

2181. Evading Peace Officer: Reckless Driving

The defendant is charged [in Count _____] with evading a peace officer with wanton disregard for safety.

To prove that the defendant is guilty of this crime, the People must prove that:

1. A peace officer driving a motor vehicle was pursuing the defendant;
2. The defendant, who was also driving a motor vehicle, willfully fled from, or tried to elude, the officer, intending to evade the officer;
3. During the pursuit, the defendant drove with willful or wanton disregard for the safety of persons or property;

AND

4. All of the following were true:

- (a) There was at least one lighted red lamp visible from the front of the peace officer's vehicle;
- (b) The defendant either saw or reasonably should have seen the lamp;
- (c) The peace officer's vehicle was sounding a siren as reasonably necessary;
- (d) The peace officer's vehicle was distinctively marked; AND (e) The peace officer was wearing a distinctive uniform.

[A person employed as a police officer by *<insert name of agency that employs police officer>* is a *peace officer*.]

[A person employed by *<insert name of agency that employs peace officer, e.g., "the Department of Fish and Game">* is a *peace officer* if *<insert description of facts necessary to make employee a peace officer, e.g., "designated by the director of the agency as a peace officer">*.]

Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

A person acts with *wanton disregard for safety* when (1) he or she is aware that his or her actions present a substantial and unjustifiable risk of harm, and (2) he or she intentionally ignores that risk. The person does not, however, have to intend to cause damage.

[*Driving with willful or wanton disregard for the safety of persons or property* includes, but is not limited to, causing damage to property while driving or committing three or more violations that are each assigned a traffic violation point.]

[*<insert traffic violations alleged>* are each assigned a traffic violation point.]]

A vehicle is *distinctively marked* if it has a red lamp and siren. [It may also have additional markings or devices that identify it as a peace officer's vehicle.] The vehicle's appearance must be such that a person would know or reasonably should know that it is a law enforcement vehicle.

A *distinctive uniform* means clothing adopted by a law enforcement agency to identify or distinguish members of its force. The uniform does not have to be complete or of any particular level of formality. However, a badge, without more, is not enough.

Bench Notes

Instructional Duty

The court has a *sua sponte* duty to give this instruction defining the elements of the crime.

The jury must determine whether a peace officer was pursuing the defendant. (*People v. Flood* (1998) 18 Cal.4th 470, 482 [76 Cal.Rptr.2d 180, 957 P.2d 869].) The court must instruct the jury in the appropriate definition of "peace officer"

from the statute. (*Ibid.*) It is an error for the court to instruct that the witness is a peace officer as a matter of law. (*Ibid.* [instruction that "Officer Bridgeman and Officer Gurney are peace officers" was error].) If the witness is a police officer, give the bracketed sentence that begins with "A person employed as a police officer." If the witness is another type of peace officer, give the bracketed sentence that begins with "A person employed by."

Give the bracketed definition of "driving with willful or wanton disregard" if there is evidence that the defendant committed three or more traffic violations. The court may also, at its discretion, give the bracketed sentence that follows this definition, inserting the names of the traffic violations alleged.

There is a split in authority over whether a law enforcement vehicle must have something more than a red lamp and siren to be "distinctively marked." (*People v. Estrella* (1995) 31 Cal.App.4th 716, 722-723 [37 Cal.Rptr.2d 383] [something in addition to red lamp and siren required]; *People v. Mathews* (1998) 64 Cal.App.4th 485, 491 [75 Cal.Rptr.2d 289] [following *Estrella*, vehicle sufficiently marked where it had red lamp, siren, and wigwag lights]; *People v. Chicanti* (1999) 71 Cal.App.4th 956, 962 [84 Cal.Rptr.2d 1] [disagreeing with *Estrella*, finding that red lamp and siren may be sufficient if these markings alone were enough to put the defendant on notice that this was a police vehicle].) This issue is currently pending before the Supreme Court. (*People v. Hudson*, No. S122816 (Cal.Sup.Ct, rev. granted May 12, 2004) 2004 Cal. LEXIS 4030.) In the definition of "distinctively marked," the court may give the bracketed "in addition to the red lamp and siren" at its discretion, until the Supreme Court has resolved this issue.

On request, the court must give CALCRIM No. 3426, ***Voluntary Intoxication***, if there is sufficient evidence of voluntary intoxication to negate the intent to evade. (*People v. Finney* (1980) 110 Cal.App.3d 705, 712 [168 Cal.Rptr. 80].)

On request, give CALCRIM No. 2241, ***Driver and Driving Defined***.

Authority

Elements. Veh. Code, ♦♦ 2800.2, 2800.1(a).

Willful or Wanton Disregard. *People v. Schumacher* (1961) 194 Cal.App.2d 335, 339-340 [14 Cal.Rptr. 924].

Three Violations or Property Damage as Wanton Disregard— Definitional. *People v. Pinkston* (2003) 112 Cal.App.4th 387, 392-393 [5 Cal.Rptr.3d 274].

Distinctively Marked Vehicle. *People v. Estrella* (1995) 31 Cal.App.4th 716, 722-723 [37 Cal.Rptr.2d 383]; *People v. Mathews* (1998) 64 Cal.App.4th 485, 490 [75 Cal.Rptr.2d 289]; *People v. Chicanti* (1999) 71 Cal.App.4th 956, 962 [84 Cal.Rptr.2d 1].

Distinctive Uniform. *People v. Estrella* (1995) 31 Cal.App.4th 716, 724 [37 Cal.Rptr.2d 383]; *People v. Mathews* (1998) 64 Cal.App.4th 485, 491 [75 Cal.Rptr.2d 289].

Jury Must Determine If Peace Officers. *People v. Flood* (1998) 18 Cal.4th 470, 482 [76 Cal.Rptr.2d 180, 957 P.2d 869].

Red Lamp, Siren, and Distinctive Uniform Must Be Proved. *People v. Shakhvaladyan* (2004) 117 Cal.App.4th 232, 237-238 [11 Cal.Rptr.3d 590]; *People v. Acevedo* (2003) 105 Cal.App.4th 195, 199 [129 Cal.Rptr.2d 270]; *People v. Brown* (1989) 216 Cal.App.3d 596, 599- 600 [264 Cal.Rptr. 906].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, ◆ 260.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, ◆ 91.22[1][a][iv] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, ◆◆ 142.01[2][b][ii][B], 142.02[2][c] (Matthew Bender).

Lesser Included Offenses

Misdemeanor Evading a Pursuing Peace Officer. Veh. Code, [◆ 2800.1](#); *People v. Springfield* (1993) 13 Cal.App.4th 1674, 1680- 1681 [17 Cal.Rptr.2d 278].

Failure to Yield. Veh. Code, [◆ 21806](#); *People v. Diaz* (2005) 125 Cal.App.4th 1484, 1491 [23 Cal.Rptr.3d 653].) (Lesser included offenses may not be used for the requisite "three or more violations.")

Related Issues

Inherently Dangerous Felony

A violation of Vehicle Code section 2800.2 is not an inherently dangerous felony supporting a felony murder conviction. (*People v. Howard* (2005) 34 Cal.4th 1129, 1139 [23 Cal.Rptr.3d 306, 104 P.3d 107].)

See the related Issues section to CALCRIM No. 2182, [Evading Peace Officer: Misdemeanor](#).

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