

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Case No. 2015-CP-26-8919

LeeAnna Williams, as Personal
Representative of the Estate of Tanya L.
James,

Plaintiff,

vs.

Allstate Fire and Casualty Insurance
Company,

Defendant.

**ORDER DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT AND
GRANTING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

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SC Court of Appeals

This matter came before the Court on the parties' cross motions for summary judgment. A hearing was held before me on June 19, 2018, in the Horry County Court of Common Pleas. Appearing for Plaintiff LeeAnna Williams, as Personal Representative of the Estate of Tanya L. James ("the decedent"), ("Plaintiff") was Lisa Poe Davis of the law firm Kelaher, Connell & Connor, P.C. and for the Defendant Allstate Fire and Casualty Insurance Company ("Allstate") A. Johnston Cox of the law firm Gallivan, White & Boyd, P.A. Based upon the arguments of counsel, memoranda of law, exhibits, applicable law, and the record in this case, Allstate's Motion is granted and Plaintiff's Motion is denied. Therefore, judgment is entered in favor of Allstate on Plaintiff's Complaint as a matter of law.

FINDINGS OF FACT

Based on the competent evidence submitted in this case, the Court makes the following findings of fact:¹

¹ These facts are presented in the light most favorable to Plaintiff as required under Rule 56, SCRPC.

Plaintiff purchased automobile policy number 000955908577 for the 05/26/14 to 11/26/14 policy period (“the Policy”). The Policy insured the vehicles described as 2004 GMC Yukon, 2002 Honda Accord, and 2006 Hummer H3 and provided uninsured motorist coverage (“UM coverage”), among other things. With regard to the UM coverage, the Policy provides:

Allstate will pay those damages that an insured person is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of:

1. bodily injury sustained by an insured person, and
2. property damage.

The bodily injury or property damage must be caused by an accident and arise out of the ownership, maintenance or use of an uninsured motor vehicle.

The decedent was a backseat passenger in a vehicle that was traveling east on South Carolina Highway 57 on October 6, 2014. Clarida was a front seat passenger in the same vehicle and began shooting at another vehicle that was allegedly chasing the vehicle in which both the decedent and Clarida were riding as passengers. Clarida had his arm out of the vehicle shooting at this other vehicle when it was traveling behind them and beside them. Plaintiff contends Clarida shot Plaintiff’s decedent while he was shooting at the other vehicle.

On December 28, 2015, Plaintiff filed suit against Clarida in the Court of Common Pleas for Horry County, South Carolina. In the Tort Suit Complaint, Plaintiff alleged Clarida was negligent, grossly negligent, willful, and wanton in one or more of the following respects:

- In firing a gun in a confined space;
- In failing to keep a proper lookout;
- In discharging a firearm without ascertaining where he was pointing same;
- In failing to handle a gun in a reasonable manner; and

- In failing to take that degree of skill and care which a reasonable and/or prudent person would under the same or similar circumstances.

Plaintiff further contended “[t]hat as a direct and proximate result of the negligence of [Clarida] the Plaintiff’s Decedent was killed.” Plaintiff included causes of action for wrongful death and survival in the Tort Lawsuit Complaint.

On December 28, 2015, Plaintiff filed suit against Allstate for “a declaratory judgment action to determine the scope and extent of coverage provided by [Allstate].” Plaintiff alleges Allstate “provides uninsured motorist coverage for the vehicle that the Plaintiff owned at the time of the accident and the Plaintiff’s decedent was as resident relative of the Plaintiff at the time of this accident and therefore, covered under this policy.” Plaintiff also alleges that she “seeks a declaration of this coverage and the extent of this coverage with regard to the liability of [] Clarida inasmuch as the vehicle in which Mr. Clarida was a passenger was an active accessory to the injury of the Plaintiff’s Decedent.” Ultimately, given the pending Declaratory Judgment Action, Plaintiff dismissed the Tort Lawsuit Complaint without prejudice by filing the Stipulation of Dismissal Without Prejudice on April 14, 2016.

SUMMARY JUDGMENT STANDARD

“Summary judgment is appropriate where 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 that the moving party is entitled to judgment as a matter of law.” *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 213, 609 S.E.2d 565, 568 (Ct. App. 2005) (citing *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 602 S.E.2d 389 (2004) and SCRCP 56. The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. *Rife*, 363 S.C. at 215, 609 S.E.2d at 568 (citing *Dawkins v. Fields*, 354

S.C. 58, 580 S.E.2d 433 (2003)). “Further, summary judgment depends upon the existence of plain, undisputable facts on which reasonable minds cannot differ. *Allen v. Long Mfg. NC, Inc.*, 332 S.C. 422, 426, 505 S.E.2d 354, 356 (Ct. App. 1998) (citing *Priest v. Brown*, 302 S.C. 405, 396 S.E.2d 638 (Ct.App.1990)).

“Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (2003). To defeat a properly supported motion for summary judgment, the party opposing the motion “must come forward with specific facts showing there is a genuine issue for trial.” *Regions Bank*, 354 S.C. at 660, 528 S.E.2d at 438. *See, e.g., Humana Hospital-Bayside v. Lightle*, 305 S.C. 214, 218, 407 S.E.2d 637, 639 (1991) (determining grant of summary judgment was proper where the opposing party “failed to assert any facts as to which there is a genuine issue so as to make summary judgment improper [and] offered no evidence or raised any issues to support his claims that the insurer was in any way negligent, fraudulent, or acting in bad faith.”).

In viewing the record evidence in this case in the light most favorable to Plaintiff, the Court finds that Plaintiff has failed to show that genuine issues of material fact exist to defeat Allstate’s motion for summary judgment.² Based on review of the evidence in this case and in accordance with South Carolina law, the Court finds that the clear, undisputed facts in this case clearly demonstrate that Plaintiff’s decedent’s injuries and subsequent death were caused by Clarida shooting the gun, striking her in the head with a bullet. Accordingly, the Court finds that the decedent’s injuries do not arise out of the ownership, maintenance, or use of a motor vehicle.

² The parties agreed at the hearing that no material issues of fact exist regarding how the decedent’s death occurred and submitted cross motions for summary judgment seeking the court’s determination of whether Allstate’s policy provides coverage for the decedent’s injuries.

Therefore, the Court finds that the Policy's UM coverage is not available in connection with this claim and judgment is entered in favor of Allstate as a matter of law.

CONCLUSIONS OF LAW

The Court finds that South Carolina law does not support a determination that the Policy's UM coverage provides coverage for this claim. Per its terms, the Policy provides that UM coverage is afforded for damages that an insured person is legally entitled to recover from the owner or operator of an uninsured vehicle if such damages are caused by an accident and arise out of the ownership, maintenance, or use of an uninsured motor vehicle. The Court finds that the undisputed facts of this case clearly demonstrate the damages sought in this case do not meet the Policy's requirements. Therefore, the Court finds that UM coverage is not afforded and Plaintiff is not entitled to recover under the Policy.

South Carolina courts have explained when damages arise out of the ownership, maintenance, or use of a motor vehicle. In *Peagler v. USAA Insurance Company*, 368 S.C. 153, 628 S.E.2d 475 (2006), the Supreme Court of South Carolina explained that it uses a three-part test to determine whether an injury arises out of the ownership, maintenance, and use of a vehicle as follows:

The party seeking coverage must show (1) a causal connection exists between the vehicle and the injury, (2) no act of independent significance breaks the causal link between the vehicle and the injury, and (3) the vehicle was being used for transportation purposes at the time of the injury.

Peagler, 368 S.C. at 159-160, 628 S.E.2d at 478 (citing *State Farm Fire & Cas. Co. v. Aytes*, 332 S.C. 30, 33, 503 S.E.2d 744, 745 (1998)). The Court explained "[t]he focus is on the extent of the role, if any, the vehicle played in causing the injuries or damage, or whether a particular activity is a covered use as required by statute or a policy provision." *Id.* at 160, 628 S.E.2d at 479. *See also Integon Gen. Ins. Corp. v. Bartkowiak*, C.A. No. 7-09-cv-03035-JMC, 2010 U.S. Dist. LEXIS

111368, *20 (D.S.C. Oct. 19, 2010) (explaining that under South Carolina law, “[u]nder the *Aytes* test, all three elements must be established.”).

The court in *Peagler* analyzed the first *Aytes* factor. The plaintiff, as the personal representative of his wife’s estate, brought suit against their insurer seeking coverage for her death. The decedent was shot when her husband was removing two shot guns from the back seat of the truck, which she was preparing to drive. The plaintiff argued coverage was available under automobile policy. The court explained “[a] causal connection between the vehicle and the injury must exist in order for an injury to be covered by an automobile insurance policy.” *Peagler*, 368 S.C. at 161, 628 S.E.2d at 479. Further, the court explained:

In this context, we have held that causal connection means: (a) the vehicle was an “active accessory” to the injury; (b) the vehicle was something less than the proximate cause but more than the mere site of the injury; and (c) the injury was foreseeably identifiable with the normal use of the vehicle.

Id., 628 S.E.2d at 479. Ultimately, the court determined that the auto policy did not provide coverage because no causal connection existed between the vehicle and the injury because there could be no causal connection where “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.*, 628 S.E.2d at 479 (quoting *Aytes*, 332 S.C. at 33, 503 S.E.2d at 746). Further, while recognizing that it was foreseeable and not an unanticipated or abnormal use of the truck to have transported the firearms to and from the hunting grounds, the court reasoned the “[p]laintiff ha[d] not demonstrated the truck was an active accessory to the injury.” *Id.* at 164, 628 S.E.2d at 481. The court reasoned the “[p]laintiff [] failed to show, under the facts as stipulated, that a causal connection exist[ed] between the pickup truck and the accidental shooting of Decedent.” *Id.*, 628 S.E.2d at 481.

The Court of Appeals of South Carolina's decision in *Hite v. Hartford Accident & Indemnity Company*, 288 S.C. 616, 344 S.E.2d 173 (Ct. App. 1986) is also instructive. In *Hite*, the plaintiff was employed by the insured car dealership that gave the plaintiff permission to use, and provided automobiles, for the plaintiff's use. *Hite*, 288 S.C. at 617, 344 S.E.2d at 174. Before the accident occurred, the plaintiff drove the insured's vehicle to the insured's dealership, exited the car, and approached the dealership on foot in response to the night manager's request for assistance. *Id.* at 618, 344 S.E.2d at 175. The plaintiff was struck by a vehicle after he walked fifty feet across the parking lot. The plaintiff sought to recover uninsured motorist benefits.

In determining whether the plaintiff was entitled to recover uninsured motorist benefits, the court considered decisions by other courts. The court noted that what appeared "to be crucial to many courts in determining whether an injury produced by another vehicle or person falls within the ambit of 'use' is the existence of a causal connection between an accident or injury and the use of the vehicle." *Id.* at 620, 344 S.E.2d at 173. Further, the court explained that "[i]t has been held that the existence of a causal connection obviates the necessity of finding that the injury was directly and proximately caused by the use of the vehicle [] and affords coverage for injuries bearing almost any causal relation with the insured." *Id.* at 621, 344 S.E.2d at 173 (internal citations omitted). However, the court did note that "[t]he injury must, [], be foreseeably identifiable with the normal use, maintenance, and ownership of the vehicle." *Id.*, 344 S.E.2d at 173. The court also explained that "[i]f the injury was directly caused by some independent or intervening cause wholly dissociated from, independent of or remote from the use of the automobile, the injury cannot be said to arise out of its 'use.'" *Id.*, 344 S.E.2d at 173 (citations omitted). Further, the court explained "[e]ven if there is some remote connection

between the use of the automobile and the injury complained of, if the injury is directly caused by some independent act or intervening cause wholly dissociated from, independent of, and remote from the use of the automobile, the injury is not the result of the 'use' of an automobile." *Id.*, 344 S.E.3d at 173 (citations omitted).

The *Hite* court ultimately determined that the plaintiff's injury did not arise from the use of the insured automobile. The court reasoned that the plaintiff's injury was directly caused by the uninsured motorist, which "was an independent or intervening cause wholly disassociated from, independent of, and remote from the use of the insured automobile." *Id.*, 344 S.E.2d at 176-177. The court explained that being struck fifty feet away from the insured automobile while answering a call for assistance by the night watchman was not foreseeably identifiable with the normal use, maintenance, or ownership of the insured automobile. The court further explained "[i]t is difficult to see where use of the insured automobile was directly connected with or a cause of the ensuing accident." *Id.*, 344 S.E.2d at 177.

The Court further finds the South Carolina Court of Appeals' decision in *Wright v. N. Area Taxi, Inc.*, 337 S.C. 419, 523 S.E.2d 472 (Ct. App. 1999) instructive. In *Wright*, plaintiffs brought a declaratory judgment action seeking a declaration regarding whether the self-insurer was liable for an accident involving its vehicle. The taxi driver leased and operated a vehicle that was owned by the self-insurer. *Wright*, 337 S.C. at 422, 523 S.E.2d at 473. The taxi driver picked up two individuals who shot the taxi driver during an attempted robbery. The taxi driver was driving the vehicle at the time he was shot and killed. *Id.* at 422, 523 S.E.2d at 473. After she was shot, the taxi driver lost control of the taxi and crashed into a parked vehicle that was owned by a third party. The taxi driver died from the gunshot injuries. *Id.*, 523 S.E.2d at 473.

The personal representative of the taxi driver's estate brought suit arguing the policy provided coverage for the accident. *Id.*, 523 S.E.2d at 473.

In determining that the policy did not afford coverage, the court explained that South Carolina law required that automobile insurance policies contain a provision protecting an insured against “loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of a motor vehicle.” *Id.* at 423, 523 S.E.2d at 474 (quoting S.C. Code Ann. § 38-77-140). Further, the court explained that for the loss to be covered under the policy, the plaintiffs had to satisfy the three-pronged test. The court explained plaintiff first had to “establish a causal connection between the vehicle and the injury.” *Id.*, 523 S.E.2d at 474 (citing *Wausau Underwriters Ins. Co. v. Howser*, 309 S.C. 269, 422 S.E.2d 106 (1992)). Second, the court explained that “no act of independent significance can occur that breaks the causal link.” *Id.* at 423-424, 523 S.E.2d at 474 (citing *Wausau Underwriters*, 309 S.C. 269, 422 S.E.2d 106). Third, the court explained the test required that “the vehicle must have been used for transportation at the time of the accident.” *Id.* at 424, 523 S.E.2d at 474 (citing *Canal Ins.. Co. v. Ins. Co. of N. Am.*, 315 S.C. 1, 431 S.E.2d 577 (1993)).

In considering the application of the test to the facts at issue, the *Wright* court determined there was no causal connection between the vehicle and the injury. The court explained “[t]he 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.* at 425, 523 S.E.2d at 475 (citations omitted).

In conducting its analysis, the court also considered an opinion issued by the Michigan Supreme Court in *Thornton v. Allstate Insurance Company*, 391 N.W.2d 320 (Mich. 1986). In *Thornton*, the court addressed an almost identical issue and found that “the use of the motor

vehicle as a motor vehicle did not cause the injury to the taxi driver.” *Id.* at 425, 523 S.E.2d at 475. The court further explained while the *Thornton* court conceded that the injuries were likely “foreseeably identifiable” with the occupational or commercial use of the motor vehicle as a taxi, “the relation of the injury to the functional use of a motor vehicle as a motor vehicle was merely incidental and fortuitous.” *Id.*, 523 S.E.2d at 475. Therefore, the *Wright* court determined that while “recognize[ing] that the potential for injury to taxi drivers is foreseeably identifiable[, t]he danger, however, is inherent in the occupation and not in the use of the motor vehicle as a motor vehicle.” *Id.* at 426, 523 S.E.2d at 476.

The *Wright* court also rejected plaintiff’s contention that no act of independent significance interrupted the causal link. Specifically, plaintiff explained the assailants were able to summon the taxi driver and gain entrance into the vehicle as a result of their status as fare-paying guests and that the moving vehicle was essential to accomplish the crime. The court disagreed and considered its earlier opinion in *Doe v. S.C. State Budget & Control Bd.*, 329 S.C. 214, 494 S.E.2d 469 (Ct. App. 1997) where the court determined that the police officer’s sexual assaults in a vehicle were acts of independent significance and that “[t]o hold otherwise would subject automobile liability carriers to exposure for any criminal act committed in the insured vehicle.” *Id.* at 427, 523 S.E.2d at 476 (quoting *Doe*, 329 S.C. at 219, 494 S.E.2d at 473). The *Wright* court determined “[t]he assault of the gunmen broke any causal connection between the vehicle and [the taxi driver]’s injuries because it arose from an act of independent significance” and “[t]he fatal injuries that [the taxi driver] sustained were unrelated to any use of the vehicle.” *Id.*, 523 S.E.2d at 476. Further, the court explained “[t]he same injuries could have occurred when the vehicle was parked, or otherwise not moving, or when [the taxi driver] or the gunmen were standing outside the vehicle.” *Id.*, 523 S.E.2d at 476. *See also State Farm Mut. Auto. Ins.*

Co. v. Bookert, 337 S.C. 291, 293, 523 S.E.2d 181, 182 (1999) (determining that the policy did not provide coverage for the injuries sustained during a shooting because the injuries were not “foreseeably identifiable with the normal use of an automobile.”) (quoting *Aytes*, 332 S.C. 30, 503 S.E.2d 744); *Aytes*, 332 S.C. at 35, 503 S.E.2d at 746 (“There was not a causal connection in this case as the vehicle was not an active accessory, nor was it being used for transportation at the time of the injury. Further, if there was a causal link, it was broken when the assailant exited the vehicle. The only connection between the car and the injury is the fact that [the injured party] was sitting in the car when she was shot. Therefore, we do not find [her] injuries resulted from the ownership, maintenance, or use of her vehicle.”); *Carraway v. Smith*, 321 S.C. 23, 467 S.E.2d 120 (Ct. App. 1996) (determining no causal link existed between the use of the vehicle and the shooting because the shooter exited the car before the shooting and there was no ongoing use of the vehicle at the time of the shooting); *Nationwide Mut. Fire Ins. Co. v. Jeter*, C/A No. 3:12-1759-MBS, 2013 U.S. Dist. LEXIS 85029, *12 (D.S.C. June 18, 2013) (“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.”); *United Fin. Cas. Co. v. Butler*, No. 2:11-cv-02897-DCN, 2013 U.S. Dist. LEXIS 36628 (D.S.C. Mar. 18, 2013) (determining the automobile liability policy did not provide coverage because the claimed injuries did not arise out of the ownership, maintenance, or use of an insured vehicle); *Wimberly v. Gov’t Employees Ins. Co.*, C/A No. 3:10-01824-JFA, 2011 WL 1326362, *3-7 (D.S.C. Apr. 5, 2011) (finding that the decedent’s injuries sustained during a shooting did not arise from the ownership, maintenance, or use of a vehicle and therefore the uninsured motorist insurance did not apply); *Holmes v. Allstate Ins. Co.*, 786 F. Supp.2d 1022, 1027 (D.S.C. May 7, 2009) (“While Plaintiff likens the assault on her with that of a drive-by shooting, [South Carolina

precedent] establishes that such use of a vehicle will not satisfy the causal connection requirement necessary to invoke insurance coverage, since such conduct is not foreseeably identifiable with the normal use of an automobile. Thus, this court does not find that a causal connection exists between [the underinsured motorist]'s use of his vehicle and Plaintiff's injuries.”).

The three part test set out in *Aytes* and *Peagler* is not satisfied under the facts of this case. While the vehicle was being used for transportation at the time of the injury, that fact satisfies only one part of the three part test. Here, based on the undisputed facts in this case and South Carolina law, the Court finds that the causal connection and independent significance prongs cannot be met. The gunshot wound sustained by the decedent is not an injury that is foreseeably identifiable with the normal use of the automobile. *See Wright*, 337 S.C. at 426, 523 S.E.2d at 476. Further, to the extent the injuries could be foreseeably identifiable with the normal use of the automobile, the Court finds that Clarida's shooting of the decedent was an act of independent significance that broke any causal link between the motor vehicle and the complained of injuries. *See id* at 426-427, 523 S.E.2d at 476. Therefore, the Court finds that Clarida's shooting of Plaintiff's decedent did not involve the ownership, maintenance, or use of an uninsured motor vehicle. As a result, the Court denies Plaintiff's motion for summary judgment and grants Allstate's motion for summary judgment and finds that Allstate is entitled to entry of summary judgment in its favor as a matter of law.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that Allstate's Motion for Summary Judgment is hereby GRANTED and Plaintiff's Motion for Summary Judgment is hereby DENIED. The Court finds that the decedent's injuries were not caused by the operation, maintenance, or use of an uninsured motor vehicle under Allstate's policy and South Carolina law and further declares that the Policy does not afford uninsured motorist coverage for this incident.

AND IT IS SO ORDERED.

The Honorable Benjamin H. Culbertson
Circuit Court Judge, Fifteenth Judicial Circuit

_____, South Carolina

_____, 2018



Horry Common Pleas

Case Caption: LeeAnna Williams , plaintiff, et al VS Allstate Fire And Casualty
Insurance Company
Case Number: 2015CP2608919
Type: Order/Summary Judgment

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148