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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA CLARA

10 THE PEOPLE OF THE STATE OF)
11 CALIFORNIA,)

12 Plaintiff and Respondent,)

13 vs.)

14 STEPHEN LEAL,)

15 Defendant and Appellant.)
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Superior Court Case No. CC 463613
Appellate Case No. 1-05-AP000303

APPELLANT’S REPLY BRIEF

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

1 prejudicial and constituted a miscarriage of justice.

2 **I. THE TRIAL COURT’S EXCLUSION OF THE VIDEOTAPE ON THE**
3 **GROUND THAT IT WAS UNDULY PREJUDICIAL WAS OBIATED BY**
4 **DEFENDANT’S REQUEST THAT A TRUNCATED VERSION OF THE VIDEOTAPE,**
5 **REMOVING THE PREJUDICIAL PORTIONS, BE RECEIVED IN EVIDENCE.**

6 Contrary to the argument in Respondents Opening Brief, the transcript of the hearing on
7 the cross-motions in limine clearly reflects that Leal’s attorney requested that the Court consider
8 receiving a truncated version of the tape in evidence, removing the prejudicial portions thereof,
9 i.e., the depiction of the use of excessive force by law enforcement officers against Leal, defense
10 counsel made his remarks on this topic at RT 11:26 et seq.

11 The Court responded at RT 12:11: “I don’t think any of that evidence is relevant or
12 appropriate and I am not going to let any of it in”

13 Respectfully, the Court ordered even a truncated version of this tape, that did not contain
14 any depiction of excessive force, excluded because of its opinion that even the non-prejudicial
15 evidence on the tape was not relevant.

16 **II. NOTHING IN THE RECORD REFLECTS THAT THE TRIAL COURT**
17 **ORDERED THE VIDEOTAPE EXCLUDED BECAUSE ITS VISUAL QUALITY WAS**
18 **DEGRADED.**

19 On page 30 of its brief, Respondent argues:

20 “Further, as the prosecutor argued in her written motion in limine, the tape was
21 misleading as there was a time lapse in the tape such that Appellant’s movements were
22 not precisely captured. Because the tape did not accurately depict Appellant’s
23 movements, it was properly excluded under Evidence Code § 352. (CT 99).”

24 There is nothing in the record that suggests that the Court below gave credence to this
25 argument. Moreover, Leal respectfully submits that unless the images on the tape were of such
26 poor quality that it could not be discerned what was happening, the quality of the tape would go
27 to its weight, rather than its admissibility. The jury, being the trier of fact, should have been
28 allowed to view the tape and make its own determination of whether its contents corroborate

1 Leal's testimony that he was not intoxicated when stopped and arrested by the police, or the
2 contrary testimony by the police is false.

3 **III. SINCE AS A GENERAL PROPOSITION, EVIDENCE OF SUBSEQUENT**
4 **CIRCUMSTANCES IS RELEVANT TO DETERMINE CONDUCT AT A PRIOR TIME,**
5 **THE ISSUE IN THIS CASE IS WHETHER THE CONDUCT OF LEAL DEPICTED ON**
6 **THE VIDEOTAPE, AT LEAST THE BEGINNING PORTION WHICH OCCURRED**
7 **VERY SHORTLY AFTER HIS ARREST, HAS "ANY TENDENCY" IN REASON, "NO**
8 **MATTER HOW WEAK IT IS," TO CORROBORATE HIS TESTIMONY AND**
9 **IMPEACH THE CONTRARY TESTIMONY OF THE POLICE; AND THE EVIDENCE**
10 **ON THE VIDEOTAPE CLEARLY MEETS THIS STANDARD.**

11 The conduct of Leal testified to by the police, which constituted symptoms of his being
12 under the influence, may be summarized as follows: His eyes were bloodshot and watery, he had
13 a strong odor of alcoholic beverage coming from his breath, when he stepped out of the vehicle
14 and moved to the sidewalk, he was off balance, bumped against the car several times, holding
15 himself up as he walked over to the sidewalk, and was moving very slowly. When asked if he
16 had been drinking, he stated he had a few drinks. RT 21:13 - 26:9

17 The testimony of the criminalist as to the different levels of alcohol intoxication equates
18 these symptoms with Leal's being at the third of five levels of intoxication: "staggering or slurred
19 speech." RT 67:16 - 69:16.

20 If Leal were as intoxicated as the testimony of the police (if true) would lead one to
21 believe, it is highly probable that he would continue to exhibit evidence of such intoxication
22 within a few minutes after his arrest. Leal contends that his conduct as depicted on the
23 videotape, which begins immediately as he arrived at the Main Jail, walking from the police car
24 into the Jail, and continues with his conduct for several minutes thereafter, demonstrates that the
25 testimony of the police as to his state of intoxication is false.

26 Suppose that within 20 minutes after allegedly exhibiting gross symptoms of intoxication
27 at the time of his arrest, an arrestee was depicted on videotape as performing a world-class
28 gymnastics routine. Such evidence would obviously be relevant evidence of subsequent

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 REPLY 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 June ____, 2006 at Los Angeles, California.

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Terran T. Steinhart

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SERVICE LIST

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803\Appellants Reply Brief