

ALLAYE BAH

*

NO. 2005-CA-0499

VERSUS

*

COURT OF APPEAL

**CONTINENTAL CASUALTY
INSURANCE CO., COCA-
COLA ENTERPRISES, INC.,
AND BEVERLY KITCHEN**

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

*

*

MURRAY, J., DISSENTS WITH REASONS

Although most, if not all, the fault appears to be on the part of Mr. Bah, the record does not rule out the possibility of some fault on the part of Ms. Kitchen. From the testimony in the record it cannot be determined how long Mr. Bah was in the intersection before the collision. Mr. Bah testified in his deposition that before entering the intersection he stopped at the stop sign and did not see any traffic approaching. Ms. Kitchen acknowledged in her deposition testimony that she did not see if Mr. Bah stopped at the stop sign. Rather, she testified that she first saw Mr. Bah when he was in her path. Although Ms. Kitchen testified there was nothing she could do to avoid the accident, whether she was keeping a proper lookout and whether she acted reasonably under the circumstances are factual issues inappropriate for summary judgment. For these reasons, I respectfully dissent.