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

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN WILLIAM WATKINS,

Defendant and Appellant.

F046612

(Super. Ct. No. 1066615)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. John E. Griffin, Jr., Judge.

Gregory Marshall, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Julie A. Hokans and Catherine Chatman, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Ardaiz, P.J., Vartabedian, J. and Buckley, J.

INTRODUCTION

A jury convicted appellant, John William Watkins, of driving recklessly while evading a police officer (Veh. Code, § 2800.2).¹ At a bifurcated trial, the court found that appellant had suffered a prior strike conviction, for which he served a prison term. The court sentenced appellant to a five-year prison term (two-year midterm, doubled to four under the three strikes law, plus an additional year for the prison term prior under Penal Code, section 667.5, subdivision (b)). Appellant contends that insufficient evidence supports his conviction. Specifically, appellant contends there was insufficient evidence that the pursuing officers drove “distinctively marked” vehicles (§ 2800.1, subd. (a)(3)), and that the pursuing police officers wore distinctive uniforms (§ 2800.1, subd. (a)(4)). As we shall explain, we find that appellant’s arguments lack merit. We will affirm the conviction.

FACTS

On October 21, 2004, at approximately 10:30 p.m., a multi-jurisdictional Auto Theft Task Force was engaged in an undercover operation aimed to combat car theft in the town of Empire, just east of Modesto. One of the officers observed appellant’s Honda (a high-theft vehicle) and discovered that the plates did not match the vehicle. Unable to procure a marked, black and white patrol vehicle, the officers attempted to conduct the traffic stop themselves and appellant fled. Three unmarked police cars gave chase with lights and sirens engaged. Two of the vehicles (a black Lexus operated by Deputy Sheriff David Brown and a green Chevrolet pickup operated by Officer William Genest), had front end strobe lights and alternating headlights (“wigwag” lights). Officer Gary Guffey followed in a maroon BMW, equipped with strobes but no wigwags.

¹ All statutory references are to the Vehicle Code, unless otherwise stated.

Appellant sped through a residential area and failed to observe six stop signs. After the chase ensued for a few minutes, appellant's Honda stalled and the officers apprehended him.

DISCUSSION

Standard of Review

The test of sufficiency of the evidence is whether, reviewing the whole record in the light most favorable to the judgment below, substantial evidence is disclosed such that a reasonable trier of fact could find the essential elements of the crime beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 578; accord, *Jackson v. Virginia* (1979) 443 U.S. 307, 319.) Substantial evidence is evidence that is "reasonable, credible, and of solid value." (*People v. Johnson, supra*, 26 Cal.3d at p. 578.) An appellate court must "presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence." (*People v. Reilly* (1970) 3 Cal.3d 421, 425.) An appellate court must not reweigh the evidence (*People v. Culver* (1973) 10 Cal.3d 542, 548), reappraise the credibility of the witnesses, or resolve factual conflicts, as these are functions reserved for the trier of fact. (*In re Frederick G.* (1979) 96 Cal.App.3d 353, 367). Here, the evidence supports the jury's finding of guilt as to each element of the offense. We therefore reject appellant's contentions on both issues.

Appellant was convicted of violating section 2800.2, which is the felony violation of section 2800.1 (applicable when the defendant's evasion occurred in a reckless manner). Section 2800.2, subdivision (a) states: "If a person flees or attempts to elude a pursuing peace officer in violation of Section 2800.1 and the pursued vehicle is driven in a willful or wanton disregard for the safety of persons or property, the person driving the vehicle, upon conviction, shall be punished by imprisonment in the state prison, or by confinement in the county jail for not less than six months nor more than one year." Section 2800.2 incorporates and expressly requires a violation of each element under section 2800.1, subdivision (a).

Section 2800.1, subdivision (a) states:

“Any person who, while operating a motor vehicle and with the intent to evade, willfully flees or otherwise attempts to elude a pursuing peace officer’s motor vehicle, is guilty of a misdemeanor if all of the following conditions exist:

“(1) The peace officer’s motor vehicle is exhibiting at least one lighted red lamp visible from the front and the person either sees or reasonably should have seen the lamp.

“(2) The peace officer’s motor vehicle is sounding a siren as may be reasonably necessary.

“(3) The peace officer’s motor vehicle is *distinctively marked*.

“(4) The peace officer’s motor vehicle is operated by a peace officer ... and that peace officer is wearing a *distinctive uniform*.” (Italics added).

SUFFICIENT EVIDENCE SATISFIES THE “DISTINCTIVELY MARKED” REQUIREMENT OF SECTION 2800.1, SUBDIVISION (a)(3).

Appellant maintains that the evidence failed to satisfy the “distinctively marked” element of section 2800.1, subdivision (a)(3) because the pursuit vehicles lacked any logo or symbol signifying their status as police vehicles. Appellant urges us to adopt a reading of the statute that would require police vehicles to have distinctive markings identifiable to the casual observer not involved in the police pursuit. In *People v. Estrella* (1995) 31 Cal.App.4th 716 (*Estrella*), we rejected a similar argument. In *Estrella*, while we acknowledged that “a red light and siren alone do not distinctively mark a police vehicle,” we held that “additional ‘devices’ ... consisting of wigwag lights and the flashing blue and clear lights adequately identified [the] vehicle as a police vehicle.” (*Id.* at p. 723) There we adopted a “commonsense approach” to the question of whether a person had reasonable notice as to the pursuer’s identify. (*Ibid.*) Other districts have adopted this approach (see, e.g., *People v. Mathews* (1998) 64 Cal.App.4th 485, 489) and we see no justification to depart from this approach today.

In *Estrella*, the police pursuit involved two unmarked police vehicles devoid of any insignia identifying them as police vehicles. (31 Cal.App.4th at pp. 719-720) One of the vehicles had wigwags and a light bar flashing red and blue, in addition to a siren. (*Ibid.*) We held that these devices placed the defendant on reasonable notice regarding his pursuers' identity. (*Id.* at p. 723.) Here, too, the pursuit involved police vehicles equipped with more than just red lights and sirens. Two of the vehicles had wigwag lights and strobe lights, easily rendering them distinctively marked under *Estrella*. Officer Guffey's maroon BMW lacked wigwag lights but had a flashing red light, strobe lights, and a siren. The pursuit occurred at 10:30 p.m. and so all of the lights would have been brightly illuminated and easy for appellant to see. Even without the wigwags, Officer Guffey's red light and flickering strobes would sufficiently identify his BMW as a police-operated vehicle. As in *Estrella*, we are not persuaded that a reasonable person could have mistaken Officer Guffey's vehicle for a nonpolice vehicle. (*Ibid.*) Sufficient evidence supports the jury's finding that the pursuing vehicles were distinctively marked.

**SUFFICIENT EVIDENCE SATISFIES THE “DISTINCTIVE UNIFORM”
ELEMENT OF SECTION 2800.1, SUBDIVISION (a)(4).**

Officer Guffey's Raid Vest Satisfies the Distinctive Uniform Requirement.

Appellant also attacks the evidence related to the pursuing officers' uniforms under section 2800.1, subdivision (a)(4). In *Estrella*, we addressed a similar argument as to whether the officers' uniforms were sufficiently distinctive. We ruled that “[t]he statute does not require that the uniform be of any particular level or formality or that it be complete.” (*Estrella, supra*, 31 Cal.App.4th at p. 724.) We defined “uniform” as “dress of a distinctive design or fashion adopted by or prescribed for members of a particular group and serving as a means of identification.” (*Ibid.*, quoting Webster's 3d New Internat. Dict. (1981) p. 2498.) In essence, we concluded that the statute requires that the pursuing officer wear a uniform that places a reasonable person on notice as to the officer's identity.

In *Estrella*, we held: “Defendant does not point to any related provision of law that would define ‘uniform’ in a manner that would exclude either [Officer] Borton’s vest or [Officer] Haskins’s police department vest, cloth badge, gunbelt and navy blue baseball cap marked ‘Police’ in bright yellow lettering.” (*Estrella, supra*, 31 Cal.App.4th at p. 724.) We determined that these uniforms notified the defendant as to the officers’ identity and affirmed the conviction. (*Id.* at pp. 724-25.) Here, in addition to his badge and weapon, Officer Guffey wore a black raid vest with the word “Police” inscribed in two-inch yellow letters on the front and six-inch yellow letters on the back. This black raid vest constituted a distinctive uniform. As in *Estrella*, Officer Guffey’s uniform placed appellant on reasonable notice as to his pursuer’s identity. Sufficient evidence supports the jury’s findings on the distinctive uniform element of section 2800.1, subdivision (a)(4).

We Need Not Address Whether the Officers’ “Non-Clothing” Items Satisfied the Distinctive Uniform Requirement.

Regarding the officers’ “non-clothing” items, appellant exhorts us to deem such attire as insufficiently distinctive under the Third District’s reasoning in *People v. Mathews, supra*, 64 Cal.App.4th 485. Appellant emphasizes that Deputy Brown and Officer Genest wore nothing more than their badges and gunbelts to distinguish them as peace officers. In *Mathews*, the officer involved in the pursuit wore plain clothes with a badge and gun displayed at his side. (*Id.* at p. 487.) Relying on *Estrella*’s definition of uniform as “dress” (*Estrella, supra*, 31 Cal.App.4th at p. 724), the court held that a badge does not constitute a distinctive uniform because it fails to qualify as an article of clothing. The court reasoned that defendants must receive the “““benefit of every reasonable doubt ... as to the true interpretation of words or the construction of language used in a statute”””” and reversed the conviction. (*Mathews*, 64 Cal.App.4th at p. 490, quoting *People v. Garfield* (1985) 40 Cal.3d 192, 200.)

We need not address the issue of whether badges and gunbelts alone satisfy the uniform requirement because Officer Guffey's raid vest clearly sufficed. The statute does not require that each and every pursuing vehicle be operated by a peace officer wearing a distinctive uniform. It simply requires that the pursued driver attempt to flee a distinctively marked vehicle driven by a distinctively uniformed peace officer. Appellant fled Officer Guffey, who drove a distinctively marked car and whose police raid vest sufficiently distinguished him as a police officer. This alone supports the jury's conviction under the statute's distinctive uniform element.

Appellant's Inability to See Officer Guffey's Raid Vest is Irrelevant.

In passing, appellant argues that Officer Guffey's raid vest should not satisfy the uniform requirement because appellant could not see it during the pursuit. He notes that the only pursuing officer he could possibly see during the chase (Deputy Brown, following directly behind) did not have a distinctive uniform. Appellant insists he could not discern Officer Guffey's raid vest because Guffey drove the third car in the pursuit line, too far away from appellant's Honda for him to see. He contends that basing liability on the attire of a nonobservable peace officer violates his due process rights. We disagree.

As we held in *Estrella*: "there is no requirement in the statute that the person eluding capture actually see that the police officer is wearing a distinctive uniform." (*Estrella, supra*, 31 Cal.App.4th at p. 724.) Because the statute has no observability requirement, appellant's contention on this point fails. We find it irrelevant as to whether or not appellant could observe Officer Guffey's raid vest. The pursuit occurred at night, where appellant would have difficulty seeing any type of uniform the officer wore, regardless of their location in the pursuit line. Again, appellant attempted to elude Officer Guffey, who drove a distinctively marked vehicle and wore a distinctively marked uniform. In addition to the other elements of sections 2800.1 and 2800.2 not

raised as issues on appeal, the statute requires nothing more. The evidence supports appellant's conviction.

DISPOSITION

The judgment is affirmed.