

COURT OF APPEALS OF VIRGINIA

Record No. 0915-25-2

ERIE INSURANCE COMPANY

v.

JASON SHOWMAN, ET AL.

Present: Judges Callins, Duffan and Senior Judge Clements

Argued at Richmond, Virginia

Opinion Issued October 6, 2026*

FROM THE CIRCUIT COURT OF GOOCHLAND COUNTY

Timothy K. Sanner, Judge

Benjamin R. Fox (John B. Mumford, Jr.; John S. Buford; Hancock, Daniel & Johnson, P.C., on briefs), for appellant.

Ashley T. Davis (C. Stewart Gill, Jr.; MichieHamlett; Smith Law Center / Brain Injury Law Center, on brief), for appellee Jason Showman.

MEMORANDUM OPINION BY JUDGE KEVIN M. DUFFAN

Jason Showman was supervising an interstate repair and improvement project when he was struck by an underinsured motorist. The circuit court ruled that Erie Insurance Company (Erie) owed Showman underinsured motorist (UIM) insurance coverage under a policy it issued to one of the project's subcontractors, RCH Hauling, LLC (RCH). On appeal, Erie argues that at the time of the accident, Showman was not "using" a covered vehicle, as contemplated by Code § 38.2-2206, so RCH's underinsured motorist coverage did not apply. We disagree and affirm the circuit court's judgment.

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

BACKGROUND¹

In September 2020, Showman was a superintendent for Allan Myers, Inc. (Allan Myers), a “heavy civil contractor” that the Virginia Department of Transportation (VDOT) had hired to repair and improve a two-mile portion of Interstate 85. The project required Allan Myers to repair portions of the highway and then “overlay” the entire stretch with two inches of asphalt. The relevant portion of the interstate had 2 travel lanes, each 12 feet wide, with a 10-foot shoulder on both sides.

Allan Myers’s plan required a subcontractor to cut the road’s concrete surface into rectangular slabs. An excavator would lift those slabs into dump trucks to be hauled away. The dump trucks, which were owned and operated by other subcontractors, including RCH, were equipped with a “hinged-style,” “swing-open gate,” which was essential to transport the concrete. In addition, to comply with the VDOT’s regulations, the dump trucks had “certain signage on” them and flashing beacon lights, which were visible from all directions, to warn “everyone . . . around [the truck] or approaching it” that they were “in a construction zone.” The lights were “a safety measure,” and they had to be on whenever the trucks were within a “VDOT project,” though the drivers typically kept the lights on “the whole night they’re working” even if not technically within a project.

Showman managed the project for Allan Myers by “scheduling . . . crews and the equipment and trucking.” He would order asphalt, stone material, and dump trucks. He also had completed “traffic control supervisor training” and ensured “the lane closures were set up properly” for the project. On “any given day,” he would spend half the day walking through the

¹ “We ‘view the evidence and all reasonable inferences drawn from it in the light most favorable to . . . the prevailing party at trial.’” *Bistro Manila, LLC v. Alvah I, LLC*, 83 Va. App. 300, 306 n.1 (2025) (alteration in original) (quoting *Moncrieffe v. Deno*, 76 Va. App. 488, 496 (2023)).

construction area, “checking on the crews” and “directing trucks.” The “other half” he would spend ensuring lanes were properly closed and “all the signs [were] still up.”

On the day of the accident, Showman’s crew closed the right travel lane at 8:00 a.m., leaving the left travel lane open for traffic. They placed traffic cones with reflective material at “every other skip mark,” dividing the work zone in the right travel lane from “live” traffic in the left travel lane. Ten dump trucks were operating on that day, and each truck would haul away between six and eight loads. Only one excavator was on site that day; it was being operated by Joe Grimes.

At the beginning of the shift, Showman instructed the dump truck drivers to drive out of the work zone using only the right lane, so they did not have to merge into the “live” left lane and “impede” traffic. The drivers would then dump the concrete at a nearby location before returning for their next load. Toward the end of the day, Showman began directing the dump trucks as they received their last loads so that he could sign them out. He stood near the excavator and directed the trucks with hand signals to where they could “get loaded.” After a truck received its last load, Showman would step onto the truck’s “side step” and sign the driver’s “ticket,” certifying that the truck had operated through 11:00 p.m., so they would be paid.

Sometime before 11:00 p.m., Showman signed a truck driver’s ticket and stepped off the truck. Showman then “yelled” to Grimes, telling him to “follow me” with the excavator. Showman intended to direct Grimes to park the excavator in a specific spot so that it could be picked up. “As soon as” he yelled to Grimes, Showman heard screeching tires. The dump truck driver had driven between two traffic cones and completely into the left travel lane; the truck was “still inside [the] construction limits,” about two or three car lengths away from where Showman was standing. Although the truck was only “going 10 miles an hour,” other traffic “was going 70

miles an hour,” and Showman saw that a “car almost rear ended” the truck because “it takes time for those trucks to get speed.”

Another car, which was underinsured, struck Showman “immediately after” he told Grimes to follow him in the excavator. Only “seconds” had passed between when Showman signed the dump truck driver’s ticket and the accident. Showman initially testified that the excavator had not started moving to follow him before the accident, but he later suggested that “maybe” he had taken “a step or two” and the excavator was moving; he was “not a hundred percent sure.” Showman explained that the beacon lights on the dump truck were a “safety measure” to “notif[y] . . . traffic that we were there,” but he was not using the trucks to control the flow of traffic. When asked whether the lights were intended to warn vehicles of the truck’s presence or to warn people in the construction zone of the truck’s presence, Showman testified that while he did not “know the actual . . . design of the strobe lights,” they tended “to slow the vehicles down when they approach [the] trucks into the construction zone.”

Showman filed a complaint for a declaratory judgment against Erie, which had issued an insurance policy to RCH, which owned the dump truck. Showman’s complaint alleged that he was “using” the dump truck at the time of the accident and that his use of the truck was causally related to the accident, so he was covered by the policy to the extent that the vehicle that struck him was underinsured. He thus asked for a declaratory judgment, concluding that Erie’s UIM coverage provisions applied to him, as required by Code § 38.2-2206(B).

At the bench trial, James Wilson, a part owner of RCH, testified that the safety lights on the dump trucks were intended to “make people aware of” the truck, not the nearby construction workers. The expectation was that other cars would “slow down” when the drivers saw the “beacon light.” After the close of the evidence and argument by counsel, the court found Showman’s and Wilson’s testimony to be credible, though it was “not necessarily convinced by”

Wilson’s “opinions.” The court concluded that the case turned on “whether at the time of the accident” Showman was “using the vehicle as an integral part of his mission” and that his mission contained both “hauling” and “safety” aspects. The court found that Showman’s mission continued “at least” until the slabs were removed from the construction zone and that the accident occurred within that zone even though the dump truck was in the “live” left travel lane “because the entire road is affected.” The court found that Showman’s hauling responsibility continued through the time of the accident.

Turning to the “safety” aspect, the court found that the “slow moving” truck’s safety markings and lights were designed to notify traffic of the truck’s presence and movement, and it would be “unreasonable to infer that th[o]se safety measures [were] employed only for the benefit of the truck driver and the oncoming traffic.” Indeed, the lights also benefited the construction workers within the zone because, as this case demonstrates, the trucks created a hazard for those workers. Accordingly, the court reasoned that those safety measures were also part of Showman’s mission. Consequently, the court ruled that Showman was entitled to UIM coverage under Erie’s policy to RCH because he was “using” the dump truck at the time of the accident in two different ways. Erie appeals.

ANALYSIS

Erie argues that the circuit court legally and factually erred by concluding that Showman was “using” the dump truck at the time of the accident.² Erie contends that the truck had completely entered the “live” left lane before the accident, and Showman “had begun a task unrelated to the dump truck’s use as a vehicle.” Erie also asserts that none of the prior cases where a vehicle was being “used” for its safety features “involved a vehicle that had already

² Erie concedes that if Showman was “using” the dump truck he is entitled to UIM coverage under the policy.

reentered the roadway en route to another destination unconnected to the alleged insured user.”

At bottom, Erie concludes that Showman was not “using” the truck because it “was actively engaged in a task unrelated to what [he] was doing, and [he] was actively engaged in a task completely unrelated to what the dump truck was doing.” We disagree.

This Court “defer[s] to the circuit court’s determination of the facts unless [such a determination is] unsupported by evidence or plainly wrong[,] because an appellate court lacks the fact-finder’s ability to hear and see the witnesses and assess their credibility.” *Bratton v. Selective Ins. Co. of Am.*, 290 Va. 314, 318 (2015) (second and third alterations in original) (quoting *Mongold v. Woods*, 278 Va. 196, 204 (2009)). “We will not hold the circuit court’s actions in error as contrary to the evidence ‘unless it appears from the evidence that such judgment is plainly wrong or without evidence to support it.’” *Id.* at 322 (quoting Code § 8.01-680). Yet “the issues before us do not concern simply whether the circuit court’s actions were contrary to the evidence.” *Id.* Erie’s argument also raises interpretation issues, including the interpretation of Code § 38.2-2206(B) and the insurance contract, which we review de novo. *Id.* (citing *Doctors Co. v. Women’s Healthcare Assocs.*, 285 Va. 566, 571 (2013)); *Simpson v. Va. Mun. Liab. Pool*, 279 Va. 694, 699 (2010) (citing *Turner v. Caplan*, 268 Va. 122, 125 (2004)).

An insurance policy for “bodily injury or property damage liability insurance relating to the ownership, maintenance, or use” of a vehicle must provide uninsured and “underinsured motorist insurance coverage with limits that shall be equal to the uninsured motorist insurance coverage limits and shall obligate the insurer to make payment for bodily injury . . . caused by the operation or use of an underinsured motor vehicle to the extent the vehicle is underinsured.” Code § 38.2-2206(A). An “insured” under such a policy includes “any person who *uses* the motor vehicle to which the policy applies, with the expressed or implied consent of the named insured.” Code § 38.2-2206(B) (emphasis added).

Here, the relevant insurance policy provided coverage to anyone “occupying” a “covered” vehicle, including the dump truck. The policy then defined “[o]ccupying” as “in, upon, *using*, getting in, on, out of or off” a covered vehicle. (Emphasis added). Thus, the policy, “like many motor vehicle insurance policies, includes ‘use’ or ‘using’ as a type of ‘occupying’ a ‘covered auto.’” *Bratton*, 290 Va. at 329.

But whether the obligation is found in the insurance policy itself, or can be found only in the Code, the meaning of “use” or “using” is the same because “[t]he provisions of . . . Code § 38.2-2206 are part of the contract of insurance, and we will not consider language in a policy that, arguably, is inconsistent with the statute as [the Supreme Court has] construed it.”

Id. (alterations in original) (quoting *Dyer v. Dairyland Ins. Co.*, 267 Va. 726, 731 (2004)).

“Cases involving the terms ‘use’ and ‘occupancy’ in automobile insurance policies present to the courts such an infinite variety of factual patterns that it is impossible to formulate bright-line rules of universal application or a list of factors dispositive of the issue in every case.” *Simpson*, 279 Va. at 699 (citing *Slagle v. Hartford Ins. Co.*, 267 Va. 629, 636 (2004)). “Nevertheless, some general standards have evolved . . . to determine when ‘use’ and ‘occupancy’ begin and end.” *Id.* “[T]he critical inquiry is whether there was a causal relationship between the incident and the employment of the insured vehicle *as a vehicle*.”³ *Slagle*, 267 Va. at 636 (emphasis added). In addition, the Supreme Court has “‘established some general guidelines’ for th[e] analysis.” *Bratton*, 290 Va. at 329 (quoting *Slagle*, 267 Va. at 636). “[T]he injured person must be using the insured

³ The parties do not contest on appeal that there was a “causal connection” between the use of the dump truck as a vehicle and Showman’s injuries, only whether *Showman* was the one “using” the truck. See *Corriveau v. State Farm Mut. Auto. Ins. Co.*, 298 Va. 273, 283 (2019) (affirming a judgment that there was no causal connection because there was “no nexus” between the injuries sustained when children on a “special needs school bus” were assaulted “and the use of the school bus as a means of transportation”); *United Servs. Auto. Ass’n v. Estep*, 77 Va. App. 16, 20, 30-32 (2023) (finding that the underinsured motorist victim was “occupying” a vehicle when he was loading luggage into it, and his injuries were causally connected to that occupancy when wind blew a luggage cart into him).

vehicle as a vehicle and as an integral part of his mission.” *Id.* The “[a]ctual use of the vehicle as a vehicle is not restricted to its transportation function.” *Id.* (alteration in original). And the “[u]se of the vehicle need not be the direct, proximate cause of the injury in the strict legal sense.” *Id.* at 329-30 (alteration in original). The Supreme Court has declined to go “further in defining what it means to be ‘using’ a vehicle”; instead, when the issue arises, it has consistently sought “guidance” from the factual circumstances underlying its “prior decisions on the issue.” *Id.* at 330-31 (reviewing and detailing the factual circumstances of numerous cases related to “use” of a motor vehicle); *Slagle*, 267 Va. at 633-36 (same). This guidance often looks at the design characteristics of the vehicle.

In *Bratton*, the Supreme Court held that a dump truck driver was “using” another pickup truck when, within 30 seconds, he dumped asphalt from his dump truck, exited the front cab, closed the door behind him, and walked “at least 9 feet to the rear tires” to ensure the asphalt dump went smoothly, and was hit and killed by a drunk driver. *Bratton*, 290 Va. at 321, 328. The pickup truck was equipped with hazard lights and safety strobe lights and was parked as a safety mechanism 200 feet away at the time of the accident. *Id.* at 320-21, 328. The Supreme Court reasoned that the pickup truck, with its “warning lights,” was “designed to be used for more than simply transportation”; it was “a rolling barricade” and was like “all the other safety equipment at the [jobsite].” *Id.* at 331 (alteration in original). Thus, the dump truck driver was “using” that pickup truck for “that specialized purpose during the course of his mission and at the time of the accident.” *Id.*

Similarly, the Supreme Court held that a firefighter captain was “using” a firetruck when he was completing a required fire report 20 to 25 feet away from the firetruck, its lights were on, and it was positioned to influence the flow of traffic and provide a protective barrier to the firefighters. *Great Am. Ins. Co. v. Cassell*, 239 Va. 421, 422-24 (1990). The captain was entitled to uninsured

motorist coverage after he was struck and killed by a hit-and-run driver because use of the firetruck to “extinguish the fire, control traffic and protect the fire fighters, including [the captain], was an integral part of the fire fighters’ mission,” and the mission had not been completed at the time of the accident. *Id.* at 424.

In another example, the Supreme Court relied on *Cassell* to hold that a highway worker was “using” his employer’s truck while placing lane closure signs along the side of a highway. *Randall v. Liberty Mut. Ins. Co.*, 255 Va. 62, 64, 67 (1998). The worker would park the truck on the shoulder of the highway and exit the truck to erect signs and stands while “leaving the engine running and the flashing yellow bubble light on top of the cab turned on,” and he was struck and killed by a motorist while placing one of the signs. *Id.* at 64. The Supreme Court found that the truck’s “specialized warning equipment” was dispositive because it “made the use of the truck more than merely a means of transportation.” *Id.* at 67. Indeed, the worker was “using” the truck’s “specialized equipment to perform his mission.” *Id.*

By contrast, the Supreme Court distinguished *Cassell* when holding that a landscape gardener was not “using” her company pickup truck at the time of an accident when she drove it to a location to plant cabbages and was digging a hole 12 to 15 feet away from where she parked it with its door open to listen to a “two-way radio . . . installed in the truck.” *United States Fire Ins. Co. v. Parker*, 250 Va. 374, 376-78 (1995). An underinsured motorist struck the truck and then the gardener. *Id.* at 376. The trial court held that the gardener was “using” the truck because she remained close to it, and the truck “was being used as a barrier, to load and unload the plants, and for communication with the supervisor” over the radio. *Id.* at 377. The Supreme Court reversed, finding that unlike the firefighter in *Cassell*, the gardener “was not engaged in a transaction essential to the use of the pickup truck when she was injured.” *Id.* at 378. The court reasoned that merely placing the truck as a barrier and using its radio did not transform the core purpose of the truck

beyond mere transportation. Important to its analysis, the Supreme Court noted that unlike a firetruck—which is an emergency vehicle specifically designed to control traffic and protect firefighters—the pickup truck did not have any safety equipment and was being used by the gardener on an ad hoc basis. *Id.*⁴

Applying these guidelines to this case, we note that the dump truck here was equipped with specialized safety equipment—beacon lights—and thus hold that the record supports the circuit court’s finding that Showman was engaged in using the truck for those safety features as an integral part of his mission at the time of the accident. VDOT required the dump truck to have safety mechanisms, including signage on the back and beacon lights that were visible from all directions. Showman testified that those lights were “designed . . . as a . . . safety measure,” to notify “traffic that *we* were there.” (Emphasis added). Indeed, on cross-examination, Showman articulated that the lights were intended to warn traffic of both the truck’s and the construction workers’ presence, explaining that the lights “ha[d] a tendency to slow the vehicles down.” This evidence supports the circuit court’s factual conclusion that it would be “unreasonable” to believe the lights were intended to protect only the trucks, not also the nearby construction workers, and that using that safety mechanism was integral to Showman’s mission.

Notably, the dump truck was specifically designed with signage and lights. This fact elevates the dump truck from a mere ad hoc safety attempt, which the Supreme Court deemed insufficient in *Parker*, to a vehicle whose core mission included protecting workers in dangerous environments like in *Cassell* and *Randall*. Indeed, the lights and signs were specifically designed and intended to serve as a safety mechanism for a slow-moving truck, in part to protect the nearby

⁴ Similarly, the Supreme Court held that a police officer was not “using” his police vehicle when he drove it to a neighborhood, parked it, placed the keys in his pocket, and walked 164 feet away to serve a warrant when he was struck and killed by a motorist. *Ins. Co. of N. Am. v. Perry, Adm’r*, 204 Va. 833 (1964).

construction workers. Consequently, the dump truck’s signage and lights operated much like the flashing yellow light atop the victim’s truck in *Randall*. They were “specialized warning equipment” that “made the use of the truck more than merely a means of transport[ing]” concrete away from the construction zone. *Randall*, 255 Va. at 67.

Regardless of whether Showman was still using the dump truck for its *hauling* function, even though he had turned his attention to another task,⁵ he was still using it for its safety feature as it was only two or three car lengths away from him and still in the construction zone.⁶ See *Cassell*, 239 Va. at 422-24 (holding that the fire captain was using the firetruck as a safety mechanism when it was 20 to 25 feet away from him). The use of a safety mechanism in this context is possible—indeed, intended—specifically when the worker is engaged in a distinct task. See *Randall*, 255 Va. at 67 (holding that the truck’s specialized warning light was being “used” by the victim when he was engaged in a task of setting up signs along the side of a road).

Nor does it matter that, as Erie argues, the dump truck was moving at the time of the accident, whereas the firetruck and pickup truck in the above cases were stationary. As Showman testified, the slow-moving dump truck posed a danger to the construction workers when it was moving specifically because of the delta between its speed and the “live” traffic, heightening the need for a safety mechanism on the truck *to protect the construction workers*. Thus, the circuit

⁵ The circuit court found that Showman was using the dump truck as an integral part of his mission for both its “hauling” and “safety” aspects. As we can affirm the court’s judgment based solely on the finding that he continued to use the truck in part for its specialized safety features even though his attention was on another task, we need not address the portion of Erie’s argument that Showman was no longer engaged in using the truck to haul away the concrete. See *Parker*, 250 Va. at 378 (holding that the gardener was not “using” the truck at the time of the accident because she was not “*engaged* in a transaction essential to the use of the pickup truck when she was injured” (emphasis added)).

⁶ This also distinguishes this case from *Perry* because the officer in *Perry* walked 164 feet away from his cruiser. *Perry*, 204 Va. at 834, 838.

court did not err in concluding that Showman was “using” the dump truck’s specialized safety mechanism at the time of the accident.

CONCLUSION

For these reasons, the circuit court’s judgment is affirmed.

Affirmed.