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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ROSA CACERES,

Plaintiff and
Respondent,

v.

LOS ANGELES COUNTY
METROPOLITAN
TRANSPORTATION
AUTHORITY,

Defendant and
Appellant.

GUADALUPE ELIZABETH
CRUZ DE PINEDA et al.,

Plaintiffs and
Respondents,

v.

B341068

(Los Angeles County
Super. Ct. No.
20STCV23470)

(Los Angeles County
Super. Ct. No.
20STCV29920)

LOS ANGELES COUNTY
METROPOLITAN
TRANSPORTATION
AUTHORITY,

Defendant and
Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Ernest M. Hiroshige, Judge. Affirmed.

O'Reilly & McDermott, Paul O'Reilly; Greines, Martin, Stein & Richland, Edward L. Xanders and Marco A. Pulido for Defendant and Appellant.

Scolinos, Sheldon & Nevell, Todd F. Nevell and Daniel G. Sheldon for Plaintiff and Respondent Rosa Caceres.

The Ehrlich Law Firm and Jeffrey I. Ehrlich for Plaintiffs and Respondents Rosa Caceres, Guadalupe Elizabeth Cruz De Pineda, Kevin Pineda, Kayla Pineda, and Estate of Nelson Ernesto Pineda Caceras.

Dordick Law Corporation, Gary A. Dordick, Dylan J. Dordick; Setareh Law and Daniel O. Setareh for Plaintiffs and Respondents Guadalupe Elizabeth Cruz De Pineda, Kevin Pineda, Kayla Pineda, and Estate of Nelson Ernesto Pineda Caceres.

The Los Angeles County Metropolitan Transportation Authority (MTA) appeals from a judgment entered after a jury awarded Nelson Pineda's wife, mother, and children (plaintiffs)

more than \$6.5 million in damages after an MTA bus struck and killed Nelson while he was crossing the street.

On appeal, MTA contends the trial court abused its discretion in granting plaintiffs' motion in limine to exclude evidence of Nelson's potential alcohol intoxication, including a coroner's toxicology report that showed the percentage level of alcohol in Nelson's blood and testimony from MTA's "human factors" expert that Nelson's behavior as a pedestrian was inconsistent with that of a sober person. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Accident

On the evening of October 12, 2019, while it was still light out, MTA bus operator Augustin Terrazas was driving an MTA bus westbound on Sunset Boulevard in Los Angeles in the number 3 lane.¹ After completing a stop, the bus proceeded toward the intersection of Sunset Boulevard and Custer Avenue (the intersection).

As the bus approached the intersection, Nelson started to cross Sunset Boulevard in an unmarked crosswalk (walking from north to south), and he looked left and right before stepping off the curb into the number 3 lane. When the bus was about 500 feet away from Nelson, Terrazas saw Nelson step from the curb into the number 3 lane while looking away from the bus. Although Terrazas admitted he could have slowed and stopped

¹ Sunset Boulevard has three lanes for westbound traffic. The number 3 lane is adjacent to the sidewalk; the number 2 lane is the middle lane; and the number 1 lane is adjacent to the median.

the bus to avoid hitting Nelson, he decided to pass Nelson by changing lanes and accelerating. As the bus moved into the number 2 lane, it accelerated to between 36 and 38 miles per hour (above the speed limit). At the same time, Nelson walked toward the number 2 lane. After Nelson reached the number 2 lane, he began jogging toward the number 1 lane, and Terrazas honked the bus's horn and began swerving into the number 1 lane. When Nelson reached the middle of the number 1 lane, he looked toward the bus, and the bus struck and killed him within less than a second.

After the accident, Eucen Fu, a senior criminalist at the Los Angeles County Department of Medical Examiner-Coroner, analyzed samples of Nelson's heart blood, femoral (leg) blood, and vitreous (eyeball) fluid. Fu's findings were incorporated into the "Alcohol Quantitation/Confirmation" section of a county coroner forensic lab report. The report stated gram-percentage-of-alcohol results (commonly called "blood alcohol content," or BAC) of .165 in Nelson's heart blood, .257 in his femoral blood, and .266 in his vitreous fluid.

B. *Plaintiffs' Complaints*

In June 2020 Nelson's mother, Rosa Caceres, filed a complaint against the MTA for negligence, wrongful death, and a survivor claim. In August 2020 Nelson's wife, Guadalupe Elizabeth Cruz De Pineda, and his two children, Kayla and Kevin Pineda, filed a separate action against MTA and Terrazas for negligence against a public entity under Government Code

section 815.2.² The trial court subsequently consolidated the actions, designating Rosa Caceres's action as the lead case.

MTA answered both complaints, alleging as affirmative defenses that Nelson was comparatively negligent.

C. *Plaintiffs' Motion in Limine*

On April 19, 2023 plaintiffs moved in limine to exclude any evidence or argument that Nelson was intoxicated at the time of the accident, including any reference to the "Alcohol Quantitation/Confirmation" section of the coroner's lab report (including the BAC levels). Plaintiffs argued Fu's blood analysis results were irrelevant because Fu, one of MTA's designated experts, could not opine on whether Nelson was impaired at the time of the accident, relying on Fu's deposition testimony that he did not "perform any type of determination of Decedent's alleged impairment" in analyzing Nelson's blood samples. They further argued that evidence of Nelson's alcohol use was inadmissible under Evidence Code section 352³ because it was not probative of whether Nelson was crossing the intersection in a negligent manner, and the evidence would prejudice plaintiffs by attacking Nelson's character and evoking a strong emotional bias.⁴

² The parties stipulated to dismiss Terrazas as a defendant during jury selection.

³ Further undesignated statutory references are to the Evidence Code.

⁴ Plaintiffs also argued there were other bases for excluding the evidence, including that the chain of custody for the blood samples was inadequate and the lab report was inadmissible hearsay. MTA contends on appeal that to the extent the trial court relied on these bases for excluding the evidence, it erred.

In its opposition, MTA argued its designated human factors expert Dr. David A. Krauss would opine that Nelson’s street crossing behavior was “inconsistent with . . . an attentive, sober pedestrian” based on Nelson’s failure to look for oncoming traffic or to respond to the oncoming bus. Further, Krauss would provide probative testimony that Nelson’s intoxication caused his injury. MTA did not offer any evidence that Nelson had consumed alcohol before the accident.

Plaintiffs responded in their reply that Krauss was not qualified to opine on whether Nelson was intoxicated and was not designated as an expert on that issue. Further, evidence of presence of alcohol in Nelson’s system was not probative absent a showing that it had a causal connection to the accident, which MTA could not show.

At the May 24, 2024 hearing on plaintiffs’ motion, MTA’s attorney argued the behavior attributable to Nelson’s impairment included Nelson standing in the roadway for approximately seven to 10 seconds before running across the street without looking, which MTA’s accident reconstruction expert would establish. Further, a witness from the county coroner’s office (presumably Fu) would establish Nelson’s intoxication, and Krauss would explain that Nelson’s erratic behavior was caused by his consumption of alcohol. Plaintiffs’ attorney again argued there was no admissible evidence of Nelson’s impairment and Krauss was not qualified to opine that alcohol consumption caused Nelson’s behavior.

We do not reach these issues because we conclude the trial court did not abuse its discretion in excluding evidence of Nelson’s potential intoxication for lack of an adequate foundation based on expert testimony and its finding under section 352.

At the conclusion of the hearing the trial court granted plaintiffs' motion, stating MTA had not made a "sufficient showing to justify admitting anything about alcohol beverage use in this case." The court adopted its tentative ruling, in which it reasoned that MTA "has not shown that it can prove decedent's consumption of alcoholic beverages prior to his being struck and killed by the bus . . . resulted in decedent being 'alcohol impaired' and that caused the accident." Further, there was "no behavior by the decedent that was attributable to alcohol impairment that caused the accident." The court also found the "probative effect of any alcohol consumption by decedent is outweighed by its prejudicial effect" under section 352. The court concluded the order by "adopt[ing] the points and authorities and legal arguments presented by the Plaintiff[s] in support of th[e] motion"

D. *Trial*

At trial, the plaintiffs played for the jury videos of the accident captured from the bus's on-board digital video system. The videos provided a view of the accident from the front of the bus and a view of Terrazas throughout the event.

1. *Plaintiffs' case*

Shonda Breland, an MTA manager of transportation operations, testified regarding MTA's bus operator training and instruction. MTA's training and rule book required bus operators to yield, slow, and stop when approaching an intersection with a pedestrian in a marked or unmarked crosswalk until the crosswalk was clear. This rule applied regardless whether the pedestrian is looking toward the bus or in another direction. If

the bus operator sees a pedestrian in the crosswalk when the bus is within 500 feet of the intersection, the operator is required to slow down and then stop at the intersection.

Terrazas testified he was trained to follow the MTA rule that bus operators stop for pedestrians in crosswalks, but he did not comply with the rule on the day of the accident. He saw Nelson step from the curb into the number 3 bus lane and stand in the lane for a few seconds. Nelson was looking away from the bus as Terrazas approached. Terrazas did not stop because Nelson did not show any “intention in his body language that he’s trying to cross.” Nelson acknowledged that had he slowed and stopped, he would not have hit Nelson.

When Terrazas saw Nelson standing in the bus lane, Terrazas changed lanes to the number 2 lane. Terrazas recalled that at this point Nelson began running toward the number 1 lane while continuing to look away, and Terrazas went into “high alert,” began honking the bus’s horn, and started “evading [Nelson] by moving, by swerving to the left.” Terrazas considered Nelson’s conduct in running toward where the bus was (in the number 1 lane) abnormal and believed Nelson put the bus in an emergency situation without sufficient time to stop.

Jon Landerville, an accident reconstruction expert, opined Nelson saw the bus when he looked left and right before entering the street, but he did not perceive it as a danger. When Nelson entered the street he walked slowly into the crosswalk in the bus lane then paused to allow two cars in the number 1 lane to pass. Once the cars had passed, Nelson began jogging across the number 2 lane without looking toward the bus. Landerville concluded based on Nelson’s conduct that Nelson did not detect that the bus would move two lanes over and strike him in the

number 1 lane. Further, Terrazas honked the bus's horn two to three seconds before impact; had Terraza instead applied the brakes, the accident would not have occurred. Landerville also performed a reconstruction of the events to show that the accident would not have happened had the bus stayed in the bus lane or not accelerated while changing lanes.

2. *MTA's case*

MTA's accident reconstruction expert, Timothy Reust, initially testified (consistent with Terrazas) that Nelson stood in lane number 3 for at least three seconds before moving across the lane, although on cross-examination Reust conceded that Nelson must have been moving while in lane number 3. Reust acknowledged Nelson waited in the number 3 lane for two vehicles in the number 1 lane to pass, then he proceeded toward the number 2 lane. As the bus moved into the number 2 lane, its horn sounded just over three seconds before impact; at that time Nelson was near the center of lane number 3. By the time Terrazas honked the horn, the bus did not have enough time to stop if it applied its brakes in a gradual manner that was safe for passengers. Further, pedestrians usually take about one second to stop moving after hearing the horn. Nelson looked toward the bus four-tenths of a second before impact, which was too late to avoid the accident. Reust confirmed Terrazas had sufficient time to slow down and safely stop when he first saw Nelson and that the accident would not have happened had Terrazas applied the bus's brakes and its hard brake instead of honking the horn. However, Nelson could have avoided the accident by waiting on the sidewalk until it was safe to cross, not stopping for several

seconds in the roadway, looking left when he started to move across the crosswalk, or by not running in the street.

The MTA did not call Krauss as a witness.

3. *Closing Arguments*

Plaintiffs' attorneys asserted in their closing arguments that Nelson did not suddenly step off the curb into the bus's path, gave no indication he was relinquishing his right-of-way, and had the right to reasonably believe that the bus would not accelerate in response to him being in the street with the right-of-way. When Nelson was in lane number 3, he focused on waiting for the cars in lane number 1 to pass before speeding up and looking at cross traffic, which was not unusual or erratic behavior. Further, it was unrealistic to believe Nelson could have stopped and avoided the bus as it approached.

MTA's attorney argued Nelson failed to exercise reasonable care by leaving the sidewalk when it was unsafe to cross, stopping in the crosswalk, and running into the path of the bus that was close enough to constitute an immediate hazard. When the bus's horn sounded, Nelson could have stopped, but he continued running without looking toward the bus. Further, Nelson did not look toward the bus until four-tenths of a second before impact, which was unusual.

E. *Verdict, Judgment, and Appeal*

On June 4, 2024, the jury returned a special verdict in favor of plaintiffs, which awarded more than \$7 million in total damages for plaintiffs and assigned 90 percent of the fault to MTA and 10 percent of the fault to Nelson. On June 17 the trial court entered a judgment awarding plaintiffs more than

\$6.5 million in total damages based on the jury's fault apportionment.

MTA timely appealed.

DISCUSSION

A. *Governing Law and Standard of Review*

“No evidence is admissible except relevant evidence.’ (Evid. Code, § 350.) ‘Relevant evidence is evidence “having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.”’” (*People v. Hardy* (2018) 5 Cal.5th 56, 87; accord, *People v. Daveggio and Michaud* (2018) 4 Cal.5th 790, 822.) Even if evidence is otherwise admissible, the trial court has discretion to exclude it under section 352 “if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create a substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.”

We review the trial court's rulings on the admission of evidence for an abuse of discretion. (*People v. Trujeque* (2015) 61 Cal.4th 227, 278; *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773.) A ruling constitutes an abuse of discretion only if it is “so irrational or arbitrary that no reasonable person could agree with it.” (*Sargon*, at p. 773; accord, *Sanchez v. Kern Emergency Medical Transportation Corp.* (2017) 8 Cal.App.5th 146, 154.) We likewise review a court's ruling under section 352 for an abuse of discretion and “accord deference to a trial court's determination that the probative value of a particular piece of evidence

outweighs any danger of prejudice.” (*People v. Dworak* (2021) 11 Cal.5th 881, 899-900.) Thus, “we will not disturb the trial court’s ruling “except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.”” (*Briley v. City of West Covina* (2021) 66 Cal.App.5th 119, 132; accord, *People v. Miles* (2020) 9 Cal.5th 513, 587-588.)

B. *The Trial Court Did Not Abuse Its Discretion in Excluding Evidence Relating to Nelson’s Alleged Intoxication*

MTA contends the trial court abused its discretion in excluding evidence of Nelson’s potential intoxication based on the lack of an adequate expert to opine that Nelson’s alleged alcohol consumption resulted in his impairment and contributed to the accident. The trial court did not abuse its discretion.

“Testimony of an expert witness is required when the subject matter ‘is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact.’” (*Knutson v. Foster* (2018) 25 Cal.App.5th 1075, 1097, quoting § 801, subd. (a).) ““[T]he decisive consideration in determining the admissibility of expert opinion evidence is whether the subject of inquiry is one of such common knowledge that men [or women] of ordinary education could reach a conclusion as intelligently as the witness or whether, on the other hand, the matter is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact.”” (*Mountain View Police Dept. v. Krepchin* (2024) 106 Cal.App.5th 480, 504 [expert on police threat assessment had special knowledge, skill, experience, and training or education on a topic beyond common experience of trier of fact]; accord, *People v. Phillips* (2022) 75 Cal.App.5th

643, 682, 685 [trial court did not abuse its discretion in admitting expert testimony from investigating officer that color, size, and shape of stains on defendant's pants were consistent with blood]; *Knutson v. Foster, supra*, 25 Cal.App.5th at p. 1097 [plaintiff's testimony about how she suffered emotional distress from her lawyer's conduct was sufficient to support her claim for damages without an expert because it was not beyond the common experience of jurors].)

The interpretation of the results in the county coroner's forensic lab report to determine Nelson's level of impairment during the accident was a topic sufficiently beyond common experience such that expert testimony was required. It is undisputed that Fu, MTA's designated expert from the coroner's office who analyzed Nelson's blood samples, admitted he did not analyze Nelson's impairment. Further, MTA offered no other witness who could opine on what the coroner's blood test results meant with respect to Nelson's impairment and conduct during the accident. Accordingly, even if Fu had testified regarding the collection of the blood samples, how the samples were analyzed, and what the results were, the jury would have been left to speculate about what the results meant for Nelson's level of impairment during the accident given his height, weight, and alcohol tolerance and how the blood alcohol levels affected Nelson's ability to see, hear, and assess traffic as he crossed the street. Accordingly, the trial court did not abuse its discretion in excluding testimony and evidence regarding Nelson's intoxication based on the county coroner's lab report.⁵

⁵ MTA supports its argument that no expert is necessary to interpret lab results with cases holding blood alcohol levels are generally accepted measures of an individual's impairment from

MTA contends, as it did in the trial court, that it could nevertheless rely on its retained human factors expert, Krauss, to opine that Nelson’s behavior was “inconsistent with . . . an attentive, sober person.” Section 801, subdivision (b), states that a court must determine whether the matter an expert relies on is “of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates” “Thus, under . . . section 801, the trial court acts as a gatekeeper to exclude speculative or irrelevant expert opinion.” (*Sargon Enterprises, Inc. v. University of Southern California, supra*, 55 Cal.4th at p. 770.) As the Supreme Court explained in *Sargon*, “the expert’s opinion may not be based “on assumptions of fact without evidentiary support [citation], or on speculative or conjectural factors,”” and “[a] court may conclude that there is simply too great an analytical gap between the data and the opinion proffered.” (*Id.* at pp. 770-771.)

MTA contends that jurors are well equipped to determine the effects of alcohol on a person when “someone has had one too many drinks.” But the only evidence that Nelson consumed alcohol prior to the accident was the coroner’s lab report reflecting the BAC levels in his body. And, as discussed, the jury would have needed to interpret those BAC levels to determine the level of Nelson’s impairment. None of the cases cited by MTA stands for the proposition that a jury may determine alcohol

alcohol and the fact that Government Code section 27491.25, subdivision (a), requires the coroner or medical examiner to take blood and biological samples from the body of an individual who dies after being struck by a motor vehicle. But this does not mean an expert is not required to interpret BAC levels in a lab report.

impairment and its effects from forensic lab results absent an opinion from a qualified expert. (See *Pedefferri v. Seidner Enterprises* (2013) 216 Cal.App.4th 359, 374 [trial court did not abuse its discretion in prohibiting cross-examination of plaintiff's toxicologist on impairment of defendant (who "careened off" the freeway in his car) due to drugs found in his system, observing that "probable effect of intoxicants other than alcohol is a topic 'sufficiently beyond [the] common experience' of most jurors"];⁶ cf. *Sanchez v. Brooke* (2012) 204 Cal.App.4th 126, 138 [trial court did not err in concluding the risk of causing a fire by smoking in bed was well within the realm of common knowledge]; *People v. Cox* (1990) 221 Cal.App.3d 980, 989 [trial court did not err in failing to give instruction on a defendant's voluntary intoxication, observing it was common knowledge that "intoxication" means "a state of drunkenness" from ingesting alcohol].) There was no evidence that Nelson was drinking alcohol before the accident;

⁶ *Pedefferri v. Seidner Enterprises, supra*, 216 Cal.App.4th at page 379 did not involve the presence of alcohol in the driver's body; the only mention of alcohol was this single observation. *Hernandez v. County of Los Angeles* (2014) 226 Cal.App.4th 1599, 1616, cited by the parties, likewise involved use of marijuana, not alcohol. The court in *Hernandez* distinguished cases involving alcohol, stating alcohol "did not necessarily require expert testimony as to the probable effects." (*Ibid.*) MTA relies on this language, but the cases cited in *Hernandez* did not involve interpretation of lab results. For example, the Court of Appeal in *Brkljaca v. Ross* (1923) 60 Cal.App. 431 at page 438 concluded the trial court properly permitted a doctor, who had seen the victim of a traffic accident immediately after the accident, to testify the victim was "in a state of intoxication." The opinion did not address whether a layperson could determine intoxication based on numerical BAC levels. (*Ibid.*)

rather, MTA sought to rely on the results from the forensic lab report to show Nelson was intoxicated. However, a layperson would not understand what the percentage BAC reflected in the lab report meant in terms of impairment and how those levels would have affected Nelson's conduct in crossing the street as the bus approached.

The trial court likewise did not abuse its discretion in excluding testimony from Krauss that Nelson did not cross the street like a sober person for lack of foundation. As MTA's human factors expert, Krauss was designated to testify "as to the human perception and cognition, memory, reaction time, attention, distraction, fatigue, the effects of lighting conditions on vision, and how stress affects behavior." Given his lack of expertise to determine an individual's alcohol impairment from lab results, Krauss had no basis to conclude Nelson's behavior was due to his lack of sobriety absent evidence establishing Nelson's impairment and its effects on his conduct. As discussed, the MTA did not present any expert who could interpret the county coroner's forensics lab results to opine on that topic, and there was no evidence that Nelson had consumed alcohol prior to the accident.

Finally, the trial court did not abuse its discretion in excluding evidence of Nelson's alleged intoxication under section 352. Because MTA did not offer testimony or evidence tending to show the alcohol present in Nelson's body caused impairment or contributed to the accident, evidence that there was alcohol in Nelson's blood at some unexplained level and Kraus's opinion that Nelson did not walk consistent with a sober person had minimal, if any, probative value with respect to Nelson's comparative negligence. Moreover, any probative value

was diminished by the fact the jury could observe the videos from the bus's on-board system showing Nelson's behavior as he crossed the street. MTA's proffered evidence also created a substantial risk of prejudice to plaintiffs because it could cause the jury to be biased against Nelson and his family based on his alleged alcohol consumption and impairment or to speculate about whether the alcohol in his system contributed to the accident without any foundation for whether the alcohol levels caused impairment.

DISPOSITION

The judgment is affirmed. Plaintiffs are to recover their costs on appeal.

FEUER, J.

We concur:

SEGAL, Acting P. J.

STONE, J.