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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ROYCE SULLIVAN, Plaintiff and Appellant, v. SOUTHERN CALIFORNIA EDISON COMPANY, Defendant and Respondent.	D073454 (Super. Ct. No. MCC1301122)

APPEAL from a judgment of the Superior Court of Riverside County, Raquel A. Marquez, Judge. Affirmed.

Greene, Broillet & Wheeler, Scott H. Carr; Esner, Chang & Boyer and Stuart B. Esner for Plaintiff and Appellant.

Casolari & Zell, Donald H. Zell, Carissa Casolari; Southern California Edison Company, Leon Bass, Jr.; Greines, Martin, Stein & Richland, Robin Meadow and David E. Hackett for Defendant and Respondent.

A car crashed into the back of a laundromat owned by the family of plaintiff Royce Sullivan,[1] damaging an attached electrical panel. A representative from defendant Southern California Edison Company (Edison) visually inspected the panel and decided nevertheless to leave the electrical power to the building turned on. The next day while repairing the damage from the crash, Royce was electrocuted.

A jury concluded that Edison's negligence caused Royce's ensuing injuries and damages—but only to an extent. The jury awarded far less in damages than Royce sought and also attributed nearly a quarter of the fault for his injuries to his father, Jerry Sullivan. Royce now appeals, claiming that two ostensible evidentiary errors led to the "miserly damages" awarded. He also contends that it was error to attribute fault to his father.

As to the first evidentiary issue Royce complains of, his failure to make an adequate offer of proof precludes us from considering it. With respect to the second, we conclude that the trial court acted well within its discretion in excluding expert testimony that would have relied on speculative factual assumptions to estimate his lost earning capacity—namely, that Royce would abandon his current pursuits and return to school solely to pursue new vocations that he never before expressed any interest in. Finally, we conclude that substantial evidence supports the fault attributed to Jerry, largely in light of facts from which a jury could infer he exercised supervisory control over the activities that ultimately led to Royce's injuries. Accordingly, we affirm.

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1 Because two individuals pertinent to this appeal share the last name Sullivan, we refer to them in the first instance by first and last name and thereafter by first name only.

FACTUAL AND PROCEDURAL BACKGROUND

One December morning, a car ran into the back of a Lake Elsinore laundromat owned by Royce's family. The crash damaged, among other things, a small structure attached to the back of the laundromat that housed an electrical panel behind a gated door. Royce, who helped with the family business, went to check out the damage and spoke with his father, Jerry, over the phone about it. Jerry told Royce to wait for the fire department and not to touch the electrical panel.

A police officer and the fire department responded, followed by Edison's "troubleman" Richard Taylor. "Troublemen" are the utility company's first responders, typically sent to assess if there are any hazards with the power lines. Taylor spoke briefly with the fire department personnel, and then visually inspected the electrical panel through the gated door. He saw that the housing structure was compromised, but could not see anything abnormal about the panel itself. Concerned that the enclosure was "structurally unsound," Taylor did not go behind the gate to inspect the service lines. Instead, he moved on to conducting the standard voltage and amperage checks at the transformer; he found nothing amiss.

Before leaving, Taylor talked with Jerry about the panel. Although there had been no electrical service issues in the building following the crash, Taylor considered turning off the power coming from the transformer, given potential concerns about portions of the panel he could not see. But Jerry asked him to leave the electricity on because he was worried the building would be burglarized if the security system was down. Partially in light of Jerry's request, Taylor left the power coming from the transformer to the meter

on. Taylor acknowledged, however, that the decision was ultimately his and his alone. He warned Jerry that "before he did anything," a licensed electrician should inspect the panel. Jerry agreed that if anything happened because the power was left on, it "was on him [i.e., Jerry]." Taylor also told Jerry that, should he change his mind, Edison could come back to turn the power off. Taylor then departed.

A city building inspector arrived next. He too visually inspected the panel. From his vantage point outside the enclosure he could see that the panel had been pushed back about six to eight inches and that a conduit was exposed. Because he thought the panel was unsafe, the inspector instructed them to turn the power off at the main breaker, cutting off the supply from the meter into the laundromat (as opposed to the power from the transformer to the meter, which Taylor left on). The inspector also yellow-tagged the building—i.e., closed it off to the public and restricted its use to repairs—until a certified electrician signed off on its safety.

When Royce, his brother, and his girlfriend arrived to start the repairs the next morning, they were greeted by an odd sight. Quarters were coming out of the building's backdoor. It soon became apparent that someone had stolen from the change machines inside. In other words, the fear Jerry had expressed to Taylor was well founded: With the power turned off, the laundromat had been burglarized. After reporting the crime to the police, Royce turned the building power back on at the main breaker to start repairing the damage from the previous day's car crash. Jerry stopped by while Royce was working and, after checking out the effects of the burglary, went back home.

Jerry returned to the laundromat that afternoon. By then, Royce was almost ready to push the panel back into place. As Jerry stepped outside, he heard a noise behind him. He turned to see Royce with his hands on the panel—being electrocuted.

Jerry lunged toward Royce and threw his shoulder into him to break him away from the electrical panel. Royce landed atop Jerry. "His eyes were only open a slit, and he was not moving." Jerry squeezed him repeatedly until finally he heard Royce exhale. Royce woke, confused by how distraught his father was. Jerry assisted Royce into the seat of a nearby truck before going inside to get his other family members. They contacted emergency services and the fire department responded. Royce at first refused to be evaluated, insisting that he would be fine, but eventually allowed a paramedic to assess him. The paramedic noted that Royce did not appear to have any neurological issues, but still advised him to go to the hospital. Royce refused further treatment, reasserting that he was fine.

But when he woke the next morning, Royce felt "[l]ike [he] had been hit by a train." He went to see a chiropractor that day and to urgent care the next day for pain in his back and groin. In the following months, his condition worsened. Pain started to travel down his right leg, his hands became numb, and he started getting shooting, crippling back pains, causing him at times to fall. He started using a wheelchair to get around at home.

Based on the incident, Royce sued Edison.[2] The case was tried to a jury. Among other things, the jury heard extensive expert testimony related to the electrical shock Royce received, Royce's medical needs, and the damages ostensibly flowing from the incident.

The jury found that Edison, through its employee Taylor, was negligent and that negligence was a substantial factor in causing harm to Royce. It concluded that Royce's total damages were $117,824—composed of $25,000 for past medical expenses; $11,412 for past lost earnings; $60,000 for future medical expenses, $11,412 for future earnings; and $10,000 in noneconomic losses. The jury also found, however, that both Royce and Jerry were also at fault respectively for 25 percent and 24 percent of the harm. The balance (51 percent) was attributed to Edison.

DISCUSSION

Royce raises three contentions on appeal. First, he argues that the trial court erroneously precluded him from calling Edison's private investigator as a witness. He next claims that the court improperly limited testimony from his vocational expert. Finally, he asserts there was no basis to allocate fault for his injuries to his father. We reject each of his claims in turn.

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[2] Jerry was also a plaintiff in the suit against Edison, but his claims were settled before trial. He is not a party to this appeal.

1. *Private Investigator Evidence*

a. *Additional Background*

In an interrogatory response, Edison disclosed that it hired private investigator Todd Wright to surveil Royce, but there were no photos, videos, or reports related to the surveillance. Edison did not intend to call Wright as a witness. Royce, however, subpoenaed him to testify at trial and produce documents.

Edison moved in limine to preclude Wright from testifying and producing documents at trial, arguing that the information sought was irrelevant, prejudicial, and protected by the attorney work product doctrine. In opposition, Royce asserted that the dearth of documentation from the surveillance meant that Wright found nothing indicating that Royce was lying about his injuries.

Hearing the motion, the trial court requested an offer of proof. Royce's counsel responded,

> "Since [Edison] is disputing the extent of [Royce's] injury, the jury should be entitled to hear that they had the facts regarding that investigation that they conducted, that their investigator followed our client for a period of eight months and didn't come up with any reports, any video, any photographs whatsoever to suggest that he's faking it or that these injuries aren't consistent with what he testified to. So for that reason, the jury should be entitled to hear the facts related to this investigation."

Thereafter, the court granted Edison's motion, citing the attorney work product doctrine and Evidence Code section 352.

b. *Analysis*

Royce asserts that precluding Wright's testimony was error. Edison urges it was not. But before reaching the substance of Royce's arguments, Edison raises a threshold issue that we find dispositive: the absence of a sufficient offer of proof.

A judgment cannot be set aside based on the erroneous exclusion of evidence unless "[t]he substance, purpose, and relevance of the excluded evidence was made known to the court by the questions asked, an offer of proof, or by any other means." (Evid. Code, § 354, subd. (a); *Bowman v. Wyatt* (2010) 186 Cal.App.4th 286, 329 (*Bowman*).) In other words, "[f]ailure to make an adequate offer of proof precludes consideration of the alleged error on appeal." (*In re Mark C.* (1992) 7 Cal.App.4th 433, 444.) This rule is, in many respects, a practical one: "[T]he reviewing court must know the substance of the excluded evidence in order to assess prejudice." (*People v. Anderson* (2001) 25 Cal.4th 543, 580; accord, *People v. Brady* (2005) 129 Cal.App.4th 1314, 1332 (*Brady*); *Nienhouse v. Superior Court* (1996) 42 Cal.App.4th 83, 93–94 (*Nienhouse*).)

To that end, " 'an offer of proof must be specific.' " (*Brady*, *supra*, 129 Cal.App.4th at p. 1332.) It " 'must set for the actual evidence to be produced' " (*Bowman*, *supra*, 186 Cal.App.4th at p. 329)—i.e., " 'the testimony of specific witnesses, writings, material objects, or other things presented to the senses, to be introduced to prove the existence or nonexistence of a fact in issue' " (*In re Mark C.*, *supra*, 7 Cal.App.4th at p. 444)—" 'and not merely the facts or issues to be addressed and argued' " (*Bowman*, at p. 329). Absent such specificity, a claim is not adequately preserved. (See, e.g., *Gutierrez v. Cassiar Mining Corp.* (1998) 64 Cal.App.4th 148, 161–162 (*Gutierrez*)

[claim not adequately preserved where "[n]othing in this record properly shows, beyond surmise, what Greeley would have said"]; *Semsch v. Henry Mayo Newhall Memorial Hospital* (1985) 171 Cal.App.3d 162, 168 (*Semsch*) [claim not adequately preserved where the offer of proof, "[a]lthough it contained the names of alternate witnesses who might testify . . . and the purpose of the testimony, . . . did not give the precise testimony to be offered by either of those witnesses"].) Likewise, " '[t]he trial court may reject a general or vague offer of proof that does not specify the testimony to be offered by the proposed witness.' " (*Bowman*, at p. 329; accord, *Semsch*, at p. 167.)

Royce's offer of proof was not sufficiently specific. He never identified "just what [Wright] would say." (*Gutierrez*, *supra*, 64 Cal.App.4th at p. 161.) Rather, he only surmised what Wright might testify given Edison's interrogatory response. Inferring what a witness might testify is, needless to say, not the equivalent of "set[ting] forth the actual evidence to be produced." (*Bowman*, *supra*, 186 Cal.App.4th at p. 329.)

Tellingly, in response to Edison's argument, Royce does not claim that his offer of proof comported with the usual standards. He contends that "[u]nder these circumstances, [he] was not required to make an offer of proof to preserve this issue as long as he explained why he thought that testimony would likely be helpful to his case (which he did)."

His argument overreads the exception attendant to cross examination. Generally, "no offer of proof is necessary in order to obtain a review of rulings on cross examination. [Citations.]" (*Tossman v. v. Newman* (1951) 37 Cal.2d 522, 525–526; see also Evid. Code, § 354, subd. (c).) The exception only applies where the inquiry entails

proper cross examination. In contrast, where a party goes outside the bounds of the direct examination and "attempt[s] to offer affirmative evidence of his own," an offer of proof is necessary to preserve the issue for appellate review. (*Nienhouse*, *supra*, 42 Cal.App.4th at p. 93; *People v. Foss* (2007) 155 Cal.App.4th 113, 127.) No cross examination by Royce was involved here. To the contrary, he was "attempt[ing] to offer affirmative evidence of his own." (*Nienhouse*, at p. 93.) Thus, the exception does not apply.

Moreover, we find the factual basis Royce uses to analogize to the cross examination exception untenable. Royce claims no offer of proof "was possible" since "only [Edison] (and Mr. Wright) knew what was observed during the investigation—and they weren't talking." This is a problem of Royce's own making. He apparently never sought to depose Wright in advance of trial. Nor did Royce request an Evidence Code section 402 hearing to explore the issue further.

We also find unpersuasive Royce's reliance on *Lawless v. Calaway* (1944) 24 Cal.2d 81. There, our Supreme Court stated that "[w]here . . . an entire class of evidence has been declared inadmissible or the trial court has clearly intimated that it will receive no evidence of a particular type or class, or upon a particular issue, an offer of proof is not a prerequisite to arguing on appeal the prejudicial nature of the exclusion of such evidence." (*Id.* at p. 91.) Royce does little more than quote this case and, in an ipse dixit fashion, assert that it is "[a] further reason why an offer of proof was not needed." He does not identify what class of evidence was precluded, and we cannot conceive what class it would be—if any. To the contrary, the fact that the court *requested* an offer of proof indicates that it was not excluding the evidence on a categorical basis, but instead

giving the information individual consideration. So, this exception does not save Royce's failure to provide an offer of proof.

In sum, absent a sufficiently specific offer of proof or an exception excusing it, we cannot consider Royce's claim of error as to this issue (Evid. Code, § 354, subd. (a)), and the trial court was likewise justified in rejecting Royce's vague offer of proof. (*Bowman*, *supra*, 186 Cal.App.4th at p. 329; *Semsch*, *supra*, 171 Cal.App.3d at p. 168.)

2. *Vocational Expert Testimony*

a. *Additional Background*

Royce retained Leonard Matheson (Dr. Matheson) to evaluate his work capacity after the incident. Using a "transferable skills analysis," Dr. Matheson initially assessed Royce's loss of earning capacity based on three alternative vocations: construction manager, logistician, and sales engineer. In his expert report and at his deposition, Matheson acknowledged that each career would require an additional two to four years of college beyond Royce's current high school level education.

Edison moved in limine to preclude reliance on the three alternative vocations, arguing they were "purely speculative" in light of Royce's educational background and the fact that he had not previously expressed any interest in entering those fields. The trial court granted Edison's motion without prejudice. The court reasoned that "as it pertains to employment that . . . [Royce] was not accredited for or did not have the appropriate licensing or education for it, then it would lack foundation and be speculation." But if the requisite foundation was laid, the court specified that counsel

should request a sidebar and, subject to the court's ruling there, could "inquire into other fields of employment."

During Dr. Matheson's direct examination, Royce's counsel asked him to opine on Royce's "pre-injury earning capacity . . . assuming that he needed no further training and no further education." Edison's counsel objected and following an unreported sidebar, was permitted to "inquire . . . in terms of the foundation . . . for an entry-level job as a construction manager."[3] Matheson explained that while Royce needed further education to enter the construction management field at the 50th percentile, his current level would suffice for entry at the 10th percentile.

The court concluded "there [was] sufficient evidence with what was testified in court . . . to support the . . . witness's opinion that he could qualify for a position as a construction manager." Dr. Matheson's direct examination was resumed in accord with the court's ruling. No mention was made of the logistician or sales engineer professions. Another of Royce's experts (an economist) later used Matheson's construction management salary estimates to forecast Royce's total loss of earning capacity at $4,229,710.

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3 Edison contends that Royce waived the ability to challenge this issue by failing to have the sidebar during Dr. Matheson's testimony reported. (See *Wysinger v. Automobile Club of Southern Cal.* (2007) 157 Cal.App.4th 413, 429 ["Where the record is silent we must presume the court correctly ruled based on what occurred in the unreported proceedings"].) We are unpersuaded. The sidebar followed a question that was wholly in line with the court's earlier ruling; counsel asked about Royce's future earning capacity "*assuming he needed no further training and no further education*." (Italics added.) Thus, it does not appear that the court revisited its earlier ruling—i.e., the ruling that Royce challenges—in this unreported sidebar.

b. *Analysis*

Royce claims that the court prejudicially erred by precluding Dr. Matheson from estimating his loss of earning capacity based on his putative employment as a logistician or sales engineer. We disagree. In our view, the trial court acted well within its discretion in excluding such speculative testimony.

"Even when [a] witness qualifies as an expert, he or she does not possess a carte blanche to express any opinion within the area of expertise." (*Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1117.) His or her " 'opinion may not be based "on assumptions of fact without evidentiary support . . . or on speculative or conjectural factors." ' " (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 770 (*Sargon*); accord, *Atkins v. City of Los Angeles* (2017) 8 Cal.App.5th 696, 740 (*Atkins*).) Indeed, " 'an expert's opinion that something *could* be true if certain assumed facts are true, without any foundation for concluding those assumed facts exist' [citation], has no evidentiary value." (*Bushling v. Fremont Medical Center* (2004) 117 Cal.App.4th 493, 510.) "[T]he trial court has the duty to act as a 'gatekeeper' to exclude speculative [expert] testimony." (*Sargon*, at p. 753.)

"Except to the extent the trial court bases its ruling on a conclusion of law (which we review de novo), we review its ruling excluding or admitting expert testimony for abuse of discretion. [Citations.] A ruling that constitutes an abuse of discretion has been described as one that is 'so irrational or arbitrary that no reasonable person could agree with it.' " (*Sargon*, *supra*, 55 Cal.4th at p. 773.)

Because the " 'scope of discretion always resides in the particular law being applied,' " we must "consider 'the legal principles and policies that should have guided the court's actions.' " (*Sargon*, *supra*, 55 Cal.4th at p. 773.) Thus, although "the issue before us is whether the court abused its discretion in excluding the expert testimony, not whether substantial evidence supports [an] award [for loss of future earning capacity]," "the substantive law regarding [loss of earning capacity damages] is relevant to help define the matter on which an expert may reasonably rely." (*Id.* at pp. 775–776.)

"As its name suggests, a loss of earning capacity is the difference between what the plaintiff's earning capacity was *before* [his or] her injury and what it is *after* the injury." (*Licudine v. Cedars-Sinai Medical Center* (2016) 3 Cal.App.5th 881, 893 (*Licudine*).) It "is an element of general damages which can be inferred from the nature of the injury, without proof of actual earnings or income either before or after the injury." (*Connolly v. Pre-Mixed Concrete Co.* (1957) 49 Cal.2d 483, 489 (*Connolly*).) Because it is an issue of capacity, the pertinent inquiry is what the plaintiff *could* have earned, not what he or she *would* have earned. (*Licudine*, at p. 893.)

"A jury tasked with evaluating a plaintiff's prayer for prospective loss of earning capacity must answer two questions: (1) Did the plaintiff suffer a loss in [his or] her earning capacity as a result of [his or] her injury; and, if so, (2) How is that loss to be valued?" (*Licudine*, *supra*, 3 Cal.App.5th at p. 892.)

The second question (valuation) is at issue here. It is ultimately "a function of two variables—the career(s) the plaintiff *could* have pursued and the salaries attendant to such career(s)." (*Licudine*, *supra*, 3 Cal.App.5th at p. 894, italics added.) As to the careers

relevant, "some modicum of scrutiny by the trier of fact is warranted": "[T]he jury must look to the earning capacity of the career choices that the plaintiff had a reasonable probability of achieving." (*Ibid.*) Because an expert's "testimony about the plaintiff's earning capacity must . . . be grounded in reasonable assumptions" (*id.* at p. 897), it follows as a matter of course that such an expert cannot rely on careers a jury could not find the plaintiff had a reasonable probability of attaining. (Cf. *Sargon*, *supra*, 55 Cal.4th at pp. 775–776 [expert testimony on lost profits properly excluded where the "analysis relied 'on data that in no way [was] analogous to Plaintiff' "]; *Atkins*, *supra*, 8 Cal.App.5th at p. 742 [expert testimony regarding future economic damages was unreasonably speculative where the expert " 'simply assumed' " the plaintiffs would complete the necessary training at the police academy and be employed as police officers until retirement].)

Here, Dr. Matheson's testimony was properly limited given the absence of evidence from which a jury could find Royce had a reasonable probability of becoming a logistician or sales engineer. At the time of the incident, Royce was 29 years old and had pursued no further education past high school. He had previously worked in landscaping, construction (though never under his own license), precious metal recycling, and welding. In the two years preceding the incident, he operated his own welding business. He also did a "variety of things" to help with the operation of the laundromat and was in the process of patenting an invention. To be certain, the evidence reflects that Royce was an entrepreneurial and hardworking individual. But that is not enough to establish that a career in sales engineering or as a logistician was reasonably probable. The record holds

no indication that Royce would pursue those careers, nor that he even harbored any interest in them or in obtaining further education, as would be necessary.

Granted, Royce is correct that "a plaintiff need not be actually working at the career or have training related to [it] to recover lost earning capacity damages based on [it]." (See, e.g., *Connolly*, *supra*, 49 Cal.2d at pp. 488–489; see generally *Licudine*, *supra*, 3 Cal.App.5th at pp. 896–897 [collecting and summarizing cases].) But cases in accord with that principle are distinct from this one. More often than not, they dealt with plaintiffs who had yet to enter the workforce; projecting earning capacity based on hypothetical careers was therefore a necessity. (See, e.g., *Connolly*, at pp. 488–489.) Moreover, when a young plaintiff not yet a member of the workforce seeks to rely on "a specific career, courts have generally required some proof that the plaintiff is far along in his or her training or experience." (*Licudine*, at p. 896; accord, *Atkins*, *supra*, 8 Cal.App.5th at p. 739.) For example, in *Licudine*, the college student plaintiff failed to "establish that it was reasonably probable she could have obtained employment as an attorney," despite the fact that she was admitted to law school. (*Id.* at pp. 887–889.)

Royce had already entered the workforce and provided no showing that he was contemplating a change, let alone "far along" in changing, career paths. It would be unduly speculative to suppose he would abandon his current pursuits to return to *and* successfully complete further schooling, all so he could enter a wholly new vocational field. (Cf. *Licudine*, *supra*, 3 Cal.App.5th at pp. 898–899; *Atkins*, *supra*, 8 Cal.App.5th at pp. 740–742.) Thus, the trial court properly carried out its gatekeeping duty in precluding Dr. Matheson's speculative testimony.

Further, even if we were to conclude that the court abused its discretion, we would find any such error nonprejudicial. The jury ultimately awarded Royce $11,412 for past lost earnings and the same amount for future lost earnings. Given the minimal amount, it is clear the jury rejected the notion that Royce's injuries would have a long-term impact on his earning capacity. Thus, any further testimony about vocations Royce might have pursued at some point in the distant future (and accordingly increasing his economist's evaluation of his earning capacity losses from approximately $4.2 million to $5 million) would quite obviously have made no difference.

3. *Apportionment of Fault*

a. *Additional Background*

During trial, the parties disagreed as to whether Jerry should be listed on the special verdict form as an individual potentially responsible for Royce's injuries. The court ultimately concluded that he should be included. Thereafter, the jury assigned 24 percent of the fault for Royce's injuries to Jerry.

b. *Analysis*

Royce contends there was insufficient evidence to justify including Jerry on the special verdict form. Alternatively, he contends that the allocation of fault to Jerry is against the weight of the evidence. Given that substantial evidence supports the apportionment of fault to him, we find no error.

While liability for economic damages remains joint and several amongst codefendants, under Civil Code section 1431.2, subdivision (a) a defendant is only liable for noneconomic damages in proportion to its own fault. (See *Vollaro v. Lipsi* (2014)

224 Cal.App.4th 93, 99.) Thus, as to noneconomic damages, " 'the plaintiff alone now assumes the risk that a proportionate contribution cannot be obtained from each person responsible for the injury.' " (*Id.* at p. 100, quoting *DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 600.)

"A defendant . . . may reduce its own comparative fault by pointing the finger at other tortfeasors, including those who are not party to the case." (*Soto v. BorgWarner Morse TEC Inc.* (2015) 239 Cal.App.4th 165, 202 (*Soto*).) The comparative fault doctrine "is designed to permit the trier of fact to consider all relevant criteria in apportioning liability." (*Rosh v. Cave Imaging Systems, Inc.* (1994) 26 Cal.App.4th 1225, 1233 (*Rosh*); accord, *Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1285 (*Pfeifer*).) To that end, it " 'is a flexible, commonsense concept, under which a jury properly may consider and evaluate the relative responsibility of various parties for an injury (whether their responsibility for the injury rests on negligence, strict liability, or other theories of responsibility), in order to arrive at an "equitable apportionment or allocation of loss." ' " (*Rosh*, at p. 1233; accord, *Pfeifer*, at p. 1285.)

"The defendant bears the burden of establishing that some nonzero percentage of fault is attributable to other entities." (*Soto*, *supra*, 239 Cal.App.4th at p. 202.) To justify instructing on apportionment of fault to another individual, there must be substantial evidence that the individual is at fault and that its fault was a substantial factor in causing harm. (*Blevin v. Coastal Surgical Institute* (2015) 232 Cal.App.4th 1321, 1329 (*Blevin*); see *Wilson v. Ritto* (2003) 105 Cal.App.4th 361, 367.) Similarly, "[w]e review the jury's

allocation of fault for substantial evidence." (*Soto*, *supra*, 239 Cal.App.4th at p. 203; accord, *Pfeifer*, *supra*, 220 Cal.App.4th at p. 1286.)

Accordingly, both of Royce's arguments here can be addressed by answering a single question: Was the allocation of some proportionate fault to Jerry supported by substantial evidence?

In reviewing for substantial evidence, we consider the evidence in the light most favorable to allocating fault to Jerry. (See *Blevin*, *supra*, 232 Cal.App.4th at p. 1329 ["We review the evidence most favorable to the applicability of the requested instruction, as a party is entitled to that instruction if that evidence could establish the elements of the theory presented"]; *Pfeifer*, *supra*, 220 Cal.App.4th at p. 1286 ["On review for substantial evidence, we 'consider the evidence in the light most favorable to the prevailing party, giving that party the benefit of every reasonable inference and resolving conflicts in support of the judgment' "].) We " 'may not substitute [our] judgment for that of the jury or set aside the jury's finding if there is any evidence which under any reasonable view supports the jury's apportionment. . . . For this reason, courts rarely disturb [a] jury's apportionment of fault." (*Pfeifer*, at p. 1286; accord, *Soto*, *supra*, 239 Cal.App.4th at pp. 202–203.)

Because Royce's jury was instructed on general negligence principles, and not specifically on premises liability, Royce contends that we cannot uphold the verdict considering Jerry's duty as a landowner. (See *Bullock v. Phillip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 674–675 ["We review the sufficiency of the evidence . . . under the law stated in the instructions given, rather than under some other law on which the jury

was not instructed"].) He posits that doing so "would be akin to affirming a plaintiff's verdict based on a strict liability theory when the jury was only instructed on negligence."

But it is well-established that "[p]remises liability is a form of negligence." (*Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, 1619; *Leyva v. Garcia* (2018) 20 Cal.App.5th 1095, 1103.) "Since *Rowland v. Christian* (1968) 69 Cal.2d 108, the liability of landowners for injuries to people on their property has been governed by general negligence principles." (*Pineda v. Ennabe* (1998) 61 Cal.App.4th 1403, 1407; compare CACI No. 401 ["Negligence is the failure to use reasonable care to prevent harm to oneself or to others"] with CACI No. 1001 ["A person who [owns/leases/occupies/controls] property is negligent if he or she fails to use reasonable care to keep the property in a reasonably safe condition"].) Thus, even though the jury was not specifically instructed as to Jerry's duties as a landowner, we need not blind ourselves to his status as one. Indeed, Jerry's status as the landowner, just like his status as owner of the laundromat, is relevant to his right of supervision and control—a right which "Justice Mosk has aptly stated . . . 'goes to the very heart of the ascription of tortious responsibility . . . .' " (*Sprecher v. Adamson Companies* (1981) 30 Cal.3d 358, 369.)

We conclude sufficient evidence of Jerry's fault justified both the inclusion of his name on the special verdict form and the ultimate allocation to him. Accepting troubleman Taylor's testimony (as we must on substantial evidence review), Jerry was told that the panel was hazardous and that it should be inspected by a qualified licensed electrician before the family did anything further. Despite being warned of the possible

hazards from the panel, Jerry requested that the power to the laundromat remain on. And he allowed his son to perform repairs on the building. Given his status as the landowner, the business owner, and Royce's father, the jury could well infer he took part in deciding that Royce should conduct repairs before a licensed electrician was contacted. This inference is further strengthened by the fact that he saw Royce starting the repairs and made no attempt to intervene.

In light of the above evidence, we will not disturb the jury's allocation of fault here. Given that the ultimate allocation was supported by substantial evidence, we further conclude that including Jerry's name on the special verdict form was not error.

DISPOSITION

The judgment is affirmed. Edison is entitled to costs on appeal.

DATO, J.

WE CONCUR:

BENKE, Acting P. J.

O'ROURKE, J.