Filed 12/11/12 Mullen v. Avis Budget Group CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

KENNETH MULLEN, Plaintiff and Appellant, v. AVIS BUDGET GROUP, INC., et al., Defendants and Respondents.	B236034 (Los Angeles County Super. Ct. No. BC411891)

APPEAL from a judgment of the Superior Court of Los Angeles County. Gregory W. Alarcon, Judge. Affirmed.

Law Offices of Berglund & Johnson, Daniel W. Johnson, David W. Berglund and Anthony Vieira for Plaintiff and Appellant.

Calendo, Puckett, Sheedy and DiCorrado, Kim B. Puckett and Kelly Hara-Tadaki for Defendants and Respondents.

* * * * * *

Plaintiff and appellant Kenneth Mullen appeals from a judgment against him following a jury trial on his claims against Avis Budget Group, Inc., Budget Truck Rental LLC and Budget of Victorville (collectively Budget). He sought to recover damages for injuries he sustained while operating a rental truck. The jury found that Budget was not negligent in any respect and that appellant was fully responsible for his own injuries. Appellant contends the judgment should be reversed because the trial court prejudicially abused its discretion by declining to exclude evidence of his prior felony convictions, evidence of his arrest and conviction for possession of a sawed-off shotgun and evidence of the absence of prior similar incidents.

We affirm. The trial court properly exercised its discretion in making the three challenged evidentiary rulings. Moreover, even if there had been any error, it did not prejudicially affect the verdict.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant grew up in South Central Los Angeles and lived there for over 40 years. In 2007, he lived in Apple Valley with his wife, Veronica Mullen (Veronica). At that time, he owned property in the Mojave Desert (desert property) that he hoped to turn into a youth compound. He had graded and prepped the ground at the desert property for a manufactured or mobile home.

On November 1, 2007, Veronica rented a 24-foot truck from Budget. Appellant intended to take the truck to his house, load it up with items from the house and put them into storage because he was in the process of losing his home. Veronica signed and initialed the rental agreement, stating that she would not allow the truck to be used in any area that posed unusual danger or risk of damage to the truck. The rental agreement also prohibited the pushing or towing of anything other than Budget towing equipment, specifically identifying towing one's own trailer as a prohibited use. Veronica did not indicate on the rental agreement that appellant was one of the intended drivers of the truck.

At the time of the rental, Veronica and a Budget agent conducted a 10-point inspection of the truck, which included opening and closing its rear roll-up door. No problem with or damage to the door was noted on the inspection checklist. A federal inspection of the truck conducted approximately one week before Veronica rented it similarly did not reveal any problem with the rear door or any of its hinges. Moreover, the individual who had rented the truck immediately before Veronica did not have any problems with the rear door.

The following day, appellant and a friend, Wesley Jones or "West" (West), loaded the truck with furniture, appliances and other household items. While loading items onto the truck, West yelled that the rear door was stuck; he recalled inconsistently whether or not appellant had heard him and responded. Appellant did not recall hearing West say the door had problems.

Though West recalled that they unloaded the items into storage that day, appellant recalled driving the truck to a storage unit in Lancaster the following morning, where he and West unloaded most of the items. Appellant then drove the truck to the desert property to unload the remaining items. On the way, however, appellant stopped at a different location to pick up a mobile home to take it to the desert property. He jacked up the approximately 25-foot long mobile home and hooked it to the back of the truck before driving to the desert property. If Budget had been aware that appellant intended to use the truck to tow a mobile home, it would not have rented the truck to him. The truck is designed to tow automobiles, and a sign on the back of the truck stated that the truck's maximum towing capacity was 6,000 pounds. Appellant did not remember seeing the truck's warning labels. Appellant knew that a mobile home he had towed on a prior occasion weighed approximately 15,000 pounds, and the mobile home he towed on this occasion weighed between 12,000 to 15,000 pounds.

As he was arriving at the desert property, appellant drove onto a bumpy dirt road and made a couple of turns that resulted in the back of the truck contacting and putting creases in the mobile home. Budget would not have rented the truck to appellant if it had been aware he intended to drive it on an unpaved road. Appellant then noticed that one

of the tires on the mobile home was flat; West did not recall seeing a flat tire. Appellant disconnected the mobile home and left it on the property adjacent to his.

According to appellant, once he unhooked the mobile home he drove approximately one-half the length of a football field to a fenced area on the desert property. West recalled the drive as being only about 20 feet. After unloading the remaining items, appellant started to drive the truck away but it became bogged down in sand. Both he and West tried unsuccessfully to dig out the tires. After approximately one hour, they walked to a neighbor's house to borrow shovels. The neighbor, Daniel Deges, observed that the truck was just a few feet in front of the mobile home; his wife saw the same thing. Even with the additional equipment, appellant and West could not dig the truck out. They decided to put the shovels in the back of the truck and get additional assistance the next morning.

Up to that point, only West had opened and closed the truck's rear roll-up door. In order to put the shovels in the truck, West opened the door again. While West was in the restroom, appellant went to close the rear door and it got stuck before closing. He pushed the door up, and when he pulled it down using greater force than before, the door came down quickly and struck him on the head. Appellant fell backwards and lost consciousness for a few seconds. West returned and saw appellant down on the ground. He used appellant's cell phone to call appellant's wife and 9-1-1, and helped move appellant to the truck's cab area.

Paramedics arrived approximately 35 minutes later. Emergency medical technician Charles Brown saw appellant in the passenger seat of the truck. Brown also saw that the truck was stuck in the sand about 10 to 15 feet in front of a mobile home. Brown spoke with appellant and observed that he was alert and responsive and did not appear to have any outward sign of injury. Appellant told him that he had fallen off the back of the truck head first into the sand and he hurt all over. Sometime later, appellant told the man from whom he had purchased the mobile home that he had hit his head on the roof of the truck while he was driving over some holes in the road; Veronica reiterated that version of the events while appellant was in the hospital.

When Veronica filled out an incident report at Budget after appellant's fall, she did not disclose that appellant had been driving the truck, that appellant had used the truck to tow his mobile home or that the truck had gotten bogged down in sand on an unpaved road.

Appellant sustained spinal cord damage in his neck area. Essentially, one of his vertebrae was fractured and pushed forward, creating a central spinal cord injury. Lawrence Miller, M.D., opined that such an injury could have been caused by a blow to the head. One biomedical engineer, Jesse Wobrock, Ph.D., opined that appellant suffered a blow to the head while his head was tilted forward and that such conditions were consistent with an individual exerting the force necessary to pull down a door that had been stuck. Another biomedical engineer, Peter Burkhard, Ph.D., concluded that if the events had occurred as appellant described them, he could not have suffered a blow to the top of his head from the door and he would not have fallen backwards after being hit. In other words, he opined that the accident could not have happened according to appellant's description. Given that appellant was found inside the truck's cab, he opined that appellant's injuries could have been caused by a driving injury—specifically by a road disturbance propelling appellant's head into the cab.

A forensic engineer who later examined the truck saw that the hinge on the passenger side of the rear door had separated from the door panel and that the panel itself was cracked. He also saw that the door had become misaligned because of the hinge, which in turn meant the door required extra force to close on occasion. Further, he observed that the strap used to pull down the door was too short. A mechanical engineer similarly observed that the door's hinge and roller assembly were distorted and opined it was unlikely the condition was caused by an impact on the outside of the door. He also opined that the truck had been inadequately maintained—evidenced by a torn warning sign, frayed door strap and damaged door rollers.

On the other hand, an accident reconstructionist opined that the hinge had been damaged from an outside force pushing the hinge into the truck. More specifically, he opined that the damage was caused by contact between the truck and the mobile home

that appellant had hitched to the truck. He further opined that the hinge damage could not have been caused by an object hitting the hinge inside the cargo area of the truck. In addition, he opined that the warning labels on the truck were adequate, and the portion of the warning that had been torn was duplicative of existing warnings on the truck. Finally, he opined that the length of the strap used to pull the door was within the industry standard and designed to be beyond the reach of children.

Budget maintenance records showed that there had never been any reported problems with the rear door on the truck appellant had rented. According to a Budget agent, during her 20 years with the company she had never previously received a report of a door falling on someone's head. Further, a Budget maintenance manager employed for 30 years and a maintenance supervisor employed for 10 years had never received a complaint that the truck door strap was too short.

Pleadings, Trial and Judgment.

In April 2009, appellant and his wife Veronica[1] filed a complaint against Budget and the Moving Store, alleging causes of action for strict liability, negligent product liability, breach of warranty, negligence and loss of consortium. Budget answered and asserted several affirmative defenses. In October 2009, appellant added Utilimaster Corporation and Whiting Door Manufacturing Corporation as defendants, and they answered in December 2009.

Among a number of pretrial motions, appellant moved in limine to exclude evidence of his prior felony convictions, evidence of his arrest and conviction for possession of a sawed-off shotgun and evidence of the absence of prior incidents. He argued that the evidence was irrelevant and more prejudicial than probative. Budget and other defendants opposed the motions. By order dated May 24, 2011, the trial court denied the motions, but directed that a limiting instruction be given with respect to the prior convictions.

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1 Veronica was dismissed from the case at the beginning of trial.

A 13-day jury trial commenced the following day. During cross-examination, appellant responded affirmatively when asked whether he had been arrested and convicted of the felony being a felon in possession of a sawed-off shotgun, and he testified that he spent eight months in jail for the offense. He also admitted having spent time in prison after being convicted of committing six felonies in the 1980's and 1990's, including burglary, grand theft, receiving stolen property and possessing a controlled substance.

After deliberating for approximately one and one-half days, the jury returned a special verdict. It found that the truck's rear roll-up door struck appellant and caused the accident; the roll-up door did not have a manufacturing defect when it left Budget's possession; the roll-up door was misused in a manner that was not reasonably foreseeable after leaving Budget's possession; Budget installed, rented or provided maintenance on the roll-up door in a manner that was not negligent; appellant was negligent; and his negligence was a substantial factor in causing his harm.[2] The jury assigned appellant 100 percent of the responsibility for his harm.

The trial court entered judgment on the jury verdict in June 2011 and this appeal followed.

DISCUSSION

Appellant's challenge to the judgment is confined to three evidentiary rulings. He contends the trial court abused its discretion in denying his motions to preclude the admission of evidence of his prior felony convictions before 2000, his felony arrest and conviction in 2004 and the absence of prior incidents involving the truck's rear roll-up door. We find no merit to his challenges.

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[2] The jury made identical findings as to Utilimaster, which is not a party to this appeal.

I. Standard of Review.

We review a trial court's ruling with respect to the admission of evidence for an abuse of discretion. (*Dart Industries, Inc. v. Commercial Union Ins. Co.* (2002) 28 Cal.4th 1059, 1078; *Pannu v. Land Rover North America, Inc.* (2011) 191 Cal.App.4th 1298, 1317.) In order for the trial court to abuse its discretion, its decision must exceed the bounds of reason by being arbitrary, capricious, or patently absurd. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.)

Even if we find an abuse of discretion, any error in admitting or excluding evidence warrants reversal only if the error resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13; Evid. Code, §§ 353, 354; *Dee v. PCS Property Management, Inc.* (2009) 174 Cal.App.4th 390, 406.)[3] "In civil cases, a miscarriage of justice should be declared only when the reviewing court, after an examination of the entire cause, including the evidence, is of the opinion that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error. [Citation.]" (*Huffman v. Interstate Brands Corp.* (2004) 121 Cal.App.4th 679, 692.)

"Appellant has the burden of demonstrating both that the evidence at issue was erroneously admitted, and that the error was prejudicial. (*Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1069.)" (*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1122.)

II. The Trial Court Properly Exercised Its Discretion in Admitting Evidence of Appellant's Prior Felony Convictions.

Before trial commenced, the trial court denied appellant's motion in limine to exclude evidence of his prior felony convictions. During cross-examination, Utilimaster's counsel asked appellant about his prior convictions, eliciting his testimony that he had suffered several felony convictions during the 1980's and 1990's for burglary,

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[3] Unless otherwise indicated, all further statutory references are to the Evidence Code.

grand theft, possession of a controlled substance and receiving stolen property, and had served time in prison as a result of those convictions. Budget's counsel's questioning about the prior convictions was limited to inquiring about appellant's changing an answer on his deposition. Initially, appellant had had answered "no" to the question of whether he had ever been convicted of armed robbery, and he later changed that answer to "yes."

On appeal, appellant argues that evidence of his prior convictions should have been excluded because it was not relevant for impeachment purposes, was more prejudicial than probative and too remote in time. His position is unsupported by the law.

First, by statute, prior felony convictions constitute relevant impeachment evidence. Section 788 provides: "For the purpose of attacking the credibility of a witness, it may be shown by the examination of the witness or by the record of the judgment that he has been convicted of a felony" except in specified circumstances such as a pardon or dismissal. In enacting the statute, the Legislature rejected restricting impeachment evidence to convictions involving dishonesty or a false statement. (*Robbins v. Wong* (1994) 27 Cal.App.4th 261, 270.) Because of "the diminished level of prejudice attendant to felony impeachment in civil proceedings," the requirement that a prior conviction involve moral turpitude is the threshold showing for relevancy only in a criminal case—not a civil case. (*Id*. at pp. 273, 274.) The only limitation on this form of impeachment evidence in a civil case is that the trial court, upon proper objection, is required "to perform the weighing function prescribed by section 352. [Citations.]" (*Id.* at p. 274.) This means the trial court must "balance probative value against potential prejudicial effect[.]" (*Id.* at p. 264.) In so doing, the trial court may utilize the restrictions set forth in criminal cases "to formulate guidelines for the judicial weighing of probative value against prejudicial effect under section 352." (*Id.* at p. 274.)

Contrary to appellant's second argument, the trial court properly exercised its discretion in finding that any prejudice did not outweigh the probative value of the prior felony convictions. Section 352 provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger

of undue prejudice, of confusing the issues, or of misleading the jury." As explained in *People v. Karis* (1988) 46 Cal.3d 612, 638: "'The "prejudice" referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues. In applying section 352, "prejudicial" is not synonymous with "damaging."' [Citation.]" When a party raises an objection under section 352, "the record must affirmatively demonstrate that the trial court did in fact weigh prejudice against probative value. The trial court need not make findings or expressly recite its weighing process, or even expressly recite that it has weighed the factors, so long as the record as a whole shows the court understood and undertook its obligation to perform the weighing function. [Citations.]" (*Rufo v. Simpson* (2001) 86 Cal.App.4th 573, 599.)

Here, the trial court was presented with and rejected appellant's arguments that the evidence would involve an undue consumption of time or potentially confuse the jury. Moreover, the trial court expressly balanced the probative value of the evidence against its potential for prejudice by ordering that a limiting instruction be provided. The jury was directed to consider the evidence of appellant's prior convictions for a limited purpose with an instruction providing: "You have heard that a witness in this trial has been convicted of a felony. You were told about the conviction only to help you decide whether you should believe the witness. You must not consider it for any other purpose." Limiting instructions are generally deemed to be effective in restricting or eliminating the prejudice which might otherwise result from potentially inflammatory testimony, and in the absence of any evidence to the contrary, jurors are presumed to understand and follow the court's instructions. (See *People v. Boyde* (1988) 46 Cal.3d 212, 255; *Piscitelli v. Salesian Society* (2008) 166 Cal.App.4th 1, 12.) The trial court's limiting instruction negated the possibility that the evidence would either prejudice appellant or confuse and mislead the jury.

Finally, highlighting one of the factors involved in the trial court's balancing under section 352, appellant contends that his prior convictions were too remote in time to be probative. (See *Holley v. J & S Sweeping Co.* (1983) 143 Cal.App.3d 588, 594

[remoteness of a prior conviction is one factor to be considered in balancing it probative value].) Courts have acknowledged that "a witness's felony conviction that is remote in time might ordinarily have little or no bearing on the credibility of a witness who has since lived a commendable life, thereby moving the needle closer toward exclusion of the evidence under section 352. [Citation.]" (*Piscitelli v. Salesian Society, supra*, 166 Cal.App.4th at p. 12.) Conversely, "[e]ven a fairly remote prior conviction is admissible if the defendant has not led a legally blameless life since the time of the remote prior. [Citations.]" (*People v. Mendoza* (2000) 78 Cal.App.4th 918, 925–926.) Here, the evidence showed that appellant had been convicted of at least six felonies beginning in the 1980's and extending into the 1990's. Thereafter, he suffered another felony conviction in 2004. In view of appellant's criminal history, the trial court properly exercised its discretion in rejecting appellant's argument that his prior convictions were too remote in time to be relevant. (See *People v. Humphrey* (1997) 58 Cal.App.4th 809, 813 [proper exercise of discretion to admit 20-year-old prior conviction where the defendant had not led a legally blameless life]; *People v. Muldrow* (1988) 202 Cal.App.3d 636, 648 ["the systematic occurrence of defendant's priors over a 20-year period creates a pattern that is relevant to defendant's credibility"].)

In any event, even if we could discern some error from the admission of appellant's prior convictions, reversal of the judgment would not be warranted. "The erroneous admission of evidence requires reversal of a judgment only when it results in a 'miscarriage of justice.' [Citation.] The admission of improper evidence results in a miscarriage of justice only if '"it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error."' [Citation.]" (*Rappaport v. Gelfand* (2011) 197 Cal.App.4th 1213, 1229.) Here, the jury received a wealth of other evidence related to appellant's credibility. For example, appellant admitted that following his deposition he changed his answers from "yes" to "no" and vice-versa in 14 different places. Moreover, the jury heard several inconsistencies within appellant's testimony, including whether he drove the truck on a bumpy road, whether he grabbed the rear door strap with his right or left hand when closing the door and whether

he told a third party that he was injured in the truck's cab. In addition, his testimony was inconsistent with that of other witnesses, including West, Deges and the mobile home seller. Indeed, when addressing appellant's credibility during closing argument, Budget's counsel did not even mention appellant's prior felony convictions.

More importantly, however, appellant's credibility was not necessarily critical to the jury's determination. The jury found that the rear roll-up door struck appellant, causing the accident. But it also found that the door was not defective and that appellant's unforeseeable and negligent misuse of the truck was the sole cause of his injuries. To reach this conclusion, the jury could have believed virtually all of appellant's testimony, as appellant conceded he used the truck to pull the mobile home and the two vehicles collided with each other, and disbelieved appellant's experts, who opined that the damage to the hinge was a defect caused by something other than an outside impact.

Because appellant's credibility was impeached by other means and because the jury's verdict was not dependent on appellant's credibility, we do not find it reasonably probable that the jury would have reached a different result had evidence of appellant's prior convictions been excluded.

III. The Trial Court Properly Exercised Its Discretion in Admitting Evidence of Appellant's 2004 Conviction.

The jury also heard evidence that appellant was convicted in 2004 for the offense of being a felon in possession of a firearm. By way of a separate motion, appellant had sought to exclude evidence of that conviction on the grounds he served less than one year in jail (and therefore a felony was not involved), he should be permitted to present the circumstances surrounding the offense to put it in context and admission of the offense was more prejudicial than probative. The trial court denied the motion. Again, we find no abuse of discretion.

In 2004, appellant suffered a felony conviction for violating Penal Code section 12021, subdivision (a)(1). As the court in *People v. Ratcliff* (1990) 223 Cal.App.3d 1401, 1410 (fn. omitted), pointed out, "[a] violation of [former Penal Code]

section 12021, subdivision (a) is a relatively simple crime to commit: an ex-felon who owns, possesses, or has custody or control of a firearm commits a felony."[4] (See also *People v. Frawley* (2000) 82 Cal.App.4th 784, 788 ["Section 12021, subdivision (a)(1), declares it a felony for '[a]ny person who has been convicted of a felony' to possess 'any firearm'"].) We reject appellant's assertion—made without citation to authority—that his serving less than one year in jail for the offense somehow transformed the conviction into a misdemeanor.

We likewise reject appellant's assertion that the circumstances surrounding his conviction should have been admitted. While the jury learned that appellant was working as a gang counselor at the time of his conviction, appellant sought to introduce further evidence that his possession of the firearm was related to his counseling duties. The trial court properly sustained multiple objections to the additional evidence. It is well settled that "[t]he scope of inquiry when a criminal defendant is impeached with evidence of a prior felony conviction does not extend to the facts of the underlying offense. (*People v. McClellan* (1969) 71 Cal.2d 793, 809.)" (*People v. Heckathorne* (1988) 202 Cal.App.3d 458, 462.) We find no reason why this principle should not apply equally in a civil case.

Finally, the probative value of this evidence outweighed any potential prejudice. Evidence of appellant's prior conviction was relevant to his credibility according to section 788. On the other hand, presentation of the evidence was not time-consuming and, in view of the limiting instruction, there was little possibility that the evidence created a substantial risk of prejudice or confusion. Accordingly, the trial court did not abuse its discretion in denying appellant's motion to exclude evidence of his 2004 conviction under section 352.

For the same reasons outlined earlier, we would find no basis for reversing the judgment even if the prior conviction should have been excluded. It is not reasonably

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[4] Effective January 1, 2012, former Penal Code section 12021, subdivision (a)(1) was repealed and replaced without substantive change by Penal Code section 29800, subdivision (a)(1). (Stats. 2010, ch. 711, § 4 [repealed], Stats. 2010, ch. 711, § 6 [reenacted].)

probable that the outcome would have been any different had the evidence of appellant's 2004 conviction been excluded. (See *People v. Walker* (2006) 139 Cal.App.4th 782, 808 ["'the erroneous admission of prior misconduct evidence does not compel reversal unless a result more favorable to the defendant would have been reasonably probable if such evidence were excluded'"].)

IV. The Trial Court Properly Exercised Its Discretion in Admitting Evidence of the Absence of Prior Door Incidents.

Appellant's last contention is that the trial court abused its discretion in denying his motion in limine to exclude evidence about the lack of prior incidents or complaints involving the truck's rear roll-up door. As a threshold matter, appellant's claim is devoid of any pertinent citations to the record. With the exception of an isolated citation in his reply brief, appellant fails to identify any trial testimony or documentary evidence that was either erroneously admitted or caused him prejudice. For this reason alone, his claim of error fails. (See, e.g., *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368 ["One cannot simply say the court erred, and leave it up to the appellate court to figure out why"]; *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768 ["it is counsel's duty to point out portions of the record that support the position taken on appeal. The appellate court is not required to search the record on its own seeking error"]; *In re Marriage of Schroeder* (1987) 192 Cal.App.3d 1154, 1164 [the appellate "court is not inclined to act as counsel for . . . any appellant and furnish a legal argument as to how the trial court's rulings in this regard constituted an abuse of discretion"].)

Even if we were to consider the merits of appellant's claim, we would find no basis for reversal. Appellant's complaint included a cause of action for strict product liability in which he alleged that Budget warranted, maintained and leased trucks which included a hinged rear door, Budget knew the truck and door would be used by members of the public, and "[t]he subject rear door and rear lift gate system, and TRUCK, contained design, manufacturing and other defects when it left the control of each Defendant . . . ." The complaint also included a cause of action for negligence, which

alleged in part that Budget leased, inspected, controlled, maintained and operated the truck so as to cause the rear door to stick and come down on appellant's head. Appellant further alleged: "The condition described above was a dangerous and defective condition of which Defendants knew or should have known existed. Notwithstanding Defendants' notice and knowledge of the dangerous condition, Defendants failed to adequately warn Plaintiff of the condition."

The court in *Benson v. Honda Motor Co.* (1994) 26 Cal.App.4th 1337, 1344, (*Benson*) held "that trial courts may admit testimony regarding the absence of prior similar claims in cases concerning negligence or strict products liability. Whether a trial court ought to do so depends upon the purpose of such evidence and a showing of foundational requirements." The court explained that a strict liability claim and a negligence claim based on a defective design both require the plaintiff to show that the product presents an unreasonable risk of harm. (*Ibid*.) In connection with that showing, the *Benson* court acknowledged that "'[s]afety-history, including the presence or absence of prior accidents under similar use, is evidence which may make these ultimate facts "more probable or less probable than [they] would be without the evidence." [Citations.] There can be no doubt that evidence of safety-history is relevant.' [Citations.]" (*Id*. at pp. 1344–1345.)

Like *Benson*, "[b]ecause this action involves both negligence and failure to warn, evidence concerning product safety history is particularly relevant. [Citations.]" (*Benson*, *supra*, 26 Cal.App.4th at p. 1345.) Accordingly, the evidence was offered for a proper purpose—to show lack of notice or knowledge of prior similar incidents and, in turn, lack of foreseeability of harm. (*Id*. at pp. 1345–1346.) Addressing the requisite foundational requirements, the *Benson* court explained that "the proponent should proffer evidence through a witness who is familiar with product safety surveys or safety records concerning the product." (*Id*. at p. 1346.) Here, a Budget maintenance manager testified that he performed a computer search of the truck's maintenance records for the one and one-half years preceding appellant's accident, and he learned that there had been no reported problems with or complaints about the truck's rear roll-up door. We find no

meaningful distinction between the accident claims records admitted in *Benson* and the maintenance records admitted here. (See *id*. at p. 1343.) Because the evidence of lack of prior similar incidents satisfied the admissibility requirements outlined in *Benson*, the trial court properly exercised its discretion in denying appellant's motion in limine to exclude the evidence.

In any event, we would find that any error was harmless. Even without the evidence showing that there were no prior similar incidents, there was substantial evidence to support the jury's determination that the rear roll-up door did not contain a manufacturing defect and Budget was not negligent in its installation, rental and/or maintenance of the truck and its door. Juan Hernandez, who conducted a federal inspection of the truck just one week before appellant rented it, found no problem with the rear door or any of its hinges. The individual who rented the truck just before appellant did not experience any issues with the truck's rear door. When Veronica rented the truck, she and a Budget agent personally conducted an inspection of the truck, which included opening and closing the rear door, and neither of them reported any problems on the inspection checklist. Moreover, Budget's accident reconstructionist expert opined that any damage to the rear door's hinge was caused by the mobile home.

In sum our "review of the instant case, especially the overwhelming, if not conclusive, evidence supporting the jury verdict[] convinces us that it is not reasonably probable that in the absence of the errors complained of a result more favorable to appellant would have been reached." (*Bedolla v. Logan & Frazer* (1975) 52 Cal.App.3d 118, 137.)

DISPOSITION

The judgment is affirmed. Budget is entitled to its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

CHAVEZ