

STATE OF MICHIGAN
COURT OF APPEALS

JEFFREY W. PETERSON

UNPUBLISHED

Plaintiff-Appellant,

v

No. 179372

LC No. 92-079269 CK

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

Before: Saad, P.J., and Marilyn Kelly and M.J. Matuzak,* JJ.

SAAD, P.J. (dissenting):

I dissent for two reasons.

First, the Michigan Supreme Court held in *Winter v AAA*, 433 Mich 446,457-458; 446 NW2d 132 (1989) that where a parked vehicle is involved, sections 3105 and 3106 must be considered *together*. The holding in *Gordon v Allstate Ins Co*, 197 Mich App 609, 496 NW2d 357 (1992) is contrary to the holding in *Winter*. The majority correctly notes that *Gordon* concludes that where a section 3106 exception to the parked vehicle exclusion applies, recovery may be had regardless of whether the vehicle was being used “as a motor vehicle” under section 3105. Notwithstanding Administrative Order 1996-4, 451 Mich xxxii, and its predecessors, where, as here, there is a conflict between the holdings of the Michigan Supreme Court and the Michigan Court of Appeals, I believe we are obliged to follow the Supreme Court. I also believe also explains why *Yost v League General Ins Co*, 213 Mich App 183, 184-185; 539 NW2d 568 (1995); *McKenzie v Auto Club Ins Ass’n*, 211 Mich App 659, 662; 536 NW2d 301 (1995) did not follow *Gordon*.

Second, plaintiff’s act of loading a gun in his truck violated the criminal law of this state. MCL 750.227c; MSA 28.424(3) (misdemeanor to possess a loaded firearm other than a pistol in a vehicle). The purpose of this statute is “protection of both the public and the person carrying or possessing the firearm from the danger inherent in a loaded firearm.” *People v Quinn*, 440 Mich 178, 194; 487 NW2d 194 (1992). Recovery of PIP benefits in this context undercuts the purpose of the statute and the criminal law of this state. I would affirm the circuit court’s grant of summary disposition in favor of defendant.

/s/ Henry William Saad