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# Contributory Negligence - Duty of Pedestrian to Look While Crossing Intersection with Light

Harvey A. Howard S.Ed.
*University of Michigan Law School*

CONTRIBUTORY NEGLIGENCE—DUTY OF PEDESTRIAN TO LOOK WHILE CROSSING INTERSECTION WITH LIGHT—The plaintiff was crossing a busy intersection in reliance on a green traffic light in his favor when he was struck by defendant's automobile. Testifying in his own behalf, plaintiff said that he waited until the light changed to green and traffic on both sides stopped before proceeding to cross the street. He further stated that he was hit just before reaching the other side of the street. He did not see defendant's automobile before it struck him. At the conclusion of this testimony defendant moved for a directed verdict on the ground that plaintiff had failed to show freedom from contributory negligence. The trial court granted the motion as there was no testimony that plaintiff made continual observations after he started to cross. The circuit court, on appeal, reversed and remanded for a new trial: the uncontradicted testimony showed plaintiff was crossing on the green light and hence a prima facie case was made. On appeal, the circuit court was affirmed by an equally divided court. A pedestrian starting to cross when the light has turned green cannot be held contributorily negligent as a matter of law for failure to observe approaching traffic. The justices voting for reversal thought that the plaintiff, in failing to make further observations of the light and traffic after starting to cross the street, did not exercise due care for his own safety and hence was contributorily negligent as a matter of law. *Ortisi v. Oderfer*, 341 Mich. 254, 67 N. W. (2d) 153 (1954).

It is a well established rule that a person in crossing a street or highway must exercise that degree of care and caution which a reasonable man would exercise under similar circumstances.[1] In crossing an intersection with a

[1] Morse v. Bishop, 329 Mich. 488, 45 N.W. (2d) 367 (1951); Pecora v. Marique, 273 App. Div. 705, 79 N.Y.S. (2d) 350 (1948); Cheatwood v. Virginia Electric & Power Co., 179 Va. 54, 18 S.E. (2d) 301 (1942); 79 A.L.R. 1073 (1932).

favorable signal, the vast majority of jurisdictions do not as a matter of law require a pedestrian to make a continual observation of the light and traffic.[2] Although a pedestrian crossing a street with a green light has no absolute right of way, he is entitled to presume that automobiles on the intersecting street will obey the unfavorable light.[3] The majority of courts hold that although this preferential right of way does not excuse the pedestrian's duty of reasonable care, it does make the question of whether he exercised such care in failing to maintain a lookout for approaching traffic one for the trier of facts.[4] In contrast, a few states have adopted the badly reasoned view, long adhered to by Michigan, that reasonable care requires that a pedestrian make constant observations in almost all directions while crossing a street, with or without a favorable light, under the penalty that a failure to do so will constitute contributory negligence as a matter of law.[5] As suggested by the affirming opinion of the principal case, the effect of the minority doctrine is to afford a pedestrian no protection from the green light since his duties of observation are the same with or without it.[6] The majority doctrine requires only that a pedestrian look at such times as will give him reasonable knowledge of approaching traffic.[7] Hence, having looked when he started to cross, a pedestrian is not generally bound as a matter of law to look again.[8] This would especially hold true when, as in the principal case, the pedestrian started to cross when the light turned green. Ordinarily he should have the right to presume that traffic lights are adjusted so that he may safely cross the street.[9] Still, even under the majority doctrine there are those instances where the circumstances and conditions would clearly indicate that the failure of the pedestrian to make any observation is contributory negligence as a matter of law.[10] The tendency of cases where the

[2] Sandefer v. Robins, 35 Ala. App. 393, 48 S. (2d) 540 (1950); Young v. Tassop, 47 Cal. App. (2d) 557, 118 P. (2d) 371 (1941); Butts v. Kansas Power & Light Co., 165 Kan. 477, 195 P. (2d) 567 (1948); Grass v. Ake, 154 Ohio St. 84, 93 N.E. (2d) 590 (1950); 2A BLASHFIELD, CYC. AUTOMOBILE LAW AND PRACTICE, perm. ed., §1472 (1951); 10 id. §6628, n. 21.5, 22 (1942).

[3] Petersen v. General Rug & Carpet Cleaners, 333 Ill. App. 47, 77 N.E. (2d) 58 (1947); Wisnaski v. Afman, 341 Mich. 453, 67 N.W. (2d) 731 (1954); Horwitz v. Eurove, 129 Ohio St. 8, 193 N.E. 644 (1934).

[4] Hendricks v. Pappas, 82 Cal. App. (2d) 774, 187 P. (2d) 436 (1947); Evans v. Dickinson, 127 Conn. 297, 16 A. (2d) 582 (1940); Bishop v. Huffman, 175 Kan. 270, 262 P. (2d) 948 (1953); 164 A.L.R. 8 at 234 (1946).

[5] Sloan v. Ambrose, 300 Mich. 188, 1 N.W. (2d) 505 (1942); Boyd v. Maruski, 321 Mich. 71, 32 N.W. (2d) 53 (1948); Rucheski v. Wisswesser, 355 Pa. 400, 50 A. (2d) 291 (1947); Dwyer v. Kellerman, 363 Pa. 593, 70 A. (2d) 313 (1950); 2A BLASHFIELD, CYC. AUTOMOBILE LAW AND PRACTICE, perm. ed., §1472 (1951).

[6] Principal case at 259.

[7] Cummings v. Whitney, (2d Cir. 1953) 203 F. (2d) 354; Duchaine v. Ray, 110 Vt. 313, 6 A. (2d) 28 (1939).

[8] Chevalley v. Degar, (Ohio App. 1943) 52 N.E. (2d) 544; Farrow v. Ostrom, 10 Wash. (2d) 666, 117 P. (2d) 963 (1941).

[9] Principal case at 262.

[10] Robb v. Pike, 119 Fla. 833, 161 S. 732 (1935) (deliberately walking in front of approaching car); Moseley v. Mills, 145 Wash. 253, 259 P. 715 (1927) (aware of approaching car but failing to look). ". . . where the danger is obvious and apparent being directly in the path of the pedestrian, and where the pedestrian is no longer entitled to

pedestrian is crossing with the signal is to limit the duty of lookout to the discovery of obvious perils from vehicles.[11] The rationale of the majority is apparently founded on the reasoning that a pedestrian who crosses in reliance on a favorable light is bound to center at least a part of his attention upon the condition of the pavement, other pedestrians crossing the street, and upon the traffic signal itself in order to be aware of any changes therein.[12] Other Michigan cases have recognized that a pedestrian has a right to assume that approaching automobiles will not violate the law.[13] Clearly the affirming opinion does not ask that a pedestrian crossing with the light be fully relieved from a duty of exercising reasonable care, but only that the light afford such protection as will free him from the absolute and invariable duty of constant observation. Although the principal case followed the majority doctrine by an equally divided court, it may well be interpreted as indicating a possible retraction in Michigan of the antiquated and unrealistic minority doctrine.

*Harvey A. Howard, S.Ed.*

the benefit of the light because it has changed . . . the plaintiff may be guilty of contributory negligence as a matter of law for failure to observe." Principal case at 258.

[11] Riddel v. Lyon, 124 Wash. 146, 213 P. 487 (1923); Ballard v. Yellow Cab Co., 20 Wash. (2d) 67, 145 P. (2d) 1019 (1944).

[12] Goodman v. Brown, 164 Misc. 145, 298 N.Y.S. 574 (1937); 164 A.L.R. 8 at 59 (1946).

[13] Travis v. Eisenlord, 256 Mich. 264, 239 N.W. 304 (1931); Douglas v. Holcomb, 340 Mich. 43, 64 N.W. (2d) 656 (1954).