

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 00219

September Term, 2016

MAX ARTHUR BLOOM

v.

PRISCILLA NASH ADLER

Meredith,
Friedman,
Pierson, W. Michel
(Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: July 11, 2017

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.

This appeal arises out of a traffic accident that occurred in Annapolis, Maryland, on January 29, 2012. Max Arthur Bloom (“Bloom”), appellant, was employed as a delivery person by the sandwich chain Jimmy John’s, and was in the process of making a delivery via bicycle when he collided with a vehicle being driven by Priscilla Nash Adler (“Adler”), appellee. As a result of the collision, Bloom suffered injuries to his head, face, neck, ear, and knee. Bloom sued Adler in the Circuit Court for Anne Arundel County, alleging that Adler’s negligence caused his injuries. At trial, the circuit court permitted Adler’s counsel to ask Bloom whether he was wearing a helmet when the accident occurred. Bloom had not been wearing a helmet. The jury was subsequently instructed, over objection from Bloom, regarding the defense of contributory negligence. Adler’s attorney argued that Bloom was contributorily negligent because he attempted to pass Adler’s vehicle on the left side and rode his bicycle into the left rear side window of Adler’s vehicle. The jury returned a verdict finding that both Adler and Bloom had been negligent. After Bloom’s motion for a new trial was denied, this appeal followed.

QUESTIONS PRESENTED

Bloom presents two questions for our review:

1. Whether the court below erred in allowing evidence before the jury that the plaintiff was not wearing a helmet while operating a bicycle at the time of the collision in this matter.
2. Whether the court below erred in allowing the issue of contributory negligence to go to the jury.

For the following reasons, we will affirm the judgment of the Circuit Court for Anne Arundel County.

FACTUAL & PROCEDURAL BACKGROUND

On January 29, 2012, Bloom was employed as a delivery person by Jimmy John's, a nationally operating sandwich shop chain. As part of his employment at the Jimmy John's shop on Main Street in Annapolis, Bloom rode a bicycle from Jimmy John's to various locations to deliver customers' orders.

At trial, Bloom testified that, on January 29, 2012, he was traveling from Jimmy John's to Gate 1 at the United States Naval Academy to make a delivery. Bloom testified that he turned from Randall Street onto Dock Street, and was proceeding in a southeasterly direction on Dock Street when the accident occurred. Bloom and Adler gave slightly different descriptions of the accident.

Bloom described the accident as follows:

Uh, well, from the time I turned off of Randell onto Dock Street, I continued my path of, you know, the normal delivery that I had done a few times that day. And I'm -- I was riding my bike down Dock Street on the right side of the road with the cars travelling that way because of the nature of the parking area there, there is one lane that goes towards the water and another lane that goes away from the water. And you have to circle around a median where there's parking on both sides. It's kind of a confusing situation if you're not familiar with the area.

So right before the split, as I'm approaching the split where the median, where you can park in the middle is -- there are -- I'm not sure if there was just the minivan or a line of cars. I'm assuming there was a line because it was a very busy day. But as I'm approaching the median where it splits on the right side of the road to the left side of the cars, I noticed a vehicle pull in front of my path -- the path of my bike. And in that split second of realizing, putting my brakes on, skidding, hitting [Adler's] window, that was all less than a second, of like a fraction of a second.

Bloom additionally testified regarding the lane markings on the road where the accident occurred:

As you can see, there's -- this picture was taken on kind of a cloudy day or gloomy day, but this yellow line then splits here (indicating) and turns into two double yellow lines and goes on either side of this median where there's then parking. And in between these two double yellow lines, there's also yellow diagonal lines that connect the sets of double yellow lines.

Bloom further explained that, as he approached Adler's mini-van, it appeared to be either stopped or moving very slowly, and, as a consequence, Bloom intended to pass the van. Bloom testified that Adler's van was ten feet in front of him when it began to turn to the left, resulting in Bloom colliding with the side of the vehicle, hitting his head on the rear driver's side window. Adler's van was "straddling" the yellow lines in the center of Dock Street at the time of the collision. As a result of the accident, Bloom suffered injuries to his face, head, neck, ear, and knee.

On cross-examination, Bloom was asked about his attire on the day of the accident, and the following colloquy ensued:

[COUNSEL FOR ADLER]: Now, when you were at work at Jimmy John's that day, you were dressed how?

[BLOOM]: Uh, it was a colder day, so I had a jacket on, it was a pull-over jacket, and some khakis, which was work uniform.

[COUNSEL FOR ADLER]: Did you have a helmet?

[BLOOM]: No.

[COUNSEL FOR BLOOM]: Objection. Relevance. It's not a legal requirement.

THE COURT: I think he's asking how he was dressed.

[COUNSEL FOR ADLER]: Right.

THE COURT: I'm going -- I'm going to overrule the objection.

[COUNSEL FOR ADLER]: He had a -- he didn't have a helmet. Okay.

(Emphasis added.) Bloom's bike helmet, or lack thereof, was never mentioned again at any other point during trial.

Bloom also gave the following testimony on cross-examination:

[COUNSEL FOR ADLER]: Okay. You -- when you got to a point where you were aware of [Adler's] vehicle, you thought she was either stopped or moving slowly, correct?

[BLOOM]: Right.

Q: Going in the same direction that you were going?

A: Right.

Q: And it was at that point that you made a decision that you were going to pass her on her left.

A: Right.

Q: Okay. And that point, the roadway, Dock Street, was divided by a double yellow line.

A: Right.

Q: Okay. So you indicated that for whatever reason you decided you were going to pass her on the left in an area where there was a double yellow line, and you proceeded to do so, is that correct?

A: Where there was a double yellow line to my left, yes.

Q: Yes, yes.

A: Yes, sir.

Adler described the collision slightly differently. According to Adler, she was driving her Chrysler mini-van on Dock Street toward Spa Creek, intending to park as close as possible to Stevens Hardware store. The hardware store was located on the left side of Dock Street, *i.e.*, the opposite side from Adler's travel lane. Adler testified that, as she approached the hardware store, she saw a parking space open up on the hardware store's side of Dock Street, and she stopped and turned on her left turn signal. Adler then began to turn but stopped to ensure that no traffic was coming toward her from the opposite direction. Adler estimated that she was in this partially turned position for "about 10 seconds when smash, crash," Bloom collided with her vehicle. Adler testified that she never saw Bloom approach her vehicle from behind.

The accident was also described by Samantha Buzaid, a witness called by Bloom. Ms. Buzaid testified:

So, I walked right out of Starbucks right here, and was about to come to where the cars are, and the minivan, which was right about here, was -- put on a signal, and was about to make a left hand turn, which was -- would be a U -- turn over the -- the line here, while the man on the bicycle was coming down the street.

At that time, the car had started to turn and the minivan . . .

Okay. And the minivan and bicycle collided. So, the bicyclist hit the back left window on the minivan. And that's when the man on the bicycle shattered the window with his head.

Ms. Buzaid further testified that Bloom was about "two cars' lengths" away from Adler's van when Adler began to turn, and that Adler "turned left on a -- double [yellow] line." Ms. Buzaid described Adler's turn as a "U-turn."

At the close of evidence, the circuit court gave Adler's proposed instruction regarding contributory negligence, over Bloom's objection, and told the jury:

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Contributory Negligence

A plaintiff cannot recover if the plaintiff's negligence is a cause of the injury. The defendant has the burden of proving by a preponderance of evidence that the plaintiff's negligence was a cause of the plaintiff's injury.

The court instructed the jury that “[t]he violation of a statute, which is a cause of the plaintiff's injuries or damages, is evidence of negligence.” The court also instructed the jury regarding several provisions of the Transportation Article, including:

Md. Code Transpor[t]ation Art., §21-1205

Md. Code Transpor[t]ation Art., §21-1205, provides in part that each person operating a bicycle or a motor scooter at a speed less than the speed of traffic at the time and place and under the conditions then existing on a roadway shall ride as near to the right side of the roadway as practicable, except when: (1) making or attempting to make a left turn; (2) operating on a one-way street; (3) passing a stopped or slower moving vehicle; (4) avoiding pedestrians or road hazards; (5) the right-hand lane is a right turn only lane; or (6) operating in a lane that is too narrow for a bicycle or motor scooter and other vehicle to travel safely side by side within the lane.

The statute also provides that each person operating a bicycle or a motor scooter on a roadway shall exercise due care when passing [a] vehicle.

Md. Code Transportation Art., § 21-1202

Md. Code Transportation Art., § 21-1202, provides in part that every person operating a bicycle or a motor scooter in a public bicycle area has all the rights granted to and is subject to all the duties required of the driver of the vehicle by this title, including the duties set forth in 21-504 of this title except: (1) as otherwise provided in the subtitle; (2) for those provisions of this title that by their very nature cannot apply.

During closing arguments, Adler's counsel argued, in part, that Bloom had been contributorily negligent in failing to exercise due care when he attempted to pass Adler's mini-van.

The jury returned a verdict answering "Yes" to each of the following questions:

1. Do you find that the Defendant, Priscilla Adler, was negligent and that her negligence was a proximate cause of the accident which occurred on January 29, 2012?
2. Do you find that the plaintiff, Max Bloom, was contributorily negligent?

Following entry of judgment in favor of Adler, Bloom filed a motion for a new trial, which was denied by the circuit court. This appeal followed.

DISCUSSION

I. Bloom's Failure to Wear a Helmet

Bloom contends that the circuit court committed reversible error by overruling his objection to defense counsel's question asking Bloom whether he was wearing a helmet while riding his bicycle on the day of the accident. According to Bloom, "[a]llowing [Adler] to cross examine [Bloom] about whether [Bloom] was wearing a helmet was grossly prejudicial to [Bloom] and should not have been admitted or even asked."

Adler contends that Bloom has failed to properly preserve for our review the issue of whether the admission of Bloom's failure to wear a helmet into evidence was unduly prejudicial. Adler additionally asserts that, if this issue is properly preserved, Bloom has failed to establish any likelihood of prejudice, and, at most, the fleeting reference to a helmet amounted to harmless error.

As a threshold matter, we must address whether Bloom has properly preserved the arguments he makes on appeal as to why the circuit court was required to sustain his objection to the question about a helmet. We have previously held that, “[i]f counsel provides the trial judge with specific grounds for an objection, the litigant may raise on appeal only those grounds actually presented to the trial judge. All other grounds for the objection, including those appearing for the first time in a party’s appellate brief, are deemed waived.” *Anderson v. Litzenberg*, 115 Md. App. 549, 569 (1997); *see also Stevenson v. State*, 222 Md. App. 118, 140–41, *cert. denied*, 443 Md. 737 (2015); *Patras v. Syphax*, 166 Md. App. 67, 80 (2005).

As noted above, the sole reference to a bike helmet at trial occurred during the following exchange near the beginning of the cross-examination of Bloom:

[COUNSEL FOR ADLER]. Now, when you were at work at Jimmy John’s that day, you were dressed how?

[BLOOM]. Uh, it was a colder day, so I had a jacket on, it was a pull-over jacket, and some khakis, which was work uniform.

Q. Did you have a helmet?

A. No.

[COUNSEL FOR BLOOM]: **Objection. Relevance. It's not a legal requirement.**

THE COURT: I think he’s asking how he was dressed.

[COUNSEL FOR ADLER]: Right.

THE COURT: I’m going -- I’m going to overrule the objection.

[COUNSEL FOR ADLER]: He had a -- he didn't have a helmet. Okay.

(Emphasis added.)

In our view, a trial judge considering Bloom's objection would have reasonably understood that he was objecting on the ground that the question of whether Bloom was wearing a helmet was irrelevant *because* Bloom was not legally required to wear a helmet when riding a bicycle. Although it is true that Bloom was not required by statute to wear a helmet, that does not compel a conclusion that it was totally irrelevant whether Bloom was wearing a helmet.

On appeal, Bloom presents an extensive analysis of *other* helmet laws that include restrictions on evidence, such as Transportation Article § 21-1306(e), which is applicable to motorcycles. But no similar restriction on evidence appears in the statute addressing bicycle helmets.¹ And, at the time Bloom objected to the question that was posed at trial,

¹ TA § 21-1207.1 provides:

Application of section

(a)(1) The provisions of this section apply:

(i) At all times while a bicycle is being operated on any highway, bicycle way, or other property open to the public or used by the public for pedestrian or vehicular traffic; and

(ii) To a person under the age of 16 who is riding on a bicycle, including a person under the age of 16 who is a passenger on a bicycle:

1. In a restraining seat attached to the bicycle; or

(continued . . .)

he did not ask the trial judge to consider whether those other statutes prohibiting evidence of not wearing a helmet support the exclusion of such evidence in a bicycle case. Consequently, we will not address the arguments Bloom presents on appeal --- but did not make during the trial --- as to why the mere mention of a helmet constitutes reversible error.

But, even if Bloom had persuaded us that the trial judge erred in overruling his objection, he has not persuaded us that the single mention of a helmet contributed to the jury's finding of contributory negligence. *See Brown v. Daniel Realty Co.*, 409 Md. 565, 595 (2009) ("[W]e will not reverse a judgment if the trial court's error was harmless. A successful proponent of error ordinarily has the additional burden of showing that the error complained of probably, as opposed to possibly, influenced the unfavorable verdict." (Citation omitted.)). At most, the trial judge's ruling on this question was harmless error if it was error at all.

(. . . continued)

2. In a trailer being towed by the bicycle

- (2) The provisions of this section do not apply to passengers in commercial bicycle rickshaws.

* * *

Helmet standards

- (c) A person to whom this section applies may not operate or ride as a passenger on a bicycle unless the person is wearing a helmet that meets or exceeds the standards of the American National Standards Institute, the Snell Memorial Foundation, or the American Society for Testing and Materials for protective headgear for use in bicycling.

II. Contributory Negligence Instruction

Bloom contends that the circuit court erred in instructing the jury on contributory negligence because, he asserts, “[t]here was no evidence that [Bloom] did not exercise due care when passing [Adler’s] vehicle.” Bloom does not cite to any caselaw, rules, or statutes in support of this contention.

“We review ‘a trial court’s refusal or giving of a jury instruction under the abuse of discretion standard.’” *Jarrett v. State*, 220 Md. App. 571, 584 (2014) (quoting *Stabb v. State*, 423 Md. 454, 465 (2011)). “‘Where the decision or order [of the trial court] is a matter of discretion it will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.’” *Id.* (quoting *Bazzle v. State*, 426 Md. 541, 549 (2012) (alteration in *Jarrett*)). “‘A requested jury instruction is applicable if the evidence is sufficient to permit a jury to find its factual predicate.’” *Id.* at 585 (quoting *Bazzle*, 426 Md. at 550–51).

We are satisfied that circuit court did not abuse its discretion by instructing the jury on contributory negligence. In reviewing whether there was sufficient evidence to support giving an instruction, we are obligated to consider all evidence in the light most favorable to the proponent of the instruction. *See, e.g., Page v. State*, 222 Md. 648, 668–69 (2015) (“This threshold is low, in that the requesting party must only produce ‘some evidence’ to support the requested instruction. Upon our review of whether there was ‘some evidence,’ we view the facts in the light most favorable to the requesting party,” (Citation

omitted.)). And a “defendant’s burden of production on the issue of contributory negligence is slight.” *McQuay v. Schertle*, 126 Md. App. 556, 568 (1999). Adler’s testimony at trial, if believed by the jury, indicated that she was stopped for roughly ten seconds, with her turn signal on, when Bloom collided with the side of her turning vehicle. Viewing that evidence in the light most favorable to Adler, it was not an abuse of discretion for the circuit court to conclude that a rational jury could reasonably find that Bloom failed to keep a proper lookout and attempted to pass Adler’s vehicle when it was not safe for him to do so. If the jury viewed the evidence in that manner, the jury could properly have found Bloom contributorily negligent. Therefore, the circuit court did not err by instructing the jury on contributory negligence.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**