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LEONARD STANZIALE *v.* BETTY A. HUNT ET AL.
(AC 44542)

Prescott, Seeley and Sheldon, Js.

Syllabus

The plaintiff motorcyclist sought to recover damages from the defendants B and H for injuries he sustained when he swerved to avoid colliding with a vehicle operated by B and lost control of the motorcycle. A state police trooper who investigated the accident scene testified at trial that the motorcycle had left a skid mark on the road that was about forty feet long. B's husband, H, the owner of the vehicle, testified that he had gone to the scene three hours after the accident and used a tape measure to determine that the skid mark was approximately seventy-one feet in length. In a one count complaint, the plaintiff alleged that B had been negligent in entering the intersection when he was only forty to fifty feet away from her vehicle. The defendants alleged the special defense of comparative negligence, contending that the plaintiff had failed to keep a proper lookout for other vehicles and to apply his brakes in time to avoid a collision. The plaintiff did not request that the jury be given interrogatories to answer should it find in favor of the defendants, and the jury returned a verdict for the defendants. On appeal to this court, the plaintiff claimed, inter alia, that the trial court improperly permitted H to testify about the length of the skid mark and improperly refused to redact from the plaintiff's medical records all references to the speed at which the motorcycle had been traveling at the time of the accident. *Held*:

1. Contrary to the defendants' assertion, the general verdict rule did not bar this court from reviewing the plaintiff's claims because the contested evidence of the speed at which the motorcycle was traveling and the length of its skid mark were relevant to both the defendants' denial of the plaintiff's claim of negligence and the defendants' special defense of comparative negligence: evidence of the motorcycle's speed was relevant to whether B acted reasonably by entering and proceeding through the intersection as the plaintiff was approaching, as well as to whether the plaintiff negligently caused the accident by traveling at an unreasonable rate of speed and failing to keep a proper lookout for other vehicles, and evidence of the length of the skid mark both undermined the plaintiff's claim that B was negligent in entering the intersection when he was only forty to fifty feet away from her vehicle and supported the defendants' claim that the plaintiff was comparatively negligent in the operation of his motorcycle.
2. The plaintiff could not prevail on his claim that the trial court improperly denied his motion to redact from his medical records all statements as to the speed at which he was operating his motorcycle at the time of the accident: contrary to the plaintiff's assertion, the defendants did not bear the burden of establishing that the statements were admissible under any potentially applicable exception to the rule against hearsay, as it is well established that the party who files a motion to exclude evidence has the burden of demonstrating the inadmissibility of such evidence, which the plaintiff acknowledged in his brief to this court; moreover, the plaintiff's claim that he did not make any of the challenged statements was factually unfounded, as he conceded in his brief to this court that the medical records expressly attributed one of the statements to him, and, because the records contained substantial other evidence, including notations by his medical providers, that he was the source of statements that directly concerned conduct on his part that may have contributed to the cause of the accident, he also failed to prove that such statements were inadmissible against him under the applicable provision (§ 8-3 (1)) of the Connecticut Code of Evidence, the hearsay exception for statements by a party opponent; furthermore, the plaintiff failed to establish that none of the challenged statements were inadmissible against him under § 8-3 (5) of the Connecticut Code of Evidence, the medical treatment exception to the hearsay rule, as he provided no basis to support his contention that his speed at the time of the accident

was irrelevant to the treatment of his injuries.

3. The trial court did not abuse its discretion in permitting H to testify about his measurement of the length of the skid mark, as H's testimony was material to the determination of the negligence of both B and the plaintiff, there was an adequate evidentiary foundation for H's testimony, and the possibility that the skid mark H measured had been made by another vehicle during the three hour period after the accident did not render H's testimony as lacking an adequate foundation or irrelevant but went to the weight of the evidence, which was a matter within the exclusive province of the jury.

Argued September 19, 2022—officially released May 2, 2023

Procedural History

Action to recover damages as a result of the named defendant's alleged negligence, brought to the Superior Court in the judicial district of Ansonia-Derby, where the court, *Pierson*, *J.*, denied the plaintiff's motion to preclude certain evidence; thereafter, the case was tried to the jury before *Pierson*, *J.*; verdict for the defendants; subsequently, the court denied the plaintiff's motions to set aside the verdict and for a mistrial, and rendered judgment in accordance with the verdict, from which the plaintiff appealed to this court. *Affirmed.*

Michael S. Hillis, for the appellant (plaintiff).

Jesalyn Cole, with whom, on the brief, was *Colin R. Gibson*, for the appellees (defendants).

Opinion

SHELDON, J. In this negligence action arising out of a motorcycle accident on Great Hill Road in Oxford on July 24, 2015, the plaintiff, Leonard Stanziale, appeals from the judgment of the trial court in favor of the defendants, Betty A. Hunt and Harold W. Hunt, which was rendered upon the general verdict of a jury following the denial of the plaintiff's motion to set aside the verdict. On appeal, as in his motion to set aside, the plaintiff claims that the court improperly (1) denied his pretrial motion in limine to redact from his medical records all statements as to the speed at which he was operating his motorcycle at the time of the accident, and (2) overruled his foundation and relevancy objection to the testimony of Harold Hunt, the owner of the motor vehicle that was allegedly being driven by his wife, Betty Hunt, at the time and place of the accident, as to the length of a skid mark he allegedly found, measured, and photographed in that location when he went there approximately three hours after the accident.[1]

In response to the plaintiff's claims, the defendants argue first that the general verdict rule precludes our review of those claims, and, second, if we conclude that the general verdict rule does not bar our review of those claims, neither such claim requires the reversal of the judgment. For the reasons that follow, although we disagree with the defendants' contention that the general verdict rule bars our review of the plaintiff's claims, we agree with the defendants that neither such claim requires us to reverse the judgment of the trial court in this action.

The following procedural history and facts, as the jury reasonably could have found them, are relevant to this appeal. On January 7, 2016, the plaintiff commenced this action against the defendants, seeking to recover damages for injuries and losses he claims to have suffered due to the negligence of Betty Hunt in operating Harold Hunt's motor vehicle at the time and place of the accident. In his amended complaint, the plaintiff alleged that, at approximately 3:45 p.m. on July 24, 2015, as he was approaching the intersection of Great Hill Road and Fox Drive on his motorcycle, Betty Hunt negligently drove her motor vehicle into the intersection and directly into the path of the plaintiff's motorcycle. The plaintiff alleged that, in order to avoid a direct collision between the two vehicles, he attempted to "operate his motor vehicle around the Hunt motor vehicle, but his motor vehicle was caused to hit and slide upon the pavement, thereby throwing him from his motor vehicle and across the roadway pavement." As a result of his fall and its aftermath, the plaintiff suffered several serious physical injuries and financial and nonfinancial losses. The plaintiff further alleged that Betty Hunt's conduct that caused his fall and resulting injuries and losses was negligent, in that "(a) she failed to keep

a reasonable and proper lookout for other vehicles traveling on Great Hill Road and at the intersection of Great Hill Road and Fox Drive; (b) she failed to keep and maintain her vehicle under reasonable and proper control; (c) she failed to apply her brakes in time to avoid a collision, although by proper and reasonable exercise of her faculties, she could and should have done so; (d) she failed to turn her vehicle to the left or right to avoid a collision, although by proper and reasonable exercise of her faculties, she could and should have done so; [and] (e) in violation of General Statutes § 14-301 (c), she failed to bring her vehicle to a stop in obedience to a stop sign controlling traffic entering the intersection and failed to yield the right of way . . . to the motor vehicle driven by the [plaintiff]." On the basis of these allegations, the plaintiff further claimed that Harold Hunt was liable for his injuries and losses because Harold Hunt was the owner of the vehicle that Betty Hunt was driving with his permission at the time of the accident.

In their answer, the defendants denied the essential allegations of the plaintiff's complaint and asserted the special defense of comparative negligence, alleging that the plaintiff, by his own negligence in operating his motorcycle at the time and place of the accident, proximately caused the accident and his own resulting injuries and losses.[2] The defendants alleged, more particularly, that the plaintiff was negligent in operating his motorcycle "in one or more of the following respects: (a) in that he was inattentive and failed to keep a proper lookout; (b) in that he failed to keep and operate his vehicle under proper control; (c) in that he failed to make reasonable use of his faculties and senses so as to avoid the accident; (d) in that he drove his vehicle at an excessive rate of speed for the driving conditions then and there prevailing; and (e) in that he failed to slacken his speed so as to avoid said accident although reasonable care required him to do so." The plaintiff denied the essential allegations of the defendants' special defense.

On February 4, 2020, just before the start of trial, the plaintiff filed a "motion in limine to redact medical records." In his motion, the plaintiff sought the court's permission to redact "from his evidentiary medical records," which had been premarked for identification, all "statements . . . that pertain to the alleged speed that [he] was operating his motorcycle at the time of the accident." Although the plaintiff filed no memorandum of law in support of his motion in limine, the motion included the following allegations of fact about the challenged statements and recitations of authority in support of his claim that they should be redacted: "1. They are hearsay within hearsay and not admissible under any hearsay exception. (Conn. Code Evid. § 8-7.) 2. They are not relevant or germane to [the plaintiff's] medical treatment. (See, e.g., *Gil* v. *Gil*, 94 Conn. App.

306, 320, 892 A.2d 318 (2006); *State* v. *Dollinger*, 20 Conn. App. 530, 534, 568 A.2d 1058, cert. denied, 215 Conn. 805, 574 A.2d 220 (1990) ('[b]ecause statements concerning the cause of injury . . . are generally not germane to treatment, they are not allowed into evidence under the medical treatment exception [to the rule against hearsay]'). 3. The medical records do not identify who made the statements concerning the alleged speed at the time of the accident or when such statements were made and as such cannot be verified. 4. [The alleged statements] are inconsistent in the various records, with some stating, '50 mph,' and others stating, '50 kph,' and, as such, the statements' probative values are outweighed by their prejudicial effect arising from the unreliability of such statements."

At oral argument on the motion in limine, the plaintiff's counsel briefly stated that his problems with the multiple "claims of speed" in the plaintiff's medical records were that no such statements were attributed to the plaintiff, the statements regarding speed were inconsistent with one another, and they were not really part of the medical record because there was "no proof" that the plaintiff would have required any different treatment for his injuries based upon his speed at the time of the accident.

The defendants responded to the plaintiff's motion and supporting argument in two ways. First, they argued that the plaintiff himself was the source of most, if not all, of the challenged statements as to his speed at the time of the accident, for the records identified him as the person who had given the history of the accident and his resulting injuries. The substance of such statements, the defendants further argued—concerning the speed at which the plaintiff was operating his motorcycle at the time he fell off it and struck and skidded across the roadway—was directly relevant to the diagnosis and treatment of the plaintiff's resulting injuries because it concerned the mechanism of injury, which is routinely noted and relied upon by medical personnel in their records of an injured person's treatment. As for any inconsistencies among the statements in the records about the plaintiff's speed at the time of the accident, the defendants' counsel argued simply that resolving such inconsistencies in the evidence is a task that juries are routinely asked and expected to perform.

After hearing the parties' oral arguments on the motion, the court denied the motion from the bench, stating only that "medical records are replete with hearsay statements . . . [and thus it] is commonplace that there should be hearsay contained within medical records. Nevertheless, we have a statute that allow[s] . . . those records to be admitted into evidence, and that is the statute on which [the] plaintiff is relying in submitting these records into evidence, and I am not going to engage in a—I'm not going to parse out certain

parts of the records, leaving certain things in and certain things out. Certainly, the plaintiff is more than free to challenge the accuracy of the contents of the record by way of testimony or other appropriate evidence and means, as well as argument, but the motion [in limine] is hereby denied."

Later in the day on February 4, 2020, immediately after the court denied the plaintiff's motion in limine, a three day trial began before a jury. The plaintiff ultimately called six witnesses to testify at trial: Betty Hunt; Michelle Krasenics, an eyewitness who had seen the accident take place from inside her automobile as she was driving westbound along Great Hill Road toward its intersection with Fox Drive; then state police Trooper Michael R. Dyki, who had responded to the scene of the accident in his official police capacity shortly after the accident occurred;[3] two of the plaintiff's longtime acquaintances, Cheyenne Kistner and David Defeo; and the plaintiff himself. The plaintiff also introduced several exhibits into evidence, including thirteen sets of documents, premarked before trial as plaintiff's exhibits 1 through 13 for identification, which, together, constituted a complete set of the plaintiff's medical records and bills for services in connection with his medical treatment following the accident; nineteen photographs, premarked before trial as plaintiff's exhibits 14 through 32 for identification, which depicted the intersection where the accident had occurred and some of the injuries he had suffered in the accident; and seven additional photographs, premarked before trial as defendants' exhibits A through G for identification, which also depicted the intersection where the accident had occurred. The plaintiff's medical records, which the plaintiff offered into evidence and the court admitted as full exhibits on the second day of trial, without restriction or limitation as to their permissible use, contained all of the statements as to the speed of the plaintiff's motorcycle at the time of the accident, to which he had objected in his motion in limine. The defendants, in turn, called a single witness, Harold Hunt, to testify in their defense at trial concerning the skid mark he had found, measured and photographed at the scene on the evening of the accident. The defendants also offered into evidence a single photograph, premarked before trial as defendants' exhibit H for identification, which presented an aerial view of the intersection where the accident had occurred.

On the basis of the parties' evidence, the jury reasonably could have found the following facts. On July 24, 2015, at approximately 3:45 p.m., Betty Hunt was operating an automobile owned by Harold Hunt in the northbound lane of Fox Drive in Oxford, where she had brought it to a complete stop just before its T intersection with Great Hill Road. The weather at the time was sunny, dry, and clear. At the same time, the plaintiff was operating his motorcycle in an easterly

direction on Great Hill Road, to the west of its intersection with Fox Drive. Great Hill Road is a winding and hilly road that runs perpendicular to Fox Drive at the point where the two roads intersect at the bottom of a right-curving hill. There is a stop sign controlling northbound traffic on Fox Drive as it reaches the painted stop line just before its intersection with Great Hill Road, but there is no stop sign or any other marking, sign, or signal controlling traffic traveling through that intersection in either direction on Great Hill Road. The posted speed limit on Great Hill Road, as it approached its intersection with Fox Drive, was thirty miles per hour.

After Betty Hunt stopped her vehicle at the intersection of Fox Drive and Great Hill Road, she looked initially to her right, and then to her left, to see if any other vehicles were approaching the intersection on Great Hill Road, then she waited at the stop sign for three or four oncoming vehicles to pass through the intersection. Thereafter, she looked again to her right and saw one automobile off in the distance traveling toward the intersection from the east, then looked again to her left and saw that no vehicles at all were traveling toward the intersection from the west. She then started to turn left into the westbound lane of Great Hill Road without seeing the plaintiff's motorcycle.

As Betty Hunt began to drive through the intersection to turn left, the plaintiff, who had been traveling downhill toward the intersection in the eastbound lane of Great Hill Road, began to approach the intersection from her left. When he saw Betty Hunt's automobile crossing the roadway ahead of him, at a distance he described as approximately forty to fifty feet, the plaintiff braked hard and swerved to his right to avoid colliding with her automobile. In so doing, the plaintiff locked his motorcycle's brakes, lost control of the motorcycle, and fell off it to the pavement, hitting it hard, bouncing, and then sliding across the roadway. Betty Hunt first became aware of the plaintiff's presence in or near the intersection when she heard the tires of his motorcycle squealing behind her, then she saw him lose control of the motorcycle when she looked in her driver's side mirror. As a result of the accident, the plaintiff, who was not wearing a helmet, sustained lacerations, puncture type wounds, abrasions, road rash type injuries, a partially collapsed lung, and fractures to his ribs and back.

Shortly after the accident, emergency medical personnel from the Valley Emergency Medical Service (VEMS) responded to the accident scene, where they found the plaintiff sitting upright on the ground, leaning against a guardrail. Speaking with VEMS personnel in that location, the plaintiff reported, as noted in his medical records, that he had been driving his motorcycle at "approximately thirty miles per hour when he got cut

off at a side street and had to dump the bike. [The plaintiff] was thrown off the motorcycle but not airborne. [The plaintiff was] not wearing a helmet. Only safety gear was a leather vest."

Dyki responded to the accident scene shortly after the emergency medical personnel arrived. While there, he examined the scene, observed a single skid mark in the eastbound lane of Great Hill Road, to the west of its intersection with Fox Drive, and spoke with the plaintiff, Betty Hunt, and Krasenics about what they had seen when the accident occurred. Dyki testified that the sole skid mark he observed, which ended near the point on Great Hill Road where the plaintiff's motorcycle ultimately came to rest, was approximately forty feet long. After the plaintiff was seated for transport on a backboard because his back pain was too great for him to lie down, he was taken by ambulance to Bridgeport Hospital.

The defendants' only witness, Harold Hunt, contradicted the testimony of the plaintiff and Dyki as to the plaintiff's distance from the intersection of Great Hill Road and Fox Drive when Betty Hunt's vehicle entered the intersection in front of the plaintiff before the plaintiff braked, swerved, and began to slide down the roadway to avoid colliding with her automobile. Harold Hunt testified that, on the evening of the accident, approximately three hours after it occurred, he and Betty Hunt's father went to that location and measured the sole skid mark they found there. Harold Hunt testified that the skid mark, which was depicted in three photographs the plaintiff introduced as exhibits A, B, and C, was seventy-one feet, three inches long.

At the close of all the evidence, the court held a final charge conference[4] with counsel as to how it would instruct the jury, and later, after counsel's closing arguments, it instructed the jury as indicated at the conference. The court's instructions described, inter alia, the elements of the plaintiff's claim of negligence against the defendants, the elements of the defendants' special defense of comparative negligence, the rules for assessing and awarding damages should the jury find the defendants liable, and the process by which the jury should conduct its deliberations and return its verdict. The jury was given a general verdict form with no interrogatories to answer if it should find the issues for the defendants, which it was told it should do in either of two circumstances: first, if it found that the plaintiff had failed to prove his claim of negligence against the defendants; or, second, if it found that the defendants had proved their special defense of comparative negligence against the plaintiff and that the plaintiff's proven negligence was greater than that of Betty Hunt.[5] On February 6, 2020, after two hours of deliberations, the jury used the defendants' verdict form to return a general verdict in favor of the defendants.

On March 10, 2020, the plaintiff filed a motion to set aside the verdict and a memorandum of law in support thereof.[6] The plaintiff claimed that the verdict should be set aside on several grounds, including that the court improperly had denied his pretrial motion in limine, and improperly had overruled his foundation and relevancy objection to the testimony of Harold Hunt as to the length of the skid mark. On October 1, 2020, the defendants filed an objection to the motion to set aside, in which they argued in relevant part that the court was barred from setting aside the verdict based upon alleged error in either challenged evidentiary ruling because review of those claims was precluded by the general verdict rule and neither such ruling was improper. As to the propriety of the challenged rulings, the defendants argued first that the court properly exercised its discretion in denying the plaintiff's motion in limine because the medical records established that the challenged statements within them had been made by the plaintiff himself, making them admissible against him pursuant to the hearsay exception for statements by a party opponent, and second, that the subject matter of those statements, the speed at which the plaintiff was traveling at the time of the accident, was relevant to his medical treatment, making them also admissible under the medical treatment exception to the hearsay rule.

The defendants also argued that the court had properly overruled the plaintiff's foundation and relevancy objection to the testimony of Harold Hunt as to the length of the skid mark because a sufficient foundation had been laid for such testimony through the testimony of Betty Hunt and Dyki that the skid mark had been left by the plaintiff's skidding motorcycle. The defendants argued that such skid mark evidence was relevant to the plaintiff's credibility as to how far he had been from the intersection when Betty Hunt's vehicle entered the intersection in front of him to turn left before he began to brake and skid along the roadway to avoid colliding with her vehicle.

On January 28, 2021, the court issued a short-form order denying the motion to set aside the verdict and an accompanying order sustaining the defendants' objection to that motion "for the reasons set forth therein." This appeal followed.[7] Additional facts and procedural history will be set forth as necessary.

I

We first address the defendants' argument that the general verdict rule precludes our review of the plaintiff's claims on appeal. For the following reasons, we disagree with the defendants' claim that that rule applies in the present case.

We begin by setting forth the relevant legal principles governing the operation of the general verdict rule. "Under the general verdict rule, if a jury renders a gen-

eral verdict for one party, and [the party raising a claim of error on appeal did not request] interrogatories, an appellate court will presume that the jury found every issue in favor of the prevailing party. . . . Thus, in a case in which the general verdict rule operates, if any ground for the verdict is proper, the verdict must stand; only if every ground is improper does the verdict fall. . . . The rule rests on the policy of the conservation of judicial resources, at both the appellate and trial levels." (Internal quotation marks omitted.) *Garcia* v. *Cohen*, 335 Conn. 3, 10–11, 225 A.3d 653 (2020).

"On the appellate level, the rule relieves an appellate court from the necessity of adjudicating claims of error that may not arise from the actual source of the jury verdict that is under appellate review. In a typical general verdict rule case, the record is silent regarding whether the jury verdict resulted from the issue that the appellant seeks to have adjudicated. Declining in such a case to afford appellate scrutiny of the appellant's claims is consistent with the general principle of appellate jurisprudence that it is the appellant's responsibility to provide a record upon which reversible error may be predicated." (Internal quotation marks omitted.) Id., 11. "In the trial court, the rule relieves the judicial system from the necessity of affording a second trial if the result of the first trial potentially did not depend upon the trial errors claimed by the appellant. Thus, unless an appellant can provide a record to indicate that the result the appellant wishes to reverse derives from the trial errors claimed, rather than from the other, independent issues at trial, there is no reason to spend the judicial resources to provide a second trial." (Internal quotation marks omitted.) Id. "[T]he general verdict rule operates . . . to insulate a verdict that may have been reached under a cloud of error, but which also could have been reached by an untainted route." (Internal quotation marks omitted.) *McCrea* v. *Cumberland Farms, Inc.*, 204 Conn. App. 796, 815, 255 A.3d 871, cert. denied, 338 Conn. 901, 258 A.3d 676 (2021).

"[T]he general verdict rule applies to the following five situations: (1) denial of separate counts of a complaint; (2) denial of separate defenses pleaded as such; (3) denial of separate legal theories of recovery or defense pleaded in one count or defense, as the case may be; (4) denial of a complaint and pleading of a special defense; and (5) denial of a specific defense, raised under a general denial, that had been asserted as the case was tried but that should have been specially pleaded." (Internal quotation marks omitted.) *Garcia* v. *Cohen*, supra, 335 Conn. 11–12. It is undisputed that the present case falls into the fourth of the five above-described situations because it involves a general verdict for the defendants, returned on a defendants' verdict form to which the plaintiff agreed without requesting interrogatories, in a trial during which the pleadings raised issues whose resolution could have

established two separate and independent grounds for the jury's general verdict in favor of the defendants. The first such ground, based upon the defendants' denial of the plaintiff's claim of negligence, could have been premised on a finding that the plaintiff had failed to prove his claim of negligence against Betty Hunt. The second possible ground, based upon the defendants' special defense of comparative negligence, could have been premised on findings that the plaintiff negligently caused the accident and his own resulting injuries and losses, and that the plaintiff's proven causative negligence was greater than that of Betty Hunt. Accordingly, the general verdict rule would apply to any of the plaintiff's claims on appeal that did not seek to invalidate both possible grounds for the jury's general verdict. See id.; *Spears* v. *Elder*, 124 Conn. App. 280, 288–89, 5 A.3d 500, cert. denied, 299 Conn. 913, 10 A.3d 528 (2010); *Bergmann* v. *Newton Buying Corp.*, 17 Conn. App. 268, 270–71, 551 A.2d 1277 (1989). To determine which of the plaintiff's appellate claims, if any, is barred by the general verdict rule, a reviewing court must compare those claims to the legal claims presented to the jury, as framed by the parties' pleadings. See *R.I. Pools, Inc.* v. *Paramount Concrete, Inc.*, 149 Conn. App. 839, 865 n.16, 89 A.3d 993, cert. denied, 312 Conn. 920, 94 A.3d 1200 (2014).[8]

On appeal, the plaintiff advances two narrow challenges that the court improperly admitted into evidence (1) hearsay statements within his medical records as to the speed at which he was operating his motorcycle at the time of the accident, and (2) testimony of Harold Hunt regarding the length of the skid mark allegedly left by the plaintiff's motorcycle at the scene of the accident, which he found, measured, and photographed on the evening of the accident. When an appellant's claim on appeal challenges the trial court's evidentiary rulings, the applicability of the general verdict rule to any such claim is contingent on whether the evidence thereby challenged is relevant to just some, but not all, of the grounds on which the jury may have based its verdict. For instance, the general verdict rule bars review of claims where the contested evidence is relevant to, or impacts, only one of several possible grounds for the jury's general verdict. See, e.g., *Klein* v. *Quinnipiac University*, 193 Conn. App. 469, 487–88, 219 A.3d 911 (2019) (in premises liability action stemming from plaintiff's falling from bicycle after riding over speed bump on defendant's premises, general verdict rule *barred* review of claim that court improperly admitted testimony of police officer estimating speed at which plaintiff's bicycle was traveling when it struck speed bump because that claim related only to defendant's special defense of contributory negligence, not to plaintiff's own claim that speed bump was dangerous, defective, and unsafe), appeal dismissed, 337 Conn. 574, 254 A.3d 865 (2020); *Modugno* v. *Colony Farms of Col-*

chester, *Inc.*, 110 Conn. App. 200, 202, 204–205, 954 A.2d 270 (2008) (in premises liability action stemming from plaintiff's tripping over rocky terrain on defendant's premises, general verdict rule *barred* review of claim that court improperly denied motion for new trial that challenged exclusion from evidence of testimony regarding zoning regulations, permit requirements, and site plan because that evidence related only to premises liability claim and not to defendant's special defenses that plaintiff was comparatively negligent and that dangerous condition was open and notorious); *Diener* v. *Tiago*, 80 Conn. App. 597, 601–602, 836 A.2d 1224 (2003) (in negligence case stemming from motor vehicle accident, general verdict rule *barred* review of claim that court improperly denied motion to set aside verdict on basis of its exclusion from evidence of photographs depicting defendant's skid marks specifically offered to identify location of cars before, at or after impact because that evidence was not relevant to defendant's special defense that plaintiff had negligently caused accident and its consequences by failing to use proper warning signals prior to accident); *Rivezzi* v. *Marcucio*, 55 Conn. App. 309, 311–13, 738 A.2d 731 (1999) (in case involving negligence claim stemming from plaintiff's falling off dirt bike when it hit large rock defendant previously had pushed into bike path, general verdict rule *barred* review of claim that court improperly admitted into evidence hearsay statement within hospital record that plaintiff was traveling at seventy miles per hour because that evidence was relevant only to whether plaintiff was comparatively negligent).

Conversely, the general verdict rule does not bar review of claims if the contested evidence is relevant to all the possible grounds of the jury's general verdict. See, e.g., *McCrea* v. *Cumberland Farms*, *Inc.*, supra, 204 Conn. App. 814–18 (in case involving negligence claim stemming from motor vehicle accident, general verdict rule *did not bar* review of claim that court improperly admitted evidence of plaintiffs' motive in filing lawsuit, which went to plaintiffs' general credibility, because improper admission of evidence affecting plaintiffs' credibility would have been relevant to all possible grounds of jury's verdict, necessarily tainting entire case); *Spears* v. *Elder*, supra, 124 Conn. App. 290–92 (in case involving claims of slander and fraud, although general verdict rule *barred* review of claim that court improperly excluded evidence of plaintiff's reputation because that evidence was relevant only to plaintiff's slander claim but did not impact his fraud claim, general verdict rule *did not bar* review of claim that court improperly excluded evidence of plaintiff's arrest record because that evidence was relevant to impeach credibility of plaintiff and thus applied to both of his causes of action); *Segale* v. *O'Connor*, 91 Conn. App. 674, 677–80 and 678 n.3, 881 A.2d 1048 (2005) (in case involving negligence claim stemming from motor

vehicle striking pedestrian, general verdict rule *barred* review of claim that court improperly excluded hearsay of eyewitness that unknown declarant had stated, " 'I didn't hit him, did I?,' " because that claim related only to negligence of defendant and not to plaintiff's alleged comparative negligence, but general verdict rule *did not bar* review of claim that court improperly admitted full text of transcribed hearsay statement of decedent as to his recollection of accident and that he was issued police warning for jaywalking because that claim implicated both plaintiff's negligence claim and defendant's special defense of comparative negligence).

On the basis of the foregoing authorities, we conclude that the general verdict rule does not bar our review of the plaintiff's claims on appeal because the evidence challenged in those claims, as to the speed at which he was operating his motorcycle when he braked to avoid colliding with the defendants' automobile and the length of the skid mark he left on the pavement by so braking, was relevant to both of the legal grounds on which the jury could have based its general verdict for the defendants. The speed at which the plaintiff was traveling when he first applied his brakes to avoid colliding with the defendants' automobile was relevant to the reasonableness of Betty Hunt's actions in entering and driving through the intersection to turn left as he was approaching it from her left because the faster he then was traveling, the less likely it was that he would have come into her field of vision and she would have seen him in time to slow or stop her automobile, and thus to yield him the right of way at a stop sign, before entering the intersection and completing her left turn. By the same token, such evidence bore directly on the defendants' claims in their special defense of comparative negligence that the plaintiff negligently caused the accident by traveling at an unreasonable rate of speed and by failing to keep a proper lookout for other vehicles on the highway before locking his brakes and skidding to a stop to avoid colliding with the defendants' automobile, and thereby failing to keep his motorcycle under proper and reasonable control. Logically, the faster the plaintiff was traveling when he saw the defendants' automobile and applied his brakes, the less time he would have had to avoid colliding with that automobile without losing control of the motorcycle and having to lay it down before reaching the intersection, and the more likely it was that the jury would have found his conduct to be negligent due to operating at an unreasonable speed, failing to keep a reasonable and proper lookout for other vehicles on the highway, and/or failing to keep his vehicle under proper and reasonable control.

Likewise, the challenged skid mark evidence was relevant both to the plaintiff's claim of negligence against the defendants and to the defendants' special defense of comparative negligence. In substance, the challenged

evidence from Harold Hunt was that the skid mark he observed, photographed, and measured at the scene of the accident, in the eastbound lane of Great Hill Road to the west of its intersection with Fox Drive, was just over seventy-one feet long. Such testimony directly contradicted testimony from Dyki that that same skid mark, which he had observed when he arrived at the scene of the accident shortly after it occurred, was approximately forty feet long. By necessary implication, moreover, Harold Hunt's testimony as to the length of the skid mark left by the plaintiff's motorcycle at the scene of the accident contradicted the plaintiff's own testimony that he had first seen Betty Hunt's automobile enter the intersection in front of him and locked his brakes to avoid hitting her when she was only forty or fifty feet ahead of him. Such evidence, therefore, was relevant to the credibility of the plaintiff as to his description of the sequence of the events that led to the accident, including his claim that Betty Hunt had entered the intersection in front of him when he was only forty or fifty feet away from her, where she could and should have seen him approaching. It thereby tended to undermine the plaintiff's claim that Betty Hunt had failed to keep a proper and reasonable lookout for other vehicles on the highway and failed to yield the right of way to him at an intersection controlled by a stop sign. By the same token, such evidence was relevant to the defendants' special defense of comparative negligence because it tended to support the defendants' assertion that the plaintiff had negligently caused the accident by failing to keep a proper and reasonable lookout for other vehicles on the highway as he approached the intersection and by failing to apply his brakes or to turn his motorcycle to the left or to the right in time to avoid a collision when a reasonable person in his circumstances, operating a motorcycle at a proper and reasonable speed, could and would have done so. Stated simply, the evidence of the speed of the plaintiff's motorcycle and the distance it skidded on the road were relevant to the jury's determination as to which of the operators—the plaintiff or Betty Hunt—was negligently responsible for the plaintiff's injuries and, if both were so responsible, whose negligence was greater.

At trial, the factual issues as to the location and the speed of the plaintiff's motorcycle when Betty Hunt proceeded into the intersection was the crux of the case. Both parties, in their opening statements and closing arguments, repeatedly emphasized the importance of the plaintiff's speed and its impact on both the plaintiff's and Betty Hunt's actions at the time of the accident. The parties' opening and closing arguments referenced at least twenty-five times the speed of the plaintiff's motorcycle and the length of the skid mark it left at the accident scene. The plaintiff's counsel argued in closing that, "[o]ne of the things that I want you to pay

attention to, and we kind of went through it laboriously yesterday, was this idea about miles per hour, and the reason why I spent so much time on it is, is you're going to be asked to determine if there's anything that you could say from the accident scene or from anything, that [the plaintiff] was speeding or going too fast for the conditions." The court, in accordance with the parties' submissions, provided an instruction to the jury on the standard for determining whether the operator of a vehicle was traveling unreasonably fast.

Both parties had different versions of the speed and location of the plaintiff's motorcycle, and, consequently, these issues resulted in a credibility contest at trial. The defendants' counsel made this clear in closing argument by informing the jury that it had to make a credibility determination as to whether to believe either the plaintiff's testimony or the statements contained in his medical records. The defendants' counsel further stated in closing argument, and in her opposition to the plaintiff's motion to set aside the verdict, that Harold Hunt's testimony that the skid mark measured seventy-one feet, three inches in length could be used to impeach the plaintiff's testimony that he was only forty to fifty feet away from the intersection when he saw Betty Hunt's automobile. The plaintiff's counsel posed the same inquiry to the jury and specifically asked it to discredit certain of the references to speed contained in the plaintiff's medical records. The jury necessarily had to credit one side or the other as to the speed and the location of the plaintiff's motorcycle and, consequently, the amount of time that both parties had to make their decisions, given their locations on the road. Thus, here, as in *McCrea*, *Spears* and *Segale*, the contested evidence was relevant both to the credibility of the plaintiff and to the alleged negligence of the two parties involved.[9] Therefore, we conclude that the general verdict rule does not bar our review of either of the plaintiff's claims on appeal. Accordingly, we will now address the merits of the plaintiff's claims.

II

The plaintiff's first claim on appeal, as previously noted, is that the court improperly denied his pretrial motion in limine to redact from his medical records all statements as to the speed at which he was operating his motorcycle at the time of the accident. Generally, he argues that all such statements should have been redacted because they constituted hearsay, or hearsay within hearsay, which the defendants had not shown and the court had not determined to be admissible under any recognized exception to the hearsay rule. Focusing, more specifically, on the hearsay exceptions for statements by a party opponent[10] and for medical treatment,[11] which the defendants previously had invoked to justify the court's in limine ruling when they opposed the plaintiff's challenge to that ruling in his

motion to set aside the verdict, the plaintiff argues that the challenged statements were not admissible under either exception because the defendants had not established either that he had made any of the challenged statements or that the subject matter of such statements was relevant or germane to the diagnosis or treatment of his accident related injuries.

The defendants dispute the plaintiff's arguments on three grounds, which we find persuasive. First, and most fundamentally, they claim that the plaintiff's arguments improperly attempt to shift the burden of proving the admissibility of the challenged statements to them rather than assuming the burden of proving their inadmissibility himself. This, they claim, is improper for two reasons, with which we agree. To begin with, it is well established that a party who files a motion in limine to exclude evidence on the ground that it is inadmissible under the rules of evidence "has the burden of demonstrating that the evidence is inadmissible on any relevant ground." *Menna* v. *Jaiman*, 80 Conn. App. 131, 138 n.4, 832 A.2d 1219 (2003).[12] Here, the plaintiff bears the burden on appeal of demonstrating that the challenged statements were inadmissible against him under the Connecticut Code of Evidence.

Additionally, if, as here, a party in a personal injury action challenges the admissibility of statements in an otherwise admissible medical record on the ground that they are not relevant or germane to the diagnosis or treatment of any relevant injury, the burden is on the party seeking to redact such statements to specify his objections to the statements and demonstrate their inadmissibility against him under the medical treatment exception to the hearsay rule. See *Aspiazu* v. *Orgera*, 205 Conn. 623, 628, 535 A.2d 338 (1987). Indeed, the plaintiff so acknowledges in his reply brief, in which, relying on *Aspiazu* and this court's subsequent decision in *Nevers* v. *Van Zuilen*, 47 Conn. App. 46, 57, 700 A.2d 726 (1997), he states: "It is the objecting party's burden to put the trial court on notice of the specific nonmedical sections of the report that should be redacted . . . ." Under these authorities, the plaintiff's argument that the challenged statements should have been redacted because the defendants did not demonstrate their admissibility under any potentially applicable hearsay exception misstates our law and must accordingly be rejected.

The defendants' second basis for opposing the plaintiff's claim of error based upon the court's denial of his motion in limine is that one of his principal grounds for requesting the redaction of all statements from his medical records as to the speed at which he was operating his motorcycle at the time of the accident—that he had not been shown by the defendants to have made any of the challenged statements—is factually unfounded. Indeed, despite the allegations of his

motion, the plaintiff has conceded in his principal appellate brief that the records themselves expressly attribute at least one of the challenged statements to him. Although the plaintiff does not specifically identify that statement in his brief, he is obviously referring to his original statement to the emergency medical technicians from VEMS who first found him at the scene of the accident, sitting up against a guardrail on the road where he had fallen and was injured. In that statement, as reported by VEMS personnel in their official report, which they signed and filed at 4:43 p.m. on July 24, 2015, the plaintiff stated that he had been traveling on his motorcycle at approximately thirty miles per hour when he was cut off at a side street and had to lay down his bike to avoid colliding with another motor vehicle.

Although the foregoing statement alone was sufficient to defeat the plaintiff's original, all-or-nothing motion, in which he requested the redaction from his medical records of *all* statements as to his speed at the time of the accident on the ground, inter alia, that he had not made *any* such statement, that statement was not the only statement about speed in the plaintiff's medical records that is fairly attributable to him. In fact, his medical records contain substantial evidence that he was the source of most of the challenged statements as to his speed at the time of the accident. Several challenged statements in the hospital records about his speed, for example, expressly noted that the information had been "provided by the patient and the EMS personnel." Such notations appeared in entries containing descriptions of the speed at which the plaintiff was traveling that were made by Dr. Zev Balsen, a medical resident at the hospital; the attending medical provider, Dr. Tanya D. Shah; and the admitting medical provider, Dr. Alisa Savetamal. Because all of these statements were made hours after the emergency medical technicians had delivered the plaintiff to the hospital, the doctors' reliance on the emergency medical technicians' input as to the plaintiff's speed must logically have been based on the emergency medical technicians' written report, which included the plaintiff's original statement that he was traveling at approximately thirty miles per hour at the time of the accident.[13]

In addition to the above-described notations as to the source of reported information about the history of plaintiff's injuries, Shah specifically mentioned in the hospital records on several occasions that she personally had spent critical care time "obtaining history from patient or surrogate." No other source of patient history is noted elsewhere in the hospital records.

Because several of the challenged statements as to the plaintiff's speed at the time of the accident are clearly attributable to him, and such statements directly concern conduct on his part that may have contributed

to the causation of the accident and his resulting injuries and losses, the plaintiff has failed to prove that such statements were not admissible against him under the hearsay exception for statements by a party opponent.

Finally, the defendants argue that the plaintiff failed to establish that the challenged statements were inadmissible under the medical treatment exception to the hearsay rule by demonstrating that they were not relevant or germane to the diagnosis and treatment of his accident related injuries. In support of his claim to the contrary, the plaintiff has cited cases in which our appellate courts have ruled that statements in medical records as to facts going only to the legal responsibility of other persons for causing an accident should be excluded from such records because they are not relevant or germane to the plaintiff's medical treatment for his injuries. See, e.g., *Kelly* v. *Sheehan*, 158 Conn. 281, 282, 284–86, 259 A.2d 605 (1969) (information in medical record as to who drove car involved in injury producing accident should be redacted from medical record because it was not relevant or germane to injured person's medical treatment); see also *Gil* v. *Gil*, supra, 94 Conn. App. 320–21 (making exception to general rule excluding evidence of causation from medical records for statements identifying child's family member as cause of child's stress and anxiety, on theory that such information is relevant to treatment that may be required for child). The defendants have rightly noted, however, that cases in which medical records contain information identifying the person who caused and is legally responsible for an injury must be distinguished from those in which additional details in such records describe the physical manner in which the injury was caused, reasoning that the latter, unlike the former, may shed useful light on the nature and extent of the injury and inform a medical care provider's judgment as to how the injury should be treated. Such information is particularly relevant if it concerns the mechanism of injury, describing how, physically, the injuries were inflicted, by what instrument or other means they were inflicted, and/or at what speed or with what force they were so inflicted. Such details, they rightly argue, may give medical care providers guidance as to what else they should look for to assess the injuries properly and determine how best to treat them.

In this case, apart from generally dismissing the relevance to the diagnosis or treatment of the plaintiff's injuries of the speed at which his motorcycle was moving when he fell off it, struck the pavement, and was dragged or slid across it on his head, side and back, the plaintiff has provided no basis in evidence or argument to support his claim that his speed at the time of this accident was irrelevant to the treatment of his injuries. It is true, of course, as the plaintiff has suggested, that some of the plaintiff's injuries were visible on his body, and the existence of other, associated

internal injuries might have been inferable from the appearance of those visible injuries and the pain he reported suffering as a result of their infliction. Logic suggests, however, that the speed at which the plaintiff struck the roadway while not wearing a helmet or other protective equipment might have led his medical care providers to examine and treat him differently than if he had fallen to the pavement less violently, at a slower speed. They might, for example, have questioned if and to what extent he had suffered more serious internal injuries as a result of the fall, not only to his arms, legs, and torso, but also to his head and brain. That logic is consistent with the ruling of our Supreme Court in *Berndston* v. *Annino*, 177 Conn. 41, 411 A.2d 36 (1979), in which the court determined that statements as to an injured person's speed at the time of an injury producing accident are "relevant to the severity of impact and, inferentially, to the injury sustained [in that accident]." Id., 43. Although the court in *Berndston* noted that courts in other jurisdictions were divided as to whether evidence of speed should be admitted when liability is not in dispute, it adopted what it described as "[t]he prevailing view" on that issue; id., 44; concluding that "evidence of speed, physical impact, and the like is admissible as relevant to the probable extent of personal injuries. . . . This accords with our view. We conceive this to be a rational and logical approach to the problem." (Citations omitted.) Id., 44–45. It is clear that information concerning speed and physical impact is information relevant to a medical care provider for the diagnosis of the extent of injuries and treatment.

Consistent with this authority, the official commentary to § 8-3 (5) of the Connecticut Code of Evidence expressly notes that "[§] 8-3 (5) excepts from the hearsay rule statements describing 'the inception or general character of the cause or external source of an injury . . . when reasonably pertinent to medical diagnosis or treatment.' " Against this background, we conclude that the plaintiff failed to carry his burden of establishing, as he claimed in his motion in limine and has argued before this court, that none of the statements in his medical records about the speed at which he was traveling on his motorcycle at the time of the accident were relevant or germane to his treatment for the injuries he suffered therein.[14]

III

The plaintiff next claims that the court improperly overruled his objection to the testimony of Harold Hunt regarding the length of the skid mark he found, photographed and measured on the roadway at the scene of the accident approximately three hours after the accident. Specifically, the plaintiff argues that Harold Hunt's testimony as to his measurement of the length of the skid mark was irrelevant and inadmissible because there was an inadequate evidentiary foundation to

establish "that the skid mark was an accurate depiction of the scene of the accident at the time that the accident occurred." We disagree.

The following additional facts and procedural history are relevant to our resolution of this claim. During the direct examination of Betty Hunt, the plaintiff introduced exhibits A, B, and C into evidence, all of which are photographs of the intersection of Fox Drive and Great Hill Road. Depicted in exhibits A, B, and C is a single skid mark in the eastbound lane of Great Hill Road as it approaches its intersection with Fox Drive from the west. Exhibit A, which was taken from the perspective of a person standing in the middle of Great Hill Road, to the west of Fox Drive and facing east, depicts a single skid mark beginning substantially to the west of the intersection of Fox Drive and ending essentially where the intersection begins. Exhibit B, which was taken from the same perspective as exhibit A, shows an open reel measuring tape resting on the surface of the roadway and spanning the entire distance from where the skid mark begins to the spot where an individual—later identified in the defendants' testimony as Betty Hunt's father—is standing near the outlet of Fox Drive. Exhibit C, which was taken from the same perspective as exhibits A and B, depicts the same skid mark in the same location.

The plaintiff's counsel asked Betty Hunt a series of questions regarding exhibits A, B, and C and the skid mark shown in them. Betty Hunt testified that she was familiar with the photographs and that they depicted the location where the accident had occurred. She was asked whether she knew who took the photographs, and she responded that "I know someone that took two of those [photographs] because that's my father standing in one of them." She further testified that Harold Hunt and her father "went and took" two of the photographs, defendants' exhibits A and B, on the night of the accident. The plaintiff's counsel then asked Betty Hunt several questions regarding the skid mark shown in exhibits A and B. She was asked, "there's a picture in exhibit A of a skid mark . . . [d]id you see that?" Betty Hunt responded, "[y]es, sir," and, "[m]y father—there's [a] tape measure in ours." She was then asked, "[b]ut you do believe that's the skid mark from the accident? Betty Hunt responded, "[i]t looks to be." Betty Hunt then was asked whether, when Harold Hunt and her father "got to the scene, that's what they thought, that the skid mark was from the accident?" Betty Hunt responded, "[i]t was there during the accident, yes." Betty Hunt testified that Harold Hunt and her father had brought that tape measure to the scene several hours after the accident because her insurance company had declined to send someone out to investigate the scene that same night. Betty Hunt identified the individual shown at the end of the tape measure as her father and stated that Harold Hunt had used the tape

measure to take the measurements of the skid mark. The defendants did not object to any of the foregoing testimony.

Later in the trial, the plaintiff's counsel elicited testimony from Dyki as to his observation of the skid mark. The plaintiff's counsel questioned Dyki about plaintiff's exhibit 14, which he identified as another photograph of the intersection of Great Hill Road and Fox Drive. Exhibit 14, like the photographs in exhibits A and B, showed a single skid mark in the eastbound lane of Great Hill Road beginning to the west of Fox Drive and ending at the point along the roadway where Great Hill Road intersects with Fox Drive. Dyki testified that he "believe[d]" the skid mark in exhibit 14 was "a skid mark from the motorcycle . . . ." The plaintiff's counsel then asked Dyki if, "when [he] looked at the area of Great Hill [Road] and [Fox Drive], did [he] look for any skid marks?" Dyki responded, "[y]es," and testified that he "observed approximately forty feet of skid marks from vehicle one, which was the motorcycle, in the eastbound lane of Great Hill Road, which led to its final rest[ing] position." Dyki testified that his observations were made immediately after he arrived at the scene of the accident. On cross-examination, Dyki testified that he did not recall measuring the skid mark, although he said he was "sure" that he had done so. He did not recall, however, what device he had used to make the measurement or in what fashion he had done so. He further stated that his approximation within his report of the length of the skid mark being forty feet was due to the fact that he did not complete a "scale map on that. If it was a to-scale map, then we certainly would have done precise measurements and reference points and so forth."

After the plaintiff rested his case, the sole witness called by the defendants was Harold Hunt, who testified only with respect to the skid mark. Harold Hunt testified that, after learning that Betty Hunt had been involved in an accident, he went to the accident scene on the evening of the accident, at approximately 6:35 p.m. or 6:40 p.m. Harold Hunt testified that he observed a skid mark at the accident scene and took photographs of the skid mark, which he recognized as exhibits A and B. He further testified that the additional object shown resting on the roadway in exhibit B was his tape measure, that Betty Hunt's father was shown in the exhibit at the other end of the skid mark, and that he personally had measured the skid mark shown in the exhibit. The defendants' counsel then asked Harold Hunt, "what did you observe on your tape measure?" The plaintiff's counsel objected on the grounds of "[r]elevancy, materiality, there's no foundation as to what the skid marks are from, there's no identification. So, if you allowed it in, it would be allowing in testimony about skid marks that we don't know what the etiology of the skid marks were." The court overruled the plaintiff's objection.

When asked again what he observed the measurement to be on the tape measure, Harold Hunt answered, "Seventy-one feet, three inches, and the reason I say three inches is because the beginning of the skid mark is obviously a little lighter than when it becomes solid. So, between six and three inches it was—didn't really look like it was there. So, three inches past seventy-one feet I began to mark." On cross-examination, Harold Hunt testified that he "did not see the skid mark when the accident happened" because he had arrived at the accident scene at 6:35 p.m., three hours after the accident.

We next set forth the standard of review and legal principles relevant to our resolution of this claim. "Relevant evidence is evidence that has a logical tendency to aid the trier in the determination of an issue. . . . One fact is relevant to another if in the common course of events the existence of one, alone or with other facts, renders the existence of the other either more certain or more probable. . . . Evidence is irrelevant or too remote if there is such a want of open and visible connection between the evidentiary and principal facts that, all things considered, the former is not worthy or safe to be admitted in the proof of the latter. . . . Evidence is not rendered inadmissible because it is not conclusive. . . . The trial court has wide discretion to determine the relevancy of evidence and [e]very reasonable presumption should be made in favor of the correctness of the court's ruling in determining whether there has been an abuse of discretion. . . . The proffering party bears the burden of establishing the relevance of the offered testimony. Unless such a proper foundation is established, the evidence . . . is irrelevant." (Citations omitted; internal quotation marks omitted.) *State* v. *Davis*, 298 Conn. 1, 23, 1 A.3d 76 (2010); see Conn. Code Evid. § 4-1 (" '[r]elevant evidence' means evidence having any tendency to make the existence of any fact that is material to the determination of the proceeding more probable or less probable than it would be without the evidence"); see also *State* v. *Wynne*, 182 Conn. App. 706, 721, 190 A.3d 955 (" 'materiality turns upon what is at issue in the case, which generally will be determined by the pleadings and the applicable substantive law' "), cert. denied, 330 Conn. 911, 193 A.3d 50 (2018).

We conclude that the court did not abuse its discretion by overruling the plaintiff's objection to the testimony of Harold Hunt as to his measurement of the length of the skid mark because that testimony was supported by an adequate foundation and was relevant. First, there was an adequate evidentiary foundation to provide context for Harold Hunt's testimony as to the length of the skid mark. Prior to the testimony of Harold Hunt, the plaintiff previously had introduced exhibits A, B, C, and 14 into evidence. All of these exhibits are photographs that clearly depict the intersection where

the accident occurred and show a single skid mark in the eastbound lane of Great Hill Road as it approaches its intersection with Fox Drive. Exhibit B shows an open reel measuring tape resting on the surface of the road extending eastbound from the beginning to the end of the skid mark, at a point where an individual identified as Betty Hunt's father is standing in the intersection of Great Hill Road and Fox Drive.

Corroborating these exhibits was the testimony of the Hunts and Dyki, all of which was elicited by the plaintiff's counsel. Betty Hunt testified that exhibits A and B were taken by her father and Harold Hunt on the night of the accident when they went to the accident scene and measured the lone skid mark in that location. Betty Hunt testified that the lone skid mark depicted in the photograph of the roadway leading to the intersection where the accident occurred "looks to be" the one that was left by the plaintiff's motorcycle when it skidded and went down in that location, and she confirmed that Harold Hunt and her father had used a tape measure to measure the length of the skid mark from the accident. Likewise, Dyki testified that his investigation of the accident scene immediately after the accident revealed the skid mark depicted in exhibit 14. Dyki confirmed that this single skid mark was caused by the plaintiff's motorcycle and that the skid mark led to the final resting position of the plaintiff's motorcycle. Finally, prior to his testimony as to the length of the skid mark, Harold Hunt testified that he and Betty Hunt's father went to the accident scene three hours after the accident. He testified that he observed a single skid mark and took photographs of the skid mark that were introduced as exhibits A and B. He testified that his tape measure was depicted in exhibit B and that he personally used that device to measure the skid mark. All of this evidence cumulatively provided a proper foundation for Harold Hunt's subsequent testimony as to what he observed on his tape measure when he used it to measure the length of the skid mark.

Second, the length of the skid mark caused by the plaintiff's motorcycle was plainly relevant to this action. As explained in part I of this opinion, Harold Hunt's testimony was material to determining the negligence of both Betty Hunt and the plaintiff because it supported an inference as to the speed of the plaintiff and established where the plaintiff was in relation to the intersection when he first saw Betty Hunt's automobile and locked the brakes of his motorcycle. Harold Hunt's testimony that the skid mark measured seventy-one feet, three inches in length also was also material to the credibility of Dyki, who testified that, in his estimation, the length of the skid mark was forty feet, and to the credibility of the plaintiff, who testified that he was only forty to fifty feet away from the intersection when Betty Hunt's vehicle began to enter the intersection and he applied his brakes.

In contrast to the foregoing, the plaintiff argues that Harold Hunt's testimony was not supported by an adequate foundation, and thus was irrelevant, because there was no evidence that the accident scene was restricted to traffic during the three hours between the accident and the time when Harold Hunt measured the skid mark, and thus it was possible that another vehicle had left the skid mark that Harold Hunt measured. The possibility that the skid mark measured by Harold Hunt was made during the three hour period after the accident does not render Harold Hunt's testimony without adequate foundation or irrelevant; instead, that hypothesis goes to the weight of the inference supported by exhibits A, B, C, and 14 as well as to the testimony of the Hunts and Dyki, which is a matter lying within the exclusive province of the jury. See, e.g., *State* v. *Lori T.*, 345 Conn. 44, 74, 282 A.3d 1233 (2022) (" '[i]t is the jury's role as the sole trier of the facts to weigh the conflicting evidence and to determine the credibility of witnesses' "); *Booker* v. *Stern*, 19 Conn. App. 322, 333, 563 A.2d 305 (1989) (fact that photographs of plaintiff's property were taken one year after completion of renovations by defendant's workers goes to "weight that should be afforded that evidence").

Finally, we are not persuaded by the plaintiff's substantial reliance on *Tarquinio* v. *Diglio*, 175 Conn. 97, 394 A.2d 198 (1978). In *Tarquinio*, the trial court overruled the plaintiff's foundation objection to photographs of skid marks on the highway taken five hours after a motor vehicle accident. Id., 98. Our Supreme Court stated that "a photograph depicting such skid marks would be relevant to prove the appearance of the scene only if it could be demonstrated that those same marks were visible on the road immediately after the accident." Id., 99. In light of this principle, our Supreme Court concluded that the trial court improperly admitted the challenged photographs into evidence because there was no foundational testimony that the individual who took the photographs five hours after the accident "ever said or observed that the appearance of the road at the time the photographs were taken was the same as it had been following the accident." Id. Our Supreme Court nevertheless concluded that the admission of these photographs constituted harmless error because one of the photographs taken by the police immediately after the accident depicting the skid marks already had been admitted into evidence. Id., 100. Here, unlike in *Tarquinio*, the plaintiff does not challenge the admission of the several photographs depicting the skid mark. To the contrary, the plaintiff himself introduced exhibits A, B, and C into evidence and elicited an abundance of evidence from the witnesses to support the conclusion that the skid mark Harold Hunt measured was the skid mark that had been left by the plaintiff's motorcycle, including the testimony of Dyki and Betty Hunt, who were at the

accident scene in close temporal proximity to the accident and testified that the single skid mark in the intersection had been left by the plaintiff's motorcycle. In sum, we conclude that the court did not abuse its discretion in overruling the plaintiff's objection to the testimony of Harold Hunt as to the length of the skid mark.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] The plaintiff also claims that the court abused its discretion by denying his motion to set aside the verdict, which claim is entirely premised on the same two claimed evidentiary improprieties he raises in his first two claims on appeal, namely, the court's denial of his motion in limine seeking to preclude all statements as to the plaintiff's speed within his medical records and the court's overruling of his objection to the testimony of Harold Hunt as to the length of the skid mark. Consequently, for the reasons articulated in parts II and III of this opinion, we conclude that the plaintiff cannot prevail on his claim that the court improperly denied his motion to set aside the verdict. See, e.g., *Rendahl* v. *Peluso*, 173 Conn. App. 66, 118–19, 162 A.3d 1 (2017) (summarily rejecting claim that trial court improperly denied motion to set aside verdict premised on evidentiary claims that this court rejected); *Buchanan* v. *Moreno*, 117 Conn. App. 732, 736–37, 980 A.2d 358 (2009) (same).

[2] At trial, the parties agreed that Harold Hunt was the owner of the automobile operated by Betty Hunt and, consequently, that he would be liable to the same extent as she would be if the claims against her were proved. The record does not reveal the basis for this agreement; however, we presume that the parties were relying on the family car doctrine, as codified in General Statutes § 52-182. See generally *Chen* v. *Bernadel*, 101 Conn. App. 658, 665, 922 A.2d 1142 (2007).

[3] By the time of trial, Dyki had retired from the Department of Public Safety, now known as the Department of Emergency Services and Public Protection, and become a police officer for the town of Oxford.

[4] The trial court had circulated a proposed jury charge to counsel on the first day of trial and had discussed the proposed charge with counsel on multiple occasions thereafter.

[5] The jury also was presented with a plaintiff's verdict form containing interrogatories—as to the percentages of the parties' liability, the specification of economic damages, the findings of fair, just, and reasonable damages, and the total damages accounting for the percentage of liability of each party—to use in the event it found the issues in favor of the plaintiff. The court specifically instructed the jury that, if the liability allocated to the plaintiff "is more than [fifty] percent, you will enter a verdict for the defendant[s]. So, you would set [the plaintiff's verdict] form aside and fill out the verdict for the defendants if the percentage is greater than [fifty] . . . ." The court also instructed the jury that it should only use "the verdict for the defendant[s'] form . . . if you find the issues in favor of the defendants . . . ." Thus, the jury returned a general verdict in this case, and neither party on appeal claims otherwise.

[6] The plaintiff's motion to set aside the verdict also alleged that the verdict was "against the evidence . . . ." The plaintiff does not renew this claim on appeal.

[7] On March 1, 2021, the plaintiff filed a motion for articulation, requesting that the trial court articulate both the factual and legal bases for its denial of his motion to set aside the verdict. On March 2, 2021, the court denied the plaintiff's motion for articulation. The plaintiff did not file with this court a motion for review of the trial court's denial of his motion for articulation. See Practice Book § 66-7.

[8] The parties' appellate briefs do not frame their general verdict rule arguments in this manner. Rather, both parties analyze whether there was sufficient evidence to support each theory presented to the jury. In contrast to the parties' submissions, the applicability of the general verdict rule does not hinge on whether there was evidence to support all grounds of the verdict but, rather, on whether the appellate claims seek to invalidate all possible grounds of the verdict. See, e.g., *Spears* v. *Elder*, supra, 124 Conn. App. 288–89. The cases cited by the parties on appeal do not undermine but, rather, confirm this point. See *Tetreault* v. *Eslick*, 271 Conn. 466, 473, 857 A.2d 888 (2004) (general verdict rule barred review of claim challenging

superseding cause special defense because claim did not contest plaintiffs' failure to establish defendants' negligence); *Morales* v. *Moore*, 85 Conn. App. 208, 211, 855 A.2d 1041 (2004) (general verdict rule barred review of claim challenging sudden emergency doctrine instruction because claim related only to defendants' alleged negligence, not to plaintiff's alleged comparative negligence).

[9] The pertinent cases to the contrary are distinguishable. In *Diener*, this court held that the general verdict rule barred review of a claim that the trial court had improperly excluded evidence of photographs depicting skid marks caused by the defendant's vehicle that had been offered to identify the locations of cars before, at or after impact because that evidence was not relevant to the defendant's special defense that the plaintiff had failed to use proper warning signals. *Diener* v. *Tiago*, supra, 80 Conn. App. 601–602. Here, however, the plaintiff's claim challenges the admissibility of Harold Hunt's testimony as to the length of the skid mark, which was neither offered for a specific purpose nor was subject to a limiting instruction as to how it could be used by the jury at the time of the trial. Thus, the jury could have used Harold Hunt's testimony for all proper purposes, including, but not limited to, impeaching the plaintiff, supporting the inference that the plaintiff was traveling at a high rate of speed, or to establish the plaintiff's location when Betty Hunt's vehicle entered the intersection. See generally *In re Corey C.*, 198 Conn. App. 41, 78, 232 A.3d 1237, cert. denied, 335 Conn. 930, 236 A.3d 217 (2020); *Procaccini* v. *Lawrence + Memorial Hospital, Inc.*, 175 Conn. App. 692, 723–24, 168 A.3d 538, cert. denied, 327 Conn. 960, 172 A.3d 801 (2017). Further, the defendants' special defense did not include any reference to the warning signals used by Betty Hunt.

Neither *Klein* nor *Rivezzi* compels a different conclusion. In *Klein*, the general verdict rule barred review of a claim that the court improperly admitted the testimony of a police officer to estimate the speed at which the plaintiff's bicycle traveled over a speed bump because that claim related only to the defendant's contributory negligence special defense. *Klein* v. *Quinnipiac University*, supra, 193 Conn. App. 487–88. In *Rivezzi*, the general verdict rule barred review of a claim that the court improperly admitted into evidence a hearsay statement within the plaintiff's hospital record that he was riding at seventy miles per hour on a dirt bike when it hit a large rock because that evidence was relevant only to whether the plaintiff was comparatively negligent. *Rivezzi* v. *Marcucio*, supra, 55 Conn. App. 311–13. The contested speed evidence in *Klein* and *Rivezzi* implicated only the plaintiffs' comparative negligence because that evidence was not relevant to the defendants' liability for a speed bump on the roadway or a large rock in the path taken by the plaintiff. In contrast, the speed evidence in the present case was relevant to the negligence of both the plaintiff and Betty Hunt because, as explained previously, the accident was fluid in that it involved Betty Hunt's traveling into the intersection as the plaintiff was approaching.

[10] Section 8-3 (1) of the Connecticut Code of Evidence provides: "A statement that is being offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, (B) a statement that the party has adopted or approved, (C) a statement by a person authorized by the party to make a statement concerning the subject, (D) a statement by the party's agent, servant or employee, concerning a matter within the scope of the agency or employment, and made during the existence of the relationship, (E) a statement by a coconspirator of a party while the conspiracy is ongoing and in furtherance of the conspiracy, (F) in an action for a debt for which the party was surety, a statement by the party's principal relating to the principal's obligations, or (G) a statement made by a predecessor in title of the party, provided the declarant and the party are sufficiently in privity that the statement of the declarant would affect the party's interest in the property in question."

[11] Section 8-3 (5) of the Connecticut Code of Evidence provides: "A statement made for purposes of obtaining a medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof, insofar as reasonably pertinent to the medical diagnosis or treatment."

[12] This rule stands in contrast to the generally applicable rule that the burden to establish the admissibility of evidence in the face of a properly asserted objection is on the proponent of the evidence. See *New England Savings Bank* v. *Bedford Realty Corp.*, 238 Conn. 745, 753, 680 A.2d 301 (1996). The burden ordinarily will not shift to the opponent of the evidence to demonstrate that the evidence is inadmissible. See also 1 Wigmore on

Evidence (Tillers Rev. 1983) § 18, p. 841 ("The burden of proving the grounds of an objection is ordinarily not upon the opponent . . . . [T]he burden of establishing the preliminary facts essential to satisfy any rule of evidence is upon the party offering it. The opponent merely invokes the law; if it is applicable to the evidence, the proponent must make the evidence satisfy the law.").

[13] No explanation appears in the records for the consistent differences among the doctors in describing the speed at which the plaintiff was traveling at the time of the accident, with Balsen always stating that the plaintiff had been "going 50 mph"; Shah always stating that "[the plaintiff's] vehicle was traveling at a high speed"; and Savetamal always stating that the plaintiff had been traveling at "approx. 50 KPH at the time of the accident." Only Balsen's description varies materially from the plaintiff's own description of his speed.

[14] We finally note that the procedural posture of this case raised two possible reasons for not reaching and deciding this issue on the merits. First, the plaintiff failed to obtain and present to this court a decision from the trial court specifically addressing and deciding his in limine claim that none of the challenged statements was admissible against him under the medical treatment exception to the hearsay rule. Second, the plaintiff introduced the challenged statements into evidence himself without renewing his motion in limine or clarifying that, by so doing, he was only attempting to comply with the court's in limine ruling and thus was not waiving his right to seek appellate review of the denial of his motion in limine. Because the defendants did not ask the court to decline review of the plaintiff's in limine claim on either of these grounds and both parties fully briefed that claim on the merits without suffering any apparent prejudice, we have chosen to review the plaintiff's claim on its merits.