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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

AMADOR L. CORONA, JR., Plaintiff and Appellant, v. CITY OF RIVERSIDE, Defendant and Respondent.	D075558 (Super. Ct. No. RIC1514353)

APPEAL from a judgment of the Superior Court of Riverside County, Gloria Connor Trask, Judge. Affirmed.

Law Offices of Scott E. Schutzman, Scott E. Schutzman; and Amador L. Corona, for Plaintiff and Appellant.

Gary G. Geuss, City Attorney, Robert Hansen, Assistant City Attorney, Richard S. Hall, Sr. and Rebecca L. McKee, Deputy City Attorneys; Skane Wilcox, Wendy L. Wilcox and John G. Wilcoxson; Greines, Martin, Stein & Richland, Timothy T. Coates and Carolyn Oill, for Defendant and Respondent.

After Amador L. Corona was seriously injured in a traffic accident, he sued the City of Riverside (City) for negligence based on the dangerous condition of public property. Prior to trial, the court granted several motions in limine, which substantially impaired Corona's case against the City. After Corona presented his opening statement, the court granted the City's motion for nonsuit.

Corona appeals the resulting judgment. He contends the court erred by granting the motions in limine. But, as we explain further below, he fails in many cases to address the bases for the court's orders or offer any cogent legal analysis to support his claims of error. These deficiencies are fatal to his appeal. " 'A judgment or order of the lower court is *presumed correct.* All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "This burden requires more than a mere assertion that the judgment is wrong. 'Issues do not have a life of their own: If they are not raised or supported by argument or citation to authority, [they are] . . . waived.' [Citation.] It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 (*Benach*).)

We conclude Corona has not shown reversible error. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In his operative complaint, Corona alleged the following: In late December 2014, at approximately 7:00 p.m., Corona was riding his bicycle when he was hit by a car at the intersection of Central Avenue and Phoenix Avenue in the City of Riverside. Corona approached on Phoenix and entered the intersection with Central on a green light. The car was travelling on Central and struck Corona. The City owned and maintained the intersection. The intersection was dangerous for bicyclists because of the nature and timing of the traffic signal equipment at Central and Phoenix. Corona was seriously injured in the accident and expected to incur millions of dollars in medical expenses.

By the time of trial, Corona had focused his contentions on the adequacy of the traffic signal equipment at Central and Phoenix. It was undisputed that the traffic signal incorporated a "loop line detection system," which utilized wires in the pavement to detect the presence of a car waiting at the intersection. When a car was detected, the traffic light would change to red on Central and green on Phoenix, allowing the car to proceed through the intersection. Otherwise, because Central was a major street, the traffic light would remain green on Central and red on Phoenix. The loop line detection system was not capable of detecting a bicyclist waiting at the intersection.

As a result of his injuries, Corona could not remember the circumstances of the accident. The other driver maintained that the light on Central was green as he approached and proceeded through the intersection. Police officers who responded to the accident noted the locations of various personal items, debris, and markings in the intersection and surrounding streets. In a police report, one officer expressed her opinion

that the accident occurred in the intersection itself. (The City disputed this conclusion; it believed that the accident occurred prior to the intersection as Corona turned around illegally across lanes of traffic.)

Corona retained a civil engineering expert to examine the circumstances of the accident and render an opinion on the adequacy of the traffic signal equipment at the intersection. The expert opined that under California law the City was required to upgrade the loop line detection system at the intersection to register the presence of bicyclists. He believed the City's obligation to upgrade the system was triggered either in 2009, when the California Department of Transportation released standards for bicycle detection, or in 2012, when the City replaced the electronics cabinet that controlled the system and potentially one loop wire in the pavement.

Based on his analysis, the expert concluded that the loop line detection system on Phoenix had been previously triggered by a car, and Corona entered the intersection with a green or yellow light, but Corona could not make it across the intersection before the light changed and the other driver hit him. To support this conclusion, the expert relied on (among other things) Corona's custom and practice when riding his bicycle. Through his attorneys, Corona stated that he normally stops and waits at an intersection if the traffic light is red. If the light does not change to green, he would use the pedestrian crosswalk button. If there were no pedestrian button, he would look both ways to make sure it was safe to cross and then proceed through the intersection against the red light.

Corona engaged a graphics consultant to create a computer animation of his theory of the accident. The consultant said the animation was consistent with the "Time Space

Calculations" produced by Corona's expert. The expert testified at deposition that he did not know how the animations were created but that they used data "similar" to his own calculations. In a later hearing, the expert testified that the animation accurately reflected his opinion regarding the circumstances of the accident.

In advance of trial, the court granted several motions in limine filed by the City. The substance of the relevant motions will be discussed in the next section. As a result of the court's rulings, Corona gave a short opening statement, and the court granted nonsuit.

DISCUSSION

I

Motions in Limine Generally

" ' "The usual purpose of motions in limine is to preclude the presentation of evidence deemed inadmissible and prejudicial by the moving party. A typical order in limine excludes the challenged evidence and directs counsel, parties, and witnesses not to refer to the excluded matters during trial. [Citation.] 'The advantage of such motions is to avoid the obviously futile attempt to "unring the bell" in the event a motion to strike is granted in the proceedings before the jury.' " ' " (*Amtower v. Photon Dynamics, Inc.* (2008) 158 Cal.App.4th 1582, 1593 (*Amtower*), italics omitted.) "A trial court's ruling on an in limine motion is generally reviewed for abuse of discretion. However, review is de novo when the issue is one of law." (*Children's Hospital Central Cal. v. Blue Cross of Cal.* (2014) 226 Cal.App.4th 1260, 1277.)

Motions in limine may also be used, in limited cases, to challenge the sufficiency of the evidence supporting an opposing party's claim or defense. (*Amtower*, *supra*,

158 Cal.App.4th at p. 1595.) "[W]hen the trial court utilizes the in limine process to dispose of a case or cause of action for evidentiary reasons, we review the result as we would the grant of a motion for nonsuit after opening statement, keeping in mind that the grant of such a motion is not favored, that a key consideration is that the nonmoving party has had a full and fair opportunity to state all the facts in its favor, and that all inferences and conflicts in the evidence must be viewed most favorably to the nonmoving party." (*Ibid*.)

II

Loop Line Detection Systems and Requirements

Three of the City's motions in limine challenged aspects of Corona's theory that the City was required to upgrade the loop line detection system at the intersection of Central and Phoenix to detect bicyclists. As noted, the loop line detection system was not capable of detecting bicyclists at the time of the accident.

In 2007, the Legislature amended the Vehicle Code to require the installation of loop line detection systems capable of detecting bicyclists: "Upon the first placement of a traffic-actuated signal or replacement of the loop detector of a traffic-actuated signal, the traffic-actuated signal shall, to the extent feasible and in conformance with professional traffic engineering practice, be installed and maintained so as to detect lawful bicycle or motorcycle traffic on the roadway." (Veh. Code, § 21450.5, subd. (b), as amended by Stats. 2007, ch. 337, § 2.) Public agencies were not required to comply with the statute until the Department of Transportation established uniform standards, specifications, and guidelines. (Veh. Code, § 21450.5, subd. (c).)

Two years later, the Department of Transportation adopted an amendment to section 4D.105(CA) of the California Manual on Uniform Traffic Control Devices (MUTCD), which governed bicycle and motorcycle loop detectors. The amended section confirms that "[a]ll new limit line detector installations and modifications to the existing limit line detection on a public or private road or driveway intersecting a public road . . . shall either provide a Limit Line Detection Zone in which the Reference Bicycle-Rider is detected or placed on permanent recall or fixed time operation." Under the heading of "Guidance," the amended section provides, "If more than 50% of the limit line detectors need to be replaced at a signalized intersection, then the entire intersection should be upgraded so that every lane has a Limit Line Detection Zone."

In one motion in limine (Motion in Limine No. 3), the City requested that the trial court interpret the phrases "loop detector" and "limit line detector" as used in the statute and MUTCD. The City contended that interpretation of these phrases was a question of law for the court. Relying on the Federal Highway Administration's Traffic Detector Handbook, the City argued that these phrases referred to the actual loop wire in the pavement itself. The City noted that Corona's expert had a different interpretation. The expert testified that a loop detector was "the electronic box that's in the controller cabinet that is able to pick up a signal and relay that signal to the controller to show that there was an actuation." The trial court agreed with the City that interpretation of the phrases was a question of law and found that the phrases referred to the actual wire in the pavement.

In this appeal, Corona notes that his expert gave a different definition. He asserts, "Since there is no case on what a loop detector is, [Corona] contends that this was a question of fact for the jury." Corona is incorrect. Whether an issue is a question of fact or a question of law does not turn on the existence of case law defining a term. Instead, it turns on the nature of the issue itself. The issue here is interpretation of a statute and related regulatory guidance. This issue presents a pure question of law. (*People ex. rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432 ["To determine the meaning of such a provision entails the resolution of a pure question of law."]; *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699 ["The interpretation of a statute . . . is a question of law[.]"]; *Daugherty v. City & County of San Francisco* (2018) 24 Cal.App.5th 928, 944.) The authority cited by Corona, *DiRosa v. Showa Denko K.K.* (1996) 44 Cal.App.4th 799, is not to the contrary. In *DiRosa*, the trial court instructed the jury on the meaning of various statutory terms as a matter of law. (*Id*. at p. 806.) It left to the jury the factual determination whether the defendant's product fell within the scope of those terms. (*Ibid*.) Similarly, here, the trial court resolved a dispute over the meaning of loop detector and limit line detector. This threshold issue, the meaning of these phrases, was a question of law for the court. Corona has not shown the court erred by deciding this issue, rather than leaving it to the jury to decide. We note that Corona does not address the merits of the trial court's decision. To the extent he intends to raise the merits, he has forfeited this claim of error on appeal. " 'We are not bound to develop appellants' arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court

to treat the contention as waived.' " (*Cahill v. San Diego Gas & Electric Co*. (2011) 194 Cal.App.4th 939, 956 (*Cahill*); accord, *Benach*, *supra*, 149 Cal.App.4th at p. 852.)

In another motion in limine (Motion in Limine No. 1), the City requested that the trial court determine when and under what circumstances a public agency is required to install upgraded limit line detectors under the statute and the MUTCD. The City contended that the upgrade requirement in Vehicle Code section 21450.5 applied only to new and replacement limit line detectors, to the extent feasible, rather than existing limit line detectors. And, under MUTCD section 4D.105(CA), existing limit line detectors only needed to be upgraded if more than 50 percent of the limit line detectors at a given intersection needed to be replaced. The trial court agreed and granted the motion.

Corona's briefing on appeal does not directly address the substance of the City's motion. He does not mention the Vehicle Code or the MUTCD, let alone attempt to interpret their requirements. Instead, Corona recites his expert's definition of limit line detectors. We address this definitional issue above. Citing *Korsak v. Atlas Hotels, Inc.* (1992) 2 Cal.App.4th 1516, 1524-1525 (*Korsak*), Corona also asserts that his expert was allowed to base his opinion on hearsay, even if the hearsay was ultimately inadmissible. This assertion, while generally correct, has no bearing on this motion in limine. This motion concerned whether the court could determine when and under what circumstances a public agency is required to install upgraded limit line detectors. Corona has not shown the court erred by making such a determination as a matter of law. Again, Corona does not address the merits of the trial court's determination under the Vehicle Code and the MUTCD. To the extent he intends to raise the merits, he has forfeited this claim of

error on appeal as well. (See *Cahill*, *supra*, 194 Cal.App.4th at p. 956; *Benach*, *supra*, 149 Cal.App.4th at p. 852.)

In a third motion in limine (Motion in Limine No. 2), the City relied on the court's interpretations of the statute and the MUTCD to argue that Corona had no evidence the City was required to upgrade the loop line detection system at Central and Phoenix to detect bicycles. The City contended that the limit line detectors were last replaced in 2003, before the statute requiring bicycle detection was enacted. Corona opposed the motion. He argued that the City was required to upgrade the limit line detectors either in 2009, when the MUTCD was amended, or in 2012, when the City replaced the electronics cabinet that controlled the system and potentially one loop wire in the pavement. The City responded that it was not required to immediately upgrade the system in 2009 because the statute applied only to new or replacement systems. The City disputed that one loop wire was replaced in 2012. But, even if it had been, the City argued that the replacement did not trigger the requirement to upgrade the loop line detection system because it did not meet the MUTCD's 50 percent threshold. And, in the City's view, the controller cabinet was not a "loop detector" or "limit line detector" under the statute and MUTCD, so its replacement did not trigger the requirement to upgrade either.

The trial court agreed with the City. It found that the City was not required to immediately upgrade the limit line detectors in 2009 and neither the electronic cabinet replacement in 2012 nor the single loop line replacement (if it occurred) was sufficient to trigger the upgrade obligation.

In his appellate briefing, Corona recounts this procedural history but he does not present a cogent argument to support any claim of error. He notes that the court's order prevented his expert from testifying that the City was required to upgrade the loop line detection system to accommodate bicyclists either in 2009 or in 2012. But this observation does not show why the court's order was wrong. He seems to focus his argument on a dispute about the evidence used to prove whether a limit line detector was replaced in 2012, i.e., whether his expert could use a photo taken in 2015 by Corona's counsel to support that assertion. However, even if the court erred by not accepting the 2015 photo as evidence, Corona still has not shown error. The court found that even if the limit line detector had been replaced in 2012, it still would not have triggered the City's obligation to upgrade the limit line detection system at the intersection based on the 50 percent threshold in the MUTCD. Corona does not address this threshold or explain why the court erred by relying on it. Because the court would still have reached the same result on this motion regardless of the 2015 photo, Corona has not shown prejudicial error.

III

Traffic Signal Timing

In Motion in Limine No. 5, the City requested that the trial court prevent Corona from presenting evidence that the timing of the traffic signal on Phoenix was inadequate. The City argued that the traffic signal timing was irrelevant because Corona could not show (1) he was travelling on Phoenix before the accident and (2) he entered the intersection on anything other than a red traffic signal. The City also argued that traffic

signal timing was irrelevant because Corona could not establish that the City had a duty to implement elongated bicycle timing for the same reasons it had no duty to upgrade the limit line detectors at the intersection. In his opposition, Corona pointed to the physical evidence at the scene and his expert's analysis, which relied in part on Corona's custom and habit as a bicycle rider. He contended that this evidence supported the inference that Corona entered the intersection from Phoenix on a green light.

The trial court found, based on the assumed testimony of Corona and his expert, that Corona could prove he was travelling on Phoenix before the accident and had entered the intersection on a green light. But the court found that the City had no duty to implement elongated bicycle timing, as a matter of law, based on the MUTCD.

In this appeal, Corona does not mention the basis for the court's order or address whether the City had a duty to implement elongated bicycle timing. Instead, he references his expert's ability to rely on Corona's custom and practice, which was the subject of a separate motion in limine that we address in the next part. He also asserts that "[w]here [Corona] was situated was a question of fact for the jury." These statements do not address the basis for the court's order or explain why the court erred. They are insufficient to show prejudicial error on appeal. "Mere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review. The court is not required to make an independent, unassisted study of the record in search of error. The point is treated as waived and we pass it without further consideration." (*Dept. of Alcoholic Beverage*

Control v. Alcoholic Beverage Control Appeals Bd. (2002) 100 Cal.App.4th 1066, 1078; accord, *Benach*, *supra*, 149 Cal.App.4th at p. 852.)

IV

Custom and Habit

In Motion in Limine No. 10, the City sought an order precluding Corona's expert from relying on Corona's custom and habit as a bicycle rider in rendering his opinions. It argued that any conclusions based on the custom and habit would be unduly speculative. (See Evid. Code, § 801, subd. (b); *Sargon Enterprises, Inc. v. University of Southern Cal.* (2012) 55 Cal.4th 747, 770-772 (*Sargon*).) Corona opposed the motion. He argued that evidence of his custom and habit was relevant and reliable, especially given his inability to remember the circumstances of the accident.

The trial court concluded that Corona could testify to his custom and habit but that his expert could not rely on that custom and habit in rendering his opinions. The court reasoned that Corona's alleged custom and habit of only proceeding through an intersection when the light was green was inconsistent with his other custom and habit that he would cross against a red light when he believed it was safe to do so. The court explained, "I will exclude it from [the expert's] opinions or reliance on his habit of not entering on a red [light] because it is not reliable because he's taking inconsistent statements and that is not the type of information that experts are or do rely on. So inconsistent statements are not sufficiently reliable to [support an opinion]." We review the trial court's ruling for abuse of discretion. (*Sargon*, *supra*, 55 Cal.4th at p. 773.)

In his opening brief, Corona does not address the basis of the trial court's order. He does not discuss whether the custom and habit evidence is sufficiently reliable under the Evidence Code and *Sargon* to support his expert's opinions. He notes that custom and habit evidence is admissible (citing *Snibbe v. Superior Court* (2014) 224 Cal.App.4th 184, 191) and that an expert may rely on hearsay (citing *Korsak*, *supra*, 2 Cal.App.4th at pp. 1524-1525). These general principles are unmoored from the court's reasoning and the circumstances of this appeal. They are insufficient to show the court erred, let alone that any such error was prejudicial. (*Cahill*, *supra*, 194 Cal.App.4th at p. 956; *Benach*, *supra*, 149 Cal.App.4th at p. 852.)

On reply, for the first time, Corona asserts, "The testimony was reliable because it was consistent with all the other testimony and physical evidence much of which the court excluded based upon the police report." He has waived this argument by failing to raise it in his opening brief. (See *Tilton v. Reclamation Dist. No. 800* (2006) 142 Cal.App.4th 848, 864, fn. 12 (*Tilton*).) And, even considering this assertion, it appears without any legal analysis, citation to authority, or supporting references to the record. Corona also does not explain how the court's order on this motion was prejudicial in light of the court's other rulings. Corona's assertion is insufficient to show error. (See *Cahill*, *supra*, 194 Cal.App.4th at p. 956 [" 'We are not bound to develop appellants' arguments for them.' "]; *Benach*, *supra*, 149 Cal.App.4th at p. 852 ["It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness."]; see also *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1011 ["It is not the duty of a reviewing court to search the record for evidence on a point

raised by a party whose brief makes no reference to the pages where the evidence can be found."].) In any event, based on our review of the record, the trial court did not abuse its discretion by granting the motion in limine. The court could reasonably find that the portion of Corona's custom and habit evidence Corona's expert chose to credit was too inconsistent and disconnected from the circumstances of the accident to be reliable for the purposes of his opinion.

V

Nonretained Expert Opinion Testimony

In Motion in Limine No. 6, the City sought to preclude any police officers who responded to the accident from providing expert testimony, including based on their police reports. The City argued, among other things, that the police officers had not been designated as experts and therefore could not testify as experts at trial. In opposition, Corona stated that he intended to designate one officer as a nonretained expert but through mistake or excusable neglect failed to do so. The trial court granted the motion. It found that the police officer should have been designated as an expert in pretrial proceedings, and it would not relieve Corona from the designation requirement absent an appropriate motion.

On appeal, Corona does not mention the designation issue or explain why the court should have allowed the police officer to testify as an expert. Instead, he asserts that his expert should have been allowed to rely on the measurements taken by the police officer at the scene. But the court in this motion in limine did not preclude Corona's expert from relying on such measurements. And, the court specifically stated that it

would allow the police officer to testify to the measurements, since they were not the subject of expert opinion.

In his reply brief, for the first time, Corona argues that his retained expert should have been allowed to testify based on the police report that liquid found on the ground at the scene of the accident was radiator fluid. Again, he has waived this argument by failing to raise it in his opening brief. (See *Tilton*, *supra*, 142 Cal.App.4th at p. 864, fn. 12.) Even considering the merits, the argument appears to be based on a misstatement of the record. In the portion of the record cited by Corona, the court notes that the *police officer* would not be able to testify that the liquid was radiator fluid because that would require expert knowledge. The court did not address Corona's retained expert. Corona has not shown error.

VI

Computer Animation

In Motion in Limine No. 9, the City sought an order excluding computer animations of the accident prepared by a graphics consultant retained by Corona's counsel. The City argued that the animations lacked foundation because Corona's expert could not verify what data was used to prepare them and that they were substantially more prejudicial than probative under Evidence Code section 352. The City contended that various aspects of the animations were misleading and, in any event, they relied upon evidence such as Corona's custom and habit that Corona's expert could not properly consider. In opposition, Corona submitted a declaration from the graphics consultant, who stated, "All dimensions and times used in the demonstrative exhibits are consistent

with the Time Space Calculations produced by [Corona's expert]." The expert testified in an Evidence Code section 402 hearing that the animation accurately reflected his opinion regarding the circumstances of the accident.

The trial court granted the motion based on Evidence Code section 352. The court found that the animations were too simplistic and confusing, they did not include a vehicle that Corona's expert assumed would be there to trigger the traffic signal, and they suffered from foundational issues. We review the court's finding under section 352 for abuse of discretion. (*Geffcken v. D'Andrea* (2006) 137 Cal.App.4th 1298, 1307.)

In order to be admissible as demonstrative evidence, "[an] animation must accurately depict an expert opinion, the expert opinion must fairly represent the evidence, the trial court must provide a proper limiting instruction, and the animation must be otherwise admissible under Evidence Code section 352." (*People v. Caro* (2019) 7 Cal.5th 463, 509.) Corona has not shown the court abused its discretion by excluding the animations under section 352. He points out that the consultant could have authenticated the animations and that his expert believed they accurately represented his opinions. But these points do not address the court's concern that the animation would be confusing to the jury under section 352, especially given the omitted elements.

Moreover, even if the court had erred, Corona has not shown the error was prejudicial. He argues, "The ruling on the motion in limine regarding the animation was highly prejudicial because in one fell swoop, the court took as gospel what the City argued without putting on one witness to dispute [the consultant and the expert], and struck all of [Corona's] evidence." Corona misstates the import of the court's order on

this motion in limine. It excluded the animation; it did not exclude his expert's opinion or Corona's substantive evidence. And, since the animation was purely demonstrative, it could have no effect on Corona's ability to put on a prima facie case. Corona has not shown prejudicial error.

DISPOSITION

The judgment is affirmed.

GUERRERO, J.

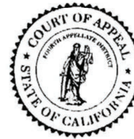
WE CONCUR:

HUFFMAN, Acting P. J.

AARON, J.

KEVIN J. LANE, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.



10/22/2019

KEVIN J. LANE, CLERK

By
Deputy Clerk