THE STRAIGHT SKINNY ON BETTER JUDICIAL OPINIONS

JOSEPH KIMBLE*

May it please the court: this article presents the first empirical testing of judicial opinions. Of course, you will find no end of commentary on writing opinions – and several books.[1] So we have lots of sensible advice based on perception, experience, judgment, and a feel for good style. But as far as I know, no one has ever tested opinions on readers to see what works and what doesn't.

You will probably not be surprised by the results or by the recommendations for writing effective opinions. Nothing in here will be radically new. My testing confirms what judges and lawyers should have long known but don't regularly practice: if you care to write better opinions (or letters or memos or briefs), then make them straightforward and lean.

METHOD OF TESTING

I did this work several years ago and am just now publishing the results. The method was simple: ask lawyers to read two versions of the same opinion, decide which one they like better, and give the reasons why.

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[1] RUGGERO J. ALDISERT, OPINION WRITING (1990; repr. 1993); APPELLATE JUDGES CONFERENCE, AMERICAN BAR ASS'N, JUDICIAL OPINION WRITING MANUAL (1991); JOYCE J. GEORGE, JUDICIAL OPINION WRITING HANDBOOK (4th ed. 2000); ROBERT A. LEFLAR, APPELLATE JUDICIAL OPINIONS (1974); *see also* FEDERAL JUDICIAL CENTER, JUDICIAL WRITING MANUAL (1991).

So I started by taking a volume of the *Michigan Appeals Reports* from the shelf, and I spent maybe 10 or 15 minutes picking an opinion. I had only three criteria. First, it had to be fairly short so that readers would take the time to read the two versions. Second, it had to deal with an uncontroversial subject. I picked a case involving insurance coverage. Pretty bland, but I did not want readers to be distracted by impressions of how the case should have been decided. Third, the writing had to be fairly typical. I did not try to find a case that I thought was quite badly written. Of course, that would have skewed the results, and readers and reviewers would have seen through that game easily enough. You can be the judge of whether the writing in the opinion seems about average for most of the opinions you read.

The case is *Wills v State Farm Insurance Co.*[2] It seems that Robert Wills was driving along one day, minding his own business, when another car pulled alongside him in the passing lane, fired shots toward his car, and kept right on cruising down the road, never to be seen again. Wills wanted to collect uninsured-motorist benefits. To collect under his policy, he needed to show that the other car had "struck" his car.

I revised the published opinion, did pilot-testing on third-year law students, and then randomly mailed the original and revised versions to 700 Michigan lawyers. Actually, I sent them out in two mailings and tinkered a little with the revised opinion between mailings. But the tinkering made almost no difference in the results. I labeled one opinion O (my own clever code for "original") and the other opinion X (first mailing) or Y (second mailing). For simplicity, I'll just call the revised opinion the Y opinion.

I had someone else sign the cover letter, since Michigan lawyers might recognize me as the editor of the "Plain Language" column in the *Michigan Bar Journal*. Along with the cover letter and two opinions, I included a one-page sheet called "Questions About the Opinions." Readers were asked which opinion they liked better, how they rated the two opinions on a 1-to-10 scale, and the top two reasons why they liked the one better than the other.

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[2] 564 N.W.2d 488 (Mich. Ct. App. 1997).

Readers who liked the O version better had these reasons to choose from:

- It's more traditional.
- It's better organized.
- It cites more cases, so it will be more helpful for research.
- The other opinion leaves out important details.
- Other reason: _____
  _____

Readers who liked the Y version better had these reasons to choose from:

- It has a summary at the beginning.
- It uses headings.
- It's better organized.
- It leaves out a lot of unnecessary detail.
- Other reason: _____
  _____

I tried hard to identify what I thought the most likely reasons would be and to state them dispassionately. I also asked trusted colleagues to look them over.

In Appendix A, you'll find the complete package that readers received. There was just one variable. I thought that it might make a difference which opinion the readers looked over first, so in half the packages the O opinion appeared first, and in the other half the Y opinion appeared first. If the O opinion came first (as it does in Appendix A), then the O opinion came first in the choices on the "Questions About the Opinions" page. And I just reversed it if the Y opinion came first.

Of the 700 lawyers who received the package, 251 responded by returning the "Questions" page. I considered that a good response, since they had to read seven pages of opinions and then answer the questions.

The results, as I said, were no surprise: readers strongly preferred the revised version. I'll dissect the results in a moment, but first let me put them alongside some other testing of legal and official writing.

PREVIOUS STUDIES – MINE AND OTHERS'

This testing of opinions was my fourth round of testing.

First, a colleague and I prepared a study that was eventually conducted in four states. We asked readers to check off their preference for the A or B version of six different paragraphs from various legal documents. One version of each paragraph was in plain language and the other in traditional legal style – although they were not identified that way, but only as A and B. Altogether, 1,462 judges and lawyers responded, and in all four states they preferred the plain-language versions by margins running from 80% to 86%.[3]

Second, I tested a contract used by a Michigan state agency. I tested it on the agency staff and on law students. Half got the original contract, half got the plain-language version, and they all got the same questions to answer. The agency staff was 45% more accurate and 16% faster using the plain-language version. The law students were 23% more accurate and 20% faster.[4]

Third, I tested a South African statute that two colleagues and I had redrafted as part of a demonstration project for that country's new Ministry of Justice. I tested it on law students and on a law-school staff. The law students were 17% more accurate and 5% faster using the redrafted version, and they rated it 41% easier to use. The law-school staff was 21% more accurate and 9% faster, and they rated it 26% easier to use.[5]

I summarized these three studies – along with dozens more – in *Answering the Critics of Plain Language* and *Writing for Dollars, Writing to Please*, which appeared in Volumes 5 and 6 of *The Scribes Journal of Legal Writing*. Once and for all, the weight of these studies should put to rest the terrible, stubborn myths about plain language – that it dumbs down the language, that it involves a few limited guidelines (use short sentences, the active voice, and simple words), that legal readers won't like it,

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[3] Joseph Kimble & Joseph A. Prokop, Jr., *Strike Three for Legalese*, 69 MICH B.J. 418 (1990) (reporting the results in Michigan, Florida, and Louisiana); Kevin Dubose, *The Court Has Ruled*, THE SECOND DRAFT (Legal Writing Institute), Oct. 1991, at 8 (reporting the results in Texas).

[4] *See* Joseph Kimble, *Answering the Critics of Plain Language*, 5 SCRIBES J. LEGAL WRITING 51, 69-70, 83-85 (1994-1995).

[5] *Id*. at 69, 71.

that it's not accurate or precise, that it's a matter of personal style and does not entail any larger public benefit, and that there's no evidence it works. Here's what I said at the end of *Writing for Dollars, Writing to Please*: "There is now compelling evidence that plain language saves money and pleases readers: it is much more likely to be read and understood and heeded – in much less time. It could even help to restore faith in public institutions."[6]

RESULTS OF THE OPINION-TESTING

Out of the 251 lawyers who responded to my mailing, 98, or 39%, preferred the original opinion; 153, or 61%, preferred the revised opinion.

Readers rated the original opinion at an average of 6 on a 1-to-10 scale; they rated the revised opinion at 7. Given the strong preference for the revised opinion, I was a little surprised at those two numbers. Then again, the number for the original opinion seems to confirm that I succeeded in choosing one that's about par for the course. Also, as I'll explain later, I shortened the original opinion by omitting 500 words of unnecessary detail even before I sent it out. So readers were already seeing a somewhat improved version of the original.

Finally, readers were asked to mark the top two reasons for their preference. Those results appear below. Each number shows how many readers marked that reason as their first or second reason. (The numbers do not add up perfectly because some readers did not follow instructions.) For readers who liked the O (original) opinion better:

It's more traditional.	9
It's better organized.	52
It cites more cases, so it will be more helpful for research.	53
The other opinion leaves out important details.	43
Other reason: better analysis (most common "other reason").	34

[6] 6 SCRIBES J. LEGAL WRITING 1, 37 (1996-1997).

For readers who liked the Y (revised) opinion better:

It has a summary at the beginning.	77
It uses headings.	37
It's better organized.	72
It leaves out a lot of unnecessary detail.	84
Other reasons: clearer, easier to read, more succinct, in plain English, not so much legalese.	34

Although both of these distributions are fairly even, two things seem noteworthy. First and foremost, readers who preferred the revised opinion gave the greatest weight to leaving out unnecessary detail. And since that reason overlapped with many of the "other reasons" those readers gave (more succinct, in plain English, and so on), the exceptional importance of conciseness becomes even more exceptional.[7] Second, readers greatly value a good summary at the beginning of an opinion, and judges should take pains to provide one. Let's hope these two lessons, at least, are reflected in every opinion from now on. That would be almost revolutionary.

THE DIFFERENCES BETWEEN THE OPINIONS

I wrote the revised opinion in plain language. Please remember that "plain language" has become the established shorthand for a broad set of writing guidelines. I have identified more than 40 guidelines, contained in five categories: in general, design, organization, sentences, and words.[8] Only the uninformed and the misinformed think that plain language involves a handful of rudimentary techniques.

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[7] *See* Kristen K. Robbins, *The Inside Scoop: What Federal Judges Really Think About the Way Lawyers Write*, 8 LEGAL WRITING 257, 279 (2002) (noting, in a survey of federal judges about lawyers' briefs, a "strong, recurring, and unmistakable cry for conciseness and clarity" – qualities that judges ought to strive for in their own writing as well).

[8] *The Elements of Plain Language*, in LIFTING THE FOG OF LEGALESE: ESSAYS ON PLAIN LANGUAGE 69 (2006).

Of course, no one kind of legal document will call into play all the guidelines. In an opinion, for instance, a judge is not usually worried about minimizing definitions or making a table of contents or testing the document on a small group of typical users. At the same time, virtually all the changes I made in the revised opinion reflect plain-language guidelines.

1. Begin the document with a good summary.

I mentioned earlier that to recover under his insurance policy, Wills needed to show that the disappearing car had "struck" his car. Obviously, the striking was indirect: only the bullets from the other car – not the car itself – hit Wills's car. In cases like this, the Michigan courts have looked for a "substantial physical nexus" between the cars. (By the way, the courts should never have developed that fuzzy language; it's not needed to differentiate the cases.)

Now consider the two opening paragraphs:

Original:

> Plaintiff Robert Wills filed a declaratory judgment action against defendant State Farm Insurance Company to determine whether defendant has a duty to pay benefits under the uninsured motorist provisions found in plaintiff's policy with defendant. Pursuant to the parties' stipulated statement of facts, the trial court granted summary disposition in plaintiff's favor upon finding coverage where gunshots fired from an unidentified automobile passing plaintiff's vehicle caused plaintiff to drive off the road and suffer injuries. Defendant appeals as of right. We reverse and remand.

Revised:

> **Summary**

> Robert Wills was injured when someone drove by him and fired shots toward his car, causing him to swerve into a tree. He filed a declaratory- judgment action to determine whether State Farm had to pay him uninsured-motorist benefits. The issue is whether there was a "substantial physical nexus" between the unidentified car and Wills's car. The trial court answered yes and granted a summary disposition for Wills. We disagree and reverse. We do not find a substantial physical nexus between the two cars, because the bullets were not projected by the unidentified car itself.

I have already written, in excruciating detail, about these two openers.[9] I explained that the *Wills* case involves four syllogisms, each one depending for its validity on a deeper syllogism. And in the original opinion, the first paragraph does not get to the deep issue – whether there's a "substantial physical nexus" between the two cars. Nor does the original first paragraph get to the deep answer. In contrast, the revised opinion identifies the deep issue and gives an answer. It gets down to the bottom of the case, the last syllogism, the dispositive rule: there was no substantial physical nexus because the bullets were not projected by the unidentified car itself.

2. Divide the opinion into short sections (and subsections, as needed); use informative headings; begin each section with a summary.

There were two issues in the *Wills* opinion, one of which I used for the testing. Neither issue was announced by a heading. The issue I tested took seven pages in the official reporter. Needless to say, that issue was not divided into sections. The revised opinion was divided into three sections with three headings:

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[9] *First Things First: The Lost Art of Summarizing*, in LIFTING THE FOG OF LEGALESE, *supra* note 8, at 73.

Summary

Facts and Procedural History

Analysis of "Substantial Physical Nexus"

I already showed you the opening paragraphs of the original and revised opinions.

Now compare the paragraphs that begin the second part of the opinion. Notice how the revised opinion at least summarizes the controlling policy language.

Original:

(No heading)

> In 1994, defendant issued a policy of insurance to plaintiff to cover his 1989 Mercury Sable. As part of this policy, defendant promised to pay plaintiff certain damages if he were injured as the result of an automobile accident between his vehicle and a vehicle driven by an uninsured motorist. The policy stated as follows:

Revised:

Facts and Procedural History

> State Farm's policy promised to pay Wills if he was injured in an accident between his vehicle and an uninsured motor vehicle. The policy defines "uninsured motor vehicle" to include a hit-and-run vehicle that "strikes" Wills's vehicle:

Finally, compare the paragraphs that begin the third part of the opinion. Notice how the revised opinion, besides being tighter, once again summarizes not only the deep issue, but also the answer to that issue.

Original:

(No heading)

Uninsured motorist coverage is not required by statute; thus, the contract of insurance determines under what circumstances the benefits will be awarded. *Berry v State Farm Mutual Automobile Ins Co*, 219 Mich App 340, 346; 556 NW2d 207 (1996); *Auto-Owners Ins Co v Harvey*, 219 Mich App 466, 470; 556 NW2d 517 (1996). An uninsured motorist policy's requirement of "physical contact" between a hit-and-run vehicle and the insured or the insured's vehicle is enforceable in Michigan. *Berry*, *supra* at 347; *Kreager*, *supra* at 581-583; *Hill*, *supra* at 394. This Court has construed the physical contact requirement broadly to include indirect physical contact as long as a substantial physical nexus exists between the unidentified vehicle and the object cast off by that vehicle or the object that strikes the insured's vehicle. *Id*.

Revised:

Analysis of "Substantial Physical Nexus"

Under State Farm's policy, Wills must show that the other car "struck" his car, at least indirectly. In cases involving indirect physical contact, this court has required a "substantial physical nexus" between the unidentified vehicle and the object that it casts off or the object that strikes the policyholder's vehicle. But there is no physical nexus when the striking object comes from an occupant of the unidentified vehicle – as it did here.

3. Use topic sentences that advance the analysis.

The best topic sentences look backward and forward: they connect back to the point made in the previous paragraph, and they summarize the main point of the new paragraph. At their best, they combine to form an outline of the discussion or analysis.

If you think that topic sentences are overrated or beneath the dignity of adept writers, then you would have to conclude that they played no part in the clear preference for the revised opinion. Look over the difference between the topic sentences – the paragraph openers – and ask whether you would discount their importance. These are from the analytical part (not the facts and procedural history) of the two opinions.

Original:

> Uninsured motorist coverage is not required by statute; thus, the contract of insurance determines under what circumstances the benefits will be awarded.
>
> A "substantial physical nexus" between the unidentified vehicle and the object causing the injury to the insured has been found where the object in question was a *piece* of, or *projected* by, the unidentified vehicle, but not where the object originates from an occupant of an unidentified vehicle.
>
> In *Hill*, *supra* at 384-385, the plaintiff's husband was driving his vehicle when a camper-truck passing in the opposite direction propelled a large rock through the car's windshield, causing the husband's death.
>
> In the case at bar, the parties stipulated that there was no actual physical contact between plaintiff's automobile and the unidentified vehicle in question.

> Rather, the bullets fired by an occupant of the unidentified vehicle struck plaintiff's car.
>
> Reversed and remanded for entry of summary disposition in favor of defendant.
>
> ***Revised***:
>
> The controlling case is *Kreager v State Farm Mutual Automobile Ins Co*, 197 Mich App 577; 496 NW2d 346 (1992). The *Kreager* court distinguished between an object that comes from an occupant and an object that is projected by the unidentified vehicle itself.
>
> Furthermore, the case that the trial court relied on, *Hill*, *supra*, is distinguishable.
>
> The present case is like *Kreager*, not *Hill*: the projectile came from a gun fired by an occupant of the unidentified vehicle, not from the vehicle itself.
>
> We reverse and remand for the entry of summary disposition in favor of defendant.

4. Omit unnecessary detail, including unnecessary cases.

Now for a twist that makes the test results even more remarkable. Because I was so afraid that people would not take the time to read the opinions, I omitted things from the original opinion even before I mailed out the package. So readers got a shortened version of the original. Among the omissions:

- An explanation of why State Farm moved for summary disposition. (Obviously, the company thought that the policy language did not cover these facts.)

- A long half-paragraph that elaborated on the trial court's reasoning beyond the court's basic conclusion that a substantial physical nexus existed because the bullet came from one car and entered the other.

- The reasoning of the trial court in the *Hill* case.

- At the end of the opinion, a long rehash of the court's reasoning.

These omissions shortened the original opinion by more than 500 words. As shortened and submitted to readers, the original opinion had 1,494 words; the revised opinion had 877 words.

That takes us to the additional cuts that I made in the original opinion – the details that I did not include in the revised opinion. Appendix B contains a struck-through version of the original opinion. From that example, I think we can identify four main kinds of unnecessary detail.

First, statements of the obvious. For instance: "In 1994, defendant issued a policy of insurance to plaintiff to cover his 1989 Mercury Sable." Another instance: "Plaintiff subsequently [after the accident] filed a claim with defendant for medical and uninsured motorist benefits." Of course he did. We knew that from the start.

Second, needless repetition. For instance, the court cites the *Hill* case no fewer than three times for the rule that physical contact does not require direct physical contact.

Third, unnecessary facts. It makes no difference what kind of car Wills was driving or where he was driving it. Likewise, in the decisive *Kreager* case, it makes no difference why the insured was standing beside his car when he was shot at from the other car.

Fourth, unnecessary cases. This category may provoke a little more debate. The original opinion cites nine cases; the revised opinion cites four. More specifically, the original opinion cites four cases for the rule that physical contact can include indirect physical contact if the striking object was projected by the unidentified car. Then the court analyzes the *Kreager* case

(the insured was shot while standing outside his car) and the *Hill* case (the insured was killed by a large rock that the other car propelled through his windshield). Then the court distinguishes *Hill*, provides three *see also* citations with parentheticals, and analogizes to the *Kreager* case. Essentially, the court sets out a rule with string citations, analyzes two of those cases, distinguishes *Hill* and three other cases, and analogizes to *Kreager*. This piling on of authority at different points requires the court to use multiple *supras*.

In contrast, the revised opinion starts with a summarizing paragraph that contains no citations; analyzes the controlling *Kreager* case; briefly analyzes the *Hill* case and cites one more recent case that was consistent with *Hill*; and explains that the present case is like *Kreager*, not *Hill*.

The question for opinion-writers is whether they should cite every case that has ever considered the issue. Or is it enough to deal only with the controlling case or cases? I'd say that writers should be judiciously selective. There's no need to analyze or even cite a line of cases that state essentially the same rule. Readers will not object to an occasional *see also* or a two-sentence analysis of a reinforcing case. But at some point, the opinion that seeks to be exhaustive will cease to be clear and effective.

5. Omit unnecessary words.

One of the all-time best quotations about writing appears in Wilson Follett's *Modern American Usage*:

> [T]o eliminate the vice of wordiness is to ensure the virtue of emphasis, which depends more on conciseness than on any other factor. Wherever we can make twenty-five words do the work of fifty, we halve the area in which looseness and disorganization can flourish, and by reducing the span of attention required we increase the force of the thought.[10]

[10] WILSON FOLLETT, MODERN AMERICAN USAGE 14 (1966).

I said earlier that the *Wills* case is not a terrible specimen or even a bad specimen. It's average, and it contains a typical assortment of faults. Wordy phrases, for instance: *has a duty to (must)*; *injured as a result of (in) an automobile accident*; *enter judgment with regard to (on) the coverage dispute*; *rulings with regard to summary disposition motions (on summary-disposition motions)*; *the court found in favor of (for) plaintiff; under what circumstances (when) the benefits will be awarded*; *in order to find coverage (for coverage).*[11]

Notice how many of these examples involve an unnecessary *of*. More examples: *a policy of insurance (an insurance policy)*; *as part of this policy (in this policy)*; *the identities of the occupants (the occupants' identities)*; *the contract of insurance (the insurance contract)*; *was dispositive of the dispute (governed the dispute)*.

Finally, beyond these recurring kinds of wordiness, you have the surplusage that is harder to categorize because it is so endlessly variable. It results from turning words into phrases and phrases into clauses, from overspecifying, from adding little unnecessary bits that are entirely clear from the context, from not seeing how a second reference to the same thing can be shortened, from pointless repetition – in short, from not having developed the writer's eye for tightening. Here are more examples from the two opinions. In each bullet, the original opinion is first and the revised opinion second:

- As part of this policy, defendant promised to pay plaintiff certain damages if he were injured as the result of an automobile accident between his vehicle and a vehicle driven by an uninsured motorist.

  State Farm's policy promised to pay Wills if he was injured in an accident between his vehicle and an uninsured motor vehicle.

[11] *See generally* Joseph Kimble, *Plain Words*, in LIFTING THE FOG OF LEGALESE, *supra* note 8, at 163, 170-73.

- The parties agree that there was no actual physical contact between the unidentified automobile from which the shots were fired and plaintiff's automobile.

  There was no actual physical contact – no direct contact – between the two cars.

- The unidentified vehicle and its occupants left the scene of the accident, and the identities of the occupants remain unknown.

  The other car drove away, and its occupants are unknown.

- This Court has construed the physical contact requirement broadly to include indirect physical contact as long as a substantial physical nexus exists between the unidentified vehicle and the object cast off by that vehicle or the object that strikes the insured's vehicle. A "substantial physical nexus" between the unidentified vehicle and the object causing the injury to the insured has been found where the object in question was a *piece* of, or *projected* by, the unidentified vehicle, but not where the object originates from an occupant of an unidentified vehicle.

  In cases involving indirect physical contact, this court has required a "substantial physical nexus" between the unidentified vehicle and the object that it casts off or the object that strikes the policyholder's vehicle. But there is no physical nexus when the striking object comes from an occupant of the unidentified vehicle….

- In the case at bar, the parties stipulated that there was no actual physical contact between plaintiff's automobile and the unidentified vehicle in question. Rather the bullets fired by an occupant of the unidentified vehicle struck plaintiff's car…. Thus,

> where it is undisputed that an *occupant* of an unidentified vehicle moving alongside plaintiff's vehicle shot at and hit plaintiff's vehicle, i.e., the projectile here came from a gun, not from the vehicle itself, plaintiff cannot show the requisite substantial physical nexus between the unidentified vehicle and himself or his vehicle. *Kreager, supra*.
>
> The present case is like *Kreager*, not *Hill*: the projectile came from a gun fired by an occupant of the unidentified vehicle, not from the vehicle itself. Because Wills cannot show a substantial physical nexus between the uninsured vehicle and his vehicle, he is not entitled to benefits.

There is no easy or mechanical fix for a wordy style. The only remedy is a heightened critical faculty. And the only route to that is through training, reading and critique – along with a deep sympathy for the reader and an antipathy toward clutter. Here is Wilson Follett again:

> To make our words count for as much as possible is surely the simplest as well as the hardest secret of style. Its difficulty consists in the ceaseless pursuit of the thousand ways of rectifying our mistakes, eliminating our inaccuracies, and replacing our falsities – in a word, editing our prose.[12]

The greatest favor that appellate courts could do for themselves and their readers is to hire a few good editors – real editors, not just people who check citations, punctuation, and grammar. Of course, that would require enough humility to recognize that all writers, even the best ones, need editing.

6. Prefer short and medium-length sentences, and plain words.

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[12] FOLLETT, *supra* note 10, at 14.

Bryan Garner recommends, as a guideline, that writers keep their average sentence length to about 20 words.[13] Richard Wydick recommends an average of below 25 words.[14] So let's say that 20 words is an ideal average.

The original opinion averages 25 words (excluding citation sentences). The revised opinion averages 19.

As for inflated diction and legalese, the original opinion includes the following: *pursuant to*, *subsequently*, *instant case*, *originates from*, *case at bar*, *requisite*. You might argue that none of these are egregious or even high-toned, but I didn't use them in the revised opinion.

7. Avoid unnecessary citations; use the parties' names; punctuate well.

I'll end with a miscellany.

First, citations. In a couple of places, the original opinion uses string citations for undisputed points. Why do that? In another place, discussing the *Hill* case, it has a pinpoint citation to the facts in *Hill*. Why do that? In the discussion of *Hill*, it includes a pinpoint citation after every sentence. I would tend to save pinpoint cites for quotations and dispositive rules, especially if you are putting citations in the text instead of in footnotes.[15] Otherwise, the writing keeps getting interrupted by citation hiccups. See for yourself as you look over the original opinion.

Second, party names. I used the parties' names – Wills and State Farm – instead of "plaintiff" and "defendant." How many times, in reading opinions, have you had to stop and think who is the "plaintiff" or the "defendant"? Names are more vivid – they raise a picture in the reader's mind. We can at least be grateful that the original opinion did not use "appellant" and "appellee."

Finally, punctuation. Everyone should own *The Redbook*, by Bryan Garner, or *The Gregg Reference Manual*, by William Sabin. For my money, they are the best, and I regularly consult

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[13] BRYAN A. GARNER, LEGAL WRITING IN PLAIN ENGLISH 19 (2001).

[14] RICHARD C. WYDICK, PLAIN ENGLISH FOR LAWYERS 36 (5th ed. 2005).

[15] *Cf.* Bryan A. Garner, *The Citational Footnote*, 7 SCRIBES J. LEGAL WRITING 97 (1998-2000) (recommending that citations – and citations only – appear in footnotes).

both of them. They agree on how to form the possessive of a singular that already ends in *s* – *Wills's claim*. Garner is somewhat more strict than Sabin in requiring hyphens with phrasal (compound) adjectives, and I agree that the following phrases in the original opinion should have used hyphens (which I'll now include): *uninsured-motorist provisions*, *uninsured-motorist benefits*, *declaratory-judgment action*, *summary-disposition motions*, *uninsured-motorist coverage*, *uninsured-motorist insurance carrier*, *phantom-vehicle claims*, *physical-contact requirement*, *uninsured-motor-vehicle coverage*, *substantial-physical-nexus requirement*. The hyphens help to avoid reader miscues, and the double hyphens may indicate a need to rephrase. As the very last point, note that the original opinion does not use a single dash. The revised opinion uses three. The handy and versatile dash belongs in every writer's punctuation kit. The notion that it's too informal for legal writing is silly.

CONCLUSION

The message for opinion-writers is the same as it is for all legal writers. Care enough to work at your craft. Become critical-minded about words. Read the best books on writing. Pay attention to models. Keep at hand a group of current references on grammar and usage. Welcome good editing. Put yourself in your readers' shoes and resolve not to waste their time. Above all, revere clarity and simplicity – in a style that's straightforward and lean.

Appendix A
The Package That Readers Received

Elisha Jones
964 Briarwick Drive
East Lansing, Michigan 48823

March 18, 1999

Mrs. XXXXXX
XXXXXXXXX
XXXXXXXXX

Dear Mrs. X:

I am a recent law-school graduate who is working on a study of judicial opinions. I believe that no one has ever done a study like this. But I need your help.

I'm trying to determine what lawyers like and dislike about judicial opinions. Obviously, I can't test everything, but I'm trying to test a few things. I'm sending the study to a random selection of Michigan lawyers. The effort has taken a good deal of time and money. I hope you will help me make it worthwhile. I plan to publish the results in the *Michigan Bar Journal*.

Would you please take a few minutes from your busy schedule to read these two short opinions? After you read the two opinions, please answer the questions on the yellow sheet. Then return the yellow sheet to me in the enclosed self-addressed, stamped envelope. Because this study is based on a random sampling, it's crucial to receive your response in order to obtain reliable data.

Thanks very much for your help.

Sincerely,

Elisha Jones

EJ/kmk
Enclosures

O

STATE OF MICHIGAN

COURT OF APPEALS

Robert Wills

Plaintiff-Appellee,

v.

State Farm Insurance Company

Defendant-Appellant.

Before: Judges A, B, and C.

JUDGE A

Plaintiff Robert Wills filed a declaratory judgment action against defendant State Farm Insurance Company to determine whether defendant has a duty to pay benefits under the uninsured motorist provisions found in plaintiff's policy with defendant. Pursuant to the parties' stipulated statement of facts, the trial court granted summary disposition in plaintiff's favor upon finding coverage where gunshots fired from an unidentified automobile passing plaintiff's vehicle caused plaintiff to drive off the road and suffer injuries. Defendant appeals as of right. We reverse and remand.

In 1994, defendant issued a policy of insurance to plaintiff to cover his 1989 Mercury Sable. As part of this policy,

defendant promised to pay plaintiff certain damages if he were injured as the result of an automobile accident between his vehicle and a vehicle driven by an uninsured motorist. The policy states as follows:

> We will pay damages for *bodily injury* an *insured* is legally entitled to collect from the owner or driver of an *uninsured motor vehicle*. The *bodily injury* must be caused by [an] accident arising out of the operation, maintenance or use of an *uninsured motor vehicle*.
>
> *Uninsured Motor Vehicle* – means:
>
> * * *
>
> 2. a "hit-and-run" land motor vehicle whose owner or driver remains unknown and which strikes
> a. the *insured* or
> b. the vehicle the *insured* is *occupying* and causes *bodily injury* to the *insured*. [Emphasis in original.]

While plaintiff was driving his Sable on Shaw Lake Road in Barry County, another vehicle pulled alongside his car as if it were passing him in the left lane. Suddenly, plaintiff saw a flash and heard gunshots. Reacting to the shots, plaintiff ducked down to the right toward the floor of the passenger area to avoid injury. Upon doing so, plaintiff turned the Sable's steering wheel to the right. The vehicle swerved off the road and hit two trees. As a result of the accident, plaintiff injured his neck and back, requiring surgery. The parties agree that there was no actual physical contact between the unidentified automobile from which the shots were fired and plaintiff's automobile. The unidentified vehicle and its occupants left the scene of the accident, and the identities of the occupants remain unknown.

Plaintiff subsequently filed a claim with defendant for medical and uninsured motorist benefits. Defendant paid plaintiff his medical benefits but denied plaintiff's claim for uninsured motorist benefits because there was no physical contact between plaintiff's Sable and the unidentified vehicle. Plaintiff responded

by filing a declaratory judgment action asking the trial court to enter judgment in his favor with regard to the coverage dispute.

Defendant moved for summary disposition under MCR 2.116(C)(8) and (C)(10). At the hearing on defendant's motion, the trial court distinguished this Court's decision in *Kreager v State Farm Mutual Automobile Ins Co*, 197 Mich App 577; 496 NW2d 346 (1992), from the instant case and relied upon *Hill v Citizens Ins Co of America*, 157 Mich App 383; 403 NW2d 147 (1987), to find that a sufficient physical nexus existed between the two involved automobiles because, while they were moving, a projectile came from one car and entered the other. Therefore, the court found in favor of plaintiff under MCR 2.116(C)(8) and (C)(10) and denied defendant's motion.

We review de novo the trial court's rulings with regard to summary disposition motions, declaratory judgments, and questions of law. See *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991); *State Treasurer v Schuster*, 215 Mich App 347, 350; 547 NW2d 332 (1996); *Michigan Residential Care Ass'n v Dep't of Social Services*, 207 Mich App 373, 375; 526 NW2d 9 (1994).

Uninsured motorist coverage is not required by statute; thus, the contract of insurance determines under what circumstances the benefits will be awarded. *Berry v State Farm Mutual Automobile Ins Co*, 219 Mich App 340, 346; 556 NW2d 207 (1996); *Auto-Owners Ins Co v Harvey*, 219 Mich App 466, 470; 556 NW2d 517 (1996). An uninsured motorist policy's requirement of "physical contact" between a hit-and-run vehicle and the insured or the insured's vehicle is enforceable in Michigan. *Berry*, *supra* at 347; *Kreager*, *supra* at 581-583; *Hill*, *supra* at 394. This Court has construed the physical contact requirement broadly to include indirect physical contact as long as a substantial physical nexus exists between the unidentified vehicle and the object cast off by that vehicle or the object that strikes the insured's vehicle. *Id*.

A "substantial physical nexus" between the unidentified vehicle and the object causing the injury to the insured has been found where the object in question was a *piece* of, or *projected* by, the unidentified vehicle, but not where the object originates from an occupant of an unidentified vehicle. See *Berry*, *supra* at

350; *Kreager*, *supra* at 579; *Adams v Zajac*, 110 Mich App 522, 526-527; 313 NW2d 347 (1981). In *Kreager*, *supra*, an occupant of an unidentified vehicle shot the insured while he stood outside the driver's side of his vehicle. He was standing there because someone in the unidentified vehicle had thrown a bottle at his car, and he responded by throwing the bottle back at the unidentified vehicle. The shooting occurred in apparent retaliation. After determining that the "physical contact" requirement was dispositive of the dispute between the insured and his uninsured motorist insurance carrier, this Court stated:

> Plaintiff's injuries lack a sufficient "physical nexus" with the unidentified vehicle. Unlike the plaintiff in *Hill*, *supra*, plaintiff was not injured by an object accidentally projected by the uninsured vehicle. Rather, the "projectile" involved [here] was a bullet fired from the handgun used by the assailant. There was no projection resulting from the vehicle itself. [*Kreager*, *supra* at 583.]

This Court found no "substantial physical nexus" between the insured or his vehicle and the unidentified vehicle. It also agreed with defendant that the insured's injuries did not arise from any physical contact between the vehicles. Thus, in *Kreager*, *supra* at 582-583, this Court held that the insured could not recover uninsured motorist benefits.

In *Hill*, *supra* at 384-385, the plaintiff's husband was driving his vehicle when a camper-truck passing in the opposite direction propelled a large rock through the car's windshield, causing the husband's death. Upon reviewing various Michigan and out-of-state cases, this Court found that direct physical contact between the uninsured vehicle and the insured was not required in order to find coverage. *Id*. at 390. Rather, because the parties agreed that a rock came through the windshield just as the other vehicle passed, the plaintiff could "establish a substantial physical nexus between the disappearing vehicle and the object cast off or struck." *Id*. at 394. Moreover, this Court believed that requiring an insured to prove indirect contact would also foreclose the possibility of fraudulent phantom vehicle claims. *Id*. "In

summary, the overwhelming majority of jurisdictions hold that the 'physical contact' provision in uninsured motor vehicle coverage may be satisfied even though there is no direct contact between the disappearing vehicle and claimant or claimant's vehicle." *Id*.; see also *Berry*, *supra* at 347-348, 350.

In the case at bar, the parties stipulated that there was no actual physical contact between the plaintiff's automobile and the unidentified vehicle in question. Rather, the bullets fired by an occupant of the unidentified vehicle struck plaintiff's car. Thus, unlike *Hill*, there was no physical contact between the involved vehicles and no projectile that the unidentified vehicle cast against plaintiff's car. See also *Berry*, *supra* at 343-350 (scrap metal left in road after trailer full of scrap passed through area fifteen minutes before insured collided with it satisfied substantial physical nexus requirement); *Adams*, *supra* at 526-527 (summary disposition for Secretary of State reversed where insured's vehicle went out of control after striking or swerving to avoid striking a truck tire and rim assembly left in the highway as the indirect physical contact between the involved vehicles was sufficient); *Lord v Auto-Owners Ins Co*, 22 Mich App 669, 672; 177 NW2d 653 (1970) (recovery permitted where a hit-and-run vehicle struck a second vehicle that in turn was propelled into the plaintiff's vehicle). Indeed, as this Court recognized in *Kreager*, *supra* at 581, the shooting was not related to the assailant's use of a motor vehicle as a motor vehicle because "the shots could just as readily have been fired from a building, a parked car, a bicycle, or by a pedestrian." Thus, where it is undisputed that an *occupant* of an unidentified vehicle moving alongside plaintiff's vehicle shot at and hit plaintiff's vehicle, i.e., the projectile here came from a gun, not from the vehicle itself, plaintiff cannot show the requisite substantial physical nexus between the unidentified vehicle and himself or his vehicle. *Kreager*, *supra*.

Reversed and remanded for entry of summary disposition in favor of defendant. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

Y

STATE OF MICHIGAN

COURT OF APPEALS

Robert Wills

Plaintiff-Appellee,

v.

State Farm Insurance Company

Defendant-Appellant.

Before: Judges A, B, and C.

JUDGE A

Summary

Robert Wills was injured when someone drove by him and fired shots toward his car, causing him to swerve into a tree. He filed a declaratory- judgment action to determine whether State Farm had to pay him uninsured-motorist benefits. The issue is whether there was a "substantial physical nexus" between the unidentified car and Wills's car. The trial court answered yes and granted a summary disposition for Wills. We disagree and reverse. We do not find a substantial physical nexus between the two cars, because the bullets were not projected by the unidentified car itself.

Facts and Procedural History

State Farm's policy promised to pay Wills if he was injured in an accident between his vehicle and an uninsured motor vehicle. The policy defines "uninsured motor vehicle" to include a hit-and-run vehicle that "strikes" Wills's vehicle:

> We will pay damages for bodily injury an insured is legally entitled to collect from the owner or driver of an uninsured motor vehicle. The bodily injury must be caused by [an] accident arising out of the operation, maintenance or use of an uninsured motor vehicle.
>
> *Uninsured Motor Vehicle* – means:
>
> * * *
>
> 2. a "hit-and-run" land motor vehicle whose owner or driver remains unknown and *which strikes*
> a. the insured or
> b. *the vehicle the insured is occupying* and causes bodily injury to the insured. [Emphasis added.]

As Wills was driving his car in Barry County, another car pulled alongside him in the passing lane. Suddenly, he saw a flash and heard gunshots. Reacting to the shots, he ducked down to the right, pulled the steering wheel to the right, swerved off the road into two trees, and injured himself. There was no actual physical contact – no direct contact – between the two cars. The other car drove away, and its occupants are unknown.

State Farm denied Wills's claim for uninsured-motorist benefits because there was no physical contact between the two cars. Wills filed a declaratory-judgment action, and State Farm moved for summary disposition under MCR 2.116(C)(8) and (C)(10).

The trial court denied State Farm's motion and instead granted a summary disposition for Wills. The court relied on *Hill v Citizens Ins Co*, 157 Mich App 383; 403 NW2d 147 (1987), to find a sufficient physical nexus between the two cars because,

while they were moving, a projectile came from one car and entered the other.

We review de novo a ruling on a motion for summary disposition. *State Treasurer v Schuster*, 215 Mich App 347, 350; 547 NW2d 332 (1996).

Analysis of "Substantial Physical Nexus"

Under State Farm's policy, Wills must show that the other car "struck" his car, at least indirectly. In cases involving indirect physical contact, this court has required a "substantial physical nexus" between the unidentified vehicle and the object that it casts off or the object that strikes the policyholder's vehicle. But there is no physical nexus when the striking object comes from an occupant of the unidentified vehicle – as it did here.

The controlling case is *Kreager v State Farm Automobile Ins Co*, 197 Mich App 577; 496 NW2d 346 (1992). The *Kreager* court distinguished between an object that comes from an occupant and an object that is projected by the unidentified vehicle itself. In *Kreager*, someone in the unidentified vehicle shot the policyholder while he stood outside his car. The court acknowledged that the "physical contact" between two vehicles could include indirect physical contact as long as there was a "substantial physical nexus between the disappearing vehicle and the object cast off or struck." *Kreager* at 582 (quoting an earlier case). But the policyholder could not show this physical nexus:

> [P]laintiff was not injured by an object accidentally projected by the uninsured vehicle. Rather, the "projectile" involved was a bullet fired from the handgun used by the assailant. There was no projection resulting from the vehicle itself. [*Kreager* at 583].

Thus, the injury did not arise out of the use of the unidentified vehicle as a motor vehicle; the assailant could just as well have fired from a bicycle or while on foot.

Furthermore, the case that the trial court relied on, *Hill*, *supra*, is distinguishable. In *Hill*, the unidentified vehicle threw a

rock through the policyholder's windshield. So the striking object *was* projected by the vehicle itself. See also *Berry v State Farm Mutual Automobile Ins Co*, 219 Mich App 340; 566 NW2d 207 (1996) (finding a substantial physical nexus between a disappearing truck full of scrap metal and a piece of metal left in the road).

The present case is like *Kreager*, not *Hill*: the projectile came from a gun fired by an occupant of the unidentified vehicle, not from the vehicle itself. Because Wills cannot show a substantial physical nexus between the uninsured vehicle and his vehicle, he is not entitled to benefits.

We reverse and remand for the entry of summary disposition in favor of defendant. Defendant, as the prevailing party, may tax costs under MCR 7.219.

Questions About the Opinions

1. You read the two opinions, O and Y. Which one did you like better? Please put a check mark next to the one you liked better.

☐ O ☐ Y

2. On a scale of 1 (very poor) to 10 (very good), how do you rate the two opinions?

___ O ___ Y

3. If you liked O better, please give the top two reasons why you liked O better. Mark 1 next to your top reason, and mark 2 next to your second top reason.

_____ It's more traditional.

_____ It's better organized.

_____ It cites more cases, so it will be more helpful for research.

_____ The other opinion leaves out important details.

_____ Other reason: _____
_____

OR

If you liked Y better, please give the top two reasons why you liked Y better. Mark 1 next to your top reason, and mark 2 next to your second top reason.

_____ It has a summary at the beginning.

_____ It uses headings.

_____ It's better organized.

_____ It leaves out a lot of unnecessary detail.

_____ Other reason: _____
_____

Appendix B
Omitting Unnecessary Detail

O

STATE OF MICHIGAN

COURT OF APPEALS

Robert Wills

Plaintiff-Appellee,

v.

State Farm Insurance Company

Defendant-Appellant.

Before: Judges A, B, and C.

JUDGE A

Plaintiff Robert Wills filed a declaratory judgment action against the defendant State Farm Insurance Company to determine whether defendant has a duty to pay benefits under the uninsured motorist provisions found in plaintiff's policy with defendant. ~~Pursuant to the parties' stipulated statement of facts,~~ [T]he trial court granted summary disposition in plaintiff's favor upon finding coverage where gunshots fired from an unidentified automobile passing plaintiff's vehicle caused plaintiff to drive off the road and suffer injuries. Defendant appeals as of right. We reverse and remand.

~~In 1994, defendant issued a policy of insurance to plaintiff to cover his 1989 Mercury Sable.~~ As part of [the] policy, defendant promised to pay plaintiff certain damages if he were injured as the result of an automobile accident between his vehicle and a vehicle driven by an uninsured motorist. The policy states as follows:

> We will pay damages for *bodily injury* an *insured* is legally entitled to collect from the owner or driver of an *uninsured motor vehicle*. The *bodily injury* must be caused by [an] accident arising out of the operation, maintenance or use of an *uninsured motor vehicle*.
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> *Uninsured Motor Vehicle* – means:
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> 2. a "hit-and-run" land motor vehicle whose owner or driver remains unknown and which strikes
> a. the *insured* or
> b. the vehicle the *insured* is *occupying* and causes *bodily injury* to the *insured*. [Emphasis in original.]

While plaintiff was driving ~~his Sable on Shaw Lake Road~~ in Barry County, another vehicle pulled alongside his car as if it were passing him in the left lane. Suddenly, plaintiff saw a flash and heard gunshots. Reacting to the shots, plaintiff ducked down to the right ~~toward the floor of the passenger area to avoid injury.~~ Upon doing so, plaintiff turned the ~~Sable's~~ steering wheel to the right. The vehicle swerved off the road and hit two trees. As a result of the accident, plaintiff injured his neck and back, requiring surgery. The parties agree that there was no actual physical contact between the unidentified automobile from which the shots were fired and plaintiff's automobile. The unidentified vehicle and its occupants left the scene of the accident, and the identities of the occupants remain unknown.

~~Plaintiff subsequently filed a claim with defendant for medical and uninsured motorist benefits.~~ Defendant ~~paid plaintiff his medical benefits but~~ denied plaintiff's claim for uninsured motorist benefits because there was no physical contact between

plaintiff's [car] and the unidentified vehicle. Plaintiff responded by filing a declaratory judgment action ~~asking the trial court to enter judgment in his favor with regard to the coverage dispute.~~

Defendant moved for summary disposition under MCR 2.116(C)(8) and (C)(10). At the hearing on defendant's motion, the trial court distinguished this Court's decision in *Kreager v State Farm Mutual Automobile Ins Co*, 197 Mich App 577; 496 NW2d 346 (1992), from the instant case and relied upon *Hill v Citizens Ins Co of America*, 157 Mich App 383; 403 NW2d 147 (1987), to find that a sufficient physical nexus existed between the two involved automobiles because, while they were moving, a projectile came from one car and entered the other. Therefore, the court found in favor of plaintiff under MCR 2.116(C)(8) and (C)(10) and denied defendant's motion.

We review de novo the trial court's rulings with regard to summary disposition motions, declaratory judgments, and questions of law. See ~~*Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991);~~ *State Treasurer v Schuster*, 215 Mich App 347, 350; 547 NW2d 332 (1996)~~; *Michigan Residential Care Ass'n v Dep't of Social Services*, 207 Mich App 373, 375; 526 NW2d 9 (1994).~~ ~~Uninsured motorist coverage is not required by statute; thus, the contract of insurance determines under what circumstances the benefits will be awarded. *Berry v State Farm Mutual Automobile Ins Co*, 219 Mich App 340, 346; 556 NW2d 207 (1996); *Auto-Owners Ins Co v Harvey*, 219 Mich App 466, 470; 556 NW2d 517 (1996).~~ An uninsured motorist policy's requirement of "physical contact" between a hit-and-run vehicle and the insured or the insured's vehicle is enforceable in Michigan. ~~*Berry, supra* at 347;~~ *Kreager, supra* at 581-583; *Hill, supra* at 394. This Court has construed the physical contact requirement broadly to include indirect physical contact as long as a substantial physical nexus exists between the unidentified vehicle and the object cast off by that vehicle or the object that strikes the insured's vehicle. *Id*.

A "substantial physical nexus" between the unidentified vehicle and the object causing the injury to the insured has been found where the object in question was a *piece* of, or *projected* by, the unidentified vehicle, but not where the object originates from an occupant of an unidentified vehicle. See ~~*Berry, supra* at~~

~~350;~~ *Kreager*, *supra* at 579; *Adams v Zajac*, 110 Mich App 522, 526-527; 313 NW2d 347 (1981). In *Kreager*, *supra*, an occupant of an unidentified vehicle shot the insured while he stood outside the driver's side of his vehicle. ~~He was standing there because someone in the unidentified vehicle had thrown a bottle at his car, and he responded by throwing the bottle back at the unidentified vehicle. The shooting occurred in apparent retaliation.~~ After determining that the "physical contact" requirement was dispositive of the dispute ~~between the insured and his uninsured motorist insurance carrier~~, this Court stated:

> Plaintiff's injuries lack a sufficient "physical nexus" with the unidentified vehicle. Unlike the plaintiff in *Hill*, *supra*, plaintiff was not injured by an object accidentally projected by the uninsured vehicle. Rather, the "projectile" involved [here] was a bullet fired from the handgun used by the assailant. There was no projection resulting from the vehicle itself. [*Kreager*, *supra* at 583.]

This Court found no "substantial physical nexus" between the insured or his vehicle and the unidentified vehicle. ~~It also agreed with defendant that the insured's injuries did not arise from any physical contact between the vehicles.~~ Thus, ~~in *Kreager*, *supra* at 582-583,~~ this Court held that the insured could not recover uninsured motorist benefits.

In *Hill*, *supra* at 384-385, the plaintiff's husband was driving his vehicle when a camper-truck passing in the opposite direction propelled a large rock through the car's windshield, causing the husband's death. ~~Upon reviewing various Michigan and out-of-state cases,~~ [T]his Court found that ~~direct physical contact between the uninsured vehicle and the insured was not required in order to find coverage. *Id*. at 390. Rather, because the parties agreed that a rock came through the windshield just as the other vehicle passed,~~ the plaintiff could "establish a substantial physical nexus between the disappearing vehicle and the object cast off or struck." *Id*. at 394. Moreover, this Court believed that requiring an insured to prove indirect contact would also foreclose the possibility of fraudulent phantom vehicle claims. ~~*Id.*~~

~~"In summary, the overwhelming majority of jurisdictions hold that the 'physical contact' provision in uninsured motor vehicle coverage may be satisfied even though there is no direct contact between the disappearing vehicle and claimant or claimant's vehicle." *Id.*; see also *Berry*, *supra* at 347-348, 350.~~

In the case at bar, the parties stipulated that there was no actual physical contact between plaintiff's automobile and the unidentified vehicle in question. Rather, the bullets fired by an occupant of the unidentified vehicle struck plaintiff's car. Thus, unlike *Hill*, there was no physical contact between the involved vehicles and no projectile that the unidentified vehicle cast against plaintiff's car. See also *Berry* [*v State Farm Mutual Automobile Ins Co*, 219 Mich App 340, 343-350; 556 NW2d 207 (1996)] (scrap metal left in road after trailer full of scrap passed through area fifteen minutes before insured collided with it satisfied substantial physical nexus requirement)~~; *Adams*, *supra* at 526-527 (summary disposition for Secretary of State reversed where insured's vehicle went out of control after striking or swerving to avoid striking a truck tire and rim assembly left in the highway as the indirect physical contact between the involved vehicles was sufficient); *Lord v Auto-Owners Ins Co*, 22 Mich App 669, 672; 177 NW2d 653 (1970) (recovery permitted where a hit-and-run vehicle struck a second vehicle that in turn was propelled into the plaintiff's vehicle)~~. Indeed, as this Court recognized in *Kreager*, *supra* at 581, the shooting was not related to the assailant's use of a motor vehicle as a motor vehicle because "the shots could just as readily have been fired from a building, a parked car, a bicycle, or by a pedestrian." Thus, where it is undisputed that an *occupant* of an unidentified vehicle moving alongside plaintiff's vehicle shot at and hit plaintiff's vehicle, i.e., the projectile here came from a gun, not from the vehicle itself, plaintiff cannot show the requisite substantial physical nexus between the unidentified vehicle and himself or his vehicle. *Kreager*, *supra*.

Reversed and remanded for entry of summary disposition in favor of defendant. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.