

IN THE CIRCUIT COURT OF LONOKE COUNTY, ARKANSAS

STATE OF ARKANSAS

Plaintiff

v.

No. CR06-494-4

BOBBY JUNIOR COX

Defendant

**COX'S MOTION FOR JUDICIAL NOTICE ON MOTION
CONTINUANCE BECAUSE OF DEER SEASON**

Defendant Cox moved for a continuance of the November 8th trial date because of deer season in a motion served September 12, 2006 and filed September 13, 2006, and he requests the court to take judicial notice pursuant to A.R.E. 201:

I. A.R.E. 201

1. Arkansas' rule on judicial notice is A.R.E. 201:

(a) **Scope of Rule.** This rule governs only judicial notice of adjudicative facts.

(b) **Kinds of Facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort [resort] to sources whose accuracy cannot reasonably be questioned.

(c) **When Discretionary.** A court may take judicial notice, whether requested or not.

(d) **When Mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) **Opportunity to be Heard.** A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) **Time of Taking Notice.** Judicial notice may be taken at any stage of the proceeding.

(g) **Instructing Jury.** The court shall instruct the jury to accept as conclusive any fact judicially noticed.

2. The facts sought to be notice here are mandatory under A.R.E. 201(d) because the court is provided with the necessary information to decide.

II. Facts Requested to Be Judicially Noticed

1. The deer hunting schedule in Arkansas for 2006, to the Arkansas Game and Fish Commission's website,¹ the following is as follows:

November 11-19 and November 23-December 3	Zones 1, 2, 3, 6, 7, 8, 10 and 11
November 11-12, 2006	Zone 4
November 11-12 and November 18-19	Zone 5
November 11-December 10	Zone 4A, 5A, 13, 14 and 15
November 11-December 17	Zones 9 and 12:
November 11-December 28	Zone 16, 16A and 17

McNabb v. Taylor Oil Field Rental Company, 428 S.W.2d 714, 717 (Tex. Civ. App. 1968) (deer season subject to judicial notice); *State v. Goodhart*, 112 Vt. 154, 22 A.2d 151, 152 (1941) (same).

2. 273,128 big game hunting licenses were issued in Arkansas in 2005.²
3. The court can reasonably predict that the 2006 number will be about the same.
4. The U.S. Census Bureau reports, based on the 2000 census, and revised in March 2003 that Arkansas resident hunters³ totaled 306,000, they averaged 23 days hunting per year, for

¹ http://www.agfc.state.ar.us/rules_regs/hunting_regs_all.html.

² E-mail from Arkansas Game and Fish Commission, September 12, 2006 (attached to motion).

³ <http://www.census.gov/prod/2002pubs/fhw01-ar.pdf>, page 2 (Exh. A):

Hunters are sportspersons who only hunted plus those who hunted and fished. Hunters include not only licensed hunters using common hunting practices, but also those who have no license and those who engaged in hunting with a bow and arrow, muzzleloader, other primitive firearms, or a pistol or handgun. Four types of hunting are reported: (1) big game, (2) small game, (3) migratory bird, and (4) other animals. Since many hunters participated in more than one type of hunt-

a total of 7,075,000 days.⁴ *2001 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation; Arkansas* 5 (rev. March 2003) [.pdf p. 11] (Exh. A).⁵ (That same report also states that 431,000 persons hunted in 2001. *Id.* at 6.)

5. Doing the math, with big game hunters being 89% of the total number of hunters, that means that Arkansas big game hunters with licenses issued by the Game and Fish Commission spent 6,314,969 days per year hunting.

6. People often schedule their vacation time with hunting season in mind.⁶

7. The U.S. Census Bureau estimates the 2005 population on Lonoke County to be 60,658 with 26.2% being under 18 years of age (15,892).⁷ Therefore, 44,765 are 18 or older.

ing, the sum of hunters for big game, small game, migratory bird, and other animals exceeds the total number of hunters.

⁴ It is also a sport that generates \$387,489,000 for the state economy. *Id.*

⁵ <http://www.census.gov/prod/2002pubs/fhw01-ar.pdf> (86 page .pdf file)

⁶ *See, e.g., Johnson v. N. Union Local School Dist. Bd. of Edn*, 141 Ohio App.3d 354, 750 N.E.2d 1233, 1234 (3d Dist. 2001); *Masneri v. State Civil Service Com'n (Western Center, Dept. of Public Welfare)*, 712 A.2d 821, 824 (Pa.Cmwlt. 1998); *State v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270, 1275 (Alaska 1992) (dissenting opinion) (hunting season traditionally becomes a week's vacation); *Moran v. Moran*, 200 N.W.2d 263, 264 (N.D. 1972) (custody case: father had additional week of custody when he went on vacation to hunt); *Montano v. Industrial Commission*, 171 Colo. 92, 464 P.2d 518, 518-19 (1970) ("Montano was employed for twenty years by the Colorado Metal Products Corporation of Denver, Colorado (the employer), until October 17, 1968, when he left for an authorized one-week vacation which coincided with this state's big game hunting season." Then he was fired when he stayed gone an additional week without leave.); *Darling v. Electric Auto-lite Co.*, 4 Wis.2d 345, 90 N.W.2d 597, 605 (1958) (construing employment contract: employees got vacation time plus time off for hunting season; "A period was also designated hunting season and employees who took leaves at times other than the designated period were permitted to call them their vacation."); *Lamm v. Silver Falls Timber Co.*, 133 Or. 468, 277 P. 91, 93 (1929), *rev'd on other grounds*, 133 Or. 468, 286 P. 527 (1930) (employment dispute; employee claimed that employer promised additional vacation time to employee who did not take off for hunting season like everybody else on the job).

⁷ <http://quickfacts.census.gov/qfd/states/05/05085.html> (Exh. B).

8. The Arkansas Game and Fish Commission shows 6,735 big game hunting licenses to Lonoke County residents.⁸

9. Any hunter over the age of 16 is required to have a hunting license, and hunting licenses expire on June 30.⁹

10. The Arkansas Secretary of State reported on May 18, 2006, just before this year's primary elections, that there were 31,914 registered voters in Lonoke County.¹⁰

11. The sole source of jury lists in Lonoke County is from voter registration lists. Ark. Code Ann. § 16-31-103.¹¹

12. Under the Twenty-Sixth Amendment to the U.S. Constitution, the voting age is 18.

13. While this corollary is not exact because of age variables (18 being the age to vote and 16 to have a hunting license), it should be within just a couple of percentage points of the true number:

31,914 registered voters in Lonoke County
6,735 big game licenses in Lonoke County

licenses / registered voters = 21.1%

Therefore, it is a reasonable assumption that approximately 20% of the registered voters in Lonoke

⁸ <http://www.arkansasonline.com/ShowStoryTemplate.asp?Path=ArDemocrat/2006/09/14&ID=Ar00105&Section=Arkansas> (Exh. C).

⁹ http://www.agfc.state.ar.us/licenses/hunting_licenses.html#Resident (Exh. D).

¹⁰ <http://www.sos.arkansas.gov/news/pr/2006/05182006.html> (Exh. E)

¹¹ Jury lists *may* be drawn from driver's license records, too; Ark. Code Ann. § 16-32-301; but they are not in Lonoke County. Telephone call from defense counsel's office to Lonoke County Clerk, September 13, 2006.

Convicted felons are removed from the voter registration lists by the County Clerk. Ark. Const., Amdt. 51, § 11(a)(4).

Because possession of a firearm by a convicted felon is a crime; Ark. Code Ann. § 5-73-103; they could not carry a firearm to hunt.

County are deer hunters.

CONCLUSION

Wherefore, Cox's motion for judicial notice should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a this pleading was served by mail, fax, or e-mail (.pdf) on the following on September 14, 2006:

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