10 A. No, sir.</p> <p>11 <b>Q. So you slam on brakes?</b></p> <p>12 A. Yes, sir.</p> <p>13 <b>Q. Did the tires skid?</b></p> <p>14 A. They chirped.</p> <p>15 <b>Q. What do you mean?</b></p> <p>16 A. Basically, it's like a skid. It's a</p> <p>17 slight skid to where your tires lock up for basically</p> <p>18 like a millisecond and then you're rolling again.</p> <p>19 They chirped and I slammed on the brakes, but,</p> <p>20 luckily, my brakes were good so they didn't slide.</p> <p>21 Yes, sir.</p> <p>22 <b>Q. From what you can observe, does he punch</b></p> <p>23 <b>the gas to -- let me stop and ask a different</b></p> <p>24 <b>question. Was he at a dead stop in the turning lane</b></p> <p>25 <b>or was he moving?</b></p>                                                          |
| <p style="text-align: right;">23</p> <p>1 would be basically all the way down here in a little</p> <p>2 cut. Yes, sir.</p> <p>3 <b>Q. The traffic light is the blue line running</b></p> <p>4 <b>across?</b></p> <p>5 A. Um-hm. And then there's another blue</p> <p>6 traffic line right there, traffic light.</p> <p>7 <b>Q. How many lanes of travel goes straight?</b></p> <p>8 A. Two.</p> <p>9 <b>Q. Should I do like a dotted line here and a</b></p> <p>10 <b>dotted line here?</b></p> <p>11 A. I was basically making that the street,</p> <p>12 the red line the street, but we can do that.</p> <p>13 <b>Q. Are there two turning lanes going to the</b></p> <p>14 <b>Wal-Mart?</b></p> <p>15 A. So the line itself is the turning lane.</p> <p>16 That's one lane. That's the other lane. That was the</p> <p>17 lane that I was in.</p> <p>18 <b>Q. Oh, I see.</b></p> <p>19 A. And they came out while I was coming up.</p> <p>20 <b>Q. So it was like they were going to go into</b></p> <p>21 <b>Wal-Mart?</b></p> <p>22 A. Yeah. That's what it seemed like, yes,</p> <p>23 sir.</p> <p>24 <b>Q. And then they changed their mind?</b></p> <p>25 A. Exactly.</p>                                                                                                                                                                             | <p style="text-align: right;">25</p> <p>1 A. I do not recall that part.</p> <p>2 <b>Q. That's okay. Do you recall whether his</b></p> <p>3 <b>brake lights were on or off before he cut you off?</b></p> <p>4 A. I honestly don't recall that because I was</p> <p>5 paying attention to traffic.</p> <p>6 <b>Q. Fair enough. Do you recall how much space</b></p> <p>7 <b>there was between your car and the car in front of you</b></p> <p>8 <b>before Mr. Kingkade cut you off?</b></p> <p>9 A. Between the car that was already in my</p> <p>10 lane in front of me?</p> <p>11 <b>Q. Yes, sir.</b></p> <p>12 A. Maybe about two to maybe three car spaces.</p> <p>13 <b>Q. Okay. So there was a very short window --</b></p> <p>14 <b>A. Yeah.</b></p> <p>15 <b>Q. -- for him to get in there?</b></p> <p>16 A. Yeah. Yes, sir.</p> <p>17 <b>Q. He comes in and you slam on the brakes.</b></p> <p>18 <b>Do you hit him?</b></p> <p>19 A. Originally, he made contact with us just</p> <p>20 because he turned out in front of us. Yes, sir.</p> <p>21 <b>Q. You say "originally." Was there more than</b></p> <p>22 <b>one impact?</b></p> <p>23 A. No, sir. I'm just stating that that's how</p> <p>24 it actually happened, that they turned out in front of</p> <p>25 us, causing the accident.</p> |

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| <p style="text-align: right;">26</p> <p>1 <b>Q. We'll go over it in a minute, but there is</b><br/> 2 <b>a police report where the police officer talks to you,</b><br/> 3 <b>I think, at the hospital. And what he writes down</b><br/> 4 <b>that you said, don't know if it's true or not, but</b><br/> 5 <b>what he writes down you said is, "I think our vehicles</b><br/> 6 <b>touched."</b></p> <p>7 A. I will say, while I was in the hospital, I<br/> 8 was under a lot of medication so there were times I<br/> 9 was in and out of dazy-ness. Right now, a lot more<br/> 10 stuff is clear now, but there are some blurry spots,<br/> 11 though, just because it was very traumatic, and while<br/> 12 I was on ground, I was going in and out of<br/> 13 consciousness. It was just a lot going on.</p> <p>14 <b>Q. Do you recall telling the police officer</b><br/> 15 <b>that you think the vehicles touched?</b></p> <p>16 A. Yes, sir.</p> <p>17 <b>Q. And were you not sure at that time in the</b><br/> 18 <b>hospital whether there had actually been contact or</b><br/> 19 <b>not?</b></p> <p>20 A. I was sure. I was sure, yes, sir. It was<br/> 21 just, like I said, the heat of the moment, I was just<br/> 22 not in the right head space at the time just because<br/> 23 all the pain medicine that I was under. It was just a<br/> 24 lot of stress at the time.</p> <p>25 <b>Q. Would you mind diagramming for me the</b></p> | <p style="text-align: right;">28</p> <p>1 A. It was right on the corner and it made<br/> 2 contact with -- it had their white paint on it. Yes,<br/> 3 sir.</p> <p>4 <b>Q. So in the left corner of your front bumper</b><br/> 5 <b>is where his vehicle hit?</b></p> <p>6 A. I would have to say, yes, sir. Yes, sir.</p> <p>7 <b>Q. How high up the bumper did he hit?</b></p> <p>8 A. I don't recall that. It's been a minute<br/> 9 since I've had that vehicle.</p> <p>10 <b>Q. What part of his vehicle was it that made</b><br/> 11 <b>contact with the left corner of your front bumper?</b></p> <p>12 A. The rear bumper.</p> <p>13 <b>Q. What part of his rear bumper? Was it</b><br/> 14 <b>right side, left side, corner, middle?</b></p> <p>15 A. Right side.</p> <p>16 <b>Q. Right corner or?</b></p> <p>17 A. So it was right middle-ish, if that makes<br/> 18 sense. It was slightly in the middle but still on the<br/> 19 right corner, if that makes sense.</p> <p>20 <b>Q. The right middle of his bumper?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. So if you don't mind, I'm going to try and</b><br/> 23 <b>draw a rear end of a car. I'm going to put Kingkade,</b><br/> 24 <b>which I don't know how to spell that, so I'm going to</b><br/> 25 <b>put JK for John Kingkade. And I wonder if you could</b></p> |
| <p style="text-align: right;">27</p> <p>1 <b>collision?</b></p> <p>2 A. Can you explain that?</p> <p>3 <b>Q. Yeah. You told me that he hit you?</b></p> <p>4 A. Um-hm.</p> <p>5 <b>Q. And I would like to see, like, if you</b><br/> 6 <b>could, give me some crude drawings of the cars so I</b><br/> 7 <b>can see --</b></p> <p>8 A. I'm not a good drawer.</p> <p>9 <b>Q. Well, me neither. But I'll just tell you</b><br/> 10 <b>what I'm looking for, is what part of his vehicle hit</b><br/> 11 <b>yours and what part of your vehicle did his hit.</b></p> <p>12 A. Okay.</p> <p>13 <b>Q. So you're going straight, I assume?</b></p> <p>14 A. I'm going straight. Here's the lane that<br/> 15 he's in. Here's me coming up. He comes out and I<br/> 16 slam on my brakes, and that's when, boom, the contact<br/> 17 was made. Because, like I said, I'm going 45 at the<br/> 18 time and he's going, I guess, less than 15, maybe 20.<br/> 19 So that's kind of, yeah.</p> <p>20 <b>Q. So your vehicle is in the center of the</b><br/> 21 <b>lane and that's -- I've kind of drawn a front bumper</b><br/> 22 <b>there, if that makes sense. Does he hit your front</b><br/> 23 <b>bumper or what does he hit?</b></p> <p>24 A. Yes, sir. He hits my front bumper.</p> <p>25 <b>Q. Where on the front bumper?</b></p>                                                                                                                           | <p style="text-align: right;">29</p> <p>1 <b>circle --</b></p> <p>2 A. So is this the bumper?</p> <p>3 <b>Q. Yes, sir. These are the wheels. The</b><br/> 4 <b>circles are the wheels and that's the rear end. Does</b><br/> 5 <b>that make sense? That's his rear wheels.</b></p> <p>6 A. These are the rear wheels?</p> <p>7 <b>Q. Yes, sir. And that's the back end.</b></p> <p>8 A. That's the back bumper, okay. So the<br/> 9 original contact happened around this area.</p> <p>10 <b>Q. Thank you.</b></p> <p>11 A. Like right in the middle, if that makes<br/> 12 sense.</p> <p>13 <b>Q. I'm going to put "original contact."</b></p> <p>14 A. Okay.</p> <p>15 <b>Q. In circle. Is that accurate?</b></p> <p>16 A. Yes, sir.</p> <p>17 <b>Q. And then I'm going to draw a --</b></p> <p>18 A. Well, how you have it written, wouldn't it<br/> 19 be this way instead? Because how you have it written,<br/> 20 it makes it seem like it's on the left side, kind of.</p> <p>21 <b>Q. So it would be more over here?</b></p> <p>22 A. Yeah, on the right middle-ish.</p> <p>23 <b>Q. I'm going to start a new page. I'm going</b><br/> 24 <b>to make a better one this time. So I put front where</b><br/> 25 <b>the front of the car is and rear where the rear of the</b></p>                                             |

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| <p style="text-align: right;">30</p> <p>1 car is. Circle where the original contact would be.</p> <p>2 A. (Complying).</p> <p>3 Q. Perfect. Thank you. And then I'm going</p> <p>4 to do the same thing for yours on this page. This is</p> <p>5 terrible. I'm going to put BC car, rear, front.</p> <p>6 Could you circle where the damage to your car was?</p> <p>7 A. Yes, sir. And then, do you want me to</p> <p>8 circle --</p> <p>9 Q. Oops, you did that on the wrong one.</p> <p>10 A. Oh.</p> <p>11 Q. That's okay, don't worry about it.</p> <p>12 A. You want me to just scratch it out?</p> <p>13 Q. Yeah, scratch that out.</p> <p>14 A. Am I circling just the damage for the</p> <p>15 front of the accident or that he caused as well?</p> <p>16 Q. I'm just looking at the accident.</p> <p>17 A. Gotcha. Gotcha.</p> <p>18 Q. Thank you. So you slam on brakes. Would</p> <p>19 you classify this as a -- you said that the vehicles</p> <p>20 touched --</p> <p>21 A. Um-hm.</p> <p>22 Q. -- previously?</p> <p>23 A. Yes.</p> <p>24 Q. Is that an accurate description?</p> <p>25 A. Yes, sir.</p> | <p style="text-align: right;">32</p> <p>1 A. Not at the time of the accident just</p> <p>2 because everything was going on.</p> <p>3 Q. At any time did you see any damage to</p> <p>4 Mr. Kingkade's vehicle besides paint transfer?</p> <p>5 A. No, sir.</p> <p>6 Q. And what color was the paint that was left</p> <p>7 on Mr. Kingkade's vehicle?</p> <p>8 A. Red.</p> <p>9 Q. And can you describe how large of a -- are</p> <p>10 we talking ping-pong ball, softball, basketball,</p> <p>11 football, three basketballs? Give me an idea of how</p> <p>12 large the impact was on Mr. Kingkade's vehicle.</p> <p>13 A. It was -- the smudge itself was about the</p> <p>14 size of a softball. Yes, sir.</p> <p>15 Q. Was it round or not?</p> <p>16 A. It was about -- like about the size of the</p> <p>17 Burger King cup.</p> <p>18 Q. I've got a large Burger King coffee cup</p> <p>19 here.</p> <p>20 A. Yeah.</p> <p>21 Q. I might mark this as an exhibit. So,</p> <p>22 really, did the smudge appear to you to be about the</p> <p>23 size of my Burger King cup?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Was that smudge red?</p> |
| <p style="text-align: right;">31</p> <p>1 Q. This wasn't a full-blown collision or -- I</p> <p>2 don't know the right word, but let's say it wasn't a</p> <p>3 -- let me start the question over.</p> <p>4 Did this cause any damage besides smudged</p> <p>5 paint?</p> <p>6 MR. SELLERS: Object to the form. Please</p> <p>7 answer.</p> <p>8 BY MR. WHELAN:</p> <p>9 Q. Let me ask it a different way.</p> <p>10 A. Okay.</p> <p>11 Q. Did you see any damage to either of the</p> <p>12 vehicles besides paint transfer?</p> <p>13 A. There was a slight crack behind the smudge</p> <p>14 like where the paint was cracking and everything, if</p> <p>15 that makes sense?</p> <p>16 Q. On whose vehicle?</p> <p>17 A. On my vehicle.</p> <p>18 Q. So I'll ask you some more questions about</p> <p>19 that.</p> <p>20 A. Okay.</p> <p>21 Q. Let me ask you this: Did you see paint</p> <p>22 transfer on Mr. Kingkade's vehicle?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Did you see any damage to Mr. Kingkade's</p> <p>25 vehicle besides paint transfer?</p>                                                       | <p style="text-align: right;">33</p> <p>1 A. Yes, sir.</p> <p>2 Q. And was it on a white background?</p> <p>3 A. Yes, sir.</p> <p>4 Q. What I'm going to do is mark this drawing</p> <p>5 as Exhibit 7.</p> <p>6 (Defendant's Exhibit 7 was marked for</p> <p>7 identification.)</p> <p>8 BY MR. WHELAN:</p> <p>9 Q. Now, you told me about the damage to your</p> <p>10 car. You said that there was some cracking behind the</p> <p>11 smudge on your car?</p> <p>12 A. Yes, sir.</p> <p>13 Q. When did you perceive that?</p> <p>14 A. What do you mean by that?</p> <p>15 Q. When did you realize that there was -- had</p> <p>16 the bumper cracked? Did the bumper crack?</p> <p>17 A. The bumper itself wasn't cracked. It was</p> <p>18 more of the paint was cracked on it even more. It was</p> <p>19 smudged and then you could tell that it was cracking</p> <p>20 around it. So that's what I mean.</p> <p>21 Q. So the bumper was not?</p> <p>22 A. Like originally cracked?</p> <p>23 Q. At any time. The bumper wasn't cracked,</p> <p>24 was it?</p> <p>25 A. No, sir.</p>                                                      |

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| <p style="text-align: right;">34</p> <p>1 <b>Q. There are two things that happened. One,</b><br/> 2 <b>there was a smudge on your car?</b><br/> 3 A. Um-hm.<br/> 4 <b>Q. And two, the paint on your car cracked?</b><br/> 5 A. Yes, sir.<br/> 6 <b>Q. How large was the smudge on your car?</b><br/> 7 A. I do not recall that without honestly<br/> 8 looking at a picture. I'd have to see a picture. I<br/> 9 don't recall it off the top of my head.<br/> 10 <b>Q. Did you take a photograph of the damage?</b><br/> 11 A. My mother did.<br/> 12 <b>Q. Fantastic. Does she still have that?</b><br/> 13 A. Yes, sir.<br/> 14 <b>Q. When's the last time you saw that</b><br/> 15 <b>photograph?</b><br/> 16 A. Probably about a year and some change.<br/> 17 <b>Q. Would it be possible --</b><br/> 18 MR. WHELAN: I don't know, Bakari, if you<br/> 19 have it.<br/> 20 BY MR. WHELAN:<br/> 21 <b>Q. I wonder, if not, on a break, can you ask</b><br/> 22 <b>your mom to text that?</b><br/> 23 A. I can do that.<br/> 24 <b>Q. That will save us some time about</b><br/> 25 <b>baseballs and ping-pong balls.</b></p>                                                                                                                                  | <p style="text-align: right;">36</p> <p>1 <b>Q. Were you told that the paint had cracked</b><br/> 2 <b>on the bumper?</b><br/> 3 A. Yes. And I saw it, too, once I finally<br/> 4 got home and was able to walk with the external<br/> 5 fixator.<br/> 6 <b>Q. When the collision happened -- it's a</b><br/> 7 <b>pretty long drive from the Wal-Mart to the Dollar</b><br/> 8 <b>General?</b><br/> 9 A. Yes, sir.<br/> 10 <b>Q. I drove it this morning.</b><br/> 11 A. Yes, sir.<br/> 12 <b>Q. And I counted including that traffic light</b><br/> 13 <b>before you -- right before the accident happened up to</b><br/> 14 <b>the Dollar General parking -- the Dollar General</b><br/> 15 <b>intersection, I counted seven traffic lights?</b><br/> 16 A. Uh-huh.<br/> 17 <b>Q. Does that sound right to you?</b><br/> 18 A. Yes, sir.<br/> 19 <b>Q. How long did it take to travel that</b><br/> 20 <b>distance?</b><br/> 21 A. A couple of minutes.<br/> 22 (Defendant's Exhibit 6 was marked for<br/> 23 identification.)<br/> 24 BY MR. WHELAN:<br/> 25 <b>Q. I've marked as Exhibit 6 a Google Maps</b></p> |
| <p style="text-align: right;">35</p> <p>1 A. Yes, sir.<br/> 2 <b>Q. When did you first see the damage to your</b><br/> 3 <b>car?</b><br/> 4 A. I saw the damage -- well, I was originally<br/> 5 told about the damage when I was in the hospital.<br/> 6 When I finally got transferred to the hospital, I was<br/> 7 told about the damage on my vehicle. My mom went to<br/> 8 go take the pictures while they were still trying to<br/> 9 reset my leg. Then, that's when I originally saw it<br/> 10 once I finally got home, but that wasn't until two<br/> 11 weeks later because I was in the hospital for around<br/> 12 two weeks.<br/> 13 <b>Q. So you did not know what had happened to</b><br/> 14 <b>your car until you were told while you were in the</b><br/> 15 <b>hospital?</b><br/> 16 A. Correct.<br/> 17 <b>Q. What were you told happened to your car?</b><br/> 18 A. That it had damage on it. I don't recall<br/> 19 everything just because, like I said, I was going<br/> 20 through something traumatic and a lot was going on.<br/> 21 But that there was damage. I was told that there was<br/> 22 damage.<br/> 23 <b>Q. Were you told whether there had been a</b><br/> 24 <b>paint smudge on the bumper?</b><br/> 25 A. Yes.</p> | <p style="text-align: right;">37</p> <p>1 <b>printout that purports to show directions from the</b><br/> 2 <b>Wal-Mart to the Dollar General.</b><br/> 3 A. Um-hm.<br/> 4 <b>Q. This shows that it's a distance of 3.3</b><br/> 5 <b>miles.</b><br/> 6 A. Um-hm.<br/> 7 <b>Q. I also see it's coming out of the Wal-Mart</b><br/> 8 <b>parking lot. So there's a driveway there that you</b><br/> 9 <b>would not have gone down?</b><br/> 10 A. No, sir.<br/> 11 <b>Q. Does the three miles reflected in this</b><br/> 12 <b>exhibit seem about right to you?</b><br/> 13 A. Yes, sir.<br/> 14 MR. SELLERS: I'm going to just pause one<br/> 15 second. You said Dollar General.<br/> 16 MR. WHELAN: Dollar Tree.<br/> 17 MR. SELLERS: I just wanted to clarify<br/> 18 that.<br/> 19 MR. WHELAN: I appreciate that.<br/> 20 BY MR. WHELAN:<br/> 21 <b>Q. Was this at a Dollar General or a Dollar</b><br/> 22 <b>Tree?</b><br/> 23 A. It was -- honestly, I've always got it<br/> 24 mixed up, I'm not gonna lie to you. I've always got<br/> 25 it mixed up. I don't want to say it was a Dollar Tree</p>           |

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| <p style="text-align: right;">38</p> <p>1 and it be the Dollar General, and I don't want to say<br/> 2 it was the Dollar General and it be the Dollar Tree.<br/> 3 (Defendant's Exhibit 3 was marked for<br/> 4 identification.)<br/> 5 BY MR. WHELAN:<br/> 6 <b>Q. You know what we might be able to do is if<br/> 7 you look at Exhibit 3, I think, that is the police<br/> 8 report that y'all produced. If you look at the fourth<br/> 9 page of Exhibit 3.</b><br/> 10 MR. SELLERS: Dollar Tree.<br/> 11 BY MR. WHELAN:<br/> 12 <b>Q. First line says Dollar Tree at 8921 Two<br/> 13 Notch Road.</b><br/> 14 A. Yes, sir.<br/> 15 <b>Q. So that's where the incident happened?</b><br/> 16 A. Yes, sir.<br/> 17 <b>Q. Thank you.</b><br/> 18 MR. WHELAN: And, thank you, Bakari, for<br/> 19 catching that.<br/> 20 BY MR. WHELAN:<br/> 21 <b>Q. But looking at Exhibit 6, this shows the<br/> 22 distance from the Wal-Mart to 8921 Two Notch Road.<br/> 23 Correct?</b><br/> 24 A. Right.<br/> 25 <b>Q. Who knows how they come up with the times</b></p>                                                                                                      | <p style="text-align: right;">40</p> <p>1 A. I wouldn't recall that, actually.<br/> 2 <b>Q. Do you recall anything about the<br/> 3 three-mile drive?</b><br/> 4 A. Just that I was trying to catch up to him<br/> 5 just to get the insurance, license plate, stuff like<br/> 6 that. Yes, sir.<br/> 7 <b>Q. Did you ever honk your horn at him?</b><br/> 8 A. Yes, sir.<br/> 9 <b>Q. When did you do that?</b><br/> 10 A. When first contact was -- well, when<br/> 11 contact was made and when -- if I can point it out<br/> 12 here, I might be able to recall it. No, I can't do<br/> 13 that. But I honked at him about three times, yes,<br/> 14 sir.<br/> 15 <b>Q. Three different areas?</b><br/> 16 A. Yes, sir.<br/> 17 <b>Q. Did he have any reaction to your honking?</b><br/> 18 A. No, sir. He just kept driving.<br/> 19 <b>Q. Was there ever a car between you guys or<br/> 20 were you always the car directly behind him?</b><br/> 21 A. Like I said, I wouldn't remember that,<br/> 22 honestly.<br/> 23 <b>Q. Did you ever get beside him or in front of<br/> 24 him or were you always behind him?</b><br/> 25 A. I got beside him when we finally caught up</p> |
| <p style="text-align: right;">39</p> <p>1 <b>but this says seven minutes. It doesn't look like the<br/> 2 traffic is very heavy on this exhibit. Does this<br/> 3 refresh your recollection as far as how long it took<br/> 4 to get from the Wal-Mart to the Dollar Tree?</b><br/> 5 A. Honestly, I wouldn't remember. I wouldn't<br/> 6 recall.<br/> 7 <b>Q. Were you guys speeding along that route?</b><br/> 8 A. We were definitely going a little bit over<br/> 9 45, yes, sir, just because I was trying to get caught<br/> 10 up to them. Yes, sir.<br/> 11 <b>Q. Do you know how many of the seven traffic<br/> 12 lights you guys stopped at?</b><br/> 13 A. I want to say, they were all green,<br/> 14 actually.<br/> 15 <b>Q. You should have gone to stop at the gas<br/> 16 station. So you never stopped at any of the traffic<br/> 17 lights?</b><br/> 18 A. No, sir.<br/> 19 <b>Q. And, obviously, when he cut you off, you<br/> 20 were the car directly behind him?</b><br/> 21 A. Um-hm.<br/> 22 <b>Q. Yes?</b><br/> 23 A. Yes, sir.<br/> 24 <b>Q. Did you continue to be the car directly<br/> 25 behind him for the entire three miles?</b></p> | <p style="text-align: right;">41</p> <p>1 to the light, at the light. That's when I got next to<br/> 2 him.<br/> 3 <b>Q. You were always behind him until the light<br/> 4 at Rabon Road?</b><br/> 5 A. Yes, sir.<br/> 6 <b>Q. That's the one by the Dollar Tree?</b><br/> 7 A. Yes, sir.<br/> 8 <b>Q. Did you both stop at the light at Rabon<br/> 9 Road?</b><br/> 10 A. Yes, sir.<br/> 11 <b>Q. Was that one green or red?</b><br/> 12 A. That was red.<br/> 13 <b>Q. Your luck ran out. What lane was he in?</b><br/> 14 A. He was in the right lane. I was in the<br/> 15 left lane.<br/> 16 <b>Q. Were there cars behind you?</b><br/> 17 A. I wouldn't remember that one.<br/> 18 <b>Q. Now, the traffic was heavy back at<br/> 19 Wal-Mart?</b><br/> 20 A. Um-hm.<br/> 21 <b>Q. Did the traffic continue to be heavy<br/> 22 during that three-mile stretch?</b><br/> 23 A. Yes. Actually, there were cars behind us,<br/> 24 because he told me to turn over, and I remember there<br/> 25 were vehicles behind us but I took that right turn as</p>                                                                                                                           |

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| <p style="text-align: right;">42</p> <p>1 well just because, like I said, I thought it was going<br/>2 to be the usual reaction when an accident happens.<br/>3 You pull over, you exchange information. But that<br/>4 wasn't the case.<br/>5 <b>Q. Did he ever indicate that he knew that an</b><br/>6 <b>accident had occurred?</b><br/>7 A. I wouldn't know that, actually. I don't<br/>8 know if he was talking to his wife in the vehicle,<br/>9 saying, I'm going to just keep going. I'm not too<br/>10 sure about that one.<br/>11 <b>Q. Was there any nonverbal communication</b><br/>12 <b>between you and the occupants of that car from the</b><br/>13 <b>time of the accident until you got to the light at the</b><br/>14 <b>Dollar Tree?</b><br/>15 A. What do you mean by that?<br/>16 <b>Q. Were you guys making contact in the mirror</b><br/>17 <b>-- eye contact in the mirrors?</b><br/>18 A. No, sir.<br/>19 <b>Q. Or hand gestures or anything like that?</b><br/>20 A. No, sir.<br/>21 <b>Q. No flipping of the bird or anything like</b><br/>22 <b>that?</b><br/>23 A. No, sir.<br/>24 <b>Q. You were trying to get his attention with</b><br/>25 <b>the horn?</b></p> | <p style="text-align: right;">44</p> <p>1 A. I don't recall.<br/>2 <b>Q. Did you gesture to him or honk to him to</b><br/>3 <b>get his attention at the traffic light?</b><br/>4 A. I want to say, I honked.<br/>5 <b>Q. Then, he looks over and the first thing</b><br/>6 <b>that's said is by you. Correct?</b><br/>7 A. Yes.<br/>8 <b>Q. And you say, "Hey, you hit my vehicle"?</b><br/>9 A. Yes, sir.<br/>10 <b>Q. Did you say anything else?</b><br/>11 A. No, sir. But he said to pull over.<br/>12 <b>Q. At this point, were you angry?</b><br/>13 A. I was angry, yes, I was. Yes, sir. But I<br/>14 wasn't angry to the point I wanted to fight. I wasn't<br/>15 angry like that.<br/>16 <b>Q. Why were you angry?</b><br/>17 A. Because I worked very hard for that<br/>18 vehicle and it had a custom paint job on it, and I was<br/>19 very proud of that vehicle.<br/>20 <b>Q. Were you angry that he cut you off?</b><br/>21 A. Yes, sir.<br/>22 <b>Q. Were you angry that he sped away from you?</b><br/>23 A. Yes, sir.<br/>24 <b>Q. Did you tell him to pull over?</b><br/>25 A. No. He told me to pull over.</p>                                                                                                                                         |
| <p style="text-align: right;">43</p> <p>1 A. Yes, sir.<br/>2 <b>Q. Were you doing other things to get his</b><br/>3 <b>attention? Were you flashing your lights or anything</b><br/>4 <b>like that?</b><br/>5 A. I wouldn't remember that one, actually.<br/>6 <b>Q. Was he honking his horn or did he do</b><br/>7 <b>anything to acknowledge your presence on the road up</b><br/>8 <b>to the traffic light?</b><br/>9 A. No, sir.<br/>10 <b>Q. At the traffic light, were any words</b><br/>11 <b>exchanged?</b><br/>12 A. Yes, sir.<br/>13 <b>Q. What was said?</b><br/>14 A. "Hey, you hit my vehicle." "Pull over up<br/>15 here." He told me to pull over right there. And I<br/>16 pulled over. Well, I told him, "You hit my vehicle."<br/>17 I should be more clear about that.<br/>18 <b>Q. So he stops at the traffic light first?</b><br/>19 A. Um-hm.<br/>20 <b>Q. Then you stop at the traffic light second.</b><br/>21 <b>Right?</b><br/>22 A. Yes, sir.<br/>23 <b>Q. Do you roll down your window at that time?</b><br/>24 A. My windows were already rolled down.<br/>25 <b>Q. Were his already rolled down?</b></p>                                                           | <p style="text-align: right;">45</p> <p>1 <b>Q. When you said, "Hey, you hit my vehicle,"</b><br/>2 <b>what did you want -- what was the purpose of that?</b><br/>3 <b>Did you want him to pull over?</b><br/>4 A. Yes, sir. But he originally made the<br/>5 point to pull over, though. He initiated to pull over<br/>6 first, though.<br/>7 <b>Q. But even though you were angry when you</b><br/>8 <b>said, "You hit my vehicle," did you do that in an</b><br/>9 <b>aggressive manner or a calm manner, or how would you</b><br/>10 <b>describe it?</b><br/>11 A. It wasn't aggressive, like, "Oh, hey, you<br/>12 hit my vehicle." It was -- there was attitude behind<br/>13 it, though, yes, sir. But it wasn't anything to where<br/>14 it should initiate a fight.<br/>15 <b>Q. Got it. So you say, "Hey, you hit my</b><br/>16 <b>vehicle," and then he says, "Pull over to the Dollar</b><br/>17 <b>General"?</b><br/>18 A. Yes, sir.<br/>19 <b>Q. Did he say anything else besides that?</b><br/>20 A. No, sir.<br/>21 <b>Q. Was there any attitude behind what he said</b><br/>22 <b>that you perceived?</b><br/>23 A. I can't remember that, no, sir.<br/>24 <b>Q. Does he wait for the light to turn green?</b><br/>25 A. I can't remember that either.</p> |

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| <p style="text-align: right;">46</p> <p>1 <b>Q. How were you able to cut across the</b><br/> 2 <b>traffic behind him from the left lane to turning</b><br/> 3 <b>right?</b><br/> 4 A. I put my blinker on and I cut over,<br/> 5 basically, to follow right behind him. Because we<br/> 6 were the two cars up front, the first cars. I just --<br/> 7 I don't remember -- I don't recall if the light was<br/> 8 green or red or not.<br/> 9 <b>Q. Did you believe him to be at fault for</b><br/> 10 <b>the accident?</b><br/> 11 A. Yes, sir.<br/> 12 <b>Q. And were you concerned about what sort of</b><br/> 13 <b>damage your car had?</b><br/> 14 A. Yes, sir.<br/> 15 <b>Q. Did you take down his license plate</b><br/> 16 <b>information during the three-mile chase?</b><br/> 17 A. No, sir. I didn't have my phone in my<br/> 18 hand at the time. I took down his license plate<br/> 19 information once we finally got -- well, I tried to<br/> 20 take down his license plate information, but that's<br/> 21 when the contact happened. His wife took my phone out<br/> 22 of my hand. He came up behind me and started hitting<br/> 23 me.<br/> 24 <b>Q. After the collision, during the three-mile</b><br/> 25 <b>pursuit, did you or Ms. Vawter call the police?</b></p> | <p style="text-align: right;">48</p> <p>1 <b>you would be assaulted by this guy?</b><br/> 2 A. Can you rephrase that?<br/> 3 <b>Q. Yeah. Were you ever concerned for your</b><br/> 4 <b>safety before he -- let me back up and ask a different</b><br/> 5 <b>question. Did he blind-side you? Did he sucker punch</b><br/> 6 <b>you? What happened?</b><br/> 7 A. Still, to this day, I don't remember<br/> 8 exactly what happened. All I know is she took my<br/> 9 phone, and I don't know where he hit me, but I<br/> 10 remember seeing punches when I turned around, but I<br/> 11 don't recall where he hit me, though.<br/> 12 <b>Q. You didn't see it coming?</b><br/> 13 A. Correct.<br/> 14 <b>Q. Fair enough?</b><br/> 15 A. Correct.<br/> 16 <b>Q. I'd call it a sucker punch if it was a</b><br/> 17 <b>punch, but, you know, it wasn't fair?</b><br/> 18 A. Correct.<br/> 19 <b>Q. And, I guess, what I want to ask you is,</b><br/> 20 <b>before he hit you while you weren't looking, were you</b><br/> 21 <b>concerned for your safety?</b><br/> 22 A. Oh, yes, sir.<br/> 23 <b>Q. When did you first become concerned for</b><br/> 24 <b>your safety?</b><br/> 25 A. Once he took his shirt off and his eyes --</p> |
| <p style="text-align: right;">47</p> <p>1 A. No, sir. We called the police once we got<br/> 2 to the actual pullover spot, and I said, "You know<br/> 3 what, babe? F that, call the cops." That's when I<br/> 4 was walking around to their vehicle, because that's<br/> 5 when he kicked my car. And I got out. "You know<br/> 6 what, babe? F that, call the cops." She took the<br/> 7 phone out of my hand.<br/> 8 <b>Q. Do you know whether Ms. Vawter did call</b><br/> 9 <b>the police?</b><br/> 10 A. Yes, sir, she did.<br/> 11 <b>Q. And I'll ask her these questions. I just</b><br/> 12 <b>want to know what you know. Was she talking to the</b><br/> 13 <b>police when the --</b><br/> 14 A. The police never answered.<br/> 15 <b>Q. Oh, wow.</b><br/> 16 A. She called them about, I want to say,<br/> 17 seven times.<br/> 18 <b>Q. Holy cow. Like 911?</b><br/> 19 A. Yes, sir.<br/> 20 <b>Q. Oh, my gosh. That's frightening.</b><br/> 21 A. Yes, sir. The police didn't get there<br/> 22 until I arrived at the hospital.<br/> 23 <b>Q. Wow. At what point did you realize that</b><br/> 24 <b>this -- let me ask a different question. At any point</b><br/> 25 <b>in time were you concerned before you were struck that</b></p>                                    | <p style="text-align: right;">49</p> <p>1 like, mentally, he wasn't there anymore. Like, he was<br/> 2 a completely different person.<br/> 3 MR. WHELAN: Off the record for a second.<br/> 4 (A recess transpired.)<br/> 5 BY MR. WHELAN:<br/> 6 <b>Q. We had kind of slowed down the chain of</b><br/> 7 <b>events and gotten to the Dollar Tree parking lot.</b><br/> 8 A. Yes, sir.<br/> 9 <b>Q. Mr. Kingkade pulls into the driveway of</b><br/> 10 <b>the parking lot. You follow him and you park behind</b><br/> 11 <b>him?</b><br/> 12 A. Yes, sir.<br/> 13 <b>Q. What happens next?</b><br/> 14 A. He gets out of his car. I am still in my<br/> 15 car at this time. He takes his shirt off. He kicks<br/> 16 my door. That's when I get out of the vehicle and<br/> 17 words are exchanged.<br/> 18 <b>Q. Can I stop you there?</b><br/> 19 A. Yes, sir.<br/> 20 <b>Q. What words were exchanged?</b><br/> 21 A. That I do not recall. It was just one of<br/> 22 those heat-of-the-moment type things. I know he was<br/> 23 calling me the N-word and calling my girlfriend an<br/> 24 N-word lover and all this.<br/> 25 <b>Q. Do you feel that the assault was racially</b></p>                                         |

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| <p style="text-align: right;">50</p> <p>1 motivated?</p> <p>2 A. To an extent, yes, sir.</p> <p>3 Q. Tell me what you mean by that.</p> <p>4 A. I feel that it was -- he was definitely</p> <p>5 racist. It was racially motivated. Let me backtrack.</p> <p>6 Sorry about that.</p> <p>7 Q. That's okay.</p> <p>8 A. Yes. I do feel like it was racially</p> <p>9 motivated. Yes, sir.</p> <p>10 Q. Is it your belief that if you had been</p> <p>11 white, that this would not have happened?</p> <p>12 A. Correct.</p> <p>13 Q. And you mentioned that at some point he</p> <p>14 kind of snapped? That's my word.</p> <p>15 A. Yes, sir.</p> <p>16 Q. But was it after he got out of the car and</p> <p>17 saw you, is that when his demeanor all of the sudden</p> <p>18 changed?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Do you remember where he was when you</p> <p>21 perceived him to kind of snap and this racist</p> <p>22 personality come out?</p> <p>23 A. Yes, sir. He was right next to his door.</p> <p>24 That's when he took his shirt off, eyes just wide like</p> <p>25 he was on drugs. That's exactly what it seemed like.</p>                                                                                                                                                                                                                                  | <p style="text-align: right;">52</p> <p>1 around?</p> <p>2 A. Not for sure. It would be just my guess,</p> <p>3 that she just didn't want us to get the license plate</p> <p>4 on their Mercedes. I'm also guessing that just</p> <p>5 because they took our phones after the whole original</p> <p>6 incident. Yeah.</p> <p>7 Q. Okay. So he kicks your door. Then you go</p> <p>8 to get his license plate number?</p> <p>9 A. That's when I get out of the car, yes,</p> <p>10 sir.</p> <p>11 Q. Were you injured at all by the kick in the</p> <p>12 door?</p> <p>13 A. No, sir.</p> <p>14 Q. I should have asked you this earlier, but</p> <p>15 you were not injured at all by the vehicles touching</p> <p>16 previously?</p> <p>17 A. No, sir.</p> <p>18 Q. And neither was your girlfriend?</p> <p>19 A. No, sir.</p> <p>20 Q. So you go around -- after he kicks the</p> <p>21 door, you get out of the car, and you walk around the</p> <p>22 front of your car and then to the rear of</p> <p>23 Mr. Kingkade's car?</p> <p>24 A. Yes, sir.</p> <p>25 Q. To get his license plate number?</p>                                                                                                              |
| <p style="text-align: right;">51</p> <p>1 He kicked my door and it was just, he was a whole</p> <p>2 different person. He didn't seem like the person that</p> <p>3 I was just talking to at the light. It seemed like</p> <p>4 him on rabies. It was crazy. Yes, sir.</p> <p>5 Q. The chain of events -- and we've got a</p> <p>6 video of it. If I can pull it up, I'll pull it up. I</p> <p>7 don't know if I'll be able to or not. Have you seen</p> <p>8 the video that was --</p> <p>9 A. No, sir.</p> <p>10 Q. Okay. Well, I definitely want to pull it</p> <p>11 up, then. Before we look at the video, just from your</p> <p>12 memory, him kicking your door and stuff like that,</p> <p>13 that happens on the driver's side of your vehicle. At</p> <p>14 some point they turn their car around so they're</p> <p>15 facing you?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Do you remember when that occurred?</p> <p>18 A. I don't remember when that occurred just</p> <p>19 because I was dealing with him. I don't know if his</p> <p>20 wife did it. I think she did it just to try not to</p> <p>21 get us to get the license plate number. But other</p> <p>22 than that, I don't recall, really, what happened after</p> <p>23 I was on the ground.</p> <p>24 Q. Let me ask you this: Do you know what</p> <p>25 Ms. Kingkade's motivation was in turning the car</p> | <p style="text-align: right;">53</p> <p>1 A. Yes, sir.</p> <p>2 Q. Do you have your phone out to take a</p> <p>3 picture before it's snatched from you or what?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Were you able to actually click a picture?</p> <p>6 A. I don't recall just because they took our</p> <p>7 phones at that moment, and after I was able to finally</p> <p>8 get a replacement phone, none of my stuff was saved.</p> <p>9 Yeah.</p> <p>10 Q. So you are somewhere in the process of</p> <p>11 taking a picture with your phone of the license plate?</p> <p>12 A. Yes, sir.</p> <p>13 Q. What does Ms. Kingkade do?</p> <p>14 A. She takes it out of my hand.</p> <p>15 Q. How? Did you even know where she was</p> <p>16 before she --</p> <p>17 A. I was dealing with her husband and, I</p> <p>18 guess, my hand went limp and she snatched it out.</p> <p>19 Q. During this time at the back of the</p> <p>20 Kingkades' car, are they continuing to -- first of</p> <p>21 all, is Mr. Kingkade continuing to hurl racial</p> <p>22 obscenities toward you?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Do you recall whether Mrs. Kingkade was</p> <p>25 also making this racial hate speech as well?</p> |

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| <p style="text-align: right;">54</p> <p>1 A. Yes, sir.</p> <p>2 <b>Q. She actually takes the phone out of your</b></p> <p>3 <b>hand?</b></p> <p>4 A. Yes, sir.</p> <p>5 <b>Q. Does she run?</b></p> <p>6 A. Again, I'm not sure what happens after</p> <p>7 that just because I was dealing with him. I didn't</p> <p>8 want to have my back turned to him for long just</p> <p>9 because he already started hitting me once she took my</p> <p>10 phone and I pushed her, because she had no reason</p> <p>11 taking my phone. But after that, I really don't</p> <p>12 recall.</p> <p>13 <b>Q. Again, I'm slowing this down to slow</b></p> <p>14 <b>motion. Okay?</b></p> <p>15 A. Yes, sir.</p> <p>16 <b>Q. She takes your phone. I guess, when she</b></p> <p>17 <b>does that, Mr. Kingkade is -- if you're facing the</b></p> <p>18 <b>license plate, I assume, Mr. Kingkade is to your</b></p> <p>19 <b>right?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. Mrs. Kingkade is to your left. True?</b></p> <p>22 A. Yes, sir.</p> <p>23 <b>Q. So when she takes your phone, you turn to</b></p> <p>24 <b>the left towards Mrs. Kingkade?</b></p> <p>25 A. Um-hm.</p>                                                                                                                 | <p style="text-align: right;">56</p> <p>1 A. No, sir. Unfortunately, not.</p> <p>2 <b>Q. I think I saw somewhere that you bit him?</b></p> <p>3 A. Yes, sir.</p> <p>4 <b>Q. That was on his face?</b></p> <p>5 A. Yes, sir.</p> <p>6 <b>Q. And that got him off you?</b></p> <p>7 A. That did get him off of me, and he got up</p> <p>8 to go deal with my girlfriend and his wife, and he</p> <p>9 kicked and pushed my girlfriend and all that while I</p> <p>10 was on the ground screaming, "My leg."</p> <p>11 <b>Q. Doing what to your leg?</b></p> <p>12 A. I was screaming, "My leg," because my leg</p> <p>13 was pointing upward.</p> <p>14 <b>Q. When you went down, did you just drop to</b></p> <p>15 <b>the pavement, did you hit their car, or did you go</b></p> <p>16 <b>straight down?</b></p> <p>17 A. We both went straight down. I felt a pop</p> <p>18 and I heard a pop, and I looked down; my leg was</p> <p>19 pointing upwards. He was still on top of me, I guess,</p> <p>20 hitting me or something. I bit him right on his</p> <p>21 cheek, yes, sir, and that's when he was able to</p> <p>22 finally get off of me.</p> <p>23 <b>Q. So he didn't push you into the car or</b></p> <p>24 <b>anything like that?</b></p> <p>25 A. No, sir. Not that I remember, no, sir.</p>          |
| <p style="text-align: right;">55</p> <p>1 <b>Q. Yes?</b></p> <p>2 A. Yes, sir.</p> <p>3 <b>Q. Mr. Kingkade now is to your back?</b></p> <p>4 A. Mr. Kingkade is to my back, yes, sir.</p> <p>5 <b>Q. Do you push Mrs. Kingkade with both hands</b></p> <p>6 <b>or one hand or do you remember?</b></p> <p>7 A. I do not remember that.</p> <p>8 <b>Q. Do you remember whether she fell or what</b></p> <p>9 <b>happened after you pushed her?</b></p> <p>10 A. I don't recall that. I do recall my</p> <p>11 girlfriend telling her to "give me my boyfriend's</p> <p>12 phone back." I do remember pushing her, and that's</p> <p>13 when he came up behind me and started hitting me and</p> <p>14 everything.</p> <p>15 <b>Q. How much time passed between when you</b></p> <p>16 <b>pushed Ms. Kingkade and when her husband attacked you?</b></p> <p>17 A. Couple of seconds.</p> <p>18 <b>Q. Did you fight back? Were you able to</b></p> <p>19 <b>fight back?</b></p> <p>20 A. Yes, sir. I was defending myself.</p> <p>21 <b>Q. So he was hitting; you were hitting him</b></p> <p>22 <b>back?</b></p> <p>23 A. That I can remember, yes, sir.</p> <p>24 <b>Q. Are you able to quantify how many punches</b></p> <p>25 <b>were exchanged by either of the parties?</b></p> | <p style="text-align: right;">57</p> <p>1 <b>Q. Fair enough. Was he continuing to yell</b></p> <p>2 <b>racial epithets during the actual punching and stuff?</b></p> <p>3 A. Yes, sir.</p> <p>4 <b>Q. Your injuries, I know your knee was pretty</b></p> <p>5 <b>messed up?</b></p> <p>6 A. Yes, sir.</p> <p>7 <b>Q. Was anything else hurt beyond scratches</b></p> <p>8 <b>and bruises?</b></p> <p>9 A. I have nerve damage in my foot. I can't</p> <p>10 lift my foot up. I can't push it down. Torn ACL. I</p> <p>11 just had the surgery for that, actually, November</p> <p>12 30th. I want to say, torn meniscus. And that's about</p> <p>13 it for that. I want to say -- I would have to look go</p> <p>14 through my medical records for the knee because I</p> <p>15 wasn't too sure, but I've had about three or four</p> <p>16 surgeries. I had the external fixator as well with</p> <p>17 the metal rods in my leg.</p> <p>18 <b>Q. Obviously, you have been through a lot of</b></p> <p>19 <b>treatment for the knee?</b></p> <p>20 A. Yes, sir.</p> <p>21 <b>Q. I don't want to get into that. I just</b></p> <p>22 <b>want to know, generally, did you require medical</b></p> <p>23 <b>treatment for any injury other than the one to your</b></p> <p>24 <b>knee?</b></p> <p>25 A. No, sir.</p> |

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| <p style="text-align: right;">58</p> <p>1 <b>Q. And was the damage to the knee caused by a</b><br/> 2 <b>karate kick to the knee or was that from your landing</b><br/> 3 <b>on the knee?</b><br/> 4 A. I don't really remember. All I remember<br/> 5 was I'm going down and he's going down with me. I<br/> 6 feel a pop and I heard it as well, and, I'm pretty<br/> 7 sure, that was my ACL popping. I just remember on the<br/> 8 ground biting him and I was going in and out of<br/> 9 consciousness. Yes, sir.<br/> 10 <b>Q. You didn't hit your head, did you?</b><br/> 11 A. Actually, I don't remember, actually.<br/> 12 <b>Q. If the medical records reflect you telling</b><br/> 13 <b>the doctors that you didn't hit your head, do you have</b><br/> 14 <b>any reason to disagree with that?</b><br/> 15 A. No, sir.<br/> 16 <b>Q. Did the vehicle cause Mr. Kingkade to</b><br/> 17 <b>assault you?</b><br/> 18 MR. SELLERS: Object to the form. That's<br/> 19 a weird question. You can answer.<br/> 20 THE WITNESS: Can you basically -- what do<br/> 21 you mean by that?<br/> 22 BY MR. WHELAN:<br/> 23 <b>Q. Well, I'm just asking, did the vehicle</b><br/> 24 <b>cause Mr. Kingkade to assault you?</b><br/> 25 A. Like the vehicle incident?</p> | <p style="text-align: right;">60</p> <p>1 A. No, sir.<br/> 2 <b>Q. Did you have any idea that you would be</b><br/> 3 <b>assaulted when he cut you off?</b><br/> 4 A. No, sir.<br/> 5 <b>Q. Have you ever kicked someone while using</b><br/> 6 <b>an automobile before or assaulted someone while using</b><br/> 7 <b>an automobile before?</b><br/> 8 A. No, sir.<br/> 9 <b>Q. Have you ever been assaulted by anyone</b><br/> 10 <b>using an automobile before?</b><br/> 11 A. Can you -- what do you mean by that?<br/> 12 <b>Q. Has anyone using an automobile ever</b><br/> 13 <b>assaulted you before?</b><br/> 14 A. Like hit me with a car?<br/> 15 <b>Q. No, with their fist or a knee or a foot?</b><br/> 16 A. Yes, sir.<br/> 17 <b>Q. How many times has that occurred?</b><br/> 18 A. Just this time, the Kingkade time.<br/> 19 <b>Q. How was Mr. Kingkade using his automobile</b><br/> 20 <b>when he assaulted you?</b><br/> 21 A. I'm a little confused by the question.<br/> 22 Are you saying like how it originally all started?<br/> 23 <b>Q. No, sir. I think we've been over that,</b><br/> 24 <b>haven't we?</b><br/> 25 A. Yes, sir.</p> |
| <p style="text-align: right;">59</p> <p>1 <b>Q. The vehicle at all. You were driving a</b><br/> 2 <b>Ford?</b><br/> 3 A. Ford Mustang.<br/> 4 <b>Q. He was driving a Mercedes?</b><br/> 5 A. Yes, sir, C-Class.<br/> 6 <b>Q. Did either the Ford or the Mercedes cause</b><br/> 7 <b>Mr. Kingkade to assault you?</b><br/> 8 A. Yes, sir.<br/> 9 <b>Q. Which one?</b><br/> 10 A. The Mercedes.<br/> 11 <b>Q. How did it cause him to assault you?</b><br/> 12 A. That's how the original incident happened<br/> 13 just because of him -- what do you mean by the<br/> 14 question?<br/> 15 <b>Q. I don't know. I agree, it's a weird</b><br/> 16 <b>question. Let me try and break it down. Do you think</b><br/> 17 <b>that when Mr. Kingkade cut you off in traffic, that</b><br/> 18 <b>caused him to later assault you?</b><br/> 19 A. Yes, sir.<br/> 20 <b>Q. When he cut you off, did you think that</b><br/> 21 <b>you would be assaulted?</b><br/> 22 A. No, sir.<br/> 23 <b>Q. If you thought you would be assaulted,</b><br/> 24 <b>would you have followed Mr. Kingkade and pulled into</b><br/> 25 <b>that parking lot?</b></p>                                                                                                                               | <p style="text-align: right;">61</p> <p>1 <b>Q. Let me ask it differently.</b><br/> 2 A. Okay.<br/> 3 <b>Q. At the time Mr. Kingkade assaulted you,</b><br/> 4 <b>was he using his automobile?</b><br/> 5 A. No, sir.<br/> 6 <b>Q. Has anyone ever assaulted you while they</b><br/> 7 <b>were using their automobile?</b><br/> 8 A. No, sir.<br/> 9 <b>Q. Was it significant to you that</b><br/> 10 <b>Mr. Kingkade took his shirt off?</b><br/> 11 A. Yes, sir.<br/> 12 <b>Q. Was it significant to you that he</b><br/> 13 <b>expressed his racial hatred to you before the assault?</b><br/> 14 A. Yes, sir.<br/> 15 <b>Q. Before you pulled into that parking lot,</b><br/> 16 <b>did you ever imagine that Mr. Kingkade would rip his</b><br/> 17 <b>shirt off and say all these racist things to you and</b><br/> 18 <b>your girlfriend?</b><br/> 19 A. No, sir.<br/> 20 <b>Q. Did you ever imagine that Mr. Kingkade</b><br/> 21 <b>would get out of his car and assault you?</b><br/> 22 A. No, sir.<br/> 23 <b>Q. Did you ever imagine that Mrs. Kingkade</b><br/> 24 <b>would take your phone out of your hand?</b><br/> 25 A. No, sir.</p>            |

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| <p style="text-align: right;">62</p> <p>1 <b>Q. Do you think Ms. Kingkade taking the phone</b><br/> 2 <b>out of your hand and then you having the reaction of</b><br/> 3 <b>pushing Ms. Kingkade, do you think that is something</b><br/> 4 <b>that led to the assault occurring?</b><br/> 5 A. No, sir.<br/> 6 <b>Q. Do you think the assault would have</b><br/> 7 <b>occurred even if that hadn't have happened?</b><br/> 8 A. Yes, sir.<br/> 9 <b>Q. Why do you think that?</b><br/> 10 A. Just because the hatred that he has,<br/> 11 everything that he was saying. He just -- he said it<br/> 12 too easily and it just seemed like he has the hatred<br/> 13 in him, like he doesn't mind doing that.<br/> 14 <b>Q. So your belief just based off of things</b><br/> 15 <b>that he said, was his racial hatred was such that he</b><br/> 16 <b>would have attacked you no matter what?</b><br/> 17 A. Yes, sir.<br/> 18 <b>Q. At the time you were assaulted, no one was</b><br/> 19 <b>in Mr. Kingkade's vehicle. True?</b><br/> 20 A. Correct.<br/> 21 <b>Q. At the time you were assaulted, both</b><br/> 22 <b>Mr. Kingkade and Ms. Kingkade were at the rear of</b><br/> 23 <b>their vehicle or on the passenger side of their</b><br/> 24 <b>vehicle?</b><br/> 25 A. Yes, sir.</p> | <p style="text-align: right;">64</p> <p>1 identification.)<br/> 2 BY MR. WHELAN:<br/> 3 <b>Q. Mr. Cornett, you have procured for us four</b><br/> 4 <b>color photographs. Who took these photographs?</b><br/> 5 A. My mother.<br/> 6 <b>Q. When and where were they taken, if you</b><br/> 7 <b>know?</b><br/> 8 A. In the garage at our house, at our old<br/> 9 house.<br/> 10 <b>Q. There's two photographs of the driver's</b><br/> 11 <b>side door. That reflects damage done by</b><br/> 12 <b>Mr. Kingkade's foot?</b><br/> 13 A. Yes, sir.<br/> 14 <b>Q. Then, the first two photographs are a red</b><br/> 15 <b>bumper and I see a white smudge?</b><br/> 16 A. Yes, sir.<br/> 17 <b>Q. Is that the damage you were telling us</b><br/> 18 <b>about earlier?</b><br/> 19 A. Yes, sir.<br/> 20 <b>Q. Was this repaired?</b><br/> 21 A. I ended up selling the vehicle because it<br/> 22 started having mechanical issues.<br/> 23 <b>Q. Were you able to just rub that paint off?</b><br/> 24 A. No, sir. It was -- it was -- so it was<br/> 25 like gashed into the bumper itself.</p> |
| <p style="text-align: right;">63</p> <p>1 <b>Q. At the time you were assaulted, the</b><br/> 2 <b>Kingkades' vehicle was not being used for</b><br/> 3 <b>transportation. True?</b><br/> 4 A. Correct.<br/> 5 <b>Q. In fact, it was not being used at all at</b><br/> 6 <b>the time you were assaulted. True?</b><br/> 7 A. Correct.<br/> 8 <b>Q. Let me ask you this: When did you first</b><br/> 9 <b>realize there might be insurance coverage for this</b><br/> 10 <b>incident?</b><br/> 11 A. What do you mean by that?<br/> 12 <b>Q. At some point did you decide to make a</b><br/> 13 <b>claim with USAA?</b><br/> 14 A. Yes, sir.<br/> 15 <b>Q. At what point did you realize that was a</b><br/> 16 <b>possibility?</b><br/> 17 A. Once I realized there was damage to my<br/> 18 vehicle.<br/> 19 <b>Q. When did you realize there was damage on</b><br/> 20 <b>your vehicle?</b><br/> 21 A. When I was told in the hospital.<br/> 22 <b>Q. I'm going to see if those pictures --</b><br/> 23 MR. SELLERS: You should have gotten them.<br/> 24 They went through.<br/> 25 (Defendant's Exhibit 9 was marked for</p>                                                                                                                                                                   | <p style="text-align: right;">65</p> <p>1 <b>Q. So when you sold the vehicle, it had the</b><br/> 2 <b>white paint on it still?</b><br/> 3 A. Yes, sir.<br/> 4 <b>Q. Did you have the door repaired?</b><br/> 5 A. No, sir.<br/> 6 <b>Q. So it still had that?</b><br/> 7 A. Yes, sir.<br/> 8 <b>Q. Did you receive a payment to repair the</b><br/> 9 <b>door?</b><br/> 10 A. No, sir.<br/> 11 <b>Q. Oh, it was under the deductible?</b><br/> 12 A. I have still yet to see anything, if that<br/> 13 makes sense.<br/> 14 <b>Q. You're unaware of any payment being issued</b><br/> 15 <b>with respect to the damage to the vehicle?</b><br/> 16 A. Correct.<br/> 17 <b>Q. Do you know whether a claim was made for</b><br/> 18 <b>the white smudge on the bumper?</b><br/> 19 A. Yes, sir.<br/> 20 <b>Q. It was?</b><br/> 21 A. Yes, sir.<br/> 22 <b>Q. Looking at this photograph, I'm not sure</b><br/> 23 <b>we need the coffee cup anymore. How big is this</b><br/> 24 <b>smudge?</b><br/> 25 A. About, say, the size of your key fob.</p>                                                |

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| <p style="text-align: right;">66</p> <p>1 MR. WHELAN: Bakari, okay with you if I</p> <p>2 withdraw Exhibit 8 so Meg doesn't have to keep up a</p> <p>3 coffee cup?</p> <p>4 MR. SELLERS: We can recycle it.</p> <p>5 MR. WHELAN: Exhibit 8 will be withdrawn</p> <p>6 and removed from the deposition.</p> <p>7 BY MR. WHELAN:</p> <p>8 Q. I may see if I can pull up the video real</p> <p>9 quick. Do you know if you or your parents have any</p> <p>10 other USAA products, whether they still have -- I</p> <p>11 don't know whether they ever had checking accounts or</p> <p>12 banking accounts or anything like that with USAA?</p> <p>13 A. I do not know that.</p> <p>14 Q. I'm showing you a video that's been</p> <p>15 produced in discovery that's 11 minutes and 40 seconds</p> <p>16 long. I'm going to pause it at 4 minutes and 22</p> <p>17 seconds into the video, and then I'll hit play and</p> <p>18 then ask you some questions about it. Does this show</p> <p>19 the Dollar Tree that you pulled into?</p> <p>20 A. Yes, sir.</p> <p>21 Q. At 4 minutes and 22 seconds, does that</p> <p>22 look like Mr. Kingkade's white Mercedes?</p> <p>23 A. Yes, sir.</p> <p>24 Q. I'm just going to hit play. Then, your</p> <p>25 gray Mustang follows him in the parking lot. You're</p> | <p style="text-align: right;">68</p> <p>1 A. Yes, sir.</p> <p>2 Q. Are words exchanged at that time?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And your window is down while he's outside</p> <p>5 the car?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Then, after he comes to your car and you</p> <p>8 talk, then he goes back towards his car?</p> <p>9 A. Um-hm. He takes his shirt off.</p> <p>10 Q. He walks back to his car, takes his shirt</p> <p>11 off, and then he comes back to your car?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And at this point --</p> <p>14 A. He kicks my door.</p> <p>15 Q. -- that's when you detect a change in him?</p> <p>16 A. Yes, sir.</p> <p>17 Q. So he comes to your car twice before he</p> <p>18 kicks your door. First, he comes there, y'all</p> <p>19 exchange words. Then he goes back to his car, takes</p> <p>20 his shirt off, and this is when you see this new</p> <p>21 personality come out?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Wow. Yeah, when I was talking about a</p> <p>24 karate kick earlier, I guess, I was thinking about the</p> <p>25 door.</p>                                                          |
| <p style="text-align: right;">67</p> <p>1 welcome to get up and cozy with it. I know you</p> <p>2 haven't seen it before. I'm going pause it at 6</p> <p>3 minutes, 43 seconds into the video. You're welcome to</p> <p>4 watch more of it if you would like to, just let me</p> <p>5 know.</p> <p>6 Does that refresh your recollection at all</p> <p>7 about any of the events that occurred?</p> <p>8 A. Yes, sir, a little bit.</p> <p>9 Q. Having seen that video, what else do you</p> <p>10 now remember, if anything?</p> <p>11 A. Honestly, it's still blurry just because</p> <p>12 the whole going in and out of consciousness when I was</p> <p>13 finally on the ground. It was just a very stressful</p> <p>14 time. It's still blurry, I'm sorry about that.</p> <p>15 Q. No, don't apologize. I just wanted to</p> <p>16 make sure you had a chance to see it and see if that</p> <p>17 helped at all.</p> <p>18 A. Yes, sir.</p> <p>19 Q. It looks like when you -- after he parks,</p> <p>20 you park behind him and you park just a couple of feet</p> <p>21 behind his car?</p> <p>22 A. Um-hm.</p> <p>23 Q. He gets out, comes up to your car?</p> <p>24 A. Um-hm.</p> <p>25 Q. Right?</p>                                                                                              | <p style="text-align: right;">69</p> <p>1 A. Yes, sir.</p> <p>2 Q. So he throws his shirt in his car. He</p> <p>3 comes running and karate-kicks your door?</p> <p>4 A. Yeah.</p> <p>5 Q. Then, he retreats back to his car and you</p> <p>6 pursue him up to his car?</p> <p>7 A. Um-hm.</p> <p>8 Q. You guys square up?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And kind of --</p> <p>11 A. That's when I say, "You know what, babe?</p> <p>12 F that, call the cops." Yes, sir.</p> <p>13 Q. Right. So you square up with him at his</p> <p>14 car, then you say, I don't want to engage in him, and</p> <p>15 you walk back to your car?</p> <p>16 A. I wouldn't say it's at his car is where</p> <p>17 I'm squared up. I would say, we were just squaring up</p> <p>18 in the middle, kind of. Because I never walked,</p> <p>19 really, back to his car.</p> <p>20 Q. I'm just going to rewind it a little bit.</p> <p>21 A. That's us squaring up, yes, sir.</p> <p>22 Q. I'm not trying to change your answer. I'm</p> <p>23 just asking you, does that video refresh your</p> <p>24 recollection that you walked back up --</p> <p>25 A. Yes, sir.</p> |

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| <p style="text-align: right;">70</p> <p>1     <b>Q. -- to his car when you squared up with</b><br/> 2 <b>him?</b><br/> 3     A. Yes, sir.<br/> 4     <b>Q. Then, when you decided "F that," then you</b><br/> 5 <b>walk back to your car?</b><br/> 6     A. Yes, sir.<br/> 7     <b>Q. After that, Ms. Kingkade drives the car,</b><br/> 8 <b>turns around and parks a good distance in front of</b><br/> 9 <b>your car?</b><br/> 10    A. Yes, sir.<br/> 11    <b>Q. So instead of two or three feet between</b><br/> 12 <b>the cars, now there's two or three car lengths?</b><br/> 13    A. Um-hm.<br/> 14    <b>Q. Let me rewind it a bit. Or maybe three or</b><br/> 15 <b>four car lengths. How many car lengths between the</b><br/> 16 <b>cars were there?</b><br/> 17    A. Two to three.<br/> 18    <b>Q. After she does that, you walk from your</b><br/> 19 <b>car, across the space between the cars and then to the</b><br/> 20 <b>back of the Kingkades' car when the events we've</b><br/> 21 <b>already talked about occur. Fair?</b><br/> 22    A. Yes, sir.<br/> 23    <b>Q. I'm almost done, Bron. Let's go off the</b><br/> 24 <b>record for a second and let me look over this stuff.</b><br/> 25 <b>I probably have a few questions I've forgotten and</b></p> | <p style="text-align: right;">72</p> <p>1     A. Say that one more time, sir?<br/> 2     <b>Q. Do you know whether the photographs that</b><br/> 3 <b>your mom sent to you today were ever sent to USAA?</b><br/> 4     A. Yes, sir.<br/> 5     <b>Q. They were?</b><br/> 6     A. Yes, sir.<br/> 7     <b>Q. Who sent them to USAA?</b><br/> 8     A. I want to say, she did.<br/> 9     <b>Q. How did she send them?</b><br/> 10    A. I'm not too sure about that one.<br/> 11    <b>Q. Do you know whether she e-mailed or texted</b><br/> 12 <b>it or faxed or mailed?</b><br/> 13    A. E-mail?<br/> 14    <b>Q. The record won't reflect it but when you</b><br/> 15 <b>say e-mail there is a question mark at the end of it,</b><br/> 16 <b>and, I guess, I need to ask you this: Do you actually</b><br/> 17 <b>know whether your mom sent those pictures to USAA or</b><br/> 18 <b>are you guessing?</b><br/> 19    A. Right now I am guessing, but there was a<br/> 20 claim that was made for it, so that's what I'm saying,<br/> 21 I want to say, that she did do it.<br/> 22    <b>Q. Did she tell you that she sent those</b><br/> 23 <b>photographs?</b><br/> 24    A. Yes, sir.<br/> 25    <b>Q. To USAA?</b></p> |
| <p style="text-align: right;">71</p> <p>1 <b>then we can get you out of here.</b><br/> 2     A. Yes, sir.<br/> 3     (A recess transpired.)<br/> 4 BY MR. WHELAN:<br/> 5     <b>Q. You said, I think, that the bumper had</b><br/> 6 <b>been messed up previously so you had the red one on?</b><br/> 7     A. Yes, sir.<br/> 8     <b>Q. Did you have two bumpers for that?</b><br/> 9     A. Yes, sir. I had a color-matched one that<br/> 10 was gray and then I had the red one as well, because<br/> 11 the car was originally red. I got a Cobra front<br/> 12 bumper put onto it and that was the gray bumper.<br/> 13     (Defendant's Exhibit 5 was marked for<br/> 14 identification.)<br/> 15 BY MR. WHELAN:<br/> 16     <b>Q. Would you mind looking at Exhibit 5 for me</b><br/> 17 <b>which is a stack of photographs? I don't know who</b><br/> 18 <b>took these or when, but does this show any damage to</b><br/> 19 <b>your vehicle caused by the collision with</b><br/> 20 <b>Mr. Kingkade's car?</b><br/> 21     A. Caused by the collision?<br/> 22     <b>Q. Yes, sir, like when your vehicles touched?</b><br/> 23     A. No, sir.<br/> 24     <b>Q. Do you know whether the photographs that</b><br/> 25 <b>you...</b></p>                                   | <p style="text-align: right;">73</p> <p>1     A. Yes.<br/> 2     <b>Q. Did she tell you how she did it?</b><br/> 3     A. No, sir.<br/> 4     <b>Q. So you are basing your testimony on what</b><br/> 5 <b>your mother told you she did?</b><br/> 6     A. Yes.<br/> 7     <b>Q. You suffered an injury to your leg, your</b><br/> 8 <b>knee?</b><br/> 9     A. Yes, sir.<br/> 10    <b>Q. Your foot?</b><br/> 11    A. Yes, sir.<br/> 12    <b>Q. You've missed work?</b><br/> 13    A. Yes, sir.<br/> 14    <b>Q. You have been damaged by Mr. Kingkade's</b><br/> 15 <b>assault on you. True?</b><br/> 16    A. Yes, sir.<br/> 17    <b>Q. Have you been damaged in any way by any</b><br/> 18 <b>conduct of USAA?</b><br/> 19       MR. SELLERS: Object to the form.<br/> 20       THE WITNESS: Yes, just because it's<br/> 21 taking -- everything just is time consuming, really.<br/> 22 That's really it, yes, sir.<br/> 23 BY MR. WHELAN:<br/> 24     <b>Q. Explain what you mean by that.</b><br/> 25     A. That it's almost been two years since the</p>                                                                                                                                                                |

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| <p style="text-align: right;">74</p> <p>1 original accident, and it's still an ongoing process,<br/>2 and it's just been a long wait.<br/>3 <b>Q. Do you know what provision of the policy</b><br/>4 <b>would cover the damages you're seeking?</b><br/>5 A. No, sir.<br/>6 <b>Q. Do you know how much insurance coverage</b><br/>7 <b>there is?</b><br/>8 A. No, sir.<br/>9 <b>Q. Do you know how much USAA owes you right</b><br/>10 <b>now?</b><br/>11 A. No, sir.<br/>12 <b>Q. Do you know how many -- let me start that</b><br/>13 <b>question over. Do you know whether you are currently</b><br/>14 <b>legally entitled to any recovery from the Kingkades?</b><br/>15 A. Not that I know of right now.<br/>16 <b>Q. Do you know which coverage you are seeking</b><br/>17 <b>damages under under the policy?</b><br/>18 A. I am unsure about that.<br/>19 <b>Q. The policy has different provisions,</b><br/>20 <b>liability, uninsured motorist, underinsured motorist,</b><br/>21 <b>property damage, things like that. Do you know which</b><br/>22 <b>section of the policy you're pursuing?</b><br/>23 A. I want to say, it's uninsured because, I<br/>24 want to say, they didn't have insurance.<br/>25 <b>Q. Did you take any steps to see whether the</b></p> | <p style="text-align: right;">76</p> <p>1 of days in the hospital. He actually came to see me<br/>2 and interviewed me and asked me questions about it.<br/>3 <b>Q. You're familiar, I'm sure, in your other</b><br/>4 <b>accidents, you actually got an accident report that</b><br/>5 <b>had all the drivers' information, had a little diagram</b><br/>6 <b>showing what happened?</b><br/>7 A. Yes, sir.<br/>8 <b>Q. Said who was at fault?</b><br/>9 A. Yes, sir.<br/>10 <b>Q. Was one of those ever created for your</b><br/>11 <b>accident with Mr. Kingkade?</b><br/>12 A. I am unsure of that.<br/>13 <b>Q. We're almost done. Do you know whether</b><br/>14 <b>Ms. Vawter made an insurance claim?</b><br/>15 A. I am unsure of that.<br/>16 <b>Q. Was she injured?</b><br/>17 A. Yes, sir.<br/>18 <b>Q. What happened to her?</b><br/>19 A. She got a cracked tooth, back pain. She<br/>20 had wrist pain as well. She had to wear a brace for a<br/>21 minute. She had to walk on a cane for her back as<br/>22 well. And they gave her a bloody lip as well.<br/>23 <b>Q. Man. Okay. Well, I'm really sorry that</b><br/>24 <b>y'all went through that.</b><br/>25 A. Thank you. Yes, sir.</p> |
| <p style="text-align: right;">75</p> <p>1 <b>Kingkades had insurance or did you leave all that with</b><br/>2 <b>your attorneys?</b><br/>3 A. Left it with them.<br/>4 <b>Q. When you pulled over to exchange</b><br/>5 <b>information with the Kingkades, was it your intention</b><br/>6 <b>to report that an auto accident had occurred to</b><br/>7 <b>police?</b><br/>8 A. Yes, sir.<br/>9 <b>Q. Did you ever report to the police that an</b><br/>10 <b>auto accident occurred?</b><br/>11 A. Personally, I didn't get the chance to.<br/>12 <b>Q. Could you do that today?</b><br/>13 A. Report it?<br/>14 <b>Q. Yes.</b><br/>15 A. Yes, sir.<br/>16 <b>Q. Have you ever in the last two years told</b><br/>17 <b>the police that an auto accident occurred that had</b><br/>18 <b>been unreported?</b><br/>19 A. I didn't report it, but I don't know if<br/>20 someone outside of me, like my girlfriend, reported<br/>21 it. I'm not sure.<br/>22 <b>Q. Have you ever seen an accident report from</b><br/>23 <b>the police that describes the collision when the</b><br/>24 <b>Kingkades cut you off?</b><br/>25 A. Yes, sir, in the hospital, my first couple</p>                                                                                                  | <p style="text-align: right;">77</p> <p>1 <b>Q. I hope you get them.</b><br/>2 A. Definitely.<br/>3 <b>Q. I have no other questions for you.</b><br/>4 MR. WHELAN: Do you have any, Bakari?<br/>5 MR. SELLERS: No. But we can close it. I<br/>6 don't want to leave it open.<br/>7 MR. WHELAN: Yeah, okay. We're done.<br/>8 (The deposition was concluded at 11:56<br/>9 a.m.)<br/>10<br/>11<br/>12<br/>13<br/>14<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

## 1 CERTIFICATE OF REPORTER

2

3 I, Margaret F. Barnett, Professional Court  
4 Reporter and Notary Public for the State of South  
5 Carolina at Large, do hereby certify that the  
6 foregoing transcript is a true, accurate, and complete  
7 record of the testimony of the witness and of all  
8 objections made at the time of the examination.

9 I further certify that I am neither related to  
10 nor counsel for any party to the cause pending or  
11 interested in the events thereof.

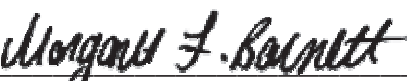
12 Witness my hand, I have hereunto affixed my  
13 official seal this 3rd day of April, 2023 at  
14 Charleston, Charleston County, South Carolina.

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16

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18

  
Margaret F. Barnett  
Notary Public  
My Commission expires  
February 25, 2030

19

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21

22

23

24

25





Wesley B. Sawyer  
Direct Dial 803-454-1233  
wsawyer@murphygrantland.com

November 2, 2021

**Sent Via E-Mail**

Christopher Oxner  
USAA  
17200 Commerce Park Blvd  
Tampa, FL 33647  
Email: [christopher.oxner@usaa.com](mailto:christopher.oxner@usaa.com)

Re: Bron Cornett vs. John Kingkade  
Claim No.: 14178248 LR 44  
Insured: Robert J. Felder, Jr.  
Date of Loss: 04/10/2021  
Our File No.: 3250-2481

Dear Chris:

We provide this letter in response to your request for a legal opinion regarding the above-referenced matter. Specifically, you have asked whether bodily injuries suffered by Bron Cornett in a physical assault perpetrated by John and Krystal Kingkade triggers uninsured motorist (UM) coverage under a USAA South Carolina Auto Policy issued to Robert J Felder, Jr. For the reasons set forth below, any bodily injuries caused by the physical assault are not covered. However, any property damage or bodily injury caused by a collision between the two vehicles falls within the Policy's uninsured motorist (UM) coverage.

**FACTUAL BACKGROUND**

USAA issued a South Carolina Auto Policy to Robert J Felder Jr, identified by policy number 01417 82 48U 7107 2, with effective dates of December 26, 2020 to June 26, 2021 (hereinafter the "Policy"). The Policy listed four vehicles: (1) 2003 Toyota; (2) 2014 Nissan; (3) 2019 Nissan; and (4) 2004 Ford. Each vehicle carried liability, UM, and underinsured motorist (UIM) coverage with limits of 100/300/25. The Policy lists Bron Cornett, Jr. as one of the listed "operators."

USAA has received a policy limits UM demand for Bron Cornett. The following facts are collected from a review of: (a) your assignment email; (2) a September 2, 2021 demand letter sent by Cornett's attorney; (3) Richland County Sheriff's Department Incident Report for Incident #2104035710; (4) Cornett's recorded statement; (5) news reports and articles; and (6) the claims notes. Bron Cornett is Robert Felder, Jr.'s resident son. On April 10, 2021, Cornett was operating a 2004 Mustang listed on the insurance policy. Cornett claims that his vehicle was cutoff by a 2017 Mercedes Benz C300 operated by John Kingkade and occupied by Krystal Kingkade. It appears the two vehicles may have made minimal contact. John Kingkade then pulled his vehicle

beside Cornett's vehicle at a red light and directed him to pull into a nearby Dollar Tree parking lot.

In an interview with the media, Cornett reported what took place once they parked in the Dollar Tree lot:

He [John Kingkade] immediately gets out of his car, takes his shirt off, is talking all this blah, blah, blah; called me racial slurs. I'm walking around to take a picture of his license plate. That's when his girl decided to snatch my phone out of my hands, and then that's when he decided to come up behind me and try to attack me.

A witness captured part of the incident on video. The video clearly shows Cornett, his girlfriend, and the Kingkades are all outside of their vehicles. However, the portion of the video we were able to view on news media takes place after Cornett was assaulted. For a portion of the video, the Mercedes blocks the view of Cornett. The video shows the Kingkades assaulting Cornett's girlfriend shortly before they jump into the Mercedes and drive off. As they drive away, Cornett comes into view laying on the ground.

The Sheriff's Report contains a similar description of events:

The male suspect driving the Mercedes got out of the vehicle and approached [REDACTED] driver's side window and began cussing [REDACTED] out and called him the n-word. The male suspect then kicked and dented [REDACTED] driver's side front door (listed above). [REDACTED] then got out of his vehicle and confronted the male suspect. The male suspect took off his shirt and squared up as if he was ready to fight. That is when the female suspect who was in the passenger seat of the Mercedes, exited the vehicle. [REDACTED] tried to take a picture of the Mercedes and the license plate but the male suspect snatched [REDACTED] phone from his hand. The male suspect then assaulted [REDACTED] and threw him to the ground, which dislocated his knee and scraped his foot and elbow. [REDACTED] exited the vehicle to defend [REDACTED] who was on the ground injured and the female suspect ran over to [REDACTED] and assaulted her and threw her to the ground. The female suspect took [REDACTED] phone as she was attempting to take a picture of the Mercedes. Both suspects ran back into their Mercedes and drove off. [REDACTED] gave a possible SC tag of KQE711 or KQE117.

Cornett and his girlfriend also reported that the Kingkades stole their cell phones. A witness to the assault followed the Kingkades after they drove away. He then witnessed Krystal Kingkade exit her vehicle and run to nearby woods. Notably, Cornett's attorney claims the Kingkades threw the phones into the woods.

Cornett gave a recorded statement on October 6, 2021. Cornett was driving the Mustang on Two Notch Road in Columbia, South Carolina near a Wal-Mart and a Nissan Dealership. Cornett claims they were in the righthand lane of Two Notch near the Walmart when a white Mercedes "came out in traffic" and "we touched vehicles." The Mercedes did not stop, and Cornett "caught up to them at a light." He claims they then told them to pull over at a Dollar General<sup>1</sup> parking lot.

<sup>1</sup> The event took place in a Family Dollar parking lot. The closest Family Dollar to the Walmart on Two Notch is about 3 miles away, and there are numerous stop lights between those two locations.

Once in the Family Dollar parking lot, Kingkade exited his vehicle and “some words were exchanged.” Kingkade took off his shirt and kicked Cornett’s door. Then, Cornett got out for the purpose of getting Kingkade’s license plate information to report to the police. He walked over to the white Mercedes and Kingkade’s wife took Cornett’s phone. Cornett then pushed her and Kingkade started attacking him from behind. At some point, Cornett felt his leg snap, screamed about his leg, and he and Kingkade fell down to the ground. Finally, Cornett bit Kingkade on the face to get him off.

Cornette claims his front bumper came in contact with the rear bumper of the Mercedes. He observed a red smudge on their rear bumper, and he later observed a white smudge on his red bumper.

Cornett alleges he suffered significant injuries to his knee, requiring multiple surgeries. He claims past medicals of \$199,334.12, lost wages of \$7,302.40, and future medicals.

John and Krystal Kingkade were both charged with two counts of strong arm robbery and two counts of assault and battery in the first degree. Those cases are currently pending in the Richland County General Sessions Court.

### **RELEVANT POLICY PROVISIONS<sup>2</sup>**

#### **DEFINITIONS**

The words defined below are used throughout this policy. They are in **boldface** when used.

A. “**You**” and “**your**” refer to the “named insured” shown on the Declarations and spouse if a resident of the same household.

\* \* \*

F. “**Family member**” means a person related to **you** by blood, marriage or adoption who resides primarily in **your** household. This includes a ward or foster child.

\* \* \*

K. “**Occupying**” means in, on, getting into or out of.

\* \* \*

**PART C – UNINSURED MOTORISTS COVERAGE** (referred to as UM Coverage) and  
**UNDERINSURED MOTORISTS COVERAGE** (referred to as UIM Coverage)

#### **DEFINITIONS**

A. “**Covered person**” as used in this Part means:

1. **You** or any **family member**.
2. Any other person **occupying your covered auto**.

<sup>2</sup> We have not received a certified copy of the Auto Policy or copies of any endorsements to the Auto Policy. The only portions we have reviewed are the declarations page and form 5100SC(05) Rev. 06-15. The declarations page lists several additional forms and endorsements. It is possible that one or more of those forms or endorsements could have a significant impact on the opinions in this letter. Therefore, please provide a full, certified copy of the Auto Policy as soon as possible.

\* \* \*

**INSURING AGREEMENT****A. UM Coverage.**

1. **We** will pay damages which a **covered person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** because of:
  - a. **BI** sustained by a **covered person** and caused by an auto accident; or
  - b. **PD** to the property of a **covered person**.
2. The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the **uninsured motor vehicle**.

**LEGAL ANALYSIS**

Cornett's injuries from the physical assault do not arise out of the ownership maintenance or use of an auto. Injuries from a physical assault do not have any causal connection with the Kingkades' use of an automobile. To the extent any causal connection existed, the Kingkades' actions after exiting their vehicle were acts of independent significance that broke any causal connection with the use of the vehicle. Lastly, the Kingkades were not using their vehicle for transportation at the time of the assault. Therefore, Cornett's injuries do not trigger UM coverage under the Policy.

If Cornett claims any bodily injury from the alleged vehicular collision, then UM coverage will apply to those injuries. Likewise, if the collision caused any property damage, then the Policy will provide UM coverage for that property damage.

The Policy extends UM coverage to damages caused by an uninsured motorist's "ownership, maintenance or use" of an automobile. This language mirrors South Carolina's liability insurance statute, which requires insurance for liability arising out of the "ownership, maintenance, or use" of an insured vehicle. S.C. Code § 38-77-140. Courts have read this requirement into the UM and UIM statutes for UM and UIM claims. *See, e.g., State Farm Mut. Auto. Ins. Co. v. Bookert*, 337 S.C. 291, 523 S.E.2d 181 (2000) (holding injuries from shooting did not arise out of the shooter's ownership, maintenance or use of a vehicle).

An insured seeking UM coverage must satisfy the three-part test set forth in *State Farm Fire & Casualty Co. v. Aytes*, 332 S.C. 30, 503 S.E.2d 744 (1998):

1. There exists a causal connection between the vehicle and the injury; and
2. No act of independent significance breaks the causal link; and
3. The vehicle is being used for transportation at the time of the assault.

*Bookert*, 337 S.C. at 293, 523 S.E.2d at 182 (citing *Aytes*, 332 S.C. at 33, 503 S.E.2d at 745). To establish the causal connection prong, the insured must show:

- a. The vehicle was an "active accessory" to the assault; and
- b. The vehicle was something less than the proximate cause but more than the mere site of the injury; and

c. That the “injury [is] foreseeably identifiable with the normal use of the automobile.”

*Id.*

Based on the facts presented, there is no causal connection between Cornett’s injuries and the Kingkades’ use of their Mercedes.

#### **A. Causal connection**

##### **i. Active accessory and mere site.**

The Kingkades’ vehicle was not an “active accessory” to the physical assault. In fact, the vehicle was not even the site from which the assault occurred. The claimants and the Kingkades were all outside of their respective vehicles during the physical assault. Courts addressing similar factual scenarios have found that vehicles are not an “active accessory” to such assaults. Moreover, because no one was in a vehicle during the assaults, the vehicles were not the site of the injuries, much less the cause of the injuries.

For example, in *Doe v. South Carolina State Budget and Control Bd., Office of Ins. Services, Ins. Reserve Fund*, 337 S.C. 294, 523 S.E.2d 457 (1999), an officer pulled different women over for DUI. In each instance, he offered to not arrest the women in exchange for sex. When the women would agree, he would either drive them in his cruiser to a remote location or follow them to a remote location. They would then engage in sexual intercourse in or on the cruiser. When his conduct came to light, the women sued and sought automobile coverage. The Supreme Court held the cruiser was not an “active accessory” to the assaults. *Id.* at 297b 523 S.E.2d at 458.

Likewise, in *Nationwide Mut. Fire Ins. Co. v. Jeter*, 2013 WL 3109214 (D.S.C. June 18, 2013), our firm represented an insurer in a dispute over coverage resulting from a physical assault. In that case, a driver began assaulting her passenger inside their moving car, including spraying the victim with pepper spray. At an intersection, the victim exited the car, and the driver continued to spray her with pepper spray. The driver then drove down the road, turned around to return to the victim, exited her car, and then sprayed the victim some more. *Id.* at \*1. The District Court found there were three separate assaults: (1) the assault when both individuals were in the car; (2) the assault when the victim exited the car and the driver was still in the car; and (3) the assault when both individuals were outside of the car. *Id.* at \*2. The District Court found the vehicle was the mere site of the injuries for the first assault. *Id.* at \*4-5. Also, the District Court found the assault with pepper spray was not “foreseeably identifiable with the normal use” of the car. *Id.* at \*5. Notably, the District Court held “the test is not whether the vehicle was being used in a foreseeable or normal manner at the time of the injuries, but whether the injuries are foreseeable with the normal use of a vehicle.” *Id.* at \*5.

In *Aytes*, the assailant forced the victim into her car and drove her to a remote location with the express intent of killing her. When they parked, he got out of the car, and the victim grabbed a gun from the glove box to protect herself. However, the assailant gained control of the gun. Then, while standing outside of the vehicle, he fired into the vehicle, striking the claimant. The

Supreme Court held the vehicle was the mere site of the injury and that the vehicle was not an “active accessory” to the shooting.<sup>3</sup> *Id.* at 35, 503 S.E.2d at 746.

Although applying a different test, the United States District Court for the District of South Carolina addressed a similar factual scenario in *Commercial Union Ins. Co. of N.Y. v. Hall*, 246 F. Supp. 64 (D.S.C. 1965). In that case, the assailant used his vehicle to force the victim’s vehicle off the road and to block the victim’s vehicle. The assailant then exited the vehicle and physically assaulted the victim with his fists. *Id.* at 65. The District Court held, in part, that the injuries did not arise out of the ownership, maintenance or use of an automobile. Although the assault may have been “associated” with the use of the vehicle, the injuries did not arise out of the use of the vehicle. *Id.* at 66.

We are only aware of one case in which injuries from a physical assault arose out of the ownership maintenance or use of an automobile. See *Chapman v. Allstate Ins. Co.*, 263 S.C. 565, 211 S.E.2d 876 (1975). In *Chapman*, a driver in a moving vehicle began punching his passenger. Although the evidence was in dispute, the trial court determined that the passenger fell from the moving vehicle, causing numerous injuries. On those facts, the trial court found the “injuries in a fall from the automobile while it was being driven” arose out of the ownership, maintenance and use of the auto by the driver. *Id.* at 570-71, 211 S.E.2d at 879. This holding is consistent with another South Carolina case where the speed of the vehicle contributed to the claimant’s injuries. See *Home Ins. Co. v. Towe*, 314 S.C. 105, 441 S.E.2d 825 (1994) (finding causal connection between use of vehicle and injuries from bottle thrown from moving vehicle because the “vehicle’s speed contributed to the velocity of the bottle increasing the seriousness of” the victim’s injuries).

In this case, the Mercedes did not contribute at all to Cornett’s injuries. Therefore, the Mercedes was not an active accessory to the assault. At most, the Mercedes merely served as transportation to and from the scene of the assault. As the courts held in *Hall*, *Aytes*, *Jeter*, and *Doe*, such a use does not constitute a causal connection.

## ii. Foreseeably identifiable injury.

The third prong of the “causal connection” test requires the injuries to be foreseeably identifiable with the normal use of an automobile. Cornett’s injuries resulted from being slammed or thrown to the ground during a physical altercation outside of a vehicle. These injuries are not foreseeably identifiable with the normal use of an automobile.

In *State Farm Mut. Auto. Ins. Co. v. Bookert*, 337 S.C. 291, 523 S.E.2d 181 (2000), the victim suffered gunshot wounds as a pedestrian when a vehicle passenger fired multiple rounds into a crowd of people, striking the victim in each leg. The South Carolina Supreme Court held that the gunshot injuries were not “foreseeably identifiable with the normal use of an auto.” *Id.* at 293, 523 S.E.2d at 182. As a result, the claimant’s policy did not provide UIM coverage for his injuries. *Id.*

In *Nationwide Mutual Insurance Company v. Brown*, 779 F.2d 948 (4th Cir. 1985), an estranged husband passenger convinced a pickup truck driver to drive around to help him find his

<sup>3</sup> The Supreme Court also held that the vehicle was not being used for transportation at the time of the shooting and that any causal connection with the car was broken when the assailant exited the vehicle. *Id.*

wife. Upon seeing his wife's car, the husband/passenger jerked the wheel, causing the truck to collide with the wife's vehicle. The husband then got out of the truck and shot his wife, killing her while she sat in the car. *Id.* at 986. The Fourth Circuit held the gunshot injuries were not foreseeably identifiable with the normal use of an automobile.

Although the Supreme Court found injuries connected with the use of an auto in *Chapman*, that case did not apply the "foreseeably identifiable" test because that test was not adopted by the South Carolina Supreme Court until the *Aytes* decision in 1998. Also, as discussed above, the injuries in *Chapman* were caused by the vehicle's speed as the victim fell out of the moving vehicle. Those injuries would arguably have been foreseeably identifiable with the use of an automobile.

Cornett's injuries resulted from being physically attacked and slammed to the ground. His injuries were not caused by the mechanical forces associated with the use of a vehicle. Injuries from a physical assault are not foreseeably identifiable with the normal use of a motor vehicle. Therefore, Cornett's injuries are not foreseeably identifiable with the normal use of an automobile.

#### **B. Act of independent significance.**

Even if a causal connection existed, the Kingkades' acts of exiting their vehicle broke any causal link. In *Carraway v. Smith*, 321 S.C. 23, 467 S.E.2d 120 (Ct. App. 1996), a claimant approached an intersection behind a red car. The red car stopped at the intersection stop sign, and the claimant stopped behind it. While the victim waited in his car, the driver of the red car exited his vehicle and began speaking with a third party who was standing on the sidewalk. The claimant waited in his car with his engine running for approximately five minutes. After five minutes, the driver of the red car pulled out a gun and began shooting at someone on the sidewalk. One of the bullets hit the claimant's windshield, causing glass fragments to hit the claimant in the face. The claimant ducked. When he looked back up, the shooter and the red car were gone. *Id.* at 24, 467 S.E.2d at 120. The trial court found the injuries arose out of the ownership, maintenance, or use of the automobile. The Court of Appeals reversed, holding that the shooting "injuries were caused by an independent act wholly separate from the use of the vehicle." *Id.* at 26, 467 S.E.2d at 122.

Likewise, the District Court in *Jeter* held that an assault that took place after both the driver and the claimant had exited the vehicle lacked any causal connection because "once [the driver] exited the vehicle, any causal connection that might have existed was broken." *Jeter*, 2013 WL 3109214 at \*5 (holding each assault was an act of independent significance that broke any causal link). Even though the driver used her vehicle as a means of transportation to the location of the assault, that conduct would not trigger coverage under the auto policy. *Id.*; see also, *Doe*, 337 S.C. at 297, 523 S.E.2d at 458 (holding women's acceptance of officer's offer to exchange sex to not prosecute DUI charges were acts of independent significance that broke any causal link); *State Farm Mut. Auto. Ins. Co. v. Goyeneche*, 429 S.C. 211, 224, 837 S.E.2d 910, 916 (Ct. App. 2019) (holding father's act of leaving child unattended in back seat for seven hours was an act of independent significance that broke the causal link between child's death from hyperthermia and father's use of the vehicle); *Holmes v. Allstate Ins. Co.*, 786 F. Supp. 2d 1022 (D.S.C. 2009) (holding that act of vehicle-to-vehicle shooting when both vehicles had come to a stop was an act of independent significance that broke any causal connection with the use of the vehicle); *Nationwide Prop. & Cas. Co. v. Lain*, 402 F. Supp. 2d 644 (D.S.C. 2005) (holding that act of

strangling victim in the back seat of the vehicle was an act of independent significance that broke any causal connection with the use of the vehicle).

By the time the assault took place, the Kingkades had completed their use of the Mercedes, and the assault broke any causal connection. For example, in *Plaxco v. U.S. Fidelity & Guar. Co.*, 252 S.C. 437, 166 S.E.2d 799 (1969), the driver's airplane battery died, and he used his insured automobile to jumpstart the airplane. As he was disconnecting the jumper cables after starting the airplane engine, the plane rolled forward and damaged another airplane. The South Carolina Supreme Court held that the only connection between the automobile and the airplane was the use of the automobile battery to start the plane. When that task was complete, the failure of the airplane's brakes was an act of independent significance that broke any connection. *Id.* at 441, 166 S.E.2d at 800. "The facts show that the accident resulted from the use of the airplane and not the insured automobile." *Id.*

In *Wright v. North Area Taxi, Inc.*, 337 S.C. 419, 523 S.E.2d 472 (Ct. App. 1999), two assailants gained entry into a taxi by pretending to be fare paying passengers. Once the cab driver began driving, the assailants attempted to rob her. During the robbery, they shot the cab driver, who died as a result of her injuries. The Court of Appeals found the act of robbing and shooting the cab driver were acts of independent significance that broke any causal connection with the use of the cab. *Id.* at 427, 523 S.E.2d at 476. "The same injuries could have occurred when the vehicle was parked, or otherwise not moving, or when [the victim] or the gunmen were standing outside of the vehicle." *Id.*

In *Wright*, the vehicle happened to be moving at the time of the assault. However, the Court of Appeals noted that the assault could have taken place outside of the vehicle or while the vehicle was stationary. Here, the Kingkades' vehicle was parked during the assault, and the assault did take place outside of their vehicle. Therefore, the assault was an act of independent significance that broke any causal connection with the Kingkades' use of their vehicle.

In an unpublished decision, the South Carolina Court of Appeals addressed a very similar set of facts and affirmed a ruling in favor of the insurance company. See *South Carolina Farm Bureau Mut. Ins. Co. v. Harrelson*, 2018 WL 3198762 (Ct. App. June 27, 2018).<sup>4</sup> In that case, the victim was in the travel lane of a parking lot waiting to turn into a parking space. The assailant stopped behind the victim, revved his engine, and blew his horn. When the victim parked, the assailant parked behind the victim's vehicle, got out, and verbally accosted him. The victim then exited his car, and a physical altercation followed. Then, the assailant returned to his car and drove away. The trial court held that the vehicle was not an active accessory, the act of exiting the car broke any causal connection, and the assailant's vehicle was not being used for transportation at the time of the assault. The Court of Appeals affirmed. *Id.*

Once the Kingkades exited their vehicle, any potential connection between their vehicle and the assault ended. All of Cornett's injuries took place during the physical assault outside of

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<sup>4</sup> Please note that unpublished decisions in South Carolina are not binding authority and cannot generally be cited in subsequent cases. Nonetheless, the Court of Appeals' ruling in an unpublished case with very similar facts is a good indicator of how a court will apply the law to the facts of this case.

the vehicles. Therefore, the injuries did not arise out of the ownership, maintenance or use of a vehicle.

### C. Transportation

The third *Aytes* factor requires that the vehicle be used for transportation at the time of the injury. Transportation to the scene is not enough for a vehicle to be used for transportation at the time of an injury. For example, in *Lain*, the assailant used the vehicle to transport himself and the victim to the location of the assault, but the District Court found the vehicle was not being used for transportation during the assault. *Lain*, 402 F. Supp. 2d at 650; *see also Doe*, 337 S.C. at 297, 523 S.E.2d at 458 (holding injuries from coercive sex acts did not occur when vehicles were being used for transportation even though officer used vehicle to transport victims to remote location before performing acts); *Goyeneche*, 429 S.C. at 224, 837 S.E.2d at 916-17 (holding vehicle was not being used for transportation when child was left forgotten in the back seat died from heat exposure).

When the assault occurred, the vehicles were parked and everyone involved was standing outside of their respective vehicles. Therefore, the vehicles were not being used for transportation at the time of the assault.

### D. Groves

In the demand letter, counsel for Cornett cites to a recent South Carolina Court of Appeals decision, *Progressive Direct Ins. Co. v. Groves*, 431 S.C. 203, 847 S.E.2d 114 (Ct. App. 2020), *cert. granted* April 29, 2021. As an initial matter, the South Carolina Supreme Court granted the insurance companies' Petition for a Writ of Certiorari in *Groves*, and I will be arguing the case on November 10, 2021. Therefore, the *Groves* decision is not final. However, even if the Supreme Court affirms *Groves*, that case has no application here. First, *Groves* involved a vehicle-to-vehicle shooting. At the time of the victim's fatal injuries, the shooter was in his vehicle, and the victim was in her vehicle. Both vehicles were on the roadway, sitting at a stoplight. *Id.* at 207, 847 S.E.2d at 116. Moreover, the Court of Appeals found that the shooter used his vehicle to "closely pursued" the victim until the point where he shot her. *Id.* at 214, 847 S.E.2d at 120. The Court of Appeals held that the shooter could not have committed the assault without the use of his vehicle. Therefore, the Court of Appeals found a causal connection between the shooter's use of his vehicle and the victim's injuries. *Id.*

The Court of Appeals held the shooter in *Groves* used his vehicle to stay in a position to shoot the victim. Here, the injuries occurred when the victims were outside of their vehicle. Therefore, the Kingkades did not need to use their vehicles to position themselves to harm the victims. Moreover, the Court of Appeals in *Groves* found the shooting and the use of the vehicle were "inextricably linked as one continuing assault." *Id.* at 222, 847 S.E.2d at 124. In contrast, the Kingkades exited their vehicle. Therefore, even if there was some causal connection between their use of the vehicle and the injuries, that connection was broken when they exited their vehicle.

## CONCLUSION AND RECOMMENDATION

For the above-stated reasons, Cornett's injuries do not arise out of the ownership, maintenance or use of a vehicle. First, there was no causal connection between the Kingkades'

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use of their vehicle and Cornett's injuries. The vehicle was not an active accessory to the assault or even the site of the assault. Moreover, the injuries are not foreseeably identifiable with the normal use of an auto. Even if a causal connection existed, the Kingkades' actions after exiting their vehicle were acts of independent significance that broke any causal connection. Finally, the vehicles were not being used for transportation at the time of the assault.

On the other hand, if the Cornett vehicle sustained any damages from the alleged, initial impact or if Cornett or his girlfriend suffered any injuries from the initial impact, then those damages may be covered under the Policy's UM coverage.

In light of the demand letter received from Cornett's counsel, we recommend promptly filing a declaratory judgment action to address this coverage issue and seeking a declaration that USAA does not owe UM BI or UM PD for injuries sustained by Cornett and his girlfriend in the assault.

With warm personal regards, I am

Sincerely yours,

*S/Wesley B. Sawyer*

Wesley B. Sawyer

WBS

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Bron Cornett,

Plaintiff,

v.

United Services Automobile Association  
D/B/A USAA,

Defendant.

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTH JUDICIAL CIRCUIT  
)

) Civil Action No. 2022-CP-40-00830  
)

) **MEMORANDUM IN OPPOSITION**  
) **TO DEFENDANT'S MOTION FOR**  
) **SUMMARY JUDGMENT**  
)

---

Plaintiff Bron Cornett ("Plaintiff"), by and through his undersigned Counsel, hereby submits this Memorandum in Opposition to Defendant USAA's ("Defendant") Motion for Summary Judgment.

**I. FACTUAL BACKGROUND**

On April 10, 2021, Plaintiff was driving on Two-Notch Road with his girlfriend Elena Vawter riding in the passenger seat of his vehicle. (Complaint ¶¶ 14–15). Plaintiff approached a traffic light outside of a shopping center where the outside lane became a turn lane into the shopping center. (Cornett Depo., 21:7–19). At this point, Plaintiff was not in the turning lane, but a white four-door sedan was in the lane. (*Id.* at 21:19–20). As Plaintiff neared the light, the white sedan cut directly into Plaintiff's lane, striking the front of his vehicle. (*Id.* at 21:19–22). The white sedan was driven by John Kingkade ("Mr. Kingkade") and his wife Crystal Kingkade ("Mrs. Kingkade") was his passenger. (Complaint ¶ 28). The collision resulted in an exchange of paint between the two vehicles and cracked paint on Plaintiff's vehicle. (Cornett Depo., 31:1–34:5).

After the collision, Plaintiff believed that Mr. Kingkade would pull over so that the parties could exchange insurance information, but Mr. Kingkade drove away from the scene. (*Id.* at 20:2–4). Thereafter, Plaintiff followed the white sedan for approximately three miles in an effort to

exchange insurance information or obtain the vehicle's license plate number. (*Id.* at 36:6–37:13, 40:2–6). While following the white sedan, Plaintiff honked at Mr. Kingkade and made efforts to get his attention. (*Id.* at 40:7–18). Plaintiff eventually pulled beside the white sedan at a red light. (*Id.* at 40:23–41:15). Plaintiff then informed Mr. Kingkade that he had hit Plaintiff's vehicle, and Mr. Kingkade signaled for Plaintiff to pull over to a local business. (*Id.* at 41:21–42:4, 44:2–45:18). Mr. Kingkade then pulled into the parking lot of the business and Plaintiff pulled in behind him. (*Id.* at 49:6–12). Both vehicles were placed in park but continued to run. (Vawter Depo., 16:6–7).

After pulling into the parking lot, Mr. Kingkade exited the white sedan and walked towards Plaintiff's vehicle. (Incident Video 18:59:35). Mrs. Kingkade then exited the passenger side of the white sedan and walked around to the driver's side. Mr. Kingkade and Plaintiff spoke briefly before Kingkade began walking back to the white sedan. (Cornett Depo., 67:19–68:12). While near the white sedan, Mr. Kingkade took off his shirt before running back to Plaintiff's vehicle and kicking the driver's side door. (*Id.* at 68:7–69:4). Throughout the encounter, Mr. Kingkade hurled racial obscenities at Plaintiff. (*Id.* at 49:20–24).

At this point, Plaintiff exited his vehicle and began walking toward Kingkade, who stood in a fighting posture. (*Id.* at 69:5–9). Plaintiff then turned his back on Kingkade and walked back to his vehicle, instructing Ms. Vawter to call the police. (*Id.* at 69:10–12, 70:4–6). Despite Ms. Vawter calling the police roughly seven times, they never answered. (*Id.* at 47:11–22). At this point, Ms. Kingkade was now seated in the driver's seat of the white sedan and Mr. Kingkade was walking between the cars and pointing at Plaintiff. (Incident Video, 19:00:09). Plaintiff then turned and followed Mr. Kingkade. (*Id.* at 19:00:10). At the same time, Ms. Vawter was attempting to take a picture of the white sedan's license plate. However, in an attempt to conceal the license plate, Ms. Kingkade drove the white sedan forward, turned it around so that the front of the sedan

faced Plaintiff's vehicle, and parked it several car lengths in front of Plaintiff's vehicle. (Cornett Depo., 51:24–52:6, 70:7–17).

Mr. Kingcade began walking back to the white sedan and Mrs. Kingcade exited the driver's side as he returned to the passenger side of the vehicle. (Incident Video, 19:00:27–19:00:35). Plaintiff then walked past Mrs. Kingcade toward the rear of the white sedan to take a picture of the license plate. (Cornett Depo., 52:20–53:12). Plaintiff was then approached by the Kingkades before Mrs. Kingcade snatched his phone from his hand. (*Id.* at 53:2–18). Plaintiff then pushed Mrs. Kingcade and Mr. Kingcade began assaulting him. (*Id.* at 54:1–12). Ms. Vawter exited Plaintiff's vehicle and ran towards the commotion in an attempt to defend Plaintiff. (*Id.* at 55:8–12). At some point, Mr. Kingcade delivered a blow to Plaintiff's leg that sent him crumpling to the ground. (*Id.* at 56:6–22). The Kingkades then turned their attention to Ms. Vawter, assaulting her and stealing her phone. (Vawter Depo., 18:14–19:3). The Kingkades then jumped back into their vehicle and fled the scene, throwing the cell phones from the vehicle at some point. (Complaint, ¶¶ 27, 29). Sometime later, the Kingkades were ultimately apprehended by law enforcement. (*Id.* at 28).

As a result of this incident, Plaintiff sustained several catastrophic 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 multiple surgical repairs. After the incident, Plaintiff learned that the Kingcade vehicle was not insured. Plaintiff was insured through a policy issued by Defendant covering three vehicles, including uninsured motorist coverage for all three vehicles. Plaintiff issued a demand for the applicable coverage on September 2, 2021. Defendant advised Plaintiff he would be required to provide a statement, which he provided on October 6, 2021. After not hearing from Defendant for several weeks, Plaintiff reached out on October 25,

2021, to inquire into the status of the claim. Defendant responded by stating that it was in the process of reviewing and researching the matter. Plaintiff extended the deadline for Defendant to respond to November 5, 2021, and Defendant sent Plaintiff a letter on that date denying Plaintiff's claim.

## II. STANDARD OF DETERMINATION

"Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law." *Ray v. Austin*, 388 S.C. 605, 611, 698 S.E.2d 208, 211 (2010). "The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." *Hawkins v. City of Greenville*, 358 S.C. 280, 288, 594 S.E.2d 557, 561 (Ct. App. 2004) (quoting *McNair v. Rainsford*, 330 S.C. 332, 342, 499 S.E.2d 488, 493 (Ct. App. 1998)). Notably, "[i]n determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the nonmoving party." *Ray*, 388 S.C. at 611, 698 S.E.2d at 211 (quoting *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006)). Similarly, "[a]ll ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party." *Hawkins*, 358 S.C. at 289, 594 S.E.2d at 561 (quoting *Hall v. Fedor*, 349 S.C. 169, 173, 561 S.E.2d 654, 656 (Ct. App. 2002)).

"Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Id.* at 288, 594 S.E.2d at 561 (quoting *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002)). Additionally, "[e]ven when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Id.* at 289, 594 S.E.2d at 561 (quoting *Hall*, 349 S.C. at 173–74, 561 S.E.2d at 656). Ultimately, "[b]ecause it is a drastic

remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues.” *Id.* at 289, 594 S.E.2d at 561–62 (quoting *Murray v. Holnam, Inc.*, 344 S.C. 129, 138, 542 S.E.2d 743, 747 (Ct. App. 2001)).

### III. LAW AND ARGUMENT

#### a. Uninsured Motorist Coverage

Under South Carolina law, an insured driver is entitled to recover under an automobile insurance policy’s uninsured motorist coverage if the driver’s damages arose “out of the ownership, maintenance, or use” of the uninsured motor vehicle. S.C. Code Ann. § 38–77–140. South Carolina Courts have established a three-prong test to determine whether an insured driver’s damages meet 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, 31–32, 882 S.E.2d 464, 466 (2022) (quoting *State Farm Fire & Cas. Co. v. Aytes*, 332 S.C. 30, 33, 503 S.E.2d 744, 745 (1998)). Crucially, the South Carolina Supreme Court has indicated that “[n]o distinction is made as to whether the injury resulted from a negligent, reckless, or intentional act.” *Id.* at 32, 882 S.E.2d at 467 (quoting *Home Ins. Co. v. Towe*, 314 S.C. 105, 107, 441 S.E.2d 825, 827 (1994)).

Notably, the incident involved in this matter began when the Kingcade vehicle struck Plaintiff’s vehicle, and continued to the point where the Kingcades fled in their vehicle and disposed of Plaintiff’s phone by throwing it from the vehicle window. Everything between these two points forms a continuum of events that resulted from the use of the Kingcade vehicle, the maintenance of that vehicle in the form of trading insurance, and the ownership of the vehicle, including efforts to conceal its license plate information.

### i. Causal Connection

In satisfying the first prong, the insured driver must “show three subparts: a) the vehicle was an active accessory to the assault; and b) something less than proximate cause but more than mere site of the injury; and c) that the injury must be foreseeably identifiable with the normal use of the automobile. *Id.* (internal quotation marks omitted) (quoting *State Farm Mut. Auto. Ins. Co. v. Bookert*, 337 S.C. 291, 293, 523 S.E.2d 181, 182 (1999)).

Here, there is a causal connection between the Kingkade vehicle and Plaintiff’s injuries. The Kingkade was an active accessory to the assault, as Mr. Kingkade’s acts of bumping Plaintiff’s vehicle and fleeing the scene resulted in the need to trade information or identify the driver of the vehicle for insurance purposes. Moreover, Mrs. Kingkade’s act of driving the vehicle and parking it with the front facing Plaintiff so that he could not see the license plate led to Plaintiff walking around the Kingkade vehicle where he was attacked by the Kingkades. Finally, the Kingkades used their vehicle to quickly escape the scene and attempt to destroy the evidence of the incident.

The Kingkade vehicle was more than the mere site of the injury, as it was the means by which the Kingkade’s caused the initial damages to Plaintiff’s vehicle, isolated Plaintiff in a business parking lot, lured him to the point he was attacked, and disposed of the evidence of the incident. Stated differently, this incident would not have occurred but for the Kingkade vehicle striking Plaintiff’s vehicle and the Kingkade’s use of the vehicle in an attempt to conceal their insurance and license information. *See Wausau Underwriters Ins. Co. v. Howser*, 309 S.C. 269, 273, 422 S.E.2d 106, (1992) (“The gunshot was the culmination of an ongoing assault, in which the vehicle played an essential and integral part.”). Moreover, but for the Kingkade vehicle, the Kingkades would not have been able to make a quick escape from the incident location while

disposing of the evidence on Plaintiff's phone. *See id.* (“[O]nly a motor vehicle could have provided the assailant a quick and successful escape.”).

Furthermore, Plaintiff's injuries are reasonably foreseeable. “Road rage” is a common occurrence and becomes more likely where an accident has occurred or where a party is attempting to hold another responsible for such damages. Thus, that a driver may assault another driver after an auto accident and subsequent attempts to obtain insurance or license information is reasonably foreseeable. In turn, injuries resulting from such conduct are reasonably foreseeable.

## **ii. No Act of Independent Significance**

Here, there was no act of independent significance that broke the causal chain. Plaintiff's injuries arose out of the Kingkade vehicle bumping his vehicle and Plaintiff's subsequent attempt to exchange insurance information or obtain the license plate number<sup>1</sup> for the vehicle. There is no conduct or act, unrelated to the use, maintenance or ownership of the Kingkade vehicle, that contributed to Plaintiff's injuries. As such, Plaintiff's injuries were caused entirely by the use, maintenance or ownership of the Kingkade vehicle, and no intervening event exists that would have broken the causal chain.

Defendant points to several cases where courts have found that an assailant's act of exiting the vehicle constitutes an intervening act of independent significance. Notably, however, these cases are distinguishable from the facts at bar. In each of the cases cited, the assailant exited the vehicle before causing any accident or damage or before assaulting another party. *See Aytes*, 332 S.C. at 35, 503 S.E.2d at 746 (finding an act of independent significance where no damage had been caused and the defendant drove the victim to a secluded location and exited the vehicle prior

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<sup>1</sup> The attempt to exchange insurance information “arises” out of the maintenance of the vehicle, while the attempt to ascertain the vehicle's license plate number “arises” out of the ownership of the vehicle.

to shooting her in the vehicle); *State Farm Mut. Auto. Ins. Co. v. Goyeneche*, 429 S.C. 211, 224, 837 S.E.2d 910, 916 (Ct. App. 2019) (finding a father's act of exiting the vehicle and leaving his daughter in the vehicle, before any damage or injury occurred, constituted an act of independent significance); *Travelers Indem. Co. v. Auto World, Inc.*, 334 S.C. 137, 150, 511 S.E.2d 692, 699 (Ct. App. 1999) (finding an act of independent significance where, prior to any damage or injury occurring, the assailant parked behind the victims's vehicle, exited his vehicle, and shot the victims); *Carraway v. Smith by S.C. Ins. Co.*, 321 S.C. 23, 26, 467 S.E.2d 120, 121 (Ct. App. 1995) (finding an act of independent significance where, prior to any injury or damage, the assailant exited his vehicle, spoke to a bystander for a few minutes, and began shooting resulting in shattered glass injuries to the plaintiff); *see also Nationwide Mut. Fire Ins. Co. v. Jeter*, 2013 U.S. Dist. LEXIS 85029, at \*14 (S.C.D.C. 2013) (finding an act of independent significance relating to the third assault where the assailant exited her vehicle before causing injury or damage to the victim). Here, the Kingkades did not exit their vehicle until after they had already struck Plaintiff's vehicle, and after they used their vehicle to lure Plaintiff to the area in which he was assaulted. As such, exiting the vehicle did not break the causal chain stemming from the continuum of events underlying the incident.

### **iii. Used for Transportation**

The Kingkade vehicle was used for transportation throughout the incident. The event starting the incident, Kingkade's bumping of Plaintiff's vehicle, occurred while both vehicles were being used for transportation down Two Notch Road. When the vehicles stopped at the local business, both remained turned on and Ms. Kingkade was able use the vehicle for transportation by driving the vehicle, moving it away from Plaintiff's vehicle, and turning it around in an attempt to conceal the license plate number from Plaintiff and Ms. Vawter. Additionally, because the

Kingkade vehicle was still turned on, the Kingkades were able to make a rapid getaway after assaulting Plaintiff, and their attempt to dispose of the evidence of the incident occurred while they were using the vehicle for transportation. As such, the vehicle was used for transportation throughout the subject incident.

Accordingly, based on the Aytes factors, Plaintiff has demonstrated that his injuries arose out of the use, maintenance, or ownership of the Kingkade vehicle. Thus, Plaintiff's injuries should be covered under the uninsured motorist provision of his policy with Defendant.

**b. Stack Coverage**

Plaintiff is entitled to stack coverage as a result of the accident. Pursuant to S.C. Code Ann. § 38-77-160,

Automobile insurance carriers shall offer, at the option of the insured, uninsured motorist coverage up to the limits of the insured's liability coverage in addition to the mandatory coverage prescribed by Section 38-77-150. Such carriers shall also offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute. If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident.

Here, Plaintiff's vehicle was involved in the incident, as the Kingkade vehicle striking his front bumper led to the continuum of events that transpired. Plaintiff's vehicle was further involved in the assault, as Mr. Kingkade kicked Plaintiff's driver's side door prior to assaulting him. As such, Plaintiff's vehicle was involved in the incident and Plaintiff is entitled to stack coverage.

**c. Bad Faith Causes of Action**

A material question of fact exists regarding Plaintiff's bad faith causes of action.

“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, 645, 594 S.E.2d 455, 462 (2004). The elements of a cause of action for bad faith refusal to pay first party insurance benefits are

(1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant; (2) refusal by the insurer to pay benefits due under the contract; (3) resulting from the insurer's bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealing arising on the contract; (4) causing damage to the insured.

*Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 359, 415 S.E.2d 393, 396–97 (1992). “Importantly, an insured need not prove a breach of an express contractual provision as a prerequisite to bringing a bad faith cause of action.” *BMW of N. Am., LLC v. Complete Auto Recon Servs.*, 399 S.C. 444, 453, 731 S.E.2d 902, 907 (Ct. App. 2012).

Here, Plaintiff was insured through a policy issued by Defendant covering three vehicles, including uninsured motorist coverage for all three vehicles. Plaintiff issued a demand for the applicable coverage on September 2, 2021. Defendant advised Plaintiff he would be required to provide a statement, which he provided on October 6, 2021. After not hearing from Defendant for several weeks, Plaintiff reached out on October 25, 2021, to inquire into the status of the claim. Defendant responded by stating that it was in the process of reviewing and researching the matter. Plaintiff extended the deadline for Defendant to respond to November 5, 2021, and Defendant sent Plaintiff a letter on that date denying Plaintiff’s claim.

As such, Defendant gave Plaintiff the run around for roughly two-months. Plaintiff informed Defendant that he was extending the deadline for Defendant to make its decision regarding the claim. After failing to maintain consistent contact with Plaintiff regarding his claim, Defendant sent him a letter on the deadline informing him that they would deny his uninsured

motorist claim. As demonstrated above, Plaintiff is entitled to uninsured motorist coverage. As such, Defendant's failure to act promptly in processing Plaintiff's claim and its denial of a claim covered under Plaintiff's policy constitutes bad faith.

#### IV. CONCLUSION

Based on the foregoing, Defendant's Motion for Summary Judgment should be denied.

Respectfully submitted,

s/ John R. Alphin

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September 13, 2024

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STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Bron Cornett,

Plaintiff,

v.

United Services Automobile Association  
D/B/A USAA,

Defendant.

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTH JUDICIAL CIRCUIT  
)

) Civil Action No. 2022-CP-40-000830  
)

) **PLAINTIFF'S MOTION TO**  
) **RECONSIDER ORDER GRANTING**  
) **SUMMARY JUDGMENT**  
)

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Plaintiff respectfully submits this Motion for Reconsideration, pursuant to Rule 59(e), SCRPC, of this Court's October 28, 2024 Order granting summary judgment to Defendant. In support of this Motion, Plaintiff would demonstrate unto this Court as follows:

**ARGUMENT AND CITATION TO AUTHORITY**

**I. Rule 59(e) Standard**

"A motion under Rule 59(e) long has been viewed as 'motion for reconsideration' despite the absence of those words from the rule." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). As such, "[t]he purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (quoting *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 200, 108 S. Ct. 1717, 100 L. Ed. 2d 178 (1988)). "Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." *Elam*, 361 S.C. at 21, 602 S.E.2d at 778–79.

**II. Uninsured Motorist Coverage**

Under South Carolina law, an insured driver is entitled to recover under an automobile insurance policy's uninsured motorist coverage if the driver's damages arose "out of the ownership, maintenance, or use" of the uninsured motor vehicle. S.C. Code Ann. § 38–77–140. South Carolina Courts have established a three-prong test to determine whether an insured driver's damages meet 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, 31–32, 882 S.E.2d 464, 466 (2022) (quoting *State Farm Fire & Cas. Co. v. Aytes*, 332 S.C. 30, 33, 503 S.E.2d 744, 745 (1998)).

Initially, this Court did not address Plaintiff's argument that the incident involved in this matter began when the Kingkade vehicle struck Plaintiff's vehicle, and continued to the point where the Kingkades fled in their vehicle and disposed of Plaintiff's phone by throwing it from the vehicle window. See *Wausau Underwriters Ins. Co. v. Howser*, 309 S.C. 269, 274, 422 S.E.2d 106, 109 (1992) ("Here, . . . the unknown driver's use of his vehicle and the shooting were *inextricably linked as one continuing assault*." (emphasis added)). As such, Plaintiff asserts that everything occurring between these two points formed a continuum of events that resulted from the use of the Kingkade vehicle, the maintenance of that vehicle in the form of trading insurance, and the ownership of the vehicle, including efforts to conceal its license plate information.

#### **a. Causal Connection**

To establish a causal connection, the insured driver must "show three subparts: a) the vehicle was an active accessory to the assault; and b) something less than proximate cause but more than mere site of the injury; and c) that the injury must be foreseeably identifiable with the normal use of the automobile. *Groves*, 438 S.C. at 32, 882 S.E.2d at 467 (internal quotation marks

omitted) (quoting *State Farm Mut. Auto. Ins. Co. v. Bookert*, 337 S.C. 291, 293, 523 S.E.2d 181, 182 (1999)).

Here, there is a causal connection between the Kingkade vehicle and Plaintiff's injuries. The Kingkade vehicle was an active accessory to the assault, as Mr. Kingkade's acts of bumping Plaintiff's vehicle and fleeing the scene resulted in the need to trade information or identify the driver of the vehicle for insurance purposes. Moreover, Mrs. Kingkade's act of driving the vehicle and parking it with the front facing Plaintiff so that he could not see the license plate led to Plaintiff walking around the Kingkade vehicle where he was attacked by the Kingkades. Finally, the Kingkades used their vehicle to quickly escape the scene and attempt to destroy the evidence of the incident.

The Kingkade vehicle was more than the mere site of the injury, as it was the means by which the Kingkade's caused the initial damages to Plaintiff's vehicle, isolated Plaintiff in a business parking lot, lured him to the point he was attacked, and disposed of the evidence of the incident. Stated differently, this incident would not have occurred but for the Kingkade vehicle striking Plaintiff's vehicle and the Kingkade's use of the vehicle in an attempt to conceal their insurance and license information. *See Wausau Underwriters Ins. Co. v. Howser*, 309 S.C. 269, 273, 422 S.E.2d 106, 108 (1992) ("The gunshot was the culmination of an ongoing assault, in which the vehicle played an essential and integral part."). Moreover, but for the Kingkade vehicle, the Kingkades would not have been able to make a quick escape from the incident location while disposing of the evidence on Plaintiff's phone. *See id.* ("[O]nly a motor vehicle could have provided the assailant a quick and successful escape.").

Furthermore, Plaintiff's injuries are reasonably foreseeable. First, it is reasonably foreseeable that Plaintiff would seek to exchange insurance information with the Kingkades after

their vehicle bumped his. In fact, exchanging such information is required by South Carolina law. See S.C. Code Ann. § 56-5-1230 (“The driver of any vehicle involved in an accident resulting in . . . damage to any vehicle which is driven or attended by any person shall give his name, address and the registration number of the vehicle he is driving and shall upon request and if available exhibit his driver’s license to the person struck or the driver or occupant of or person attending any vehicle collided with.”). As such, drivers involved in accidents are generally expected to exchange insurance information and the failure to do so can result in criminal penalties or lack of insurance coverage. Second, “road rage” is a common occurrence and becomes more likely where an accident has occurred or where a party is attempting to hold another responsible for such damages. Thus, that a driver may assault another driver after an auto accident or during subsequent attempts to obtain insurance or license information is reasonably foreseeable. In turn, injuries resulting from such conduct are reasonably foreseeable. As such, it is reasonably foreseeable that a driver would seek to exchange insurance information with the driver who hit him, and foreseeable that the at-fault driver may become hostile.

This Court cited *Wright v. North Area Taxi*, 337 S.C. 419, 523 S.E.2d 472 (Ct. App. 1999), for the proposition that such assaults are not reasonably foreseeable. However, *Wright* is distinguishable from the facts at bar. Notably, in *Wright*, a taxi driver was assaulted by two patrons who were riding inside the taxi at the time of the assault. *Id.* at 422, 523 S.E.2d at 473. As such, the assailants and the victim were not involved in an automobile accident and the assailants did not utilize a vehicle in any manner to further the assault. Conversely, in the facts at bar, the Kingkades hit Plaintiff’s vehicle with their vehicle, used the accident to lure Plaintiff to the assault location, used their vehicle to conceal their license information, and used their vehicles to dispose of the evidence of the incident. These events were part of a a continuum of events that resulted

from the maintenance, ownership, and operation of the Kingkade vehicle. That a driver would follow another driver in an attempt to exchange insurance information after an accident is reasonably foreseeable in the normal maintenance, ownership, and operation of a vehicle, as is a driver becoming hostile and engaging in road rage.

**b. No Act of Independent Significance**

Here, there was no act of independent significance that broke the causal chain. Plaintiff's injuries arose out of the Kingkade vehicle bumping his vehicle and Plaintiff's subsequent attempt to exchange insurance information or obtain the license plate number<sup>1</sup> for the vehicle. There is no conduct or act, unrelated to the use, maintenance or ownership of the Kingkade vehicle, that contributed to Plaintiff's injuries. As such, Plaintiff's injuries were caused entirely by the use, maintenance or ownership of the Kingkade vehicle, and no intervening event exists that would have broken the causal chain.

This Court found that an assailant's act of exiting the vehicle constitutes an intervening act of independent significance. Notably, however, the cases supporting this proposition are distinguishable from the facts at bar. In each of the cases cited, the assailant exited the vehicle before causing any accident or damage or before assaulting another party. *See Aytes*, 332 S.C. at 35, 503 S.E.2d at 746 (finding an act of independent significance where no damage had been caused and the defendant drove the victim to a secluded location and exited the vehicle prior to shooting her in the vehicle); *State Farm Mut. Auto. Ins. Co. v. Goyeneche*, 429 S.C. 211, 224, 837 S.E.2d 910, 916 (Ct. App. 2019) (finding a father's act of exiting the vehicle and leaving his daughter in the vehicle, before any damage or injury occurred, constituted an act of independent

---

<sup>1</sup> The attempt to exchange insurance information "arises" out of the maintenance of the vehicle, while the attempt to ascertain the vehicle's license plate number "arises" out of the ownership of the vehicle.

significance); *Travelers Indem. Co. v. Auto World, Inc.*, 334 S.C. 137, 150, 511 S.E.2d 692, 699 (Ct. App. 1999) (finding an act of independent significance where, prior to any damage or injury occurring, the assailant parked behind the victims's vehicle, exited his vehicle, and shot the victims); *Carraway v. Smith by S.C. Ins. Co.*, 321 S.C. 23, 26, 467 S.E.2d 120, 121 (Ct. App. 1995) (finding an act of independent significance where, prior to any injury or damage, the assailant exited his vehicle, spoke to a bystander for a few minutes, and began shooting resulting in shattered glass injuries to the plaintiff); *see also Nationwide Mut. Fire Ins. Co. v. Jeter*, 2013 U.S. Dist. LEXIS 85029, at \*14 (S.C.D.C. 2013) (finding an act of independent significance relating to the third assault where the assailant exited her vehicle before causing injury or damage to the victim). Here, the Kingkades did not exit their vehicle until after they had already struck Plaintiff's vehicle, and after they used their vehicle to lure Plaintiff to the area in which he was assaulted. As such, exiting the vehicle did not break the causal chain stemming from the continuum of events underlying the incident.

Similarly, the assault of Plaintiff was not an intervening event of independent significance, as it was inextricably linked with the accident and escape as one continuing assault.<sup>2</sup> *See Howser*, 309 S.C. at 274, 422 S.E.2d at 109 ("In this case, no independent act occurred to break the causal link. . . . [T]he unknown driver's use of his vehicle and the shooting were inextricably linked as one continuing assault.").

The same logic is applicable to Plaintiff's actions. At the outset, Plaintiff's decision to follow the Kingkade vehicle after the initial collision in an attempt to exchange insurance

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<sup>2</sup> Moreover, that Mr. Kingkade's assault may have been racially motivated does not change the analysis. *See Groves*, 438 S.C. at 32, 882 S.E.2d at 467 ("No distinction is made as to whether the injury resulted from a negligent, reckless, or intentional act." (quoting *Home Ins. Co. v. Towe*, 314 S.C. 105, 107, 441 S.E.2d 825, 827 (1994))).

information or obtain the license plate number is not an act that is unexpected or significantly unusual for a motor vehicle collision. As mentioned above, exchanging such information is required by South Carolina law, and insurance companies expect and encourage covered parties to exchange insurance information after an automobile collision. The finding that an insured driver's following of an at-fault vehicle to obtain insurance or license information is an intervening act of independent significance would wreak havoc on insurance law in South Carolina.

Moreover, this Court notably breaks the Kingkades' assault of Plaintiff into several events and describes them as occurring "before the assault," i.e., before Mr. Kingkade injured Plaintiff's leg. However, the Kingkades' acts of kicking Plaintiff's door, getting in his face, pushing him, and stealing his phone all constitute assault under the law. *See Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 230, 317 S.E.2d 748, 754–55 (Ct. App. 1984) ("[A]n assault occurs when a person has been placed in reasonable fear of bodily harm by the conduct of the defendant."). Thus, this conduct constitutes one continuous assault. As such, because the Kingkade's attack of Plaintiff was inextricably linked with the accident and escape as one continuing assault, it should not be considered an intervening act of independent significance.

### **c. Used for Transportation**

The Kingkade vehicle was used for transportation throughout the incident. The event starting the incident, Kingkade's bumping of Plaintiff's vehicle, occurred while both vehicles were being used for transportation down Two Notch Road. When the vehicles stopped at the local business, both remained turned on and Ms. Kingkade was able use the vehicle for transportation by driving the vehicle, moving it away from Plaintiff's vehicle, and turning it around in an attempt to conceal the license plate number from Plaintiff and Ms. Vawter. Additionally, because the Kingkade vehicle was still turned on, the Kingkades were able to make a rapid getaway after

assaulting Plaintiff, and their attempt to dispose of the evidence of the incident occurred while they were using the vehicle for transportation. *See Howser*, 309 S.C. at 273, 422 S.E.2d at 108 (“[O]nly a motor vehicle could have provided the assailant a quick and successful escape.”). As such, the vehicle was used for transportation throughout the subject incident. Notably, this Court cited several cases in which assaults occurred in or on the vehicle in which courts found that the vehicle was not being used for transportation. However, these cases are distinguishable because they did not involve an auto accident prior to the assault, so no continuum of events was formed as it was here. Furthermore, the vehicle here was used for transportation throughout the incident including: (1) leading Plaintiff to the site of the assault; (2) moving the car to conceal the license plate; and (3) using the car to escape and dispose of evidence.

Accordingly, based on the Aytes factors, Plaintiff has demonstrated that his injuries arose out of the use, maintenance, or ownership of the Kingcade vehicle. Thus, Plaintiff’s injuries should be covered under the uninsured motorist provision of his policy with Defendant

#### **d. Stack Coverage**

Plaintiff is entitled to stack coverage as a result of the accident. Pursuant to S.C. Code Ann. § 38–77–160,

Automobile insurance carriers shall offer, at the option of the insured, uninsured motorist coverage up to the limits of the insured’s liability coverage in addition to the mandatory coverage prescribed by Section 38-77-150. Such carriers shall also offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute. If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident.

Here, Plaintiff's vehicle was involved in the incident, as the Kingkade vehicle striking his bumper led to the continuum of events that transpired. Plaintiff's vehicle was further involved in the assault, as Mr. Kingkade kicked Plaintiff's driver's side door after the vehicles pulled into the local business parking lot. As such, Plaintiff's vehicle was involved in the incident and Plaintiff is entitled to stack coverage

### **III. Bad Faith Claims**

A material question of fact exists regarding Plaintiff's bad faith causes of action and the nature and timing of Defendant's communications.

"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, 645, 594 S.E.2d 455, 462 (2004). The elements of a cause of action for bad faith refusal to pay first party insurance benefits are

- (1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant; (2) refusal by the insurer to pay benefits due under the contract; (3) resulting from the insurer's bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealing arising on the contract; (4) causing damage to the insured.

*Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 359, 415 S.E.2d 393, 396–97 (1992).

"Importantly, an insured need not prove a breach of an express contractual provision as a prerequisite to bringing a bad faith cause of action." *BMW of N. Am., LLC v. Complete Auto Recon Servs.*, 399 S.C. 444, 453, 731 S.E.2d 902, 907 (Ct. App. 2012).

Here, Plaintiff was insured through a policy issued by Defendant covering three vehicles, including uninsured motorist coverage for all three vehicles. Plaintiff issued a demand for the applicable coverage on September 2, 2021. Defendant advised Plaintiff he would be required to provide a statement, which he provided on October 6, 2021. After not hearing from Defendant for

several weeks, Plaintiff reached out on October 25, 2021, to inquire into the status of the claim. Defendant responded by stating that it was in the process of reviewing and researching the matter. Plaintiff extended the deadline for Defendant to respond to November 5, 2021, and Defendant sent Plaintiff a letter on that date denying Plaintiff's claim.

As such, Defendant gave Plaintiff the run around for roughly two-months. Defendant told Plaintiff that it required certain documentation to process his claims and, when Plaintiff provided such documentation, Defendant did not respond for roughly three weeks. When Plaintiff did reach out, Defendant stated that it still needed more time and Plaintiff informed Defendant that he was extending the deadline for Defendant to make its decision regarding the claim. After failing to maintain consistent contact with Plaintiff regarding his claim, Defendant sent him a letter on the deadline informing him that they would deny his uninsured motorist claim. As demonstrated above, Plaintiff is entitled to uninsured motorist coverage. Further, Defendant's dragging its feet on Plaintiff's claim, failing to communicate with him about the same, and denying the claim covered under Plaintiff's policy on the deadline constitutes bad faith.

### **CONCLUSION**

Based on the foregoing, this Court should reconsider its October 28, 2024 Order and enter an Order denying Defendant's Motion for Summary Judgment.

Respectfully submitted,

s/ John R. Alphin

John R. Alphin, S.C. Bar No. 72583

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November 6, 2024

*Attorney for the Plaintiff*

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

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United Services Automobile Association (“USAA”) responds to Plaintiff’s Motion to Reconsider (MTR). Plaintiff’s MTR is largely a “rehashing. ... of an argument previously presented,” so this Response will make two points and otherwise rely on previous argument and submissions. (MTR, p. 1).

**I. Plaintiff’s “continuation” theory is not viable under modern South Carolina law.**

Plaintiff’s main theory is that his assault by Kingkade was the result of a “continuum of events” that began with a “bump” three miles down Two Notch Road, continued into a Dollar General parking lot, and persisted through several engagements and disengagements between Plaintiff and Kingkade, until Kingkade’s wife stole Plaintiff’s phone, Plaintiff pushed Kingkade’s wife, and Kingkade then caused Plaintiff’s injuries through an assault. (MTR, p. 2, *et seq.*).

This “continuum” theory relies upon South Carolina case law that has been, at best, severely limited by modern authority: *Wausau Underwriters Ins. Co. v. Howser*, 309 S.C. 269, 422 S.E.2d 106 (1992). Plaintiff cites *Howser* at pages two, three, six, and eight of his MTR. However, the South Carolina Supreme Court has since described *Howser* as “an aberration in our jurisprudence” and made clear *Howser* does not reflect modern South Carolina law with respect

to whether injuries arise from the use of an automobile. *Progressive Direct Ins. Co. v. Groves*, 438 S.C. 26, 33, 882 S.E.2d 464, 467 (2022). Indeed, while the Supreme Court has not “specifically overrule[d]” *Howser*, thirty-two years of subsequent jurisprudence make clear it no longer reflects the law of this state. *Id.* (“While the Court in *Aytes* did not specifically overrule *Howser* and *Towe*, in retrospect we believe it was a game-changer.”) Accordingly, neither *Howser*, nor any valid South Carolina authority, supports Plaintiff’s “continuum” theory.

## **II. Plaintiff’s attempts to distinguish South Carolina’s non-*Howser* cases because of a “bumping” preceding the assault fail.**

Plaintiff seeks to distinguish his facts from the cases cited in the Court’s Order granting summary judgment because Plaintiff’s car was “bumped” before the assault occurred. (MTR p. 4-6). Such a distinction is not recognized in any South Carolina case, and it was explicitly rejected by a case, *Nationwide v. Brown*, that is a cornerstone of South Carolina law on this subject. *See, Travelers Indem. Co. v. Auto World of Orangeburg, Inc.*, 334 S.C. 137, 141, 511 S.E.2d 692, 694 (Ct. App. 1999) (“The development of our current law began with [*Brown*].”) <sup>1</sup>

In *Brown*, a husband caused a tow truck in which he was a passenger to collide into a different car driven by his wife. 779 F.2d 984 (4<sup>th</sup> Cir. 1985). After that collision, the husband exited the tow truck and shot his wife while she sat in the wrecked car. The *Brown* court held that while the injuries suffered by the wife as a result of the *collision* were compensable under an uninsured motorist policy, the injuries she suffered as a result of the gun *assault* after the husband exited the tow truck did not arise from the use of an automobile and therefore were not

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<sup>1</sup> *Brown* was cited, favorably, many times by the South Carolina Court of Appeals and Supreme Court, including extensive citation by the Supreme Court when developing the modern, three-part, *Aytes* factors. *State Farm Fire & Cas. Co. v. Aytes*, 332 S.C. 30, 503 S.E.2d 744 (1998). *See also*, e.g., *Peagler v. USAA Ins. Co.*, 628 S.E.2d 475, 368 S.C. 153 (2006); *Wright v. North Area Taxi, Inc.*, 523 S.E.2d 472, 337 S.C. 419 (Ct. App. 1999); *Travelers Indem. Co. v. Auto World of Orangeburg, Inc.*, 334 S.C. 137, 141, 511 S.E.2d 692, 694 (Ct. App. 1999).

compensable. *Id* at 991 (“ Because the collision, as opposed to the shooting, clearly arose out of the “use of an auto as an auto,” ... any injuries resulting from the collision itself are on that basis covered under the policy.”). Just like the severe collision<sup>2</sup> in *Brown* would not result in an ensuing gun assault being deemed arising from the use of an automobile, neither could a “bumping” of Plaintiff’s car result in a subsequent physical assault being deemed to arise from the use of an automobile.

The Court’s Order Granting Summary Judgment was correct; the Plaintiff’s Motion to Reconsider should be denied.

WHELAN MELLEN & NORRIS, LLC

By: /s/ROBERT W. WHELAN

Robert W. Whelan

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*Attorneys for Defendant USAA*

Charleston, South Carolina

November 13, 2024

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<sup>2</sup> In contrast to the bump described by Cornett, the *Brown* collision “was ‘severe’ and sounded ‘like a train (sic) run together.’” *Brown*, at 991.

**The Incident Video shared with the circuit court by Defendant via WebEx during the September 19, 2024 Summary Judgment Hearing was submitted via OneDrive and is on file with the SC Court of Appeals Clerk of Court's Office.**

RECEIVED

Jan 06 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
In the Court of Common Pleas

The Honorable Thomas W. McGee, III, Circuit Court Judge

Case No. 2022-CP-40-00830

Bron Cornett. . . . . Appellant

v.

United Services Automobile Association  
D/B/A USAA. . . . . Respondent

NOTICE OF APPEAL

Appellant Bron Cornett hereby gives notice of an appeal of the Order Granting Summary Judgment and Order Denying Reconsideration entered by the Honorable Thomas W. McGee III, Circuit Court Judge, entered on October 28, 2024, and December 23, 2024 respectively. A copy of these orders are attached as **Exhibit A** and **Exhibit B**.

Respectfully submitted,

January 6, 2025  
Columbia, SC



Matthew B. Robins (Bar No. 103685)  
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
In the Court of Common Pleas

The Honorable Thomas W. McGee III, Circuit Court Judge

Case No. 2022-CP-40-00830

Bron Cornett ..... Appellant  
v.

United Services Automobile Association  
D/B/A USAA ..... Respondent

PROOF OF SERVICE

The undersigned hereby certifies that on January 6, 2025, he served the Notice of Appeal in this matter on United Services Automobile Association, by emailing a copy of the same to its attorney of record, Robert W. Whelan, at [robbie@whelanmellen.com](mailto:robbie@whelanmellen.com).

Respectfully submitted,

January 6, 2025  
Columbia, SC

  
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**RECEIVED**

**Jan 06 2025**

**SC Court of Appeals**

January 6, 2025

***VIA ELECTRONIC MAIL***

The Hon. Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RE: *Cornett v. USAA*  
Case No. 2022-CP-40-00830

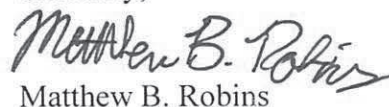
Dear Ms. Kitchings:

Enclosed please find for filing the Notice of Appeal and the challenged orders. Additionally, I am placing a check for \$250 in the mail for the filing fee in the above-referenced matter. By copy of this letter, I am filing this Notice with the Richland County Clerk of Court and serving it upon counsel for USAA.

Additionally, Appellant has made a request for transcript from the summary judgment hearing.

With warmest regards, I am

Sincerely,

  
Matthew B. Robins

cc: The Honorable Thomas W. McGee, III  
The Honorable Jeanette W. McBride  
Robert W. Whelan

RECEIVED

May 27 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
In the Court of Common Pleas

The Honorable Thomas W. McGee, III, Circuit Court Judge

Case No. 2022-CP-40-000830  
Appellate Case No. 2025-000028

Bron Cornett. . . . . Appellant  
v.

United Services Automobile Association  
D/B/A USAA. . . . . Respondent

CERTIFICATE OF COUNSEL

The undersigned hereby certifies this Record on Appeal contains all material proposed to  
be included by the parties and not any other materials.

Respectfully submitted:



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May 27, 2025