

**IN THE COURT OF APPEALS 11/14/95**  
**OF THE**  
**STATE OF MISSISSIPPI**  
**NO. 95-CA-00047 COA**

**LINZIE DORRIS, II**

**APPELLANT**

**v.**

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. MARCUS D. GORDON

COURT FROM WHICH APPEALED: LEAKE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

DAVID L. WALKER

ATTORNEY FOR APPELLEE:

PHILLIP W. GAINES

NATURE OF THE CASE: SUMMARY JUDGMENT

TRIAL COURT DISPOSITION: SUMMARY JUDGMENT GRANTED FOR DEFENDANT

BEFORE BRIDGES, P.J., DIAZ, KING, AND McMILLIN, JJ.

McMILLIN, J., FOR THE COURT:

The Leake County Circuit Court granted summary judgment to State Farm Mutual Automobile

Insurance Company (State Farm) in a proceeding brought by Linzie Dorris, II, (Dorris) seeking recovery under the uninsured motorists provisions of an insurance policy covering a truck driven by Dorris. The truck was rammed from the rear by an unidentified vehicle, after which the driver of the other vehicle fired several gunshots, striking and injuring Dorris. The unknown assailant then proceeded to loot certain property from the truck.

Dorris sought recovery for his injuries under the State Farm policy; however, State Farm denied coverage on the basis that the injuries suffered by Dorris did not "arise out of the operation, maintenance or use of an uninsured vehicle" within the meaning of its policy of insurance.

The trial court agreed with the position asserted by State Farm and awarded summary judgment against Dorris. Dorris raises two related issues on appeal. One is that the language of the State Farm policy as written improperly restricts the applicability of uninsured motorist coverage beyond that mandated by relevant Mississippi statutes. The other is an assertion that, even under the language of the policy, his injuries arose out of the operation of an uninsured vehicle in that the vehicle was the instrumentality that directly facilitated the possibility of his injuries.

Public policy in Mississippi prevents an insurance company from restricting statutorily defined coverage in such a manner as to defeat the coverage contemplated by the statute. *United States Fidelity and Guaranty Co. v. Gough*, 289 So. 2d 925 (Miss. 1974); *Harthcock v. State Farm Mut. Auto. Ins. Co.*, 248 So. 2d 456 (Miss. 1971). Section 83-11-101 of the 1972 Mississippi Code, conditionally mandating the inclusion of uninsured motorist coverage in all vehicle liability policies, admittedly does not contain the "arising out of" language of the State Farm policy. The law requires the insurer "to pay the insured all sums which he shall be legally entitled to recover as damages for bodily injury or death from the owner or operator of an uninsured motor vehicle . . ." Miss. Code Ann. § 83-11-101(1) (1972). Undoubtedly, in this case, could the unknown assailant be discovered, Dorris would be entitled to recover from the assailant damages for his bodily injury. It is further true that, under applicable Mississippi case law, a vehicle is presumed to be uninsured if the driver of that vehicle is unknown. Miss. Code Ann. § 83-11-103(c)(v) (1972). Therefore, a literal reading of the statute would suggest the availability of coverage. Nevertheless, such a literal reading of the statute would permit recovery for injuries received in an altercation by simply showing that the assailant owned an uninsured vehicle that may have been hundreds of miles from the scene. Justice Roberts, writing for the Mississippi Supreme Court in *Spradlin v. State Farm Mutual Automobile Insurance Company*, rejected such a notion, saying that the clear intent of the statute was to provide "the same protection to one injured by an uninsured motorist as that individual would have if injured by a financially responsible driver." *Spradlin v. State Farm Mut. Auto. Ins. Co.*, 650 So. 2d 1383, 1387 (Miss. 1995) (quoting, *Lawler v. Government Employees Ins. Co.*, 569 So. 2d 1151, 1153 (Miss. 1990)).

Since the policy language has been accepted as a proper definition of the coverage extended, we must then turn to Dorris' second argument that, in any event, his injuries arose out of the use of an uninsured automobile. Mississippi case law has established quite clearly that injuries intentionally inflicted through the use of an instrumentality other than a vehicle are not injuries within the contemplation of uninsured motorist coverage, even though the circumstances revolve around the use of an uninsured automobile. The *Spradlin* Court denied uninsured motorist coverage on a showing that *Spradlin* was shot by the occupant of an uninsured vehicle while *Spradlin* was riding as a

passenger in a vehicle having uninsured motorist coverage. In *Roberts v. Grisham*, 487 So. 2d 836 (Miss. 1986), the assailant used an uninsured vehicle to block his victim's escape route, then shot and killed the victim. The Mississippi Supreme Court held that the shooting was a deliberate act rendering the use of the uninsured vehicle merely incidental and denied coverage. *Roberts*, 487 So. 2d at 839. In *Coleman v. Sanford*, 521 So. 2d 876 (Miss. 1988), the assailant utilized an uninsured vehicle to catch up and pull alongside his victim driving down a highway and proceeded to shoot the victim. Again, the Mississippi Supreme Court held that the real cause of the injuries was the voluntary and deliberate act of shooting and that the use of the uninsured vehicle was merely incidental to the injuries. *Coleman*, 521 So. 2d at 877.

This case is indistinguishable from *Spradlin*, *Roberts* and *Coleman*. Dorris' injuries did not arise out of the impact of the collision but from the wilful and intentional acts of his unknown assailant that followed. While it is true that such injuries, in all likelihood, would not have been possible without the use of another vehicle, that alone is insufficient, under the prevailing case law of this state, to permit a finding that these injuries arose out of the use of an uninsured vehicle.

The trial court properly applied the law to the facts in this case to award summary judgment to State Farm. We affirm.

**THE JUDGMENT OF THE LEAKE COUNTY CIRCUIT COURT IS AFFIRMED. THE COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

**FRIASER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, PAYNE AND SOUTHWICK, JJ., CONCUR. DIAZ, J., CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY BRIDGES, P.J., BARBER AND PAYNE, JJ.**

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DIAZ, J., CONCURRING:

I concur with my fellow colleagues on the Court that based upon prior precedent of the Mississippi Supreme Court summary judgment was properly granted to State Farm Mutual Automobile Insurance Company. However, it is that prior precedent that has caused me to write separately in the instant case. I would argue that even though a party's injuries arise from the intentional acts of an uninsured motorist who uses in some manner, no matter how incidental to the ultimate injury, an automobile, uninsured motorist coverage of the damages should be provided. *See Spradlin v. Atlanta Casualty Co.*, 650 So. 2d 1389, 1393 (Miss. 1995) (McRae, J., dissenting).

In this case, as well as *Spradlin*, the gunshot injury to the plaintiff would not have occurred without some use of an automobile. Had the unknown assailant in the instant case not been driving his or her automobile and had not struck Dorris from the rear with the automobile, the gunshot injury to Dorris would not have likely occurred. Other jurisdictions have found uninsured motorist coverage under the exact circumstances as before the Court today. *See Continental Western Ins. Co. v. Klug*, 415 N.W.2d 876, 878-79 (Minn. 1987); *Ganiron v. Hawaii Ins. Guar. Ass'n*, 744 P.2d 1210, 1212 (Haw. 1987); *Fortune Ins. Co. v. Ferreiro*, 458 So. 2d 834, 834 (Fla. Dist. Ct. App. 1984).

If the injuries in a specific case could not have arisen without some type of use-in-fact of an automobile, then I think the claimant's injuries should be covered under an insurance provision for "damages arising out of the ownership, maintenance or use of [a] . . . motor vehicle. . . ." Therefore, I think this issue should be revisited by the Mississippi Supreme Court.

**BRIDGES, P.J., BARBER AND PAYNE, JJ., JOIN THIS SEPARATE OPINION.**