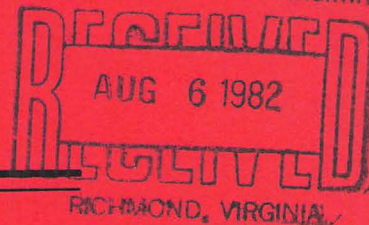


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CLERK
SUPREME COURT OF VIRGINIA



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 812176

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

Appellant,

v.

SHIRLEY C. POWELL, ADMINISTRATRIX
OF THE ESTATE OF KEITH DALE POWELL,
DECEASED, et als.

Appellees.

JOINT APPENDIX

Ronald D. Hodges, Esq.
WHARTON, ALDHIZER &
WEAVER
90 North Main Street
Harrisonburg, VA 22801

Counsel for Appellant

James V. Lane, Esq.
Donald D. Litten, Esq.
LITTEN, SIPE & MILLER
P. O. Box 429
Harrisonburg, VA 22801

Counsel for Appellees

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MOTION FOR DECLARATORY
JUDGMENT

State Farm Mutual Automobile Insurance Company (State Farm), moves the Court for a declaratory judgment and in connection therewith alleges as follows:

(1) Shirley C. Powell, Administratrix of the Estate of Keith Dale Powell, Deceased, has filed a suit which is pending in this Court against David C. Good and Charles I. Good, alleging wrongful death as the result of an accident which occurred in the City of Staunton, Virginia, on April 6, 1980. A copy of the Motion for Judgment is attached hereto as Exhibit "A".

(2) On said date, Keith Dale Powell, now deceased, was standing outside of and on the passenger side of David C. Good's truck. In the cab of the truck was a gun rack which held a Winchester shotgun. The shotgun was in the gun rack, loaded and pointed toward the passenger side. It discharged and the blast went through the side of the truck and struck Keith Dale Powell, who died within minutes from the wounds he received.

(2) David C. Good and Charles I. Good have filed their grounds of defense denying negligence. A copy of their Grounds of Defense is attached hereto as Exhibits "B" and "C", respectively.

(3) On April 6, 1980, David C. Good was a member of the household of Charles I. Good, who resided at Route 1, Mt. Sidney, Virginia.

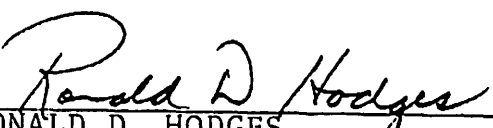
(4) Rockingham Mutual Insurance Company (Rockingham Mutual) had in effect at the time of the accident a homeowners insurance policy issued to Charles I. Good. A copy of said policy is attached hereto as Exhibit "D".

(5) At the time of the accident, David C. Good was the owner and operator of the 1979 GMC pickup truck in which the shotgun was located. The truck was insured by State Farm when the accident occurred.

(6) Shirley C. Powell, Administratrix, has demanded that State Farm extend coverage to David C. Good on the basis of its automobile liability policy. A copy of said policy is attached hereto as Exhibit "E".

WHEREFORE, State Farm Mutual Automobile Insurance Company moves the Court to construe the State Farm policy language to exclude coverage in that the injury sustained arose from the use of the gun and not from the use of the automobile, that there was no relationship between the use of the shotgun at the time and the use of the pickup truck for transportation purposes and that the truck was the mere situs of the accident.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY
By Counsel


RONALD D. HODGES
of Wharton, Aldhizer & Weaver
90 North Main Street
Harrisonburg, VA 22801
Counsel for State Farm Mutual
Automobile Insurance Company

A N S W E R

Comes now the defendant, Rockingham Mutual Insurance Company, by counsel, and answer as follows:

(1) All material factual allegations of the Motion for Declaratory Judgment are admitted, however, it is expressly denied that Rockingham Mutual Insurance Company, through its policy issued to Charles I. Good, extends any coverage in the matter.

(2) Rockingham Mutual Insurance Company has reserved and continues to reserve unto itself the right to assert such policy defenses as may be applicable.

(3) Rockingham Mutual Insurance Company joins State Farm Mutual Automobile Insurance Company in moving the Court to declare the legal liability of either or both of such insurance companies in that a controversy has arisen as to which carrier's policy might extend coverage to the accident occurring on April 6, 1980.

WHEREFORE, the defendant, Rockingham Mutual Insurance Company, moves the Court to construe the Rockingham Mutual Insurance Company policy language to exclude coverage of the accident in that the injuries sustained arose from the use of the motor vehicle which was insured by the State Farm Mutual Automobile Insurance Company.

ROCKINGHAM MUTUAL INSURANCE COMPANY

By Counsel

Donald D. Litten

and

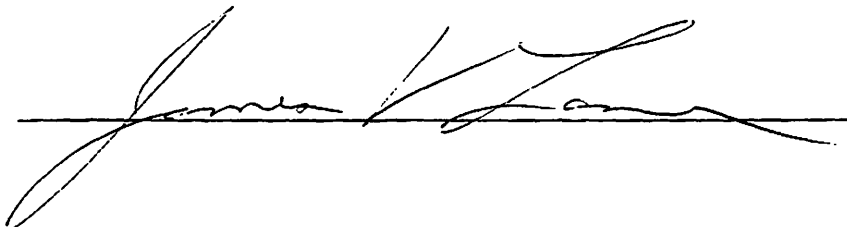

James V. Lane

Litten, Sipe and Miller
250 East Market Street
Harrisonburg, Virginia 22801

Counsel for Rockingham Mutual Insurance
Company

C E R T I F I C A T E

I hereby certify that a copy of the foregoing Answer was mailed this 1st day of April, 1981, to Ronald D. Hodges, Esquire, Wharton, Aldhizer & Weaver, 90 North Main Street, Harrisonburg, Virginia, 22801, counsel for plaintiff and P. Donald Moses, Esquire, Timberlake, Smith, Thomas & Moses, P. O. Box 2566, Staunton, Virginia, 24401, counsel for Shirley C. Powell, Administratrix of the Estate of Keith Dale Powell, Deceased.



D E C R E E

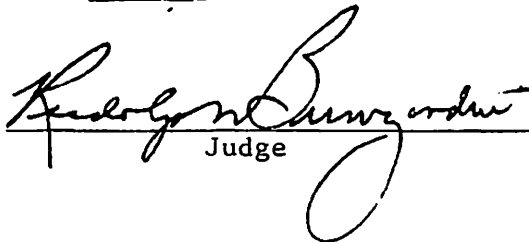
This cause came on the 23rd day of June, 1981, to be heard on the pleadings, exhibits, stipulation of facts, and memorandums of law heretofore filed and was argued by counsel.

UPON CONSIDERATION WHEREOF, and in accordance with the Court's written opinion as set forth in its letter of September 10, 1981, the Court doth ADJUDGE, ORDER and DECREE that the State Farm Mutual Automobile Insurance Company motor vehicle policy issued to David C. Good extends coverage to David C. Good concerning injuries sustained by Keith Dale Powell, deceased, in that said injuries arose out of and were a consequence of the use of the insured motor vehicle in accordance with the terms of the State Farm Mutual Automobile Insurance Company policy, a copy of which has heretofore been filed as Exhibit E. And, be it further

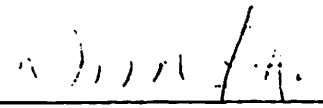
ADJUDGED, ORDERED and DECREED that the Rockingham Mutual Insurance Company homeowner's policy does not extend coverage to David C. Good concerning injuries to Keith Dale Powell, deceased, since such coverage is excluded pursuant to Rockingham Mutual Insurance Company's policy heretofore filed as Exhibit D when said injuries arise out of the use of a motor vehicle.

DATED: September 18, 1981.

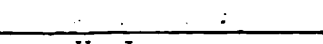
ENTER:


Judge

WE ASK FOR THIS:


Donald D. Litten


and


James V. Lane

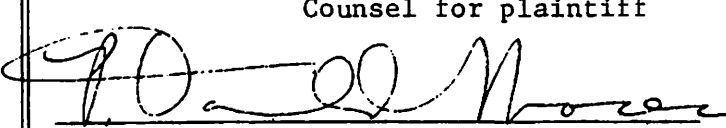
Litten, Sipe and Miller
250 East Market Street
Harrisonburg, Virginia 22801

Counsel for Rockingham Mutual Insurance Company

SEEN *and objected to:*


Ronald D. Hodges
Wharton, Aldhizer & Wharton
90 North Main Street
Harrisonburg, Virginia 22801

Counsel for plaintiff


P. Donald Moses
Timberlake, Smith, Thomas & Moses
P. O. Box 2566
Staunton, Virginia 24401

Counsel for Shirley C. Powell, Administratrix

TWENTY-FIFTH JUDICIAL CIRCUIT
OF VIRGINIA

WILLIAM S. MOFFETT, JR.
AUGUSTA COUNTY COURTHOUSE
P. O. BOX 689
STAUNTON, VIRGINIA 24401
(703) 885-8931

ROSCOE B. STEPHENSON, JR.
P. O. BOX 670
COVINGTON, VIRGINIA 24426
(703) 962-4430



RUDOLPH BUMGARDNER, III
CITY HALL
P. O. BOX 88
STAUNTON, VIRGINIA 24401
(703) 886-8421

PAUL A. HOLSTEIN, RETIRED
903 BOWYER LANE
LEXINGTON, VIRGINIA 24450
(703) 463-4237

COUNTIES
ALLEGHANY, AUGUSTA, BATH,
BOTETOURT, CRAIG, HIGHLAND, ROCKBRIDGE,
CITIES
BUENA VISTA, CLIFTON FORGE,
COVINGTON, LEXINGTON, AND STAUNTON

September 10, 1981

Ronald D. Hodges, Esquire
Wharton, Aldhizer & Weaver
P. O. Box 809
Harrisonburg, Virginia 22801

James V. Lane, Esquire
Litten, Sipe and Miller
P. O. Box 429
Harrisonburg, Virginia 22801

RE: State Farm Mutual Auto Insurance Company
v.
Shirley C. Powell, Adm'x., et al

Gentlemen:

This is a declaratory judgment action brought to determine whether a loss arising from a wrongful death suit is payable under the automobile insurance policy or under a homeowner's insurance policy. The automobile policy covers liability "...arising out of the maintenance, operation or use. . ." of the automobile. The homeowner's policy covers liability other than that "...arising out of the maintenance, operation or use. . ." of an automobile. The case was submitted upon a stipulation of facts. It is the opinion of the Court that the loss arose "out of the maintenance, operation or use" of the automobile. It is payable by the automobile insurance carrier, State Farm Mutual Automobile Insurance Company. It is excluded from the coverage of the homeowner's policy issued by Rockingham Mutual Insurance Company.

The facts are stated in the stipulation of facts. In addition to those facts which are unique to this case, there is an additional factor. It bears upon the case because it is a matter coming within the common knowledge and every day experiences of the general

Ronald D. Hodges, Esquire
James V. Lane, Esquire
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September 10, 1981

public. In rural areas such as the one in which this accident occurred, it is not uncommon for pickup trucks to be equipped with gun racks. Guns are carried routinely in this manner and are often openly displayed in such trucks. Racks are advertised and sold in all types of retail stores, and their use is not limited to various hunting seasons.

There are many decisions interpreting the word "use" as found in automobile insurance policies. See 12 Couch, Insurance 2d, §45:321 et seq. (Anderson Ed., 1964). There are numerous decisions on whether an injury arising from a gun discharge is covered by automobile insurance. The case of Cameron Mut. Ins. Co. v. Ward, 599 S.W.2d 13 (Mo. App. 1980), is particularly helpful in this area. This case classifies the various decisions in this area. The cases hold that for an activity to arise out of the "use" of a vehicle the activity must arise from its "use" as a vehicle. It is an activity related to a use for which the vehicle was intended to be put. There must be a causal connection between the activity and a foreseeable (or normal) use of the vehicle. It is not necessary that the use of the automobile be a direct or proximate cause of the injury. However, there must be a relationship between the use being made of the vehicle and the risk against which the automobile policy insured.

In this case the gun rack was bolted to the cab of the pickup truck, and the vehicle had frequently been used to transport the gun. The transportation of a gun was one of the uses to which the truck was put, and that of itself was not an unusual use of such a vehicle. The injury, though unexpected, was a natural and reasonable consequence of this type of use. The vehicle was more than the mere situs of the accident. Compare Reliance Ins. Co. v. Walker, 33 N.C. App. 15, 234 S.E.2d 206 (1977) and Casualty Co. v. Insurance Co. 16 N.C. App. 194, 192 S.E.2d 113 (1972).

In the present case there was the requisite causal connection between the use to which the vehicle was being put and the injuries received. It arose out of "the ownership, maintenance or use of the owned automobile." The loss is covered by the automobile insurance policy. It is excluded from the coverage of the homeowner's insurance policy.

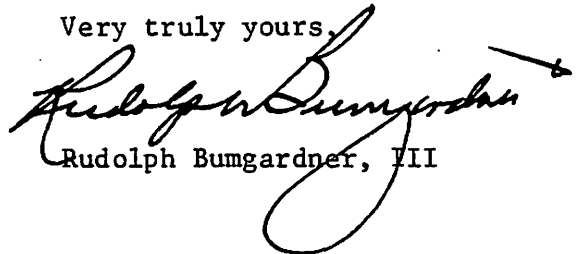
I would ask that Mr. Lane prepare an appropriate Order. After

Ronald D. Hodges, Esquire
James V. Lane, Esquire
Page 3
September 10, 1981

it has been reviewed by Mr. Hodges, please forward it to me for entry.

With best regards, I am,

Very truly yours,

A handwritten signature in cursive script, reading "Rudolph Bumgardner, III". The signature is written in dark ink and is positioned above the printed name. There is a small arrow pointing to the right at the end of the signature.

Rudolph Bumgardner, III


RBIII:pms

NOTICE OF APPEAL

TO: Mrs. Margaret White
Clerk
Circuit Court of the City of Staunton

Notice is hereby given that State Farm Mutual Automobile Insurance Company, Plaintiff, hereby appeals to the Supreme Court of Virginia from the final judgment entered in this action on September 18, 1981, and will apply for a writ of error. A statement of facts will be filed hereafter.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY
By Counsel



RONALD D. HODGES
of Wharton, Aldhizer & Weaver
90 North Main Street
Harrisonburg, Virginia 22801
Counsel for Plaintiff

CERTIFICATE

I hereby certify that a copy of the foregoing Notice of Appeal was mailed this 7th day of October, 1981, to James V. Lane, Esquire, P. O. Box 429, Harrisonburg, Virginia, 22801, Counsel for Rockingham Mutual Insurance Company, and to P. Donald Moses, Esquire, P. O. Box 2566, Staunton, Virginia, 24401, Counsel for Shirley C. Powell, Administratrix.



Counsel for Plaintiff

ASSIGNMENTS OF ERROR

1) The lower court erred in ruling that the injuries arose out of and were a consequence of the use of the insured motor vehicle.

2) The lower court erred in taking judicial notice that it is not uncommon in rural areas for pickup trucks to be equipped with gun racks and that pickup trucks routinely are used to transport firearms.