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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

STEVEN WAYNE KEEFER et al., Plaintiffs and Appellants, v. HYUNDAI MOTOR AMERICA, Defendant and Respondent.	B276557 (Los Angeles County Super. Ct. No. BC580805)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ruth Ann Kwan, Judge. Affirmed.

Rosner, Barry & Babbit, Hallen D. Rosner and Shay Dinata-Hanson; O'Connor & Mikhov and Steve Mikhov for Plaintiffs and Appellants.

Bowman and Brooke, Brian Takahashi and Jennifer N. Hinds for Defendant and Respondent.

Plaintiffs and appellants Steven Wayne Keefer and Patricia Ann Nelson Keefer (the Keefers) appeal a judgment on a special verdict in favor of defendant and respondent Hyundai Motor America (Hyundai) in a lemon law action involving their 2015 Hyundai Genesis (Genesis or the vehicle).

The issues presented relate to two evidentiary rulings excluding certain evidence proffered by plaintiffs. The trial court disallowed the testimony of Joseph Bartlett (Bartlett) because plaintiffs did not disclose this witness until after the close of discovery, even though they were aware of Bartlett for nearly a year before the discovery cutoff date. The trial court also excluded a work order on the ground it was double hearsay.

We perceive no abuse of discretion in either of these evidentiary rulings and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The alleged defect*.

The Keefers purchased the vehicle in June 2014. Shortly thereafter, Mr. Keefer reportedly began experiencing intermittent acceleration problems whereby the vehicle would not respond immediately to Mr. Keefer pressing on the gas pedal after coming to a stop. Instead, the vehicle allegedly would stall for two to five seconds, "and when the car did kick in, it knocks you to your seat." Mr. Keefer took the vehicle to Hyundai dealers seven times during the first year, but the technicians repeatedly found no "trouble codes" and were unable to duplicate the complained-of defect on a test drive.

2. *The Jabourian work order*.

In addition to taking the vehicle to Hyundai dealerships, the Keefers took the Genesis to an independent automotive

facility, Fremont & Purdon, Inc., where it was examined by Steve Jabourian (Jabourian).

A work order by Jabourian, dated February 18, 2015, stated in relevant part: "Customer states vehicle upon stopping fully will have a 5 second delay when trying to accelerate. Pedal is depressed fully or partially but the engine does not respond. Several occasions rolled in a middle of an intersection and would not move. Happens intermittently at any condition[.] [¶] Check and advise."

The work order continued: "Technician comment: Tested the system and found no fault codes...*test drove several times and experienced the hesitation upon takeoff one time… It seems like the car goes into limp mode for 5 seconds or so then recovers*. In my opinion its [*sic*] a software issue or a sensor is malfunctioning and recovering. Again, no fault codes are set and no warning lights come on in the process. . . . . Recommended to the customer to take it to the dealer for a [*sic*] extensive troubleshooting procedure because it seems to be very irratic [*sic*] and dangerous if it happens at a bad time." (Emphasis added, ellipses in original.)

3. *Pleadings.*

On May 5, 2015, the Keefers filed suit against Hyundai pursuant to the Song-Beverly Consumer Warranty Act (Civ. Code, § 1790 et seq.), the statutory scheme known as California's lemon law (*Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478, 485), as well as under the federal lemon law, the Magnuson-Moss Warranty Act (15 U.S.C. § 2301 et seq.). The complaint alleged, inter alia, that Hyundai failed to remedy the alleged defect after a reasonable number of repair attempts and failed to

issue a refund or replacement vehicle in breach of its statutory obligations.

4. *Bartlett allegedly experiences a three to four second hesitation while driving the vehicle in the summer of 2015.*

In the summer of 2015, after the lawsuit was filed, Mr. Keefer took another vehicle he owned, a GMC Yukon, to a GMC dealer for service. There, he became familiar with Bartlett, a service advisor. Bartlett was considering purchasing a Hyundai automobile for his daughter, and asked Mr. Keefer for his opinion on his Genesis. Mr. Keefer told Bartlett of unresolved issues with the vehicle, specifically, "that the car had . . . an intermittent hesitation and would sometimes be non-responsive when accelerating from a stop." Bartlett offered to drive Mr. Keefer's Genesis for the weekend to see if he could duplicate the problem. Mr. Keefer agreed, and Bartlett drove the vehicle for a weekend in July 2015, from Friday evening through Sunday, and then returned the vehicle to the GMC dealership to be picked up by Mr. Keefer. According to Bartlett, on the Friday evening drive, the vehicle "demonstrated a 3-4 second hesitation between stepping on the gas pedal and accelerating."

5. *The Keefers omitted Bartlett's test drive from their discovery responses, but then sought to add him as a witness on the eve of trial.*

On July 31, 2015, the same month that Bartlett test drove the vehicle for the weekend, the Keefers verified and served their responses to Hyundai's special interrogatories.

Hyundai's special interrogatory no. 2 asked the Keefers to identify all drivers of the subject vehicle to the present date. The Keefers responded that the only individuals who had driven the vehicle were the Keefers as well as any personnel who had driven

the vehicle at a Hyundai authorized repair facility. The Keefers' response did not mention Bartlett.

Hyundai's special interrogatory no. 19 asked the plaintiffs to identify by name, address, and telephone number each person who had observed any nonconformity in the subject vehicle that had not been repaired after a reasonable number of repair attempts. The Keefers did not mention Bartlett, although he allegedly had observed the acceleration defect.

Hyundai's special interrogatory no. 20 asked for details of any instance in which any defect in the Genesis had manifested after the last repair visit at any Hyundai authorized repair facility. The Keefers' response did not mention Bartlett's test drive or his purported duplication of the Keefers' hesitation concern.

On August 10, 2015, Hyundai deposed the Keefers. The deposition did not cover Bartlett's test drive. Hyundai did not ask any questions about Bartlett because he had not been identified as a witness in the Keefers' discovery responses.

On April 4, 2016, one month before the scheduled trial date of May 2, 2016,[1] the Keefers served their response to Hyundai's supplemental interrogatory, which asked the Keefers to supplement their previous interrogatory responses with any information acquired subsequent to the date of their responses. The Keefers' response did not mention Bartlett or his weekend-long July 2015 test-drive.

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[1] Due to calendaring issues, the trial date was continued to May 16, 2016, and thereafter to June 15, 2016.

On April 7, 2016, the Keefers filed a motion in limine to preclude Hyundai from introducing any witnesses or evidence that Hyundai had not disclosed in discovery.

a. *The Keefers' belated identification of Bartlett as a witness they intended to call at trial.*

On May 3, 2016, the Keefers' attorney, Jordan G. Cohen, wrote to Hyundai's counsel that he, Cohen, had "recently discovered the existence of an important witness," namely, Bartlett, a service advisor at a GMC dealership in Oxnard, and that Bartlett had driven the Genesis and had experienced the hesitation issue complained of by Mr. Keefer. Cohen stated he "first had occasion to speak with Mr. Bartlett on April 29, 2016," and he attached a declaration from Bartlett recounting the events of July 2015. Cohen stated he intended to file an amended witness list to include Bartlett, and offered to make Bartlett available for deposition before trial.

b. *Hyundai's objection to the addition of Bartlett to the witness list.*

On May 5, 2015, Hyundai's attorney, Brian Takahashi, responded to Cohen, stating his objection "to your late identification of Joseph Bartlett as a witness. Your letter provides no explanation why plaintiffs didn't disclose Mr. Bartlett before the discovery cutoff. That you didn't speak with him until April 29, 2016 doesn't excuse plaintiffs from their obligations under the Discovery Act." Takahashi's letter set forth the following:

"On July 31, 2015, plaintiffs served verified interrogatory responses. Special interrogatory no. 2 asked plaintiffs to identify all drivers of the subject 2015 Hyundai Genesis. Mr. Bartlett was not identified. Special interrogatory no. 19 asked plaintiffs to

identify by name, address and telephone number each person who had observed any nonconformity which supposedly had not been repaired after a reasonable number of repair attempts. Once again, Mr. Bartlett was not identified. Interrogatory no. 20 asked for the details of any instance where any defect in the subject vehicle had manifested after the last repair visit to any Hyundai repair facility. There was no description of the hesitation allegedly observed by Mr. Bartlett.

"On August 10, 2015, we deposed plaintiffs. We did not ask them any questions about Mr. Bartlett as he had not been identified as a witness in their verified discovery responses.

"On April 4, 2016, plaintiffs served a response to our supplemental interrogatory. Asked to supplement their previous responses with any information acquired subsequent to the date of their responses, plaintiffs did not identify Mr. Bartlett, nor did they disclose any instance where any defect in the subject vehicle had manifested after the last repair visit to any Hyundai repair facility.

"On April 7, 2016, plaintiffs served their motion in limine no. 1. . . . . It asked to exclude all witnesses, evidence or contentions not disclosed in [Hyundai's] discovery. . . . [W]e asked that plaintiffs likewise be prohibited from presenting evidence they did not disclose in discovery. Our opposition was filed on April 11, 2016.

"On April 15, 2016, consistent with Local Rule 3.25 of the Los Angeles County Superior Court rules effective January 1, 2016, we filed our Witness List. This rule requires each party to file a witness list at least 5 days prior to the Final Status Conference. The rule states that failure to exchange and file a Witness List may result in a party 'not being able to call

witnesses, present exhibits at trial, or have a jury trial.' To date, we have still not received any witness list or exhibit list from your office. Accordingly, your statement that you now intend to add Mr. Bartlett to an Amended Witness List is puzzling. We believe plaintiffs have violated the rules by not filing any Witness List to date.

"On April 19, 2016, your expert Darrel Blasjo was deposed. He did not identify Mr. Bartlett during his deposition testimony.

"On April 22, 2016, we appeared for the Final Status Conference in this matter. Our witness and exhibit list had been filed on April 15, 2016.

"On April 26, 2016, we had a Mandatory Settlement Conference. There was no disclosure of Mr. Bartlett in plaintiffs' Mandatory Settlement Conference Statement.

"On Friday, April 29, 2016, you purportedly spoke with Mr. Bartlett for the first time. Yet no effort was made that day or the next 3 days to notify us about Mr. Bartlett.

"On May 3, 2016, it wasn't until about 3:00 pm that we learned about Mr. Bartlett for the first time. No explanation was provided why plaintiffs didn't disclose him in their July 31, 2015 or April 4, 2016 interrogatory responses. That you offer to make him available for deposition now doesn't resolve the prejudice created by plaintiffs' failure to disclose. These cases involve fee shifting statutes. Our discovery is intended to help evaluate the cases before unnecessary fees are incurred. Waiting 9 months to disclose a witness known to your clients behooves [*sic*].

"So Hyundai Motor America declines your request to take Mr. Bartlett's deposition. In fact, [Hyundai] will file its own motion to exclude him."

c. *Trial court denies the Keefers' motion to reopen discovery.*

The Keefers moved to continue the trial and to reopen discovery, to allow for Bartlett's deposition.

On May 11, 2016, the trial court denied the request, stating: "This is someone that your client knew about a year ago. You announced ready for trial. Even at the final status conference you announced ready for trial. The only reason why you are not in trial is because the court was engaged. . . . . [¶] This witness, although you indicate that you personally did not know about it is certainly somebody that your client knew about . . . and is not as if it's someone you recently discovered."

d. *Trial court grants Hyundai's motion in limine to exclude Bartlett.*

Hyundai filed a motion in limine to preclude Bartlett as a witness on the ground that the Keefers did not identify him as a witness until May 3, 2016, over 30 days after the discovery cut-off.

On the first day of trial, the trial court granted the motion in limine. The court explained: "For the record, I find that there is a discovery violation. I have to tell you, I've been doing civil now for nine years and I don't even recall a time when I really excluded anybody because often-times you can cure it by deposition or whatnot, but the reason why I'm doing it this time is because . . . this is the type of case where it involved fee [shifting] statutes and if they had known about this individual earlier on, it may have affected their . . . settlement strategy, and that is one reason.

"The second reason is that there is really no reason the Keefers didn't know. It is not a situation [in which] the guy drove

the car for ten minutes and . . . where he didn't even know the guy's name, but he loaned the car to the guy for the weekend. There is no way a reasonable person . . . would believe that he does not know the name of the guy he loaned the car to. This was a private transaction. He happened to have met the guy at the dealership – the GMC . . . repair place. It is not reasonable for the defendant to have discovered this on their own. For all those reasons, I'm going to exclude him."

Following opening statements, the Keefers' counsel again raised the issue of Bartlett's exclusion. The trial court reiterated its earlier ruling. The court stated that Hyundai's defense all along had been that nobody else had confirmed the acceleration problem, "it has been their entire defense, and you choose to sandbag them at the last minute with that information when that is the crucial defense, and if you had this information and you could have and should have given that to them early on, that may change the evaluation on their case . . . ."

6. *Hyundai's motion in limine to exclude hearsay statements by Jabourian.*

Prior to trial, Hyundai also moved in limine for an order precluding hearsay statements by Jabourian, arguing that Jabourian had disavowed certain statements contained in the February 2015 work order, the Keefers did not designate Jabourian as an expert, Jabourian had not been deposed, and the work order was inadmissible hearsay.

The motion in limine was supported by Jabourian's declaration. He stated: "6. During the test drive I did not experience any hesitation that I felt was significant. There was no objective measurement of any hesitation during the test drive. The hesitation I felt was only milliseconds of delay which is very

common in vehicles with electronic throttle. It was very slight and did not cause me any concern for my safety. [¶] 7. *The words in the Technician Comment section of the work order 'It seems like the car goes into limp mode for 5 seconds or so then recovers' were Mr. Keefer's words*. [¶] 8. As my work order indicates, I was only able to get a slight hesitation one time during the 20 mile drive and there were no fault codes. As I am not familiar with the Genesis vehicle and how it is designed, I am not certain that what I felt was anything more than the way the vehicle was designed." (Italics added.)

The Keefers opposed the motion in limine, arguing the work order and Jabourian's comments to Mr. Keefer would be admissible at trial under various exceptions to the hearsay rule. If Jabourian were to testify contrary to the statements on the work order, then the work order and his comments to Mr. Keefer would be admissible as prior inconsistent statements. (Evid. Code, § 1235.) If Jabourian were to testify consistent with the statements on the work order, Hyundai would seek to contradict those statements with Jabourian's later declaration, so the work order would be a prior consistent statement. (Evid. Code, § 1236.) If Jabourian were unable to recall, the work order would constitute a written statement regarding events that were fresh in his mind at the time the work order was created. (Evid. Code, § 1237.)

7. *Trial and verdict*.

a. *Testimony*.

The witnesses at trial included: Mr. Keefer, who testified that the vehicle intermittently hesitated when he sought to accelerate after coming to a stop; Mrs. Keefer, who testified she drove the vehicle five or ten times but never experienced a

hesitation; Darrell Blasjo, the Keefers' expert, who did not experience any abnormal hesitation while he test drove the vehicle and didn't know "the cause of these unintended delays"; and Jabourian, who testified that he experienced "a very slight, little like eighth of a second hiccup upon takeoff." Jabourian explained that the statement in his work order that " 'the car goes into limp mode for *five seconds*' " was based on Mr. Keefer's description of the problem, not on Jabourian's experience in test driving the vehicle. (Italics added.)

b. *Trial court excluded the Jabourian work order but allowed the Keefers to impeach Jabourian with that document.*

During Jabourian's testimony, the Keefers' attorney sought to introduce the work order (exhibit 32) into evidence, stating a foundation had been laid for its admission as a business record.

The trial court ruled the document was inadmissible because it contained "hearsay within hearsay," but allowed Jabourian to use the work order to refresh his recollection. Although the work order was not admitted as an exhibit, the Keefers were allowed to impeach Jabourian with the work order, including reading the contents of the work order to the jury.

c. *Verdict.*

The jury returned a special verdict. It determined, inter alia, that the vehicle did not have a defect covered by the warranty that substantially impaired the vehicle's use, value, or safety to a reasonable buyer in the Keefers' position; the subject vehicle was of the same quality as those generally acceptable in the trade; and the vehicle was fit for the ordinary purposes for which such goods are used.

The Keefers filed a timely notice of appeal from the judgment.

CONTENTIONS

The Keefers contend: the broad exclusion of Bartlett as a witness gutted their case and deprived them of a fair trial; the trial court erred in excluding the Jabourian work order; and the trial court's errors were cumulatively prejudicial.

DISCUSSION

1. *Standard of appellate review*.

"Trial court rulings on the admissibility of evidence, whether in limine or during trial, are generally reviewed for abuse of discretion." (*Pannu v. Land Rover North America, Inc.* (2011) 191 Cal.App.4th 1298, 1317.) The trial court's " 'error in excluding evidence is grounds for reversing a judgment only if the party appealing demonstrates a "miscarriage of justice"—that is, that a different result would have been probable if the error had not occurred.' " (*Ibid.*)[2]

2. *No abuse of discretion in Bartlett's exclusion at trial.*

The record on appeal establishes the following: In July 2015, Mr. Keefer entrusted the Genesis to Bartlett, who was a service advisor at the GMC dealership that serviced his Yukon. Mr. Keefer told Bartlett that the acceleration problem that he had been experiencing with the vehicle had not been resolved. With Mr. Keefer's permission, Bartlett drove the Genesis in his personal capacity, not as a service advisor. Bartlett drove the Genesis from Friday evening through Sunday, and then returned

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[2] Evidence Code section 354 states in relevant part that a "verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous exclusion of evidence unless the court which passes upon the effect of the error or errors is of the opinion that the error or errors complained of resulted in a miscarriage of justice."

it to the GMC dealership for Mr. Keefer to pick it up. According to Bartlett, on the Friday evening drive, the vehicle "demonstrated a 3-4 second hesitation between stepping on the gas pedal and accelerating."

However, the Keefers omitted Bartlett and his weekend test drive from their July 31, 2015 interrogatory responses and their supplemental interrogatory responses, and thus they were not questioned about Bartlett in deposition. Finally, more than nine months after Mr. Keefer entrusted the Genesis to Bartlett for a weekend, and beyond the discovery cutoff date, on May 3, 2016, the Keefers' attorney emailed Hyundai that he had "recently discovered the existence of an important witness," namely, Bartlett, and offered to make Bartlett available for deposition.

Under these circumstances, the trial court's exclusion of Bartlett as a witness at trial was not an abuse of discretion. "[E]xclusion of a party's witness for that party's failure to identify the witness in discovery is appropriate only if the omission was *willful* or a violation of a court order compelling a response. [Citations.]" (*Mitchell v. Superior Court* (2015) 243 Cal.App.4th 269, 272, italics added; see generally, Weil & Brown et al., Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2017) § 8:2396 [exclusion of undisclosed witnesses].) A failure "may be deemed willful if the party understood its obligation, had the ability to comply and failed to comply." (*Morgan v. Southern Cal. Rapid Transit Dist.* (1987) 192 Cal.App.3d 976, 984, disapproved on other grounds by *Schwab v. Rondel Homes, Inc*. (1991) 53 Cal.3d 428, 434.) Here, the trial court found "that there is a discovery violation," and that the violation was willful, in that "[t]his is someone that your client knew about a year ago." The

Keefers, as the party on whom the interrogatories were served, had the burden of showing that their failure to comply with discovery was not willful. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 788; see generally, Weil & Brown et al., *supra*, § 8:1054 [in answering interrogatories a party must furnish information from sources within the party's control].) The Keefers did not meet their burden.

Although the Keefers contend the exclusion of Bartlett eviscerated their case, the Keefers failed to show good cause for not having revealed Bartlett to Hyundai nine months earlier. To be sure, Bartlett's weekend-long test drive was *not* newly discovered evidence. Because Mr. Keefer had personally entrusted the Genesis to Bartlett in July 2015, Bartlett's weekend drive was clearly within Mr. Keefer's personal knowledge. Although the Keefers' attorney advised Hyundai in May 2016 that *he* had only "recently discovered" the existence of witness Bartlett, the Keefers themselves were fully aware of Bartlett at the time they verified their interrogatory responses on July 31, 2015, and at all times thereafter.

" ' "An abuse of discretion occurs if, in light of the applicable law and considering all of the relevant circumstances, the court's decision exceeds the bounds of reason and results in a miscarriage of justice." ' " (*Espejo v. The Copley Press, Inc.* (2017) 13 Cal.App.5th 329, 378.) Here, the trial court excluded Bartlett as a trial witness due to "an abuse of discovery by the plaintiff[s]." The trial court determined that the Keefers' discovery violation was willful, in that "[t]his is someone that your client knew about a year ago." The circumstances, set forth in some detail above, support the trial court's finding that the Keefers "cho[se] to sandbag [Hyundai] at the last minute."

Accordingly, the trial court acted within the bounds of its discretion in excluding Bartlett at trial.[3]

In a related argument, the Keefers also contend the trial court erred in excluding Bartlett even for purposes of rebuttal or impeachment. The record reflects that during trial, the Keefers' counsel called Frank Burns, service manager at Hyundai's authorized repair facility in Oxnard, and asked Burns on direct examination: "At some point in time, you actually instructed someone within the dealership to not reveal that this problem had been repeated?" Burn responded, "No." Burns added, with respect to the acceleration or hesitation problem, "[w]e had never experienced it nor duplicated the concern." The Keefers then sought to call Bartlett to impeach Burns; Bartlett allegedly would have testified he advised Burns that he experienced a 3 to 4 second hesitation while driving the car in July 2015, and that Burns told him not to "get involved." The trial court denied the Keefers' request to call Bartlett on the ground that it had already excluded Bartlett's testimony. The trial court observed this was "a backdoor way of getting Bartlett's testimony through."

We agree. Although the Keefers contend the door had been opened to Bartlett's testimony, as the trial court recognized, it was *the Keefers* who attempted to open that door by their questioning of Burns during their case-in-chief. The trial court explained that after it had already barred Bartlett's testimony,

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[3] The Keefers' reliance on *R & B Auto Center, Inc v. Farmers Group, Inc*. (2006) 140 Cal.App.4th 327 is misplaced. There, the trial court abused its discretion in excluding the testimony of three witnesses who were not discovered until after the discovery cutoff date. (*Id*. at pp. 357-358.) Here, Bartlett was known to the Keefers for nine months prior to the discovery cutoff date.

"the problem is this, now you're putting them in a position to call Bartlett if at all to either dispute what was said or to say that the conversation didn't quite happen this way or that way when I already excluded a witness that I found to be an abuse of discovery by the plaintiff." The Keefers have not cited any authority for the proposition that notwithstanding the trial court's exclusion of Bartlett due to the Keefers' willful violation of their discovery obligations, they were entitled to call Bartlett as a witness in order to controvert Burns's testimony.

3. *No abuse of discretion in exclusion of the Jabourian work order.*

As indicated, at trial the Keefers sought to introduce the Jabourian work order into evidence, stating a foundation had been laid for its admission as a business record. (Evid. Code, § 1271.)[4] The trial court ruled the work order was inadmissible because it contained "hearsay within hearsay."

As set forth above, Jabourian's work order (beginning with the words "Customer states . . . ") included statements that Mr. Keefer had made to Jabourian. When there are multiple layers of hearsay, the question is "whether each 'layer' of hearsay is dispelled by a hearsay exception." (*Cheal v. El Camino Hospital*

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[4] Evidence Code section 1271, the business records exception to the hearsay rule, states: "Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if: [¶] (a) The writing was made in the regular course of a business; [¶] (b) The writing was made at or near the time of the act, condition, or event; (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and [¶] (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness."

(2014) 223 Cal.App.4th 736, 756.) Although a work order, prepared in the regular course of business, under certain circumstances may fall within the business records exception, the Keefers failed to make a proper showing as to the admissibility of the Jabourian work order in its entirety. In arguing the matter in the court below, the Keefers' counsel merely argued the work order was admissible as a business record. Counsel did not argue either that (1) Mr. Keefer's statement to Jabourian was not being offered for its truth and therefore was not hearsay, or (2) that Mr. Keefer's statement to Jabourian was admissible under an exception to the hearsay rule.

However, even assuming the Jabourian work order was admissible as a business record, a conclusion that we do not reach, the Keefers cannot demonstrate that they were prejudiced by its exclusion. Although the work order was not admitted as an exhibit, the Keefers were allowed to impeach Jabourian with the work order, including by reading the contents of the work order to the jury. The reporter's transcript reflects that Jabourian was questioned in detail by the Keefers on direct examination regarding the contents of the work order and the circumstances that led to its creation. Thus, the jury was fully advised of the apparent discrepancy between Jabourian's remark in the work order that "it seems like the car goes into limp mode for 5 seconds or so then recovers," and Jabourian's trial testimony attributing that statement to Mr. Keefer.

4. *No merit to claim of cumulative error.*

Our conclusion that the Keefers have failed to demonstrate any evidentiary error disposes of their contention that the trial court's errors were cumulatively prejudicial.

DISPOSITION

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

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

LAVIN, J.

CURREY, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.