Circuit Court for Frederick County
Case No. C-10-CV-21-000551

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1932

September Term, 2022

MICHAEL LEWIS

v.

PEDRO ROMERO

Berger,
Ripken,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: October 10, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal arises out of a negligence action filed by Appellant, Michael Lewis ("Lewis") against Appellee, Pedro Romero ("Romero"). The case proceeded to a jury trial in the Circuit Court for Frederick County. At the close of the evidence, Lewis moved for judgment as a matter of law, asserting that he was not contributorily negligent. The circuit court denied Lewis' motion. Thereafter, during Romero's counsel's closing argument, Lewis' counsel objected and moved for a mistrial on the improper reference to a lack of insurance coverage, which was also denied. Ultimately, the jury found that while Romero was negligent, Lewis was contributorily negligent, barring Lewis from recovering damages under Maryland's contributory negligence standard.[1] Lewis filed a motion for judgment notwithstanding the verdict and a motion for a new trial, which Romero opposed. The circuit court denied both of Lewis' post-trial motions. Lewis noted this timely appeal. For the reasons to follow, we shall affirm.

ISSUES PRESENTED FOR REVIEW

Lewis presents the following issues for our review:[2]

[1] Under the doctrine of contributory negligence, "a plaintiff who fails to observe ordinary care for his own safety is contributorily negligent and is barred from all recovery, regardless of the quantum of a defendant's primary negligence." *Harrison v. Montgomery Cnty. Bd. of Educ.*, 295 Md. 442, 451 (1983).

[2] Rephrased from:

1. Did the Circuit Court Err in Denying Appellant's Motion for Mistrial when Appellee's Counsel Suggested During Closing Arguments that Defendant Would Be Personally Responsible for Paying the Verdict?
2. Did the Circuit Court Err in Denying Appellant's Motion for Judgment and Submission of the Issue of Contributory Negligence to the jury?
3. Did the Circuit Court Err in Propounding Md. Code § 21-503(a) as a Jury Instruction?

I. Whether the circuit court erred in denying Lewis' motion for mistrial.

II. Whether the circuit court erred in denying Lewis' motion for judgment and properly submitted the issue of contributory negligence to the jury.

III. Whether the circuit court abused its discretion in instructing the jury on the duty of a pedestrian crossing a roadway.

FACTUAL AND PROCEDURAL BACKGROUND

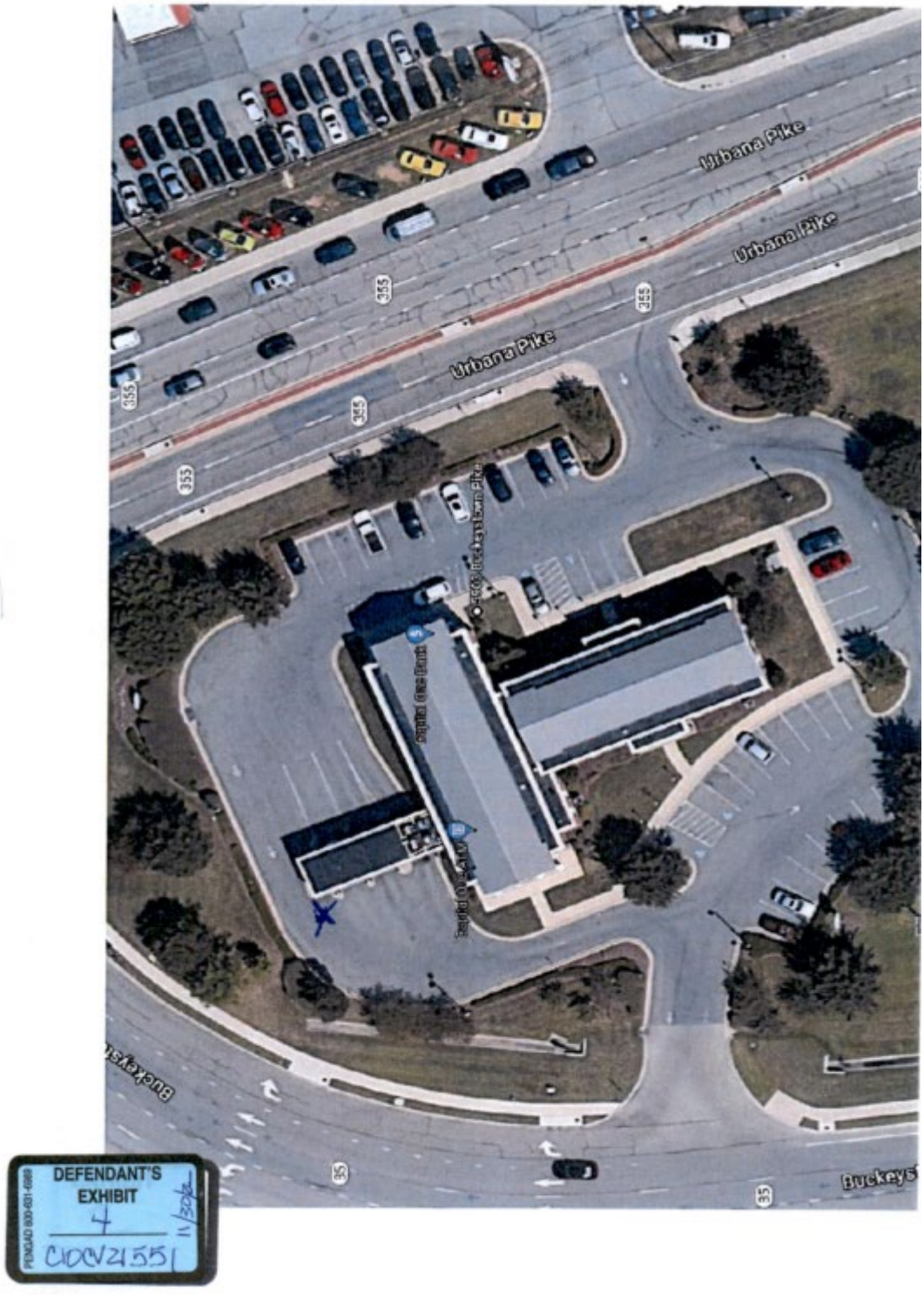
The precise details of the incident were disputed at trial; however, the parties agreed that the incident occurred on October 9, 2019, outside of the Capital One Bank (the "bank") located at 5903 Buckeystown Pike in Frederick, Maryland. Lewis contended that the incident occurred in the "parking lot" of the bank, while Romero asserted that the "incident occurred in an area where cars are not allowed to park and there are no marked parking spaces."[3] At trial, various Google Map images, including street and aerial views, were admitted into evidence and published to the jury. Because the parties disputed the exact location and whether the area constituted a parking lot or a road, we reproduce the various trial exhibits depicting the scene of the incident below for context.

[3] At trial, the terms "parking lot," "roadway," and "service road" were used interchangeably by counsel and the parties. For clarity, we refer to this area as the "one-way road" or simply "the road." We observe several inconsistencies in Lewis' brief with respect to his characterization of the exterior of the bank. Although Lewis contends the incident occurred in the "parking lot," he also concedes that the incident occurred "on the one-way road through the bank's parking lot," and uses the words "road" and "roadway" when referring to where the incident occurred. Lewis appears to acknowledge that the incident occurred on a "road" but asserts that the "road of the bank does not legally constitute a 'roadway.'" As we shall explain in detail below, the area where the incident occurred does constitute a road, not a parking lot. *See* Discussion Section III., *infra*.

PLAINTIFF'S EXHIBIT 5 C100/21551


Frederick, Maryland
Google
Street View - Nov 2017
Capital One Bank
PLAINTIFF'S EXHIBIT
6
C10CV21 551


Frederick, Maryland
Google
DEFENDANT'S EXHIBIT
3
C10CV21 551
Google


Urbana Pike
Urbana Pike
Urbana Pike
355
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DEFENDANT'S
EXHIBIT
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C10CV2155

The bank has two points of access for vehicles. One access point is located at the front of the bank where vehicles can enter and exit the bank from Route 85/Buckeystown Pike. The second access point is located behind the bank where vehicles can enter and exit the bank from Urbana Pike. There is a one-way, single lane road spanning the perimeter of the bank with painted one-way arrows. This road does not have any crosswalks.

When a vehicle enters the bank from Route 85/Buckeystown Pike, a driver must travel to the right of the bank's front entrance as per the direction of the arrows. If a motorist enters the bank from Route 85/Buckeystown Pike, in order to exit the same way, the driver must travel around the entire perimeter of the bank. There are parking spaces in the front and back of the bank's exterior. There are three drive through banking and ATM[4] lanes on the left side of the bank.

Both parties agreed that on the date of the incident, Romero was driving a pickup truck on the one-way road around the perimeter of the bank when he struck Lewis, a pedestrian, who was exiting the bank. At trial, Romero testified that he entered the bank from Route 85/Buckeystown Pike and drove around the right side of the bank, where he parked his vehicle in a space at the back of the bank facing Urbana Pike. After making a transaction inside of the bank, Romero got back into his vehicle and, per his testimony, intended to exit the bank the same way he entered it from Route 85/Buckeystown Pike. According to Romero, the incident occurred when he was traveling in the through lane to

[4] An "ATM" is "a computerized electronic machine that performs basic banking functions (such as handling check deposits or issuing cash withdrawals)." ATM, https://perma.cc/H6J5-GZ7A.

the right of the ATM drive through lanes. Romero also identified the location on an aerial photograph from Google Maps by marking an "X" where he contended the incident occurred.[5]

According to Romero, just before the incident occurred, he was driving slowly and was not distracted. Romero conceded that immediately before striking Lewis he did not see him because Lewis "was literally right there crossing at the corner where the pillars are." Romero testified that after he struck Lewis, he saw a phone on the ground and heard "someone talking" through the phone's speaker. Romero believed the phone belonged to Lewis.

Lewis testified that he walked on foot from a nearby hotel where he was staying to the bank in order to withdraw money. Lewis entered the bank from the front entrance facing Route 85/Buckeystown Pike and withdrew money from an indoor ATM. After Lewis completed his transaction, he exited the bank from the front entrance. Lewis stated that as he exited the bank, he reached the sidewalk, "kind of turned to [his] left" and got "about mid-way into th[e] service road" and was "hit from behind." When asked if he "look[ed] before [he] crossed" Lewis replied, "I probably kind of gave a glance, I've got great peripheral vision, so I knew that I didn't see anything when I stepped into the road." Lewis admitted that at the time of the impact, his cell phone was in his hand. However, Lewis denied that he was talking on the phone at the time he was struck by Romero's vehicle.

[5] It is apparent from Romero's "X," as depicted in Defendant's Exhibit 4, that he indicated that the accident occurred as he was traveling on the one-way road to the far right of the three ATM drive-through lanes towards the Route 85/Buckeystown Pike exit. *See* Defendant's Exhibit 4, reproduced on page 5, *supra*.

At the close of evidence, Lewis moved for judgment arguing that Romero failed to provide sufficient evidence for the issue of contributory negligence to be presented to the jury. In opposition, Romero asserted:

> [S]ubsection (a) [of the Maryland Code, Transportation Article section 21-503] states that if a pedestrian crosses a roadway at any point other than in a marked crosswalk or an unmarked crossing or intersection[,] the pedestrian shall yield the right of way to any vehicle approaching the roadway.[6]

The court denied Lewis' motion for judgment, stating:

> On the issue of contributory negligence when measuring contributory negligence the standard of care is the conduct of an ordinarily prudent person under circumstances ordinarily. The issue of contributory negligence is a question of fact for the jury to resolve. Only when no reasonable person could find in favor of the Plaintiff on the issue of contributory negligence should the court take away the issue from the jury. This court finds that [Romero] has met their burden of production regarding contributory negligence and that is that [Romero] has introduced more than a mere scintilla of evidence meaning more than a surmised possibility or conjecture that [Lewis] has been guilty of negligence and I find that [Romero] has generated a jury issue.

Following the court's ruling, the parties proceeded to closing arguments. During closing argument, after discussing Lewis' alleged damages, Romero's counsel stated, "[Lewis] is asking you to award him [the monetary figure Lewis requested] for the choices he has made. He wants Mr. Romero to pay him for some of these choices." Immediately thereafter, Lewis' counsel moved for a mistrial, asserting Romero's counsel improperly suggested Romero, in his personal capacity, would be responsible for paying any verdict entered in Lewis' favor. Lewis' counsel further asserted that Romero's counsel's comment

[6] As will become relevant in Discussion Section III., *infra*, the court subsequently instructed the jury on the applicable law concerning pedestrians not crossing in a crosswalk and cited section 21-503(a) of the Maryland Code Transportation Article. Lewis took exception to this instruction.

suggested a lack of insurance coverage. The court denied Lewis' motion for mistrial, explaining, "I don't find that the use of the word pay was a reference to insurance specifically[.]" Following the court's ruling, and at Lewis' counsel's request, the court instructed the jurors that they "should not consider . . . how a verdict is paid in a case." The jury returned a verdict, finding that while Romero was negligent, Lewis was contributorily negligent, barring Lewis from any recovery.

Thereafter, Lewis filed a motion for judgment notwithstanding the verdict and a motion for a new trial on the issue of contributory negligence, which Romero opposed. The circuit court denied both of Lewis' post-trial motions. Additional facts will be included as they become relevant to the issues.

DISCUSSION

I. THE CIRCUIT COURT PROPERLY DENIED LEWIS' MOTION FOR MISTRIAL.

A. Parties' Contentions

Lewis asserts that the circuit court erred in denying his motion for mistrial. According to Lewis, Romero's counsel's statement that Lewis wanted "Romero to pay [him] for some of [his] choices" during closing argument was highly prejudicial. Lewis contends that despite the court's curative instruction, the prejudice caused by Romero's counsel was so substantial that it deprived Lewis of a fair trial. In response, Romero maintains that his counsel's statements during closing argument were not prejudicial as the issue of lack of insurance was never presented to the jury. Romero further asserts that, even so, Lewis received a fair trial because the court used the curative instruction that Lewis specifically requested.

B. Standard of Review

We review a trial court's decision to deny a motion for mistrial under an abuse of discretion standard. *Nash v. State*, 439 Md. 53, 66–67 (2014). Appellate courts reviewing the denial of a mistrial generally afford trial judges "a wide berth." *Id.* at 68. Moreover, we are mindful that "[t]he grant of a mistrial is considered an extraordinary remedy," *Carter v. State*, 366 Md. 574, 589 (2001) (internal quotation marks omitted), and should not "be ordered lightly." *Nash*, 439 Md. at 69. In reviewing the denial of a motion for mistrial, we must first determine whether the opposing party's conduct or comments imputed prejudice on the moving party. *Goldberg v. Boone*, 396 Md. 94, 115 (2006). Next, we assess "whether the trial judge took sufficient curative measures to overcome that prejudice, or whether the prejudice was so great that, in spite of the curative measures, the moving party was denied a fair trial." *Id*.

C. Analysis

"Maryland follows the majority rule that evidence of insurance on the part of a defendant is generally inadmissible." *Morris v. Weddington*, 320 Md. 674, 680 (1990). As the *Morris* Court explained,

> The rule against admitting evidence regarding insurance is for the protection of both parties. If the amount of insurance coverage is high, reference to it may prejudice the defendant because the jury may consider the fact that the defendant will not be personally liable for any damages, and therefore be overly generous in an award to the plaintiff. Conversely, if the limits of coverage are low, or if coverage is nonexistent, the award may be smaller than justified because the jury may limit the award to what it believes the defendant can personally afford regardless of the actual damages proved.

Id. at 681 (citing McCormick on Evidence (3d ed. 1984 § 201)). On the other hand, the

Supreme Court of Maryland has also held that "a mere inference that there may be insurance would not necessarily require a termination of the trial." *Bricker v. Graceffo*, 236 Md. 558, 564 (1964).

According to Lewis, this case is analogous to *Morris v. Weddington*. In *Morris*, a witness inadvertently stated on cross-examination that the defendant did not have insurance. 320 Md. 674, 676 (1990). The plaintiff then moved for a mistrial, which was denied. *Id*. On appeal, this Court held that the trial court did not err when it denied the motion for mistrial because it was highly unlikely that the plaintiff was prejudiced by the inadvertent remark. *Morris v. Weddington*, 74 Md. App. 650, 661 (1988), *rev'd*, 320 Md. 674 (1990). The Supreme Court of Maryland disagreed and reversed, holding that the "mere mention" of the lack of defendant's insurance was prejudicial error requiring reversal of the jury's verdict. *Morris*, 320 Md. 674, 681–82 (1990). The Court emphasized that the jurors posed several questions to the court during deliberations that made clear that the issue of insurance coverage was a primary factor in the jury's consideration and that the "jury came back with an award well below the damages established by [the plaintiffs]." *Id.* at 681.

Romero counters that this case is more akin to *Brooks v. Daley*, 242 Md. 185 (1966). In *Brooks*, a police officer was called as a witness and was asked by counsel if he had any conversations with the defendant. *Id.* at 195. The police officer stated that he had asked the defendant if he was covered by insurance. *Id*. Defense counsel objected to the statement, as well as to other alleged improper statements, and requested that they be stricken. *Id*. at 196. The trial court instructed the jury to disregard the police officer's answer concerning

the defendant's insurance coverage, as well as other statements and remarks made by opposing counsel. *Id*. Defense counsel then moved for a mistrial, which was denied. *Id*. On appeal, the Court held that the trial court did not abuse its discretion in refusing to declare a mistrial as "the improper statements were not so patently prejudicial that they were not cured by instructions to the jury." *Id*. at 197. In explaining its holding, the Court noted that the jury was not informed whether the defendant was covered by insurance or whether he was not insured. *Id*. at 196. Moreover, the Court stated that "no inferences either way could arise from [the police officer's] statement; and, the mere mention of the word 'insurance' certainly would not vitiate the trial." *Id*.

Here, we are persuaded that the facts of the case at bar are distinguishable from those in *Morris*. Unlike in *Morris*, where a witness stated during the evidentiary phase of the trial that the defendant was uninsured, here, Romero's counsel made an ambiguous comment during closing argument that Lewis wanted "Romero to pay him for some of [his] choices." There is nothing in the record to suggest that Romero's counsel's statement suggested or referred to insurance or lack thereof. Hence, there is nothing in the record to suggest that the comment surpassed the threshold of being an improper statement that warranted further consideration. While *Brooks* is certainly more analogous to the present case, that case involved a specific mention of the word "insurance," which is not the situation here. *See* 242 Md. at 195. As in *Brooks*, we conclude that "no inferences either way could arise from" Romero's counsel's statement; and the mere reference to Lewis wanting "Romero to pay him for some of [his] choices", did not prejudice Lewis. *See id*. at 196. In light of the facts herein, the trial court did not abuse its discretion in declining to

declare a mistrial.[7]

Lewis' next contention, that the circuit court's curative instructive called further and additional attention to the presence or absence of liability insurance, thus depriving him of a fair trial, is likewise without merit. At trial, after the court denied Lewis' motion for mistrial, defense counsel requested that the court instruct the jury "that they should not concern themselves with how the verdict gets paid." Thereafter, pursuant to defense counsel's request for a curative instruction, the court instructed the jury as follows: "I just want to note one thing for the record and that is that in a case like this . . . you should not consider for yourselves how a verdict is paid in a case. . . . [t]hat is not relevant." As stated above, we conclude that Romero's counsel's statement in closing argument did not prejudice Lewis. However, even if we determined that the statement was problematic and prejudicial, the record is clear that "the trial judge took sufficient curative measures to overcome [any] prejudice." *Goldberg*, 396 Md. at 115. Notably, the court used the specific language as requested by Lewis' counsel. The court did not err in denying Lewis' motion for mistrial, nor was Lewis denied a fair trial.

[7] After Lewis' counsel moved for a mistrial, he cited *Morris v. Weddington*, as discussed *supra*, in support of his argument that "any suggestion that a judgment would be hard for Mr. Romero to pay requires an immediate mistrial." The trial judge excused the jury and took a brief recess to review the *Morris* case. Following the recess, while still outside of the jury's presence, the trial judge stated that "having reviewed . . . the generic language, used here and specifically *Morris*[,] I don't find that the use of the word pay was a reference to insurance specifically as it was done in this case. So I will deny the motion for mistrial." We agree with the trial judge's assessment that *Morris* is distinguishable from the present case as there was no mention of insurance.

II. THE CIRCUIT COURT PROPERLY DENIED LEWIS' MOTION FOR JUDGMENT AND APPROPRIATELY SUBMITTED THE ISSUE OF CONTRIBUTORY NEGLIGENCE TO THE JURY.

A. Parties' Contentions

Lewis argues that the trial court erred in denying his motion for judgment and motion for judgment notwithstanding the verdict on the issue of contributory negligence. Lewis submits that the denial of his motion for judgment was "unsupported by anything more than possibility or conjecture." Romero contends that the trial court correctly denied Lewis' motion for judgment, as there was substantial evidence for a reasonable jury to find that Lewis was contributorily negligent. Romero emphasizes that a full review of the evidence clearly supports a reasonable jury's finding that Lewis' own negligence contributed to the accident.

B. Standard of Review

Appellate courts review "the trial court's decision to allow or deny judgment or [judgment notwithstanding the verdict] to determine whether it was legally correct[.]" *Scapa Dryer Fabrics, Inc. v. Saville*, 418 Md. 496, 503 (2011) (internal quotation marks and citations omitted); *see also DeMuth v. Strong*, 205 Md. App. 521, 547 (2012) ("The standard of review of a decision to grant or deny a motion for judgment notwithstanding the verdict is the same as the standard of review for the grant or denial of a motion for judgment.") We assess the trial court's decision "viewing the evidence and the reasonable inferences to be drawn from it in the light most favorable to the non-moving party[.]" *Scapa*, 418 Md. at 496 (internal citations omitted). We will find error in a trial court's denial of a such motions only "if the evidence does not rise above speculation, hypothesis,

and conjecture, and does not lead to the jury's conclusion with reasonable certainty." *Id*. (internal quotation marks and citations omitted).

C. Analysis

Contributory negligence "occurs whenever the injured person acts or fails to act in a manner consistent with the knowledge or appreciation, actual or implied, of the danger or injury that his or her conduct involves." *Campbell v. Montgomery Cnty. Bd. of Educ.*, 73 Md. App. 54, 64 (1987), *cert. denied*, 311 Md. 719 (1988) (internal quotation marks and citation omitted). Contributory negligence is defined as "the doing of something that a person of ordinary prudence would not do, or the failure to do something that a person of ordinary prudence would do, under the circumstances." *Smith v. Warbasse*, 71 Md. App. 625, 627 (1987) (quoting *Menish v. Polinger Company*, 277 Md. 553, 559 (1976)). The defendant bears the burden of proving contributory negligence. *Moodie v. Santoni*, 292 Md. 582, 586 (1982).

The question of whether the plaintiff has been contributorily negligent is ordinarily for the jury, not the judge, to decide. *Id.* at 589. Maryland courts have adopted a "restrictive rule about taking cases from the jury in negligence actions." *Campbell*, 73 Md. App. at 62. It is well settled that submission to the jury is appropriate when there is "any evidence, however slight, *legally sufficient* as tending to prove negligence, and the weight and value of such evidence will be left to the jury." *Id.* at 62–63. In other words, evidence that is legally sufficient to warrant a contributory negligence instruction for the jury must amount to "more than surmise, possibility, or conjecture that such other party has been guilty of negligence." *Fowler v. Smith*, 240 Md. 240, 247 (1965). To find contributory negligence

as a matter of law, the injured party's action must be "distinctive, prominent[,] and decisive" from "which reasonable minds would not differ as to [the] negligent character." *Dix v. Spampinato*, 28 Md. App. 81, 106 (1975). Moreover, this Court has observed that "where one leaves a place of safety to venture into a place or posture of danger, and is harmed[,] . . . the venturesome one often has been held to be guilty of contributory negligence as a matter of law." *Willis v. Ford*, 211 Md. App. 708, 717 (2013) (quoting *Martin v. Sweeney*, 207 Md. 543, 548 (1955)).

Our Court's decision in *Smith v. Warbasse* is instructive. 71 Md. App. 625 (1987). In *Smith*, a pedestrian brought an action against a driver to recover for injuries arising out of a pedestrian-car accident. *Id.* at 626. The undisputed facts demonstrated that the plaintiff crossed the street at night between crossings and failed to see the defendant's car, supporting the trial court's finding of contributory negligence. *Id.* at 628. On appeal, this Court affirmed the trial court's grant of summary judgment to the defendant on the issue of plaintiff's contributory negligence. *Id.* at 631. The Court, while recognizing that a pedestrian is not negligent *per se* for crossing in between crosswalks, noted that pedestrians "must use great care to protect [themselves] from injury and it is generally no excuse if he [or she] fails to see or hear approaching traffic." *Id.* at 630 (internal quotation marks and citation omitted); *see also Pratt v. Coleman*, 14 Md. App. 76, 80 (1972) (explaining that when a pedestrian crosses a street in between crossings, the pedestrian is "required . . .to use the greatest of care to protect himself from injury" and "a pedestrian must conform to such vehicular traffic that may be on the street, and it is generally no excuse if he fails to see or hear approaching traffic.")

With these principles in mind, we return to the present case. While Lewis and Romero gave differing accounts of the same incident, we agree with the trial judge that the evidence presented by both parties could raise a factual jury question as to Lewis' contributory negligence. Lewis' testimony reveals that he exited the bank, left the sidewalk, and entered the one-way road. Lewis testified that he got "mid-way" into the road and was hit from behind. When asked if he "look[ed] before he crossed" into the road, Lewis replied, "I probably kind of gave a glance" and that he did not see anything when he "stepped into the road." While Lewis disputed that he was talking on the phone, he admitted that his cell phone was in his hand at the time of the impact. Conversely, Romero stated that he did not see Lewis before the impact, but he was driving slowly (approximately 5 miles per hour) and he was not distracted.

The *Smith* court's holding that pedestrians have a responsibility to use caution to protect themselves from injury is applicable to the facts of this case. *See* 71 Md. App. at 630. Furthermore, our case law supports a permissible jury finding that Lewis' decision to leave a place of safety, while merely glancing for approaching vehicles, demonstrates a failure to exercise caution when he stepped into the road. *See, e.g. Campbell v. Jenifer*, 222 Md. 106, 111 (1960) (explaining that the plaintiff was contributorily negligent as a matter of law when the plaintiff "elected to leave a place of safety for a position of peril.") Moreover, even though the parties disputed the precise location of the impact, there is no allegation that Lewis used a crosswalk, and Lewis' uncontroverted testimony places him in the middle of the road at the time he was struck.

We conclude that the case was properly submitted to the jury because, even when

viewing the facts in the light most favorable to Lewis, the evidence establishing his contributory negligence amounted to "more than surmise, possibility, or conjecture." *Fowler*, 240 Md. at 247. Lewis' decision to leave the sidewalk and walk mid-way into the road while only glancing for oncoming traffic constituted a "distinctive, prominent[,] and decisive" decision from which the jury could find that Lewis was contributorily negligent. *Dix,* 28 Md. App. at 106. Notably, Lewis' testimony that he was "hit from behind" on a one-way road indicates that he was facing away from oncoming traffic and not looking for vehicles coming in his direction. Upon these facts, we conclude that the trial court properly submitted the question of contributory negligence to the jury.

III. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN INSTRUCTING THE JURY ON THE DUTY OF A PEDESTRIAN.

A. Factual Background

At trial, during jury instructions, the court instructed the jury on the applicable law concerning pedestrians who cross a roadway at a point other than a crosswalk. Specifically, the court cited section 21-503(a) of Transportation Article of the Maryland Code, which provides that "[i]f a pedestrian crosses a roadway at any point other than in a marked crosswalk or in an unmarked crosswalk at an intersection, the pedestrian shall yield the right-of-way to any vehicle approaching on the roadway." Md. Code Ann., Transp. § 21-503(a).

B. Parties' Contentions

Lewis asserts that the circuit court erred in giving the jury an instruction on the responsibility of pedestrians crossing a roadway. According to Lewis, the instruction is not

applicable to the facts of this case for the following reasons: 1) the road of the bank does not legally constitute a "roadway;" 2) there was no evidence that there was any approaching traffic at the time he entered the "parking lot" and possessed a duty to yield the right-of-way; and 3) there were no marked crosswalks in the "parking lot" of the bank for Lewis to use while crossing the "parking lot."[8] In response, Romero counters that the area where the incident occurred constitutes a roadway and Lewis had a duty to look to ensure, not "glance," if there were approaching vehicles.

C. Standard of Review

The role of the trial court is to provide the jury with instructions to "aid the jury in clearly understanding the case, to provide guidance for the jury's deliberations, and to help the jury arrive at a correct verdict." *Stabb v. State*, 423 Md. 454, 464 (2011) (quoting *Chambers v. State*, 337 Md. 44, 48 (1994)); *see also* Md. Rule 4-325.[9] We review "a trial court's refusal or giving of a jury instruction under the abuse of discretion standard." *Id.* at 465 (citing *Gunning v. State*, 347 Md. 332, 351 (1997)). We look at three factors to make this determination: "1) whether the requested instruction was a correct statement of the law; 2) whether it was applicable under the facts of the case; and 3) whether it was fairly covered in the instructions actually given." *Carter v. State*, 236 Md. App. 456, 475 (2018) (quoting *Keller v. Serio*, 437 Md. 277, 283 (2014) (internal quotation marks omitted))).

[8] In restating Lewis' contentions, we adopt Lewis' use of the words "parking lot." However, as we explain below, the area where the incident occurred is a roadway and not a parking lot.

[9] Maryland Rule 4-325 provides in relevant part that "[t]he court may, and at the request of any party shall, instruct the jury as to the applicable law[.] Md. Rule 4-325(c).

D. Analysis

As a threshold matter, we begin our analysis by determining whether the area where the incident occurred constituted a "parking lot," as Lewis contends, or a "roadway," as Romero suggests. To make this determination, we apply the rules of statutory construction. When tasked with statutory interpretation, this Court first looks to the "plain meaning of the language of the statute" and reads the statute "as a whole." *Evans v. State*, 420 Md. 391, 400 (2011) (quoting *Ray v. State*, 410 Md. 384, 404 (2009)). It is well settled that when the statute's language is "clear and unambiguous, we need not look beyond the statute's provisions and our analysis ends." *Evans*, 420 Md. at 400.

Pursuant to Section 21-10A-01 of the Transportation Article, a "parking lot" is "a privately owned facility consisting of 3 or more spaces for motor vehicle parking[.]" Md. Code Ann., Transp. § 21-10A01(a).[10] Pursuant to Section 8-101 of the Transportation Article, a "highway" includes:

> (1) Rights-of-way, roadway surfaces, roadway subgrades, shoulders, median dividers, drainage facilities and structures, related stormwater management facilities and structures, roadway cuts, roadway fills, guardrails, bridges, highway grade separation structures, railroad grade separations, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, and other structures forming an integral part of a street, road, or highway, including bicycle and walking paths; and
>
> (2) any other property acquired for the construction, operation, or use of the highway.

Md. Code Ann., Transp. § 8-101 (i). The Transportation Article further provides that the

[10] We note that although section 21-10A specifically applies to "towing or removal of vehicles from parking lots", it is the only statutory definition of "parking lot" included in the Maryland Code. Md. Code Ann., Transp. § 21-10A-01(a).

terms "road" and "street" are legally synonymous with "highway." Md. Code Ann., Transp. §§ 8-101 (o), (s).

By its plain terms, the area where the incident occurred falls within the Transportation Article's definition of "highway," which also includes a "road" and a "street." The various photographic exhibits presented at trial clearly show a one-way, single lane road located around the perimeter of the bank with painted one-way arrows. Additionally, based on the parties' testimony, there is no question that the area where the incident occurred was a road where vehicles are meant to travel. Lewis' own testimony referred to the area where the incident occurred as the "service road" and he further conceded that he "stepped into the road" before he was struck by Romero's vehicle. Moreover, Romero testified that Lewis was walking in an area where vehicles regularly travel. Thus, we have no trouble concluding that the area where the incident occurred, which is exclusively used by vehicles traveling through or around the bank, is a "road," a term included in the statutory definition of "highway." *See* Md. Code Ann., Transp. §§ 8-101 (i), (o).

Conversely, the area where the incident occurred was not a "parking lot" within either the plain meaning of section 21-10A-01 of the Transportation Article, or within the commonsense definition of the term. While the aerial view photograph of the bank shows a designated parking lot, it is located on the other side of the bank. There are no parking spaces or other indicia in the area where the incident occurred that would suggest it was a place where cars are meant to park, or pedestrians are meant to travel.

Having concluded the area where the incident occurred constitutes a roadway, we

now address Lewis' second claim that he did not possess a duty to yield the right-of-way to approaching vehicles in the "parking lot." Lewis' second claim is also without merit. As we have explained, the area where the incident occurred constitutes a road, not a parking lot. We also reiterate that the evidence at trial demonstrated that a vehicle was approaching as Lewis stepped into the road. To be sure, the undisputed evidence at trial showed that Lewis was struck by Romero's vehicle.

Lewis' third contention—that the court's instruction on section 21-503(a) of the Transportation Article was not applicable because there were no crosswalks available in the area where the incident occurred—is likewise without merit. As we have explained, section 21-503(a), as well as our case law, imposes a legal duty on pedestrians to use great care to protect themselves from injury and to yield to approaching vehicles when the pedestrian traverses the roadway without using a crosswalk. *See Smith*, 71 Md. App. at 630; *see also* Md. Code Ann., Transp. § 21-503(a). This duty is applicable any time a pedestrian crosses a roadway in the absence of a crosswalk. Whether there was a crosswalk readily available to Lewis has no impact on our analysis because it does not relieve Lewis of his duties as a pedestrian.

In sum, we conclude that section 21-503(a) was applicable to the facts of the case because the area where the incident occurred constitutes a roadway and not a parking lot. Lewis possessed a duty to yield the right-of-way to approaching vehicles, including Romero's vehicle, which the record indicates he failed to do. Therefore, the court's instruction on the duty of pedestrians pursuant to section 21-503(a) was a correct statement of the law and was applicable under the facts of this case. For these reasons, it follows that

the circuit court did not err in instructing the jury on the statute.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.