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6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SANTA CLARA

9
10 THE PEOPLE OF THE STATE OF CALIFORNIA,)

11 Plaintiff and Respondent,)

12 vs.)

13 STEPHEN LEAL,)

14 Defendant and Appellant.)
15

CASE NO. CC 463613

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

STATEMENT OF THE CASE 1
 Motions in Limine Re Videotape 1
QUESTION PRESENTED 2
REVIEW OF EVIDENCE 3
 People’s Case 3
 Officer Kenneth Siegel (arresting officer) 3
 Officer Wendell Martin (support officer) 3
 Jean Arase (criminalist) 4
 Defendant’s Case 4
 Stephen Leal (defendant) 4
 Elena Sahagun (Leal’s friend) 6
ARGUMENT 7
 THE TRIAL COURT PREJUDICIALLY ERRED IN EXCLUDING THE VIDEOTAPE
 FROM EVIDENCE BECAUSE THE DEMEANOR OF LEAL DEPICTED ON THE
 VIDEOTAPE, COMMENCING A FEW MINUTES AFTER HIS ARREST, WHICH IS
 CONSISTENT WITH SOBRIETY AND INCONSISTENT WITH INTOXICATION,
 CONSTITUTES RELEVANT EVIDENCE OF SUBSEQUENT EXCULPATORY
 CIRCUMSTANCES. 7
CONCLUSION 11

1
2
3
4
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TABLE OF AUTHORITIES

CASES

Blank v. Coffin (1942) 20 Cal .2d 457, 463 9
People v. Randolph (1957) 147 Cal App 2d Supp. 836, 845 9

STATUTES

California Constitution, Art. I, § 28(d) 7, 10
Evidence Code § 351 7, 10
Vehicle Code § 23152 8

OTHER AUTHORITIES

1 Witkin, Cal. Evid. 4th (2005 supp.) Circum. Evid., § 3, p. 45 7

1 **STATEMENT OF THE CASE**

2 This is an appeal¹ by defendant and appellant Stephen Conran Leal from a judgment of
3 conviction on a jury verdict of: Count one, driving under the influence of alcohol; Count two,
4 driving with a suspended or revoked license because of a refusal of a chemical test; and a special
5 finding that defendant at the time of the arrest willfully refused a peace officer's request to
6 submit to a chemical test. RT 154:15-157:12; CT 167-169 (sentencing minute order, 9-21-05).

7 The jury verdict was substantially based on the testimony of the arresting officer Siegel,
8 who testified that when he stopped Leal for a traffic infraction, he observed that Leal exhibited
9 classic symptoms of alcohol intoxication: bloodshot and watery eyes, strong odor of alcoholic
10 beverage coming from his breath, walking slowly and off balance, and admitting that he had
11 imbibed a few drinks. Siegel further testified that Leal refused to participate in field sobriety
12 tests, including a preliminary alcohol screening breath test, and after being given the formal
13 chemical test admonitions, refused to submit to either a breath or blood chemical test.

14 Leal testified: He had not imbibed an alcoholic beverage that night and was not under the
15 influence of alcohol. Because he had no alcohol in his system, he requested a blood test which
16 he had recently learned was the best way to establish one's innocence on suspicion of being
17 under the influence of alcohol, because a blood sample is preserved; whereas a breath sample is
18 not. The arresting officer refused to administer a blood test. He admitted that he was driving
19 with his license suspended due to an alleged refusal to submit to a chemical test several months
20 previously when he was arrested on suspicion of driving under the influence and convicted of
21 reckless driving.

22 **Motions in Limine Re Videotape**

23 The day before the commencement of the jury trial, the trial court heard cross-motions in
24 limine by the prosecution and Leal. The prosecution's motion sought to exclude from evidence a
25 videotape subpoenaed from the Santa Clara County Department of Corrections which showed the
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27 ¹ Two separate notices of appeal were timely filed, one by Leal in pro per on October 6,
28 2005, and the other by attorney Steinhart on behalf of Leal on October 11, 2005.

1 physical activities of Leal for an extended period of time at the Main Jail, commencing a few
2 minutes after he was arrested by Officer Siegel on suspicion of driving under the influence of
3 alcohol. Leal's motion sought admission into evidence of the videotape as well as photographs
4 taken of him at the Jail which showed injuries he claimed to have sustained as a result of an
5 assault by Department of Corrections officers at the Jail (an episode that appeared on the
6 videotape). RT 3, et seq. The trial court granted the People's motion on the ground that the
7 videotape and photographs were *irrelevant and unduly prejudicial, and did not bear on whether*
8 *or not Leal was operating his vehicle under the influence at the time of the arrest.* RT 10:16-
9 22;12:11-13:8. For the purpose of this appeal, Leal assigns as error only the exclusion of the
10 videotape and not the exclusion of photographs.

11 Leal contends that his physical activities as depicted on the videotape support his
12 testimony that he had not been drinking and was not under the influence, in that his demeanor on
13 the videotape is consistent with sobriety rather than intoxication; and conversely, the evidence on
14 the videotape impeaches the testimony of Officer Siegel (and a support officer present at the
15 scene of the arrest) that Leal exhibited overt symptoms of intoxication.

16 After the trial court granted the People's motion to exclude the videotape, defendant
17 requested that the court admit into evidence a truncated or altered version of the videotape that
18 excluded the episode of the assault by the Department of Correction officers, but included
19 defendant's physical activities at the Jail. The court rejected this request on the ground that *such*
20 *evidence was not relevant or appropriate; ruling that the defense could not rely on any post-*
21 *arrest information, even in cross-examination of the prosecution's expert.* RT 11:25-12:28.

22 QUESTION PRESENTED

23 Did the trial court commit prejudicial error in excluding a truncated version of the
24 videotape² depicting defendant's activities at the Main Jail, which Leal contends reflect his
25 demeanor, commencing a few minutes after the arrest, as being consistent with sobriety rather

26
27 ² With the episode of the assault on Leal by the Department of Corrections officers
28 excised.

1 than intoxication, on the ground that such evidence was not relevant to the issue of whether Leal
2 was under the influence at the time of his arrest, and that defendant could rely on no post-arrest
3 information, even in cross-examination of the prosecution's expert?

4 **REVIEW OF EVIDENCE**

5 **People's Case**

6 **Officer Kenneth Siegel (arresting officer)**

7 On July 22, 2004, at approximately 11:57 p.m., he observed Leal driving the wrong way
8 on 3Rd St. , a one-way street, near San Fernando St. When he stopped the vehicle, he observed
9 that the window was open, Leal did not have his seat belt on, was leaning on the driver's side
10 door kind of slouched in his seat, did not have a driver's license, his eyes were bloodshot and
11 watery, and he detected the strong odor of an alcoholic beverage coming from his breath while
12 the officer was standing outside the car. When he asked Leal to step out of the vehicle and move
13 to the sidewalk to do field sobriety tests, Leal was off balance, bumped against the car several
14 times, holding himself up as he walked over to the sidewalk, and was moving very slowly. When
15 asked if he had been drinking, Leal stated that he had a few drinks. He declined to take the field
16 sobriety exercises, including taking a preliminary alcohol screening breath test. RT 21:13-26:9.

17 At that point, Officer Siegel arrested Leal, handcuffed him and placed him in the patrol
18 car. RT 27:25-28:2. The officer told Leal that he had an option of taking a breath test or giving a
19 blood sample downtown. Leal refused both. Siegel told him that if he refused these tests his
20 license would be suspended. However, he did not go into detail because, "we have a specific
21 form I have to read verbatim." Leal stated he still refused to take any test. RT 28:2-16. *At some*
22 *point in time*, Siegel read the form to Leal, and Leal still refused to take either the breath or blood
23 test. RT 29:13-30:21.

24 **Officer Wendell Martin (support officer)**

25 On July 22, 2004, at approximately 11:57 p.m., he was working in downtown San Jose
26 near San Fernando and 4th St. He went there to act as a cover officer to maintain the safety of
27 officer Siegel who had made a car stop. RT 53:18-54:9. Shortly after he arrived, he saw Leal get
28 out of the car and walk to the sidewalk. He walked very slowly and deliberately. His gait was

1 unsteady and as he went around the trunk of his car, he stuck out his hand to steady himself. He
2 did not hear the conversation between Officer Siegel and Leal. All he recalls is Officer Siegel
3 saying if you don't want to take any tests, you're under arrest. He saw Officer Siegel place Leal
4 in his police unit. Officer Martin drove away before Officer Siegel did.

5 **Jean Arase (criminalist)**

6 She testified to the different levels of alcohol intoxication based on a chart which on the
7 left side that showed different levels of alcohol consumption, and opposite each level on the right
8 side showed different symptoms associated with each of those levels. First level: mild euphoria,,
9 decreased inhibition and increased risk taking. Second-level: impaired vision, impaired, divided
10 attention, poor judgment, increased reaction time, loss of fine muscle control. *Third level:*
11 *staggering or slurred speech.* Fourth level: disoriented, confused, unable to walk or stand. Last
12 level: stupor, unconsciousness, coma and sometimes even death. The symptoms at the third
13 level would affect a person's ability to drive safely. RT 67:16-69:16.

14 The following signs and symptoms are consistent with a person being under the influence
15 of alcohol: bloodshot, watery eyes, slurred speech, unsteady gait and moving very slowly. Those
16 symptoms would affect a person's ability to drive safely. RT 69:21-70:9.

17 People's Exhibit 2 (a DMV document showing defendant's license was suspended,
18 effective June 2004), and Exhibit 3 (certified document entitled Chemical Test Refusal
19 Notification of Findings and Decision) were received in evidence. RT 77:18-78:12.

20 **Defendant's Case**

21 **Stephen Leal (defendant)**

22 On March 29, 2004, he was stopped by a Santa Monica police officer for failing to stop
23 for a stop sign while riding a motorcycle. As he tried to put the kick stand down, the motorcycle
24 fell on him. The officer began a DUI investigation. Leal took field sobriety tests, including
25 blowing into the breath device three times, all of which were inconclusive. He was arrested and
26 taken to the police station. He refused to take any more tests. He pled guilty to reckless driving
27 and lost his license for a year. RT 80: 15-82: 25.

28 On July 22, 2004, at about 9:00 or 9:30 p.m., he had a business meeting at the Fairmont

1 Hotel with Elena Sahagun, a business associate with Covenant House, a charity. They had dinner
2 at the Grill Restaurant. He drank water and tea, but did not drink alcohol. Their dinner ended
3 about 11:15 to 11:30 (he was not sure of the exact time they finished). They walked out of the
4 front door of the hotel and went across the street where he showed her a park where they hold
5 some of the summer park series. They then walked to the parking lot at which both of their
6 vehicles were parked. He walked Elena to her vehicle, then walked to his vehicle and proceeded
7 to leave the parking lot at which time was stopped by Officer Siegel. RT 84:19-90:6.

8 When Officer Siegel asked for Leal's license, he told the officer that he did not have it
9 but was driving with a suspended license. The officer directed him to step from the vehicle and
10 go to the curb. The officer mentioned that he had red eyes and asked whether he had been
11 drinking alcohol. Leal replied "no." Officer Siegel asked this question three or four times. Leal
12 believed the question was appropriate because he has an eye condition known as Tpbrium due
13 to sun exposure. At that juncture, officer Martin arrived and the two officers had a side
14 conversation. Officer Siegel then asked Leal to take field sobriety tests. He respectfully declined
15 to do so and noted that Officer Siegel was visibly not happy. RT 90:19-93:21

16 Officer Siegel asked him why his license was suspended. He replied because of careless
17 and reckless. Seigel responded, "You mean DUI?" Leal answered, "It was for careless and
18 reckless, and there is a difference." RT 94:15-23.

19 Leal told the officer that he wanted to take a blood test but was refusing a breathalyzer. A
20 month previously, he learned that breathalyzer tests are unreliable because there is no way of
21 saving the samples. He determined that if he were ever stopped on suspicion of driving under the
22 influence where he had not been drinking, the best way to prove his innocence was to take a
23 blood test because the blood sample could be saved, whereas the breath sample could not be
24 saved. RT 95:5-96:9.

25 On cross-examination: Leal assumed his eyes were red and watery at the time of the arrest
26 because the officers said they were. He had been told that in the past so he took the officer at his
27 word. RT 100:27-101:5. Leal agreed with the officer's testimony that he had refused to take any
28 field sobriety examination and refused to take any breath test. However, he made repeated

1 requests for a blood test throughout the evening, but Officer Sigel refused to give him a blood
2 test. RT 102:15 -103:1. Leal told Officer Siegel on three locations he had nothing to drink that
3 night. RT 107:16-19.

4 **Elena Sahagun (Leal's friend)**

5 She has known Leal for approximately five to six years. They are good friends and also
6 business acquaintances. He helps with some charity activities she does for Covenant House.
7 They met that evening for the purpose of trying to raise money for Covenant House. They met at
8 the Fairmont Hotel around 9:30-ish. They had dinner. They both drank ice tea. Neither
9 consumed alcohol. RT 111:5-113:28.

10 She last saw Leal, "After 11:00, like 11:30, it was kind of late." After 11:00, she did not
11 observe Leal staggering, or having a slurred or slurring voice nor with bloodshot and watery eyes.
12 However, he looked really tired. He did not appear to be drunk. RT 114:1-115:1.

13 After dinner, Leal took her outside the hotel and showed her around. There was a concert
14 going on outside and he remarked that might be a good place to do a benefit. They were walking
15 around the area. RT 115:5-10. He walked her back to her car which was maybe 11:30-ish. She
16 got into her car and left the parking lot. Leal told her he was going back to his place. RT 116:1-
17 18.

18 Defendant's Exhibit A, received in evidence, consists of a Refusal to Submit to Chemical
19 Test form (two pages) filled out by arresting officer Siegel. RT 123:26-27. Exhibit B, received
20 in evidence, consists of a Police Activity Log of Siegel and Martin's activities regarding the
21 arrest. RT 124:11-12.

22 It was stipulated that Exhibit A was dated July 23, 2004 at 1:02 a.m.; and that officers
23 Siegel was not street side at 1:02 a.m. on July 23, 2004.

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1 of consequence to the determination of the action more probable or less probable than it
2 would be without the evidence.’ [Citations.]

3 In the instant case, the trial court excluded the videotape originally on two grounds: (1) it
4 was unduly prejudicial, and (2) was not relevant. Defendant does not take issue with the
5 proposition that the segment of the videotape depicting the assault by Department Corrections
6 officers on him was unduly prejudicial to the DUI prosecution, and that portion of the videotape
7 was properly excluded for that reason. However, defendant requested that a truncated version of
8 the videotape be admitted in evidence that merely depicted Leal’s demeanor at the Jail, excising
9 the assault episode. The trial court also rejected this alternative on the ground that *such evidence*
10 *was not relevant to the issue of whether Leal was under the influence at the time of his arrest,*
11 *and that defendant could rely on no post-arrest information, even in cross-examination of the*
12 *prosecution’s expert.* RT 11:25-12:28. In so ruling, the court dropped its ground of unduly
13 prejudicial, but continued to maintain its ground that the evidence of defendant’s condition at any
14 point after the arrest was not relevant on the issue of his condition at the time of the arrest.
15 Respectfully, the trial court was in error in this regard.

16 The evidence of an arrestee’s condition of intoxication within three hours after his driving
17 is made relevant by a statute. Vehicle Code § 23152 provides in relevant part: “In any
18 prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent
19 or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person
20 had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance
21 of a chemical test within *three hours* after the driving. (Emphasis added).

22 Exhibit B, the Police Activity Log, reflects that the initial traffic stop occurred at
23 11:57:33 p.m. at 4th St and San Fernando St., that Officer Martin arrived at the location at
24 12:05:54 a.m., Officer Siegel left that location (with defendant under arrest in his patrol car) at
25 12:24:58 and arrived at the Jail at 12:27:19. The videotape shows the activities of defendant
26 from his leaving the patrol car at the jail and thereafter. Exhibit A, the Refusal to Submit to
27 Chemical Test form filled out by officer Siegel, was stipulated to be dated July 23 at 1:02 p.m.,
28 and it was further stipulated that Officer Siegel was not street side at that time [rather, he was at

1 the Jail]. Officer Siegel’s filling out the Refusal form (which contains the official admonitions
2 regarding taking or refusing a chemical test) 35 minutes after he arrived at the Jail with defendant
3 is further testament to the fact that a person’s state of intoxication or sobriety at that time is
4 relevant to a determination of his state of intoxication or sobriety at the time of driving. It is
5 even more relevant to his state of intoxication or sobriety at the time of the person’s arrest, which
6 in the instant case occurred perhaps 10 or 15 minutes after the initial traffic stop; and only a few
7 minutes before Leal arrived at the Jail and the videotape began to roll.

8 The trial court’s notion that any evidence of a person’s demeanor after the point of arrest
9 is not relevant to his state of intoxication or sobriety at the time of his arrest is negated by the
10 above Vehicle Code provision, as well as by a plethora of cases which deal with the issue of
11 relevancy with respect to evidence of subsequent incriminating or exculpatory circumstances.
12 Indeed, an entire section of West’s Key Number Digest regarding relevant evidence is entitled:
13 “Subsequent incriminating or exculpatory circumstances.” There are many cases holding that
14 evidence of subsequent circumstances is relevant to determine conduct at a prior time. In People
15 v. Randolph (1957) 147 Cal App 2d Supp. 836, 845, involving a conviction of violating sections
16 of the Vehicle Code dealing with failure to make a boulevard stop and the basic speed law, the
17 court held:

18 “Defendant assigns as error of the trial court the overruling of objections to
19 testimony concerning transactions or facts occurring after the alleged commission of the
20 offenses charged. Such testimony was clearly admissible since it related to circumstances
21 which, in point of time, had evidentiary value in corroborating or disapproving facts
22 related as having occurred at the time of the commission of the offenses.”

23 In Blank v. Coffin (1942) 20 Cal .2d 457, 463 involving an action for personal injuries,
24 the court held:

25 “Defendant contends that evidence of circumstances after the accident cannot be
26 used to establish that Coffin was driving the car with the permission of defendant at the
27 time of the accident, and relies upon cases holding that evidence of precautions taken
28 after an accident are not admissible to show a negligent condition at the time of the

1 accident. [Citation.] These cases, however, are not analogous to the present one.
2 Evidence of the existence of a particular condition, relationship, or status, including
3 permission to use an automobile before and after an act in question, is admissible to
4 indicate the existence of the same status, condition, or relationship at the time of the act.
5 [Citations.]”

6 A simple illustration will demonstrate the relevancy of the evidence of Leal’s demeanor
7 as reflected on the videotape while he was at the Jail, which videotaping commenced a few
8 minutes after his arrest. Suppose: The Jail personnel had been charged with mistreatment of
9 persons in custody, and a commission had been appointed to investigate the charges. At the time
10 of Leal’s arrival at the Jail, the chairman of the commission was interviewing persons in custody
11 there, and chose to interview Leal within a few minutes after his arrival. If the chairman were
12 called as a witness by the defense to testify that he personally observed Leal for several minutes
13 during this interview and noted that he exhibited none of the symptoms of intoxication testified
14 to by the police in this case, but rather exhibited a condition of sobriety, it is clear that it would
15 be prejudicial error to exclude the testimony of the chairman on the ground that it was not
16 relevant.

17 Although the videotape does not contain evidence as exculpatory as would be the
18 testimony of the chairman in the above hypothetical, it nonetheless contains some exculpatory
19 evidence supporting Leal’s testimony that he had not imbibed alcohol that night and was not
20 exhibiting evidence of intoxication. The degree of persuasiveness of the videotape evidence goes
21 to its weight, not to its admissibility on the ground of relevance.

22 As the above authority makes crystal clear, all relevant evidence is admissible pursuant to
23 Evidence Code § 351; and California Constitution, Art. I, § 28(d) provides: “. . . relevant
24 evidence shall not be excluded in any criminal proceeding.”

25 When a person charged with a crime must defend himself by establishing that the
26 testimony of a police officer is false, and the testimony of the accused to the contrary is true, that
27 person is in a most unenviable position. It is an unfortunate fact of life that law enforcement
28 officials on occasion fabricate evidence to procure convictions of innocent people. The exposé

1 jury verdict should be reversed, and a new trial ordered in which the videotape will be admissible
2 as relevant evidence of subsequent exculpatory circumstances.

3 Respectfully submitted,

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Stephen Conran Leal
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1 PROOF OF SERVICE BY MAIL

2
3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action. My business address is 4311 Wilshire Boulevard, Suite 415,
5 Los Angeles, California 90010-3713, which is located in the county where the mailing described
6 below took place.

7 I am readily familiar with the business practice at my place of business for collection and
8 processing of correspondence for mailing with the United States Postal Service. Correspondence
9 so collected and processed is deposited with the United States Postal Service that same day in the
10 ordinary course of business.

11 On the date set forth below, at the aforesaid place of business, a copy of the document
12 described as **APPELLANT'S OPENING BRIEF** was placed for deposit in the United States
13 Postal Service in a sealed envelope, with postage fully pre-paid, addressed as set forth in the
14 attached Service List; and that envelope was placed for collection and mailing on said date
15 following ordinary business practices.

16 I declare under penalty of perjury under the laws of the State of California that foregoing
17 is true and correct.

18 Executed on April 7, 2006 at Los Angeles, California.

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Terran T. Steinhart

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803\Appellants Opening Brief