

Circuit Court for Anne Arundel County  
Case No. C-02-CV-23-000144

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 2228

September Term, 2024

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ALYSSA ROUGHTON

v.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY

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Shaw  
Zic,  
Eyler, Deborah S.  
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Shaw, J.

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Filed: June 12, 2026

\*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).

Appellant, Alyssa Roughton, filed a complaint in the Circuit Court for Anne Arundel County against Appellee, State Farm Mutual Automobile Insurance Company. Appellant alleged that she was a passenger in a vehicle involved in a single car accident, and that she sustained serious and permanent injuries as a result. A jury trial was held and following deliberations, the jury returned a verdict, finding that Appellant was not contributorily negligent, but that Appellant had assumed the risk of the accident.

Appellant noted this timely appeal, and she presents five questions for our review:

1. Did the trial court err in failing to grant Appellant/Plaintiff's motion for judgment at trial?
2. Did the trial court err in failing to grant Appellant/Plaintiff's motion for judgment notwithstanding the verdict?
3. Did the trial court abuse its discretion in refusing to grant Appellant/Plaintiff's proffered jury instructions as to incapacity and voluntariness?
4. Is the application of the doctrine of assumption of risk to passengers in cars driven by intoxicated drivers contrary to public policy?
5. Did the trial court abuse its discretion by reversing the order of presentation at the close of evidence thereby permitting the Appellee/Defendant to present both a closing and a rebuttal argument?

For reasons discussed below, we affirm the judgment of the circuit court.

### **BACKGROUND**

On July 30, 2020, Appellant, Alyssa Roughton, was a passenger in a vehicle driven by Hannah Cunningham. The car was involved in a single car accident and Appellant sustained injuries. Appellant filed a complaint in the Circuit Court for Anne Arundel County against Appellee, State Farm Mutual Automobile Insurance Company, Ms.

Cunningham's insurer. The parties agreed to a jury trial on a bifurcated basis, proceeding first with whether Appellant was contributorily negligent and whether she assumed the risk.

Dr. Yale Caplan, an expert in forensic toxicology, testified that, based on his review of hospital records, Appellant's blood alcohol level at the time of the accident was at least .22%. Dr. Caplan opined that she was markedly intoxicated and incapacitated. On cross-examination, Dr. Caplan testified that he did not personally interview Appellant, he did not know when Appellant and Ms. Cunningham started to drink, or whether they drank at three different locations that day.

Ms. Cunningham testified that she and Appellant agreed on the morning of the incident that she would be the driver for their activities that day. Ms. Cunningham testified that she and Appellant first met at Appellant's house in Edgewater, where they talked and had some drinks. They remained at Appellant's home for approximately two hours. Ms. Cunningham stated that she did not know how many drinks Appellant had, nor does she remember how many drinks she had, but stated that she probably had more than one drink.

Ms. Cunningham testified that she next drove herself and Appellant to the Brass Tap Restaurant. She ordered alcoholic drinks and probably had more than one, but she could not say for certain what type of drink it was. She stated that she thought Appellant had a drink but did not know what Appellant ordered. Ms. Cunningham testified that she next drove herself and Appellant to Union Jack's bar. She testified that they ordered two Scooby Snack shots, and that they consumed the shots. Ms. Cunningham further testified that she did not remember how long they stayed there, but that it was at least a couple of

hours. Ms. Cunningham stated that she had too much to drink that night, but she did not know how many drinks she had. She stated that there was no discussion about who was going to be the designated driver, and that since it was her car, she drove.

On cross-examination, Ms. Cunningham testified that when she left the Brass Tap restaurant, she was probably “not fine” to drive. She “hardly remembers” what happened that day, and that she may have gone to Appellant’s house earlier that afternoon. Ms. Cunningham stated that she did not remember how Appellant got in the car and she did not remember assisting Appellant in the car.

Corporal Christopher Taylor was the investigating officer for the accident. He stated that the crash time indicated on the automated crash system report for the incident was 11:54 p.m. The location of the accident was the Bayard Road and Sands Road intersection at the entrance to a county park. He testified that there was one vehicle involved in this accident: a 2016 model year Honda Civic, owned by Hannah Cunningham. Alyssa Roughton was a passenger in the car. When he first arrived, he observed Ms. Cunningham seated on the front passenger seat of the vehicle; the front passenger door was open; and her legs were on the ground, outside the vehicle. He testified that Ms. Cunningham had bloodshot and glassy eyes and a strong odor of alcohol. He noticed that she was on her cellphone when he first arrived. He observed Appellant “laying on the ground screaming in pain.”

Corporal Taylor stated that he conducted a field sobriety test on Ms. Cunningham, including a horizontal gaze nystagmus test. He testified that Ms. Cunningham failed the

walk and turn test, failed the one leg stand, and rejected his offer to take a breathalyzer test. He also testified that she had slurred speech, which was indicative of alcohol intoxication.

Mr. Conor Partello testified that he lived in Edgewater, with Appellant, and that they were dating. He testified that Ms. Cunningham and Appellant had gone out on several occasions before the accident, and in those situations, Ms. Cunningham was the driver. He stated that the three of them occasionally went out, and he would typically drive. Mr. Partello testified that on July 30, 2020, he saw Appellant after work when he arrived home, and they decided to go to dinner. He testified that Ms. Cunningham joined them at the Brass Tap, and that the dinner lasted an hour and a half or two hours. He stated that, during that time, it is possible that he noticed them having alcoholic beverages but did not specifically remember. He decided to go home after eating dinner, and there was an understanding that Ms. Cunningham would drive. On cross examination, he stated that he spent the rest of the night at home, and that he did not receive a call from Appellant for a ride home.

Appellant testified that she lives in Edgewater with Mr. Portello, her mom, and stepfather, Dan. She testified that she has been out with Ms. Cunningham before, and that Ms. Cunningham was the driver each time. She stated that she arrived home safely each time, and she never had any worries about Ms. Cunningham's ability to drive. Appellant stated that she did not remember the accident at all, and the last thing she remembered was arriving at the Brass Tap with Conor. She testified that she did not remember going to Union Jack's, and that she only remembers bit and pieces of leaving the Brass Tap. She

also stated that she did not see Ms. Cunningham earlier that day before meeting at the Brass Tap restaurant.

Appellant stated that she did not know exactly what she had to drink, but that she drank alcoholic drinks. She also stated that she did not recall how many drinks she obtained while at the Brass Tap. They spent about two hours there, and she did not know whether Ms. Cunningham had anything to drink. Appellant testified that she did not remember how much she had to drink, but she is “sure by what she knew and what she felt that it was a copious amount of alcohol.”

On cross-examination, she testified that there was no plan to use Uber or Lyft services. She confirmed that she appreciates that “getting into a car with a driver who has been drinking heavily” poses a risk of injury. She testified that she understood that a driver who has been drinking has a slower reaction time “if they are drinking in excess.” She stated that she understood that they may have trouble controlling a vehicle and that she appreciated and understood those risks for “someone who’s drinking heavily.”

Following the close of evidence, Appellant moved for judgment, which the court denied. The court explained:

[T]he jury can draw a reasonable inference that alcohol contributed to the accident or caused the accident. That the jury can certainly find Ms. Cunningham’s testimony credible, and if they do that, then find based on her testimony that Ms. Roughton was aware that she was drinking. Her testimony, as I recall it, was that they both had shots at Union Jacks. I think that the jury can draw a reasonable inference in that the Plaintiff was aware that Ms. Cunningham was drinking when she got in the car, so I am going to send the case to the jury.

Appellant’s counsel then requested that the court provide the following special jury instructions in addition to the standard instructions:

**Legal Incapacity**

Maryland law differentiates between individuals who are intoxicated but remain otherwise “orderly” and those who are so intoxicated as to be rendered physically helpless. A person rendered physically helpless is considered to lack the capacity to make decisions, legal or otherwise, for themselves as though they were very young or otherwise legally incapacitated. *Id.* at 512-22; *Taylor v. Amiger*, 277 Md. 638, 649 (1976). Similarly, Maryland recognizes that a person who is asleep, passed out, or so intoxicated lacks the capacity to provide consent. *Travis v. State*, 218 Md. App. 410, 427 (2014) (establishing that being asleep is legally equivalent to being unconscious, even where the unconsciousness is due to extreme intoxication, and that such individuals are incapable of providing consent).

**Assumption of Risk - Voluntarily Undertake the Risk**

Voluntarily undertaking the risk means consenting to the risk and consequences. For a risk to be voluntarily undertaken by a plaintiff, the defendant must establish that the plaintiff knew what risk she was exposing herself to and the existence of “some manifestation of consent . . .” *Morgan State v. Walker*, 397 Md. 509, 515 (2007). The Defendant must further establish that “there was no restriction on plaintiff’s freedom of choice whether by the existing circumstances or by coercion emanating from the defendant. *Crews v. Hollenbach*, 358 Md. 627, 644 (2000). If the plaintiff was incapable of consenting, then they are incapable of voluntarily undertaking the risk. “To be asleep is ipso facto to be physically helpless.” *Travis v. State*, 218 Md. App. 410, 427 (2014) (establishing that being asleep is legally equivalent to being unconscious, even where the unconsciousness)

The Court declined Appellant’s request, finding that the standard pattern instructions covered the relevant areas of law.

Prior to reading the jury instructions, the court addressed the ordering of closing argument and informed the parties that:

My own understanding is that the party with the burden of proof has both the opening and the rebuttal, which in this case would be defendant’s counsel.

Plaintiff’s counsel objected and argued that even though the rights of the parties are not flipped even though the only issues being tried are the affirmative defenses. The Court clarified that the party that has the burden of proof also has the right to rebuttal. The jury returned, and the parties gave their closing arguments with Appellee’s counsel providing the first closing argument and then rebuttal. The jury deliberated for two hours before returning a verdict that Appellant was not contributorily negligent, but she did assume the risk of the accident. Appellant timely noted this appeal.

### **STANDARD OF REVIEW**

In reviewing a motion for judgment or for judgment notwithstanding verdict, “[w]e assume the truth of all credible evidence on the issue, and all fairly deducible inferences therefrom, in the light most favorable to the party against whom the motion is made. Consequently, if there is any evidence, no matter how slight, that is legally sufficient to generate a jury question, the case must be submitted to the jury for its consideration.” *Mayor and City Council of Balt. v. Stokes*, 217 Md. App. 471, 491 (2014) (citation modified).

To assign error to a trial court’s refusal to give a particular jury instruction, the aggrieved party must lodge an on-the-record objection “promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of objection.” Md. Rule 4-325(f). “The standard of review for jury instructions is whether the court abused its discretion. A reviewing court will not disturb a lower court’s decision as long as the law is fairly covered by the jury instructions.” *Sail Zambezi, Ltd. v. Md. State Highway Admin.*, 217 Md. App. 138, 149 (2014).

## DISCUSSION

### **I. & II. The court did not err in denying Appellant’s Motion for Judgment, nor err in denying her Motion for Judgment Notwithstanding the Verdict.**

Maryland Rule 2-519(a) provides that, “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.” Maryland Rule 2-532(a) states, “a party may move for judgment notwithstanding the verdict only if that party made a motion for judgment at the close of all the evidence and only on the grounds advanced in support of the earlier motion.”

Appellant argues that the court erred in denying her Motions for Judgment and Judgment Notwithstanding the Verdict. Appellant contends that the undisputed evidence and permissible inferences established that the risk of danger was not fully known or understood by her. Appellant asserts that there was a period of approximately four hours preceding the accident, where there is “no evidence,” and that the jury was invited to speculate about what happened during that timeframe. Appellee argues that there was sufficient evidence for the jury to find that Appellant had knowledge of the risk of danger, she appreciated the risk of riding with a drunk driver, she voluntarily assumed that risk, and that Ms. Cunningham’s intoxication was a proximate cause of the accident.

In Maryland, assumption of risk is an affirmative defense to a claim of negligence, and the defendant has the burden of proof. *Bd. of Trs., Cmty. Coll. of Balt. Cnty v. Patient First Corp.*, 444 Md. 452, 470-71 (2015). “[T]he defendant must show that the plaintiff: (1) had knowledge of the risk of danger; (2) appreciated the risk; and (3) voluntarily

confronted the risk of danger.” *S & S Oil, Inc. v. Jackson*, 428 Md. 621 (2012). An objective standard is applied, and “a plaintiff will not be heard to say that he did not comprehend a risk which must have been obvious to him.” *Faith v. Keefer*, 127 Md. App. 706, 747 (1999).

In *Bliss v. Wiatrowski*, 125 Md. App. 258 (1999), this Court considered whether a trial court erred in allowing a jury to consider the defense of assumption of risk. In that case, four teenagers spent most of an afternoon and evening drinking alcohol together, and socializing. 125 Md. App. at 262. As they were driving home, the driver of the vehicle in which they were riding in veered off the road and struck a tree, killing one of the passengers. *Id.* The appellant, a surviving passenger, sued the driver, alleging negligence. *Id.* at 258. At the conclusion of a jury trial, the driver was found negligent. *Id.* The jury rendered a verdict that the appellant had assumed the risk of danger. *Id.* On appeal, the appellant argued that, because the accident was caused by the driver’s failure to abide by the speed limit rather than by alcohol consumption, her knowledge of the driver’s intoxication could not serve as a basis for finding that she assumed the risk. *Id.* at 272.

This Court noted that, “it is well established in Maryland that assumption of risk may bar recovery by a passenger in car driven by an intoxicated driver, if the passenger knew or should have known of the driver’s condition, and if the negligence, due to the intoxication, is a proximate cause of the accident.” *Id.* Based on the evidence presented at trial, we determined that the jury could have reasonably concluded that the driver’s intoxication was the proximate cause of the accident. *Id.* We pointed to evidence adduced at trial that included medical records that the driver’s blood alcohol level was .10% after

the accident; as well as testimony from the driver, the plaintiff, and the other surviving passenger that they drank a significant amount of alcohol that night. *Id.* at 272-73. We held that the evidence was legally sufficient for a jury to find that the passenger knew the driver was “intoxicated, knew about the danger of riding with a drunk driver, yet assumed the risk by voluntarily getting into the car with the driver.” *Id.* at 273. Appellant was with the driver when he purchased alcohol that evening; she observed his heavy drinking that night; and she was aware that a person’s reaction time was not as quick after drinking alcohol. *Id.*

Here, there was testimony that Appellant was with Ms. Cunningham for a span of at least four hours, where they consumed alcohol at Appellant’s home, the Brass Tap, and the Union Jack Bar. Ms. Cunningham admitted that she consumed an excessive amount of alcohol prior to the accident, and that she should not have been driving. Her admission was corroborated by Corporal Taylor’s testimony that Ms. Cunningham failed three separate sobriety tests that he administered immediately following the accident. Appellant admitted that the two were together, she consumed alcohol, and she was unable to state how many drinks she consumed. During cross-examination, Appellant confirmed certain answers that she gave during her deposition:

**APPELLEE COUNSEL:** You know, and you were asked in your deposition that getting into a car with a driver who has been drinking poses a risk of injury. You know that, right? Do you appreciate that?

**APPELLANT:** Yeah.

**APPELLEE COUNSEL:** You knew there was a risk of injury or of being in an accident when your driver is drinking, correct?

**APPELLANT:** Drinking, heavily correct.

Appellant also testified:

**APPELLEE COUNSEL:** Do you understand that as an adult that a driver who has been drinking has a slower reaction time? Do you understand the following?

**APPELLANT:** Yeah, if they're drinking in excess.

**APPELLEE COUNSEL:** Okay, and do you understand that a driver whose been drinking has decreased awareness around their surroundings and their vision?

**APPELLANT:** Yes.

**APPELLANT COUNSEL:** Okay, and do you understand that they might have trouble controlling a vehicle? Do you understand that?

**APPELLANT:** Yes.

**APPELLEE COUNSEL:** And do you appreciate and understand those risks, correct?

**APPELLANT:** For someone whose been drinking heavily, yes.

Appellant argues that because there was no evidence presented regarding the four-hour time span preceding the accident, the court erred in denying the motion for judgment. However, the court's standard is whether there is any evidence, "no matter how slight," that is legally sufficient to generate a jury question. *Mayor and City Council of Balt.*, 217 Md. App. at 491. Here, it was for the jury to determine the credibility of the witnesses and the weight to be given to their testimony. It was within the province of the jury to assess whether the lack of evidence for the four-hour timeframe impacted their assessment of contributory negligence or assumption of the risk. We hold that the court did not err in denying Appellant's Motions for Judgment and Judgment Notwithstanding the Verdict.

**III. The court did not abuse its discretion in changing the order of closing arguments.**

It is not required that plaintiffs in a civil case be provided with the opportunity to give closing arguments in a jury trial. *See In re Emileigh F.*, 353 Md. 30, 41 (1999). Generally, however, it is the practice of trial courts to allow opening statements and closing arguments. The Maryland Civil Pattern Jury instructions given to a jury at the beginning of a trial, instruct that, “The plaintiff’s lawyer will make the first closing argument, and then the defendant’s lawyer makes a closing argument. After the defendant’s argument, the plaintiff will have an opportunity to make an argument in rebuttal to the defendant’s argument. . . . The reason the plaintiff goes first in each instance is because the plaintiff has the burden of proof.” MPJI-Cr 1:1 (a)(1).

Appellant argues the court erred in granting Appellee a closing rebuttal as there is no precedent for permitting such a procedure. Appellee counters that the sole issue was Appellee’s affirmative defenses, for which Appellee had the burden of proof.

The conduct of a trial is within the discretion of the trial judge. *See Corman Marine Construction, Inc. v. McGeady*, 262 Md. App. 585, 617 (2024). Here, the court determined that because Appellee had the burden of proof, the order of arguments should be reversed. As we see it, the court did not abuse its discretion by changing the order of closing arguments.

**IV. The court properly declined to find that the application of the doctrine of assumption of the risk was contrary to public policy.**

Appellant argues that, under Maryland law, applying the doctrine of assumption of risk to passengers of intoxicated drivers is archaic and contrary to public policy because it

penalizes the victims and immunizes drunk drivers from liability. Appellant contends that society has moved away from blaming the victim for putting themselves in a place where danger may be increased. Appellee argues that the doctrine is not contrary to public policy.

We observe that Maryland appellate courts have consistently affirmed that assumption of the risk is a viable defense. *See Baltimore Cty. v. State ex rel. Keenan*, 232 Md. 350, 366 (1963); *ADM Partnership v. Martin*, 348 Md. 84, 103 (1997); *Bliss v. Wiatrowski*, 125 Md. App. 258, 272 (1999); *Faith v. Keefer*, 127 Md. App. 706, 752 (1999); *Morgan State University v. Walker*, 397 Md. 509, 522, (2007); *American Powerlifting Ass’n v. Cotillo*, 401 Md. 658, 672 (2007); *S&S Oil, Inc. v. Jackson*, 428 Md. 621, 649 (2012). The Maryland Supreme Court explained, in *Baltimore Cty. v. State*, that:

the rule is sound that assumption of risk or contributory negligence may bar recovery by the guest passenger of a drunken driver, who knows or should know of the driver’s condition, if the driver’s negligence, due to his intoxication, is a proximate cause of the accident causing injury or death to the passenger in a suit against a third party, as well as in a suit against the host.

*Id.* at 366.

We note, further, that the State of Maryland has not enacted comparative negligence acts, nor has the legislature sought to limit the defense of assumption of risk. We hold, therefore, that the doctrine continues to be a viable defense, and it is not in contradiction to public policy.

**V. The court did not abuse its discretion in declining to give Appellant’s instructions to the jury on legal incapacity and voluntariness.**

“The main purpose of a jury instruction is to aid the jury in clearly understanding the case and considering the testimony; to provide guidance for the jury’s deliberations by

directing their attention to the legal principles that apply to and govern the facts in the case; and to ensure that the jury is informed of the law so that it can arrive at a fair and just verdict.” *Boone v. American Mfrs. Mut. Ins.*, 150 Md. App. 201, 226 (2003). According to the Maryland Rules of Civil Procedure, a trial court “need not grant a requested jury instruction if the matter is fairly covered by the instructions given.” Md. Rule 2-520 (c). In deciding whether the court was required to provide special jury instructions, the Court considers: “(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.” *Keller v. Serio*, 437 Md. 277, 283 (2014).

Appellant argues that the instructions proffered to the court regarding incapacity and voluntariness supplemented the court’s instructions about assumption of the risk. Appellant contends that failing to instruct the jury on the legal significance of intoxication and its impact on one’s ability to provide consent, as a matter of law, “renders the finder of facts deliberations and consideration of the consent element of assumption of risk irrecoverably and fatally deficient.” Appellee counters that the special jury instructions proffered were fairly covered by the standard instruction on assumption of risk, and the instruction on voluntariness was not an accurate statement of Maryland law.

Appellant requested that the court give the following special instructions:

**Legal Incapacity**

Maryland law differentiates between individuals who are intoxicated but remain otherwise “orderly” and those who are so intoxicated as to be rendered physically helpless. *Veenstra v. United R. & E. Co.*, 148 Md. 512. A person rendered physically helpless is considered to lack the capacity to make decisions, legal or otherwise, for themselves as though they were very

young or otherwise legally incapacitated. *Id.* at 512-22; *Taylor v. Amiger*, 277 Md. 638, 649 (1976). Similarly, Maryland recognizes that a person who is asleep, passed out, or so intoxicated lacks the capacity to provide consent. *Travis v. State*, 218 Md. App. 410, 427 (2014) (establishing that being asleep is legally equivalent to being unconscious, even where the unconsciousness is due to extreme intoxication, and that such individuals are incapable of providing consent).

### **Assumption of Risk - Voluntarily Undertake the Risk**

Voluntarily undertaking the risk means consenting to the risk and consequences. For a risk to be voluntarily undertaken by a plaintiff, the defendant must establish that the plaintiff knew what risk she was exposing herself to and the existence of “some manifestation of consent . . .” *Morgan State v. Walker*, 397 Md. 509, 515 (2007). The Defendant must further establish that “there was no restriction on plaintiff’s freedom of choice whether by the existing circumstances or by coercion emanating from the defendant.” *Crews v. Hollenbach*, 358 Md. 627, 644 (2000). If the plaintiff was incapable of consenting, then they are incapable of voluntarily undertaking the risk. “To be asleep is ipso facto to be physically helpless.” *Travis v. State*, 218 Md. App. 410, 427 (2014) (establishing that being asleep is legally equivalent to being unconscious, even where the unconsciousness is due to extreme intoxication, and that such individuals are incapable of providing consent).

As we see it, the instructions proffered were fairly covered by the standard pattern jury instructions. MPJI-Cv 19:14 states, and the court instructed the jury that, “a person assumes the risk of injury if that person knows and understands, or must have known and understood, the risk of an existing danger and voluntarily chooses to encounter that danger.” The instruction, as given, was clear and was a correct statement of the law. *See Bliss*, 125 Md. App. at 272-73. We agree that Appellant’s special instruction on legal incapacity was misleading, especially in light of the testimony given. Based on the record in this case, we hold that the court did not abuse its discretion.

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