

COPY

**LAW OFFICES
LOS ANGELES COUNTY PUBLIC DEFENDER**

Ronald L. Brown
Public Defender

Appellate Branch
590 Hall of Records
320 West Temple Street
Los Angeles, California 90012
Telephone: (213) 974-3050

John Hamilton Scott
Deputy Public Defender

February 6, 2013

SUPREME COURT
FILED

FEB 11 2013

Clerk
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Frank A. McGuire Clerk

Deputy

Dear Sir:

Re: Steen v. Appellate Division
S-174773

(2d Dist.No. B217263; App.Div. No. BR046020; LASC No. 6200307)

Petitioner has received the Opposition to petitioner's Motion to Strike filed by Real Party. Petitioner respectfully requests that this court receive and consider this letter in reply.

Real party asserts that the sole purpose of including the documents denominated Exhibits 1 through 3 is so that this court may make an independent determination of whether the statute of limitations was satisfied by the issuance of an arrest warrant within those limits. Real party admits that this is an issue which was never presented to the trial court. Petitioner has explained that the reason the issue was not litigated in the trial court is that the issue was not presented in the trial court once that court ruled that the criminal action was commenced by the filing of a criminal charge by the court's clerk.

Real party is, of course, correct that this court can itself determine the statute of limitations issue upon the record if there are no factual disputes. If this court decides to do so, however, then this court must rule that the

record fails to show satisfaction of the statute of limitations. Real party notes that the record shows that petitioner was arrested on a warrant. While this is correct, that arrest on August 12, 2008, does not demonstrate a warrant issued prior to the expiration of the statute of limitations.

Real Party claims that the entry in the record of "AW 081302" demonstrates that a warrant was issued on August 13, 2002. However, even if "AW" is taken to mean "arrest warrant," nothing in that entry specifies that an arrest warrant was issued on August 13, or any other date. Real party also claims that the record shows that the warrant was issued "in Department 63." However, the record could just as easily be interpreted as indicating Department 63 was the last court to which petitioner's matter had been assigned.

Most importantly, even if the record does show a warrant issued within one year of petitioner's failure to appear, the record does not reflect that an arrest warrant was issued upon an affidavit demonstrating commission of an offense and following a determination of probable cause by a judicial officer. Real party makes no claim that the record shows the required affidavit and judicial probable cause determination. As petitioner has demonstrated, the issuance of a warrant does not satisfy the statute of limitations unless that warrant is based upon an affidavit establishing the commission of an offense and is issued after a judicial determination of probable cause. (See Petitioner's Supplemental Traverse to Return of Real Party, pp. 25-29.) If Real Party wishes to claim that the requirements of affidavit and probable cause determination were satisfied, then that is a factual issue not shown by the record and upon which there must be a hearing.

Consequently, this is not a case where resolution of the statute of limitations issue does not require any factual determination. However, should this court nevertheless accept Real Party's invitation to decide the statute of limitations issue solely upon the records provided to this court, this court must conclude that the records are insufficient to show that the statute of limitations was satisfied by the issuance of a warrant. Since petitioner was not effectively charged with an offense until the prosecutor reviewed the charge

Clerk, California Supreme Court
February 6, 2013
Page 3

and concurred in its filing long after the expiration of the statute of limitations, this court must accordingly reverse petitioner's conviction.

Respectfully submitted,

RONALD L. BROWN, PUBLIC DEFENDER
OF LOS ANGELES COUNTY, CALIFORNIA

By



John Hamilton Scott
Deputy Public Defender

Attorneys for Petitioner

JHS/hs

DECLARATION OF SERVICE

I, the undersigned, declare:

I am over eighteen years of age, and not a party to the within cause; my business address is 320 West Temple Street, Suite 590, Los Angeles, California 90012; that on February 7, 2013, I served a copy of the within LETTER, STEEN v. APPELLATE DIVISION, on each of the persons named below by depositing a true copy thereof, enclosed in a sealed envelope with postage fully prepaid in the United States Mail in the County of Los Angeles, California, addressed as follows:

ATTORNEY GENERAL
STATE OF CALIFORNIA
300 SOUTH SPRING STREET
LOS ANGELES, CA 90013

PRESIDING JUDGE
SUPERIOR COURT
111 NORTH HILL STREET
LOS ANGELES, CALIFORNIA 90012

CLERK, APPELLATE DIVISION
SUPERIOR COURT
111 NORTH HILL STREET
LOS ANGELES, CALIFORNIA 90012

CARMEN TRUTANICH
CITY ATTORNEY
CRIMINAL APPELLATE DIVISION
500 CITY HALL EAST
200 N. MAIN STREET
LOS ANGELES, CA 90012


CLERK,
CALIFORNIA COURT OF APPEAL
300 SOUTH SPRING STREET
LOS ANGELES, CA 90013

REED SMITH, LLP
PAUL D. FOGEL, ESQ.
101 SECOND ST., SUITE 1800
SAN FRANCISCO, CA 94105

I further declare that I served the above referred-to document by hand delivering a copy thereof addressed to:

JACKIE LACEY, DISTRICT ATTORNEY
APPELLATE DIVISION
320 WEST TEMPLE STREET, SUITE 540
LOS ANGELES, CA 90012

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 7, 2013, at Los Angeles, California.



ZENaida GAETOS