

Court of Appeals, State of Michigan

ORDER

Allstate Insurance Co. v Marcellus Allen Price and Denisha Bass

Docket No. 261793

LC No. 03-054314-CK

Karen M. Fort Hood
Presiding Judge

Helene N. White

Peter D. O'Connell

Judges

On the Court's own motion, the 11/3/2005 opinion is hereby AMENDED. The opinion contained a clerical error in the caption, incorrectly listing Allstate Insurance Co. as Plaintiff-Appellant, and Marcellus Allen Price and Denisha Bass as Defendants-Appellees. The caption is amended to read: Allstate Insurance Co., Plaintiff-Appellee, and Marcellus Allen Price and Denisha Bass, Defendants-Appellants.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

NOV 08 2005

Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

ALLSTATE INSURANCE CO.,
Plaintiff-Appellant,

UNPUBLISHED
November 3, 2005

V

MARCELLUS ALLEN PRICE and DENISHA
BASS,

No. 261793
Oakland Circuit Court
LC No. 2003-054314-CK

Defendants-Appellees.

Before: Fort Hood, P.J., and White and O'Connell, JJ.

PER CURIAM.

In this declaratory action, defendants appeal as of right the circuit court's ruling that plaintiff Allstate Insurance Company (Allstate) had no obligation as a matter of law to defend or indemnify defendant Allen in an underlying suit brought by defendant Bass. The circuit court concluded that the intentional/criminal acts exclusion of the homeowners' insurance policy at issue precluded coverage, and granted summary disposition in plaintiff's favor. We reverse.

I

At around 10:00 p.m. on the evening of December 24, 2002, defendant Marcellus Allen¹ went to visit his friends, Jonte Walker and Sylena Cowart, who were boyfriend and girlfriend, at 163 Michigan Avenue in Pontiac.

On the same evening, defendant Denisha Bass and three other women, including Lennisa Thomas, decided to get together. The women rode around Pontiac in a Ford Explorer SUV, and

¹ Defendant Allen testified that at the time, he lived with his parents, Arthur Price and Zena Allen, at 45 Kimball, in Pontiac. This was the residence insured by Allstate under a homeowners policy issued to defendant Allen's parents.

Plaintiff Allstate raised below that defendant Allen may not have resided in his parents' household, in which case he would not be insured under the policy. Allstate raised this potential coverage defense and reserved its right to raise it in the event its motion for summary disposition were denied.

after making one stop, Lennisa Thomas said she wanted to drive by her ex-boyfriend's (Jonte Walker) apartment to see if he was outside, so she could talk to him regarding his care of their young daughter earlier that day. The women drove by the apartment and saw Jonte Walker outside, talking to defendant Allen. The SUV stopped, Lennisa Thomas and several other women got out, Lennisa and Jonte talked, and their discussion turned into an argument. Defendant Bass was seated in the SUV rear passenger-side seat. Bass testified that when the women were standing around Jonte Walker, Jonte and Lennisa were doing a lot of finger pointing and yelling. At one point, Bass opened her door and yelled to Lennisa to "come on, let's go." Bass testified that Lennisa got back in the SUV after ten or fifteen minutes, and was talking out of the SUV window to Sylena, Jonte's girlfriend, as the SUV started to pull out of the parking spot. Bass testified that the next thing she knew, she heard gunshots. She saw defendant Allen pointing a weapon at the ground and firing it. Bass, who was still seated in the rear seat of the SUV, sustained serious leg injuries when struck by a ricocheting bullet.

Defendant Allen testified that after the argument between Lennisa and Jonte had gone on for fifteen minutes or so, the women started ganging up on Sylena, and that he therefore went inside Jonte's apartment, retrieved his AK-47, came outside, and fired six or seven rounds at the ground, toward the SUV, to scare the SUV away. Defendant Allen testified that his father had given him \$500 for Christmas, that he had bought the AK-47 the day before with the money from his father, and that the AK-47 was at Jonte's because defendant Allen's father was angry that Allen had bought it. When asked where he learned to use the AK-47, Allen responded "on the streets."

After the SUV drove away, defendant Allen went back in Jonte's apartment, called for a ride, and waited about 1½ hours before his ride arrived. Allen did not know anyone had been injured until after he was arrested. Allen went to the same high school as Bass for a year and knew who Bass was, but they were not close friends. Both Allen and Bass testified that there had never been ill will between them. Allen testified that he did not realize that Bass was one of the occupants of the SUV on the night of the incident, as it was dark outside.

As a result of the incident, defendant Allen was arrested and charged with assault with intent to commit murder, assault with intent to cause great bodily harm less than murder, assault with a dangerous weapon, and possession of a firearm. Excerpts before us of Allen's preliminary examination include the district court's comments that it was dismissing the assault with intent to commit murder charge "based primarily upon the fact that the first witness testified that the defendant was shooting in a downward manner, where could [sic] have been shooting up higher; showing intent. Count One, I'll dismiss . . ."

Defendant Allen pleaded nolo contendere of possession of a firearm and was sentenced to two years in prison.²

² There is no judgment of sentence in the record. The circuit court in the instant declaratory action stated on the record that "there was a collateral criminal case in which the defendant plead [sic] nolo contendere [sic] to a charge of possession of a firearm." Defendant's appellate brief so
(continued...)

The underlying suit

Bass filed a tort action against Allen, alleging that “On or about December 25, 2002, Defendant [Allen] negligently discharged a firearm and as a result, Plaintiff suffered a gunshot wound to her leg causing severe and permanent injuries,” and permanent disfigurement. Bass’s complaint further alleged that Allen “did not intend to shoot anyone and specifically not Plaintiff [Bass].”

At pertinent times, defendant Allen’s parents were named insureds in a homeowner’s policy Allstate issued covering their residence, at 45 Kimball in Pontiac.³ The defense of Bass’s negligence suit was tendered to plaintiff Allstate, which accepted it under a reservation of rights. Allstate also retained separate counsel on its own behalf to institute the instant declaratory action.

The instant suit

In the instant declaratory action, Allstate asserted that Allen was not entitled to a further defense or indemnification in Bass’s suit against him because there was no “occurrence” under the policy and/or because the policy’s intentional/criminal acts exclusion applied.

Citing *Allstate Ins Co v McCarn (McCarn I)*, 466 Mich 277, 280; 645 NW2d 20 (2002), the circuit court granted Allstate summary disposition, holding that, as a matter of law, Allstate owed no duty to defend or indemnify Allen in the suit brought by Bass because the policy’s intentional/criminal acts exclusion barred coverage. The circuit court entered an order granting Allstate a declaratory judgment. Defendant Bass appeals from that order, and defendant Allen has filed a concurrence and joinder in Bass’s brief on appeal.

II

“Issues involving the proper interpretation of insurance contracts are reviewed de novo.” *Allstate Ins Co v McCarn (After Remand) (McCarn II)*, 471 Mich 283, 288; 683 NW2d 656 (2004). “An insurance policy must be enforced in accordance with its terms.” *McCarn I*, 466 Mich 277, 280; 645 NW2d 20 (2002). The policy’s terms are given their commonly used meanings unless clearly defined in the policy. *Twichel v MIC General Ins Corp*, 469 Mich 524, 534; 676 NW2d 616 (2004). Determination of the scope of coverage is a separate inquiry from whether coverage is negated by an exclusion. *Heniser v Frankenmuth Mutual Ins*, 449 Mich 155, 172; 534 NW2d 502 (1995). Exclusions are strictly construed in favor of the insured. *McKusick v Travelers Indemnity Co*, 246 Mich App 329, 333; 632 NW2d 525 (2001).

A

The homeowners’ policy Allstate issued to defendant Allen’s parents provides:

(...continued)

states as well.

³ Marcellus Allen was 21 years old at the time. He left high school after the 10th grade, and at the time of the incident was employed as a hi-lo driver at a sub assembly plant.

Losses We Cover Under Coverage X:

Subject to the terms, conditions and limitations of this policy, **Allstate** will pay damages which an **insured person** becomes legally obligated to pay because of **bodily injury** or **property damage** arising from an **occurrence** to which this policy applies, and is covered by this part of the policy.

The policy defines “occurrence” as:

an accident, including continuous or repeated exposure to substantially the same general harmful conditions, during the policy period, resulting in **bodily injury** or **property damage**.

The term “accident” is not defined in the policy.

The intentional/criminal acts exclusion in the policy states:

Losses We Do Not Cover Under Coverage X:

1. **We do not cover any bodily injury or property damage** intended by, or which may reasonably be expected to result from the intentional or criminal acts or omissions of any **insured person**. This exclusion applies even if:

- a) such **insured person** lacks the mental capacity to govern his or her own conduct;
- b) such **bodily injury** or **property damage** is of a different kind or degree than intended or reasonably expected; or
- c) such **bodily injury** or **property damage** is sustained by a different person than intended or reasonably expected.

This exclusion applies regardless of whether or not such **insured person** is actually charged with, or convicted of a crime.

B

The policy language at issue is, with minor exceptions, identical to the policy language at issue in *McCarn I* (and *McCarn II*), *supra*. The facts in *McCarn, supra*, were that Kevin LaBelle was visiting Robert McCarn. Both boys were sixteen years old and friends. Robert, who lived with his grandparents, had been given a gun a year before by his father. The gun was stored under Robert’s grandfather’s bed, and was normally stored unloaded. On the day in question, both boys handled the gun. While handling the gun he believed to be unloaded, Robert pointed it at Kevin’s face from about a foot away, and pulled the trigger, killing Kevin. See *McCarn I*, 466 Mich at 279-280. The Supreme Court reversed this Court’s opinion holding that there was no “accident” under the policy. The Supreme Court concluded that Kevin’s shooting death was accidental, and an “occurrence” under the policy, reasoning:

We agree with plaintiff [Allstate] that Robert intended to point the gun at Kevin and pull the trigger. However, Robert believed the gun was not loaded. Robert had no intention of firing a loaded weapon. No bodily injury would have been caused by Robert's intended act of pulling the trigger of an unloaded gun.

* * *

Robert McCarn may have been negligent in failing to see if the gun was loaded before he pulled the trigger, particularly because he was the last person to use the gun weeks earlier for target practice. However, the issue of negligence is not before us. . . . [T]he negligence of the insured in acting as he did is not enough to prevent an incident from being an accident if the consequence of the action (e.g., shot coming from a gun) should not have reasonably been expected by the insured.

While it may be considered quite obvious that Robert's conduct was careless and foolish, it was negligence that simply did not rise to the level that he should have *expected* to result in harm. Otherwise liability insurance coverage for negligence would seem to become illusory. We must be careful not to take the expectation of harm test so far that we eviscerate the ability of parties to insure against their own negligence. [466 Mich at 285, 287-288.]

Defendants in the instant case rely heavily on *McCarn I* and *McCarn II*, discussed below, and *Buczowski v Allstate Ins Co*, 447 Mich 669; 526 NW2d 589 (1994).

In *Buczowski*, the insured, McKay, had argued with his girlfriend after consuming a large quantity of alcohol. Later that evening, McKay saw his girlfriend leaving her home with another man. After yelling at her, McKay went home and retrieved his 20-gauge shotgun, intending to shoot out the back window of the other man's truck. McKay thought he saw the man's truck in a driveway, loaded his gun, and fired a single bullet. The bullet missed the truck, but went through one of the truck's tires, ricocheted, and injured the other man. The Supreme Court held that the criminal acts exclusion (which is not the same as in the instant case or *McCarn*⁴) did not apply, noting:

If an act is highly likely to cause personal injury, performing that act usually should result in somebody getting hurt. This is what the words "highly likely" mean, and what it means when we say that the injury is expected to result from the act. This cannot be said of McKay's actions in this instance, however.

⁴ The exclusion at issue in *Buczowski*, *supra*, provided:

We do not cover any bodily injury or property damage which may reasonably be expected to result from the intentional or criminal acts of an insured person or which were in fact intended by an insured person. [*Buczowski*, 447 Mich at 672-673.]

McKay used a shotgun to shoot at the back of a car from inside another car on a residential street at night. A person could easily use up a lot of bullets shooting at cars in residential neighborhoods and not hit anyone. It is not as if Mr. McKay were shooting into a crowd; most of the places a bullet can go in a residential area simply do not result in personal injury. [*Id.* at 673-674.]

A majority of the justices in *Buczowski, supra*, concluded that a question of fact remained that required resolution at trial.

III

In the instant appeal, the first issue is whether there was an “accident,” and thus an “occurrence” under the policy. The instant policy, like the policy in *McCarn*, defines “occurrence” as an “accident . . .”, but does not define “accident.”

The parties agree that a subjective standard⁵ applies to the question whether there was an “accident,” and that applying that standard, this Court must determine whether the consequences

⁵ In *McCarn I*, 466 Mich at 281-283, the Supreme Court noted:

In similar cases where the respective policies defined an occurrence as an accident, without defining accident, we have examined the common meaning of the term. In such cases, we have repeatedly stated that “an accident is an undesigned contingency, a casualty, a happening by chance, something out of the usual course of things, unusual, fortuitous, not anticipated and not naturally to be expected.” [Citations omitted.]

Accidents are evaluated from the standpoint of the insured, not the injured party. [*Frankenmuth Mut Ins Co v Masters*, 460 Mich 105, 114 n 6; 595 NW2d 832 (1999)]. In *Masters*, we held that “the appropriate focus of the term ‘accident’ must be on both ‘the injury-causing *act or event* and its relation to the resulting . . . personal injury.” *Id.* at 115, quoting [*Auto Club Group Ins Co v Marzonie*, 447 Mich 624, 648; 527 NW2d 760 (1994) (Griffin, J., concurring) (emphasis in original)].

We also stated that “‘an insured need not act unintentionally’ in order for the act to constitute an ‘accident’ and therefore an ‘occurrence.’” *Id.*

Where an insured does act intentionally, “a problem arises ‘in attempting to distinguish between intentional acts that can be classified as “accidents” and those that cannot.’” *Id.*

In *Masters* at 115-116, we applied the following standard from Justice Griffin’s concurrence in *Marzonie* at 648-649.

(continued...)

of Allen's intentional act either were intended by Allen or reasonably should have been expected by the insured because of the direct risk of harm intentionally created by Allen's actions. See *McCarn I, supra*, 466 Mich at 282-284.

A

Plaintiff Allstate does not dispute that defendant Allen did not intend the consequences of his intentional act, i.e., did not intend to injure anyone. Indeed, all the testimony before us is in agreement that Allen did not intend to cause anyone injury,⁶ and that he was aiming the gun down, shooting either at the ground, or at the tires of the SUV. There is no testimony that defendant was aiming at the occupants of the SUV. On this record, there is thus no question of

(...continued)

[A] determination must be made whether the consequences of the insured's intentional act "either were intended by the insured or reasonably should have been expected because of the direct risk of harm intentionally created by the insured's actions. When an insured acts intending to cause property damage or personal injury, liability coverage should be denied, irrespective of whether the resulting injury is different from the injury intended. Similarly, . . . when an insured's intentional actions create a direct risk of harm, there can be no liability coverage for *any* resulting damage or injury, despite the lack of an actual intent to damage or injure."

What this essentially boils down to is that, if both the act and the consequences were intended by the insured, the act does not constitute an accident. On the other hand, if the act was intended by the insured, but the consequences were not, the act does constitute an accident, unless the intended act created a direct risk of harm from which the consequences should reasonably have been expected by the insured.

As to the perspective from which the analysis should be made, the question is not whether a *reasonable person* would have expected the consequences, but whether the *insured* reasonably should have expected the consequences. . . .

The policy language dictates whether a subjective or objective standard is to be used. However, the policy language here does not indicate whether a subjective or objective standard is to be used. Because "the definition of accident should be framed from the standpoint of the insured . . . ," *Masters* at 114, and because, where there is doubt, the policy should be construed in favor of the insured, *id.* at 111, we conclude that a subjective standard should be used here.

⁶ Both Allen and Bass testified that they attended the same high school for a time, but were not close friends. Both testified that there was no ill will between them. Bass testified that Allen was shooting at the ground and not aiming at any of the SUV's occupants. Allen testified that he did not know that Bass was in the SUV until after the incident. He also testified that he did not know anyone had been injured until he was arrested and told by the police.

fact that defendant Allen did not intend the consequences of his intentional act of shooting the rifle at the ground—he did not intend injury to anyone, he only intended that his shooting the rifle would scare the SUV occupants away.

Plaintiff Allstate asserts that there was no “accident” because Allen reasonably should have expected the consequences of his intentional act of firing the rifle at the ground in the direction of the SUV because of the direct risk of harm intentionally created by his actions. Plaintiff asserts that the facts in the instant case fall within the *McCarn* Court’s admonition that “when an insured’s intentional actions create a direct risk of harm, there can be no liability coverage for *any* resulting damage or injury, despite the lack of an actual intent to damage or injure.” *McCarn I*, 466 Mich at 282, quoting *Auto Club Group Ins Co v Marzonie*, 447 Mich 624, 648-649; 527 NW2d 760 (1994) (Griffin, J., concurring) (emphasis in original).

Plaintiff contends that “there is no dispute that Allen knew the gun was loaded and intended to repeatedly fire a loaded weapon, aimed toward the tires of an occupied vehicle, or the ground near an occupied vehicle, where the potential for a ricochet or a mis-aimed bullet ‘created a risk of harm from which the consequences should reasonably have been expected by the insured.’” Further, plaintiff asserts that Allen “intended to confront the women in the vehicle, including Denisha Bass, by repeatedly firing his weapon, which was known to be loaded, in the vicinity of the vehicle in an admitted effort to scare them. . . . The fact that he may not have had a subjective intent to injure did not convert his conduct into an accident. From Allen’s perspective, it was no accident.” Plaintiff contends further that “[c]ontrary to defendants’ contention, Allen’s assertion that he neither intended nor expected harm does not end the inquiry. Plaintiff maintains that, as explained by the majority in *McCarn I*, the Court must look beyond the insured’s assertions concerning his subjective beliefs:

* * * A subjective test does not require courts to simply accept uncritically the insured’s own assertions regarding his subjective belief. Instead, courts must examine the totality of the circumstances, including the reasonableness or credibility of the insured’s assertions, evidence of “other acts,” evidence concerning the faculties or maturity of the insured, evidence concerning relationships between an insured and a victim of an injury, and so forth. In this case, there is simply no evidence to suggest that that insured intended a shot to be discharged from *this* gun when he pulled its trigger. [466 Mich at 287 n 5.]

Although firing six or seven rounds from a semi-automatic rifle aimed at the ground, in the direction of a vehicle holding passengers, is foolish, careless, and negligent, we do not believe that as a matter of law Allen reasonably should have expected that an occupant of the SUV would suffer injuries as the result of one or more of the bullets fired ricocheting, and then penetrating the SUV’s door.

Defendant Allen had bought the AK-47 the day before this incident. Allen testified that he learned to operate the AK-47 “on the streets.” Allen has a 10th grade education. When asked whether he had considered the possibility that someone might get hurt, he answered that yes, he did consider the possibility, and that he believed no one would be injured. That is, there is nothing in the record to support that Allen knew enough about AK-47s, or about how bullets fired from an AK-47 might ricochet off the ground, or that a ricocheting bullet could penetrate an SUV’s door and injure someone seated inside.

Under these circumstances, we conclude that a question of fact remained whether Allen reasonably should have expected the consequences of his intentional act.

IV

We next address whether the intentional/criminal acts exclusion bars coverage. With very minor exceptions, the exclusion is worded exactly as was the exclusion in *McCarn, supra*. The intentional acts exclusion was addressed in *McCarn II*, 471 Mich 283; 683 NW2d 656 (2004).⁷ In that case, a majority of the Supreme Court agreed that courts should apply a two-pronged test to determine whether the intentional/criminal acts exclusion bars coverage: there is no insurance coverage if 1) the insured acted either intentionally or criminally, and 2) the resulting injuries were the reasonably expected result of the insured's intentional or criminal act. *Id.* at 289-290, 297.

In the instant case, the circuit court concluded after applying the two-pronged test of *McCarn II*, that the intentional/criminal acts exclusion barred coverage:

In the matter before me this morning, the defendant, Allen, testified that he went in the house, got his AK-47 and shot at the tires of a truck stopped in front of the house. He stated that he was trying to scare the females in the truck but he did not intend to injure anyone. He expelled six or seven rounds and saw the bullets sparking off the ground. He testified that he did not think that anyone would get hurt.

Defendant, Bass, testified that the gun was pointed towards the ground.

The court finds that as in *McCarn*, the first prong is met.

⁷ In *McCarn*, the criminal acts exclusion provided:

We do not cover any bodily injury or property damage intended by, or which may reasonably be expected to result from the intentional or criminal acts or omissions of, any insured person. This exclusion applies even if:

- a) such insured person lacks the mental capacity to govern his or her conduct;
- b) such bodily injury or property damage is of a different kind or degree than intended or reasonably expected; or
- c) such bodily injury or property damage is sustained by a different person than intended or reasonably expected.

This exclusion applies regardless of whether or not such insured person is actually charged with, or convicted of a crime. [*McCarn II, supra*, 471 Mich at 289.]

As to the second question, the question is whether a reasonable person would have expected the resulting injury to Ms. Bass based on the conduct of Mr. Allen. The court must determine whether a reasonable person, possessed of the totality of the facts possessed by Mr. Allen, would have expected the resulting injury.

There is no factual dispute that based on his own testimony, Allen fired a loaded AK-47 assault rifle six or seven times at the tires of a truck that was full of females.

The court finds in that situation, a reasonable person would have expected bodily harm to result when the gun was fired.

Thus, the intentional acts exclusion bars coverage.

Defendant testified that he went inside to retrieve the AK-47, went outside, aimed it at the ground in the direction of the SUV, and fired six or seven rounds, in order to scare the SUV away. We conclude that the circuit court properly found that defendant Allen acted intentionally, and that the first prong of the intentional act exclusion test of *McCarn II* was thus met.⁸

Regarding the second prong, a majority of the Court in *McCarn II* agreed that an objective inquiry applies:

Answering the second prong of the test, whether the resulting injury was the reasonably expected result of this criminal act, requires this Court to engage in an objective inquiry. *Allstate Ins Co v Freeman*, 432 Mich 656, 688; 443 NW2d 734 (1989) (opinion by Riley, J.). [*McCarn II*, *supra*, 471 Mich at 290-291 (Taylor, J., with whom J. Kelly and J. Markman concurred⁹; 297 (Weaver, J., dissenting, with whom Corrigan, C.J., concurred), and 302 (Young, J., dissenting, with whom Corrigan, C.J., concurred).]

A majority of the *McCarn II* Court agreed that the question is whether a reasonable person, possessed of the totality of the facts possessed by Robert, would have expected the resulting injury. *McCarn II*, 471 Mich at 291-292 (Taylor, J., with whom J. Kelly and J. Markman concurred). The three dissenting justices agreed that an objective inquiry applies, but disagreed that the insured's subjective beliefs should be taken into account. See *McCarn II*, *supra* at 297 (Weaver, J., dissenting, with whom Corrigan, C.J., concurred [noting "Regarding whether it was reasonable to expect injury . . . would result from the intentional or criminal act, it is the consensus of this Court *Freeman* correctly employed an objective inquiry . . . While the lead opinion acknowledges that the language 'may reasonably be expected' dictates an objective

⁸ Defendants concede only for purposes of the present argument that the first prong of *McCarn* has been met. Like the circuit court, we conclude that there is no question of fact that Allen's shooting of the AK-47 into the ground was an intentional act. There is simply nothing in the record to support that a question of fact remains whether Allen acted intentionally.

⁹ Justice Cavanagh concurred only in the result of Justice Taylor's lead opinion in *McCarn II*.

standard . . . [b]y focusing on McCarn’s belief that the gun was unloaded. . . the lead opinion abandons an objective standard in favor of the subjective belief of a teenager . . . ”), and 302 (Young, J., dissenting, with whom Corrigan, C.J., concurred [noting “where all members of this Court agree the contract requires application of an objective standard, I contend that what may ‘reasonably be expected to result’ from an insured’s acts is the conclusion a reasonable person reaches after examining all of the pertinent information available to the insured. . . . The belief of the insured, on the other hand, is the *subjective* conclusion reached by *the insured* armed with the same information. While the belief of the insured may be a fact, it is not an ultimate fact essential to determining what may reasonably be expected to result from an insured’s actions.”]¹⁰ The members of the *McCarn II* Court comprising the lead opinion concluded that a reasonable person possessed of the facts Robert possessed would **not** have expected bodily harm to result when the gun “in the unloaded state Robert believed it to be, was ‘fired.’” A fourth member of the Court concurred in the result only, see n 9, *supra*. The remaining three members of the Court dissented, concluding that the intentional acts exclusion barred coverage.

In the instant case, defendant Allen had bought the AK-47 the day before this incident, with money given to him by his father for the holidays. Allen, who has a 10th grade education, testified that he learned to operate the AK-47 “on the streets.” Allen knew the AK-47 was loaded and he intentionally fired the AK-47, aiming at the ground toward the SUV. However, at the time Allen fired the weapon, the women had gotten back into the SUV, and the SUV’s doors were closed. There is no evidence to support that Allen understood or knew, or that a reasonable person in his position should have understood or known, that bullets aimed and fired at the ground near the SUV could or would ricochet, and would ricochet with such force so as to penetrate a door of the SUV and cause bodily injury to an occupant of the SUV.

We conclude that a question of fact remained whether a reasonable person possessed of the facts Allen possessed would have expected bodily injury to result. As the Court noted in *Buczowski*, 447 Mich at 675, “simply because a person’s actions are foolhardy, potentially dangerous, or even criminal, does not mean that personal injuries are necessarily an expected result of those actions. It is certainly foreseeable that someone might get hurt as the result of a drunken man firing a shotgun at a car in a residential neighborhood. . . . But it is not a highly

¹⁰ Plaintiff relies on several cases, including *Marzonie*, *supra*. The policy language at issue in *Marzonie* is unlike the policy language in the instant case. The intentional acts exclusion in *Marzonie*, *supra*, excluded coverage for “bodily injury or property damage which is either expected or intended from the standpoint of the insured.” 447 Mich at 641. In the instant case, the exclusion provides in pertinent part:

We do not cover any bodily injury or property damage intended by, or which may reasonably be expected to result from the intentional or criminal acts or omissions of any insured person. . .

We note that in *Masters*, 460 Mich at 105; the Supreme Court adopted Justice Griffin’s plurality opinion in *Marzonie*, and noted that to the extent *Marzonie* conflicted with *Masters*, *Marzonie*’s rationale was overruled. *Masters*, *supra* at 115, n 8.

likely result, one that might reasonably be expected to ensue from these actions most of the time.”

In light of our disposition, we need not address defendants’ final argument, which is that the circuit court improperly focused on the egregiousness of the act of defendant Allen that gave rise to Bass’s injury.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood

/s/ Helene N. White