THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

Case No. 2016-CP-10-00363

LEVI THOMAS BROWN

Appellant

vs.

STATE FARM FIRE AND CASUALTY INSURANCE COMPANY

Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Levi Thomas Brown filed the Summons and Complaint in this action on January 25, 2016. Defendant State Farm Fire and Casualty Insurance Company, by and through the South Carolina Department of Insurance accepted service of the Summons and Complaint on April 4, 2016. Levi Thomas Brown brought this action seeking a declaratory judgment from the Court as to the parties' respective rights and obligations under an automobile insurance policy issued by State Farm Fire and Casualty Insurance Company. State Farm Fire and Casualty Insurance Company served its Answer on Levi Thomas Brown on May 2, 2016.

State Farm Fire and Casualty Insurance Company filed its Motion for Summary Judgment on October 4, 2016 and Levi Thomas Brown filed his cross Motion for Summary Judgment on October 31, 2016. The parties have polarized arguments as to whether Levi Thomas Brown's injuries arose out of the ownership maintenance or use of an uninsured vehicle. The parties stipulated to the facts of the case and requested the Court hear the motions as a dispositive bench trial.

On January 6, 2017, the Honorable W. Jeffrey Young heard the parties' motions for summary judgment in Charleston County, South Carolina.

The trial court's Order was filed February 7, 2017. The trial court ruled in favor of State Farm Fire and Casualty Insurance Company and held the injuries sustained by Levi Thomas Brown are not covered by the subject State Farm uninsured motorist policy. Levi Thomas Brown received written notice of the entry of the Order on February 14, 2017. Levi Thomas Brown served his Notice of Appeal on State Farm Fire and Casualty Insurance Company on February 16, 2017.

FACTS

Prior to their cross motions for summary judgment, Levi Thomas Brown and State Farm Fire and Casualty Insurance Company stipulated to the following facts:

1. On February 10, 2013, Levi T. Brown, Jasper T. Banks and Roy B. Walker left after a supper gathering with their female companions for a "boy's night out." The three men went in Roy B. Walker's mother's 2003 Cadillac Deville sedan to Charlie O's, a night club located at 4224 Dorchester Road in North Charleston. When Charlie O's closed, the three men decided to go to IHOP at nearby Center Point Drive by way of Dorchester Road northbound to the on-ramp of I-

526 eastbound to the next exit at Montague Ave eastbound. As the three left Charlie O's, Levi T. Brown was driving and Jasper T. Banks and Roy B. Walker were riding as passengers.

2. Levi T. Brow drove the 2003 Cadillac Deville sedan onto the on-ramp of I-526 East. The on ramp for I-526 East from Dorchester Road to Montague Avenue creates a third lane which runs adjacent to the two existing eastbound lanes and runs the distance of approximately one tenth of a mile where that third lane ends as the off-ramp of I-526 East at Montague Avenue.

3. At approximately 4:25 a.m., while the Cadillac Deville sedan was in the right-most lane between the exists, a gray/silver older model Dodge Durango came alongside of the Cadillac in one of the other eastbound lanes of the interstate with a black male with dreadlocked hair and a baseball hat hanging out of the rear passenger side window. The unknown assailant opened fire on the Cadillac. The men did not see the vehicle prior to the shots being fired. They do not know where the vehicle came from. The persons in the Cadillac still to this day have no idea as to the identity of the driver or passenger. There was nothing they did that night either at the club or on the roadway to provoke any hostility towards them.

4. Four gunshots struck the Cadillac. And one of those shot struck Levi T. Brown. There is one bullet hole on the hood near the grill and three bullet holes in the driver's side of the Cadillac—two holes in the window to the backseat behind the driver and one bullet hole in the driver's window. The hole in the driver's side window is located at approximately the same height and location where Levi T. Brown's wound is and presumably passed though the driver's side window and into Levi Brown's body, where it lodged between his heart and spine.

5. The assailant vehicle did not hit the Cadillac. The assailant vehicle did not attempt to ram, block, or otherwise strike the Cadillac. The assailant vehicle continued on I-526 East as Levi T. Brown exited at Montague Avenue.

6. Jasper T. Banks swore out an affidavit describing witnessing a silver Durango pulling alongside the left side of the Cadillac and without warning or provocation a passenger hanging out of the passenger window firing gun shots at the Cadillac. Jasper testified in his affidavit that he heard Levi say "I've been hit!"

7. The shooting incident was witnessed by someone other than the owner or operator of the insured vehicle, that being Jasper T. Banks, and his signed affidavit attests to the truth of the facts of the accident. State Farm is not disputing that Banks satisfies the witness requirement of 38-77-170 of the SC Code of Laws, but disputes Levi Brown's claim is a valid uninsured motorist claim.

8. Levi T. Brown reported this incident within a reasonable amount of time to police and was not negligent in failing to determine the identity of the other vehicle and the driver of the other vehicle at the time of the accident, all in compliance with the uninsured motorist statute section 38-77-170 of the SC Code of Laws, with the qualification that State Farm in no way concedes this is a valid underinsured motorist claim.

9. After coming down the exit ramp to Montague Avenue, Levi T. Brown pulled over and moved to the passenger seat and Jasper T. Banks drove Levi T. Brown to the emergency room

where they reported the incident to the North Charleston Police who prepared an incident report detailing this description of events and the denial of Brown of either being involved in gang activity or having any idea who the shooter might be or who may own the Durango.

10. The North Charleston Police recovered four bullet casing at the area of I-526 East between Dorchester Road and Montague Avenue as evidence in the course of their investigation of this incident.

11. On February 10, 2013, Roy B. Walker was using his mother's 2003 Cadillac Deville sedan with her express permission.

12. On February 10, 2013, Levi T. Brown was using the 2003 Cadillac Deville sedan belonging to Roy B. Walker's mother with Roy B. Walker's express permission.

13. As a result of the gunshot from the unknown assailant in this case, Levi T. Brown incurred over $46,000.00 in medical costs and has a bullet lodged between his heart and spine. The parties agree that if the uninsured motorist coverage is applicable to the loss and not otherwise excluded, the value of Brown's damages entitles him to the entire $25,000.00 per person bodily injury limit from the uninsured motorist coverage under State Farm's policy on the 2003 Cadillac Deville.

14. A copy of the State Farm Mutual Automobile Insurance Company's policy on the 2003 Cadillac Deville is included in the Record on Appeal and incorporated by reference.

ARGUMENTS

I. THE TRIAL COURT FAILED TO FOLLOW ESTABLISHED PRECEDENT

The trial court erred in declining to follow clear precedent promulgated by the Supreme Court of South Carolina when the trial court excluded coverage for injuries sustained as a result of a drive-by shooting which arose out of the ownership, maintenance, or use of an automobile. (R.). Appellant requests the South Carolina Court of Appeals reverse the trial court and determine Appellant's injuries arose out the ownership, maintenance and use of the subject uninsured vehicle.

It is mandatory that all automobile insurance policies issued in South Carolina contain uninsured motorist provisions "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." S.C. Code Ann. § 38-77-150 (1989). An insured is legally entitled to recover damages "arising out of the ownership, maintenance or use" of an uninsured vehicle. S.C. Code. Ann. § 38-77-140 (1989). The Supreme Court of South Carolina adopted the Minnesota Supreme Court's two-pronged test for determining whether an individual's injuries arose out of the ownership, maintenance or use of the assailant's vehicle during a drive-by shooting. *See* Wausau Underwriters Ins. Co. v. Howser, 422 S.E. 2d 106, 309 S.C. 269 (1991) *adopting the analysis from* Continental Western Ins. Co. v. Klug, 415 N.W. 2d 876 (Minn. 1987). The Supreme Court of South Carolina has not reversed its decision in Howser and continues to provide coverage for those injured in vehicle-to-vehicle drive-by shootings like the one at issue in this case.

The Howser facts are squarely "on all fours" with the facts in this case. In Howser, Nancy Howser was injured by an unknown assailant while driving her father's Chevrolet S-10 Blazer vehicle. Howser, 309 S.C. 271. Howser and her friend were driving in the inside lane of a four-lane road in Columbia, South Carolina. Id. A car driven by an unknown assailant "bumped"

Howser's vehicle several times and pulled alongside Howser yelling at Howser and her passenger to roll down their windows, slow, and stop their vehicle. Id. The unknown assailant pointed a pistol at Howser's passenger window. Id. As Howser made a quick left turn down a side street to avoid the assault, the gunman shot at the Chevrolet S-10 Blazer. Id. The bullet entered the rear of Howser's vehicle, fragmented, and entered Howser's back in three places. Id. The gunman continued and neither her nor his vehicle were identified. Id.

Like Nancy Howser, Levi T. Brown was injured by an unknown assailant while driving a friend's mother's Cadillac Deville. (R.). Brown was driving in the inside lane of a three-lane on-ramp on I-526 between Dorchester Road and Montague Avenue in Charleston when a Dodge Durango pulled alongside at highway speed. (R.). A black male with dreadlocked hair wearing a baseball cap shot Brown's vehicle from the assailant Dodge Durango. (R.) The bullets entered the Cadillac Deville and entered Levi T. Brown's torso. (R.). Levi T. Brown was struck and a bullet remains lodged between his heart and spine. (R.). The Dodge Durango and unknown assailant continued on I-526 and were never identified. (R.).

The two-pronged Klug test adopted by the Supreme Court of South Carolina in Howser to determine whether an injury arose out of the ownership, maintenance or use of a vehicle in the course of a drive-by shooting is as follows:

1. There exists a causal connection between the [assailant's] vehicle and the injury; and
2. No act of independent significant breaks the causal link.

For there to be a "causal connection" in this context:

a. The [assailant's] vehicle must be an "active accessory" to the assault; and
b. Something less than proximate cause but more than mere site of the injury.

Howser 309 S.C. 274. A third element was added two years after Howser in Canal Ins. Co. v. Insurance Co. of North America, 315 S.C. 1, 431, S.E. 2d 577 (1993): it must be shown the vehicle was being used for transportation at the time of the assault.

Howser Test: Prong #1

In Howser, the Court determined the vehicle was not merely a tool used to transport the assailant to the situs of the shooting, rather it was an active accessory to the assault. Howser, 309 S.C. 273. Nor, the Court said, is it a case where the assailant happened, incidentally, to be sitting in a stationary vehicle at the time of the attack. Id. The Court continued,

> Only through the use of his vehicle was the assailant able to closely pursue Howser, thereby enabling him to carry out the pistol assault. The gunshot was the culmination of an ongoing assault, in which the vehicle played an essential and integral part. Additionally, only a motor vehicle could have provided the assailant a quick and successful escape.

Id.

Here, as in Howser, the Dodge Durango played a vital role in allowing the unknown assailant to pursue, pull alongside, and carryout the drive-by shooting. Without the use of the Dodge Durango (or with assailants' vehicles in Klug and Howser), the assailant would not have been able to keep up with the victim and successfully inflict injury or of severe of an injury. Appellant argued to the trial court in this case:

> Napolski: [B]ut the vehicle-to-vehicle drive-by shooting is different than someone shooting from a hill against a car that was driving. The assailant's vehicle needs to be used in order to keep the same speed of our client's vehicle in order to increase the accuracy and actually have a shot, a chance at shooting that vehicle.
>
> If someone were standing on the shoulder of I-526 with his vehicle where this accident happened and a car was going 60 miles an hour past them three lane

> over, the accuracy is certainly going to be less than that. So the vehicle is an essential part of the shooting[.]

Transcript p. 10:2-12.

Here, assailant's Dodge Durango played an essential and integral part of the ongoing assault in that it allowed the assailant to pursue Levi T. Brown, carryout the shooting, and provide a quick and successful escape thus satisfying both the "active accessory" and "more than mere site of the injury" elements of the Howser "causal connection" prong.

Howser Test: Prong #2

Second, no act of independent significance broke the causal link in Klug, Howser, or the case at bar. In all three instances, the use of the unknown vehicle was inextricable linked as one continuing assault as opposed to being caused by some independent act or intervening cause wholly disassociated from, independent of and remote from the use of the automobile. The Howser opinion is consistent with South Carolina precedent as to this element. An independent act is most evident in Plaxco v. United States Fidelity and Guaranty Co., 252 S.C. 437, 166 S.E. 2d 799 (1969) in which an automobile's battery was used to start the engine of an airplane. Once the airplane's engine started, the airplane's brakes failed, causing it to move forward and damage another plane. Plaxco 252 S.C. 437. The Court found the only connection between the automobile and the plane was the use of the automobile to start the plane and its purpose completed when the plane moved forward, thus breaking any causal connection. Id. Because of this break, the Court determined, the accident resulted from the use of the plane and not the automobile. Id.

Here, as in Klug and Howser, nothing interrupted the assailant's pursuit and accomplishment of the drive-by shooting. Rather, it was one continuous uninterrupted event from beginning to end.

Howser Test: Prong #3

Finally, the assailant's vehicle in the present case, as in Klug, and Howser, was being used for transportation purposes at the time of the assault. In Classified Ins. Corp. v. Vodinelich, 368 N.W. 2d 921 (Minn. 1985), a case cited by the Klug court, coverage was denied when the insured's children were accidentally asphyxiated when their mothing used the vehicle to commit suicide in the garage of their home. The Vodinelich court reasoned no coverage should exists where injuries result from non-transportation use of the vehicle. This third prong was adopted by the Supreme Court of South Carolina in Canal Ins. Co. v. Insurance Co. of North America, 315 S.C. 1, 431, S.E. 2d 577 (1993) in which the Court determined S.C. Code Ann. § 38-77-140 must be construed to define "use of a motor vehicle" as limited to transportation uses, and not to include damages caused, for example, by a truck crane when hoisted on outriggers. Id.

Here, unquestionably, the vehicles were being used for transportation at the time of the assault, specifically, driving on I-526 between Dorchester Road and Montague Avenue in Charleston. (R.).

Because the facts in the present case are undistinguishable from those in Howser, they satisfy the Klug test as adopted by the Supreme Court of South Carolina, as well as the additional third prong of during transportation, and the trial court erred in failing to follow the Supreme Court of South Carolina's established precedent.

Home Ins. Co. v. Towe

The Supreme Court of South Carolina affirmed its position and the elements for determining whether injuries arose out of the ownership, maintenance or use of an automobile in Home Ins. Co. v. Towe, 314 S.C. 105, 441 S.E. 2d 825 (1993).

In Towe, John Alexander, the assailant, threw a bottle at a road sign from a moving vehicle driven by Towe. Towe, 314 S.C. 106. Instead of striking the sign, the bottle shattered on the steering wheel of a tractor McClaskey was driving in the opposite direction, seriously injuring McClaskey and causing minor damage to the tractor.

The Supreme Court of South Carolina systematically analyzed this case using the Klug test adopted in Howser. Specifically, the Court said, "The test for determining whether an injury arose out of the use of a vehicle turns on the causal connection between the vehicle and the injury." *Citing* Wausau Underwriters Ins. Co. v. Howser, 422 S.E. 2d 106, 309 S.C. 269 (1991).

As to the first element, the Supeme Court disagreed with Home Ins. Co. that the Court of Appeals erred in finding that there is a causal connection between the automobile and McClaskey's injuries. Towe 314 S.C. 107. "The use of the automobile placed [the assailant] in the position to throw the bottle at the sign and the vehicle's speed contributed to the velocity of the bottle increasing the seriousness of McClaskey's injuries." Id. Again, this is precisely in line with this case in which the Dodge Durango was used to pursue, pull alongside at high speed, and carryout the subject drive-by shooting. But for the use of the Dodge Durango keeping speed with Levi T. Brown's vehicle, the assault would not have been a success.

Next, Home Ins. Co. argued the assailant's act of throwing the bottle was an act of independent significance that broke the causal connection between McClasky's injuries and the use of Towe's automobile. Id. at 107. The Supreme Court of South Carolina was unconvinced. Rather, the Court explained, "The use of the automobile and Alexander's throwing of the bottle were, as in [Howser], 'inextricably linked' as one continuing act. Accordingly, there was no act of independent significance that broke the causal connection between the use of the automobile and McClaskey's injuries." Id. at 108. As in Towe, the facts of the case at bar constituted one

continuous event. No independent act interrupted the pulling alongside Levi T. Brown's vehicle and shots being fired by the unknown assailant. (R.).

As evidenced by the Supreme Court's careful analysis of the facts in Towe, a test for determining whether injuries arose out of the ownership, maintenance or use of an automobile has been clearly established. The test adopted by the Court in Howser was not appropriately applied by the trial court in this case. The trial court erred in failing to follow clear precedent. Nothing about the way this test has been articulated in later cases has changed the analysis or altered the precedential value of Howser and Towe.

Appellant requests this Court reverse the trial court and find the facts in the case at bar satisfy the Howser elements without distinguishability, and that the Howser and Towe rulings are not inconsistent with subsequent holdings.

II. THE TRIAL COURT ERRED IN FINDING THAT THE "FORESEEABLY IDENTIFIABLE WITH USE OF THE AUTOMOBILE" ELEMENT ARTICULATED IN AYTES AND BOOKERT IS INCONSISTENT WITH HOWSER AND TOWE

Respondent State Farm Fire and Casualty Insurance Company argues State Farm Fire & Cas. Co. v. Aytes and State Farm Mut. Auto Ins. Co. v. Bookert establish a new and stricter list of factors used to analyze coverage for injuries arising out of the use of an automobile – a list that includes "foreseeably identifiable with the use of an automobile" as part of the "causal connection" prong of the three-pronged Howser test. None of the decisions relied upon by Respondent State Farm for the expanded role of "foreseeable identifiable" as a part of the analysis actually rely on this "additional" factor to reach a conclusion. All of those decisions deny coverage based on one of the other long standing factors as previously articulated in Howser. The mention of foreseeable

identifiableness is a secondary rationale that amounts to little more than a different way of articulating that the injuries that fail the Howser test.

In State Farm Fire & Cas. Co. v. Aytes, 332 S.C 30, 503 S.E. 2d 744 (1998), Randy Aytes forcibly took Donna Dawson's car keys from her, forced her into her own vehicle and drove her to a secluded area with the express intent of killing Dawson. Aytes exited Dawson's vehicle, walked around to the passenger side and fired a pistol into the vehicle striking Dawson's foot. The Court said,

> The causal connection is established where it can be shown the vehicle was an "active accessory" to the assault. Howser, supra. The causation required is something less than proximate cause and something more than the vehicle being the mere site of the injury. Id. The injury must be foreseeably identifiable with the normal use of the vehicle. Nationwide Mut. Ins. Co. v. Brown, 779 F. 2d 984 (4th Cir. 1985). The required causal connection does not exist when the only connection between an injury and the insured vehicle's use is the fact that the injured person was an occupant of the vehicle when the shooting occurred. Id.

Aytes, 332 S.C. 34.

The Aytes Court specifically distinguishes its facts with those in Howser. The Aytes Court said,

> In Wausau Underwriters v. Howser, the insured sustained gunshot wounds while traveling on a public highway in an insured vehicle and during a vehicular chase by an unknown assailant in an unidentified vehicle. The Court found the unknown vehicle was an active accessory to this assault: it was not a case in which the assailant merely used the vehicle to provide transportation to the situs of the shooting.

Id. The Aytes Court clearly concluded its facts did not meet the threshold for determining that the assailant's vehicle was used as an active accessory to the assault. Rather, because Randy Aytes exited Dawson's vehicle prior to the infliction of the injury, he was no longer using the vehicle and the causal link was broken. "The only connection between the car and the injury is the fact

that Dawson was sitting in the car when she was shot." Id. at 35. The Aytes Court was convinced the facts in Howser demonstrated assailant's vehicle being used as an active accessory to the assault thus meeting the "active accessory" prong of the "causal connection" test. The Aytes Court explains that by establishing the Howser assailant vehicle was an "active accessory," the injuries were thusly foreseeably identifiable with the use of a vehicle.

State Farm Mut. Auto. Ins. Co. v. Bookert, 523 S.E.2d 181, 337 S.C. 291 (1999) articulates the "foreseeably identifiable" factor as a separate numbered factor in the list of how to satisfy the "causal connection" element of the three-pronged Hower test.. In Bookert, the victim (Bookert) and a group of his friends stopped at a Hardee's where two soldiers and about fifteen other your men became involved in an altercation Bookert, 337 S.C. 292. Bookert and his friends left and went to a McDonald's, as did some of the fifteen men from Hardee's. Id. The two soldiers, who were armed, picked up a third soldier and drove to the McDonald's where they circled the parking lot, looking for the fifteen men from Hardee's. Id. As Bookert was about to go in the restaurant, he heard the solders yelling, and turned in their direction. Id. The soldiers' vehicle was stopped in the traffic lane with its motor running with one soldier in the back holding a shotgun while the front passenger brandished a handgun. Id. The vehicle jerked forward and the soldier wielding the shotgun fell and fired his gun. Id. Bookert was not hit by the shotgun pellets, but while the vehicle was still moving forward, the passenger fired the handgun striking Bookert with a bullet in each leg. Id. at 293.

After the Court of Appeals reached a decision finding coverage for Bookert in a thorough analysis, the Supreme Court of South Carolina overturned this holding with a short reference to the elements as listed in Aytes. By over-simplifying the relationship of these factors in the analysis and simply placing them in a numbered list without further analysis of how coverage was found

to be lacking, the Bookert Court provided insurance carriers the foot-in-the-door necessary to create the argument Respondent State Farm is making herein. There is, however, no reason to believe the Bookert Court intended to provide a new catch-all element of foreseeable identifiableness with the normal use of an automobile that would make once covered injuries by Klug, Howser and Towe not covered after Bookert. Bookert (as was Aytes) was decided using the same methodology as Howser and Towe. However, the Bookert and Aytes facts did not rise to the level of causal connection, as the vehicles were not active enough accessories. The assaults in both Bookert and Aytes were not made worse or made successful by the involvement of the assailants' vehicle

This Court must resist posited by Respondent State Farm in this case, namely that Aytes and Bookert hold that gunshot injuries are not foreseeably identifiable with the normal use of an automobile (and can thus be excluded from coverage). The vehicle in Aytes was not an active accessory to the assault. The decision on every State and Federal case cited to the trial court on this issue post-Aytes is grounded in failures of the "causal connection" between the assailant's vehicle and the injury, and/or acts of independent significance breaking the causal link, and/or the assailant's vehicle not being used for transportation at the time injury is inflicted.

None of the subsequent cases are decided based upon "foreseeably identifiableness with the normal use of a vehicle" as the rationale. When this phrase is used, it is merely an expression of why coverage cannot be had with the stated failure of a causal connection. Lack of a causal connection and "unforeseeableness" are synonyms.

The Bookert Court restated the three part test for determining whether an individual's personal injuries arise out of the ownership, maintenance, or use of an automobile such that they are covered by an automobile insurance policy. The three part test is met when:

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

Aytes reiterated the components of the causal connection requirement. In this context, causal connection means:

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."

Bookert, 337 S.C. 293.

While affirming the Aytes list of elements, the Bookert opinion fails to explain its reasoning for reversal other than to say the "policy does noes cover [Bookert's] injuries because they are not 'foreseeably identifiable with the normal use of an automobile.'" Id. at 293. At the moment the assailant in Bookert fires the pistol that injures the victim, the assailant vehicle is being used for transportation and no act of independent significance has broken the causal link. The assailant vehicle is arguably something less than proximate cause but more than the mere site of the injury. The assailant vehicle was arguably an active accessory to the shooting. However, the Bookert vehicle did not fit within the narrow field of claims defined as "covered" by Klug, Howser, and Towe. That is, the Bookert injuries were not caused and enabled **only** through the use of the vehicle (e.g., the gunman could have just as easily gotten out of the vehicle and shot the victim). The Bookert vehicle was not involved in the actual infliction of damage, as opposed to just being part of the event. And, the speed of the Bookert vehicle nor the force of the vehicle increased the damages.

What the case before this Court now has in common with Klug, Howser, and Towe is that its fact **do** fit squarely in the narrow filed of cases that have found a causal connection to exist and for the injuries to have arisen out of the use of an automobile.

Because the trial court improperly read the dicta of the Bookert opinion citing the "foreseeably identifiable with the normal use of an automobile" as creating a new element of the analysis that would make the facts of this case not controlled by Hower and Towe, Appellant requests this Court reverse the trial court.

CONCLUSION

For the reasons stated, this Court should reverse the decision of the circuit court.

Respectfully submitted,

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May 19, 2017
North Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
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W. Jeffrey Young, Circuit Court Judge

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LEVI THOMAS BROWN

Appellant

vs.

STATE FARM FIRE AND CASUALTY INSURANCE COMPANY

Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant on State Farm Fire and Casualty Insurance Company by depositing a copy of it in the United States mail, postage prepaid, on May 19 2017 addressed to its attorney of record as follows:

Timothy A. Domin
Clawson and Staubes, LLC
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Attorney for Respondent

Dated: May 19, 2017
North Charleston, South Carolina

GEORGE SINK, P.A. INJURY LAWYERS

By: _____
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May 19. 2017

VIA U.S. MAIL
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals Clerk of Court
P.O. Box 11629
Columbia, SC 29211

Re: Levi Thomas Brown v. State Farm Fire and Casualty Insurance Company
Case No.: 2016-CP-10-00363

Dear Madam Clerk:

Please find enclosed for filing the following:

(1) Original and one copy of Initial Brief of Appellant; and
(2) Original and one copy of Designation of Matter to be Included in the Record on Appeal.

Please file the original of the Initial Brief of Appellant and Designation of Matter and return file-stamped copies to our office in the enclosed, self-addressed, stamped envelope.

If you have any questions or require additional information, please do not hesitate to contact me at (843) 569-1700.

With kindest regards, I am,

Very truly yours,

Robert E. Treacy, Jr.

RET/jav

Enclosures

cc: Timothy A. Domin, Esq.

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May 19, 2017

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South Carolina Court of Appeals Clerk of Court
P.O. Box 11629
Columbia, SC 29211

Re: Levi Thomas Brown v. State Farm Fire and Casualty Insurance Company
Case No.: 2016-CP-10-00363

Dear Madam Clerk:

Per your letter dated May 16, 2017, our office received a copy of the transcript via email from Karen Anderson on Wednesday, April 19, 2017.

If you have any questions or require additional information, please do not hesitate to contact me,

With kindest regards, I am,

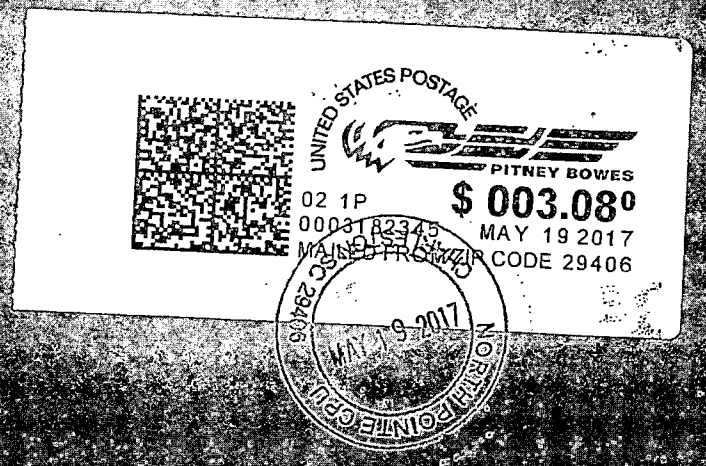
Very truly yours,

Robert E. Treacy, Jr.

RET/jav

Enclosures

cc: Timothy A. Domin, Esq.



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SC Court of Appeals

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