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Driver Having Green Light - Duty of Care - Valench v. Belle Isle Cab Co.

DRIVER HAVING GREEN LIGHT — DUTY OF CARE

Valench v. Belle Isle Cab Co.[1]

The plaintiff was a passenger in the defendant Lee's taxicab, which was eastbound on Lombard Street in Baltimore City, at the intersection of Light Street. The cab was standing directly to the south of a streetcar, both vehicles waiting for the traffic signal to change to green. Lee's vision to the north on the intersecting street was obscured by the streetcar, and he could not see the defendant Medlin's auto which was headed south on Light Street. Lee testified that he waited for the amber light to clear, and started to move when the green came on. He was in the act of passing the streetcar when he was struck by Medlin's auto, and he testified that he first saw Medlin's auto when it was inches away, and right before the collision occurred. There was testimony in the record, not referred to in the opinion, that Medlin's auto was three feet into the intersection when the light changed, but this was contradicted by other witnesses who said Medlin entered the intersection on a red light. As a result of the collision, the plaintiff was injured and

[1] 75 A. 2d 97 (Md., 1950).

sued both Medlin and the taxicab company. The jury found in favor of the plaintiff against both defendants. Medlin's negligence was apparently in his failure, while exercising his statutory[2] right to proceed, to take reasonable precautions such as slowing down, blowing his horn, etc., in anticipation that someone such as Lee might come from behind the streetcar, and there was no appeal on his part. The lower court granted the defendant cab company's motion for a judgment "n.o.v." Upon appeal from this judgment, the Court of Appeals reversed, reinstating the verdict for the plaintiff against the cab company.

The Court of Appeals began its opinion by adverting to the well established principle that if there is any evidence, however slight, legally sufficient to prove negligence, the weight and value of such evidence is for the jury, and pointed out that the same rule applied in passing on the question of negligence on a motion for judgment n.o.v. The Court quoted from *Eisenhower v. Baltimore Transit Co.*,[3] as follows:

> " 'The Court, in deciding whether to grant demurrer prayers or motions for judgments n.o.v. resolves all conflicts in the evidence in favor of the plaintiff and assumes the truth of all evidence and such inferences as may naturally and legitimately be deduced therefrom which tend to support the plaintiff's right of recovery'."[4]

It is up to the jury to decide the question of negligence, and the Court said Lee's own testimony was sufficient to send the case to the jury on the question of his own negligence, and could not be brushed aside because it was contradicted by other testimony in the case. If a motorist enters an intersection "blindly", without anticipating traffic in the intersection, he is guilty of negligence — whether the light is green, amber or red. The jury evidently found Lee guilty of such negligence as to his passenger. In its opinion, the Court of Appeals said:

> "A green light does not give an operator of a motor vehicle the right to enter an intersection irrespective

[2] Md. Code (1951), Art. 66½, Sec. 157.
"(b) Amber alone or 'Caution' when shown following the green or 'Go' signal.
(1) Vehicles facing the signal shall stop before entering the nearest crosswalk at the intersection, but if such stop cannot be made in safety a vehicle may be driven cautiously through the intersection."

[3] 190 Md. 528, 59 A. 2d 313 (1948).

[4] *Supra*, n. 1, 98. See also: State v. Gosnell, 79 A. 2d 530 (Md., 1951).

> of traffic conditions. An automobile may lawfully be in the intersection at the time, and it may 'be driven cautiously through the intersection'. If this were not so, all traffic in the intersection when the light turns from green to amber could be trapped by oncoming traffic which had just been given the green light, or 'Go' signal. An operator of an automobile, when given the green or 'Go' signal at an intersection, is required to use due care and caution to see that traffic in the intersection is such that he can proceed with safety. He must regard and heed actual traffic conditions, even though he has a green or 'Go' signal. If a motorist enters an intersection blindly, without anticipating traffic in the intersection, he is guilty of negligence."[5]

Possibly the Court's rather brief treatment of the case was due to the fact that a passenger in the taxicab was the plaintiff. If the Court is merely saying that Lee's own statement to the effect that he drove into the intersection when his view was obscured shows he was negligent in failing to anticipate the presence of persons who might be *lawfully* in the intersection, the opinion seems a sound one. It is unfortunate, however, that the Court in its opinion did not refer to Medlin's own testimony, favorable to the plaintiff (the truth of which would have to be assumed)[6] that he was three feet into the intersection when the light changed, which, of course, would place him "lawfully" within the intersection. It is also unfortunate, in light of appellee's contention that Medlin was unlawfully in the intersection, and that therefore the operator of the cab was not under a legal duty to anticipate that he was actually in the intersection, that the Court should have seen fit to dismiss this argument with the following statement:

> "This argument is too subtle and mystic for this court to consider. Medlin's automobile was not a phantom, it was really and actually a physical automobile."[7]

This somewhat cursory treatment of the case, coupled with the above statement, seems to leave some room for doubt as to whether the opinion might not be construed as saying that Lee was negligent, regardless of whether Medlin was lawfully in the intersection or not. However, from the facts of the case, the truth of all of which favorable to the

[5] *Supra*, n. 1, 99.
[6] *Supra*, n. 4.
[7] *Supra*, n. 1, 100.

plaintiff would have to be assumed, it could be found that Medlin was lawfully within the intersection. The cab driver's testimony was silent on the point, and Medlin's own testimony was to the effect that he was three feet into the intersection when the light changed. Consequently, in all likelihood, the Court of Appeals in merely saying that under these circumstances, the question of Lee's negligence was for the jury.

The question of whether Lee was negligent even if it were clearly established that Medlin was unlawfully in the intersection, must, of course, await determination until it is before the Court on undisputed evidence, or in some form requiring a ruling on that issue.

What should the extent of Lee's duty be? The Maryland Code provides that when the motorist is given the green or "Go" signal, he must "yield the right-of-way to other vehicles and to pedestrians *lawfully* within the intersection at the time such signal is exhibited."[8] The Courts agree that traffic awaiting the green or crossing signal on intersecting streets must first ascertain whether the intersection is clear before starting to cross.[9] Not to do so is negligence.[10] The motorist is under a duty to be vigilant and watch for vehicles that might cross his path.[11] The general rule is that a green light or a favorable signal gives a motorist no more than a qualified permission to cross, the qualification being two-fold: (1) he must permit traffic lawfully in the intersection to complete its crossing, and (2) he must proceed with due care.

Just what is meant by due care, is, of course, often difficult to define, and must depend largely on the circumstances of each case. The instant case is supported by prior Maryland authority and by authority elsewhere in its conclusion that a driver must exercise special care in entering an intersection where his view is obscured. This is particularly

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[8] Md. Code (1951), Art. 66½, Sec. 157 (a) (1). Italics supplied.

[9] 2 BLASHFIELD CYCLOPEDIA OF AUTOMOBILE LAW (Perm. Ed., 1951), Sec. 1005, p. 254, n. 17.

[10] Maryland holds that a violation of a statute is evidence of negligence, where such violation is the proximate cause of the accident. Hochschild Kohn & Co. v. Canoles, 193 Md. 276, 66 A. 2d 780 (1949); Meese v. Goodman, 167 Md. 658, 176 A. 621 (1934); Kelly v. Huber Baking Co., 145 Md. 321, 125 A. 782 (1924); B. & O. R.R. Co. v. State, 169 Md. 345, 181 A. 830 (1935).

[11] In Sklar v. Southcomb, 194 Md. 626, 630, 72 A. 2d 11 (1950), the defendant proceeded on a green light and hit the plaintiff's car which was being driven through a red light while in a funeral procession. The Court said:

> "Even though the light was in his favor, he was under an obligation to yield the right of way to vehicles already in the intersection."

The Court cited U. S. F. & G. Co. v. Continental Baking Co., 172 Md. 24, 190 A. 768 (1937), a case in which the car already in the intersection was lawfully there.

true if he is passing other traffic that is failing to proceed despite a favorable signal. Thus, in *Sklar v. Southcomb*,[12] cited by the instant case, a driver, having a green light, but whose view was obscured and who passed other vehicles who were stopped, despite the green light, was held guilty of negligence. Maryland, in *Longenecker v. Zanghi*,[13] has previously held that when vision is obscured by a building, the driver's duty increases to a degree commensurate with the greater danger.

That this duty will not be carried to unreasonable lengths is indicated by the decision in *Larsen v. Brenan*,[14] which held that a motorist having a favorable light was under no duty to stop his car and peer around the corner to see whether motorists having unfavorable signals would obey them.

On the question of whether Lee was negligent if it had been clearly established that Medlin was *unlawfully* in the intersection, consideration should be given to decisions involving collisions between favored and unfavored drivers at intersections where the view is not obscured, or where there are no other factors to warn the favored driver. In *Sun Cab Co. v. Faulkner*,[15] the defendant cab, having a green light, entered an intersection at an excessive rate of speed, and collided with another cab which entered at the same time on a red signal. The Court held that the defendant was not liable to the plaintiff (his passenger) because

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[12] See Sklar v. Southcomb, *ibid;* and Capillon v. Lengsfield, 171 So. 194, 197 (La. Ap., 1936), in which the defendant, with a green light, but whose view was obscured by other cars waiting for the light to change, proceeded, and collided with plaintiff; the Court said:

> "Reasonable prudence and care required that he tarry until he was in a position to see whether the roadway was clear . . ., especially, in view of the fact that the traffic, adjacent to him and proceeding in the same direction, had not moved forward but was ostensibly waiting until the roadway was clear of traffic."

In Shea v. Judson, 283 N. Y. 393, 28 N. E. 2d 885, 887 (1940), the Court said:

> "Even though (the driver) was authorized to proceed in the face of the green light, if he observed (the car with which he had collided) in the intersection . . . and conditions were such that, in the exercise of ordinary prudence, he ought to have made such an observation, he was not authorized to proceed blindly and wantonly without reference to the (other) car but was bound to use such care as to avoid the collision as an ordinarily prudent man would have used under the circumstances. Under all the circumstances of the case, it was for the jury to determine whether he exercised such care as was required of an ordinarily prudent man, though having in mind the fact that the lights gave him the right of way."

See also: Tooke v. Muslow Oil Co., 183 So. 97 (La. Ap., 1938).

[13] 175 Md. 307, 2 A. 2d 20 (1938).

[14] 54 So. 2d 337 (La. Ap., 1951).

[15] 163 Md. 477, 163 A. 194 (1932).

the collision resulted, not from his excessive speed, but from the disregard of the signal by the other cab. The Court said that even though the defendant was negligent in speeding, his negligence was not the proximate cause of the collision. The Court said:

> "The case is unlike those in which, there being no signals, by lights or by traffic officers, two drivers approaching each other on intersecting streets have the burden of determining which has the right to cross unobstructed by the other. In those cases there is commonly a question of the exercise of due care on the part of one driver or the other in deciding to cross when he did, but in the present case no such question is present. . . .
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> If negligence is found in the rate of speed at which the Sun cab was being driven, that fact alone does not, of course, answer the question of liability. The negligence must have been the cause of the collision. . . . There would be no foundation in fact here for holding that by driving at a reduced speed the Sun Company driver might have avoided the collision after the two cabs came within sight of each other. The contribution of the Sun cab to the accident appears to have been only that of being there at the moment, a circumstance which might have arisen with or without negligence in approaching the place. But taking it as proved that there was negligence in the rate of speed in this instance, that negligence, in the approach, must be found to have been the cause of the collision, or there can be no legal responsibility for it on the Sun Company's part."[16]

The above quotation from the *Faulkner* case was used in 4 Md. L. Rev. 207, a casenote on *Greenfield v. Hook*,[17] entitled " 'Boulevard Stop' Streets in Maryland", which pointed out that the law relating to the right of way at intersections controlled by traffic lights (and other forms of signals) is sharply differentiated from the right of way law at uncontrolled intersections. At controlled intersections, the driver having the green light or "Go" signal, and whose vision is unobscured and who has no other warning, seems to have almost an absolute right of way, and this without regard to his speed. *Monumental Motor Tours, Inc.*

[16] *Ibid*, 478-9.
[17] 177 Md. 116, 8 A. 2d 888 (1939).

v. Becker,[18] followed the *Faulkner* case, and held the favored driver not guilty of negligence, despite the fact that he was speeding. The Court said:

> "While relying upon the protection which the traffic sign was intended to afford for his right of way, the bus driver had no reason to anticipate and guard against such contingencies as those to which the accident in this case must be attributed, and to which the speed of the bus had no relation."[19]

The case of *Pegelow v. Johnson,*[20] pointed out that it was not negligence for a favored driver to assume that a driver of an unfavored highway marked by a stop sign will stop and allow him to proceed. *Belle Isle Cab Co. v. Pruitt,*[21] repeated the language of *Greenfield v. Hook,*[22] and made clear that if the favored driver had to slow down at every intersection the great sums of money spent in building through highways "to accommodate the great volume of automobile traffic which is so indispensable a part of modern life"[23] would be largely wasted. The Court also said that the duty of the unfavored driver to stop and yield the right of way should be positive and inflexible, so that the favored driver might safely exercise the privilege of uninterrupted travel which the statute gives. This result was reached even though the driver on the favored highway was faced with a "Slow, Dangerous Corner" sign. In *Sonnenburg v. Monumental Motor Tours,*[24] the Court said: "The favored driver on a boulevard is not his brother's keeper", in a case where there was evidence of terrific speed on the part of the favored bus driver, and he testified that he knew the intersection was dangerous.

An analysis of these cases leads to the conclusion that under normal circumstances, the driver on the favored highway has a right to rely on the assumption that the unfavored driver, *whom the favored driver sees,* will obey the traffic signal, and the favored driver may proceed accordingly, without the necessity of slowing down. Such

[18] 165 Md. 32, 166 A. 434 (1933).

[19] *Ibid,* 36.

[20] 177 Md. 345, 9 A. 2d 645 (1939). See also: Keir v. Trager, 134 Kan. 505, 7 P. 2d 49 (1932); Dikel v. Mathers, 213 Iowa 76, 238 N. W. 615 (1931); Lucas v. Andress, 17 La. App. 329, 136 So. 207 (1931).

[21] 187 Md. 174, 49 A. 2d 537 (1946), (Markell and Delaplaine dissenting). See also, to the same effect: State v. Gosnell, 79 A. 2d 530 (Md., 1951), a case where the favored driver was racing, and Baltimore Transit Co. v. O'Donovan, 78 A. 2d 647 (Md., 1951).

[22] *Supra,* n. 17.

[23] *Supra,* n. 21, 179.

[24] 81 A. 2d 617, 620 (Md., 1951).

an assumption is a necessity in order to speed the flow of traffic on our expensive through highways, and through traffic lights. It seems unlikely that the Court of Appeals, in the instant case, means to qualify or cast any doubt on the favored driver's right to rely on the above assumption, in the ordinary case where his view is unobscured, and he has no other warning of possible danger. Probably the Court of Appeals is merely reiterating what has long been the rule, and saying that where the favored driver acquires knowledge of danger, he is bound to exercise the care of an ordinarily prudent person;[25] that where his view is obscured, or he has other warning of danger, he must use a degree of care commensurate with the greater danger, and proceed with caution; that he cannot proceed blindly through an intersection, in disregard of obvious indications of danger, and in disregard of the rights of those who may be *lawfully* within the intersection. The question which seems still to need an unequivocal answer is whether this increased duty of care on the favored driver's part can be extended to make him negligent when he collides with a person who is clearly and undeniably *unlawfully* within the intersection.

[25] BLASHFIELD, *op. cit., supra*, n. 9, §1028, p. 307.