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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MARIA LOPEZ, Plaintiff and Appellant, v. AHMAD ALROUDHAN, Defendant and Respondent.	B265996 (Los Angeles County Super. Ct. No. BC513119)

APPEAL from a judgment of the Superior Court of Los Angeles County. Cary H. Nishimoto, Judge. Affirmed.

Jance M. Weberman A Professional Law Corporation and Jance M. Weberman for Plaintiff and Appellant.

Ford, Walker, Haggerty & Behar, Robert L. Reisinger and Adam C. Hackett for Defendant and Respondent.

Maria Lopez (appellant) appeals from a judgment entered in favor of Ahmad Alroudhan (respondent) after a jury trial on appellant's claim of negligence against respondent in this personal injury matter. Appellant argues that the trial court erred in denying her motion for directed verdict, and that she was denied a fair trial because the trial court demonstrated a bias towards respondent.

We find no reversible error and affirm the judgment.

FACTUAL BACKGROUND

At approximately 5:00 p.m. on July 5, 2012, appellant was waiting at the corner of Vermont Avenue and Rosewood Avenue to cross the street. Appellant was familiar with the crosswalk, as she had crossed it many times. She waited for the signal to turn "white," then she proceeded to cross the street. Appellant recalled seeing a large white car, but could not recall from which direction the vehicle came.[1] The car was driven by respondent, who is a resident of Kuwait. Appellant first testified that she had just stepped off the curb when she saw the vehicle. However, she later testified that she was almost completely across the intersection when she saw the car.

Appellant testified that the vehicle hit her, but she could not recall what part of her body the vehicle hit. Appellant recalled falling to the ground, with both hands and knees on the ground. Appellant could not recall how long she remained in that position, but eventually a gentleman came to her aid. Neither could appellant recall which side of her body was hit by the vehicle. She recalled that the front part of the vehicle struck her

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[1] Respondent's attorneys cross-examined appellant regarding her statement that she saw the vehicle that hit her. In an earlier deposition, appellant said she did not see the vehicle involved prior to the accident. Appellant claimed that later, after the deposition, she recalled having seen the vehicle.

and then the mirror. A group of nursing students came to her aid, and one of them called 9-1-1. Police officers came to the scene, but appellant could not recall talking with a police officer. Appellant was transported to the hospital in an ambulance. She could not recall whether anyone spoke Spanish to her in the ambulance. She was given medicine but she did not know what kind.

The doctor's notes from Hollywood Presbyterian Hospital emergency room indicated that appellant informed them that the vehicle struck her on her left side, although logistics of the accident suggest that she would have been hit on her right side. Appellant informed a hospital nurse that the vehicle was traveling at a low speed. Appellant could not recall whether there was a Spanish translator at the hospital. Appellant could not recall what treatment she received from the doctors in the emergency room or what type of medication she received. Appellant's discharge instructions disclosed that she was given pain medicine and treated for a contusion of the finger and abrasions. Appellant had a pre-existing liver condition, and her concern over that condition predominated during the emergency room visit. Appellant stayed at the emergency room until approximately 10:00 p.m., when her daughter's boyfriend came and took her home.

Officer Rios, who responded to the incident, prepared a report as part of his official duties. The officer observed no damage to respondent's vehicle or injuries to appellant.

After the incident, appellant spent two days at home. On the third day, she went to the store on the bus. Appellant's knee hurt while she was walking. On the fourth day, appellant went to see her sister, again taking the bus. Both her knees hurt and she had difficulty walking. Appellant went to see a doctor regarding her injuries. She could not recall the date, nor could

she recall what type of treatment she was given. Medical records show appellant's first visit with Dr. Maurice Levy was on July 10, 2012. Appellant recalled the doctor providing physical therapy and applying a liquid on both of her knees. This helped alleviate the pain a little.

Appellant saw Dr. Jon B. Greenfield on July 20, 2012. She complained of back pain, shoulder pain, and left knee pain. Dr. Greenfield recommended physical therapy for the left knee and conducted an MRI, which revealed an oblique tear of the medial meniscus and swelling in the knee. Dr. Greenfield recommended arthroscopic surgery for the knee. In addition, there was a partial tear to the rotator cuff and some degeneration of the joint at the top of the shoulder. Dr. Greenfield performed arthroscopic surgery on appellant's knee in March 2013. The surgery revealed that the medial meniscus was in fact sound with some inflammation and scar tissue, which was removed. However, the undersurface of the kneecap was damaged. If it did not heal there would be arthritis in the kneecap. Dr. Greenfield recommended a second surgery to replace the undersurface of the kneecap. Appellant testified that she continues to experience pain in the left knee. Dr. Greenfield testified that neck pain appellant was experiencing was related to the accident, since he was aware of "no other cause of her neck pain other than the accident."

Appellant also recalled seeing Dr. Ganjianpour, although she could not recall the date or what type of doctor he was. She recalled that she saw him for her knee. She told Dr. Ganjianpour that her knee pain was eight on a scale of one to ten, and he gave her pain medicine.

Appellant began seeing a chiropractor, Dr. Fromer. She saw him three days per week. She could not recall how many visits she had with Dr. Fromer, but her left knee continued to

hurt. Dr. Fromer testified that appellant came to him with cervical pain, left shoulder pain, left upper arm pain, left wrist pain, thoracic pain, upper and lower lumbar pain, left buttocks and hip pain radiating down the left leg and left knee pain. Dr. Fromer used weight training to try to strengthen appellant's muscles, adjustments for realignments, general massage and electrical stimulation for reducing pain.

Dr. Forman examined appellant on behalf of respondent. The emergency room report was a major component of the evidence that he reviewed. On the day of the accident, appellant's only complaint was that she had a contusion or bruise on her right hand and an abrasion on her right knee. The report does not mention anything about appellant's left knee, back or neck. Neither Dr. Levy nor the report from a medical clinic appellant visited in August 2012, mentioned any left knee complaints. During Dr. Forman's examination of appellant, she was complaining of neck, back, shoulder, severe left knee and moderate right knee pain. Dr. Forman noted that appellant's complaints did not match the findings in the initial hospital report, nor did her complaints match her physical examination. Dr. Forman explained that appellant's physical examination was fairly normal, with no muscle atrophy, decreased range of motion or weakness in the areas where she complained of pain. Dr. Forman indicated that appellant's complaints did not make sense.

PROCEDURAL HISTORY

The jury trial on appellant's negligence claim took place between June 30, 2015 and July 10, 2015. After the presentation of appellant's evidence, appellant filed a motion for directed verdict. Appellant argued that because respondent did not appear and testify at trial, she was entitled to judgment. Respondent argued that the court may deny a motion for directed

verdict even where a defendant offers no testimony if there is evidence for the jury to conclude that the plaintiff was not credible. The court decided to submit the issue of negligence to the jury, "the question of negligence being the plaintiff's burden of proof." The court determined that the jury should be instructed on negligence and comparative negligence.

On July 10, 2015, the jury reached an 11-1 jury verdict in favor of respondent. Judgment was entered on the same date.

On July 17, 2015, appellant filed a motion for new trial. Appellant argued that in testifying that she was hit by respondent's car in an intersection she satisfied her burden of proof on the issue of negligence and respondent failed to rebut this presumption. Appellant claimed that the court erred in allowing the jury to decide the issue of negligence.

Respondent filed an opposition and objections to appellant's motion for new trial.

On August 3, 2015, the trial court heard the motion for new trial. After the hearing, the court filed an order denying the motion. The trial court noted, "Although the testimony concerning the manner of accident [*sic*] came primarily from [appellant], the totality of evidence raised substantial doubt about [appellant's] credibility." The trial court noted appellant's "contradictions and memory failures." After reviewing the evidence, including contradictory testimony regarding how the accident took place, false testimony about her pre-existing conditions, severe memory lapses, and poor treatment by doctors, the trial court concluded, "there was ample justification to place the issue of [respondent's] negligence before the jury. Ultimately, [appellant] has the burden of proof."

On August 6, 2015, appellant filed her notice of appeal.

DISCUSSION

I. Standards of review

In an appeal challenging the sufficiency of the evidence to support the verdict, the appellate court generally applies a substantial evidence test. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873 (*Bowers*).) Under this standard, we must consider the evidence favorable to the prevailing party and resolve all conflicts in the evidence in favor of the respondent. "We do not reweigh the evidence, but instead determine whether the record contains substantial evidence, contradicted or uncontradicted, to support the judgment. [Citation.]" (*Bunch v. Hoffinger Industries, Inc.* (2004) 123 Cal.App.4th 1278, 1303.) Substantial evidence is evidence "'of ponderable legal significance, . . . reasonable in nature, credible, and of solid value.' [Citations.]" (*Bowers, supra*, at p. 873, italics omitted.)

In applying the substantial evidence test, we look at the entire record of the appeal, and do not limit our review to isolated bits of evidence. (*Bowers, supra*, 150 Cal.App.3d at p. 873.) "The ultimate determination is whether a *reasonable* trier of fact could have found for the respondent based on the *whole* record. [Citation.]" (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.)

In reviewing the denial of a motion for directed verdict, our role is similar to that of a reviewing court determining whether there is evidence in the record sufficient to support a verdict. (*County of Kern v. Sparks* (2007) 149 Cal.App.4th 11, 16.) We must resolve every conflict in the testimony in favor of the prevailing party and indulge in every presumption and inference that could reasonably support the trial court's decision. (*Ibid.*)

In determining a motion for directed verdict, the trial court has "no power to weigh the evidence, and may not consider the credibility of witnesses." (*Howard v. Owens Corning* (1999) 72

Cal.App.4th 621, 629.) The trial court may not grant a motion for directed verdict if there is any substantial conflict in the evidence. (*Ibid.*) "[I]f the party resisting a motion for directed verdict produces sufficient evidence to support a jury verdict in his or her favor, the motion must be denied." (*Id.* at p. 630.)

In evaluating appellant's claims of bias, "we assess whether any judicial misconduct or bias was so prejudicial" that it deprived a party of "'"a fair, as opposed to perfect, trial."' [Citations.]" (*People v. Guerra* (2006) 37 Cal.4th 1067, 1112, overruled in part on other grounds in *People v. Rundle* (2008) 43 Cal.4th 76, 151.) "[E]xpressions of opinion by a trial judge based on actual observation of the witnesses and evidence in the courtroom do not demonstrate a bias. [Citations.]" (*Guerra*, at p. 1111.) In addition, "a trial court's numerous rulings against a party -- even when erroneous -- do not establish a charge of judicial bias, especially when they are subject to review. [Citations.]" (*Id.* at p. 1112.) "A California trial court may comment on the evidence, including the credibility of witnesses, so long as its remarks are accurate, temperate, and 'scrupulously fair.' [Citation.]" (*People v. Melton* (1988) 44 Cal.3d 713, 735.) "The propriety and prejudicial effect of a particular comment are judged both by its content and by the circumstances in which it was made. [Citation.]" (*Ibid.*)

II. The court did not err in denying appellant's motion for directed verdict

Under Code of Civil Procedure section 630, subdivision (a), "after all parties have completed the presentation of all of their evidence in a trial by jury, any party may . . . move for an order directing entry of a verdict in its favor." A directed verdict on the issue of liability may only be granted where it can be said as a matter of law there is a total lack of evidence of sufficient substance to support a verdict in favor of the resisting party.

(*Sanchez v. Bay General Hospital* (1981) 116 Cal.App.3d 776, 786.) In this negligence matter, "'[t]he traditional elements of duty, breach of duty, causation, and damages apply.'" (*Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1072.)

A. Appellant did not show negligence as a matter of law

Appellant argues that respondent was negligent as a matter of law and that his negligence was a proximate cause of appellant's injuries. Respondent had a duty to use ordinary care to prevent injury to pedestrians, and a driver in California has a duty to yield the right-of-way to a pedestrian in a crosswalk. (*Fischer v. Keen* (1941) 43 Cal.App.2d 244, 248; *Monreal v. Tobin* (1998) 61 Cal.App.4th 1337, 1350.)[2]

A presumption of breach of duty arises when the following elements are met: "(i) the defendant violates a statute or ordinance, (ii) the violation proximately causes the injury, (iii) the injury results from an occurrence of the nature that the statute or ordinance was designed to prevent, and (iv) the injured person is within the class for whose protection the statute or ordinance was adopted." (*Parsons v. Crown Disposal Co.* (1997) 15 Cal.4th 456, 484, citing Evid. Code, § 669.) Appellant contends that she established facts supporting each of these elements, therefore she established a presumption of negligence as a matter of law.

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[2] Appellant cites Vehicle Code section 560 in support of her claim that vehicles have a duty to yield the right-of-way to a pedestrian in a crosswalk. Section 560 provides the definition of "solid tire." Vehicle Code section 21950, which appellant has not cited, provides that "[t]he driver of a vehicle shall yield the right-of-way to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection." We therefore assume that appellant intended to cite Vehicle Code section 21950, not section 560.

The evidence at trial does not support appellant's position that she established a presumption of negligence under Evidence Code section 669. Even assuming that respondent violated the Vehicle Code, appellant did not provide uncontroverted evidence of proximate cause. Appellant testified that she was hit by the vehicle on her left side, although the logistics of the accident suggest that she would have been hit on her right side. The reports from the emergency room indicate that she was treated for a contusion or bruise on her right hand and an abrasion of her right knee, although she was claiming damages for injuries to her left knee as well as other parts of her body, including her back and neck. Furthermore, Officer Rios testified that appellant appeared uninjured at the scene, and Dr. Forman testified that appellant's physical complaints did not make sense considering his medical examination of her.[3] Based on this conflicting evidence, the jury was entitled to believe that any purported Vehicle Code violation was not the proximate cause of appellant's claimed injuries. Thus, no presumption of negligence arose.

B. The burden of proof on causation did not shift to respondent

Appellant argues that because she satisfied her initial burden of proof establishing causation, the burden of proof shifted to respondent to establish that the violation was not a proximate cause of her injuries. Because respondent did not testify, appellant argues, there was no evidence to support a finding that the injuries occurred from any cause other than respondent's negligence.

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[3] Respondent's witnesses had not testified at the time of the motion for directed verdict, but respondent's counsel argued "procedurally it's too early for [Code of Civil Procedure] section 630. This discussion should be taking place after both sides rest."

In support of this argument, appellant relies on *Haft v. Lone Palm Hotel* (1970) 3 Cal.3d 756 (*Haft*). *Haft* is distinguishable. In *Haft*, a father and son drowned in a hotel pool where, in violation of the Health and Safety Code, no lifeguard was present. (*Id.* at 765-766.) The Supreme Court acknowledged that normally, proof of statutory or regulatory violations alone is insufficient to establish liability. "[P]laintiffs still bore the initial burden of showing that defendants' negligence was a proximate cause of the deaths. [Citations.]" (*Id.* at p. 765.) However, in *Haft*, there was a lack of direct evidence as to how the drownings occurred because no witnesses survived. This "evidentiary void" resulted "primarily from defendants' failure to provide a lifeguard to observe occurrences within the pool area." (*Id.* at p. 771.) The plaintiffs went as far as they could in establishing liability. "The absence of . . . a lifeguard . . . not only stripped decedents of a significant degree of protection to which they were entitled, but also deprived the present plaintiffs of a means of definitively establishing the facts leading to the drownings." (*Ibid.*) Under those specific circumstances, the high court determined that "the burden of proof on the issue of causation should be shifted to defendants to absolve themselves if they can." (*Id.* at p. 772.)[4]

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[4] *Lucas v. Hesperia Golf & Country Club* (1967) 255 Cal.App.2d 241, also cited by appellant, similarly involved an individual who drowned with no lifeguard present. The defendant argued that there was insufficient evidence that the failure to provide qualified lifeguard service or post the numbers of the emergency agencies was a proximate cause of the victim's death. The court held that the jury "could have reasonably inferred that had one been in attendance as required by law, the victim may have survived." (*Id.* at p. 253.) The case does not provide support for appellant's contention that a finding of proximate cause was required in this case.

Here, there is no evidentiary void as existed in *Haft*. Appellant was able to provide testimony regarding the accident and her injuries, as was a police officer on the scene and various medical doctors. There is no reason to shift the burden of proof on causation to respondent. Appellant had the burden to prove her case, and the jury found that she did not succeed.[5]

C. The jury verdict is supported by sufficient evidence

Appellant further argues that respondent did not present sufficient evidence to support a jury verdict in his favor, thus the question of negligence should not have gone to the jury. Appellant's position is incorrect, and appellant provides no applicable law in support.

Appellant bore the burden of proof on every element of her claim. (Evid. Code, § 500.) The jury was not required to believe her testimony, particularly where it was contradictory. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890 [trier of fact "'may reject *in toto* the testimony of a witness, even though the witness is uncontradicted. [Citations]'"].) As discussed above, based on appellant's own conflicting testimony, the testimony of Officer Rios, and the medical records, it was reasonable for the

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[5] *Newing v. Cheatham* (1975) 15 Cal.3d 351, is irrelevant, as it involved a plane crash with no survivors. The doctrine of res ipsa loquitor applied because common experience dictated that the plane crash probably arose from the pilot's negligence. Thus, it became the defendant's burden to introduce sufficient evidence that the accident resulted from some cause other than the pilot's negligence. (*Id.* at p. 364.) The doctrine of res ipsa loquitor does not apply in this matter, thus there is no reason to place the burden regarding causation on respondent. *Baumgardner v. Yusuf* (2006) 144 Cal.App.4th 1381, 1392, and *Hinds v. Wheadon* (1945) 67 Cal.App.2d 456, also involve the doctrine of res ipsa loquitor and are not relevant here.

jury to conclude that appellant failed to establish elements of causation and damages, which were required to prove her claim.[6]

None of the cases cited by appellant suggest otherwise. *Rooney v. Mutual Benefit Health & Accident Assn.* (1946) 74 Cal.App.2d 885, involved a directed verdict in favor of a beneficiary on a life insurance policy, where the question was whether the insured's death was accidental. Because there was no evidence sufficient to support a verdict in favor of the defendant, a directed verdict was properly granted. (*Id.* at p. 891.) In *Gyerman v. United States Lines Co.* (1972) 7 Cal.3d 488, 505, the court determined that insufficient evidence of contributory negligence on the part of the plaintiff warranted a limited retrial on the issue. These cases do not provide support for a directed verdict here, where the record amply supports the jury's determination that appellant failed to prove negligence.

Vinson v. Ham Bros. Constr., Inc. (1970) 7 Cal.App.3d 990 supports the trial court's decision to deny the motion for directed verdict. In *Vinson,* the Court of Appeal reversed the trial court's grant of a motion for directed verdict in a negligence case, finding that the evidence "presented substantial questions of fact" as to whether the elements of negligence were met. (*Id.* at p. 996.) The court explained that in determining negligence, "it is

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6 Appellant objects that Officer Rios was not qualified to testify as to appellant's injuries. However, he was qualified to testify as to his observations of appellant at the scene. (Evid. Code, § 800, subd. (a) ["If a witness is not testifying as an expert, his testimony in the form of an opinion is limited to such opinion as permitted by law, including but not limited to an opinion that is . . . [r]ationally based on the perception of the witness"]; see also *People v. McAlpin* (1991) 53 Cal.3d 1289, 1307 ["'Lay witnesses *having the requisite opportunity for observation* may testify as to the health of another'"].)

necessary to judge the credibility of witnesses, to weigh the evidence, to resolve conflicts and to choose between conflicting inferences. When considering a directed verdict, neither this court nor the trial court, is permitted to make such determinations. [Citations.]" (*Id.* at p. 997.) Similarly, here, the trial court properly allowed the jury to make these crucial determinations of fact.[7]

III. Appellant has failed to demonstrate judicial bias

Appellant argues that the trial court exhibited bias during trial in several ways, thus she is entitled to "'the privilege of a trial before some other judge.'" (*Keating v. Superior Court of San Francisco* (1955) 45 Cal.2d 440, 443-445.) We address each of appellant's contentions separately, and conclude that they do not amount to prejudicial bias.[8]

A. Commentary and assistance in phrasing questions

Appellant first argues that the trial court asserted objections on behalf of respondent's counsel, added commentary

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[7] We decline to address appellant's arguments that respondent failed to rebut the presumption of negligence. Appellant failed to establish the elements necessary to create such a presumption (*Parsons v. Crown Disposal Co., supra*, 15 Cal.4th at p. 484), therefore respondent had no burden to rebut it.

[8] Respondent argues that because appellant did not raise the issue of judicial bias at trial, it is forfeited on appeal. Appellant asserts that where, as here, "'an objection and an admonition could not cure the prejudice caused by' such misconduct, or when objecting would be futile [citations]," the failure to object should not preclude review. (*People v. Sturm* (2006) 37 Cal.4th 1218, 1237 (*Sturm*).) The *Sturm* court noted that attempts by counsel to object to misconduct can be counterproductive to the client because such objections may negatively sway the jury. (*Ibid.*) Therefore, we address the merits of appellant's claims.

in respondent's favor and assisted respondent's counsel in phrasing questions. In support of this argument, appellant cites three portions of testimony. The first is during appellant's direct testimony, where appellant's counsel was inquiring about appellant's trip to the emergency room:

> "[Appellant's counsel]: Do you remember the doctor who took care of you at the hospital who administered some kind of aid to you?
>
> "[Appellant]: No.
>
> "Q: But one thing: There was no translator in the hospital. Is that right?
>
> "[Respondent's counsel]: Objection. It's leading. It lacks foundation.
>
> "THE COURT: Excuse me. Sustained. How would she know?
>
> "[Appellant's counsel]: Okay."

In asking how appellant would know if there was a translator in the hospital, the court was providing counsel with information as to the reason for its decision to sustain the objection. The court's response merely indicates that there was no foundation for the question. There is no indication of bias in this exchange.

The second also took place during appellant's direct testimony:

> "[Appellant's counsel]: And how were you feeling when you left the hospital?
>
> "[Appellant]: I wasn't feeling well. Because my main concern at that point is that I had a tube in my stomach, because I have a liver illness.
>
> "Q: And did you have that -- was that liver ailment aggravated by this accident?

"[Respondent's counsel]: Objection, your Honor. There's been no claim throughout discovery that there was any aggravation.

"THE COURT: It's also leading.

"[Appellant's counsel]: Can you describe -- can you describe . . . the liver ailment that you say that you had at the time that you were hit by the vehicle?

"[Respondent's counsel]: Objection. It's irrelevant.

"THE COURT: Sustained.

"[Appellant's counsel]: Irrelevant?

"THE COURT: She's not making a claim for that.

"[Appellant's counsel]: Did that liver ailment affect the way you were thinking that day?

"[Appellant]: That was my main concern.

"Q: And when you say your 'main concern,' what did that -- how did you focus on that liver ailment?

"[Respondent's counsel]: Objection. Vague and ambiguous. Before or after the accident? If it was after the accident, there's no claim for that, and it's irrelevant.

"THE COURT: Sustained.

"[Appellant's counsel]: Is it fair to say, Ms. Lopez, that you were more concerned about your liver ailment than you were to any other part of your body that might have been hurting you that day?

"[Respondent's counsel]: Objection. Irrelevant.

"THE COURT: That's leading.

"[Respondent's counsel]: And leading.

"[Appellant's counsel]: Okay. Did your thoughts of your liver ailment predominate your thinking that day?

"[Respondent's counsel]: Objection. Leading.

"THE COURT: Sustained.

"[Appellant's counsel]: Tell the jury what you were thinking about your liver ailment that day.

"[Appellant]: As I mentioned before, I was worried because of my stomach problem, and what I was thinking about is how that was going to affect my problem."

Again, this exchange does not show bias. Appellant makes no argument that the court's rulings on these objections were wrong. The trial court is entitled to "exercise reasonable control over the mode of interrogation of a witness so as to make interrogation as rapid, as distinct, and as effective for the ascertainment of the truth, as may be." (Evid. Code, § 765.) Thus, the trial court had the authority to limit appellant's counsel's improper leading questions. Appellant was allowed to rephrase the questions in order to present relevant, appropriate evidence to the jury.

Finally, appellant cites the following exchange, during the redirect examination of appellant:

"[Appellant' counsel]: Now, you agree that you are responsible for all the medical bills you've incurred. Is that correct?

"[Respondent's counsel]: Objection. Overbroad. Lacks foundation.

"THE COURT: Sustained.

"[Appellant's counsel]: Are you responsible for Dr. Greenfield's bills?

"[Respondent's counsel]: Objection. Lacks foundation.

"THE COURT: Do you mean responsible to pay it?

"[Appellant's counsel]: Yes.

"[Appellant]: Yes.

"[Appellant's counsel]: And are you responsible to pay for Dr. Levy's bill?

"THE COURT: Excuse me.

"[Appellant]: Yes.

"THE COURT: She doesn't remember Dr. Levy.

"[Appellant's counsel]: Okay. I can --

"Q: Do you -- do you remember Dr. Froman?

"[Appellant]: Yes.

"Q: Are you responsible to pay Dr. Froman's bill?

"A: Yes.

"Q: And you don't recall going to Dr. Levy's office?

"A: Yes, I remember.

"Q: Do you remember the bill that Dr. Levy provided for his services?

"A: No. I don't remember.

"Q: Okay. Are you responsible for that bill for services even if you don't recall?

"[Respondent's counsel]: Objection. Outside of the scope of cross.

"THE COURT: Well, you are asking her to speculate as to what you mean --

"[Appellant's counsel]: Okay.

"THE COURT: -- on the bill that she can't remember.

"[Appellant's counsel]: Do you know whether you owe Dr. Levy any money for legal -- for medical services?

"[Appellant]: Yes."

The trial court had discretion to limit the appellant's testimony to events that she could recall. This is part of the court's authority to effectively control the questioning of a witness so that the testimony leads to the "ascertainment of the truth." (Evid. Code, § 765.) There is no suggestion that the court's evidentiary rulings were incorrect. Again, appellant's counsel was permitted to rephrase the questions in order to get at the desired information. No bias is apparent from these exchanges.

B. Objection to picture of intersection

Appellant claims that the court objected to admission into evidence of a picture of the intersection because the court "believed that [appellant] was at fault for being struck by [respondent's] vehicle." The transcript shows no determination of fault by the court. Instead, it merely shows that there was no foundation for admission of the photograph into evidence:

"THE CLERK: So I'm sorry. Do we actually -- are we admitting some of [appellant's] exhibits at this point, or is that happening later?

"THE COURT: None of the medical records. And the picture of the intersection, I don't think there was any foundation for that.

"[Respondent's counsel]: She --

"THE COURT: She testified --

"[Respondent's counsel]: Excuse me.

"THE COURT: -- she testified that -- it looks like the place where the accident happened.

"[Respondent's counsel]: Yeah, she did. But I wouldn't move it into evidence, your Honor.

"THE COURT: You what?

"[Respondent's counsel]: I would not move it into evidence.

"[Appellant's counsel]: Then how would the jury know what -- how would they know what it was like at the time?

"THE COURT: Well, that's a matter of what the evidence is. We don't know anything about this intersection, except that she was crossing it, there were people behind her, and I think she had reached the halfway point, or something like that, and she turned and saw this vehicle coming at her. And --

"[Appellant's counsel]: Okay.

"THE COURT: -- then she was helped at the sidewalk. So do you need any more than that? I mean, she said that when she stepped off the curb, the light was white. There is no indication other than that, or of any other information. So let's -- So there are no exhibits.

"[Respondent's counsel]: Correct."

The exchange took place outside of the presence of the jury.

There is no indication, as appellant suggests, that the court believed that appellant was at fault for the accident. Instead, the court believed there was no foundation for admission of the photograph in question. Appellant's counsel did not lodge an objection, nor does appellant argue on appeal that the ruling was erroneous.

C. Sustaining objections raised by respondent's counsel while overruling objections of appellant's counsel

Appellant argues that the court sustained objections of respondent's counsel and stated that appellant's counsel was arguing for sympathy, while overruling objections raised by appellant's counsel that respondent's counsel was misstating appellant's testimony. In support of this argument, appellant cites the following exchanges, which took place during closing arguments:

> "[Appellant's counsel]: What we have over here is someone who had no place else to go for care. Where was she going for the care to her stomach? USC. If she presented herself to USC, who would have paid for that bill? The taxpayers of Los Angeles. Dr. Greenfield told us that he had a bill from Cedars Sinai of an arthroscopy. The knee surgery that he did and the charge from Cedars, which is the top hospital in the country, one of the top, was $45,000, of which a company paying for it paid -- paid $28,000. The person who had the surgery has the burden of that $17,000. And the surgery that [appellant] had we paid $18,000 for the entire surgery -- Miracle Mile Surgery Center. And she benefits from it. Now, the choice of having the taxpayers pay for it or having [appellant] pay for her own --
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> "[Respondent's counsel]: Objection.
>
> "THE COURT: Sustained. You're arguing sympathy.
>
> "[Appellant's counsel]: I'm arguing the facts.
>
> "THE COURT: You're arguing sympathy and inappropriate matters."

Appellant then cites the following excerpt from respondent's closing argument:

> "[Respondent's counsel]: If [appellant] were to come to us and say, 'I needed to go to the hospital from the accident scene. Maybe your car scared me, and I fell down.' Ambulance bill. Treatment at the hospital. But we haven't seen those bills. Those bills aren't even in evidence. And the court instructed you that you are not to guess or speculate as to the amount of damages. We don't know how much the ambulance bill is. We don't know how much the hospital bill is. But certainly everything after that is not related to the accident. But as an example of what's going on here, we have Dr. Greenfield who says, 'Well, I always prefer to have my surgery done at Miracle Mile Outpatient Surgery Center.' Why? He owns 20 percent of it. And he charged $18,613 just for the facility fee --
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> "[Appellant's counsel]: Objection. Misstates the testimony.
>
> "THE COURT: The jury will determine it."

Nothing in these two exchanges suggests that the court was biased against appellant. Appellant cites no law suggesting that evidentiary rulings such as the ones set forth above constitute bias. "[A] trial court's numerous rulings against a party -- even when erroneous -- do not establish a charge of judicial bias, especially when they are subject to review. [Citations.]" (*Guerra, supra*, 37 Cal.4th at p. 1112.) Appellant fails to challenge the bases of the trial court's rulings, thus we assume they were correct and appropriate. These rulings do not establish a charge of judicial bias.

D. Commentary regarding appellant's pain

Appellant argues that the court further demonstrated bias against appellant by adding commentary that since appellant's pain dissipated within three or four days, she may not be able to establish respondent's negligence. In support of this claim, appellant cites a lengthy exchange, which took place outside of the presence of the jury. Appellant's counsel asked the court if he could recall appellant to the witness stand. Appellant's counsel explained, "At the time that she testified in court, she was under some pain from the -- from an unrelated surgery in her stomach, and that's why she doesn't -- didn't recall." The following exchange occurred:

> "THE COURT: You mean, she's no longer in pain?
>
> "[Appellant's counsel]: She's not in the acute pain that she was on the day that she testified. And that's specifically the question.
>
> "THE COURT: In three or four days that acute pain is gone?
>
> "[Appellant's counsel]: It's not only three or four days. I'm not the physician who's treating her, but I asked her 'How come you didn't recall?' And then she says, 'I was in such pain.' And we can ask her again when she gets on the stand. But she's not changing her testimony. And she went to these doctors for treatment, and she's had surgery for the injury she sustained by the --
>
> "THE COURT: Well, why didn't you tell me that when I excused the jury until Wednesday at 1:30? We could have called her in the morning.
>
> "[Appellant's counsel]: I spoke to her about this, and I said, 'I'm going to ask you' -- 'you can

come back on the witness stand.' And I discussed these issues. And I had a response from her yesterday, but I didn't realize we are -- the urgency. I thought maybe we can come together --

"THE COURT: You didn't realize? That was the schedule from last week."

Later, the court explained the circumstances under which appellant would be permitted to recall herself to the witness stand:

"THE COURT: If there is time on Wednesday, the [appellant] can re-call herself. But if not, you are going to have to wait until after the defense doctor testifies, which is Thursday morning?

"[Appellant's counsel]: Yes. That's what I remember.

"[Respondent's counsel]: Thursday morning. Yes, your Honor. Can I inquire what would be the scope? I mean, she's already testified, excused from testifying. She testified at length. Is she going to be asked the same questions again, and do I have to object 'asked and answered' hundreds of times in front of this jury? I object to her being recalled. I don't see that it's appropriate at all.

"THE COURT: Well, if she has changed her testimony, then fine. That would go to her credibility. So on the issue of negligence, I guess we will have to wait. I'm not sure what waiting until the evidence is finished will do to change the facts and circumstances of the issue of whether [appellant] has established the [respondent's] negligence."

The court made no suggestion that because her pain diminished in three or four days, appellant may not be able to establish negligence. The record shows the discussion took place out of the presence of the jury, and concerned appellant's request that she be permitted to be recalled as a witness because her prior testimony was hindered by her physical condition. Taking into consideration the schedule of upcoming witnesses, the trial court reasonably gave appellant a window of time in which she could testify again. The court overruled respondent's objection to appellant's request, stating that any contradictions would go to the witness's credibility. While the court appeared somewhat frustrated that counsel had not informed the court earlier of appellant's need to provide additional testimony, there is absolutely no indication that the court did not feel that appellant could prove her case.

E. Commentary on appellant's credibility and the likely outcome of the case

Appellant argues that the trial court improperly commented on appellant's credibility, commented that he assumed appellant was at fault for being struck by the vehicle, and commented that he doubted the jury would find respondent negligent. The following are the quoted portions of transcript, which took place out of the presence of the jury during consideration of appellant's motion for directed verdict.

> "THE COURT: And let's see. The only question here today this morning is the question of whether the issue of negligence goes to the jury. And, if so, the question of comparative negligence. So my feeling -- and I have read both of the briefs filed on this issue in this case, and my feeling is that the question of negligence being the [appellant's] burden of proof. And considering the questions that are

> raised by the [appellant's] testimony, the jury really has a question of credibility as to whether they believe her as to how this accident happened. And, as a result, there's a question of comparative negligence. So I don't think anyone who's lived in this country for 20 or 30 years and is familiar with the intersection in question, which the [appellant] is, can walk across that intersection at rush hour without being mindful of the traffic. So there is a -- at least a question of comparative negligence here, as well."

This is not an improper comment on appellant's credibility, nor is it an "assumption" that appellant was at fault for being struck by the vehicle. It is a conclusion that the jury needed to address appellant's credibility and make a determination both on appellant's credibility and on appellant's potential comparative negligence. We have determined that the trial court did not err in sending the issue of negligence to the jury, and appellant does not challenge the court's decision to give an instruction on comparative negligence. Therefore, we assume it is correct. The court's correct legal determinations are not indications of bias.

Finally, appellant cites another exchange outside of the presence of the jury where counsel was discussing with the court whether comparative negligence was an issue in the case. Respondent's counsel commented that the Vehicle Code puts a duty on both drivers and pedestrians to use reasonable care when crossing the street. The court commented, "Well, this incident apparently occurred during rush hour. . . . [a]nd I should think that anyone crossing Vermont anywhere on Vermont during rush hour is going to encounter a lot of traffic."

Appellant's counsel commented that appellant testified the light was white. The court stated, "It doesn't matter that the light is green. There are a lot of pedestrians who, just because the light turns green, will just automatically step off the curb . . . and get hit by a car turning right." The court commented, "[A]nd that's their fault." Appellant's counsel explained that this was a different type of situation, where appellant "wasn't hit the minute she walked off the -- off into the street. She was in the crosswalk and almost cleared to the next -- to the next sidewalk."

The court then described its understanding of the events of the accident, and reiterated its opinion that "you can't just cross a busy street like that without watching." Appellant's counsel indicated that appellant had proceeded with caution, and "she didn't see any cars as she was walking across the street." The court responded, "Ah, but see that's the point. You can't ignore the fact that there's traffic during rush hour traffic."

Appellant's counsel then stated: "Let me just follow that reasoning. If she's in the crosswalk, how can she see a car that's making a left turn?" The court indicated, "That's -- that's the question."

The exchange continued:

"[Appellant's counsel]: So that's the question. But she was hit in the crosswalk.

"[Respondent's counsel]: Well, she now claims she did see it.

"[Appellant's counsel]: When did she see it?

"THE COURT: All right.

"[Respondent's counsel]: Long enough to know her life flashed in front of her eyes.

"THE COURT: We will wait for that issue."

The above exchange shows a debate in which the court participated, outside of the presence of the jury, on whether or not to instruct the jury on comparative negligence. While the court expressed its opinion that comparative negligence was an issue in the case, the court left the question of whether such comparative negligence occurred in this case to the jury. The court's opinion that comparative negligence was a legal issue in the case does not demonstrate bias. Indeed, the court noted that it had "little doubt" that "the jury might find [respondent] having been negligent."

Appellant has failed to establish judicial bias. None of the comments described above were improper or prejudicial.[9] (*People v. Melton, supra*, 44 Cal.3d at p. 735.) Considering the comments as a whole, and the context in which they were made, appellant was given a fair trial and no reversible error occurred.[10]

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[9] At oral argument, appellant's counsel directed this court to several additional pages in the record where, counsel argued, the trial court made inappropriate comments. We have reviewed those pages, and found no improper or prejudicial comments there either.

[10] *Sturm* is distinguishable. In *Sturm,* the Supreme Court found that the trial judge's actions in the penalty phase of trial (1) making inaccurate statements leading the jury to believe that the defendant had been convicted of willful, premeditated, and deliberate murder; (2) belittling crucial defense expert witnesses and hamstringing their testimony; and (3) repeatedly disparaging defense counsel, to the extent that the trial judge gave the jury the impression that he was aligned with the prosecution, were improper. (*Sturm, supra*, 37 Cal.4th at p. 1230.) Taken together, the high court held, the errors were "sufficiently severe and pervasive that it was reasonably probable that the errors affected the jury's deliberations, to defendant's detriment." (*Ibid.*) Here,

DISPOSITION

The judgment is affirmed. Respondent is awarded his costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT

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in contrast, the trial court's remarks were not prejudicial or erroneous, and gave no indication of bias.