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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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# FINAL BRIEF OF APPELLANT

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## STATEMENT OF THE CASE

On April 10, 2021, Appellant Bron Cornett ("Appellant") suffered catastrophic injuries to his left leg following an automobile accident and subsequent attempts to obtain insurance and/or license plate information from an uninsured motorist. Following the incident, Appellant learned the other driver was not insured and filed a claim for uninsured motorist coverage through a policy he had with Respondent United Services Automobile Association ("Respondent" or "Respondent USAA"). Appellant issued a demand for the applicable uninsured motorist coverage policy limits on September 2, 2021. After several correspondences back and forth, Respondent ultimately sent a letter on November 5, 2021, denying Appellant's claim.

Following Respondent's denial of the claim, Appellant filed a complaint in the United States District Court for the District of South Carolina, Columbia Division, seeking *inter alia* declaratory judgment and enforcement of the uninsured motorist policy (C/A No. 3:22-cv-00081). Thereafter, Appellant filed a stipulation of voluntary dismissal of his federal complaint before filing the underlying action in South Carolina State Court on February 16, 2022. In his complaint, Appellant brought claims for declaratory judgment, breach of contract, breach of the covenant of good faith and fair dealing, and bad faith. Respondent timely filed its answer on March 16, 2022.

On April 8, 2024, Respondent filed a motion for summary judgment. Thereafter, the parties briefed the issues and Respondent's motion was heard on September 19, 2024. Following the hearing, the circuit court granted Respondent's motion for summary judgment in an October 28, 2024 Order. Appellant timely filed a motion to reconsider on November 6, 2024, and the same was denied by the circuit court in a December 23, 2024 Order.

This appeal followed.

## FACTS

On April 10, 2021, Appellant was driving on Two-Notch Road in Columbia, South Carolina with his girlfriend Elena Vawter riding in the passenger seat of his vehicle. (R. 19, ¶¶ 15–16). As he was driving, Appellant approached a traffic light outside of a shopping center where the outside lane became a turn lane into the shopping center. (R. 19, ¶ 17; R. 98, 21:7–19). At this point, Appellant was not in the turn lane, but a white four-door sedan was in the lane. (R. 19, ¶ 17; R. 98, 21:19–20). As Appellant neared the light, the white sedan cut directly into Appellant's lane, striking the front of his vehicle. (R. 19, ¶ 17; R. 98, 21:19–22). The white sedan was driven by John Kingkade ("Mr. Kingkade") and his wife Crystal Kingkade ("Ms. Kingkade") was his passenger. (R. 20, ¶ 29). The collision resulted in an exchange of paint between the two vehicles and cracked paint on Appellant's vehicle. (R. 101–02, 31:1–34:5).

After the collision, Appellant believed that Mr. Kingkade would pull over so that the parties could exchange insurance information, but Mr. Kingkade drove away from the scene. (R. 98, 20:1–4). Thereafter, Appellant followed the white sedan for approximately three miles in an effort to exchange insurance information or obtain the vehicle's license plate number. (R. 102–03, 36:6–37:13, 40:2–6). While following the white sedan, Appellant honked his horn at Mr. Kingkade and made efforts to get his attention before eventually pulling beside the white sedan at a red light. (R. 103, 40:7–41:15). At the light, Appellant informed Mr. Kingkade that he had hit Appellant's vehicle and Mr. Kingkade signaled for Appellant to pull over to a local business. (R. 103–04, 41:21–42:4, 44:2–45:18). Mr. Kingkade then pulled into the parking lot of the business and Appellant pulled in behind him. (R. 105, 49:6–12; R. 148, Incident Video 18:59:30). Both vehicles were placed in park but continued to run.

After pulling into the parking lot, Mr. Kingkade exited the white sedan and walked towards Appellant's vehicle. (R. 148, Incident Video 18:59:35). At the same time, Ms. Kingkade exited the passenger side of the white sedan and walked around to the driver's side. (R. 148, Incident Video 18:59:35). Mr. Kingkade and Appellant spoke briefly before Mr. Kingkade began walking back to the white sedan. (R. 110, 67:19–68:12; R. 148, Incident Video 18:59:39–18:59:49). While near the white sedan, Mr. Kingkade took off his shirt, ran back to Appellant's vehicle, and kicked the driver's side door while Appellant stood in the doorframe. (R. 110, 68:7–69:4; R. 148, Incident Video 18:59:51). During this exchange and throughout the encounter, Mr. Kingkade hurled racial obscenities at Appellant. (R. 105, 49:20–24).

Following the kick, Appellant exited his vehicle and began walking toward Mr. Kingkade, who stood in a fighting posture. (R. 110, 69:5–9; R. 148, Incident Video 18:59:56–19:00:02). Appellant then turned his back on Mr. Kingkade, walked back to his vehicle, and instructed Ms. Vawter to call the police. (R. 110–11, 69:10–12, 70:4–6; R. 148, Incident Video 19:00:03–19:00:08). Ms. Vawter called the police roughly seven times but no one picked up the calls. (R. 105, 47:14–17). 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 Appellant. (R. 148, Incident Video, 19:00:09). Appellant then turned and followed Mr. Kingkade. (R. 148, Incident Video, 19:00:09). At the same time, Ms. Vawter was attempting to take a picture of the white sedan's license plate from Appellant's vehicle. (R. 20, ¶ 23). 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 Appellant's vehicle, and parked it several car lengths in front of Appellant's vehicle. (R. 20, ¶ 24; R. 106, 51:24–52:6; R. 111, 70:7–17; R. 148, Incident Video 19:00:10–19:00:20).

After the vehicle was moved, Mr. Kingkade began walking back to the white sedan and Ms. Kingkade exited the driver's side as he returned to the passenger side of the vehicle. (R. 148, Incident Video, 19:00:27–19:00:35). Appellant then walked past Ms. Kingkade toward the rear of the white sedan to take a picture of the license plate. (R. 106, 52:20–53:12; R. 148, Incident Video 19:00:36–19:00:41). As he did so, the Kingkades approached Appellant before Ms. Kingkade snatched his phone from his hand. (R. 106, 53:2–18; R. 148, Incident Video 19:00:40). Appellant then pushed Ms. Kingkade away from him and Mr. Kingkade began assaulting Appellant. (R. 107, 54:1–55:14; R. 148, Incident Video 19:00:43). Ms. Vawter exited Appellant's vehicle and ran towards the commotion in an attempt to defend Appellant. (R. 107, 55:8–12; R. 148, Incident Video 19:00:45). During the incident, Mr. Kingkade delivered a blow to Appellant's left leg that sent him crumpling to the ground. (R. 20, ¶ 27; R. 107, 56:6–22). After severely injuring Appellant, the Kingkades turned their attention to Ms. Vawter, assaulting her and stealing her phone. (R. 106, 52:4–6; R. 107, 56:7–10). The Kingkades then jumped back into the white sedan and fled the scene, throwing Ms. Vawter and Appellant's cell phones from the vehicle at some point. (R. 20, ¶¶ 28, 30; R. 148, Incident Video 19:01:29). Following the attack, the Kingkades were ultimately apprehended by law enforcement. (R. 20, ¶ 29).

As a result of this incident, Appellant 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. (R. 21, ¶ 33). Thereafter, Appellant learned that the Kingcade vehicle was not insured. (R. 21, ¶ 35). Conversely, Appellant was insured through a policy issued by Respondent covering three vehicles, including uninsured motorist coverage for all three vehicles. (R. 21, ¶ 37). Appellant issued a demand for the applicable coverage on September 2, 2021. (R. 22, ¶ 42). Respondent advised Appellant he

would be required to provide a statement, which he provided on October 6, 2021. (R. 22, ¶ 43). After not hearing from Respondent for several weeks, Appellant reached out on October 25, 2021, to inquire into the status of the claim. (R. 22, ¶ 45). Respondent replied that it was in the process of reviewing and researching the matter. (R. 22, ¶ 46). Appellant extended the deadline for Respondent to respond to November 5, 2021, and Respondent sent Appellant a letter denying Appellant's claim on that date. (R. 22, ¶¶ 47–48).

Following Respondent's denial of the claim, Appellant filed a complaint in the United States District Court for the District of South Carolina, Columbia Division, seeking *inter alia* declaratory judgment and enforcement of the uninsured motorist policy (C/A No. 3:22-cv-00081). Thereafter, Appellant filed a stipulation of voluntary dismissal of his federal complaint before filing the underlying action in South Carolina State Court on February 16, 2022. (R. 16–30). In his complaint, Appellant brought claims for declaratory judgment, breach of contract, breach of the covenant of good faith and fair dealing, and bad faith. (R. 24–29, ¶¶ 58–98). Respondent timely filed its answer on March 16, 2022. (R. 31–37).

On April 8, 2024, Respondent filed a motion for summary judgment, arguing, *inter alia*, that Appellant's claim for uninsured motorist coverage did not satisfy S.C. Code Ann. § 38–77–140 or the *Aytes* factors[1], and that Appellant was not entitled to stack coverage because his vehicle was not involved in the incident. (R. 74–91). Appellant filed a response arguing that the claim arose out of "the ownership, maintenance, or use" of the vehicle as required by S.C. Code Ann. § 38–77–140 because (1) the underlying incident formed a continuum of events satisfying the *Aytes* test; (2) the injuries suffered by Appellant while attempting to exchange insurance information arose out of the ownership or maintenance of the Kingkade vehicle; and (3) the injuries suffered

[1] *See State Farm Fire & Cas. Co. v. Aytes*, 332 S.C. 30, 503 S.E.2d 744 (1998).

by Appellant while attempting to ascertain the Kingkade's license plate information and while Ms. Kingkade made efforts to conceal the same arose out of the ownership of the Kingkade vehicle. (R. 124–34). Appellant further argued that he was entitled to stack coverage because his vehicle was involved in the accident. (R. 132).

Thereafter, the circuit court held a hearing on Respondent's motion on September 19, 2024. During the hearing, Respondent argued that Appellant's injuries did not arise out of the ownership, maintenance, or use of the uninsured vehicle. (R. 54–62). In response, Appellant argued that the underlying incident formed a continuum of events satisfying the *Aytes* test. (R. 62–68). Appellant further argued that coverage applied because injuries occurring while attempting to trade insurance information arose out of the maintenance of the vehicle, and injuries occurring during attempts to ascertain the Kingkades' license plate information arose out of the ownership of the vehicle. (R. 62–63). Appellant also reasserted his entitlement to stack coverage based on his vehicle's involvement in the accident and assault. (R. 65).

Following the hearing, the circuit court granted Respondent's motion for summary judgment in an October 28, 2024 Order. (R. 1–12). Appellant timely filed a motion to reconsider on November 6, 2024, and the same was denied by the circuit court in a December 23, 2024 Order. (R. 13–15, 135–44). This appeal followed.

## STANDARD OF REVIEW

"When reviewing the trial court's decision to grant summary judgment, an appellate court applies the same standard applied by the trial court." *Ray v. Austin*, 388 S.C. 605, 610, 698 S.E.2d 208, 211 (2010). "Pursuant to Rule 56(c), SCRCP, summary judgment may be affirmed if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." *Cowburn v. Leventis*, 366 S.C. 20, 30, 619 S.E.2d 437, 443 (Ct. App. 2005). Thus, an

appellate court's "standard of review in evaluating a motion for summary judgment is to liberally construe the record in favor of the nonmoving party and give the nonmoving party the benefit of all favorable inferences that might reasonably be drawn therefrom." *Estes v. Roper Temp. Servs., Inc.*, 304 S.C. 120, 121, 403 S.E.2d 157, 158 (Ct. App. 1991). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Jackson v. Swordfish Invs., L.L.C.*, 365 S.C. 608, 611, 620 S.E.2d 54, 56 (2005).

"[W]hile declaratory judgment actions are generally 'neither legal nor equitable[,]' assessing coverage under an insurance policy 'is [an action] at law.'" *State Farm Mut. Auto. Ins. Co. v. Windham*, 438 S.C. 156, 159, 882 S.E.2d 754, 756 (2022) (second and third alterations in original) (quoting *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 593, 748 S.E.2d 781, 785 (2013))); *see also Progressive Direct Ins. Co. v. Groves*, 438 S.C. 26, 31, 882 S.E.2d 464, 466 (2022) ("Whether coverage exists under an insurance contract is a question of law for the Court."). Similarly, "[d]etermining the proper interpretation of a statute is a question of law, and [appellate courts] review[] questions of law de novo." *Windham*, 438 S.C. at 159, 882 S.E.2d at 756 (quoting *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)). Thus, "[i]n a case raising a novel issue of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the lower court." *Meier v. Burnsed*, 438 S.C. 362, 369, 882 S.E.2d 863, 867 (Ct. App. 2022) (quoting *Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass'n*, 417 S.C. 562, 566, 790 S.E.2d 783, 785 (Ct. App. 2016)).

**ARGUMENT**

The circuit court erred in granting Respondent's motion for summary judgment and finding that Appellant's injuries were not covered by the uninsured motorist policy because (1) Appellant's injuries arose out of the ownership or maintenance of the vehicle and (2) the continuum of events

from which Appellant's injuries arose satisfies the *Aytes* test. The circuit court further erred in finding that Appellant was not entitled to stack coverage.

## I. The circuit court erred in granting Respondent's motion for summary judgment because Appellant's injuries arose out of the ownership or maintenance of the Kingkade vehicle.

Appellant's injuries arose out of the maintenance or ownership of the Kingkade vehicle as Appellant was injured attempting to exchange ownership and insurance information after an automobile collision with the Kingkades.

Under South Carolina law,

> No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which may be no less than the requirements of Section 38-77-140.

S.C. Code Ann. § 38-77-150. Pursuant to section 38-77-140, 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. In determining whether coverage exists under the statute, courts have applied the *Aytes* test, which contains the following factors: "(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." *Groves*, 438 S.C. at 31–32, 882 S.E.2d at 466 (citing *Aytes*, 332 S.C. at 33, 503 S.E.2d at 745). However, the *Aytes* test does not address each disjunctive term in the statute.

"If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the Court has no right to impose

another meaning." *Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009). Moreover, "[a] statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (quoting *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995)). "[T]he use of the word 'or' in a statute is a disjunctive particle that marks an alternative." *Michau v. Georgetown Cty.*, 396 S.C. 589, 595, 723 S.E.2d 805, 808 (2012) (first set of internal quotation marks omitted) (quoting *K & A Acquisition Grp., LLC v. Island Pointe, LLC*, 383 S.C. 563, 580, 682 S.E.2d 252, 261 (2009)). Stated differently, "[t]he word 'or' used in a statute imports choice between two alternatives and as ordinarily used, means one or the other of two, but not both." *Brewer v. Brewer*, 242 S.C. 9, 14, 129 S.E.2d 736, 738 (1963).

Thus, pursuant to the rules of statutory construction, coverage exists under section 38-77-140 if the driver's damages arise out of the ownership OR the maintenance OR the use of the uninsured vehicle. In other words, the statute provides three distinct options for determining coverage. Despite these three options in the statute, the *Aytes* test is expressly limited by its factors to an uninsured vehicle's use. Initially, the third *Aytes* factor requires that the uninsured vehicle be *used* for transportation for coverage to apply. *See* Use, Merriam-Webster, https://www.merriam-webster.com/dictionary/use (last visited March 12, 2025) (defining "use" as "to put into action or service" or "avail oneself of" or "employ"). Notably, our Supreme Court has previously indicated that the term "use" in section 38-77-140 refers to a vehicle's use in transportation. *See Canal Ins. Co. v. Ins. Co. of N. Am.*, 315 S.C. 1, 4, 431 S.E.2d 577, 579 (1993) ("We now construe § 38-77-140 and define 'use of a motor vehicle' as limited to transportation uses."). Thus, the third factor of the *Aytes* test mirrors the Supreme Court's definition of the term "use" in the statute. Similarly, the "causal connection" factor has a subtest requiring a plaintiff to

establish three factors, including "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 (emphasis added) (quoting *State Farm Mut. Auto. Ins. Co. v. Bookert*, 337 S.C. 291, 293, 523 S.E.2d 181, 182 (1999)). As such, two of the *Aytes* factors restrict statutory coverage to injuries arising out of the use of an automobile.

Consequently, the *Aytes* test does not account for or address injuries arising out of the ownership or maintenance of an uninsured vehicle. However, the Legislature clearly intended for such injuries to be covered by including the same in the statute. If coverage only applies when the vehicle is being used, the alternative terms "ownership" and "maintenance" are rendered superfluous. *See Sweat*, 386 S.C. at 351, 688 S.E.2d at 575 ("A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." (quoting *In re Decker*, 322 S.C. at 219, 471 S.E.2d at 463)). Therefore, coverage must extend to injuries arising out of the ownership or maintenance of an uninsured vehicle.

Here, Appellant has consistently asserted this his injuries arose out of the ownership and/or maintenance of the Kingkade vehicle. Notably, Appellant's injuries arose from his attempts to exchange insurance information following the traffic collision and his attempts to discover the Kingkade's license plate information, actions taken to ascertain the ownership of the vehicle and facilitate any necessary repairs. *See* Ownership, Merriam-Webster, https://www.merriam-webster.com/dictionary/ownership (last visited March 12, 2025) (defining "ownership" as "the state, relation, or fact of being an owner"); *see also* Maintenance, Merriam-Webster, https://www.merriam-webster.com/dictionary/maintenance (last visited March 12, 2025) (defining "maintenance" as "the upkeep of property or equipment"). Moreover, such efforts to ascertain the ownership of the Kingkade vehicle and exchange insurance information for necessary maintenance

are 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."). Pursuant to the statute, drivers involved in accidents are generally expected to exchange ownership and insurance information and failure to do so can result in criminal penalties or lack of insurance coverage. Accordingly, Appellant was complying with South Carolina law in his attempts to ascertain ownership of the Kingkade vehicle and trade insurance information when he was injured. Therefore, Appellant's injuries arose out of the ownership or maintenance of the uninsured vehicle.

Ultimately, Appellant has demonstrated that his injuries arose out of the ownership or maintenance of the Kingkade vehicle. As such, Appellant's injuries should be covered under the uninsured motorist provision of his policy with Respondent and the circuit court's order granting summary judgment to Respondent should be reversed.

## II. The circuit court erred in granting Respondent's motion for summary judgment because Appellant's injuries satisfy the *Aytes* test.

Assuming arguendo that ownership, maintenance, and use are not disjunctive terms in the uninsured motorist statute, Appellant's injuries satisfy the *Aytes* test.

As previously mentioned, 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 are covered under the statute: "(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." *Groves*, 438 S.C. at 31–32, 882 S.E.2d at 466 (citing *Aytes*, 332 S.C. at 33, 503 S.E.2d at 745). Additionally, our 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 Kingkade vehicle struck Appellant's vehicle, and continued to the point where the Kingcades fled the scene in their vehicle and disposed of Appellant'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 Kingkade vehicle, and the maintenance or ownership of that vehicle in the form of trading insurance and efforts to conceal its license plate information.

**a. 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 *Bookert*, 337 S.C. at 293, 523 S.E.2d at 182).

Here, there is a causal connection between the Kingkade vehicle and Appellant's injuries. The Kingkade vehicle was an active accessory to the assault, as Mr. Kingkade's acts of bumping Appellant's vehicle and failing to stop resulted in the need to trade information or identify the driver of the vehicle for insurance purposes. Moreover, Ms. Kingkade's act of driving the vehicle and parking it with the front facing Appellant so that he could not see the license plate led to

Appellant 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 Appellant's vehicle, isolated Appellant 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 Appellant'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 Appellant's phone. *See id.* ("[O]nly a motor vehicle could have provided the assailant a quick and successful escape.").

Furthermore, Appellant's injuries are reasonably foreseeable. First, it is reasonably foreseeable that Appellant would seek to exchange ownership and insurance information with the Kingkades after their vehicles were involved in a collision. As previously mentioned, exchanging such information is required by South Carolina law. *See* S.C. Code Ann. § 56-5-1230 (requiring the driver of a vehicle involved in a motor vehicle collision to provide his name, address, vehicle registration number, and driver's license information to the other driver). As such, drivers involved in accidents are generally expected to exchange ownership and insurance information and the failure to do so can result in criminal and civil consequences. 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 that the at-fault driver may become hostile.

The circuit court relied on *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 prior to the assault and the assailants did not utilize a separate vehicle to further the assault.[2] Conversely, in the facts at bar, the Kingkades hit Appellant's vehicle with their vehicle, used the accident to lure Appellant to the assault location, used their vehicle to conceal their license information, and used their vehicle to dispose of the evidence of the incident.

**b. No act of independent significance**

Here, there was no act of independent significance that broke the causal chain. Appellant's injuries arose out of the Kingkade vehicle bumping his vehicle and Appellant's subsequent attempt to exchange insurance information or obtain the license plate number for the Kingkade vehicle. There is no conduct or act, unrelated to the use, maintenance, or ownership of the Kingkade vehicle, that contributed to Appellant's injuries. As such, Appellant's injuries were caused entirely

[2] This Court also determined that passengers causing an injury to a taxi driver is foreseeably identifiable, but that the danger is inherent in the occupation rather than the use of a motor vehicle. *Id.* at 426, 523 S.E.2d at 476.

by the use, maintenance, or ownership of the Kingkade vehicle, and no intervening event exists that would have broken the causal chain.

The circuit 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 prior motor vehicle collision, injuries, or damage had occurred and the defendant drove the victim to a secluded location, exited the vehicle, and shot her while she remained inside 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 victim'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, 121–22 (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, *14 (D.S.C. June 18, 2013) (finding an act of independent significance relating to the third assault where the victim previously exited the assailant's vehicle and the assailant drove away from the victim, entered a parking lot, returned, and 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 Appellant's vehicle and

after they used their vehicle to lure Appellant 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 Appellant was not an intervening event of independent significance, as it was inextricably linked with the accident and escape as one continuing assault.[3] *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 Appellant's actions. At the outset, Appellant's decision to follow the Kingkade vehicle after the initial collision in an attempt to exchange insurance 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.

As an additional point, the circuit court broke down the Kingkades' assault of Appellant into several events and described them as occurring "before the assault," i.e., before Mr. Kingkade injured Appellant's leg. However, the Kingkades' acts of kicking Appellant's door, getting in his face, pushing him, and stealing his phone all constitute assault under the law. *See Gathers v. Harris*

[3] 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 *Towe*, 314 S.C. at 107, 441 S.E.2d at 827)).

*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 Appellant was inextricably linked with the collision damage they caused to Appellant's vehicle and their ultimate 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 Appellant'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 Appellant's vehicle, and turning it around in an attempt to conceal the license plate number from Appellant and Ms. Vawter. Additionally, because the Kingkade vehicle was still turned on, the Kingkades were able to make a rapid getaway after assaulting Appellant, 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.

In determining that the Kingkade vehicle was not used for transportation, the circuit court relied on 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. *See Aytes*, 332 S.C. at 35, 503 S.E.2d at 746 (finding the vehicle was not

used for transportation where the defendant caused no accident or injuries with the vehicle prior to driving the victim to a secluded location, exiting the vehicle, and shooting the victim inside the vehicle); *Doe v. S.C. State Budget & Control Bd., Office of Ins. Servs., Ins. Reserve Fund*, 329 S.C. 214, 219 n.5, 494 S.E.2d 469, 472 n.5 (Ct. App. 1997) (finding the vehicle was not used for transportation where the defendant caused no accident or injuries with the vehicle prior to sexually assaulting the victim in the vehicle while parked); *see also Nationwide Prop. & Cas. Co. v. Lain*, 402 F. Supp. 2d 644, 650 (D.S.C. 2005) (finding the defendant and victim were engaged in an ongoing argument rather than an ongoing assault, and finding the vehicle was not used for transportation where the defendant caused no accident or injuries prior to murdering the victim in the backseat while the vehicle was parked).[4] Furthermore, as mentioned above, the vehicle here was used for transportation throughout the incident and following the initial collision including: (1) leading Appellant 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, Appellant has demonstrated that his injuries arose out of the use, maintenance, or ownership of the Kingkade vehicle. Thus, Appellant's injuries should be covered under the uninsured motorist provision of his policy with Respondent and the circuit court's order granting summary judgment to Respondent should be reversed.

## III. The circuit court erred in granting Respondent's motion for summary judgment because Appellant is entitled to stack uninsured motorist coverage.

The circuit court erred in denying Appellant's claim to stack coverage.

[4] The circuit court additionally relied on *Wright* for its finding that the Kingkade vehicle was not used for transportation. However, in *Wright*, two assailants shot a taxi driver during an attempted robbery while the vehicle was in motion, causing the driver to lose control of the taxi and crash into a parked vehicle. *Wright*, 337 S.C. at 422, 523 S.E.2d at 473. As such, this Court did not find that the taxi was not being used for transportation, rather, this Court determined that coverage did not apply pursuant to its analysis of the other *Aytes* factors. *Id.* at 424–27, 523 S.E.2d at 474–76.

"Stacking" uninsured motorist coverage is controlled by section 38–77–160 of the South Carolina Code, which provides:

> 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.

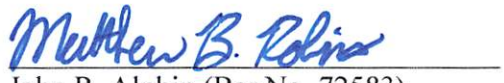
S.C. Code Ann. § 38–77–160. Stated more simply, "[s]tacking enables the insured to recover under more than one policy." *Windham*, 438 S.C. at 160, 882 S.E.2d at 756. In interpreting the uninsured motorist statutes, our courts have indicated that the same are "remedial in nature and enacted for the benefit of injured persons; therefore, they should be construed liberally to effect the purpose intended by the Legislature." *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005).

Here, Appellant's vehicle was involved throughout the incident, as the Kingkade vehicle striking his vehicle and causing damage led to the continuum of events that transpired. Additionally, Appellant's vehicle was involved in the assault, as Mr. Kingkade kicked Appellant's driver's side door after the vehicles pulled into the local business parking lot and Appellant sought to obtain the Kingkade vehicle's ownership and insurance information. As such, Appellant's vehicle was involved throughout the incident and Appellant is entitled to stack coverage. Consequently, the circuit court's order granting summary judgment to Respondent and denying Appellant's claim to stack coverage should be reversed.

## CONCLUSION

Based on the foregoing, the circuit court's order granting Respondent's motion for summary judgment and denying coverage to Appellant should be reversed.

Respectfully submitted:



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Columbia, South Carolina
June 9, 2025

**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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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that Appellant's Final Brief complies with Rule 211(b), SCACR.

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