IN THE CIRCUIT COURT FOR COUNTY, MARYLAND

Plaintiff,

v. Case No.:

Defendant.

****

REQUEST FOR JUDICIAL NOTICE

Plaintiff, by his/her lovely and talented counsel, Laura Zois, pursuant to Maryland Rule of Procedure 5-201, requests the court to take judicial notice of the following facts:

1. There are 5,280 feet in one mile.

2. A vehicle traveling at 1 mile per hour will travel 1.4667 feet in one second. (5,280 feet per hour, divided by 60 minutes, equals 88 feet per minute. 88 feet per minute, divided by 60 seconds, equals 1.4667 feet per second.)

3. Based upon the foregoing, the following speeds in miles per hour, are equal to the feet per second shown below:

1 mile per hour	=	1.4667 feet per second
30 miles per hour	=	44.0 feet per second
35 miles per hour	=	51.3 feet per second
40 miles per hour	=	58.7 feet per second
45 miles per hour	=	66.0 feet per second
50 miles per hour	=	73.3 feet per second
55 miles per hour	=	80.7 feet per second
60 miles per hour	=	88.0 feet per second
65 miles per hour	=	95.3 feet per second

The Plaintiff further requests the court, pursuant to Rule 5-201(g) to instruct the jury to accept as conclusive any fact judicially noticed.

Respectfully submitted,

MILES PER HOUR EXPRESSED IN TERMS OF FEET PER SECOND

1 mile per hour	=	1.4667 feet per second
30 miles per hour	=	44.0 feet per second
35 miles per hour	=	51.3 feet per second
40 miles per hour	=	58.7 feet per second
45 miles per hour	=	66.0 feet per second
50 miles per hour	=	73.3 feet per second
55 miles per hour	=	80.7 feet per second
60 miles per hour	=	88.0 feet per second
65 miles per hour	=	95.3 feet per second

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 841

September Term, 2003

ROGER C. HURT, Individually and f/u/c
CASUALTY RECIPROCAL EXCHANGE

v.

VALERIE A. PILKERTON

Murphy, C.J.,
Salmon,
Krauser,

JJ.

Opinion by Krauser, J.

Filed: April 23, 2004

3C01000148

> Even if you find speed, there is something else that you'll need to consider, it doesn't just end the matter. That doesn't mean that ah, speed; therefore, we check off that Mr. Hurt was negligent. There is something else you have to go on. And this is, again, in the jury instructions that the Judge read to you, any time that you're talking about a fact which causes an injury or causes a collision, there always has to be a (unintelligible) between the fact and the collision. . . . So, basically, for the Defendant to prove contributory negligence, the Plaintiff's negligence, in other words his speeding, must be a proximate cause of the collision.

In sum, the circuit court did not err in denying Hurt's request to give his proposed "proximate cause" instruction.

III.

Hurt contends that the circuit court erred "by reading as a jury instruction [Pilkerton's] request for judicial notice, which converted miles per hour to feet per second." Pilkerton's request for judicial notice, Hurt maintains, "should not have been admitted and certainly should not have been read as an instruction by the trial court." According to Hurt, the "instruction was not supported legally, as the jury should not engage in 'nice calculations of speed,'[8] nor factually, as all the witness testimony was consistent that this collision occurred almost instantly from [Pilkerton] pulling out."

The "doctrine of judicial notice substitutes for formal proof

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[8]Hurt's reference to "nice calculations of speed" appears to be a quote from the Court of Appeals' decision in *Dean v. Redmiles*, 280 Md. 137, 150 (1977).

of a fact 'when formal proof is clearly unnecessary to enhance the accuracy of the fact-finding process.'" *Lerner v. Lerner Corp.*, 132 Md. App. 32, 40 (2000) (quoting *Smith v. Hearst Corp.*, 48 Md. App. 135, 136 (1981)). Under Maryland Rule 5-201, a court can take judicial notice of certain facts, but the "judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready deterimination by resort to sources whose accuracy cannot reasonably be questioned." Md. Rule 5-201(b). That rule further provides that a "court shall take judicial notice if requested by a party and supplied with the necessary information." Md. Rule 5-201(d).

Here, Pilkerton requested that the court take

> judicial notice of the fact that there are 5,280 feet per mile. That a vehicle traveling at one mile per hour will travel 1.4667 feet in one second. That if someone is driving 30 miles an hour, they will travel 44 feet per second. If they're traveling 35 miles an hour, they'll travel 51.3 feet per second, etcetera, up to 65 miles per hour.

After granting that request, the court instructed the jury:

> [T]he Court has taken judicial notice of some facts, which you are to accept as conclusive; and, they have to do with facts that we all know as common sense, but may be might forget - some of which we might forget.
>
> One is that there are 5,280 feet in one mile. And that a vehicle traveling at one-mile-an-hour will travel 1.4667 feet, and that's taken by taking 5,280 and divid[ing] by 60 minutes, and then dividing that by 60 seconds.

> We're also giving you a list of various miles-per-hour, ranging in five mile increments, between 30 miles-an-hour and 65 miles-an-hour, for whatever use you might think it might have in your deliberations.

On appeal, Hurt does not argue that the mathematical calculations converting miles per hour to feet per second were not "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Md. Rule 5-201(b). Indeed, mathematical calculations are proper subjects of judicial notice. *See, e.g., State Bd. of Tax Comm'rs v. Traylor*, 228 N.E.2d 46, 49 (Ind. App. 1967) (noting that the Appellate Court of Indiana had previously taken judicial notice that a vehicle traveling forty miles per hour is traveling sixty feet per second); *see also Russell v. City of Wildwood*, 428 F.2d 1176, 1183 (3d Cir. 1970) (concluding that the mathematical calculation of the present value of an individual's total future earnings was an appropriate subject of judicial notice); *George v. Capital S. Mortgage Invs., Inc.*, 961 P.2d 32, 44 (Kan. 1998) (observing that a trial court could take judicial notice of mathematical calculations using assumed interest rates and mortgage amounts); *Hinkle v. Hartsell*, 509 S.E.2d 455, 457-58 (N.C. App. 1998) (providing a list of appropriate subjects of judicial notice, including the results of mathematical calculations).

Rather, Hurt contends that the court erred in taking judicial notice of the mathematical calculations because it would

"encourage[] the exact 'nice calculations of speed' that are prohibited." In support of that claim, Hurt cites the following language from *Dean v. Redmiles*, 280 Md. 137 (1977):

> "The prohibition against making *nice calculations* does not prevent a jury and judge from making *all calculations of every nature;* the prohibition pertains only to those close, hair-splitting calculations which cannot be expected of a reasonably prudent favored driver when immediately confronted by an intrusion upon his right of way."

Id. at 151 (quoting *Goosman v. A. Duie Pyle, Inc.*, 206 F. Supp. 120, 127 (D. Md. 1962), *vacated on other grounds*, 320 F.2d 45 (4th Cir. 1963)).

When Hurt objected at trial, however, he offered a different ground for his objection, stating:

> Your Honor, I have an objection on the grounds of relevancy in that testimony in the case has been - that there's been acceleration. There's testimony that there's been braking by the Plaintiff, Mr. Hurt. That's just simply the math of taking the miles per hour and turning it into feet per second. The relevancy of that to this case has - there is none. There's no bearing between that and what exactly went on in this case.
>
> We are required to show some sort of relevancy of that would be an expert up here and says what that means and what it means in terms of acceleration. What it means in terms of the vehicle itself. We'd need an expert who would know the acceleration rate of the vehicle. All of that would be required to make anything like that relevant. So, Plaintiff's going to object to - .

If "specific grounds are given at trial for an objection, the

party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal." *Klauenberg v. State*, 355 Md. 528, 541 (1999). Because Hurt gave a ground for his objection at trial that is wholly unrelated to the ground he now raises on appeal, we need not reach the merits of his argument that the circuit court erred in taking judicial notice of the mathematical calculations.

We nonetheless conclude that Hurt's contention that the circuit court erred in instructing the jury as to those calculations is without merit. Maryland Rule 5-201 states that the "court shall instruct the jury to accept as conclusive any fact judicially noticed." Md. Rule 5-201(g). The circuit court therefore did not err in giving a jury instruction as to a judicially noticed fact.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.