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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

FABIAN GUILLERMO, Plaintiff and Appellant, v. KIA MOTORS AMERICA, INC., Defendant and Respondent.	B230640 (Los Angeles County Super. Ct. No. BC411717)

APPEAL from a judgment of the Superior Court of Los Angeles County, John Shepard Wiley, Jr., Judge. Affirmed.

The Bickel Law Firm, Brian K. Cline and Larry W. Chae for Plaintiff and Appellant.

O'Hagan Spencer and Julian G. Senior for Defendant and Respondent.

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INTRODUCTION

Plaintiff Fabian Guillermo appeals from a judgment in favor of defendant KIA Motors America, Inc. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The scope of this appeal is limited to the trial court's evidentiary rulings with respect to plaintiff's expert witness, Daniel D. Calef (Calef). We limit the factual and procedural background accordingly.

In April 2009, plaintiff filed a complaint against defendant KIA Motors America, Inc., alleging violations of the Song Beverly Consumer Warranty Act (Civ. Code, § 1790 et seq.) commonly referred to as the California Lemon Law. Plaintiff alleged defects in his 2006 Kia Sorrento (vehicle) that required defendant to repurchase the vehicle. The defects allegedly caused a metallic noise in the undercarriage, a "'no start'" condition and stalling. Plaintiff sought actual, incidental and consequential damages, rescission of the purchase contract, restitution, a civil penalty, attorney's fees and costs of suit. Throughout the trial court proceedings, plaintiff maintained ownership and possession of the vehicle.

In December 2009, plaintiff retained Calef as an expert. In April 2010, plaintiff's counsel submitted a declaration in support of Calef's designation as an expert witness. The declaration stated that the general substance of Calef's trial testimony would relate to "his inspection(s) of the . . . vehicle; his observations and opinions concerning any warranty nonconformity . . . and the repairs thereto; his observations and opinions concerning the impairment of the use, value and/or safety of the . . . vehicle; documents produced in this litigation; and/or to rebut the testimony and opinions of expert witnesses called by defendant." The declaration also stated that Calef was "sufficiently familiar with the pending action to submit a meaningful oral deposition." Defendant made its expert witness disclosure in early May.

Trial was initially set for March 2, 2010. At defendant's request, the parties stipulated to continuance of the trial to June 22. The closing date for fact discovery motions was June 7. The closing date for expert discovery motions was June 11.

However, plaintiff's counsel made an ex parte motion on May 6, 2010 for another trial continuance. The grounds were trial calendar conflicts and time to complete ongoing discovery. Defendant opposed the continuance. The trial court granted a trial continuance to October 26, 2010. Defendant had previously noticed Calef's deposition for June. With the trial continued, plaintiff's counsel suggested postponing the deposition on the basis that Calef had intended to do more work. Defendant refused and demanded plaintiff's counsel produce Calef as noticed for May 2010.

Defendant inspected the vehicle later in May 2010. Calef was present but did not perform his own inspection. Although defendant first noticed Calef's deposition for May, defendant made extensions of the date based upon representations by plaintiff's counsel that Calef was not available for the scheduled date. Finally, on June 28, defendant's counsel deposed Calef.

The parties attended a final pretrial conference on October 15, 2010. Sixteen court days prior to that date, defendant filed its motion in limine, No. 4 to limit Calef's expert testimony to his opinions presented at deposition. Plaintiff and defendant both filed their trial briefs on October 8. At the conference, the trial court withheld its ruling on motions in limine until the first day of trial.

On the morning of October 15, Calef had notified plaintiff's attorney of further testing and a DVD recording he had made the evening of October 14.

On Saturday, October 16, the day after the conference, plaintiff's counsel sent an email to defendant as notice that, after Calef's deposition, he had performed his own inspection of the vehicle and recorded a DVD of his findings. Plaintiff offered to make Calef available for further deposition upon defendant's request. On October 18, plaintiff's counsel filed the notice and offer for further deposition of Calef and sent a DVD with Calef's findings to defendant.

The trial date was moved to October 29, 2010. On the first day set for trial, the trial court granted defendant's motion in limine, thereby limiting Calef's testimony to opinions presented in his deposition. The trial court denied plaintiff's motion in limine to exclude evidence about his two prior felony convictions. The court exercised its discretion under Evidence Code section 352 to allow defendant to ask plaintiff about the convictions, provided that defendant limit the questions to whether plaintiff had been convicted of the specified felony on the specified date. During trial, defendant's counsel posed similar limited questions to plaintiff and plaintiff responded, confirming the convictions.

The jury returned a verdict in favor of defendant and the trial court entered judgment. Plaintiff subsequently moved to set aside the judgment and for a new trial. The trial court denied the motion.

DISCUSSION

A. *Standard of Review*

We review a trial court's "admission or exclusion of expert testimony under the deferential abuse of discretion standard. [Citations.]" (*Tesoro del Valle Master Homeowners Assn. v. Griffin* (2011) 200 Cal.App.4th 619, 639.) "'[D]iscretion is always delimited by the statutes governing the particular issue.' [Citation.]" (*Boston v. Penny Lane Centers, Inc.* (2009) 170 Cal.App.4th 936, 950.) In general, erroneous exclusion of evidence does not require reversal unless the party shows the error has resulted in actual prejudice. (*Gordon v. Nissan Motor Co., Ltd.* (2009) 170 Cal.App.4th 1103, 1115.) That is, the party must show there has been a "'miscarriage of justice,'" in that, if the evidence had been admitted, there exists a reasonable probability that a result more favorable to the proffering party would have been reached. (*P&D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1348; see Cal. Const., art. VI, § 13; Evid. Code, § 354; *People v. Watson* (1956) 46 Cal.2d 818, 836.)

B. ***Exclusion of Expert Testimony***

Extensive and specific provisions of the Code of Civil Procedure govern discovery of expert witness evidence. (Code Civ. Proc., § 2034.010 et seq. (also referred to as "the discovery statute").)[1] The emphasis is on completing the exchange of expert witness information before the trial begins. The purpose of "the expert witness discovery statute is to give fair notice of what an expert will say at trial." (*Bonds v. Roy* (1999) 20 Cal.4th 140, 146.) The discovery statute "as a whole envisions timely disclosure of the general substance of an expert's expected testimony so that the parties may properly prepare for trial." (*Id.* at p. 148.)

After the initial trial date is set, upon demand by any party, all parties must exchange the following information concerning each party's expert witnesses: (a) a list of the name and address of each expert witness who will give an expert opinion which the party expects to offer into evidence at trial; (b) an expert witness declaration of each designated expert who has been retained by the party for providing an expert opinion in anticipation of litigation or preparation for the trial; and (c) all discoverable reports and writings of each expert compiled in the course of preparing his or her opinion. (§§ 2034.210, 2034.260, 2034.270.) An expert witness declaration must include a brief narrative statement of the expert's qualifications and the general substance of the expert's expected testimony. (§ 2034.260, subd. (c).) All parties must comply with the expert witness disclosure requirements on or before the pretrial date for exchange of information specified in the demand in accordance with statutory time parameters. (§§ 2034.220; 2034.230; 2034.260, subd. (a).)

The discovery statute provides a procedure for subsequent changes in the expert witness information exchanged. If a party who has complied with the requirements for timely exchange of expert witness information subsequently desires to augment the party's expert witness list and declaration to add an expert witness or desires to amend

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise identified.

the declaration of a previously designated expert regarding the general substance of the opinions the expert is expected to give, the trial court has discretion to grant leave to do so, subject to certain conditions. (§ 2034.610.) The party must file a motion to augment or amend "at a sufficient time in advance of the time limit for the completion of discovery . . . to permit the deposition of any expert to whom the motion relates to be taken within that time limit." (*Ibid.*) In "exceptional circumstances," however, the court has discretion to permit the motion to be made at a later time. (*Ibid.*) Other conditions include that the trial court must consider the extent to which the opposing party has relied on the expert witness list (§ 2034.620, subd. (a)); must determine that the opposing party will not be prejudiced (*id.*, subd. (b)); must determine that either the moving party exercised reasonable diligence in its prior expert witness designation and disclosure regarding testimony, or the moving party's failure to make the expert designation or disclose the additional expert evidence was the result of mistake, inadvertence, surprise, or excusable neglect and the moving party promptly moved to augment or amend and promptly served the opposing parties with a copy of the proposed expert witness designation or additional disclosure (*Id.*, subd. (c).)

The importance the Legislature attached to timely completion of expert witness discovery is shown in the mandate in section 2034.300 to exclude expert evidence under certain conditions. Upon the objection of a party who has complied with the discovery statute, section 2034.300 requires the trial court to "exclude from evidence the expert opinion of any witness that is offered by any party who has *unreasonably failed*" *to comply* with the discovery statute requirements to list that witness as an expert (§ 2034.260, italics added), submit an expert witness declaration for the expert, produce reports and writings of the expert (§ 2034.270), or make the expert available for a deposition (§ 2034.410 et seq.).

This is the basis upon which the trial court excluded Calef's post-deposition inspection report and DVD and his related testimony. The trial court found that plaintiff unreasonably failed to comply with discovery statute requirements to produce reports and

writings of expert witnesses in a timely manner. (§§ 2034.300, 2034.270.) The record shows that the trial court had ample basis for its finding.

The timing of plaintiff's disclosure of Calef's post-deposition evidence was inconsistent with the purpose of the expert witness discovery statute to give fair notice of what the expert will say at trial so that the parties may properly prepare for trial. (*Bonds v. Roy*, *supra*, 20 Cal.4th at pp. 147-148.) Plaintiff offered no information that would explain his seeming lack of diligence in assuring Calef's post-deposition evidence was generated and submitted to defendant prior to the final pretrial conference.[2] Plaintiff made no claim of mistake, inadvertence, surprise or excusable neglect that would justify the delay in providing the evidence.

At the hearing on defendant's motion to limit Calef to his deposition testimony, the trial court asked why none of the facts plaintiff's counsel was presenting in argument were included in plaintiff's opposition to defendant's motion. Plaintiff's counsel responded that, as soon as he found out about Calef's post-deposition evidence, he sent defendant's attorney email notice on Saturday, October 16, stating what Calef's testimony regarding the post-deposition evidence was going to be and offering to make Calef available for a second deposition at defendant's convenience. On Monday, October 18, plaintiff's counsel filed the notice with the court and sent the DVD to defendant's attorney by overnight mail. He received no response from defendant. Three days later, on October 21, plaintiff's counsel sent another email "offer" for further deposition and disclosure by Calef and express-mailed another copy of the DVD with a note that he had not yet received a response from defendant. Plaintiff's counsel informed the trial court that he never received a response from defendant. When the trial court questioned plaintiff's counsel about the reason for the late submission, plaintiff's counsel

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[2] The record shows that Calef knew as early as June that trial was set to begin in October, but that he did not complete his post-deposition inspection and his DVD report until October 14, one day prior to the final pretrial conference and less than two weeks prior to trial.

told the trial court that "these are all developments since the final pretrial conference." Counsel said that "this was way before trial started."

The trial court then announced that it would stand by its tentative ruling to grant defendant's motion. The court stated: "To say there were efforts after the final pretrial conference that were, quote, way before trial started, I think mistakes the meaning of a final pretrial conference. The efforts that the plaintiff made at the eleventh hour here would have been significant if taken months and months ago and had they been accompanied by, for example, an offer to pay for the cost of the second deposition [of Calef]."

Plaintiff claims his last-minute notice was reasonable because he gave notice within a day after Calef submitted the new evidence to him and he offered to make Calef available for a second deposition before trial. He cites *Boston v. Penny Lane Centers, Inc.*, *supra*, 170 Cal.App.4th 936 in which the court determined a similar course of action was reasonable and admitted the expert's untimely reports. (*Id*. at pp. 953-954.) Plaintiff's reliance on *Boston* is misplaced. Both the reviewing court and the trial court relied on facts quite different from the circumstances here of plaintiff's offer of new expert evidence essentially on the eve of trial.

In *Boston*, in response to the defendant's demand, the plaintiff timely submitted her expert witness designation of two physician experts and their declarations (§§ 2034.210, subd. (c), 2034.230, subd. (b), 2034.260). (*Boston v. Penny Lane Centers, Inc.*, *supra*, 170 Cal.App.4th at p. 953.) The defendant chose not to depose the plaintiff's experts and not to designate any experts for its case. No reports by the plaintiff's experts existed at that time, but she submitted each report the day she received them. The time of submission was slightly over a month after the statutory due date, but at least a week before the final pretrial conference on the Friday before the Monday when the trial was to begin. (*Id.* at p. 949.) The defendant did not dispute that the reports were not in existence as of the due date. However, the defendant filed a motion in limine to exclude the reports and the associated expert testimony on the basis that the plaintiff had failed to produce the reports within the time required by statute. At the hearing on the motion,

however, the trial court found that the plaintiff's submission of the reports was untimely, but it was reasonable, in that the plaintiff submitted them as soon as she received them. The trial court ordered the plaintiff to make her experts available for deposition during the intervening weekend before the start of trial. The defendant did not depose either expert. At trial, both experts offered their opinions based upon the reports. (*Ibid.*)

The *Boston* court affirmed the trial court's admission of the late-filed expert reports under the specific facts of the case. The court included the caveat that "[w]e do not suggest that a party's conduct with regard to production of expert reports and writings is necessarily reasonable as long as the opposing party is given an opportunity to depose the expert. Rather, the opportunity for meaningful deposition is one of the circumstances the trial court should consider when making the reasonableness determination." (*Boston v. Penny Lane Centers, Inc.*, *supra*, 170 Cal.App.4th at p. 954.) The *Boston* court emphasized the responsibility a party has to comply with the expert witness evidence statutory scheme, including its timeliness requirements. The court stated that section 2034.300 "empowers the court to exclude the expert opinion of any witness offered by a party who has *unreasonably* failed to produce expert reports and writings as required by section 2034.270. (§ 2034.300, subd. (c).) . . . [A] party who fails to instruct its expert to create all reports and writings before the specified date does so at its own risk." (*Boston*, *supra*, at p. 952.) In the instant case, plaintiff apparently failed in this regard and the risk materialized.

Plaintiff contends that Calef's statements at his deposition that he planned to do more investigation afterward constituted sufficient timely notice of his anticipated trial testimony. Plaintiff also claims that his prompt notice after he learned of the new evidence from Calef, together with his offer of a prompt second deposition, constituted reasonable compliance with expert witness discovery requirements. The case law plaintiff relies upon, however, does not support his contentions. Rather, the cases support the trial court's exclusion of Calef's post-deposition evidence on the basis that notice to defendant was unreasonably untimely.

In *Easterby v. Clark* (2009) 171 Cal.App.4th 772, the court explained that "[t]he overarching principle in *Kennemur*, *Jones*, and *Bonds* [identified *post*] is clear: a party's expert may not offer testimony at trial that exceeds the scope of his deposition testimony *if* the opposing party has no notice or expectation that the expert will offer the new testimony, or *if* notice of the new testimony comes at a time when deposing the expert is unreasonably difficult." (*Id.* at p. 780.) Based upon the record here, the trial court could reasonably conclude that deposing Calef a second time just days before trial would be unreasonably difficult.

In *Kennemur v. State of California* (1982) 133 Cal.App.3d 907, the court limited the expert's testimony on a subject based upon the facts that the appellant failed to disclose the expert's expected testimony on the subject at the expert's deposition or in writing prior to trial as required by the discovery statute. (*Id.* at pp. 918-919.) All Calef disclosed at his deposition was that he intended to do more investigation. Like the appellant in *Kennemur*, plaintiff did not disclose the general substance of Calef's anticipated trial testimony regarding the further investigation through Calef's deposition testimony or, on the eve of trial, in writing in accordance with the discovery statute. Contrary to plaintiff's assertion, having no reason for the very late disclosure, plaintiff's disclosure was tantamount to providing no disclosure prior to trial. (See § 2034.260, subd. (c).)

In *Jones v. Moore* (2000) 80 Cal.App.4th 557, the court stated that "[w]hen an expert deponent testifies as to specific opinions and affirmatively states those are the only opinions he intends to offer at trial, it would be grossly unfair and prejudicial to permit the expert to offer additional opinions at trial." (*Id.* at p. 565.) Plaintiff argues, in effect, that defendant was not prejudiced in that Calef did *not* state at his deposition that the opinions he was giving at deposition were the only opinions he intended to offer at trial. But merely stating that he intended to do post-deposition testing did not leave the door open for admission of other opinion testimony at the time of trial, no matter when or whether he proffered any. Given that all pretrial deadlines and proceedings had occurred prior to plaintiff's disclosure, defendant had no reason to believe that Calef would offer

any opinions except those he expressed at his deposition. Consequently, as the *Jones* court held under the facts in that case, admitting the new expert testimony evidence would have been grossly unfair and prejudicial to defendant.

In *Bonds v. Roy*, *supra*, 20 Cal.4th 140, the court affirmed that the trial court properly excluded the expert's testimony as to the standard of care when it was offered at trial, in that the appellant had unreasonably failed to make the statutorily-required pretrial disclosure for the expert in a timely manner. (*Id.* at pp. 146-148.) The appellant submitted a timely declaration for the expert, but it did not include the standard of care as part of the general substance of the expert's expected trial testimony. The appellant did not move to amend the declaration prior to trial. As a result, at the time during trial when appellant proffered the testimony, the opposing party lacked "a fair opportunity to prepare for cross-examination or rebuttal" as to any testimony of the expert regarding the standard of care. (*Id.* at p. 147.) While plaintiff did not wait until after the trial began to give notice of the new evidence, waiting to the last hour before trial, so to speak, was sufficient for the trial court to determine that defendant lacked "a fair opportunity to prepare for cross-examination or rebuttal." (*Ibid.*)

In *McCoy v. Gustafson* (2009) 180 Cal.App.4th 56, at a pretrial motion hearing, the trial court found that the plaintiff's expert had been unprepared for his first deposition and excluded additional expert evidence, despite the plaintiff's request made on the eve of trial for a second deposition of the expert. (*Id.* at p. 98.) The *McCoy* court concluded that there was "no abuse of discretion in the trial court implicitly denying this request," in that the plaintiff failed to demonstrate diligence "warranting a reopening of discovery for [the plaintiff's expert] to develop a new opinion on the eve of trial." (*Ibid.*) The facts here show that plaintiff failed to demonstrate diligence in assuring timely notice of the evidence from Calef's post-deposition inspection. The trial court's exclusion of testimony by Calef regarding his post-deposition investigation and DVD was consistent

with "'[o]ne of the principal purposes of discovery[,] . . . to do away "with . . . surprise at the trial."'" (*McCoy v. Gustafson*, *supra*, 180 Cal.App.4th at p. 95.)[3]

In sum, plaintiff's conduct with respect to proffering Calef's post-deposition evidence "'failed to comply with either the letter or the spirit of'" the discovery statute. (*Dozier v. Shapiro* (2011) 199 Cal.App.4th 1509, 1524.) The trial court acted as authorized by the discovery statute in excluding the evidence and, thus, the court did not abuse its discretion. (*Boston v. Penny Lane Centers, Inc.*, *supra*, 170 Cal.App.4th at p. 950.)

In any event, any error in excluding the additional evidence from Calef was harmless error. Calef testified regarding his active participation in and documentation of defendant's inspection of the vehicle on May 13, 2010.[4] He testified that he never heard

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[3] Plaintiff's reliance on two other cases is also misplaced. In *Whitehill v. United States Lines, Inc.* (1986) 177 Cal.App.3d 1201, the reviewing court affirmed the admission of an expert's testimony about testing he performed three weeks after the trial began, where the trial court first offered to recess for the opposing party to depose the expert and obtain rebuttal evidence. (*Id.* at p. 1210.) The reviewing court found no prejudice in the ruling, in that the opposing party "was given every opportunity to recover from any disadvantage occasioned by the surprise" but did not do so. (*Ibid.*) In *Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, the reviewing court found no prejudice in the admission of testimony by plaintiff's previously-deposed expert which was based on a mathematical analysis the expert obtained more than a month after trial began. The trial court had the analyst appear for voir dire on foundational issues and, from questions to the analyst, the court determined that the opposing party could obtain a similar analysis without a trial continuance. (*Id.* at pp. 1259-1262.) Neither *Whitehill* nor *Williams* involves circumstances similar to those in the instant case.

[4] At trial, Calef testified that, in preparation for giving his opinions, he reviewed the vehicle's repair history, several depositions, including depositions of plaintiff and of defendant's service personnel. He also stated that he was present when defendant inspected the vehicle.

In response to questions by plaintiff's counsel, Calef described specific tests defendant performed in its inspection. Calef testified that he did not remember hearing any abnormal noises at that time. During defendant's inspection, Calef observed what defendant's expert was observing, viewing the vehicle on the ground and from underneath when it was on a rack, and he took photos. Calef participated by moving the gear shift with the vehicle running while stationary. During the inspection, Calef

the noises that plaintiff had complained about to defendant and which were the basis for the allegations in the lawsuit. He testified that he based his opinion that the driveshaft was defective on the grease around the seal on a joint in the shaft and the slinging pattern of the grease underneath the vehicle. The jury determined that plaintiff's evidence, including Calef's opinions, did not prove that a defect existed in the vehicle. Plaintiff's counsel told the trial court that Calef's post-deposition testimony did not include any new opinions, but only additional facts to support the opinions Calef expressed at his deposition. Thus, there was no reasonable probability that plaintiff would have obtained a more favorable result if the trial court had admitted Calef's post-deposition evidence.

C. ***Admission of Prior Conviction Evidence***

Plaintiff next contends that the trial court erred in admitting evidence of plaintiff's two prior felony convictions and the error required reversal, in that plaintiff was severely prejudiced by the evidence. Plaintiff's motion in limine sought to exclude evidence of plaintiff's convictions of drug possession and assault. One conviction was over 10 years old; the other was over 20 years old and occurred when plaintiff was a juvenile. Plaintiff argued that the evidence was irrelevant (Evid. Code, § 350), was more prejudicial than probative (*id.*, § 352) and an improper use of character evidence of honesty or veracity to determine plaintiff's credibility (*id.*, § 788).

The trial court exercised its discretion under Evidence Code section 352 in denying plaintiff's motion in limine to exclude evidence of his felony convictions. However, the court strictly limited the questions defendant could ask to whether plaintiff had been convicted of the specified felony on the specified date.

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observed oil around a seal indicating that there was excessive heat in a joint in the drive shaft which he said was a sign that there was a bind somewhere in the shaft.

On cross-examination, Calef testified that, during the 16-mile test drive, he did not recall hearing any drive shaft noises. He repeatedly testified that he had never heard the noises plaintiff complained about to defendant. Calef said that his opinion that there was a defect in the drive shaft was based upon his observation of the oil around the seal and the slinging pattern of the grease on the underside of the vehicle.

In his opening brief, plaintiff includes no argument supported by legal authority or citation to the record that the trial court erred in allowing testimony about the existence of the two convictions. Plaintiff only briefly raised the issue as part of the discussion under a heading regarding expert testimony, as follows: "[T]he prejudice is further exacerbated by the erroneous introduction of Mr. Guillermo's prior criminal convictions. While the trial court acknowledged the error,[5] it failed to consider the effect of the error in light of its other erroneous rulings . . . . Given the trial became one of character, not of fact, Respondent's ability to introduce, remote criminal convictions, unrelated to any aspect of Mr. Guillermo's veracity of the case, severely prejudiced Mr. Guillermo." Where a party's brief presents an argument without citation of authorities (*People v. Stanley* (1995) 10 Cal.4th 764, 793) or without citation to the record (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115), the reviewing court may treat the contention as forfeited. We, therefore, treat the issue of the admissibility of plaintiff's prior felony convictions as forfeited by plaintiff. (*Boyle v. CertainTeed Corp*. (2006) 137 Cal.App.4th 645, 650.)

Even if assuming arguendo the issue is not forfeited, we agree with defendant's assertion that the trial court did not abuse its discretion in allowing testimony about the two convictions subject to the conditions the court imposed. Evidence Code sections 352 and 788 give a trial court discretion to admit felony impeachment evidence, by weighing the prejudicial effect against the probative value of the evidence.[6] (*Robbins v. Wong*

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[5] Plaintiff's reference to the trial court acknowledging the error is not followed by a citation to the record. We note that, in the statement of facts, plaintiff asserts that "the court stated the issue of Mr. Guillermo's criminal convictions 'was harmless error.'" When read in context, the court said that, if there was any error, it was harmless.

[6] Evidence Code 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."

(1994) 27 Cal.App.4th 261, 274.) Here the trial court weighed the probative value against the probability of undue prejudice pursuant to Evidence Code section 352. The court also limited the use of the felony conviction evidence by defendant to minimize any prejudicial effect.

DISPOSITION

The judgment is affirmed. Defendant shall recover its costs on appeal.

JACKSON, J.

We concur:

WOODS, Acting P. J.

ZELON, J.

Evidence Code 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.