

FILED

DEC 19 2006

KIRI TORRE
Chief Executive Officer
Superior Court of CA County of Santa Clara

BY _____ DEPUTY

Elizabeth Pierce

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

APPELLATE DIVISION

DEC 26 2006

TERRAN STEINHART

PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff and Respondent,)

) 1-05-AP-000303
) Trial Ct No. CC463613

v.)

STEPHEN LEAL,)
Defendant and Appellant.)

ORDER

This case came on for re-hearing on October 13, 2006.¹

Appellant was charged in a two-count misdemeanor complaint with violating Vehicle Code § 23152(a), driving under the influence with allegations that he had a prior DUI conviction and willfully failed to complete a chemical test, and Vehicle Code § 14601.5, driving on a suspended or revoked license for refusal of a chemical or PAS test.

¹ This appeal was originally on the July Appellate calendar. However, due to a court clerical error, Appellant's attorney did not appear for oral argument. The conviction was affirmed in an order filed on July 17, 2006. Appellant's attorney filed a timely request for rehearing, which was granted.

1 At trial, Appellant unsuccessfully sought to admit a
2 videotape from the Santa Clara County Department of Corrections
3 which contained over two hours of footage of his physical
4 activities at the main jail. The videotape commenced approximately
5 30 minutes after Appellant's vehicle was stopped and approximately
6 22 minutes after the supporting officer arrived at the scene.
7

8 A trial court's decision regarding the admissibility of
9 evidence will not be disturbed unless there is an abuse of
10 discretion that resulted in a miscarriage of justice. (*People v.*
11 *Edwards* (1991) 54 Cal.3d 787; *People v. Ochoa* (2001) 26 Cal.4th
12 398, 437-438; *People v. Milner* (1988) 45 Cal.3d 227, 239.) The
13 court should only declare a "miscarriage of justice" when, after
14 an examination of the entire cause, the court is of the opinion
15 that "it is reasonably probable that a result more favorable to
16 the appealing party would have been reached in the absence of the
17 error." (*People v. Watson* (1956) 46 Cal.2d 818, 836.)
18

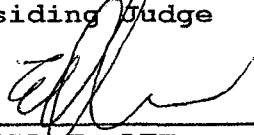
19 Notwithstanding the rebuttable presumption set forth in
20 Vehicle Code § 23152, having viewed the videotape, we believe that
21 the videotape, or at least a truncated version thereof, should
22 have been admitted at trial. It may have supported Appellant's
23 testimony that he had not been drinking that night. Further, we
24 are not convinced the error was harmless. In the absence of a
25 chemical test, the videotape was the only objective evidence of
26 Appellant's symptoms at or near the time his vehicle was stopped.
27

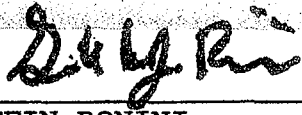
1 Accordingly, the conviction is REVERSED.

2
3
4 DATED:

December 8, 2006


C. RANDALL SCHNEIDER
Presiding Judge


EDWARD F. LEE
Judge


GRIFFIN BONINI
Judge

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
191 N. First Street
San Jose, CA 95113-1090

RECEIVED

DEC 26 2006

TO: Terran T. Steinhart
4311 Wilshire Blvd. Suite 415
Los Angeles, CA 90010-3713

TERRAN STEINHART

RE: People Vs Stephen Leal
Case Nbr: 1-05-AP-000303

PROOF OF SERVICE

Order reversing lower court's conviction by Judge Lee, Schneider and Bonini.

was delivered to the parties listed below in the above entitled case as set forth in the sworn declaration below.

Parties/Attorneys of Record:

CC: San Jose Facility

Jarisse Moore, District Attorney - SCCO
70 West Hedding, West Wing, 6th Floor, San Jose, CA 95110

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408)882-2700, or use the Court's TDD line, (408)882-2690 or the Voice/TDD California Relay Service, (800)735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 12/21/06. KIRI TORRE, Chief Executive Officer/Clerk by Elizabeth Pierce, Deputy