VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 30th day of September, 2021.

Present: All the Justices

Jennifer L. Grimsley, Appellant,

against Record No. 201200
Circuit Court No. CL19-332

Caitlyn R. Watkins, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Albemarle County.

Jennifer L. Grimsley appeals from a jury verdict in the Circuit Court of Albemarle County. Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that the circuit court's decision should be affirmed in part and reversed in part.

This case arises from a motor vehicle accident that occurred on March 5, 2018. Jennifer Grimsley was driving in the westbound lane of Route 64 in Albemarle County when she saw the vehicles in the distance ahead of her stopping. The traffic immediately in front of her had begun to slow but had not yet stopped, and she also began slowing. She saw a vehicle in the next lane suddenly slam on its brakes, and she observed that the cars travelling behind her were moving faster than the traffic ahead of her. She slowed to five-to-ten miles per hour and drove off the highway into the grassy median.

Several seconds after Grimsley's vehicle had come to a stop in the median, a vehicle driven by Caitlyn R. Watkins collided from behind, causing injury to Grimsley. Trooper Matthew Ward responded to the scene of the collision and took statements from both drivers. Grimsley told Trooper Ward that she had "[s]werved off the road to miss another crash and [Watkins'] car hit [her] in the rear in the median." The trooper ticketed Watkins, but not Grimsley, for following too closely.

Grimsley filed a complaint alleging that Watkins negligently caused the collision. Grimsley testified on direct examination that she had driven into the median not because she

thought she was going to collide with the vehicle immediately in front of her, but to give more stopping room to vehicles traveling behind her. On cross-examination, she said she did not know exactly how much distance was between her and the vehicle immediately in front of her before she drove into the median and did not know exactly how fast she or the driver of that vehicle were going. She also stated that when she told Trooper Ward that she veered off the road to prevent a collision, she meant that she intended to avoid a collision from a vehicle behind her, not ahead of her. She insisted that she could have stopped safely without colliding with the vehicle immediately in front of her even if she had not driven into the median.

Trooper Ward testified that Grimsley told him at the scene that she "swerved off the road to miss another crash." Watkins' counsel asked, "And when [Grimsley] told you she 'swerved off of the road to miss another crash,' was it obvious to you what – what was your understanding of what she was referring to?" Grimsley objected to the question on the ground that the trooper was not an expert and the question called for speculation. Watkins' counsel responded that he was "just asking what he understood [Grimsley] said to him." The circuit court overruled the objection and Watkins' counsel asked, "What was your understanding of the crash she was trying to miss?" Trooper Ward answered, "It was a crash that was up ahead." Watkins' counsel then asked, "Did you understand her to be saying to miss the car in front of her?" He answered, "Yes, I understood that."

Watkins testified that she was traveling between 35 to 40 miles per hours approximately 2 to 3 car lengths behind Grimsley when she saw her abruptly swerve into the median. As a result, the vehicle that had been in front of Grimsley was now immediately in front of Watkins. Watkins testified that she had no other option but to swerve into the median as well to avoid colliding with the vehicle that had been in front of Grimsley. She agreed with Grimsley that about five seconds elapsed between when Grimsley drove into the median and when Watkins collided with her vehicle.

At the conclusion of the evidence, the parties proposed jury instructions. Watkins requested a jury instruction on contributory negligence. Grimsley objected that there was no evidence that she had been negligent. Watkins responded that there was evidence that Grimsley had been following too closely: first, Trooper Ward testified that Grimsley told him that she had swerved to avoid another collision, meaning a collision with a vehicle ahead of her; and second,

the act of swerving implied that Grimsley had been following too closely to stop safely without leaving the highway. The court accepted the jury instruction Watkins proposed.

Grimsley proposed a jury instruction on last clear chance. She asserted that there was more than a scintilla of evidence that even if she had put herself in a situation of peril by driving into the median, she was physically unable to remove herself because she could not drive further into the median or return to the highway. The court ruled that the last clear chance doctrine did not apply and refused the jury instruction.

The jury returned a verdict for Watkins. We granted Grimsley this appeal.

I. Admission of Trooper Ward's Testimony

This Court reviews a decision to admit or exclude evidence for abuse of discretion. *Harman v. Honeywell Int'l, Inc.*, 288 Va. 84, 92 (2014). "However, a trial court has no discretion to admit clearly inadmissible evidence." *Id.*

Grimsley assigns error to the trial court's decision to allow Trooper Ward to testify regarding his interpretation of her statement that she "swerved off the road to miss another crash." Watkins argues that the trooper's statement is admissible under Rule 2:701[1] because Trooper Ward's opinion related to "the meaning of words." But Rule 2:701 is not broad enough to encompass Trooper Ward's statement here. The trooper's statement related not to the meaning of words but rather his subjective interpretation of Grimsley's words. Yet he provided no basis for that interpretation. He did not testify, for example, about any contemporaneous observations, such as facial expressions, hand gestures, or any other context that could have altered or amplified the meaning of the words he heard. His opinion therefore amounted to speculation. How Grimsley's words should be understood was a question for the jury. *See* Kent Sinclair, The Law of Evidence in Virginia (8th ed. 2018) § 13-1[b], at 759–60 ("[I]f the jury is as well-qualified as the witness to draw [an] inference, the witness's opinion is inadmissible unless the witness can relate specific details allowing the jury an adequate understanding.").

[1] That Rule provides, "Opinion testimony by a lay witness is admissible if it is reasonably based upon the personal experience or observations of the witness and will aid the trier of fact in understanding the witness' perceptions. Lay opinion may relate to any matter, such as - but not limited to - sanity, capacity, physical condition or disability, speed of a vehicle, the value of property, identity, causation, time, the meaning of words, similarity of objects, handwriting, visibility or the general physical situation at a particular location. However, lay witness testimony that amounts only to an opinion of law is inadmissible."

At trial, Grimsley objected based on improper lay opinion and speculation, and her assignment of error on appeal focuses on the fact that the trooper was not qualified as an expert. While a better objection would have been to the lack of relevance of the trooper's opinion, we recognize that the concepts of speculation and relevance are closely linked. Evidence that is speculative is often inadmissible largely because it is irrelevant. *See* 29 Am. Jur. 2d Evidence § 295 ("[E]vidence that produces only speculative inferences is irrelevant, and should be excluded."). Accordingly, Grimsley's objection, while imprecise, nonetheless provided the trial court with an opportunity to consider and rule on this issue and thus satisfied the requirements of Rule 5:25.[2] We therefore find that Grimsley properly preserved this issue for appeal and that the trial court abused its discretion in admitting the trooper's statements.

II. Instruction on Contributory Negligence

Whether to grant or refuse a proposed jury instruction rests "in the sound discretion of the trial court." *Cooper v. Commonwealth*, 277 Va. 377, 381 (2009). A jury instruction is proper only when it is supported by more than a scintilla of evidence. *Commonwealth v. Sands,* 262 Va. 724, 729 (2001). "When reviewing a trial court's refusal to give a proffered jury instruction, we view the evidence in the light most favorable to the proponent of the instruction." *Commonwealth v. Vaughn*, 263 Va. 31, 33 (2002).

"Contributory negligence consists of the independent elements of negligence and proximate causation." *Rascher v. Friend,* 279 Va. 370, 75 (2010). Consequently, "[w]hen a defendant relies upon contributory negligence as a defense, he has the burden of proving by the greater weight of the evidence not only that the plaintiff was negligent, but also that his negligence was a proximate cause, a direct, efficient contributing cause of the accident." *Karim v. Grover*, 235 Va. 550, 552 (1988) (internal quotations and citation omitted).

In *Bowers v. May*, 233 Va. 411 (1987), this Court held that there was sufficient evidence to warrant a jury instruction on contributory negligence where the plaintiff's vehicle was hit from behind by the defendant's vehicle after the plaintiff came to an abrupt stop to avoid a collision with the car in front of him. While acknowledging that the plaintiff's car was completely

[2] Rule 5:25 states, in relevant part: "Error will not be sustained to any ruling of the trial court ... unless the objection was stated with reasonable certainty at the time of the ruling." The purpose of the rule is to "afford the trial court an opportunity to rule intelligently on the issues presented, thus avoiding unnecessary appeals and reversals." *Weidman v. Babcock,* 241 Va. 40, 44 (1991).

stopped at the time of the collision and that "[s]topping momentarily is frequently a necessary incident to travel on the highway," we nonetheless found that the jury could have inferred that the plaintiff's failure to maintain a safe following distance and consequent sudden stop was a proximate cause of the accident. *Id*. at 413–14 (internal quotations and citation omitted).

Likewise, here, we find that there was more than a scintilla of evidence that Grimsley was contributorily negligent. As in *Bowers*, there was sufficient evidence for the jury to conclude that the accident was caused in part by Grimsley's failure to maintain a proper following distance behind the vehicle immediately in front of her. Thus, the trial court did not abuse its discretion by giving the instruction on contributory negligence.

III. Instruction on Last Clear Chance

Finally, Grimsley assigns error to the trial court's refusal to give her proposed jury instruction on the last clear chance doctrine. There are two types of plaintiffs to which the last clear chance doctrine may apply: the "helpless plaintiff" and the "inattentive plaintiff." *Greear v. Noland Co.*, 197 Va. 233, 238 (1955). A "plaintiff must be 'physically incapacitated' to qualify as a helpless plaintiff." *Williams v. Harrison*, 255 Va. 272, 276 (1998) (citing *Vanlandingham v. Vanlandingham*, 212 Va. 856, 858 (1972)). An inattentive plaintiff must have "negligently placed himself in a situation of peril from which he is physically unable to remove himself, but is unconscious of his peril." *Coutlakis v. CSX Transportation, Inc*., 293 Va. 212, 217 (2017).

Grimsley's proposed instruction only addressed the first type of plaintiff. There was no evidence that Grimsley was physically incapacitated before Watkins collided with her vehicle. Therefore, the circuit court did not err by refusing the last clear chance jury instruction that Grimsley proposed.

For these reasons, the Court affirms in part, reverses in part, and remands the case for a new trial. This order shall be certified to the Circuit Court of Albemarle County.

A Copy,

Teste:

Acting Clerk