

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID LEON JENKINSON,

Defendant and Appellant.

F064475

(Super. Ct. No. BF138620A)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Kern County. Gary T. Friedman, Judge.

Syda Kosofsky and Deanna F. Lamb, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

-ooOoo-

---

\* Before Wiseman, Acting P.J., Levy, J., and Cornell, J.

It was alleged in an information filed December 2, 2011, that appellant, David Leon Jenkinson, committed the following offenses: driving under the influence of a drug and/or an alcoholic beverage (DUI) (Veh. Code, § 23152, subd. (a)) within ten years of suffering two prior convictions of the same offense (Veh. Code, § 23550), a felony; unlawful possession of narcotics paraphernalia (Health & Saf. Code, § 11364), a misdemeanor; and failing to perform a legal duty following an accident causing property damage (Veh. Code, § 20002, subd. (a)), a misdemeanor. It was also alleged in the information that appellant had served four separate prison terms for prior felony convictions (Pen. Code, § 667.5, subd. (b)).

On January 30, 2012, prior to the commencement of trial, appellant admitted the prior DUI conviction allegations.

On February 2, 2012, a jury convicted appellant of the three charged offenses, and later that day, in a separate proceeding, the court found true the four prior prison term enhancement allegations.

On March 5, 2012, the court imposed a prison sentence of seven years, consisting of the three-year upper term on the DUI conviction and one year on each of the four prior prison term enhancement allegations. On each of the two misdemeanor counts, the court imposed concurrent 30-day county jail terms, with credit of 30 days served.

Appellant's appointed appellate counsel has filed an opening brief which summarizes the pertinent facts, with citations to the record, raises no issues, and asks that this court independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Appellant has not responded to this court's invitation to submit additional briefing.

## **FACTS**

Crystal Brley testified to the following. At approximately 6:40 p.m. on September 8, 2011 (September 8), she was sitting in her car, completely stopped at a red light, when she heard a sound and felt her car move forward "like [it] was going ... 15,

20 miles an hour ....” She looked in her rear-view mirror, saw a white Toyota Camry behind her and realized she had been rear-ended. At that point, the Toyota backed up and then drove forward and around Brley’s car. Brley noted the license plate number and reported it to the police. She also got a good look at the driver as he drove by. In court, she identified appellant as the driver of the Toyota.

Brley further testified to the following. After this incident, she saw that there were “scuff marks” on her rear bumper. She did not know if these scuff marks were there before the accident. Hers is an “older” car, so “scuffs come, you know. I don’t look at my bumper every day to check it out.” She was asked “You’re not sure exactly where they came from, but you saw them there?” She answered, “Exactly.”

Susie Murillo testified to the following. On September 8 at approximately 7:00 p.m. she was in her front yard along with her husband and two children when a white car backed into a neighbor’s driveway where it struck a dresser and some trash cans that were there. The car then drove back out of the driveway and down the street. Murillo noted the license plate number of the car and reported it to the police. She got a “pretty good look” at the driver, who she identified in court as appellant.

California Highway Patrol (CHP) Officer Aaron Taylor testified to the following: On September 8, responding to a call, he spoke with Susie Murillo, obtained from her the license plate number of the car that had backed into objects in the driveway of one of Murillo’s neighbors, and went searching for the car. At 8:07 p.m. on September 8 he found the car with the license plate number reported by Murillo, parked in a convenience store parking lot approximately one mile from Murillo’s house. Appellant was sitting in the driver’s seat.

Officer Taylor further testified to the following. He made contact with appellant. The officer “noticed some signs of drug influence,” viz., his eyes were red, his pupils were dilated, his speech was “rambling,” and “his actions were fidgety.” At that point,

Taylor had appellant exit the car. Next, the officer conducted a patdown search of appellant, and found a glass methamphetamine smoking pipe in appellant's rear pants pocket. The officer seized the pipe, arrested appellant, placed him in the back of his patrol car, and transported him to a nearby CHP office.

CHP Officer Scott Merritt testified to the following. He is a certified drug recognition expert. He performed an evaluation on appellant on September 8 at the Bakersfield CHP office, at which time he observed "signs of stimulant use," viz., appellant was "extremely fidgety," he was unable to stand still, his legs were shaking uncontrollably and twitching, his eyes were red and watery, and his speech was "rapid." Officer Merritt opined that appellant was under the influence of a drug and was "unsafe to drive."

#### **DISCUSSION**

Following independent review of the record, we have concluded that no reasonably arguable legal or factual issues exist.

#### **DISPOSITION**

The judgment is affirmed.