UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2129

September Term, 2015

RICHARD G. STEVENSON

v.

RICHARD B. KELLEY, ET AL.

Meredith,
Graeff,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: December 15, 2016

Richard Stevenson, appellant, filed a Complaint in the Circuit Court for Anne Arundel County, seeking damages for personal injuries sustained when he was struck by a vehicle owned by Gorana Kelley and driven by Richard Kelley, appellees. The Complaint contained three counts: negligence (Count 1); negligent entrustment (Count 2); and negligent hiring and/or retention (Count 3).

On the second day of trial, the circuit court granted Ms. Kelley's motion for judgment on Count 2.[1] The jury subsequently found Mr. Kelley negligent and concluded that his negligence was the proximate cause of Mr. Stevenson's injuries. It also found, however, that Mr. Stevenson was contributorily negligent. Accordingly, the court entered judgment in favor of Mr. Kelley.

On appeal, Mr. Stevenson raises the following questions for our review, which we have consolidated and rephrased.

1. Did the circuit court err in failing to give the jury an instruction on the doctrine of last clear chance and in failing "to put on the verdict sheet a question for last clear chance?

2. Did the court properly exercise its discretion in excluding evidence of Mr. Kelley's prior alcohol-related citations as they related to the negligent entrustment claim?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The Complaint alleged that, on December 28, 2011, at approximately 1:24 p.m., Mr. Stevenson, acting in the scope of his employment as a maintenance officer for the State

[1] Count 3 of the Complaint ultimately was dismissed, on Mr. Stevenson's motion.

of Maryland Highway Administration ("SHA"), was directing traffic around an accident that had occurred on eastbound Route 50 and West Road in Annapolis. As Mr. Stevenson directed traffic, Mr. Kelley, who was driving a vehicle owned by Ms. Kelley, "suddenly and without warning, ignored clear safety warnings from" Mr. Stevenson, who was directing Mr. Kelley to stop his vehicle. Instead, Mr. Kelley drove the vehicle onto the right shoulder of Route 50 and struck Mr. Stevenson, who was attempting to get out of the way.

Count 1 alleged that Mr. Kelley negligently operated the vehicle, causing injury to Mr. Stevenson. Count 2 alleged that Ms. Kelley negligently entrusted the vehicle to Mr. Kelley, as she knew or had reason to know that Mr. Kelley would operate the motor vehicle negligently.

On November 5, 2015, the first day of trial, the Kelleys moved in limine to preclude Mr. Stevenson from "raising any arguments regarding any alcohol related offense with regard to the negligent entrustment case." Counsel acknowledged that Mr. Kelley had an alcohol-related charge in California in 1986, and another in Maryland in 2007, but he stated that there was "no allegation or finding that alcohol was even a factor at this particular incident that we're here for today," and therefore, any mention of the incidents would be prejudicial.

Mr. Stevenson opposed the motion, stating that information about "dangerous propensities of a driver who is entrusted with an instrumentality such as a vehicle are relevant." Counsel opined that the information regarding "the prior DUIs" suggests "that

the owner negligently entrusted the vehicle to a person that – that shouldn't have been driving on the road."

The circuit court granted Ms. Kelley's motion in limine to preclude testimony regarding the alcohol violations. It stated: "In this particular case, there has been no claim that alcohol was – that alcohol was involved in this case. And I believe that the prejudicial value of mentioning that there had been a prior DWI would, in fact, be more prejudicial than probative in this case."

Mr. Stevenson testified that he had worked for the SHA for 25 years, and at the time of the accident, he was Chief Facility Maintenance officer. Mr. Stevenson drove a vehicle equipped with emergency lights, sirens, and radios, and as part of his duties, he would respond to vehicular accidents and emergencies and maintain the scene.

On December 28, 2011, Mr. Stevenson was traveling on eastbound Route 50, in the course of his duties. He noticed a three-car accident near the exit for Maryland Route 450/West Street. He described the layout of Route 50 at the accident scene, from left to right, as three travel lanes, a turn lane, and a shoulder. Mr. Stevenson activated his vehicle's emergency lights, put on his orange safety vest, and pulled over and positioned his vehicle straddling the third travel lane, the turn lane, and the shoulder. Because of his experience, Mr. Stevenson knew that he needed "to make a cushion," an area that emergency vehicles would be able to pull in and assist the injured drivers. After calling 911, he tried to have traffic in the third travel lane and the turn lane stop. Traffic was heavy due to the holidays, and vehicles in the first and second travel lanes were "still moving at a pretty good clip."

As he was trying to stop traffic, Mr. Stevenson noticed Mr. Kelley's vehicle "coming up on the shoulder" in an area where "no one is supposed to be."[2] He "kept flagging [the vehicle] down . . . to get off the shoulder, get off over into traffic." The scene was "very chaotic" and "very dangerous," as traffic was "flying by" in the first and second travel lanes. Mr. Stevenson could hear the sirens of emergency vehicles approaching, but he continued "going back and forth" across lanes of traffic, in an attempt to direct traffic. As he did so, he "notice[d] this guy still coming" up the shoulder of the road, which he "couldn't believe."

As the vehicle on the shoulder continued to get "closer and closer," Mr. Stevenson was "saying, stop, what are you doing? Stop, I need you to get over." The next thing he knew, the "car was still coming," and although the vehicle slowed down, it struck him. The vehicle did not hit him hard, but it did hit him. Mr. Stevenson stated that, when the vehicle slowed down, he thought it was "going to stop and try to go . . . over to his left . . . . off the shoulder." Mr. Stevenson did not think the vehicle was going to run into him, and he was "completely watching" it. Nevertheless, the "car kept coming," and the front driver's side of the vehicle, the "bumper or whatever," "bumped up against [his] knee." Mr. Stevenson had "work boots on with thick rubber soles." and when the vehicle bumped his knee, his boot "planted . . . into the asphalt." Mr. Stevenson thought his leg was going to snap back, but he was able to get his leg loose. Although he was struck by Mr. Kelley's

[2] Mr. Stevenson initially testified that he first noticed the vehicle on the shoulder when it was "a few thousand feet" away. When asked, on cross-examination, about his deposition testimony that he first saw Mr. Kelley 30 yards away, he stated that it may have been farther than that.

bumper on his right knee, his left knee was not hit, he was not thrown onto the hood of the car, and he was not knocked to the ground.

At that point, Mr. Stevenson "limped over and sat on the guardrail" on the shoulder. After resting for a moment, Mr. Stevenson went over to Mr. Kelley's window and stated: "Man, you hit me. Why didn't you – why didn't you stop?" Mr. Kelley responded, over and over: "I didn't hit you, I didn't hit you." Mr. Stevenson stated that Mr. Kelley did hit him. His knee became swollen, and he was taken by ambulance to Anne Arundel General Hospital.

Mr. Kelley testified on direct examination that he had not consumed any alcoholic beverages or taken any drugs or medications within the 24 hours preceding the accident. He had just entered Route 50 eastbound from Route 665 where there is a wide lane allowing the two routes to come together. Mr. Kelley intended on staying in the wide lane, which merged into one exit lane. When he entered Route 50 from Route 665, he noticed that traffic was stopped. He stated that there was enough room on the right side of the stopped cars to merge onto the exit road, which he did because he intended to get off on the next exit.

Mr. Kelley first saw Mr. Stevenson when Mr. Stevenson was waving at Mr. Kelley from approximately 100 feet away standing in the exit lane. Mr. Stevenson "just walked out and he held his hands up like this. . . . Because I didn't see this accident, I was still coming up the exit ramp." Mr. Kelley, who assumed Mr. Stevenson was law enforcement, stopped. He explained what happened next, as follows: "[Mr. Stevenson] turned around and he walked back to the direction . . . back towards the disturbance . . . or whatever it

was. And then I . . . turned my car to . . . go over and merge because when he said stop I assumed I couldn't continue on that exit road." He was trying to merge left into the traffic, "[a]nd suddenly [Mr. Stevenson] comes back to my car, puts both his hands on the front of it and said, I said stop." His testimony continued, as follows:

> Q. Okay. Did you see him coming at your vehicle?
>
> A. No, not until I got right there.
>
> Q. Okay. And . . . you were in the turn lane when . . . this happened?
>
> A. Yeah, I was looking left to – so I – hopefully a car would let me in. So, I didn't see anything approaching from that direction.
>
> Q. Okay. And when he approached from your – when he approached from the front, can you describe his demeanor before he put his hands on your vehicle?
>
> A. He looked angry.
>
> Q. Okay. And what did he do as he said, stop, and slammed his hands on the vehicle?
>
> A. After that he said, "You hit me."

Mr. Kelley testified that, when Mr. Stevenson placed his hands on his vehicle, the vehicle was stopped. After Mr. Stevenson stated that Mr. Kelley hit him, Mr. Stevenson "proceeded to go down the third lane of traffic on the passenger side vehicles. He went from one, two, three cars yelling, 'Did you see he hit me? Did you see he hit me?' But no one responded." Mr. Stevenson never returned to Mr. Kelley's vehicle, and he walked normally back to the disturbance on the road.

Following testimony on the second day of trial, Ms. Kelley moved for judgment on the negligent entrustment claim. Counsel argued that there was no testimony that

Mr. Kelley was under the influence of any medication that would cause him to be unable to operate a motor vehicle. Moreover, there was no testimony that Ms. Kelley knew or should have known of any alleged behavior of Mr. Kelley to support a negligent entrustment claim against her. In response, counsel for Mr. Stevenson renewed his opposition to the defense's motion in limine, which sought to exclude evidence regarding "two prior DUI charges." The court responded:

> The [c]ourt previously ruled that the DWI charges that took place . . . . years ago and that there is no testimony in this case that has been presented to the [c]ourt and I think by agreement of the parties there's been no testimony that alcohol was involved in this case. The [c]ourt previously ruled that that information would not be admissible.
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> So I'll . . . note for the record that you object to that ruling. I think you noted it previously, but I'm going to grant the Defense request as to negligent entrustment.

At the close of the evidence, the court instructed the jury regarding negligence and contributory negligence. The court instructed the jury that it had dismissed the claim of negligent entrustment as to Ms. Kelley, and it told the jury that it did not need to decide that question. The court then asked counsel whether there were any exceptions to the instructions given. Mr. Stevenson objected to the court's failure to give a "last clear chance" instruction, stating:

> Plaintiff requests an instruction on Plaintiff's proposed Jury Instruction Number 18, which is a Maryland Pattern Jury Instruction Civil 19.14, which is negligence, last clear chance. Which would be a plaintiff who is contributorily negligent may, nevertheless, recover if the plaintiff was in a dangerous situation, after the defendant had a fresh opportunity . . . to avoid injury to the plaintiff and failed to do so. And for the reasons that I expressed in chambers, and I'll very briefly summarize now, the testimony indicated that . . . Mr. Kelley, was negligent by driving off the roadway onto the shoulder in close proximity to Plaintiff. And if the jury were to find that

> Mr. Stevenson, Plaintiff, were contributorily negligent, then by the testimony of witnesses, including Defendant, Mr. Kelley, Mr. Kelley had sufficient time to avoid the accident, and, therefore, had the last clear chance to avoid the accident.
>
> The elements of last clear chance are present. That is the sequence of the events, and the timing of the events, and that . . . even if Mr. Stevenson were negligent, that it would be Mr. Kelley's . . . subsequent opportunity to have avoided the accident. He had plenty of time, factually indicated he had plenty of time to stop. In fact, he indicated that he did stop. That is in dispute.

Counsel also took exception to the failure of the verdict sheet to reference the doctrine of last clear chance.

The jury subsequently rendered its verdict. It found that "the defendant, Richard B. Kelley was negligent, and that said negligence was a proximate cause of Plaintiff's injury." It also found "that the Plaintiff, Richard G. Stevenson, was contributorily negligent in causing this accident."

DISCUSSION

I.

Jury Instructions and Verdict Sheet

Mr. Stevenson's first contention relates to his request to give the model pattern jury instruction regarding last clear chance. Maryland Civil Pattern Jury Instructions ("MPJI-CV") 19:14 provides: "A plaintiff who was contributorily negligent may nevertheless recover if the plaintiff was in a dangerous situation and thereafter the defendant had a fresh

opportunity of which defendant was aware to avoid injury to the plaintiff and failed to do so."

The court declined to give this instruction. Mr. Stevens contends that the court's ruling in this regard, and the failure to include the doctrine of last clear chance on the verdict sheet, was error.[3]

A court is required to give a jury instruction requested by a party if (1) "'the requested instruction was a correct statement of the law'"; (2) "'it was applicable under the facts of the case'"; and (3) it was not "'fairly covered in the instructions actually given.'" *Jarrett v. State*, 220 Md. App. 571, 583-84 (2014) (quoting *Gunning v. State*, 347 Md. 332, 348 (1997)). The question here is whether the doctrine of last clear chance was applicable under the facts of the case.

This same question is applicable to the issue raised regarding the jury verdict sheet. A "verdict sheet itself is a tool for the jury to utilize in deciding its verdict," *Ogundipe v. State*, 424 Md. 58, 72 (2011), *cert. denied*, 132 S. Ct. 1977 (2012), and therefore, it follows that only an accurate statement of the law under the facts of the case should appear on the verdict sheet.

[3] Neither the proposed jury instruction nor the proposed verdict sheet are contained in the record on appeal. Mr. Stevenson filed a motion to correct the record with these documents, which were brought to the trial court's attention during an off-the-record argument, but were not filed with the clerk of the court. We shall grant the motion, but we caution counsel in future cases, particularly now that electronic filing is being implemented, to be vigilant in making sure all relevant documents are placed in the record to avoid the risk that such documents will not be deemed part of the record on appeal.

Here, as we explain below, the circuit court properly determined that the doctrine of last clear chance was not applicable. Accordingly, it properly declined to give a last clear chance instruction and include reference to the doctrine on the verdict sheet.

Maryland has adopted the principle of contributory negligence, and pursuant to this principle, "although the defendant's misconduct may have been the primary cause of the injury," a plaintiff cannot recover "if the proximate and immediate cause of the damage can be traced to want of ordinary care and caution on his part." *Coleman v. Soccer Ass'n of Columbia*, 432 Md. 679, 687, 691 (2013). One exception to this rule is the doctrine of last clear chance, which allows a plaintiff to recover "'if the defendant might, by the exercise of care on its part, have avoided the consequences of the neglect or carelessness' of the plaintiff." *Id.* at 687 (quoting N. Cent. Ry. Co. v. State, 29 Md. 420, 436 (1868)).

In *Wooldridge v. Price*, 184 Md. App. 451, 462 (2009), this Court explained the doctrine of last clear chance, as follows:

> [T]he doctrine of last clear chance permits a contributorily negligent plaintiff to recover damages from a negligent defendant if each of the following elements is satisfied: (i) the defendant is negligent; (ii) the plaintiff is contributorily negligent; and (iii) the plaintiff makes "a showing of something new or sequential, which affords the defendant a fresh opportunity (of which he fails to avail himself) to avert the consequences of his original negligence."
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> *Burdette v. Rockville Crane Rental, Inc.*, 130 Md. App. 193, 216 (2000) (quoting *Liscombe v. Potomac Edison Co.*, 303 Md. 619, 638 (1985)). "The theory behind the doctrine is that 'if the defendant has the last clear opportunity to avoid the harm, the plaintiff's negligence is not a "proximate cause" of the result.'" *Id.* at 215 (quoting W. Prosser, Law Of Torts, § 66 (4th ed.1971)).

(parallel citations omitted).

This Court explained that "the operative phrase" was "fresh opportunity," noting that "the doctrine will apply only if 'the acts of the respective parties [were] sequential and not concurrent.'" *Id.* (quoting *Burdette*, 130 Md. App. at 216).

> In other words, the defendant must have had a chance to avoid the injury after plaintiff's negligent action was put in motion. The doctrine "assumes" that, after the primary negligence of the plaintiff and defendant, "the defendant could, and the plaintiff could not, by the use of the means available avert the accident." *United Rys. & Elec. Co. v. Sherwood Bros.*, 161 Md. 304, 310 (1931). In this way, the defendant should have recognized and responded to the plaintiff's position of "helpless peril." *Baltimore & O.R. Co. v. Leasure*, 193 Md. 523, 534 (1949).

Id. at 462-63 (quoting *Carter v. Senate Masonry, Inc.*, 156 Md. App. 162, 168-69 (2004)) (parallel citations omitted). *Accord Peregoy v. W. Md. Ry. Co.*, 202 Md. 203, 211 (1953) (for doctrine of last clear chance to apply, "[s]omething new, or independent, must be shown, which give the defendant a fresh opportunity to avert the consequences of his original negligence and the plaintiff's contributory negligence"). *See also Nationwide Mut. Ins. Co. v. Anderson*, 160 Md. App. 348, 358 (2004) (observing that the doctrine "'is only applicable when the defendant's negligence in not avoiding the consequences of the plaintiff's negligence is the *last* negligent act, and cannot be invoked when plaintiff's own act is the final negligence act, or is *concurrent* with defendant's negligence.'") (quoting *Meldrum v. Kellam Distrib. Co.*, 211 Md. 504, 512 (1957)), *cert. denied*, 386 Md. 181 (2005). "The doctrine is more often described than applied because of the requirement that plaintiffs show a new act of negligence following their own actions." *Id.*[4]

[4] Mr. Stevenson argues that the Court of Appeals added in *Peregoy v. W. Md. Ry. Co.*, 202 Md. 203, 211 (1953), without basis, the requirement of a "new," "second act," and therefore, the holding in that case is wrong and we should reject it. (continued . . .)

Here, Mr. Kelley was negligent in driving on the shoulder of the road, passing vehicles while looking to his left. Mr. Stevenson flagged and waved at him to "get off the shoulder" and "get over into the traffic flow," and he then walked away from the shoulder to direct traffic. Mr. Stevenson's contributory negligence was moving back to the shoulder in an effort to get Mr. Kelley's moving vehicle to stop.

Our review of the record reveals no "'new or sequential [act], which afford[ed] the defendant a fresh opportunity (of which he fail[ed] to avail himself) to avert the consequences of his original negligence.'" *Wooldridge*, 184 Md. App. at 462 (quoting *Burdette*, 130 Md. App. at 216). Rather, Mr. Kelley's negligence, and Mr. Stevenson's contributory negligence, were concurrent acts, and there was no evidence that there was a new act giving Mr. Kelley a "fresh opportunity" to avoid the injury after Mr. Stevenson's negligent action was put in motion.

Mr. Stevenson's reliance on *Cohen v. Rubin*, 55 Md. App. 83, *cert. denied*, 297 Md. 311 (1983), is misplaced. In that case, the defendant, Steven Cohen, who had been drinking alcohol and smoking marijuana, challenged another motorist to race down Ocean Highway in Ocean City, Maryland. *Id.* at 87-88. As Mr. Cohen accelerated his vehicle to seventy-five or eighty miles per hour down Ocean Highway, Philip Scott Rubin, approximately

(. . . continued) We decline that invitation, and we will interpret the last clear chance doctrine as repeatedly set forth in recent years, i.e., as requiring "'a showing of something new or sequential, which affords the defendant a fresh opportunity (of which he fails to avail himself) to avert the consequences of his original negligence.'" *Wooldridge v. Price*, 184 Md. App. 451, 462 (2009) (quoting *Burdette v. Rockville Crane Rental, Inc.*, 130 Md. App. 193, 216 (2000)). Indeed, we note that the jury instruction requested by Mr. Stevenson required that the jury find that Mr. Kelley had a "fresh opportunity" to avoid the injury.

three blocks away, began crossing the highway outside of a crosswalk. *Id.* at 87. A passenger in Mr. Cohen's vehicle saw Philip step down off of an island into the roadway and pleaded with Mr. Cohen to slow down. *Id.* at 88. Mr. Cohen did not slow down, and he struck and killed Philip. *Id.* at 87-88.

Mr. Cohen argued on appeal that the court erred in giving a last clear chance instruction because his negligence was concurrent to Philip's negligence, and as his negligence continued unchanged until the fatal collision, it could not serve as the basis for a jury instruction. *Id.* at 92. We disagreed, stating that Mr. Cohen's argument overlooked the passenger's testimony that she observed Philip in the roadway three blocks away and advised Mr. Cohen to slow down, which admonishment he ignored. *Id.* We stated:

> This testimony, that Steven Cohen was made aware of the dangerous position of the two boys on the highway at a time when he could have availed himself of the opportunity to slow down to avoid the consequences of his original negligence due to driving at a highly excessive rate of speed, was sufficient for the trial court to grant the last clear chance instruction.

Id.

Here, unlike in *Cohen*, there was no evidence that, after Mr. Stevenson stepped back into the shoulder in an effort to stop Mr. Kelley's vehicle, Mr. Kelley had a "fresh opportunity" to avoid the accident. There was no showing, as required, that Mr. Kelley "was negligent, [Mr. Stevenson] was negligent, and then [Mr. Kelley] had a new opportunity to change the course of events." *Carter*, 156 Md. App. at 171.

Rather, this case is more akin to *West v. Belle Isle Cab Co.*, 203 Md. 244, 252 (1953), where the Court of Appeals concluded that there was no "basis in the record for the doctrine of last clear chance" to apply. The Court explained:

> There is no evidence that the driver either saw, or should have seen, Mrs. West in time to avoid striking her. Further, if, as the testimony indicates, she suddenly stepped from between the parked cars, she was guilty of contributory negligence which was concurrent with the negligence of the driver, if negligence there was, and under those circumstances, the doctrine of last clear chance would not be applicable. To bring the doctrine into play, the negligence of the defendant must be consequential to that of the plaintiff and not concurrent. Certainly, in this case, if the accident occurred as the defendant says it did, the undisputed testimony would be that Mrs. West's own act was the final negligent act which clearly would prevent the invocation of the doctrine.

Id. at 252-53 (citations omitted). *See also Quinn v. Glackin*, 31 Md. App. 247, 253 (1976) (doctrine of last clear chance did not apply where child on bicycle entered highway from driveway 100 feet in front of defendant because defendant had no fresh opportunity to avoid the accident).

Similarly, here, there was no evidence adduced to suggest that Mr. Kelley had an opportunity to avoid hitting Mr. Stevenson after Mr. Stevenson's negligent act of moving into the path of Mr. Kelley's vehicle, or that Mr. Kelley had the ability, where Mr. Stevenson did not, to avoid injuring Mr. Stevenson. Accordingly, there was no basis to submit the last clear chance doctrine to the jury. Under these circumstances, the circuit court properly exercised its discretion in declining to give an instruction on the doctrine and declining to include mention of the doctrine on the verdict sheet.

II.

Mr. Kelley's Alcohol-Related Convictions

Mr. Stevenson next contends that the court erred in ruling that Mr. Kelley's two prior alcohol-related convictions were not admissible as they related to the negligent entrustment claim. He asserts that he was entitled to prove at trial that Ms. Kelley knew or

had reason to know that Mr. Kelley had a "known habit of recklessness" and was likely to drive in a negligent and reckless manner.

The Kelleys contend that the circuit court properly exercised its discretion in excluding the evidence of Mr. Kelley's two prior alcohol-related citations. Noting that the citations were issued "twenty-one years" apart, the last of which was approximately four years "prior to the incident," they assert that the evidence was properly excluded because it was more unfairly prejudicial than probative. They further assert that, although the "habitual component is a key element to proving [a] negligent entrustment claim," in this case, Mr. Stevenson "failed to preserve the record with evidence of an allegation of habitual drunk driving, or habitual driving under the influence of medication that would cause [Mr. Kelley] to operate his vehicle in an unreasonable fashion, and [Ms. Kelley's] knowledge thereof."

"An evidentiary ruling on a motion in limine 'is left to the sound discretion of the trial judge and will only be reversed upon a clear showing of abuse of discretion.'" *Ayala v. Lee*, 215 Md. App. 457, 474-75 (2013) (quoting *Malik v. State*, 152 Md. App. 305, 324 (2003)). For the reasons set forth below, we conclude that the circuit court did not abuse its discretion in granting Ms. Kelley's motion in limine.

This Court has explained the tort of negligent entrustment as follows:

> Maryland recognizes negligent entrustment, a type of negligence, as formulated by section 390 of the Restatement (Second) of Torts:
>
> > One who supplies directly or through a third person a chattel for use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of

> physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.
>
> *Broadwater v. Dorsey*, 344 Md. 548, 554 (1997) (quoting Restatement (Second) of Torts § 390).

Hendrix v. Burns, 205 Md. App. 1, 42-43 (2012) (parallel citations omitted.).

Here, there was no claim of youth or inexperience; the claim was that Mr. Kelley "otherwise" was likely to use the vehicle in an unsafe manner. As Mr. Stevenson notes, a plaintiff may recover against a defendant under the theory of negligent entrustment where the plaintiff can prove that the defendant was aware of a "known habit of recklessness." *See Rounds v. Phillips*, 168 Md. 120, 122, 124 (1935) (parents permitted minor son to drive vehicle when they "knew, or should have known" of his "habits of intoxication and habitually reckless and negligent use of automobiles"). *See also Curley v. General Valet Service, Inc.*, 270 Md. 248, 266 (1973) (evidence of "six moving violations of the motor vehicle laws occurring within a five-year period of the accident," permitted finding "that [employee's] failure to heed traffic control devices was habitual and as a consequence rendered him an incompetent driver whose use of the van entrusted to him by General Valet posed an unreasonable risk of physical harm to others"); *Snowhite v. Tennant*, 243 Md. 291, 299, 314-15 (1966) (employer was liable for negligent entrustment because there was sufficient evidence that the employer knew that the entrusted driver of a gasoline truck "was an habitually incompetent operator of a motor vehicle," given four convictions for moving violations in a two and one-half year period, a prior accident, and that the employee

was drinking heavily and spent time at a bar immediately prior to driving the employer's trucks).

Here, there was no proffer that Mr. Kelley's two DUI citations in a 21-year time period was evidence of habitual drunk driving that would cause him to operate his vehicle in an unreasonable manner. Nor was there any proffer of evidence to support an allegation of Ms. Kelley's knowledge of any such habits. Under these circumstances, the circuit court did not abuse its discretion in granting the motion in limine to exclude evidence of Mr. Kelley's 1986 alcohol-related citation, and his 2007 alcohol-related conviction on the grounds that those convictions, remote in time, and without any other evidence to support habit knowledge, were more prejudicial than probative.

APPELLANT'S MOTION FOR CORRECTION OF RECORD GRANTED WITH REGARD TO PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 18 AND PLAINTIFF'S PROPOSED VERDICT SHEET.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.