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Court of Appeals  
Division III  
State of Washington  
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35718-0-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, RESPONDENT

v.

MICHAEL CONNORS, APPELLANT

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APPEAL FROM THE SUPERIOR COURT  
OF SPOKANE COUNTY

---

**BRIEF OF RESPONDENT**

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## **I. ISSUES PRESENTED**

Was there sufficient evidence presented from which a rational trier of fact could find the officer was in “uniform” while the defendant attempted to elude the officer?

## **II. STATEMENT OF THE CASE**

A jury convicted the defendant of attempting to elude a police vehicle and possession of stolen of a stolen motor vehicle. CP 41-42, 43-44. Although alleged in the information, the jury did not return a special verdict finding that one or more persons were threatened by the defendant’s attempt to elude a police vehicle, under RCW 9.94A.834. CP 42, RP 182.

On July 4, 2017, around 6:00 p.m., Spokane Police Officer Scott Lesser was on routine patrol in Spokane. RP 87, 92, 95. Officer Lesser observed a Nissan Maxima, without license plates, approach his vehicle. RP 87-89. As the officer turned his vehicle around, the defendant drove away at a high rate of speed into and through an alleyway.<sup>1</sup> RP 87-89, 91. The officer activated his emergency lights and attempted to catch the vehicle. RP 90-91. Soon thereafter, the defendant’s vehicle slid out onto Haven Street, causing vehicles traveling southbound to take measures to

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<sup>1</sup> This is a residential neighborhood in the Hillyard area of Spokane. RP 91.

avoid being struck by the defendant's vehicle. RP 92. The officer then activated his siren. RP 93-94.

The vehicle travelled southbound on congested Wellesley Avenue at a high rate of speed, splitting two other vehicles, forcing one of the vehicles to the side of the road. RP 92-93. The defendant then increased his speed and Officer Lesser ultimately terminated his pursuit due to public safety. RP 93-95. The defendant eventually drove westbound on Garland Avenue, and then southbound on Regal Avenue. RP 95.

A short time later, Officer Lesser observed the defendant running near an apartment complex on Providence Avenue. RP 99, 105. The officer gave chase on foot and apprehended the defendant. RP 105-06. After being advised of his rights,<sup>2</sup> and asked why he eluded Officer Lesser, the defendant stated: "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.

Shannon Clum reported her car stolen to the police on July 3, 2017. RP 61. She gave no one, including the defendant, permission to drive or possess her car. RP 62, 64. During the evening of July 4, 2017, Ms. Clum

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<sup>2</sup> The trial court conducted a CrR 3.5 hearing and determined the statements made by the defendant to Officer Lesser would be admissible at the time of trial. RP 18-37 (testimony); RP 39-40 (ruling).

responded to Officer Lesser's location. RP 64. Upon Ms. Chum's arrival, her vehicle would not start, had a great deal of internal and external damage, and had to be towed from the scene. RP 64.

### III. ARGUMENT

**AS THE PURSUING OFFICER, THE OFFICER'S TESTIMONY THAT HE WAS ADORNED WITH A BLACK VEST, POLICE BADGE/PATCH, POLICE SHIELD, AND CLEAR BLOCK REFLECTIVE LETTERS "POLICE" IMPRINTED ON THE BACK OF HIS VEST SUFFICIENTLY ESTABLISHED THE OFFICER WAS IN "UNIFORM" DURING THE DEFENDANT'S ATTEMPT TO ELUDE.**

The defendant argues there was insufficient evidence to support the conviction for attempt to elude a police vehicle because the State did not establish Officer Lesser was in a uniform at the time of the chase.<sup>3</sup>

#### Standard of review.

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *Id.* A claim of insufficiency

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<sup>3</sup> The defendant does not assign error to the possession of a stolen motor vehicle conviction.

admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *Id.* An appellate court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004). Circumstantial and direct evidence receive equal weight on review. *Id.* at 874.

In a sufficiency of the evidence challenge, the court is highly deferential to the decision of the jury. *State v. Davis*, 182 Wn.2d 222, 227, 340 P.3d 820 (2014). In that regard, our Supreme Court has stated:

It is the province of the jury to weigh the evidence, under proper instructions, and determine the facts. It is the province of the jury to believe, or disbelieve, any witness whose testimony it is called upon to consider. If there is substantial evidence (as distinguished from a scintilla) on both sides of an issue, what the trial court believes after hearing the testimony, and what this court believes after reading the record, is immaterial. The finding of the jury, upon substantial, conflicting evidence properly submitted to it, is final.

*State v. Williams*, 96 Wn.2d 215, 222, 634 P.2d 868 (1981). Similarly, it expressed:

The fact that a trial or appellate court may conclude the evidence is not convincing, or may find the evidence hard to reconcile in some of its aspects, or may think some evidence appears to refute or negative guilt, or to cast doubt thereon, does not justify the court's setting aside the jury's verdict.

*State v. Randecker*, 79 Wn.2d 512, 517-18, 487 P.2d 1295 (1971).

In the present case, the jury was instructed as follows, in pertinent part:

To convict the defendant of the crime of attempting to elude a police vehicle, as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about July 04, 2017 the defendant drove a motor vehicle;
- (2) That the defendant was signaled to stop by a uniformed police officer by hand, voice, emergency light, or siren;
- (3) That the signaling police officer's vehicle was equipped with lights and siren;
- (4) That the defendant willfully failed or refused to immediately bring the vehicle to a stop after being signaled to stop;
- (5) That while attempting to elude a pursuing police vehicle, the defendant drove his vehicle in a reckless manner; and
- (6) That the acts occurred in the State of Washington.

CP 27.

Accordingly, the crime of eluding a pursuing police vehicle occurs when “[a] suspect [] (1) willfully fail[s] (2) to immediately bring his vehicle to a stop, (3) and drive in a manner indicating a wanton and willful disregard for the lives or property of others (4) while attempting to elude police after being signaled to stop by a uniformed officer.” *State v. Tandecki*, 153 Wn.2d 842, 848, 109 P.3d 398 (2005); *see* RCW 46.61.024 (attempting to elude). With that said, it is an express element of the crime of attempting to elude a pursuing police officer who signals a driver to stop “shall be in uniform.” *State v. Hudson*, 85 Wn. App. 401, 403, 932 P.2d 714 (1997)

(Division I); *State v. Fussell*, 84 Wn. App. 126, 127, 925 P.2d 642 (1996) (Division III).

In *Hudson*, the officers were in a marked patrol car with its lights and siren activated and said, “Stop” and “Police” after exiting the car. 85 Wn. App. at 404. There was no testimony that the officers were in uniform. *Id.* at 404. Division One held that evidence that the officers were in a marked vehicle and that the defendant probably knew they were police officers was insufficient to permit a rational trier of fact to infer beyond a reasonable doubt that these officers were in uniform. *Id.* at 405. In *Fussell*, this Court reached the same conclusion in a case with similar facts. 84 Wn. App. at 127-29.

At the time of trial in the present case, Officer Lesser described his clothing as follows:

I was wearing -- it's 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.

RP 86.

Statutory construction.

Statutory interpretation is a question of law, subject to de novo review. *Lockner v. Pierce Cty.*, 190 Wn.2d 526, 531, 415 P.3d 246 (2018). When interpreting a statute, an appellate court's duty is to give effect to the Legislature's intent. *Id.* "Where the meaning of statutory language is plain on its face, [an appellate court] must give effect to that plain meaning as an expression of legislative intent." *City of Spokane v. Spokane County*, 158 Wn.2d 661, 673, 146 P.3d 893 (2006). Similarly, words in a statute should be given their plain and ordinary meaning unless a contrary legislative intent appears. *Streng v. Clarke*, 89 Wn.2d 23, 569 P.2d 60 (1977). Moreover, an appellate court cannot read into a statute that which does not appear. *Automobile Drivers Local 882 v. Department of Retirement Systems*, 92 Wn.2d 415, 598 P.2d 379 (1979), *cert. denied*, 444 U.S. 1040 (1980).

However, "statutes should receive a sensible construction to [give] effect [to] the legislative intent and, if possible, to avoid unjust and absurd consequences." *State v. Vela*, 100 Wn.2d 636, 641, 673 P.2d 185 (1983).

The Legislature criminalized attempting to elude a police vehicle to address the dangers of high speed chases. *State v. Malone*, 106 Wn.2d 607, 611, 724 P.2d 364 (1986). In doing so, the Legislature has not defined the term "uniform." Nor does the Legislature indicate that a definition or

standards set forth elsewhere are incorporated into RCW 46.61.024, for the purpose of defining the term. However, the Legislature struck the language “prominently displaying his badge of office,” without explanation from the final bill, when enacting the crime. *See* 2 Senate Journal, 46<sup>th</sup> Leg., Reg. Sess. (Wash. 1979) at 1647.<sup>4</sup>

The rules of statutory construction require that an appellate court give undefined words their common and ordinary meaning. *State v. Smith*, 117 Wn.2d 263, 270-71, 814 P.2d 652 (1991). A court may use a dictionary to determine the meaning of a statutory term if the common and ordinary meaning of the term is not readily apparent. *Zachman v. Whirlpool Financial Corp.*, 123 Wn.2d 667, 671, 869 P.2d 1078 (1994).

Per several dictionaries, “uniform” means “dress of a distinctive design or fashion worn by members of a particular group and serving as a means of identification; *broadly*: distinctive or characteristic clothing,” MERRIAN-WEBSTER’S COLLEGIATE DICTIONARY 1368 (11<sup>th</sup> Ed. 2003) (emphasis in the original), or “[a] distinctive dress of uniform cut, materials, and colour worn by all the members of a particular naval, military, or other force to which it is recognized as properly belonging and peculiar.” OXFORD ENGLISH DICTIONARY, COMPACT EDITION, 3512 (1971). “Dress” is defined

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<sup>4</sup> A copy of the excerpt is attached at Appendix A.

as “covering, adornment, or appearance appropriate or peculiar to a particular time.” MERRIAN-WEBSTER’S COLLEGIATE DICTIONARY 380 (11<sup>th</sup> ed. 2003).

In *People v. Estrella*, 31 Cal. App. 4th 716, 724, 37 Cal. Rptr. 2d 383 (1995), the defendant argued that a police officer’s vest bearing the word “Police” did not qualify as a distinctive uniform<sup>5</sup> “because a reasonable person would not associate a vest as a police uniform and because one driving in front of such a uniformed officer [could not] reasonably be expected to see the letters written on the vest.”

Relying on dictionary definitions, the California court stated:

A “uniform” is dress of a distinctive design or fashion adopted by or prescribed for members of a particular group and serving as a means of identification. Something is distinctive if it serves to distinguish, or sets something apart from others; or, if it is characteristic of or peculiar to its type.

*Estrella*, 31 Cal. App. 4th at 724 (internal dictionary citations omitted). In affirming the conviction, the court found that the officer’s vest qualified as parts of a police uniform, holding that the California statute did not require

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<sup>5</sup> Even more restrictive than Washington’s statute, RCW 46.61.024, the former California statute defining eluding a police officer at the time required the that a police officer wear a “distinctive uniform” See former Cal. Veh. Code § 2800.2. For purposes of California statute, section 2800.2, “a law enforcement officer’s ‘distinctive uniform’ is the clothing prescribed for or adopted by a law enforcement agency which serves to identify or distinguish members of its force.” *People v. Mathews* (1998) 64 Cal. App. 4th 485, 490, 75 Cal. Rptr. 2d 289 (1988).

the uniform “be of any particular level of formality or that it be complete.”

*Id.* at 724. The *Estralla* court explained:

Defendant’s assertion that a reasonable person would not consider a vest as a police uniform lacks support in either logic or experience. Further, the word “police” and a badge are distinctive ways of identifying the wearers as police. Finally, there is no requirement in the statute that the person eluding capture actually see that the police officer is wearing a distinctive uniform. Here, [the officer’s] badge and the lettering across the front of his police cap would be reasonably visible.

*Id.* at 724.

Here, Officer Lesser was not in plain clothes or off duty. The officer’s attire identified him to the general public that he was a member of the Spokane Police Department, wearing what could be characterized as a legally distinct, tactical uniform, and could be identified as a police officer, which prominently displayed a police badge (patch) on the front of his vest, a shiny “Spokane Police” shield on his front leg, clear reflective block letters “POLICE” imprinted on the back of the vest, in conjunction with his gear, including a holster on his leg.

The defendant offers no authority of what is formally or minimally required to be considered an official Spokane police uniform. As police departments modernize and expand, it is no longer customary, as in years past, for all officers to be clad alike in the same patrol uniform and formal hat. Because Officer Lesser described his attire for the jury, a rational trier

of fact could reasonably infer that Officer Lesser was in a police “uniform.” The jury could have reasonably concluded from Officer Lesser’s testimony regarding his attire that the defendant immediately concluded Officer Lesser’s status as a police officer when he observed him on the street, that Officer Lesser was in uniform during the chase. The State presented sufficient evidence to support the conviction.

The defendant’s reliance on *State v. Montano*, No. A-1-CA-35275, 2018 WL 1577491, at \*3 (N.M. Ct. App. Mar. 29, 2018) is of no avail as it is factually distinguished. In that case, the defendant was convicted of aggravated fleeing from a law enforcement officer. Montano argued on appeal that the deputy sheriff was not in uniform nor in an appropriately marked patrol vehicle. At the time of the chase with the defendant, the deputy was wearing “a dress shirt with tie, dress slacks, and dress shoes.” *Id.* at \*1. The deputy’s badge was displayed on the breast pocket of his shirt. *Id.* The deputy was driving an unmarked Ford Expedition with no insignia, decals, or striping, but had a siren and emergency lights mounted in the grill of the vehicle and top of the rear window. *Id.* On appeal, the State argued the deputy’s badge constituted a uniform. Relying on statutory construction and a dictionary definition of “uniform,” the New Mexico court of appeals

found that the deputy's clothing did not identify him as a police officer. As the court stated:

[The deputy's] clothing was not of a distinctive design or fashion and did not serve to identify him as a law enforcement officer. On the contrary, the purpose of his outfit was, if anything, to allow him to blend in with the general public. For purposes of applying the plain meaning of uniform, it matters not that as an investigator [the deputy] was required to wear civilian clothes: they did not distinguish him from the general public any more than the dress clothing that lawyers generally must wear in court constitutes a uniform that distinguishes them from persons who work in other occupations where dress clothes are the norm. Further, [the deputy's] badge was not an article of clothing, even though it, too, may be a separate indicia of law enforcement officer status. Similarly, handcuffs and a holstered firearm may identify the person wearing them as a law enforcement officer, but they do not amount to clothing.

*Id.* at \*3.

Furthermore, *Hudson* and *Fussell* are distinguished because in those cases, there was *no* testimony presented of the pursuing officers' clothing.

In the present case, Officer Lesser's black vest, defensive gear contained and secured on his black vest, a Spokane Police badge/patch sewn and affixed onto his vest, reflective block letters "Police" sewn and fastened onto the back of his vest, and a police shield affixed to his pant leg is a vast departure from the deputy's clothing described in *Montano*, who wore a dress shirt, tie, dress pants, and dress shoes, bearing no law enforcement symbols or indicia of authority. It cannot be disputed that Officer Lesser

would have been immediately recognized as a police officer in uniform in a crowd. Indeed, the defendant knew Officer Lesser was a police officer in uniform, as he engaged and attempted to elude Officer Lesser, as he had previously done in other officer involved pursuits.

#### IV. CONCLUSION

There was sufficient evidence Officer Lesser wore a “uniform” during the pursuit with the defendant. For the reasons stated above, the State requests this Court affirm the judgment and sentence.

Dated this 10 day of August, 2018.

LAWRENCE H. HASKELL  
Prosecuting Attorney



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Larry Steinmetz #20635  
Deputy Prosecuting Attorney  
Attorney for Respondent

# **APPENDIX A**

## MOTION

On motion of Senator Rasmussen, the Senate concurred in the House amendment to Senate Bill No. 2502.

## ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 2502, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 41; nays, 1; absent or not voting, 2; excused, 5.

Voting yea: Senators Benitz, Bluechel, Bottiger, Clarke, Conner, Day, Donohue, Gallagher, Gaspard, Goltz, Guess, Henry, Jones, Lee, Lewis, Lysen, Marsh, Matson, McDermott, Moore, Morrison, Newschwander, North, Odegaard, Peterson, Pullen, Rasmussen, Ridder, Sellar, Shinpoch, Talley, Talmadge, Van Hollebeke, Vognild, von Reichbauer, Walgren, Wanamaker, Williams, Wilson, Wojahn, Woody—41.

Voting nay: Senator Scott—1.

Absent or not voting: Senators Hansen, Hayner—2.

Excused: Senators Bausch, Fleming, Gould, Keefe, Quigg—5.

SENATE BILL NO. 2502, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

## MESSAGE FROM THE HOUSE

April 10, 1979.

Mr. President: The House has passed SUBSTITUTE SENATE BILL NO. 2439 with the following amendments:

On page 1, beginning on line 20, strike all material down to and including "imprisonment" on line 25 and insert "Any person taking or possessing salmon in violation of any of the provisions of the fisheries code, or any of the rules or regulations of the director made pursuant thereto, shall, in the event such salmon have a market value greater than two hundred and fifty dollars, be punished by a fine in an amount not more than five thousand dollars. Such fine shall be in addition to any other punishment prescribed for such conduct and shall be imposed along with such punishment in the same proceedings"

On page 2, beginning on line 12, strike "((may)) shall" and insert "may"

On page 2, line 19, after "all" strike "commercial"

On page 2, line 20, after "all" strike "commercial"

On page 2, line 22, after "violations of" strike "commercial"

On page 2, line 23, after "regulations" strike "of this title", and the same is herewith transmitted.

DEAN R. FOSTER, Chief Clerk.

VITO T. CHIECHI, Chief Clerk.

## MOTIONS

Senator Gallagher moved the Senate do concur in the House amendments to Substitute Senate Bill No. 2439.

Senator Rasmussen moved the House Message together with the motion by Senator Gallagher be held for further consideration within the next day or two.

Debate ensued.

Senator Talley moved the House Message on Substitute Senate Bill No. 2439 be rereferred to the Committee on Natural Resources.

President Pro Tempore Henry declared the question before the Senate to be the motion by Senator Rasmussen that further consideration of the House Message on Substitute Senate Bill No. 2439 be held for the next day or two.

The motion carried.

## MESSAGE FROM THE HOUSE

April 10, 1979.

Mr. President: The House has passed SENATE BILL NO. 2468 with the following amendment:

On page 1, line 14, following "uniform" strike ", prominently displaying his badge of office," and the same is herewith transmitted.

DEAN R. FOSTER, Chief Clerk.

VITO T. CHIECHI, Chief Clerk.

## MOTION

On motion of Senator Marsh, the Senate concurred in the House amendment to Senate Bill No. 2468.

## ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 2468, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 46; excused, 3.

Voting yea: Senators Benitz, Bluechel, Bottiger, Clarke, Conner, Day, Donohue, Fleming, Gallagher, Gaspard, Goltz, Guess, Hansen, Hayner, Henry, Jones, Lee, Lewis, Lysen, Marsh, Matson, McDermott, Moore, Morrison, Newschwander, North, Odegaard, Peterson, Pullen, Quigg, Rasmussen, Ridder, Scott, Sellar, Shinpoch, Talley, Talmadge, Van Hollebeke, Vognild, von Reichbauer, Walgren, Wanamaker, Williams, Wilson, Wojahn, Woody—46.

Excused: Senators Bausch, Gould, Keefe—3.

SENATE BILL NO. 2468, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

## MOTIONS

On motion of Senator Walgren, the Senate advanced to the sixth order of business.

On motion of Senator Walgren, the Senate commenced consideration of Senate Bill No. 2505.

## SECOND READING

SENATE BILL NO. 2505, by Senators Donohue, Marsh, Day, Walgren, Ridder and Goltz (by Executive Request):

Authorizing a bond issue for jail facilities.

## MOTIONS

On motion of Senator Shinpoch, Substitute Senate Bill No. 2505 was substituted for Senate Bill No. 2505 and the substitute bill was placed on second reading and read the second time in full.

On motion of Senator Shinpoch, the following amendment was adopted:

On page 2, line 5, after "the" strike "state jail commission" and insert "office of financial management"

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

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL CONNORS,

Appellant.

NO. 35718-0-III

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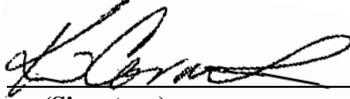
I certify under penalty of perjury under the laws of the State of Washington, that on August 10, 2018, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Jennifer J. Sweigert

[sweigertj@nwattorney.net](mailto:sweigertj@nwattorney.net); [Sloanej@nwattorney.net](mailto:Sloanej@nwattorney.net)

8/10/2018  
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Spokane, WA  
(Place)

  
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# SPOKANE COUNTY PROSECUTOR

August 10, 2018 - 9:30 AM

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