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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
CHARLES DEAN THOMAS,  
  
Defendant and Appellant.

C067083  
  
(Super. Ct. No. 10F00420)

A jury convicted defendant Charles Dean Thomas of felonious driving in willful disregard for the safety of others while fleeing from a pursuing peace officer. (Veh. Code, § 2800.2, subd. (a).) The trial court found defendant guilty of misdemeanor driving with a suspended or revoked license. (Veh. Code, § 14601.2, subd. (a).) The trial court also found true the allegations that defendant had a prior serious felony conviction for first degree burglary (Pen. Code, §§ 459, 667,

subds. (b)-(i)<sup>1</sup>) and had served three prior prison terms (§ 667.5, subd. (b)).

At sentencing, the trial court denied defendant's motions to strike the prior serious felony conviction under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*) and to reduce the felony conviction to a misdemeanor. The court imposed a six-year prison sentence along with a concurrent 180-day jail term for the misdemeanor conviction.

On appeal, defendant (1) asks this court to conduct an independent review of the trial court's in camera review of evidence produced in response to his *Pitchess*<sup>2</sup> motion for discovery of the personnel records of the arresting officer, (2) contends the trial court erred in allowing the pursuing peace officer to testify as an expert on estimating the speed of vehicles, (3) argues that his motion to strike his prior serious felony conviction should have been granted, and (4) asserts the trial court erred in refusing to reduce his felony conviction to a misdemeanor.

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

<sup>2</sup> In *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, our Supreme Court held that a criminal defendant may, in some circumstances, compel the discovery of evidence in the arresting officer's personnel file that is relevant to the defendant's ability to defend against a criminal charge. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1219.) While this decision has been superseded by statute, motions for discovery of law enforcement officer personnel files are still referred to as *Pitchess* motions. (*Mooc, supra*, at p. 1225; *City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 81; *Zanone v. City of Whittier* (2008) 162 Cal.App.4th 174, 187, fn. 13.)

We have independently reviewed the contents of the sealed record on appeal relating to defendant's *Pitchess* motion and find no error in the trial court's denial of the motion. We also conclude that the trial court did not err in allowing the peace officer to testify as an expert on vehicle speed or in denying defendant's motions to strike the prior strike conviction and to reduce the current felony conviction to a misdemeanor. Accordingly, we affirm the judgment.

#### FACTS

On the morning of January 16, 2010, California Highway Patrol Officer Kevin Ward was on duty in full uniform and driving a marked patrol vehicle. While driving along 23rd Avenue in Sacramento, Officer Ward noticed a parked red pickup truck with an expired registration tag in the parking lot of a market. When the officer saw the truck pull out of the parking lot, he made a U-turn to stop the pickup truck and issue a citation for the expired registration.

Officer Ward observed the truck drive through an intersection without stopping or even slowing down for a posted stop sign. The officer then observed the truck proceed at about 30 miles an hour through a residential neighborhood. Officer Ward activated the emergency lights on his patrol vehicle but the truck did not stop. Instead, the truck made a quick turn onto Sierra Vista Avenue and the officer had to accelerate to nearly 50 miles an hour to catch up. While catching up to the truck, the officer saw the truck make a quick turn onto Mendocino Boulevard without stopping at a posted stop sign.

When the truck swerved into the opposite lane of traffic on Mendocino Boulevard, Officer Ward activated his siren in addition to his emergency lights. The truck then ran a stop sign at approximately 40 miles an hour, accelerated to more than 55 miles an hour, and overtook a light-colored sedan that had been traveling in the same direction. At the end of Mendocino Boulevard, the truck sped past a stop sign and made a right turn onto Fruitridge Road at such a high speed that the officer "was convinced at that point in time this is where [an] accident was going to occur." To avoid a line of cars stopped at a red light at Martin Luther King Jr. Boulevard, the truck turned into a gas station. Officer Ward entered the gas station from another direction and was able to cut off the truck's avenue of escape.

Officer Ward exited his vehicle and drew his service weapon. The driver, later identified as defendant, "put his hand up in a gesture that he was not going to evade [the officer] any longer." Defendant's brother, Paul Thomas,<sup>3</sup> was a passenger in the truck. After being arrested, defendant repeatedly told Officer Ward that "he didn't want to go to jail and that's why he ran."

Paul testified that he was riding in defendant's truck when he saw the flashing red lights from a police vehicle. Paul told defendant, "there's a cop behind us." According to Paul, defendant drove carefully down Del Norte Avenue, rolled slowly

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<sup>3</sup> We refer to Paul by his first name due to his shared surname with defendant.

through a stop sign before turning onto Fruitridge Road, and stopped for the officer at the gas station. Paul opined that the officer pulled defendant over for the "California stop" even though his brother had driven past the stop sign at only "three or four miles an hour." Paul testified that he could not remember defendant making any statements while being followed by the officer.

However, during an interview with a private investigator who was hired by the defense, Paul stated that defendant urged him to get into the truck quickly with the words: "[H]urry, come on, the police are coming." As defendant sped off, Paul asked: "[W]hat the hell are you doing?" Defendant "kept saying that he didn't want to go to jail." Paul responded "that he shouldn't do this." According to Paul, defendant did not stop at stop signs and drove at speeds up to 50 miles an hour. Eventually, defendant said: "We got to stop, Paul. We can't get away." Defendant then pulled into the gas station and was arrested.

## **DISCUSSION**

### **I**

#### *Pitchess Motion*

On July 15, 2010, the trial court granted defendant's *Pitchess* motion for the limited purpose of examining Officer Ward's personnel file insofar as it revealed acts of dishonesty. The trial court conducted an in-camera hearing and thereafter denied the motion to allow the defense to have access to Officer

Ward's file. On appeal, defendant requests review of the in-camera proceedings by this court.

A trial court's ruling on the discoverability of material in peace officer personnel files pursuant to *Pitchess* is reviewed for an abuse of discretion. (*People v. Hughes* (2002) 27 Cal.4th 287, 330.) Here, as in *Hughes*, "the records have been made part of the record on appeal but have been sealed, and appellate counsel for defendant ha[s] not been permitted to view them." (*Ibid.*) We have reviewed the sealed reporter's transcript of the in-camera hearing and conclude that the trial court did not abuse its discretion in denying defense counsel's motion to discover matters in Officer Ward's personnel file.

## II

### *Expert Testimony Regarding Defendant's Speed*

Defendant next contends the trial court erred in allowing Officer Ward to testify as an expert on speed estimation for motor vehicles. We disagree.

#### A.

### *Officer Ward's Expertise in Speed Estimation*

At the outset of Officer Ward's testimony, the People moved to designate the officer as an expert in vehicles' speed estimation. In support, the People elicited testimony that the officer had been a sworn peace officer with the California Highway Patrol for 13 years. In addition to other training, Officer Ward received training specifically to estimate vehicles' speeds. In 1999, the officer attended a three-day course on estimating vehicles' speeds from both a standing position and a

moving position. The course culminated with the officer being required to estimate the speeds of 100 moving vehicles (50 from a stationary position and 50 while moving) within 5 miles per hour of their radar-clocked speeds. Officer Ward passed and received a certification for estimating the speed of moving vehicles. The officer was required to recertify every year thereafter. Recertification involved two hours of classroom training and an assessment requiring 10 speed estimates -- five from a stationary position and five while moving. Officer Ward succeeded in being recertified every year. On the basis of this testimony, the trial court allowed the officer "to testify as an expert in the area of speed estimation."

In describing the events of January 16, 2010, Officer Ward estimated that defendant had been traveling about 30 miles per hour on 23rd Avenue and at speeds up to 50 to 55 miles per hour on Mendocino Avenue.

**B.**

*Analysis*

Evidence Code section 801, subdivision (a), allows an expert witness to offer testimony "[r]elated to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact . . . ."

"The governing rules are well settled. First, the decision of a trial court to admit expert testimony 'will not be disturbed on appeal unless a manifest abuse of discretion is shown.' [Citation.] Second, 'the admissibility of expert opinion is a question of degree. The jury need not be wholly

ignorant of the subject matter of the opinion in order to justify its admission; if that were the test, little expert opinion testimony would ever be heard. Instead, the statute declares that even if the jury has some knowledge of the matter, expert opinion may be admitted whenever it would "assist" the jury. It will be excluded only when it would add nothing at all to the jury's common fund of information, i.e., when "the subject of inquiry is one of such common knowledge that men of ordinary education could reach a conclusion as intelligently as the witness" [citation].'" (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1299-1300.)

We begin with defendant's assertion that Officer Ward's testimony did not assist the jury. As defendant acknowledges, a peace officer may properly give expert opinion testimony concerning the estimated speed of a vehicle involved in a collision. (See *Neumann v. Bishop* (1976) 59 Cal.App.3d 451, 460-461; see also *Hart v. Wielt* (1970) 4 Cal.App.3d 224, 229 ["traffic officers whose duties include investigations of automobile accidents are qualified experts and may properly testify concerning their opinions as to the various factors involved in such accidents, based upon their own observations"].) In this case, defendant's recklessly evasive driving did not result in an accident. However, it is not the fact of a collision that makes the expert testimony admissible. Admissibility turns on whether the officer's expert opinion would assist the trier of fact determine a fact in issue in the case. Just as the speed of a vehicle involved in an accident is

relevant to a determination of whether the driver of that vehicle was to blame for the accident, so too is the speed of a vehicle relevant to a determination of whether that vehicle "is driven in a willful or wanton disregard for the safety of persons or property . . . ." (Veh. Code, § 2800.2.) And, as defendant also acknowledges, expert testimony has been admitted for this very purpose. (See *People v. Howard* (2005) 34 Cal.4th 1129, 1133.)

Nevertheless, relying heavily on *Crooks v. Pirrone* (1964) 228 Cal.App.2d 549, defendant argues that the foundation for Officer Ward's speed estimations was lacking. We are not persuaded. In *Crooks*, the Court of Appeal affirmed a trial court decision to prevent an officer from testifying as to his estimate of the speed of a vehicle involved in a collision based solely on his observations of the accident site. The court explained: "With a proper foundation laid as to a known relationship between speed and the objective results of an automobile accident and the knowledge and experience of the witness, there is authority to the effect that a traffic officer may testify as to his estimate of the approximate speed of vehicles which have been involved in a collision; the preliminary duty of counsel who calls such a witness to the stand is to show such relationship, the experience and training of the officer and the facts observed by him after the collision; with all of these elements proven to the satisfaction of the trial judge such a person could in a proper case give his opinion as to speed." (*Id.* at p. 552.) However, because the

proponent of the officer's testimony did not establish his experience and training in estimating speed from the physical results of a collision, the trial court properly excluded the evidence. (*Id.* at p. 553.)

Here, Officer Ward was not asked to estimate defendant's speed based on the aftermath of a collision. He was asked to do so based on his observation of defendant's driving. The People presented sufficient evidence that he was qualified to do so. Indeed, Officer Ward attended a three-day course on speed estimation while stationary and *while moving*, he passed and received a certification for estimating the speed of moving vehicles, and he was required to obtain recertification of this skill every year. Defendant complains that there was no evidence that Officer Ward's speed estimations are accurate during a pursuit where there are "drastic changes of speed." However, "[w]here a witness has disclosed sufficient knowledge of the subject to entitle his opinion to go to the jury, the question of the degree of his knowledge goes more to the weight of the evidence than its admissibility.'" (*Seneris v. Haas* (1955) 45 Cal.2d 811, 833; *People v. Bolin* (1998) 18 Cal.4th 297, 321-322.) We cannot find error regarding the qualifications of an expert witness unless the witness "*clearly lacks qualification as an expert.*" (*People v. Hogan* (1982) 31 Cal.3d 815, 852, overruled on other grounds in *People v. Cooper* (1991) 53 Cal.3d 771, 836; *People v. Farnum* (2002) 28 Cal.4th 107, 162.) Officer Ward's qualification as an expert in speed estimation was not clearly lacking.

Finally, we reject defendant's assertion that "labeling" Officer Ward's testimony as "expert testimony" violated his constitutional rights. According to defendant, because the jury was required to resolve a conflict in the evidence between the testimony of Officer Ward and that of defendant's brother Paul concerning how defendant was driving, allowing Officer Ward to testify as an expert on speed estimation "prejudicially undercut [defendant's] right to present a meaningful defense." Defendant has cited no authority, nor have we found any on our own, holding that a defendant's constitutional rights are violated simply because a peace officer testifies as an expert and that expert opinion contradicts the testimony of one of the defendant's witnesses.

We conclude the trial court did not abuse its discretion in allowing Officer Ward to testify as an expert in estimating the speed of a moving vehicle.

### **III**

#### *Denial of Motion to Dismiss Prior Strike*

Defendant also contends the trial court abused its discretion by declining to strike his prior strike conviction under *Romero*. Not so.

#### **A.**

##### *Applicable Law*

Under section 1385, subdivision (a), a "judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed." (§ 1385, subd. (a).) In *Romero*,

*supra*, 13 Cal.4th 497, our Supreme Court held that a trial court may utilize this section to strike or vacate a prior strike conviction for purposes of sentencing under the three strikes law, "subject, however, to strict compliance with the provisions of section 1385 and to review for abuse of discretion." (*Id.* at p. 504.) Similarly, a trial court's "failure to dismiss or strike a prior conviction allegation is subject to review under the deferential abuse of discretion standard." (*People v. Carmony* (2004) 33 Cal.4th 367, 374 (*Carmony*)).

"In reviewing for abuse of discretion, we are guided by two fundamental precepts. First, "[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review." [Citations.] Second, a "decision will not be reversed merely because reasonable people might disagree. 'An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.'" [Citations.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*Carmony, supra*, 33 Cal.4th at pp. 376-377.)

We are also mindful that "the Three Strikes law does not offer a discretionary sentencing choice, as do other sentencing

laws, but establishes a sentencing requirement to be applied in every case where the defendant has at least one qualifying strike, unless the sentencing court "conclud[es] that an exception to the scheme should be made because, for articulable reasons which can withstand scrutiny for abuse, this defendant should be treated as though he actually fell outside the Three Strikes scheme." [Citation.] (Carmony, supra, 33 Cal.4th at p. 377.) "[T]he court in question must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (People v. Williams (1998) 17 Cal.4th 148, 161 (Williams); Carmony, supra, 33 Cal.4th at p. 377.)

Thus, the three strikes law "creates a *strong presumption* that any sentence that conforms to these sentencing norms is both rational and proper." (Carmony, supra, 33 Cal.4th at p. 378.) This presumption will only be rebutted in an "extraordinary case -- where the relevant factors described in Williams, supra, 17 Cal.4th 148, manifestly support the striking of a prior conviction and no reasonable minds could differ." (Ibid.)

**B.**

*Analysis*

Turning to the facts of this case, we cannot find that the trial court abused its discretion by declining to strike defendant's prior conviction.

1. *Present Felony Conviction*

Defendant's present felony conviction is for driving in a willful or wanton disregard for the safety of persons or property while attempting to elude a pursuing peace officer. While this is not an inherently dangerous felony for purposes of the felony-murder rule (*People v. Howard, supra*, 34 Cal.4th at p. 1139), and is not itself a serious or violent felony for purposes of the three strikes law (§§ 667.5, subd. (c), 1192.7, subd. (c)), nor is it a trivial crime. Defendant's decision to lead Officer Ward on a perilous chase through Sacramento endangered the lives of other motorists, any pedestrians who may have been on the street, his brother Paul, Officer Ward, and defendant himself. This is not a "relatively minor" offense, as defendant would have us believe.

2. *Prior Strike Conviction*

Nor do the nature and circumstances of defendant's prior strike conviction manifestly support the striking of this conviction for purposes of sentencing under the three strikes law. This prior conviction was for a first degree residential burglary committed in 1992. While this prior strike offense was committed nearly 18 years before the commission of the present offense, defendant has repeatedly violated the law in the

meantime. In 1996, defendant was convicted of vehicle theft. He was convicted of threatening a public officer in 1999. In 2000, defendant was again convicted of vehicle theft. He was convicted of battery in 2006. In 2009, within months of committing the current offense, defendant was convicted of possession of stolen property, driving under the influence, and driving on a suspended license. Given the severity of defendant's prior strike offense and his repeated violations of the law between the prior strike and the current offense, we cannot find that defendant clearly falls outside the spirit of the three strikes law.

### 3. *Background, Character, and Prospects*

Finally, defendant's background, character, and prospects for the future do not bring him outside the spirit of the three strikes law. We have already chronicled his extensive criminal background. While defendant argues that the trial court considered only his criminal record in denying his motion to strike the prior conviction, the court specifically addressed his "background, character and prospects" in denying the motion, stating: "His prospects in this Court's view do not appear to be good, because at the age of 39 you would think that the [d]efendant would be tired of coming in and out of the system, but he appears to still have the vigor and energy to do so." Thus, the trial court was aware of the need to consider defendant's background, character, and prospects, and we must presume that it considered this factor in the absence of an affirmative record to the contrary. (*People v. Myers* (1999) 69

Cal.App.4th 305, 310.) Moreover, defendant does not point to anything in the record with respect to his background, character, and prospects that would bring him outside the spirit of the three strikes law.

The trial court did not abuse its discretion by declining to strike defendant's prior conviction under *Romero, supra*, 13 Cal.4th 497. Far from being outside the spirit of the three strikes law, defendant is the type of recidivist offender for whom the law was enacted.

#### IV

##### *Denial of Motion to Reduce Felony to Misdemeanor*

We also reject defendant's final contention that the trial court abused its discretion in denying his motion to reduce the felony conviction to a misdemeanor.

Section 17, subdivision (b), "authorizes the reduction of 'wobbler' offenses -- crimes that, in the trial court's discretion, may be sentenced alternately as felonies or misdemeanors -- upon imposition of a punishment other than state prison (§ 17(b)(1)) or by declaration as a misdemeanor after a grant of probation (§ 17(b)(3))." (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 974.) "The governing canons are well established: 'This discretion . . . is neither arbitrary nor capricious, but is an impartial discretion, guided and controlled by fixed legal principles, to be exercised in conformity with the spirit of the law, and in a manner to subserve and not impede or defeat the ends of substantial justice. [Citations.]' [Citation.]" (*Id.* at p. 977.) On

appeal, "[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.' [Citation.]"<sup>4</sup> (*Id.* at p. 977-978.)

Here, defendant has not carried his burden of establishing an abuse of discretion. The trial court stated: "[A]lthough this isn't the most egregious [section] 2800.2 case I've ever seen, nevertheless, the defendant did endanger the lives of people in the residential neighborhood he drove through at 10:00 o'clock on a Saturday morning. He did not stop. He did not yield to the officer. Ultimately he did because he truly had no place to go. He was pretty well caught by the time he stopped his vehicle. [¶] And so I think in light of the facts

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<sup>4</sup> California Rules of Court, rule 4.410 provides: "(a) General objectives of sentencing include: [¶] (1) Protecting society; [¶] (2) Punishing the defendant; [¶] (3) Encouraging the defendant to lead a law-abiding life in the future and deterring him or her from future offenses; [¶] (4) Deterring others from criminal conduct by demonstrating its consequences; [¶] (5) Preventing the defendant from committing new crimes by isolating him or her for the period of incarceration; [¶] (6) Securing restitution for the victims of crime; and [¶] (7) Achieving uniformity in sentencing. [¶] (b) Because in some instances these objectives may suggest inconsistent dispositions, the sentencing judge must consider which objectives are of primary importance in the particular case. The sentencing judge should be guided by statutory statements of policy, the criteria in these rules, and the facts and circumstances of the case."

and circumstances of this case, as well as the Defendant's background, I will decline to reduce this felony offense to a misdemeanor." We cannot find this to be an abuse of discretion.

DISPOSITION

The judgment is affirmed.

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HOCH, J.

We concur:

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BLEASE, Acting P. J.

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HULL, J.