Circuit Court for Prince George's County
Case No. CAL17-38361

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1208

September Term, 2019

JOSEPH HEID, ET AL.

v.

SAMMIE JOHNSON, JR., ET AL.

Graeff,
Arthur,
Shaw Geter,

JJ.

Opinion by Arthur, J.

Filed: April 21, 2021

The parties to this negligence action were involved in a multi-vehicle collision that resulted in permanent injuries. This appeal arises from the court's denial of the defendants' post-judgment motions and from a single evidentiary ruling at trial. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This case involves a collision that occurred on January 21, 2016, at approximately 10:30 p.m., on Interstate 295, the Baltimore-Washington Parkway. Many of the essential facts are not in dispute.

Just before the collision, appellee Sammie Johnson and appellants Angela Paylor and Joseph Heid were driving single file in the left lane. Mr. Johnson was in the front, Ms. Paylor was driving behind Mr. Johnson, and Mr. Heid was driving immediately behind Ms. Paylor.

The vehicles in front of Mr. Johnson came to a stop, and Mr. Johnson brought his car to a stop to avoid hitting them. Ms. Paylor collided into the rear of Mr. Johnson's car. Mr. Heid then collided into Ms. Paylor's car, pushing her into Mr. Johnson's car a second time. The second impact from Ms. Paylor's car caused Mr. Johnson's car to strike the vehicle in front of his.

The parties dispute whether Ms. Paylor and Mr. Heid could, in the exercise of due care, have stopped in time to avoid hitting Mr. Johnson's car. They also dispute the extent of Mr. Johnson's injuries.

A. Mr. Johnson's Testimony

Mr. Johnson testified that, before the collision, a pickup truck was driving ahead

of him in the left lane. In front of Mr. Johnson in the right lane, driving next to the pickup truck, was a large flatbed tow truck. Mr. Johnson testified that he was a "safe distance" behind the traffic in front of him.

The flatbed truck began to swerve erratically. In response, the pickup truck moved to the left, away from the flatbed truck, which was encroaching into the left lane. There is no shoulder to the left of the lane.

The driver of the pickup truck applied the brakes and "gradually" came to a complete stop. When the pickup truck began to brake, Mr. Johnson applied his brakes as well. He too came to a "gradual" stop. He did not have to stop his car quickly. To his knowledge, he did not leave any skid marks or screech his tires. Although he was "fairly close" to the pickup truck when he came to a stop, he did not strike the truck.

Before Mr. Johnson could move his car, it was struck from the rear. He heard "a loud boom," and his "body was thrown toward the front of the car." The impact occurred "immediately" after he stopped.

"A few seconds" later, Mr. Johnson's car was struck again, "more forceful[ly]" than before. The impact of the second collision pushed Mr. Johnson's car into the pickup truck in front of it.

Before they could be approached and identified, the drivers of the pickup truck and the tow truck left the scene.

As a result of the collisions, the trunk of Mr. Johnson's car was forced into the backseat, and the front of the car was pushed backward. The car "buckled" like an

accordion.

B. Mr. Heid's Testimony

Mr. Heid testified that he had been driving at the speed limit and traveling a safe "three to four car lengths" behind Ms. Paylor. The flatbed or "rollback" tow truck "was four or five cars in front of him," in the left lane. The tow truck "shifted to the right and stopped abruptly," for no reason that he could discern. A truck "behind" the tow truck – apparently the pickup truck described by Mr. Johnson – "stop[ped] abruptly as well." "[O]ne or two seconds" after the tow truck stopped, Ms. Paylor's car hit the car in front of hers. "[N]ot simultaneously, but right afterwards," Mr. Heid's car hit Ms. Paylor's car. He could not avoid the collision, because there was no shoulder on the left and there was traffic on the right.

C. Ms. Paylor

Although an attorney appeared on Ms. Paylor's behalf and mounted a defense, she did not attend the trial. Nor did she answer interrogatories or appear at her deposition.

D. Mr. Johnson's Injuries

Mr. Johnson was taken to the hospital by ambulance from the scene of the accident. He testified to the nature and extent of the injuries he suffered, including constant back pain, infrequent neck pain, and migraines. According to Mr. Johnson, his back "always" hurt and still hurt at the time of trial.

Mr. Johnson testified that his injuries made it difficult for him to work as a software programmer. He said that his injuries and constant pain caused him to have trouble sleeping, prevented him from functioning normally, and changed his quality of

life. Hoping to resolve some of the issues, Mr. Johnson received facet injections in his back and underwent a rhizotomy.[1]

Mr. Johnson's orthopedic surgeon testified that he diagnosed Mr. Johnson with "a cervical and lumbar strain as a result of his motor vehicle accident." In his opinion, the injury to Johnson's lower back was permanent.

Mr. Johnson testified that he had started experiencing "debilitating" migraine headaches two years after the accident. When he has a migraine, he said, he cannot function, get out of bed, or stand the sight of light. Mr. Johnson's treating neurologist testified that, in her opinion, the migraines were caused by the accident.

Before trial, Mr. Heid's medical expert examined Mr. Johnson and reviewed his medical records. Mr. Johnson's records indicate that he injured his knee playing basketball two months after the accident. The expert opined that Mr. Johnson's "neck and back must have been in pretty good shape to be able to run the basketball court." Mr. Johnson admitted that he has tried to play basketball because he wants his "old life back," but he denied that he was able to play "full court" basketball.

E. Motions for Judgment

At the close of Mr. Johnson's case, Mr. Heid and Ms. Paylor moved for judgment as a matter of law. Mr. Heid argued that there was no evidence that he was speeding, following too closely, or otherwise negligent. Ms. Paylor echoed Mr. Heid's arguments.

[1] "Rhizotomy is a surgical procedure to sever nerve roots in the spinal cord. The procedure effectively relieves chronic back pain and muscle spasms. For spinal joint pain, a facet rhizotomy may provide lasting low back pain relief by disabling the sensory nerve at the facet joint." https://perma.cc/TU3T-KUEX.

The court denied the motions.

At the close of all of the evidence, Ms. Paylor and Mr. Heid renewed their motions for judgment on the same grounds as previously stated. The court denied the motions again.

F. Objection to and Withdrawal of Question About Drugs or Alcohol

During Mr. Johnson's direct examination, he was asked whether Mr. Heid "appear[ed]" to be "under the influence of any drugs or alcohol?" Mr. Heid's counsel objected, and the following bench conference ensued:

> [COUNSEL FOR MR. HEID]: Drugs or alcohol is [sic] not an issue in this case and never has been.
>
> [COUNSEL FOR MR. JOHNSON]: That's why I'm cleaning it up.
>
> THE COURT: I'm overruling the objection.

When counsel returned to the trial tables and the proceedings resumed, the following exchange occurred:

> [COUNSEL FOR MR. JOHNSON]: I'll withdraw the question.
>
> [COUNSEL FOR MR. HEID]: No. Now I'd ask that he answer the question. The question was inappropriate, but now that it's been asked, he can answer it.
>
> [COUNSEL FOR MR. JOHNSON]: I don't think the objection was sustained, so I disagree with that.
>
> THE COURT: He has a right to withdraw the question, though, doesn't he?
>
> [COUNSEL FOR MR. HEID]: Fine.

> [COUNSEL FOR MR. JOHNSON]: Did you observe anything erratic or unusual about Mr. Heid?
>
> [MR. JOHNSON]: No. He seemed cautious and worried, but nothing out of the ordinary.
>
> [COUNSEL FOR MR. JOHNSON]: Thank you. He was a perfect gentleman?
>
> [MR. JOHNSON]: Yes.

G. Verdict

After denying the motions for judgment, the court submitted the case to the jury. The jury found that Ms. Paylor and Mr. Heid were negligent and that their negligence was the proximate cause of Mr. Johnson's injuries. The jury awarded Mr. Johnson $34,000 for medical expenses, $10,084 for lost income, and $500,000 in noneconomic damages.

H. Post-Judgment Motions

Mr. Heid and Ms. Paylor filed motions for judgment notwithstanding the verdict, or in the alternative, motions for a new trial and for remittitur. In support of his motion, Mr. Heid argued that "reasonable minds could not differ that the evidence did not prove that the Defendant Heid was negligent and that his negligence was not a proximate cause of the complained of accident." (Emphasis in original.) Mr. Heid also argued that the jury's award was "contrary to the evidence," "arbitrary and capricious," and "excessive," and that it "rises to the level of 'shocking the conscience.'"

Ms. Paylor's motion echoed Mr. Heid's arguments and added that the jury award "was based on sympathy and prejudice for [Mr. Johnson] and prejudice against [Ms.

Paylor]."

The court denied the motions. Ms. Paylor and Mr. Heid appealed.[2]

QUESTIONS PRESENTED

Mr. Heid and Ms. Paylor present several related questions, which we have rephrased:

1. Did the circuit court err in denying the motions for judgment and for judgment notwithstanding the verdict?

2. Did the circuit court abuse its discretion in denying the motions for a new trial and for remittitur?

3. Did the circuit court abuse its discretion in overruling Mr. Heid's objection to Mr. Johnson's counsel's question concerning drugs or alcohol and permitting counsel to withdraw the question?[3]

[2] In addition to the claims against Mr. Heid and Ms. Paylor, Mr. Johnson asserted a claim against GEICO, his uninsured or underinsured motorist carrier. The claim against GEICO was contingent on findings that neither Mr. Heid nor Ms. Paylor were negligent and that the proximate cause of Mr. Johnson's injuries was the negligence of one or both of the "phantom drivers" (the tow truck and the pickup truck) who stopped in front of him. The jury verdict against Mr. Heid and Ms. Paylor eliminated any possibility of GEICO's liability, but the court did not enter judgment in GEICO's favor. Meanwhile, Mr. Heid and Ms. Paylor noted their appeals even though the absence of a judgment as to GEICO meant that the court had not yet entered a final judgment. *See* Md. Rule 2-602(a). On March 13, 2020, this Court granted GEICO's motion to remand the case, so that the circuit court could make its decisions final and appealable by entering a judgment regarding GEICO. On remand, however, the circuit court did not enter a judgment regarding GEICO. Consequently, on October 2, 2020, this Court remanded the case again, on GEICO's motion, with directions to enter judgment on the claims involving GEICO. On the second remand, the court entered judgment in GEICO's favor on January 22, 2021. Only then did the judgment become final and appealable. Mr. Heid and Ms. Paylor, however, were not required to note a second appeal, because the order of October 2, 2020, decreed that their prior (premature) notices of appeal would relate forward to the entry of the final judgment.

[3] Mr. Heid formulated his questions as follows:

I. Did the trial court abuse its discretion denying Heid's Motion for Directed Verdict as the was insufficient evidence to find Heid was negligent as no evidence was introduced establishing that he had a reasonable opportunity and time to react in the face of an unforeseeable emergency?

II. Did the trial court abuse its discretion by denying Heid's Motion for Remittur [sic] where the jury's verdict of $544,084.00 is excessive and unconscionable given that Johnson was awarded $44,084.00 in compensatory damages?

III. Did the trial court abuse its discretion by permitting Johnson's counsel to ask his client for an opinion as to whether Heid was under the influence of drugs and alcohol despite a lack of evidence supporting such a conclusion and then withdraw the question without an answer, thereby creating a prejudicial inference against Heid?

Ms. Paylor formulated her questions as follows:

I. Did the trial judge commit error in failing to grant either of the Motions of Defendant, Angela Paylor, for Judgment made at the close of Plaintiff's case and again at the close of all of the evidence or in failing to grant the Motion of the Defendant, Angela Paylor, for Judgment Notwithstanding the Verdict filed subsequent to the jury's verdict due to the lack of any credible evidence presented at trial to support a finding of negligence on the part of Angela Paylor in the operation of her motor vehicle?

II. Alternatively, did the trial judge commit error in abusing her discretion by failing to grant the Motion of Defendant, Angela Paylor, for New Trial and/or Remittitur in view of the fact that the amount of the jury's award of $544,0484 that included $500,000 for Plaintiff's claimed non-economic damages was contrary to the evidence, grossly excessive and was [sic] likely the result of sympathy and prejudice for the Plaintiff and prejudice against one or both Defendants?

III. Alternatively, did the trial judge commit error in abusing her discretion by failing to at least reduce the jury's award to an amount not deemed to be excessive so as to allow Plaintiff the alternative option of accepting a remittitur in an amount not deemed to be excessive?

DISCUSSION

I. Motions for Judgment and Judgment Notwithstanding the Verdict

At the conclusion of Mr. Johnson's case, Ms. Paylor and Mr. Heid moved for judgment in their favor. At the close of all of the evidence, Ms. Paylor and Mr. Heid moved for judgment again. After the reading of the jury's verdict, Ms. Paylor and Mr. Heid moved for judgment notwithstanding the verdict. The court denied all of their motions.

Ms. Paylor and Mr. Heid contend that Mr. Johnson did not introduce legally sufficient evidence to create any fact question for the jury and, therefore, the court erred in not granting a judgment in their favor as a matter of law. We disagree.

A. Standard of Review

In reviewing the denial of a motion for judgment, this Court "perform[s] the same task as the trial court." *Prince George's Cnty. v. Morales*, 230 Md. App. 699, 711 (2016). We must affirm the denial of the motion "if there is 'any evidence, no matter how slight, that is legally sufficient to generate a jury question.'" *C & M Builders, LLC v. Strub*, 420 Md. 268, 291 (2011) (quoting *Tate v. Board of Educ. of Prince George's Cnty.*, 155 Md. App. 536, 544-45 (2004)); *accord Prince George's Cnty. v. Morales*, 230 Md. App. at 711. "We assume the truth of all credible evidence on the issue, and all fairly deducible inferences therefrom," and we view the evidence and those inferences "in the light most favorable to the party against whom the motion is made." *Orwick v. Moldawer*, 150 Md. App. 528, 531 (2003).

"The standard of review of a court's denial of a motion for [judgment notwithstanding the verdict] is the same as the standard of review of a court's denial of a motion for judgment at the close of the evidence, *i.e.*, whether on the evidence presented a reasonable fact-finder could find the elements of the cause of action by a preponderance of the evidence." *Univ. of Maryland Med. Sys. Corp. v. Gholston*, 203 Md. App. 321, 329 (2012). "Only where reasonable minds cannot differ in the conclusions to be drawn from the evidence, after it has been viewed in the light most favorable to the plaintiff, does the issue in question become one of law for the court and not of fact for the jury.'" *Pickett, Houlon & Berman v. Haislip*, 73 Md. App. 89, 98 (1987); *accord Elste v. ISG Sparrows Point, LLC*, 188 Md. App. 634, 648 (2009); *Giant Food, Inc. v. Booker*, 152 Md. App. 166, 177-78 (2003).

B. Negligence

"Negligence is a failure to exercise the degree of care which the circumstances reasonably require." *State ex rel. Bell v. Eastern Shore Gas and Elec. Co.*, 155 Md. 660, 663 (1928). "[E]very automobile driver must exercise toward other travelers on the highways that degree of care which a person of ordinary prudence would exercise under similar circumstances." *Brehm v. Lorenz*, 206 Md. 500, 505 (1955); *accord Baltimore Transit Co. v. Prinz*, 215 Md. 398, 403 (1958).

Under Maryland law, "[t]he driver of a motor vehicle may not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the other vehicle and of the traffic on and the condition of the highway." Md. Code

(1977, 2012 Repl. Vol.), § 21-310(a) of the Transportation Article. In addition, § 21-801(b) of the Transportation Article provides that:

> At all times, the driver of a vehicle on a highway shall control the speed of the vehicle as necessary to avoid colliding with any person or any vehicle or other conveyance that, in compliance with legal requirements and the duty of all persons to use due care, is on or entering the highway.

The violation of a statute is evidence of negligence if the statute, like the rules of the road in the Transportation Article, is designed to protect a class of persons that include the plaintiff and the violation was the proximate cause of the accident. *See, e.g.*, *Robb v. Wancowicz*, 119 Md. App. 531, 543 (1998).

In the case of rear-end collisions, "the degree of care incumbent upon the rear driver to avoid collision with the front vehicle is not susceptible of precise formulation; it must depend upon the facts and circumstances of each particular situation." *Herbert v. Klisenbauer*, 12 Md. App. 135, 139 (1971); *see also Baltimore Transit Co. v. Prinz*, 215 Md. at 404 ("what precautions the driver of the rear car must take to avoid colliding with a car which slows in front of him[] cannot be formulated into a precise rule, but depend upon the facts and circumstances of each case"); *Brehm v. Lorenz*, 206 Md. at 505 ("[j]ust how near the driver of an automobile may follow another automobile and still exercise ordinary care depends upon the facts and circumstances of the case"); *Sieland v. Gallo*, 194 Md. 282, 287 (1950) ("how closely one automobile should follow another depends upon the circumstances of each case, namely, the speed of such vehicles, the amount of traffic, and the condition of the highway").

When a rear-end collision occurs after the driver of the lead vehicle comes to "a sudden stop because of some emergency, without giving any warning to a driver following at a reasonable distance, 'there is no presumption that the rear driver was negligent unless [the rear driver] had the chance to stop after the necessity of stopping was apparent.'" *Herbert v. Klinsenbauer*, 12 Md. App. at 139 (quoting *Brehm v. Lorenz*, 206 Md. at 509). "[S]ince the happening of the accident does not of itself constitute negligence," "the burden of proof is on the plaintiff to show that the defendant was guilty of negligence which directly contributed to the accident." *Brehm v. Lorenz*, 206 Md. at 506.

On the other hand, when the lead driver comes to a stop because another driver has violated the rules of the road, "the driver of the rear car is not relieved of [the] duty to the forward driver to exercise that degree of care which a person of ordinary prudence would exercise under similar conditions." *Herbert v. Klinsenbauer*, 12 Md. App. at 139. "Nor does the existence of the emergency created by the intruding vehicle relieve the driver of the rear vehicle of his duty to maintain a safe distance between vehicles and to keep his automobile well in hand to avoid doing injury to the forward vehicle, so long as the driver is proceeding in accordance with his rights." *Id*.

"The question whether the following vehicle involved in a rear-end collision neglected to use due care is ordinarily for the jury to decide." *Id*.; *accord Baltimore Transit Co. v. Prinz*, 215 Md. at 404 (in cases involving rear-end collisions, "the questions of negligence and due care are generally left to the jury to decide"). "'Only in exceptional cases, where it is clear . . . that reasonable minds would not differ with regard

to the facts, will the question of negligence pass from the realm of fact to that of law.'" *Herbert v. Klinsenbauer*, 12 Md. App. at 139-40 (alteration in original) (quoting *Altenburg v. Sears*, 249 Md. 298, 304 (1968)).

C. Mr. Johnson Created a Jury Question

In this case, reasonable minds could differ as to whether Ms. Paylor and Mr. Heid were negligent. This is not one of those "exceptional cases" in which it would be appropriate to take the issue of negligence away from the jury.

Mr. Johnson testified that the pickup truck came to a gradual stop and that he too came to a gradual stop without hitting the truck. He did not stop quickly, he did not skid, and he did not lock up his brakes. Almost immediately after he came to a stop, Ms. Paylor smashed her car into his. Almost immediately thereafter, Mr. Heid smashed his car into Ms. Paylor's, driving her car again into Mr. Johnson's and his into the pickup truck. The damage to the front and rear of Mr. Johnson's car was considerable. In these circumstances, where Mr. Johnson was able to come to a gradual stop, but Ms. Paylor and Mr. Heid were not, a jury could reasonably infer that they were unable to avoid the collision because they were following too closely, or were traveling too fast, or both.

According to Mr. Heid, Mr. Johnson did not testify that Ms. Paylor or Mr. Heid were following too closely or speeding. He cites Mr. Johnson's statement, on cross-examination, that he did not notice that they were tailgating him. That testimony does not preclude the jury from finding that Ms. Paylor or Mr. Heid failed to maintain a proper distance or failed to control their speed: there were other bases upon which to reach that conclusion, including Ms. Paylor's and Mr. Heid's inability to stop despite Mr. Johnson's

"gradual" stop and the force of the collisions that occurred almost immediately after Mr. Johnson came to a stop.

Mr. Heid and Ms. Paylor rely prominently on cases such as *Brehm v. Lorenz* and *Traish v. Hasan*, 245 Md. 489 (1967), in which the driver of the rear car was excused from liability in a rear-end collision when the lead driver stopped suddenly because of an emergency. Mr. Heid and Ms. Paylor fail to recognize that those cases simply do not apply if we credit Mr. Johnson's testimony, as we must. Mr. Johnson testified that he did not stop suddenly. Instead, he repeatedly testified that he stopped "gradually" (as did the pickup truck in front of him). Moreover, he denied that he skidded or locked up his brakes. Viewing these facts in the light most favorable to Mr. Johnson, the jury was not required to conclude that the collision occurred because of a sudden emergency. Similarly, the jury was not required to conclude that Ms. Paylor and Mr. Heid were unable to avoid the collision despite the exercise of due care.

II. Motions for a New Trial and for Remittitur

In addition to their motions for judgment notwithstanding the verdict, Mr. Heid and Ms. Paylor moved for a new trial, or in the alternative, for remittitur. The court denied their motions.

On appeal, Ms. Paylor argues that the court abused its discretion in declining to order a new trial and in declining to order a remittitur (i.e., declining to order a new trial unless Mr. Johnson accepted a reduction in the jury verdict). Mr. Heid argues that the court abused its discretion in declining to order a remittitur. Both complain that the verdict was excessive.

"The standard to be applied by a trial judge in determining whether a new trial should be granted on the ground of excessiveness of the verdict has been variously stated as whether the verdict is 'grossly excessive,' or 'shocks the conscience of the court,' or is 'inordinate' or 'outrageously excessive,' or even simply 'excessive.'" *Hebron Vol. Fire Dep't, Inc. v. Whitelock*, 166 Md. App. 619, 628 (2006) (quoting *Banegura v. Taylor*, 312 Md. 609, 624 (1988)). "Both the granting of a remittitur or the intertwined awarding of a new trial based on the alleged excessiveness of the verdict for economic loss are matters entrusted to the wide discretion of the trial judge." *John Crane, Inc. v. Puller*, 169 Md. App. 1, 52 (2006).

"Because the exercise of discretion under these circumstances depends so heavily upon the unique opportunity the trial judge has to closely observe the entire trial, complete with nuances, inflections, and impressions never to be gained from a cold record, it is a discretion that will rarely, if ever, be disturbed on appeal." *Buck v. Cam's Broadloom Rugs, Inc.*, 328 Md. 51, 59 (1992). We know of no case where a Maryland appellate court "'has ever disturbed the exercise of the lower court's discretion in denying a motion for [a] new trial because of the inadequacy or excessiveness of [compensatory] damages.'" *Banegura v. Taylor*, 312 Md. at 624 (quoting *Kirkpatrick v. Zimmerman*, 257 Md. 215, 218 (1970)); *accord Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420, 449 (1992); *Owens-Illinois, Inc. v. Hunter*, 162 Md. App. 385, 415-16 (2005). The trial judge's discretion is "virtually boundless." *John Crane, Inc. v. Puller*, 169 Md. App. at 52.

Here, the court heard all the evidence in the case. It heard the conflicting testimony about how the accident occurred, the testimony of Mr. Johnson and his doctors regarding the nature and extent of the alleged injuries, and the testimony of the opposing expert disputing the extent of Mr. Johnson's injuries. The court had a first-hand opportunity to evaluate the impact of the evidence. The court also had the opportunity to bring to bear its knowledge of the range of jury verdicts in cases like this in the community in which it sits.

Had we been in the trial judge's position, we may (or may not) have reached a different conclusion about whether a new trial was warranted or whether the jury verdict should be reduced to some extent. But it is not our job to second-guess the trial court's discretionary decision. We perceive no abuse of the court's virtually boundless discretion.

III. Mr. Johnson's Question Regarding Drugs and Alcohol

Mr. Heid contends that the court abused its discretion in overruling his objection to one question posed by Mr. Johnson's counsel to Mr. Johnson: "[D]id he" – Mr. Heid – "appear under the influence of any drugs or alcohol?" Mr. Heid argues that the question resulted in the "improper injection of alleged drug or alcohol use" into the case. Although he complains that the court should not have allowed the question at all, Mr. Heid goes on to argue that, once the court overruled his objection, it should have required Mr. Johnson to answer the question and should not have allowed his counsel to withdraw it.

As Mr. Heid acknowledges in the formulation of the question presented, we generally review a circuit court's evidentiary decisions for abuse of discretion. *See*, *e.g.*, *Walter v. State*, 239 Md. App. 168, 200 (2018). An abuse of discretion is said to occur when the court's decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *North v. North*, 102 Md. App. 1, 14 (1994). We discern no abuse of discretion.

Citing authorities such as *Duffy v. State*, 151 Md. 456, 469 (1926), Mr. Heid asserts that in some circumstances a question may amount to an accusation that is likely to create prejudice in the minds of the jurors. In the abstract, the assertion is unquestionably correct. Nonetheless, the trial judge was in a far better position than we are to evaluate the impact, if any, of this specific question on this specific jury. From the cold record before us, we have no tangible basis to conclude that the court abused its discretion in overruling an objection to a single question about whether a person who was involved in a rear-end collision appeared to be under the influence of drugs or alcohol. For all the judge herself knew when the question was posed, the answer might have been, yes.

In advocating for a contrary conclusion, Mr. Heid cites *Hendrix v. Burns*, 205 Md. App. 1 (2012). In that motor tort case, this Court affirmed the circuit court's decision to exclude evidence of a defendant's intoxication where liability was conceded and the sole issue was the amount of damages. *Id.* at 36-37. *Hendrix* does not support the proposition that a court abuses its discretion, in a case in which liability is not conceded, when it

overrules an objection to a question about whether a person who was involved in a rear-end collision appeared to be under the influence of drugs or alcohol.

Nor can we conclude, in the circumstances of this case, that the court abused its discretion in permitting Mr. Johnson's counsel to withdraw the objectionable question and not requiring Mr. Johnson to answer it. After counsel withdrew the question, he immediately posed two questions that dissipated any arguable suggestion that Mr. Heid was impaired or intoxicated at the time of the collision. In the first question, counsel asked whether Mr. Johnson "observe[d] anything erratic or unusual about Mr. Heid," and Mr. Johnson responded, "No. He seemed cautious and worried, but nothing out of the ordinary." In the second question, counsel asked whether Mr. Heid was "a perfect gentleman," and Mr. Johnson responded, "Yes." In these circumstances, it seems obvious that, had the court not allowed Mr. Johnson's counsel to withdraw the question about whether Mr. Heid "appear[ed]" to be "under the influence of any drugs or alcohol," Mr. Johnson's answer would have been, "No, he did not."[4]

In any event, if Mr. Heid were still concerned about any unfavorable impression that the unanswered question may have left on the jury, there was nothing to prevent him from asking that very question when he had the opportunity to cross-examine Mr. Johnson. In these circumstances, we have little difficulty rejecting Mr. Heid's contention

[4] In the exchange with the court, Mr. Heid seems to have agreed that Mr. Johnson's counsel could withdraw the question: when the court asked whether Mr. Johnson "has a right to withdraw the question," Mr. Heid's counsel responded, "Fine." In view of that response, one could argue that Mr. Heid has waived any objection to the court's decision to permit Mr. Heid to withdraw the question. Mr. Johnson does not, however, make any such argument. So we do not consider it.

that the judge's rulings prevented him "from being fairly and accurately judged by the jury."

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.