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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

MICHELLE MADRID et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES, Defendant and Respondent.	B235836 (Los Angeles County Super. Ct. No. NC053472)

APPEAL from a judgment of the Superior Court of Los Angeles County. Joseph E. Diloreto. Affirmed.

Law Office of Rosalinda V. Amash and Rosalinda V. Amash; Law Office of Matthew P. Fletcher and Matthew P. Fletcher for Plaintiffs and Appellants.

Carmen A. Trutanich, City Attorney and Amy Jo Field, Deputy City Attorney for Defendant and Respondent.

Michelle Madrid (Madrid); Flavio Fernandez (Flavio) and Alyssa Fernandez, by and through their guardian ad litem Mary Munoz (collectively "appellants") appeal from a final judgment in favor of respondent City of Los Angeles (City) entered after a jury trial on appellants' claims against the City for negligence, dangerous condition of property, and wrongful death. Appellants contend that juror misconduct deprived appellants of a fair trial, and that the verdict was not supported by substantial evidence. We find no error, therefore we affirm the judgment.

FACTUAL BACKGROUND

On September 8, 2007, Madrid was crossing the street at the intersection of Sepulveda Street and Marshall Court with her three children. Madrid's five-year-old son, Flavio, pushed 14-month-old Mia Benavidez (Mia) in a stroller, while Madrid's other daughter, Alyssa, walked.

Madrid testified that before she stepped into the street, she looked and did not see any cars coming down Sepulveda Street. When she and her children were almost at the midway point of Sepulveda Street, Madrid saw a vehicle turning right from Gaffey Street, westbound on Sepulveda Street. Madrid said that once she saw the car headed toward them, she and the children "froze" in the middle of the street. She said there was nothing they could do to get out of the way.

The vehicle, driven by Michael Gibson (Gibson), struck Mia and Flavio, killing Mia and seriously injuring Flavio.

Gibson testified that he had exited the freeway at Gaffey Street and made a right turn onto Sepulveda Street to head west. There was a downhill grade that leveled out at Marshall Court, then started heading up. Gibson said that when he hit the bottom of the hill at Marshall Court and started the uphill ascent, the sun blinded him. Gibson said he never saw Madrid or her children crossing in front of him. Gibson estimated that he was traveling approximately 30 to 35 miles per hour at the time of the accident. Gibson claimed that if there had been a stop sign at the intersection, the accident would not have happened. Gibson testified that there were no signs on Sepulveda Street warning him of possible pedestrians, the street's downhill grade, or that he was entering a school zone.

Steven Nelms (Nelms), Gibson's passenger, testified that he could not see because he was "blinded" by the sun at the bottom of Sepulveda Street. Nelms reiterated that there were no signs on Sepulveda Street warning them of possible pedestrians, the street's downhill grade, or that they were entering a school zone.

PROCEDURAL HISTORY

Appellants timely filed a government tort claim on January 12, 2008, within six months after the incident, in compliance with Government Code section 911.2. Pursuant to Government Code section 912.4, the claim was denied by operation of law 45 days later, on February 17, 2008.

On September 8, 2009, appellants filed a complaint against the City, alleging that the City maintained the intersection of Sepulveda Street and Marshall Court in a dangerous condition. Appellants' complaint was timely filed within two years after the claim was denied by operation of law, pursuant to Government Code section 945.6.

The complaint identified physical characteristics of the roadway that contributed to the alleged dangerous condition. For example, the complaint alleged that "glare, grade of the roadway, excessive speed, limited vision, and limited ability to see and react appropriately to pedestrians at or near the intersection of Sepulveda St. and Marshall Ct. were physical features of the location that made it dangerous." The complaint also mentioned "a steep grade," and "inability to slow or stop a vehicle."

The case proceeded to a jury trial beginning on April 25, 2011. On May 4, 2011, the jury returned a special verdict in favor of the City. The jury was asked, "Was the intersection of Sepulveda Street and Marshall Court in a dangerous condition at the time of the incident?" The response was "No." The court polled the jurors and 10 jurors were in favor of the finding that no dangerous condition existed at the time of the accident.

After the trial, appellants' counsel filed a motion for new trial, arguing that the jury foreperson, Juror Helton (Helton), made false statements during voir dire and committed misconduct during deliberations. Specifically, while Helton revealed that she is an attorney, appellants argued that she concealed bias and conflicts which should have been disclosed, such as an affiliation with the Los Angeles City Attorney's Office and

defense-related work. In addition, appellants argued that Helton was chosen as juror foreperson because of her legal training; that she improperly instructed the other jurors on the law; and that she discussed various matters with the jury that should not have been discussed, such as the City's resources, budget, laws and regulations. In support of the motion, appellants submitted a declaration of Juror Gressman (Gressman), one of the two jurors who did not agree with the majority. In her declaration, Gressman stated that Helton was chosen as juror foreperson because she is an attorney; that during deliberations Helton "explained 'the law' to the jurors by repeating that the City could not be liable because it did everything it could"; and that Helton and another juror "told us we should not . . . consider the sun because it had nothing to do with the case."

In the motion for new trial, appellants also presented the argument that the evidence was insufficient to support the verdict.

The City opposed the motion. In support of its opposition, the City submitted a counter-declaration from Helton. In her declaration, Helton denied engaging in juror misconduct. She stated that she had volunteered as much relevant information about herself as she could. She volunteered that she had a 20-year career as an attorney; that she had started out as a litigator; that her firm had handled cases adverse to the City; that her husband is a police officer for the City of Torrance; and that through her husband's work, she occasionally meets City attorneys. She also volunteered that she recognized the name of appellants' expert witness, Harry Krueper (Krueper).

Helton denied any other affiliation with the City, stating: "I have never worked for the City of Los Angeles nor do I have any other 'affiliation' with the City of Los Angeles that I am aware of as I sit here today." Helton also explained that she did not want to be chosen as foreperson, but she was asked twice and no other juror appeared to want to take the position. She reluctantly agreed to take the foreperson position after explaining to the other jurors that she was not a law expert and was there as a juror only. Helton denied ever explaining any law to the other jurors, but stated that she advised the jurors that they should look at the jury instructions.

The hearing on appellants' motion for new trial took place on July 21, 2011. After hearing argument, the court took the matter under submission. On July 26, 2011, the trial court issued a minute order denying the motion. The court stated:

> "Court has read and re-read all of plaintiffs' moving papers and those in opposition to said motion and considered the oral argument from both sides. The court finds that there was no misconduct on the part of Juror Helton during voir dire or during jury deliberations. [¶] The motion for new trial is therefore denied."

The court entered judgment for the City on July 27, 2011.

Appellants filed their notice of appeal on September 7, 2011.

DISCUSSION

I. Juror misconduct

A. Standard of review

"A verdict may be vacated, in whole or in part, on a motion for a new trial because of juror misconduct that materially affected the substantial rights of a party. (Code Civ. Proc., § 657, subd. (2).) A party moving for a new trial on the ground of juror misconduct must establish both that the misconduct occurred and that the misconduct was prejudicial. [Citations.] One form of juror misconduct is a juror's concealment of relevant facts or giving of false answers during a voir dire examination. [Citations.]" (*Ovando v. County of Los Angeles* (2008) 159 Cal.App.4th 42, 57.)

A finding of juror misconduct usually raises a rebuttable presumption that the misconduct was prejudicial. (*In re Hamilton* (1999) 20 Cal.4th 273, 295.)

The standard of review for an order on a motion for new trial differs depending on whether the trial court granted or denied the motion for new trial. (*People v. Ault* (2004) 33 Cal.4th 1250, 1260.) The deferential abuse of discretion standard is generally applicable to an order granting a new trial. (*Ibid.*) However, where "the complaining party reasserts, on appeal, the claims previously raised in an unsuccessful new trial motion, the appellate court must employ independent review and judgment to determine if prejudicial trial error occurred." (*Id.* at p. 1261, fn. omitted.) This distinction arises

because different considerations apply when a trial court denies a new trial. An order denying a new trial is not independently appealable. Instead, "the grounds for the unsuccessful motion are assessed on appeal from the underlying final judgment against the complaining party. [Citation.]" (*Ibid.*) As the *Ault* court explained:

> "Accordingly, article VI, section 13 of the California Constitution obliges the appellate court to conduct an independent examination of the proceedings to determine whether a miscarriage of justice occurred. As in any appeal from a final judgment, the reviewing court must determine for itself whether errors denied a fair trial to the party against whom the judgment was entered. As one decision has suggested, it would be a 'non sequitur' to apply more deferential review to a claimed error affecting the fairness of the judgment simply because the complaining party moved unsuccessfully for a new trial on the same ground in the court below. [Citation.]"

(*Ault, supra*, 33 Cal.4th at pp. 1261-1262, fns. omitted.)

"Courts have stressed the particular need for independent review of the trial court's reasons for *denying* a new trial motion in *juror bias* cases. This is because the reviewing court must protect the complaining party's right to a fully impartial jury as an "'"inseparable and inalienable part" of the [fundamental] right to jury trial [(U.S. Const., amend. VI; Cal. Const., art I § 16)]. [Citations.]' [Citations.]" (*Ault, supra*, 33 Cal.4th at p. 1262, fn. omitted.)

Thus, "[w]e review independently the trial court's denial of a new trial motion based on alleged juror misconduct. [Citation.] However, we will '"accept the trial court's credibility determinations and findings on questions of historical fact if supported by substantial evidence."' [Citation.]" (*People v. Gamache* (2010) 48 Cal.4th 347, 396, citing *Ault, supra*, 33 Cal.4th at p. 1263.) "'[T]he trial judge is in the best position to assess the state of mind of a juror or potential juror on voir dire examination. [Citations.]'" (*People v. San Nicolas* (2004) 34 Cal.4th 614, 644.)

The testimony of a single witness may constitute substantial evidence. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.) While conflicting inferences may be drawn from the evidence, the determination of the trial court will be accepted on appeal even

though a contrary determination would likewise be upheld. (*Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871-872.)

B. The trial court did not err in denying appellants' motion for new trial on the ground of juror misconduct

The trial court weighed the competing declarations filed by the parties and concluded that there was no misconduct on the part of Helton during voir dire or during jury deliberations. The court reached this conclusion after reading and re-reading the declarations submitted from both sides.

Because the declarations filed by the opposing sides contradicted each other on the question of whether juror misconduct occurred, the court was required to make credibility determinations. We must accept the trial court's credibility determination if it is supported by substantial evidence. (*People v. Gamache, supra*, 48 Cal.4th at p. 396.) As set forth below, we find that the court's factual determination that no misconduct occurred is supported by substantial evidence.

1. Voir dire

We first discuss appellants' allegations that Helton, the jury foreperson, committed misconduct during voir dire. After conducting posttrial internet research, appellants enumerated several things about Helton's career and her husband's career that appellants claimed should have been revealed during voir dire. In their motion for new trial, appellants argued that Helton failed to disclose the following information:

1. Her practice includes product liability cases where she represents "automotive and machinery companies and component parts suppliers," involving "injuries ranging from minor to catastrophic";

2. She served as in-house counsel for Mitsubishi Motor Corporation where "she managed product liability cases nationwide";

3. She has an affiliation with the Los Angeles City Attorney's Office with whom she has "handled regulatory matters for clients, interfacing and resolving disputes";

4. She has been recognized for her distinguished work and writings in furtherance of the civil defense bar and was the 2007 recipient of a publication award by the Defense

Research Institute (DRI) for an article deemed the "most outstanding defense related article";

5. She was a faculty member of the National Institute of Trial Advocacy;

6. Her Avvo[1] listing includes "Defective/Dangerous Products" as one of her practice areas; and

7. She is married to Lieutenant Jon R. Megeff, the Division Commander of the Traffic and Special Events Division for the City of Torrance. Appellants alleged that one of Megeff's primary duties is to investigate accidents.

This information was submitted to the court in a declaration filed by appellants' attorney, Rosalinda Amash, who had conducted online research regarding Helton. Appellants argued that Helton's failure to disclose the accurate nature of her law practice, and her concealment of alleged biases, prejudiced the parties.

While appellants admit that their attorneys did not ask specific questions to elicit this information, they take the position that this information should have been revealed when the court asked Helton general questions such as whether there was anything that would make it difficult for her to be a juror on this case. The court also asked her whether there was "anything about anything" that would make it difficult for her to give either side a fair trial. Appellants point out that Helton responded in the negative to these questions.

However, in her declaration, Helton denied that she lied or made any false or misleading statements during voir dire. In fact, she stated that she volunteered as much relevant information as she could. She pointed out that she volunteered the following information: (1) she had practiced as an attorney for 20 years; (2) she started her career as a civil litigator; she currently has a broad transactional practice but sometimes litigates for her Japanese clients; (3) she worked on products cases early in her career, and sometimes Caltrans was a co-defendant; (4) the firm she works for, McGuire Woods, sometimes handles matters adverse to the City; (5) her husband is a Torrance police

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[1] "Avvo.com" provides advertising for attorneys.

officer; (6) sometimes through work functions of her husband's, she meets city attorneys, whom she assumes work for the City of Torrance; and (7) she recognized the name of Krueper, appellants' expert witness.

Helton denied appellants' charge that she had an "affiliation" with the Los Angeles City Attorney's Office that she failed to disclose. Helton stated that she disclosed that her firm had once handled a case adverse to the City, and that she had met some city attorneys. She denied any other past or present affiliation with the Los Angeles City Attorney's office. Helton further denied that her husband has ever been a traffic accident investigator or any other type of expert in traffic engineering or accident reconstruction. In fact, Helton stated, in January 2011 he was reassigned to the research and training division of the Torrance police department.

The trial court read the competing declarations of the parties carefully and concluded that no misconduct occurred. Substantial evidence, contained in Helton's declaration, supports this finding. Helton stated that she answered each question in voir dire truthfully and volunteered as much information about her career, and her husband's career, as she could. She denied having a current products liability practice; having any affiliation with the City of Los Angeles; or otherwise withholding any relevant information. This constitutes substantial evidence in support of the trial court's decision. We therefore decline to disturb it. (*People v. Gamache, supra*, 48 Cal.4th at p. 396.)

2. Jury deliberations

Appellants alleged that Helton committed further misconduct during the jury deliberations. First, appellants stated that Helton was chosen as the jury foreperson because of her legal training. Appellants argued that this was misconduct, because Helton was instructed not to use her training and experience as an attorney in any way. Furthermore, appellants stated that Helton: (1) explained the law to the other jurors rather than submitting questions to the court; (2) introduced evidence regarding the City's "resources, budget, law and regulations"; (3) suggested voting the same way would terminate jury deliberations; (4) instructed the jurors to disregard the sun glare issue because it was irrelevant; (5) answered questions from jurors regarding plaintiffs'

counsel's litigation skills and training during jury deliberations; and (6) told other jurors that they were not following the law. Appellants claimed that Helton told the jury that the City could not be liable for a dangerous condition because it did everything it could at the intersection of Marshall Court and Sepulveda Street. This information was contained in the declarations of Rosalinda Amash and Gressman, one of the dissenting jurors.

Helton addressed these accusations in her declaration. Helton stated that many of the jurors did ask her to be foreperson. Helton explained that she initially declined the role because she did not want people to look to her for the law. However, since the jurors asked her again, and no one else seemed to want the job, she reluctantly agreed to take on that position with the caveat that she was not a law expert and was there as a juror only.

Helton stated that, contrary to Gressman's statement in her declaration, at no time did Helton explain the law to the jury. In fact, she claimed that she specifically told the jury that was not her role. She suggested to the other jurors that they should look at the jury instructions together, and passed a note to the court requesting access to blow-ups of the jury instructions that were used in the City's closing arguments. She was informed that the blow-ups were not available, therefore the jurors looked at the packet of jury instructions and passed them around.

In reaching a decision as to the alleged juror misconduct in the jury room, the trial court had before it the conflicting declarations of Gressman and Helton. The court accepted the two jurors' statements that Helton was chosen to be foreperson because of her legal training. However, the court did not consider this, in and of itself, to constitute misconduct:

> "Well, that's not a problem for me. . . . I mean, under the circumstances, that wouldn't be unusual. I mean, most of those jurors, it's the first time they've ever been there, they don't know what to expect, so they rely on somebody who has done it before, has been a juror before, has some kind of training that they're more comfortable with somebody like that. So that doesn't go very far."

Appellant's counsel attempted to distinguish this situation by arguing that Helton told the jury "what the law is." Specifically, appellants' counsel argued that Helton said,

the "City did everything they [*sic*] could so it's not a dangerous condition." The court responded, "That's not telling the law, that's an expression of opinion." The court obviously did not find credible Gressman's claim that Helton said that this was "the law." The trial court was free to make this credibility determination based on Juror Helton's competing declaration, in which she stated "at no time did I explain 'the law' to the jury."

Thus, the trial court found that certain of the accusations of misconduct against Juror Helton did not constitute misconduct at all.[2] As to the remaining accusations, the court was forced to make a credibility determination between the declaration of Gressman and the declaration of Helton. The court clearly found Helton's declaration to be a more truthful and accurate description of her actions in the jury room. Helton's declaration provides substantial evidence in support of the trial court's decision, therefore we decline to disturb it on appeal. (*People v. Gamache, supra,* 48 Cal.4th at p. 396.)[3]

C. The "presumption of prejudice" is irrelevant

Appellants point out that juror misconduct is presumed prejudicial. (*People v. Mendoza* (2000) 24 Cal.4th 130, 195; *Hasson v. Ford Motor Co.* (1982) 32 Cal.3d 388, 416.) Appellants argue that the City had the burden of rebutting this presumption, and failed to do so.

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2 Appellants have provided no authority that the selection of an attorney as jury foreperson, in and of itself, constitutes juror misconduct. Nor have appellants provided any authority that the expression of an opinion, such as "the defendant did all that it could so it's not a dangerous condition," can constitute juror misconduct. Therefore, we presume that the trial court was correct on these two issues. (*Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 494 [judgment is presumed correct, and appellant bears the burden of affirmatively proving error].)

3 *In re Stankewitz* (1985) 40 Cal.3d 391, cited by appellants, is distinguishable. In *Stankewitz*, two jurors submitted declarations indicating that a third juror had improperly advised the jury on his understanding of the law based on his experiences as a police officer. There was no evidence to contradict the evidence that the third juror had made such inappropriate comments during deliberations. Thus, in *Stanekwitz*, there was no need for the court to compare the credibility of one juror to that of another juror. The juror misconduct was uncontested and gave rise to a strong presumption of prejudice, especially since *Stankewitz* was a capital case. (*Id.* at pp. 400-403.)

Where, as here, the facts do not support a finding of misconduct, we need not reach the question of prejudice.[4] (*Sierra View Local Health Care Dist. v. Sierra View Medical Plaza Associates* (2005) 126 Cal.App.4th 478, 484 [first, court determines whether admissible evidence establishes misconduct; only if such misconduct is established, court must determine whether the misconduct is prejudicial].)

II. Substantial evidence supported the verdict

Appellants argue that uncontroverted evidence established that the City maintained the intersection of Sepulveda Street and Marshall Court as a dangerous condition. Therefore, appellants argue, the verdict is against the law and unsupported by the evidence.

A. Standard of review

We review this question under the substantial evidence standard of review. Under this standard, we resolve all conflicts in evidence in favor of the prevailing party, and indulge all legitimate inferences to uphold the judgment if possible. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571.) "'[W]hen a [finding] is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the [finding]. When two or more inferences can reasonably be deduced from the facts, the reviewing court is without power to substitute

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[4] Appellants argue that Helton's declaration does not contain "a complete and categorical denial of all charges." (*Clemens v. Regents of University of Cal.* (1971) 20 Cal.App.3d 356, 364). Appellants describe Helton's declaration as providing only "limited denials" which must lead to the conclusion that misconduct occurred. We disagree. Helton flatly denied all the allegations against her, calling them "blatantly false." Helton also made it clear that she "answered all questions truthfully." This statement encompasses the general questions asked of her by the court as to whether there was any reason she should not be a juror on this trial. In addition, Helton provided a detailed description of the goings on in the jury room, from start to finish. From this detailed description, the court was permitted to conclude that the accusations of appellants' attorney and Gressman as to the use of information from outside sources were false.

its deductions for those of the trial court.' [Citation.]" (*Ibid.*) Substantial evidence is not any evidence, it is evidence "'of ponderable legal significance, . . . reasonable in nature, credible, and of solid value.' [Citations.]" (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873, italics omitted.)

Bearing this standard in mind, we review appellants' claim that substantial evidence did not support the verdict.

B. Appellants' evidence at trial

In support of their position that the intersection of Sepulveda Street and Marshall Court was maintained in a dangerous condition, appellants presented the testimony of the driver of the car, Gibson, and his passenger, Nelms. Gibson testified that he was "blinded" by the sun's glare at the bottom of the downhill slope just before the collision site. Nelms also testified that he was blinded by the sun at that spot.

Gibson testified that if there had been a stop sign at the location of the accident, he would have seen the children crossing the street and the accident would not have happened.

Numerous residents of the surrounding neighborhood testified regarding the condition of the intersection. Herman Cline lived on Sepulveda Street for 16 years. The intersection where Mia was killed is right outside his window so he is familiar with the traffic flow. Prior to Mia's death, Cline attended a press conference held by Janice Hahn to announce the opening of a new park at Sepulveda Street and Marshall Court. Cline attended to voice his concerns about the street because of its proximity to the freeway and the speed at which cars drive past the intersection. Cline commented at the conference that something regarding the safety of Sepulveda Street would have to be done because the cars "just go too fast" and there were "no caution signs." Cline also testified that there are times when he must stop driving because the sun shines directly into his eyes. After Mia's death, Cline and his wife put up their own signs to caution drivers to slow down.

Teresa Garcia lived in the area for approximately nine years. While living there, Garcia wrote a letter, and gathered six pages of neighbor signatures, to send to their city

councilman informing him that the intersection of Sepulveda Street and Marshall Court was dangerous and requesting a survey study for a stop sign to be placed at the corner. Garcia testified that no action was taken after she sent the letter, and that the sun is blinding when driving down from Gaffey Street.

A third longtime resident of 30 years, William Grageda, testified. Grageda also stated that he had complained to the City about the dangerous intersection and that the sun is blinding when drivers are coming down the hill. Grageda testified that many animals were killed on the street.

Benjamin Garcia also testified regarding the condition of the area. He had resided there for 28 years. He considered Sepulveda Street unsafe because drivers turn onto Sepulveda Street from Gaffey Street and the sun hits their eyes. In addition, cars turning onto Sepulveda Street from Gaffey Street turn rather quickly and go fast as they descend the hill.

Pete Acosta, a 50 to 60 year resident who lives at the corner of Sepulveda Street and Marshall Court, said since he has lived in the area he has seen an increase in the number of cars using Sepulveda Street, which he described as a "speedway." Acosta testified that he attended City meetings where he suggested that the installation of speed bumps was necessary.

Janice Hahn, the then Los Angeles councilmember, and Rudy Svornich, Jr., Hahn's predecessor, both testified they were put on notice that the intersection of Sepulveda Street and Marshall Court was a dangerous zone. Hahn had made requests to the Los Angeles Department of Transportation regarding the residents' concerns, but nothing had been done at the time of the accident.

Appellants also presented evidence from two experts: an accident reconstruction expert and a traffic engineer expert.

Philip Wang, the accident reconstruction expert, testified that there is a significant slope on Sepulveda Street approaching Marshall Court. Wang further testified that on this downgrade, cars naturally increase in speed. Wang testified that a stop sign would serve as a speed control device and a visual cue to slow down.

Kreuper, the traffic engineer expert, testified that Sepulveda Street had a relatively steep grade, and that drivers must be warned that the sun will blind them. Krueper testified that there were absolutely no safety precautions for pedestrians at the time of this accident, and that it created a "trap." Krueper explained, "if a pedestrian is crossing the street and a car comes around the corner, the pedestrian is starting out and making the crossing before the car is visible." Krueper opined that "the manner in which [the intersection] was operated at the time of the accident . . . did form a dangerous condition for pedestrians." He further opined that the dangerous condition made it reasonably foreseeable that the accident would occur.

Under cross-examination, however, Kreuper admitted that a stop sign study conducted in 2001 indicated that a stop sign was not warranted at the intersection in question due to the volume of traffic. He also admitted that there is no traffic engineering sign that says "warning, read this, the sun's coming up or the sun is setting." Traffic engineers know that the sun can be blinding at certain times of the year, and it happens for a week or so, maybe twice a year. Kreuper admitted that drivers must drive accordingly in such a situation.[5]

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[5] Regarding the issue of sun glare, appellants cite *Erfurt v. State of California* (1983) 141 Cal.App.3d 837 (*Erfurt*). In *Erfurt*, an officer investigating two related accidents concluded that they had been caused by the glare of the sun. (*Id.* at p. 841.) The three-lane freeway on which the plaintiff had been traveling split into a "Y", in the center of which was a pillar supporting an overpass for another highway. This "Y" was positioned right at the top of a hill, where sudden glare from the sun would occur as the sun rose in the morning. (The accident occurred at approximately 7:00 a.m., in December.) (*Ibid.*) Harry Kreuper, plaintiffs' expert, examined the area and opined that it was peculiar that there was an abutment sitting directly in line with the path of travel in the center lane, and also noted that the effect of the rising sun on a driver going up an incline can be very abrupt. (*Id.* at p. 842.) Kreuper opined that these conditions, along with the absence of any devices to guide and warn drivers away from the abutment, created a dangerous condition. (*Ibid.*) Under the circumstances of *Erfurt*, the jury concluded that the state was 60 percent at fault for the plaintiff's personal injuries, and the Court of Appeal found that substantial evidence supported the verdict. Nothing in *Erfurt* requires a jury to reach the same conclusion on the facts of this case, where the driver of the vehicle was traveling on a downward slope and there was no reported accident history at the location.

C. The City's evidence at trial

The City presented evidence to establish that the intersection of Sepulveda Street and Marshall Court was not maintained in a dangerous condition. In response to the community complaints, the City had conducted a traffic study. The study concluded that an all-way stop sign was not warranted at the intersection. The City's traffic engineer, Sandra Herrera (Herrera), explained that the primary reasons that an all-way stop sign was not installed were that traffic volumes were very low and visibility was good. In addition, Herrera testified that there were no correctable accidents at the intersection over the past five years.

The City also presented the expert testimony of Nazir Lalani (Lalani), a transportation engineer. Lalani explained that before a correction can be made to an intersection, there must be a discernible history of correctable collisions at the location. Lalani said that he had looked at the accident history for the intersection at issue over the past 12 years, and there were no reported accidents at all. Therefore, there was no discernable pattern for an engineer to correct. Lalani said that based on national and state standards of traffic safety, the intersection did not warrant a stop sign; the speed limit sign was correctly placed; and no pedestrian safety devices were warranted.

Lalani concluded that given the absence of any correctable pattern of accidents at the intersection of Sepulveda Street and Marshall Court, in his expert opinion the intersection did not constitute a dangerous condition of public property.

D. Application of the substantial evidence standard

As set forth above, the parties presented conflicting evidence as to the existence of a dangerous condition at the intersection of Sepulveda Street and Marshall Court. We must resolve the conflicts in this evidence in favor of the City, the prevailing party. (*Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th at p. 571.) Therefore, we must presume that the jury gave more weight to, or found more credible, the City's witnesses. While two different conclusions could have been reached based on this evidence, we have no power to substitute our own deductions for that of the jury. (*Ibid.*)

The City's evidence regarding the nonexistence of a dangerous condition was of ponderable legal significance, was reasonable in nature, credible, and of solid value. (*Bowers v. Bernards, supra*, 150 Cal.App.3d at p. 873.) The City's witnesses were experienced and educated. Herrera is a licensed traffic engineer who had worked for the City for approximately 23 years. Lalani is also a licensed traffic engineer who has held a master's degree in civil engineering for 30 years and has been a licensed civil engineer and traffic engineer in California for over 25 years. The testimony of these individuals constituted substantial evidence that the intersection of Sepulveda Street and Marshall Court was not maintained in a dangerous condition.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.*
FERNS

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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.