Circuit Court for Baltimore City
Case No. 24-C-20-005239

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 554

September Term, 2022

MAYOR AND CITY COUNCIL OF BALTIMORE

v.

AMADIHE KENNON

Graeff,
Albright,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: February 15, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

**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.

After a traffic collision with police officer's cruiser, Amadihe Kennon, Appellee, filed a negligence suit against the Mayor and City Council of Baltimore (collectively, the "City"), Appellants, in the Circuit Court for Baltimore City.[1] After a three-day jury trial, the circuit court granted Mr. Kennon's motion for judgment on the issue of liability under Maryland Rule 2-519.[2] In so doing, the circuit court held that the officer involved in the collision was negligent and Mr. Kennon was not contributorily negligent, both as a matter of law. The case then reached the jury solely on the issue of Mr. Kennon's damages.

[1] The police officer driving the cruiser was an employee of the City acting within the scope of his employment (and without any actual malice). He also cooperated with the City in defending Mr. Kennon's action. As such, the City conceded that, if the officer was negligent, and Mr. Kennon was not contributorily negligent, the City would be liable for the officer's negligence under the Local Government Tort Claims Act (subject to the various limitations and restrictions contained within that Act). *See* Md. Code, Cts. & Jud. Proc. § 5-303. In turn, the officer would not be personally liable for his own negligence. *See* Md. Code, Cts. & Jud. Proc. § 5-302.

[2] In relevant part, Maryland Rule 2-519 provides as follows:

> **(a) Generally.** A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party, and in a jury trial at the close of all the evidence. The moving party shall state with particularity all reasons why the motion should be granted. No objection to the motion for judgment shall be necessary. A party does not waive the right to make the motion by introducing evidence during the presentation of an opposing party's case.
>
> **(b) Disposition.** When a defendant moves for judgment at the close of the evidence offered by the plaintiff in an action tried by the court, the court may proceed, as the trier of fact, to determine the facts and to render judgment against the plaintiff or may decline to render judgment until the close of all the evidence. When a motion for judgment is made under any other circumstances, the court shall consider all evidence and inferences in the light most favorable to the party against whom the motion is made.

After judgment was entered, the City noted a timely appeal, asking us to consider two questions. These we list in reverse order:

1. Did the trial court err in ruling that Officer Helman was negligent as a matter of law?

2. Did the trial court err in ruling that, as a matter of law, the jury could not find that [Mr.] Kennon was contributorily negligent?

For the reasons below, we conclude that the circuit court did not err in granting Mr. Kennon's motion for judgment as to both the officer's negligence and Mr. Kennon's lack of contributory negligence. We will affirm the circuit court's judgment.

BACKGROUND

I. The Traffic Collision

On the morning of February 5, 2019, Mr. Kennon was driving southbound on Perring Parkway near the intersection with Hillen Road in Baltimore, Maryland. The southbound direction of the parkway included three separate lanes: two dedicated travel lanes, and a third lane, where parking was authorized, that was abutted on its western side by a curb.[3] The two southbound travel lanes were to the east side of the curb lane.

Mr. Kennon was traveling southbound at approximately 35 miles per hour, which was the posted speed limit on Perring Parkway. As he was approaching the Hillen Road intersection, Mr. Kennon changed lanes to avoid traffic congestion, moving one lane to

[3] We refer to this lane as the "curb lane." Parking was authorized in the curb lane at all times of the day for all drivers. But during certain times and on certain days of the week, only drivers with a valid residential permit were allowed to park in the curb lane for longer than one hour.

the west and entering the curb lane. As was usual at that time in the morning, the curb lane did not contain any parked cars. Mr. Kennon was thus able to proceed southbound in the curb lane without reducing his speed, as he had done several times before.

As Mr. Kennon neared the intersection with Hillen Road, however, Officer Hunter Helman, who had been proceeding northbound in a police cruiser, attempted to turn west onto Hillen Road.[4] That maneuver required Officer Helman to cross all three lanes on the southbound side of the parkway, and then proceed onto Hillen Road further to the west. While Officer Helman was completing this turn (and driving roughly perpendicularly across Mr. Kennon's southbound lane), his cruiser and Mr. Kennon's vehicle collided.

There were no stop signs or traffic signals at the intersection. The weather at the time was sunny and cold. Visually, the southbound curb lane in which Mr. Kennon was driving was paved in a lighter color of asphalt than Perring Parkway's other two southbound lanes. The curb lane was also somewhat narrower than the travel lanes, though it was wide enough for vehicles to drive. There were no painted dividing lines to visually separate the curb lane from the adjacent travel lane.[5] Both Mr. Kennon and

[4] South of the intersection with Hillen Road, Perring Parkway becomes Hillen Road. As such, Officer Helman had been proceeding northbound on Hillen Road, and he was making a left turn west—across the southbound lanes of Perring Parkway—to turn onto Hillen Road. Had Officer Helman instead proceeded straight ahead through the intersection, his northbound lane of Hillen Road would have become the northbound lane of Perring Parkway.

[5] South of the intersection with Hillen Road, however, where Perring Parkway itself becomes Hillen Road, dashed lines had been painted to visually separate all three of the southbound lanes.

Officer Helman were familiar with the intersection and had driven their respective routes before. Shortly before the intersection with Hillen Road, the grade of Perring Parkway in the southbound direction is downhill. Thus, drivers on Perring Parkway southbound begin to travel down an incline before reaching Hillen Road, and the incline does not return to level until after the Hillen Road intersection.

II. Circuit Court Proceedings

A. Evidentiary Motions

At the outset of the trial, the circuit court addressed several pending motions as to evidentiary issues, including Mr. Kennon's motions *in limine* concerning his speed and contributory negligence. As to these motions, Mr. Kennon argued that there was no evidence to contradict his testimony that he was traveling the posted speed limit and that his speed did not contribute to causing the collision. In response, the City indicated that it would not challenge Mr. Kennon's testimony regarding his speed, but asserted that it would nonetheless introduce some evidence that Mr. Kennon's speed, combined with his decision to proceed in the curb lane, was negligent and contributed to causing the collision. The circuit court denied Mr. Kennon's motions, reasoning that "to the extent that this is attempting to get a ruling at this point on contributory negligence, I'm not going to do it. I'm going to hear the evidence and then decide whether an issue . . . has been generated." Mr. Kennon then asserted that there was no evidence to show that he contributed to causing the collision. In response, the circuit court reiterated that it would

first hear the evidence before deciding whether any issue could reach the jury, and that it would not do so while ruling on Mr. Kennon's motions *in limine*:

> But what I'm saying is, the evidence of the Plaintiff's speed[,] of which lane he was in, of which lane other cars were in, all of that is admissible as the circumstances of the accident. It may be admissible to show the Defendant's negligence, but whether that amounts to generating an issue of contributory negligence is not something I'm going to decide until I hear all the evidence.

B. The Evidence

Over a three-day jury trial, Mr. Kennon testified and called seven other witnesses. Of those witnesses, the only eyewitnesses to the collision were Officer Helman and Mr. Kennon himself.[6] The City did not call any witnesses. Mr. Kennon introduced several exhibits into evidence, but the majority of his exhibits were relevant only to the issue of damages. The City introduced several exhibits as well. Of those, the only exhibits relevant to an issue other than damages were photographs of the intersection where the collision occurred.[7]

Officer Helman testified that, before the accident, he was driving a Baltimore City Police Department cruiser that was owned by the City. He recalled that traffic in the curb lane of southbound Perring Parkway was flowing freely, while traffic was heavy in the other two lanes. At some point, traffic in the non-curb lanes stopped completely. Seeing a

[6] Mr. Kennon's other witnesses included his doctors, friends, and family members. Their testimony related only to the issue of Mr. Kennon's damages.

[7] The photographs introduced by the City did not depict the collision itself.

gap in the stopped cars, Office Helman began to make his turn onto Hillen Road, maneuvering his cruiser perpendicular to the flow of traffic on Perring Parkway and approaching the curb lane with the intent to cross over and complete his turn.

Before entering the curb lane, Officer Helman stopped his cruiser. He knew from his experience with the intersection that drivers on Perring Parkway sometimes used the curb lane as a travel lane in the morning, and he also remembered seeing "light traffic" in the curb lane while he was attempting to make his turn.[8] Thus, Officer Helman attempted to check for traffic before entering the curb lane, but his view was obstructed by the other vehicles on Perring Parkway, and he could not see Mr. Kennon's vehicle.[9] Despite not

[8] At different times, Officer Helman explained that "light traffic" referred to seeing "at least one" car traveling in the curb lane (aside from Mr. Kennon) while Officer Helman was waiting to make his turn, or to seeing "one or two cars" traveling in that lane.

[9] Specifically, Officer Helman testified as follows:

> [Mr. Kennon's counsel:] [A]nd you got through the first lane and then into the second lane and then you stopped, and you waited because you knew that at least one vehicle had passed through the [curb] lane and you were anticipating there may be others, correct?
>
> [Officer Helman:] Yes, sir, I stopped to make sure that I didn't see any other traffic coming through before I went in.
>
> * * *
>
> [Mr. Kennon's counsel:] [Y]ou never saw Amadihe Kennon's vehicle until you proceeded forward into that far right-hand lane of travel, correct?
>
> [Officer Helman:] Yes, I didn't see it until I made it into that lane.

having a clear view, and appreciating the danger that another vehicle might be traveling in the curb lane, Officer Helman pulled into the curb lane. He immediately saw Mr. Kennon, but Officer Helman had no time to take evasive action to avoid a collision. All that Officer Helman could do was "brace for impact."

Mr. Kennon testified that, in the time before the collision, he was proceeding at a roughly constant speed of 35 miles per hour, *i.e.*, the posted speed limit. He stated that he had maneuvered his vehicle into the curb lane about a half-mile before the intersection with Hillen Road, because the other two southbound lanes had heavier traffic. Mr. Kennon testified that, when he entered the curb lane, traffic in all three southbound lanes was moving at the same speed, and traffic was not moving more slowly in any one lane. He also recalled seeing other drivers ahead of him using the curb lane as a travel lane. He stated that, when no cars were parked in the curb lane, it was generally used as "a regular lane." By the time that Mr. Kennon reached the intersection with Hillen Road, however, the vehicles in the other two southbound lanes of Perring Parkway had stopped. Because Mr. Kennon's view was obstructed by those vehicles (just as Officer Helman's view was obstructed), Mr. Kennon could not see Officer Helman's cruiser until it entered Mr. Kennon's curb lane. Mr. Kennon testified that this occurred a "quarter second -- half second maybe before I ran into him." Mr. Kennon also said that he "probably tried to

> [Mr. Kennon's counsel:] And you weren't able to see that traffic coming in that [curb lane] because your view was obstructed by the cars stopped to your right; isn't that right?
>
> [Officer Helman:] Yes, sir.

brake" as soon as he saw Officer Helman's cruiser enter his lane, but there was little time, and he did not "know for sure" whether he was able to apply his brakes before the collision.

C. Motion for Judgment

At the conclusion of the evidence, Mr. Kennon moved for judgment on the issue of liability pursuant to Maryland Rule 2-519. He argued that, as a matter of law, the City was liable for negligence because Officer Helman negligently caused the collision, and Mr. Kennon was not contributorily negligent. The circuit court agreed, granting Mr. Kennon's motion and submitting only the issue of damages to the jury. In so doing, the circuit court summarized the undisputed evidence and concluded that Mr. Kennon had the right-of-way, Officer Helman was negligent, and Mr. Kennon was not contributorily negligent:

> [S]outhbound Perring Parkway at that point approaching the intersection with Hillen Road has sufficient room on the road for three vehicles to pass.
>
> * * *
>
> The defense is correct that the markings on the southbound roadway north of the [] intersection had an interrupted white strip between the far left [eastern] lane and the second lane . . . and that there is no road marking between the middle lane and the far right [western] or the curb lane. The evidence further shows, although I don't think it's relevant, that further down [south of the intersection] there are interrupted white lines between, you know, marking out three travel lanes.
>
> The evidence is also undisputed that the parking restriction at that particular portion of Perring Parkway north of the intersection. . . permit parking I think 24 hours a day, but between 7:00 and 9:00 limit parking to 1 hour unless the

person parking has a resident permit for that area. I infer, as no evidence otherwise, that someone with a resident permit could park for longer periods of time including for more than one hour during the 7:00 to 9:00 time period.

I find, as a matter of law, that the curb lane is a travel lane as long as there are, in fact, no cars parked there, that is, if someone were actually parked there it could not be used as a travel lane. There is no evidence that any car was parked in that stretch of Perring Parkway in the curb lane when this accident occurred. In fact, Officer [Helman's] own testimony is that at least one other car passed in that lane in front of him before the accident and Mr. Kennon's undisputed evidence is that . . . [Mr. Kennon] was in that lane traveling with no parked cars in front of him.

There's no dispute that the speed limit at that point on Perring Parkway is 35 miles per hour and Mr. Kennon's own estimate of his speed is that he was going 35 miles per hour. In favor of the defense, the jury could conclude, in fact it was admitted by Mr. Kennon, that he was traveling that fast and that he did not slow as he approached the intersection except possibly for attempting to brake . . . in the split second before the collision occurred when he saw Officer [Helman] come out.

Officer [Helman's] uncontradicted testimony is that cars in the first two lanes, that is the far left [east] and the middle lane were either stopped or proceeding very slowly with heavy traffic and he was able to enter those lanes as he started his left turn and attempted to look up the third [west] lane, the curb lane, and in fact, saw one vehicle pass, thought it was clear, entered that lane believing that it was clear but it was not and his vehicle was struck . . . when he entered that lane.

On those facts under [*Myers v. Bright*, 327 Md. 395 (1992)] and [*Peters v. Ramsay*, 273 Md. 21 (1974)], I find that, as a matter of law, Officer [Helman] was negligent. He clearly did not have the right-of-way and he had the obligation to make sure that the lane that he was crossing, the curb lane, was clear and, as a matter of law, Mr. Kennon was not contributorily negligent because his speed, even if someone might conclude, and I think a reasonable juror could conclude, that he was going faster than a reasonable person

> would go on that stretch in that traffic approaching an intersection.
>
> I think under *Myers* his speed does not become contributor[ily] negligent as a matter of law because of the requirement on Officer [Helman] to observe even a vehicle moving quickly, fast, and not to turn in front of it unless there's enough time and opportunity to do that.
>
> I think the law takes this even a step further which is to say that even if one could conclude that the curb lane was not a travel lane, as a matter of law, it's not contributorily negligent to cross into it and use it as a travel lane unless that was a cause of the accident and because Officer [Helman] could see traffic coming in that lane and was aware of the danger, his negligence in failing to see Mr. Kennon approaching, overtakes any possibility of contributory negligence on the part of Mr. Kennon.
>
> * * *
>
> All right. So we will proceed then on damages only.

We will supply additional facts as needed in our analysis.

THE PARTIES' CONTENTIONS

The City argues that the issues of Officer Helman's negligence and Mr. Kennon's contributory negligence should have been left to the jury. In support, the City asserts that there was evidence that Officer Helman was not negligent because he came to a stop and attempted to check for traffic before entering Mr. Kennon's curb lane to complete his turn. As to contributory negligence, the City argues that there was at least some evidence that Mr. Kennon's own negligence contributed to causing the collision, making that issue also for the jury. The City contends that traveling in the curb lane was illegal as a matter of law, and it notes that violations of law can be evidence of negligence. The City also

argues that Mr. Kennon was negligent by failing to slow down when approaching the intersection with Hillen Road in the circumstances here, and that there was evidence that Mr. Kennon's negligence contributed to causing the collision. The City concedes that Mr. Kennon was traveling within the posted speed limit and that his speed alone did not contribute to causing to the collision.

In response, Mr. Kennon argues that this case is controlled by established precedent holding that a left-turning driver, like Officer Helman, has a duty to check for through traffic before attempting to complete a turn, and to avoid turning if the line of sight is obstructed. Mr. Kennon also asserts that the circuit court was correct that he engaged in no illegal behavior, and that there was no evidence that any negligent behavior on his part contributed to causing the collision with Officer Helman. In support, he asserts that an excessive speed is not necessarily sufficient to take a case of contributory negligence to the jury unless there is also some evidence that the collision was in part caused by the excess speed.

STANDARD OF REVIEW

"We review a trial court's decision to grant or deny a motion for judgment *de novo*." *Steamfitters Local Union No. 602 v. Erie Ins. Exch.*, 469 Md. 704, 726 (2020). When the motion for judgment was made during a jury trial, we "consider all evidence and inferences in the light most favorable to the party against whom the motion [was] made." *See* Md. Rule 2-519(b). We then assess whether "there is any evidence, no matter how slight, that is legally sufficient to generate a jury question[.]" *Thomas v. Panco*

Mgmt. of Md., 423 Md. 387, 394 (2011) (quotations omitted). If, however, "the facts and circumstances permit but a single inference as relates to the appellate issue presented," then the issue is not for the jury. *Estate of Blair v. Austin*, 469 Md. 1, 17 (2020) (cleaned up).

DISCUSSION

I. The Circuit Court Did Not Err In Holding That Officer Helman Was Negligent As A Matter Of Law.

To prevail in a claim of negligence, the plaintiff must prove four elements: "1) the defendant owed the plaintiff a duty to a certain standard of care; 2) the defendant breached this duty; 3) actual loss or damage to the plaintiff; and 4) the defendant's breach of the duty proximately caused the loss or damage." *Landaverde v. Navarro*, 238 Md. App. 224, 248 (2018). The City focuses its arguments on the second element: whether Officer Helman breached his duty to Mr. Kennon by failing to take reasonable care in making a left turn. We do the same.

In general, "[m]otorists turning left have a duty to yield to oncoming traffic that is dangerously close." *Myers v. Bright*, 327 Md. 395, 399 (1992); *see also Freudenberger v. Copeland*, 15 Md. App. 169, 175 (1972) ("It is generally recognized that the duty imposed upon the driver making the left-hand turn is one of exercising reasonable care.").[10] This is because a left-turning driver "could reasonably expect motorists to be

[10] Maryland's "Rules of the Road," as codified in the Transportation Article, are in accord. *See* Md. Code, Transp. § 21-402(a) ("If the driver of a vehicle intends to turn to the left in an intersection or into an alley or a private road or driveway, the driver shall

coming [] in the other lane, and . . . was obliged to look carefully before proceeding across. If [the driver] could not see anything, he should have waited until his line of sight was clear before completing the turn." *Myers*, 327 Md. at 400-01.

Turning to the undisputed evidence here, Officer Helman was making a left turn across three lanes of traffic. From his knowledge of the intersection, he knew that drivers sometimes traveled in the third lane (the curb lane). Indeed, while waiting to make his turn, Officer Helman saw at least one driver aside from Mr. Kennon traveling in the curb lane. As a result, Officer Helman attempted to check for through traffic, but his view was obstructed, and he could not see into the curb lane. Nevertheless, he pulled into that lane and attempted to complete his turn. "If [Officer Helman] could not see anything, he should have waited until his line of sight was clear before completing the turn." *Myers*, 327 Md. at 400-01. That is, it is not enough that Officer Helman stopped his vehicle and attempted to check for traffic in the curb lane: he was negligent as a matter of law because he attempted to cross the curb lane while his line of sight was obstructed.[11] There

yield the right-of-way to any other vehicle that is approaching from the opposite direction and is in the intersection or so near to it as to be an immediate danger.").

[11] At oral argument, the City emphasized that Officer Helman initially testified that he "stopped to make sure that I didn't see any traffic coming through [the curb lane] before I went in." As Mr. Kennon pointed out, however, Officer Helman then clarified that even though he *attempted* to check for traffic, he did not see Mr. Kennon's vehicle until "I made it into [the curb] lane." Officer Helman further clarified that he was not "able to see . . . traffic coming in [the curb] lane because [his] view was obstructed by the cars stopped to [his] right[.]"

was no other evidence on this issue, and the circuit court did not err in holding that Officer Helman was negligent as a matter of law.

II. The Circuit Court Did Not Err In Holding That Mr. Kennon Was Not Contributorily Negligent As A Matter Of Law.

In Maryland, contributory negligence is a potential defense to a negligence action, and the defendant bears the ultimate burden of proving contributory negligence. *See Woolridge v. Abrishami*, 233 Md. App. 278, 302 (2017). "Under that standard, subject to certain exceptions and qualifications not pertinent here, when a plaintiff's failure to exercise ordinary care is a proximate cause of the plaintiff's injuries, the plaintiff is barred from recovery against the defendant." *Seaborne-Worsley v. Mintiens*, 458 Md. 555, 563 n.5 (2018); *see also Bd. of Cnty. Com'rs v. Bell Atlantic-Maryland, Inc.*, 346 Md. 160, 180 (1997) ("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.").

A. Mr. Kennon did not engage in any illegal conduct that could constitute evidence of negligence.

Generally, "a violation of a duty imposed by a 'Rules of the Road' statute is evidence of negligence[.]" *McQuay v. Schertle*, 126 Md. App. 556, 576 (1999) (cleaned up). As such, evidence of such conduct (that was a proximate cause of a collision) would be sufficient evidence of contributory negligence for the issue to reach the jury. *Id.* The City references two "Rules of the Road" in arguing that Mr. Kennon engaged in illegal conduct. In response, Mr. Kennon references a different "Rule of the Road" and contends that it expressly authorizes his conduct. We address each in turn.

The two rules cited by the City each impose an affirmative duty on motorists to obey traffic control devices. *First*, motorists generally must obey any posted traffic control devices that apply to their vehicles.[12] *See* Md. Code, Transp. § 21-201. *Second*, in roadways that are divided into multiple lanes, motorists also must obey traffic control devices that designate which lanes to use, or that prohibit lane changes. Md. Code, Transp. § 21-309(d), (e). In contrast, Mr. Kennon points to a different rule that applies in certain situations where a contrary traffic control device is *not* present. Specifically, where not otherwise prohibited, motorists are authorized to overtake and pass to the right of other vehicles when driving on "a highway with unobstructed pavement not occupied by parked vehicles and wide enough for two or more lines of vehicles moving lawfully in the same direction" when it is safe to do so.[13] Md. Code, Transp. § 21-304 (a)-(b).

In essence, the City's cited rules simply require motorists to obey any applicable devices; they do not impose any obligation on motorists absent an applicable traffic control device. The rule cited by Mr. Kennon, however, applies whenever there is no contrary traffic control device (and the highway in question contains a suitable amount of

[12] Traffic control devices include any lawfully placed "sign, signal, marking, or device" that is consistent with Maryland Vehicle Law, *see* Md. Code, Transp. § 11-101 *et seq.*, and that is placed "to regulate, warn, or guide traffic[,]" Md. Code, Transp. §§ 11-167, 11-168.

[13] There are also other situations, not relevant here, when overtaking and passing to the right is allowed. *See* Md. Code, Transp. § 21-304. "Highway" is broadly defined to include "[t]he entire width between the boundary lines of any way or thoroughfare of which any part is used by the public for vehicular travel[.]" Md. Code, Transp. § 11-127. As a multiple-lane way, Perring Parkway was a highway within the meaning of the Transportation Article. No party suggests otherwise.

"unobstructed pavement[,]" and there is not some condition that makes the maneuver unsafe). Thus, to determine whether Maryland's Rules of the Road prohibited Mr. Kennon's conduct, were silent as to his conduct, or expressly authorized his conduct, we must turn to the undisputed evidence of any existing traffic control devices.

Here, there was no evidence indicating that any traffic control device prevented Mr. Kennon from entering the curb lane or traveling within it.[14] Specifically, there were no painted lines suggesting that Mr. Kennon could not enter or travel in the curb lane, nor were there any posted signs that prohibited traveling in the curb lane. The only posted sign simply authorized parking in that lane. It did not prohibit traveling. Because both of the rules cited by the City are triggered by the *presence* of an applicable traffic control device—not its absence—neither prohibited Mr. Kennon's conduct.

Indeed, the undisputed evidence further indicates that there were no parked cars in the curb lane, the lane was wide enough to accommodate a line of through traffic, the public regularly used the curb lane as a travel lane (when no cars were parked within), and more than one driver had so used the curb lane on the morning of the collision. There was no evidence indicating that a dangerous condition made it unsafe to enter the curb lane or travel within it. Accordingly, Mr. Kennon's conduct in entering and traveling in the curb lane while passing vehicles to his left was not just permitted by virtue of *not*

[14] A traffic control device did restrict motorists' speed to 35 miles per hour, but the City does not challenge that Mr. Kennon obeyed this device at all relevant times.

being prohibited—it was expressly authorized by Maryland's "Rules of the Road."[15] *See* Md. Code, Transp. § 21-304.

In sum, we see no error in the circuit court's conclusion that Mr. Kennon did nothing illegal. Mr. Kennon's decision to enter and travel in the curb lane was not, in itself, evidence of negligence that could generate a jury issue.

B. Even if Mr. Kennon engaged in negligent conduct, there was no evidence that such conduct was a proximate cause of the collision.

The City's remaining argument relies upon all the circumstances of the collision, taken together. Specifically, the City contends that, even if Mr. Kennon violated no "Rule of the Road," his decision to travel in the curb lane at the posted speed limit was negligent because he did not slow down as he approached the intersection with Hillen Road, even though vehicles in the other two southbound travel lanes were stopped. The City separately contends that there was evidence that this negligence was a proximate cause of the collision, and that the issue was properly for the jury. The City does not suggest a particular speed that would have been non-negligent in the circumstances here, nor does it point to any specific evidence that the collision could have been avoided if Mr. Kennon had instead been driving at that (hypothetical) non-negligent speed.

[15] The City acknowledges that Mr. Kennon passed several vehicles to his left while traveling in the curb lane. In its reply brief and at oral argument, however, the City argued that Mr. Kennon did not use the curb lane to "overtake and pass," within the meaning of Section 21-304 of the Transportation Article, because he travelled in that lane and passed multiple vehicles. The City cited to no authority that would support its interpretation, nor did it provide argument as to why overtaking and passing multiple vehicles did not fall within the meaning of Section 21-304. We decline to address the City's argument further. *See* Md. Rule 8-504(a), (c).

"A plaintiff does not . . . forfeit his right to recover for an injury simply because he negligently put himself in harm's way." *Blake v. Chadwick*, 249 Md. App. 696, 710 (2021). And in the context of a traffic collision, recovery will not be barred by contributory negligence unless the plaintiff's negligent or illegal conduct is "a proximate cause of the accident." *Rosenthal v. Mueller*, 124 Md. App. 170, 175 (1998); *Blake*, 249 Md. App. at 704 ("To qualify as contributory negligence, it is not enough for negligence to exist. It must actively contribute."). Conduct that merely causes the plaintiff to be "at the wrong place at the wrong time" is not, as a matter of law, contributory negligence. *Rosenthal*, 124 Md. App. at 181; *see also McQuay*, 126 Md. App. at 579 ("[W]hen a plaintiff's violation . . . is merely coincidental, having only the effect of placing him at the wrong place at the wrong time, it is non-contributory as a matter of law.") (cleaned up).

Specifically with regard to speed, our Supreme Court has held that even negligent and illegal speed will not make a case for contributory negligence unless the excess speed, above what was reasonable, was a proximate cause of the collision. *See Myers*, 327 Md. at 405 ("Even assuming that [the plaintiff] was definitely speeding, she is not barred from recovery unless the accident can be at least partly attributable to her rate of travel."). *Myers* is directly on point. There, the plaintiff was in the right-most southbound lane of a highway and was passing stopped vehicles (which were waiting to turn) in the lane to her left. The defendant had been proceeding northbound on the same highway and sought to make a left turn across the plaintiff's path. Although the defendant's line of

sight was obstructed, he nevertheless attempted his turn, which placed him directly in front of the plaintiff's vehicle. The plaintiff had "[m]aybe a split second" before the crash to react, and although she immediately applied her brakes, she could not avoid the collision. *Id.* at 396-97. There was some evidence that the plaintiff was exceeding the speed limit at the time and that she failed to slow down at the intersection. She was also passing stopped vehicles to her left. *Id.* at 397-98. Regardless, our Supreme Court ultimately upheld a directed verdict for the plaintiff, reasoning that the plaintiff's speed, even if both negligent *and* illegal, was not sufficient to generate a jury question because the defendant failed to introduce any evidence that a non-negligent speed would have prevented the collision:

> Was [the plaintiff's] speeding a proximate cause of the accident? Given different facts, it might have been a cause. . . . if [the defendant] had eased his car slowly into [the plaintiff's] 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. Or, if [the plaintiff] had some warning that a car would be cutting across her lane even though she was on a through street, her speed might have been considered a factor in the accident.

Myers, 327 Md. at 408.

The facts here fall squarely within *Myers*. The City points to no evidence suggesting that the collision could have been avoided if Mr. Kennon had been driving a non-negligent speed. Indeed, there is not even evidence of what a non-negligent speed might have been, particularly considering that Mr. Kennon (perhaps unlike the plaintiff in *Myers*) was driving *within* the posted speed limit as he approached the intersection with

Hillen Road. Once Officer Helman entered the curb lane, there was—at most—a half-second to avoid the collision. Like in *Myers*, this was far too little time to take evasive action (as both Mr. Kennon and Officer Helman testified).[16] Further, there was no evidence that Officer Helman eased his car slowly into Mr. Kennon's lane, nor was there other evidence suggesting that Mr. Kennon could have "swerved or stopped in time" to avoid the collision if he had been going a non-negligent speed (whatever that might have been). To the contrary, we note that Mr. Kennon's vehicle was bounded on both sides by, respectively, a line of stopped cars and a curb, so evasive maneuvers aside from stopping were particularly difficult. There was also no evidence that Mr. Kennon knew a vehicle was attempting to turn and would be cutting across his lane.

To be sure, one could certainly argue that a prudent driver in Mr. Kennon's position should have slowed down when approaching an intersection because, as a general matter, turning drivers sometimes attempt to enter intersections. One could also argue that the lines of stopped cars to Mr. Kennon's left should have further indicated to him that he needed to reduce his speed. Those precise arguments, however, existed with

[16] Although the City does not discuss it on appeal, we note that there was some evidence of how far apart Officer Helman's cruiser and Mr. Kennon's vehicle were when Officer Helman negligently entered the curb lane. The distance between the vehicles was the distance that Mr. Kennon's vehicle would travel in one-quarter to one-half of a second while proceeding at a constant rate of 35 miles per hour. That is, mathematically, the vehicles were somewhere between approximately 12.8 and 25.7 feet apart (or about 0.8 to 1.6 car lengths) at the time Officer Helman entered the curb lane. There was no evidence about how slowly Mr. Kennon would have needed to travel to successfully stop his vehicle within that minimal distance.

at least the same force in *Myers*, along with some additional evidence that the plaintiff there was speeding. Nonetheless, the question was not for the jury. The circuit court did not err in holding that Mr. Kennon was not contributorily negligent as a matter of law.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.