

Circuit Court for Dorchester County  
Case No.: 09-C-16-023640

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 449

September Term, 2018

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MARGARET FLEISHELL

v.

MARK RITCHIE HOWARD

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Graeff,  
Shaw Geter,  
Salmon, James P.  
(Senior Judge, Specially Assigned),  
JJ.

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Opinion by Salmon, J.

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Filed: May 3, 2019

\* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On Memorial Day in 2015, Margaret Fleishell, the appellant, and Mark Howard, the appellee, were involved in a T-bone collision in an intersection near Denton, Maryland. Fleishell brought a negligence action against Howard in the Circuit Court for Dorchester County alleging that, under the Boulevard Rule, she was the favored driver and he had failed to yield the right of way to her. She further alleged that Howard's failure to yield caused the collision. Mr. Howard, in turn, contended that Fleishell's contributory negligence was a cause of the accident. At the close of discovery, Fleishell moved for partial summary judgment on the issues of negligence and contributory negligence. Following a hearing, the circuit court granted summary judgment in favor of Fleishell on the issue of Howard's primary negligence, but denied the motion on the issue of Fleishell's contributory negligence.

The issues of Fleishell's negligence and her damages were tried by a jury. Fleishell's motions for judgment on the issue of contributory negligence were denied at the close of her case and at the close of all the evidence. The jury found that Fleishell was negligent and that her negligence was a proximate cause of the accident and, thus, did not reach the issue of damages. Fleishell's post-trial motion for judgment notwithstanding the verdict ("JNOV") was denied.

On appeal, Fleishell asks: Did the trial court err as a matter of law by denying her motions for judgment and for JNOV? We answer that question in the affirmative and shall reverse the judgment of the circuit court and remand for a new trial as to damages only.

**I.**

**FACTS AND PROCEEDINGS**

**A. Undisputed Facts**

Fleishell, at the time of the accident, was 87 years old and was retired. She divided her time between three residences – her house in Baltimore, her son’s house in Grasonville, and her trailer in Dagsboro, Delaware, where she ordinarily lived from May through October. On the morning of Monday, May 25, 2015, Ms. Fleishell left her son’s house in Grasonville and began driving her minivan to Dagsboro, Delaware for the start of her summer stay. At 12:45 p.m., she was near Denton driving eastbound on Route 404. The weather was clear.

Howard, who was then 39 years old, lived with his family in Federalsburg in Dorchester County and owned a horse farm in Harrington, Delaware. On May 25, 2015, he spent the morning working at the horse farm. At 12:45 p.m., he was driving his pick-up truck southbound on Greenwood Road back to his house. He was hauling a 12-foot trailer carrying an ATV. The combined length of his truck and trailer was about thirty feet.

The accident occurred where Route 404 intersects with Greenwood Road, to the north, and Becks Road, to the south. Route 404 is a 55 mile per hour two-way road with a lane in each direction separated by a double yellow-line. Greenwood Road also is a two-way paved road separated by a double yellow-line. Becks Road is a two-way unmarked dirt road. Traffic on Route 404 in both directions is governed by a flashing yellow light,

whereas southbound traffic on Greenwood Road is governed by a flashing red light, as it crosses onto Becks Road.

About 100 yards west of Route 404's intersection with Greenwood Road, a second eastbound lane begins. The two lanes are separated by a solid white line. The second lane continues through the intersection and then merges back into the main eastbound travel lane about 100 yards east of the intersection. The second lane permits eastbound traffic to pass vehicles that are stopped to turn left from Route 404 onto Greenwood Road.

### **B. Testimony of Appellant**

Because May 25, 2015 was the Monday of Memorial Day weekend, westbound traffic on Route 404 was “like a parking lot,” whereas eastbound traffic was light. As Fleishell approached the intersection with Greenwood Road, she testified that she was driving in the leftmost eastbound lane, not in the passing lane, and was traveling at approximately 50 to 55 miles per hour. There were no cars in front of her. Fleishell did not expect any vehicles to cross “through that parking lot,” *i.e.*, from the left on Greenwood Road. While she had testified at her deposition that she could not recall if there was any traffic control at the intersection, she clarified in her trial testimony that she did recall seeing a flashing light. She explained that if the light had been flashing red, she “would be cautious” but “it was not, it was just flashing.” She added that she would have “slowed up somewhat” at a flashing yellow light.

As soon as Fleishell entered the intersection, Howard's truck pulled out in front of her from between cars stopped in the westbound lanes. She slammed on her brakes, but

could not stop in time and within seconds had collided with him. She suffered broken bones and other injuries and was transported by ambulance to Easton Memorial Hospital and later airlifted to Shock Trauma at the University of Maryland Medical Center.

### **C. Testimony of Appellee**

Howard was called as a witness in Fleishell’s case and also testified in his case. As he drove south on Greenwood Road, he observed that the intersection with Route 404 was completely blocked by bumper to bumper westbound traffic. He stopped at the near side of the intersection for several minutes. A small break in the westbound traffic opened up and the driver of a westbound vehicle “motioned” to Howard that he could come through. He crossed over the westbound lane of Route 404 and stopped in the middle of the intersection. He observed a gray SUV in the leftmost eastbound lane of Route 404 that was waiting to turn left onto Greenwood Road. That vehicle blocked his view of the second eastbound travel lane, which he considered to be a shoulder. He did not “inch out” into the eastbound travel lanes, but rather “pulled away” and immediately collided with Fleishell’s vehicle. He did not see her vehicle until he hit it and did not believe she could have seen him until the collision occurred. His front fender collided with the front driver’s side of her vehicle. Howard estimated that he was traveling approximately 1 to 2 miles per hour when he hit her because he had just begun to move. He acknowledged that he entered the eastbound travel lanes “blind.”

#### **D. Testimony of William Bringman**

Trooper William Bringman, who responded to the scene of the accident, testified in Fleishell’s case as a lay witness and as an expert in accident investigation and Maryland’s rules of the road, as codified at Title 21 of the Transportation Article. He opined that the rightmost eastbound lane of Route 404 near its intersection with Greenwood Road was a “through lane” to allow eastbound vehicles to “go around left turning vehicles at Greenwood Road.” It is not marked as a turn-only lane and, thus, was a “free travel” lane for vehicles. Pursuant to Md. Code (1977, 2012 Repl. Vol.), § 21-204 of the Transportation Article (“Transp.”), vehicles traveling southbound on Greenwood Road were required to stop at the near side of the intersection because of the red flashing light and could only enter the intersection if it was clear. Trooper Bringman determined, based upon his investigation that the accident had occurred at the far edge of the main eastbound travel lane on Route 404, where the passing lane began, and in the middle of the intersection with Becks Road. He concluded that Fleishell did not do “anything wrong to contribute to the causing of [the] accident[.]”

On cross-examination, Trooper Bringman opined that pursuant to Transp. § 21-204(f), vehicles traveling eastbound on Route 404 controlled by the flashing yellow light should “slow down” and could “proceed through the intersection . . . only with caution.” He was also asked about Transp. § 21-304, which permits a vehicle to “overtake and pass

to the right of another vehicle . . . [i]f the overtaken vehicle is making or about to make a left turn[,]” but requires that that maneuver be undertaken “only if it is safe to do so.”<sup>1</sup>

### **E. The Trial Judge’s Ruling**

Fleishell moved for judgment on contributory negligence at the close of her case and at the close of all the evidence. Her attorney argued that there was “no evidence . . . none whatsoever, for the jury to speculate . . . that [she] was negligent.” Plaintiff’s counsel argued that because Fleishell was traveling in her lane, was not speeding, had the right of way, and “didn’t have a chance to avoid [the] accident,” no reasonable juror could find that she was negligent.

Howard’s attorney responded that Fleishell had a duty to reduce her speed and use caution as she approached an intersection governed by a flashing yellow light. Howard’s counsel maintained that because there was evidence from which a reasonable juror could find that Fleishell did not exercise any caution upon approaching and entering the intersection and may not have even seen the flashing yellow light, whether contributory negligence existed was a fact issue for the jury.

The court ruled as follows:

[I]n the deposition we heard, that she didn’t know that there was a flashing light, and she wasn’t sure if there was a traffic control device, the light does require caution, it tells you there is an intersection. Also, the statute requires, when you pass on the right you do so exercising caution and can do so when it’s safe.

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<sup>1</sup> During appellee’s case, his attorney read the excerpt of Fleishell’s deposition testimony in which she testified that she could not remember if the intersection was “controlled by any type of light or stop signs[.]”

So what I've heard is, she's going down the road, she's the favored driver. But if she approaches a car, which has a blinker on, supposedly to turn left, there's no evidence she reduced speed, looked left, looked right, she just went around that car. And that, to me, tells me that the jury does have facts on which they could determine that she may be contributorily negligent.

The case was sent to the jury on a special verdict sheet. The jurors answered "Yes" to the first question, inquiring as to whether they found that Fleishell was "negligent and that her negligence caused or contributed to her own injuries?"

On February 4, 2018, the court entered judgment in favor of Howard. Three days later, Fleishell moved for JNOV. By order entered April 25, 2018, the court denied the motion.<sup>2</sup>

## II.

### STANDARD OF REVIEW

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<sup>2</sup> In his rulings denying the motions for judgment and the motion for JNOV, the trial judge, commented that summary judgment had been denied on this issue of contributory negligence by another judge. This was true. But the evidence on summary judgment was significantly more favorable to Howard, than the evidence that was considered by the jury. In his answers to interrogatories, Howard described the accident as follows: "As [Howard] inched through the intersection past the eastbound [left-turning] vehicle on Route 404, [Fleishell] swerved around said eastbound vehicle on Route 404, ignoring the flashing yellow caution light and hit [Howard's] vehicle on the front passenger side." At his deposition, Howard testified that he "eased" out into the eastbound travel lanes. The judge who denied appellant's summary judgment noted that this was evidence from which a reasonable juror could find that Fleishell executed an unsafe driving maneuver near a flashing yellow light.

At trial, in contrast, Howard explicitly rejected the suggestion that he had "inched" into the eastbound lanes of Route 404, clarifying that he had simply pulled out. He also made clear that the first time he saw Fleishell's vehicle was after he pulled into her lane and that he could not and did not see her swerve around the left turning vehicle and that prior to the point he entered the eastbound lanes he didn't believe appellant could see him.



“We review the denial of a motion for judgment and a motion for judgment notwithstanding the verdict . . . under the same appellate lens.” *Giant Food, Inc. v. Booker*, 152 Md. App. 166, 176 (2003). Both are reviewed for legal correctness. *Scapa Dryer Fabrics, Inc. v. Saville*, 418 Md. 496, 503 (2011). In so doing, “we must view the evidence and the reasonable inferences that might be drawn from the evidence in the light most favorable to [the non-moving party].” *McQuay v. Schertle*, 126 Md. App. 556, 569 (1999). “We will find error in a denial of a motion for judgment or JNOV if the evidence ‘does not rise above speculation, hypothesis, and conjecture, and does not lead to the jury’s conclusion with reasonable certainty.’” *Scapa*, 418 Md. at 503 (quoting *Scapa v. Saville*, 190 Md. App. 331, 343 (2010)).

### III.

#### DISCUSSION

“Contributory negligence is that degree of reasonable and ordinary care that a plaintiff fails to undertake in the face of an appreciable risk which cooperates with the defendant’s negligence in bringing about the plaintiff’s harm.” *Bd. of County Comm’rs v. Bell Atl.-Md., Inc.*, 346 Md. 160, 180 (1997). As this Court explained in *McQuay*:

The burden of proving all of the elements of contributory negligence is on the defense [and a]lthough a defendant’s burden of production on the issue of contributory negligence is slight, he nevertheless must offer more than a mere scintilla of evidence, . . . more than surmise, possibility, or conjecture that [plaintiff] has been guilty of negligence, to generate a jury issue.

126 Md. App. at 568-69 (citations and internal quotation marks omitted) (second alteration in original).

In the case at bar, Fleishell contends that Howard failed to meet this slight burden because, as the favored driver, she entered the intersection with the right of way and was not negligent as a matter of law. She relies upon the well-established Boulevard Rule. Under that rule, when a vehicle on an unfavored roadway attempts to cross a through highway, it ““must stop and yield the right of way to all traffic already in or which may enter the intersection during the entire time the unfavored [vehicle] encroaches upon the right of way”” of that traffic. *Grady v. Brown*, 408 Md. 182, 194 (2009) (quoting *Creaser v. Owens*, 267 Md. 238, 240 (1972)); *see also* Transp. § 21-403 (“If the driver of a vehicle approaches a through highway, the driver shall: (1) Stop at the entrance to the through highway; and (2) Yield the right-of-way to any other vehicle approaching on the through highway.”). The purpose of the Boulevard Rule is to “accelerate the flow of traffic over the through highway at the permitted speed[.]” *Dean v. Redmiles*, 280 Md. 137, 150 (1977).

Howard does not dispute the applicability of the Boulevard Rule, that Route 404 was a through highway, and that he was negligent by failing to yield the right of way to Fleishell, the favored driver, as he attempted to cross the intersection. He argues however, that Fleishell’s favored status did not relieve her from her duty to use ordinary care. In his view, there was evidence from which reasonable jurors could find that she failed to exercise sufficient caution while passing to the right of a left-turning vehicle and entering the intersection and that that was a contributing cause of the accident.

Our decision in *Jenkins v. Charles County Board of Education*, 21 Md. App. 1 (1974), is instructive. There a sand and gravel truck operated by Jenkins collided with a school bus. The school bus was under contract to the Charles County Board of Education (“the Board”). The collision occurred in the middle of an intersection controlled by flashing lights. Jenkins had been traveling southbound on Route 5, a four-lane two-way highway separated by a grass median and controlled by a flashing yellow light. The school bus was traveling westbound on Route 232, a standard two-way highway controlled by a flashing red light. There was no dispute that Jenkins was the favored driver.

After the Board settled with students and others injured in the collision, its cross-claim against Jenkins (and his employer) was tried by a jury. At the trial, the Board conceded the primary negligence of the driver of the school bus, but argued that Jenkins’s negligence was a contributing cause of the collision. The State police officer who investigated the accident testified about the structure of the intersection. The Board also introduced into evidence Jenkins’s deposition testimony.<sup>3</sup> The driver of the school bus did not testify but portions of his deposition was read to the jury. At his deposition, Jenkins testified that on the day of the accident he was driving south on Route 5, the favored highway, approaching its intersection with Route 232. He was in the rightmost southbound lane. He observed a Greyhound bus stopped on the right shoulder. The bus was located approximately 50 feet north of the intersection and had its left indicator light blinking. Believing that the Greyhound bus might try to pull onto the road in front of him, Jenkins

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<sup>3</sup> Jenkins testified at the trial, but gave only “brief personal testimony.” *Id.* at 5.

slowed down. The Greyhound bus did not pull out, however, and Jenkins continued past the bus. As he did so, he redirected his focus to the intersection and observed the school bus for the first time. It already had crossed the northbound lane of Route 5 and was in the break in the median. When he first saw the school bus, Jenkins was about 50 feet from the intersection, was traveling 35 miles per hour, and was slowing down further. The speed limit on Route 5 was 50 miles per hour. The school bus “continued to move past the median strip and across the southbound lanes of Route 5 and the vehicles collided.” *Id.* at 7.

At the close of the Board’s case, Jenkins moved for judgment, arguing that the Board had not met its burden of showing that he was negligent or that his negligence was a proximate cause of the accident. The court granted judgment in favor of Jenkins. The Board moved for *en banc* review in the circuit court. An *en banc* panel reversed the grant of the motion for judgment and remanded for a new trial. Jenkins appealed from that ruling and this Court reversed, reinstating the trial judge’s original ruling.

In so holding, we analyzed a series of decisions bearing upon the duties imposed on drivers when approaching an intersection “controlled as to one by flashing red lights and as to the other by flashing amber lights.” *Id.* We reasoned that the “existence of the red light for the one determines to a degree the caution to be exercised by the other who is confronted with the amber light.” *Id.* The driver approaching a flashing amber or yellow light “must exercise a caution commensurate with the prudence of a reasonable man – that he has not absolute right of way.” *Id.* at 7-8. Elaborating, the Court opined that when a flashing yellow light has been erected to control traffic on a favored highway, it is “not

unreasonable to find its purpose is to exact from the users of a highway a caution higher than is to be expected in the absence of such a signal.” *Id.* at 8. While the favored driver may presume that the unfavored driver “will stop in compliance with stop signs[,]” including a blinking red light, he or she may not “proceed through such an intersection oblivious to it.” *Id.*

In *State, w/o Hopkins v. Marvil Package Co.*, 202 Md. 592, 598 (1953), the Court of Appeals held that a driver traveling on a favored driveway who had an unobstructed view of the unfavored highway was not contributorily negligent as a matter of law in a collision within that intersection controlled by flashing red and yellow lights even though he testified that he had “confined his attention to the stretch of road in front of him” without scanning the intersection for traffic. Rather, the Court held that it was the unfavored driver’s failure to stop at a stop signal that was the proximate cause of the accident. *Id.* at 600.

In contrast, recovery by the favored driver was disallowed in *Harper v. Higgs*, 225 Md. 24 (1961), on the ground of contributory negligence. There, the unfavored driver stopped at a red flashing light, observed no oncoming traffic, and drove into the intersection. Once in the intersection, her engine stalled, causing her to become stuck for “five seconds or a little longer[.]” *Id.* at 30. Testimony from a passenger in the car of the favored driver established that the favored driver approached the intersection without slowing down and apparently unaware of the presence of the stalled vehicle until it was too late. The *Harper* Court reasoned that this was “one of those rare instances in which the conduct of the favored driver was properly subject to a jury’s determination of its

reasonableness and prudence under the circumstances.” *Id.* at 34. It summarized the evidence as follows:

There was evidence below which, if believed by the jury, would have permitted, without ‘nice calculations,’ a finding that the [unfavored] car stopped at the intersection as the law requires and started across when there was no through traffic to which it was required to yield the right of way, that it traversed some twenty to twenty-five feet from a standing start and stood stalled under the blinker light for an additional five or more seconds before the collision, and that all during this time [the favored driver] continued to approach at an undiminished speed without observing the road ahead and that when her passenger ‘hollered’ that the [unfavored] car would hit them, [the favored driver] did not even know another car was around and had to cry out ‘where,’ just as the two cars hit.

*Id.* at 35. The Court explained that the favored driver “had a duty, imposed by the flashing amber light, to proceed through the intersection ‘only with caution’” and that, by her own evidence, “she did not do.” *Id.* Distinguishing *Marvil*, the Court reasoned that the favored driver could not rely upon the presumption that the unfavored car would not enter the intersection because there was evidence that it already had entered the intersection and stalled. Thus, under the circumstances, the favored driver’s “complete[] inattentive[ness]” was a contributing cause of the accident. *Id.* at 36.

Returning to the facts before it, the *Jenkins* Court summarized the undisputed evidence: the Board had “offered no evidence whatever as to the movements of the school bus”; Jenkins’s testimony had provided a “full and complete explanation . . . as to why he did not earlier observe the [school bus]”; the evidence showed “that even at the point of his first observation, [Jenkins] had no basis for a belief that the [school bus] would be driven into the path of his vehicle”; and he “was entitled to assume that the right of way would be

yielded by the school bus.” 21 Md. App. at 11. Having failed to “affirmatively . . . show inattention or lack of due care” by Jenkins and having failed to provide any evidence as to the reason the school bus failed to yield the right of way, this Court held the facts did not amount to a “rare case,” like *Harper*, where contributory negligence on the part of the favored driver could be submitted to the jury. *Id.* at 12. It would have required “sheer speculation” by the jurors to find that Jenkins’s conduct contributed to the accident. *Id.*

We also are guided by the Court of Appeals’ decision in *Myers v. Bright*, 327 Md. 395 (1992). In that case, Bright was driving northbound on a four-lane highway and attempted to turn left across the two southbound lanes of traffic to enter a fast food restaurant. The leftmost southbound lane was a left-turn only lane and was blocked by a line of cars waiting to turn left. The rightmost southbound lane was a through lane. The driver of a southbound vehicle waiting to turn left motioned to Bright that he could come through the line of cars. As Bright entered the southbound through lane, however, he collided with a car driven by Myers. Myers may have been driving up to 10 miles over the speed limit when the accident occurred. The case went to trial on the issues of Bright’s primary negligence and Myers’s contributory negligence. At the close of all the evidence, the trial judge granted Myers’s motion for judgment, ruling that Bright was negligent and that Myers’s negligence, if any, was not a contributing cause of the accident. After this Court reversed, the Court of Appeals granted *certiorari* and reinstated the judgment in favor of Myers.

The Court of Appeals determined that, even if Myers was traveling at an excessive speed, her speed could not have been a proximate cause of the accident. It opined: “Bright did not see Myers, because he could not see *anyone*, regardless of whether or not they were obeying the speed limit.” *Id.* at 400 (emphasis in original). Because his view was completely obstructed by the southbound traffic waiting to turn left, he was obligated to “wait[] until his line of sight was clear before completing the turn.” *Id.* at 400-01. With respect to Myers’s speed, the Court reasoned “[i]t is important to keep in mind that the accident happened very quickly [and t]here [was] no evidence that Myers’ speed deprived her of an opportunity to take some action to avoid the collision.” *Id.* at 406. It added that if there had been some evidence that “Bright had eased his car slowly into Myers’ lane of travel and there was evidence that she could have swerved or stopped in time had she been driving at or under the speed limit, this case might have gone to the jury.” *Id.* at 408. Moreover, because Myers’ view of northbound traffic was blocked by the cars waiting to turn left from the southbound turn lane, there was no evidence she could have “spotted Bright any sooner had she been more attentive.” *Id.* at 409. Under these facts, the Court held that there was not legally sufficient evidence to create a jury question on the issue of contributory negligence and the trial court did not err by granting judgment to Myers on that issue (and on Bright’s primary negligence).

We return to the case at bar. The evidence adduced at the trial, viewed in a light most favorable to Howard, showed that Fleishell approached the intersection of Route 404 and Greenwood Road driving at or just below the speed limit and without slowing her



speed; that she may not have noticed the flashing yellow light; that the traffic in the westbound lane of Route 404 was at a standstill; that within 100 yards of the intersection, she used the right passing lane to overtake an SUV in front of her that had stopped to turn left on Greenwood Road;<sup>4</sup> and that as soon as she entered the intersection, Howard’s truck pulled out in front of her, she hit her brakes, and she collided with his vehicle. The evidence further showed that Howard stopped at the flashing red signal at the near side of the intersection, where he waited for several minutes; that he entered the intersection when a westbound driver motioned him through a small gap in the westbound traffic; that he continued to the middle of the intersection where he came to a complete stop again; that a left-turning SUV blocked his view of the second eastbound lane of traffic; that he pulled out into the eastbound lane of traffic “blind”; and that as soon as he did so, he collided with Fleishell’s vehicle.

Upon these facts, we conclude that the trial court erred by sending the issue of contributory negligence to the jury as this was not a “rare case” like *Harper* where the favored driver’s conduct was susceptible to a jury finding that it was a contributing cause of the accident. To be sure, application of the Boulevard Rule did not relieve Fleishell from the general duty to “observe that degree of ordinary care for [her] own safety which is imposed upon all men [and women].” *Dean*, 280 Md. at 148. The undisputed evidence

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<sup>4</sup> There was a dispute of fact as to whether Fleishell was traveling in the main travel lane on Route 404 or was passing a left-turning vehicle in the passing lane. At this juncture, we must resolve disputes of fact in favor of Howard, however, and thus we assume the truth of Howard’s testimony on this point.

showed, however, that Howard could not see Fleishell and she could not see him until the moment of the collision, or mere seconds before impact. There was no evidence that Fleishell was driving erratically or was speeding. Fleishell had every right to presume that Howard, as the unfavored driver, would “stop and yield the right of way to all traffic already in or which may enter the intersection during the entire time the unfavored driver encroaches upon the right of way[.]” *Grady*, 408 Md. at 194 (quoting *Creaser*, 267 Md. at 240); see also *Dunnill v. Bloomberg*, 228 Md. 230, 234 (1962) (“This court has repeatedly held that the duty of the unfavored driver to yield the right of way extends to traffic on the whole of the favored highway, and the driver on the favored highway has the right to assume that he will do so.”).

To the extent that the evidence permitted a finding that Fleishell was inattentive to the presence of the yellow flashing light, there was no evidence from which a reasonable juror could find that, had she been more attentive or cautious, she could have avoided the collision. This was the same failure of proof that existed in *Jenkins*. See *Jenkins*, 21 Md. App. at 12. By Howard’s own testimony, his view of the eastbound traffic on Route 404 was completely obstructed when he “pulled away” from his stop in the middle of the roadway, directly into the path of Fleishell’s vehicle. Thus, unlike in *Harper*, where the favored driver’s inattention was clear and caused her not to observe a stalled vehicle stuck in the intersection, here, Fleishell had no opportunity to observe Howard’s vehicle until it entered her path unexpectedly. Like in *Myers*, Howard’s obstructed view of the eastbound traffic obligated him to wait until he had a clear view before completing his traverse of the

intersection. Also like in *Myers*, Howard’s own testimony made clear that he did not inch slowly into the eastbound lanes of Route 404, but rather “pulled away” abruptly. It was his failure to yield the right of way to Fleishell that was the proximate cause of the accident. Because the jurors were required to engage in “sheer speculation” to find that Fleishell’s conduct contributed to the accident, *Jenkins*, 21 Md. App. at 12, the circuit court erred by denying her motions for judgment and for judgment notwithstanding the verdict.

**JUDGMENT OF THE CIRCUIT COURT  
FOR DORCHESTER COUNTY DENYING  
THE MOTION FOR JUDGMENT  
NOTWITHSTANDING THE VERDICT  
REVERSED. CASE REMANDED WITH  
INSTRUCTIONS TO ENTER JUDGMENT  
FOR APPELLANT ON LIABILITY AND  
SET THE MATTER IN FOR A TRIAL AS  
TO THE ISSUE OF DAMAGES ONLY.  
COSTS TO BE PAID BY APPELLEE.**