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SUPREME COURT NO. 97335-1

NO. 35718-0-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL CONNORS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SPOKANE COUNTY

The Honorable John O. Cooney, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER/DECISION BELOW

Michael Connors, appellant below, requests this Court grant review pursuant to RAP 13.4 of the Court of Appeals' published opinion affirming his conviction for attempting to elude in State v. Connors, ___ Wn. App. 2d ___, ___ P.3d ___, 2019 WL 2292378 (No. 35718-0-III, filed May 30, 2019). A copy of the opinion is attached as an appendix.

B. ISSUE PRESENTED FOR REVIEW

The offense of attempting to elude a pursuing police vehicle requires proof that the person was signaled to stop by a uniformed police officer. Was the evidence of this element insufficient when the officer was in plain clothes except for a marked police vest?

C. STATEMENT OF THE CASE

Officer Scott Lesser tried to pull over a car with no license plates. RP 86, 88-89. When he turned to get a better look, the car sped off. RP 88. Lesser followed and activated his red and blue emergency lights. RP 90.

At the time, Lesser wore a "black external vest carrier" over his "normal clothes." RP 86. He explained the vest has "all my normal duty gear" that would otherwise be on a belt. RP 86. The vest has a "Spokane Police" patch on the front and block letters that say "police"

on the back. RP 86. The record does not reflect the size of the block lettering or the patch. He also wore a "drop-down style holster" and a "shiny silver Spokane police badge on the front of my leg." RP 86. He described his vehicle as a "plain marked kind of goldish color Chevy Tahoe" with "red and blue LED lights that flash in all four corners of the vehicle." RP 87. The vehicle is also equipped with an emergency siren. RP 87.

Lesser watched the car drive quickly down an alley and residential street, then pull out unsafely onto a busy arterial forcing other cars to slow or stop. RP 91-93. At a busy intersection the car went between two vehicles, narrowly avoiding a collision. RP 91-93. Lesser turned on his siren. RP 93-94.

For a time, Lesser broke off pursuit because of the danger to the public but he was able to follow the trail of dust behind the car. RP 95. At the entrance to an apartment complex, he saw many agitated people. RP 97. Inside the complex, he found the car and could see appellant Michael Connors running. RP 99. Lesser testified Connors was the same man he had seen driving the car. RP 105.

While Lesser searched the area, another officer read Connors his constitutional rights. RP 106-09. Connors told Lesser, "I've gotten away with eluding before so I tried to run. Police only chase me a

short distance usually and most of the time I get away.” RP 110. He also described how he “was pretty close when I swerved between two cars and almost wrecked.” RP 110. In Connors’ backpack, police found latex gloves similar to a glove found in the car. RP 111-12. The key was stuck in the car’s ignition and could not be removed. RP 79.

The license plates and identification belonging to Shannon Clum were found under the driver’s seat. RP 78. Clum had reported her car stolen. RP 61. She had not given Connors or anyone else permission to drive it. RP 63.

The jury found Connors guilty of attempting to elude a pursuing police vehicle and possessing a stolen motor vehicle. CP 41, 43. The court imposed concurrent sentences at the high end of the standard range. CP 108-10.

On appeal, Connors argued he could not lawfully be convicted of attempting to elude because Lesser was wearing, “normal clothes” and a police vest, rather than a uniform. The Court of Appeals held that the uniform requirement is met as long as the officer “is attired in a distinctive garment that clearly identifies him as a member of law Enforcement.” Connors, slip op. at 4. Connors seeks this Court’s review.

D. REASONS WHY REVIEW SHOULD BE ACCEPTED AND ARGUMENT

THIS COURT SHOULD GRANT REVIEW AND REVERSE BECAUSE PLACING A VEST OVER PLAIN CLOTHES IS NOT THE SAME AS WEARING A UNIFORM.

The law prohibits conviction for attempting to elude unless the pursuing officer is wearing a uniform. RCW 46.61.024. The Court of Appeals erred in failing to reverse Connors' conviction because the officer who signaled him to stop was in "normal clothes" supplemented with a police vest and his badge. RP 86.

A person commits the offense of attempting to elude if the driver, after being given the signal to stop by a uniformed police officer in a marked police vehicle "willfully fails or refuses to immediately bring his or her vehicle to a stop." RCW 46.61.024. By law, "The officer giving such a signal shall be in uniform and the vehicle shall be equipped with lights and sirens." RCW 46.61.024. The fact that the officer was in uniform is an essential element that must be proved beyond a reasonable doubt. See State v. Fussell, 84 Wn. App. 126, 128-29, 925 P.2d 642 (1996); see also State v. Pittman, 185 Wn. App. 614, 620, 341 P.3d 1024 (2015) ("The requirements in the second and third sentences that the signal be given by a police officer in uniform are also necessary to establish illegality and are thus essential elements). Thus, the validity of

Connors' conviction for attempting to elude rests on whether a vest alone means that an officer is "in uniform" for purposes of the attempting to elude statute. It does not.

No Washington case has defined the contours of what it means to be in uniform. The meaning of a statutory term is a legal question reviewed de novo. State v. Weatherwax, 188 Wn.2d 139, 148, 392 P.3d 1054 (2017). Statutory interpretation begins with the legislature's intent as indicated by the plain language of the statute. Pittman, 185 Wn. App. at 620 (citing Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9-12, 43 P.3d 4 (2002)). The plain language meaning of non-technical terms is discerned from the dictionary definition. State v. Kintz, 169 Wn.2d 537, 547, 238 P.3d 470 (2010).

The dictionary defines "uniform" as "dress of a distinctive design or fashion adopted by or prescribed for members of a particular group (as an armed service, an order, or a social or work group) and serving as a means of identification," and "a garment or outfit of a widely copied style or prescribed design." Webster's Third New International Dictionary 2498 (1993).

As the Court of Appeals recognized, the legislature likely intended that the officer must be wearing "department issued clothing

that clearly communicates the officer's status to members of the general public." Connors, slip op. at 4. What the court failed to acknowledge was the context in which this must occur.

The crime of attempt to elude occurs when a person fails to stop for a "pursuing police vehicle." RCW 46.61.024. Thus, the officer must necessarily be behind the wheel of a motorized vehicle, usually a car. The officer's back, where the block lettering identifying the wearer as "POLICE" is found on the vest in question, is completely obscured by the driver's seat of a car. In the context of attempting to elude, the vest alone does not meet the Court of Appeals' own standard of "clearly communicat[ing] the officer's status."

At best, the term "uniform" is ambiguous as it pertains to an officer who is in plain clothes except for a vest. Where a statute is susceptible of multiple reasonable interpretations after the plain meaning analysis, it is ambiguous. Pittman, 185 Wn. App. at 620 (citing Dep't of Ecology, 146 Wn.2d at 9-12). Here, the term uniform could mean "full uniform," as Connors suggests it must, or it could, as the Court of Appeals concluded, mean wearing any item of clothing that might identify a person as a police officer. Under this rationale, the term "in uniform" could be seen as ambiguous, but that ambiguity also requires reversal of Connors' conviction.

“Criminal statutes are strictly construed.” State v. Hudson, 85 Wn. App. 401, 403, 932 P.2d 714 (1997). Moreover, the rule of lenity requires that, absent other indications of legislative intent, criminal statutes must be strictly construed in favor of the defendant. Weatherwax, 188 Wn.2d at 155. “[W]hen choice has to be made between two readings of what conduct [the legislature] has made a crime, it is appropriate, before we choose the harsher alternative.” State v. Tvedt, 153 Wn.2d 705, 710-11, 107 P.3d 728 (2005) (quoting United States v. Universal C.I.T. Credit Corp., 344 U.S. 218, 222, 73 S. Ct. 227, 97 L. Ed. 260 (1952)). If the legislature had intended that one item of distinctive clothing, visible or not, could constitute a uniform, it could have defined the term. Because the legislature did not do so, the term “uniform” should be construed strictly to mean a full uniform.

The meaning of the uniform requirement is a question of substantial public interest that should be resolved by this Court under RAP 13.4(b)(4). The general public should be able to lawfully flee someone who cannot be clearly identified as a police officer. Oregon law has a similar requirement, and one court there noted the purpose of the uniform requirement is that it, “ensures that the person being pursued will know that he or she is in fact fleeing a police officer.”

State v. Burnett, 185 Or. App. 409, 414, 60 P.3d 547 (2002).¹ A simple vest could be easily donned in a hurry or as a costume. Permitting prosecution of a person chased by someone wearing a police vest over normal clothing fails to serve the purpose of the statutory requirement. It fails to ensure that a member of the general driving public can identify the officer as a legitimate police officer.

The Court of Appeals opinion ignores the common understanding of the word uniform. It also ignores the common distinction in law enforcement between “uniforms” and “plain clothes.” It further ignores the legislative purpose, namely, to identify a police officer behind the wheel of a car. And finally, it ignores the rule of lenity. Connors requests this Court grant review under RAP 13.4(b)(4) and reverse.

Because Officer Lesser was not “in uniform,” as required by the statute, the evidence was insufficient to convict Connors, and his conviction must be reversed. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); U.S. Const. amend. XIV; Const. art. I, § 3. No rational trier of fact could find that Lesser was “in uniform.” Lesser testified he wore “normal clothes” with his

¹ But see People v. Estrella, 31 Cal. App. 4th 716, 724, 37 Cal. Rptr. 2d 383 (1995) (marked police vest constituted distinctive police uniform).

police vest over them. When the term “in uniform” is correctly interpreted to require a full uniform that could identify the person as a police officer in the context of driving a car, the evidence is insufficient to support this element. Connors’ conviction must be reversed.

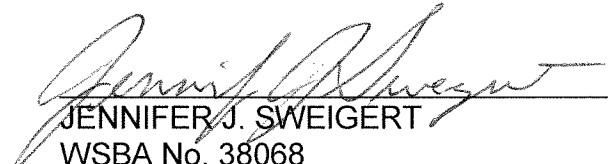
E. CONCLUSION

The Court of Appeals’ decision presents an issue of substantial public interest. RAP 13.4(b)(4). Therefore, Connors asks this Court to grant review and reverse his conviction.

DATED this 14th day of June, 2019.

Respectfully submitted,

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Appendix

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	No. 35718-0-III
)	
Respondent,)	
)	
v.)	PUBLISHED OPINION
)	
MICHAEL E. CONNORS JR.,)	
)	
Appellant.)	

PENNELL, A.C.J. — Michael Connors appeals his conviction for attempting to elude a police vehicle. He claims the State presented insufficient evidence that he had been pursued by a police officer “in uniform.” We disagree with this contention and affirm.

FACTS

Mr. Connors was driving a stolen car when he failed to respond to a signal to stop issued from a police vehicle. Instead of stopping, Mr. Connors sped away to an apartment complex. He then abandoned the stolen car and fled on foot until he was

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apprehended by the pursuing officer. The officer described his own attire at the time of the incident as including

a black external vest carrier, so it actually goes over normal clothes, has all my normal duty gear, I just carry it on a vest in front of me instead of on a belt. It has a Spokane Police badge on the front; it's a patch. And then it has clear block reflective letters across the back that say police. Then I wear a drop-down style holster and it has a shiny silver Spokane Police badge on the front of my leg.

Report of Proceedings (RP) (Nov. 13, 2017) at 86.

Mr. Connors was charged with, and convicted of, attempting to elude a police vehicle and possession of a stolen motor vehicle. He appeals his eluding conviction.

ANALYSIS

A conviction for attempting to elude a police vehicle requires the State to prove, beyond a reasonable doubt, that the defendant was signaled to stop by a uniformed police officer. *State v. Hudson*, 85 Wn. App. 401, 403, 932 P.2d 714 (1997); *State v. Fussell*, 84 Wn. App. 126, 127, 925 P.2d 642 (1996). The pertinent language of the eluding statute is as follows:

Any driver of a motor vehicle who willfully fails or refuses to immediately bring his or her vehicle to a stop and who drives his or her vehicle in a reckless manner while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class C felony. The signal given by the police officer may be by hand, voice, emergency light or siren. The officer giving such a signal *shall be in uniform* and the vehicle shall be equipped with lights and sirens.

RCW 46.61.024(1) (emphasis added).

Mr. Connors argues the State’s evidence was insufficient to meet this standard because the officer who signaled Mr. Connors to stop was predominantly dressed in “normal clothes,” accompanied by a police vest and badges. Br. of Appellant at 1, 4; RP (Nov. 13, 2017) at 86. The merits of Mr. Connors’s argument turns not on the nature of the State’s proof (the facts are uncontested), but on the meaning of the word “uniform.” This is a matter of statutory interpretation, which we review de novo. *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002).

When interpreting statutory text, our fundamental goal is to discern legislative intent. *In re Marriage of Schneider*, 173 Wn.2d 353, 363, 268 P.3d 215 (2011). When a statute does not define a term, courts will give the term “its plain and ordinary meaning unless a contrary legislative intent is indicated.” *State v. Jones*, 172 Wn.2d 236, 242, 257 P.3d 616 (2011) (quoting *Ravenscroft v. Wash. Water Power Co.*, 136 Wn.2d 911, 920-21, 969 P.2d 75 (1998)). Generally, courts derive the plain meaning from context as well as related statutes. *State v. Barnes*, 189 Wn.2d 492, 495-96, 403 P.3d 72 (2017). But a standard English dictionary may also be employed to determine the plain meaning of an undefined term. *Id.* at 496 (citing *State v. Fuentes*, 183 Wn.2d 149, 160, 352 P.3d 152 (2015)).

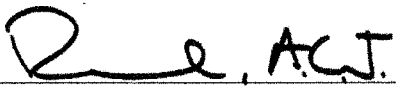
Because the term “uniform” is not defined by RCW 46.61.024, we look to the dictionary for assistance. A “uniform” is defined as a “dress of a distinctive design or fashion adopted by or prescribed for members of a particular group . . . and serving as a means of identification,” and “a garment or outfit of a widely copied style or prescribed design.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2498 (1993). In the context of the eluding statute, this definition appears to contemplate that the signaling or pursuing officer is wearing department-issued clothing that clearly communicates the officer’s official status to members of the general public.

The clothing described during Mr. Connors’s trial readily meets the ordinary definition of a “uniform.” The vest worn by the officer was specific to the Spokane Police Department. It served to notify the public that the officer was an official member of the police department. The fact that the officer wore “normal clothes” under his police vest does not mean he was not wearing a uniform. Some uniforms are comprehensive from head to toe. Others are not. *See, e.g., People v. Estrella*, 31 Cal. App. 4th 716, 724, 37 Cal. Rptr. 2d 383 (1995) (marked police vest constituted distinctive police uniform). The eluding statute makes no preference. So long as an officer deploying the signal to stop is attired in a distinctive garment that clearly identifies him as a member of law enforcement, the statutory requirement of a “uniform” is met.

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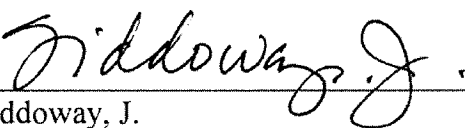
CONCLUSION

The judgment of conviction is affirmed.

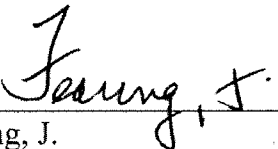


Pennell, A.C.J.

WE CONCUR:



Siddoway, J.



Fearing, J.

NIELSEN, BROMAN & KOCH P.L.L.C.

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