

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID MICHAEL CHIESA,

Defendant and Appellant.

F067668

(Super. Ct. No. CRM024688)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Merced County. Ronald W. Hansen, Judge.

Emily J. Haden, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Attorney General, Sacramento, California, for Plaintiff and Respondent.

-ooOoo-

* Before Gomes, Acting P.J., Kane, J. and Smith, J.

A jury convicted David Michael Chiesa of evading a police officer and, in doing so, operating his vehicle in willful and wanton disregard for the safety of others. In a bifurcated proceeding, the trial court found four prior prison term enhancement allegations true. The trial court imposed and suspended a prison sentence and placed Chiesa on five years' probation, with the first two years to be spent in an inpatient substance abuse program.

Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 asserting she did not identify any arguable issues in this case. By letter dated June 10, 2014, we invited Chiesa to submit a letter identifying any grounds for appeal he wanted this court to consider. Chiesa did not respond to our invitation.

After a thorough review of the record, we find no arguable issues and affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

The first amended information charged Chiesa with evading a police officer and, in doing so, operating his vehicle in willful and wanton disregard for the safety of others. (Veh. Code, § 2800.2, subd. (a).) In addition, the information alleged Chiesa had served four prior prison terms within the meaning of Penal Code section 667.5, subdivision (b).

On the date of the offense, Merced Police Detective Owen Johnson and his partner, Detective Brian Rodriguez, were performing surveillance on a house for the purpose of locating three specific fugitives (not including Chiesa). Johnson observed Chiesa drive up to the house in a black vehicle. Johnson had known Chiesa since at least high school and had had a number of official contacts with him over the years. Johnson also recognized the vehicle as being one Chiesa normally drove. It was registered to Chiesa's girlfriend, Tamalyn Atkinson.

Chiesa and an unidentified passenger exited the vehicle and entered the residence. A few moments later Chiesa and the passenger exited the residence. Chiesa had an object in his hands. He placed the object in his trunk and looked around the area in all

directions as if he were looking to see if he was being watched. Chiesa then entered the vehicle and drove away. Johnson followed in the unmarked police vehicle he was driving. When Chiesa stopped at a stop sign, Johnson pulled up behind him. Chiesa saw Johnson in the side view mirror.

Chiesa made a right turn, with Johnson following. Johnson then activated his siren and emergency lights. Chiesa accelerated away, failing to stop for traffic signals and stop signs. Johnson called for assistance and continued the pursuit. A marked patrol vehicle driven by Merced Police Sergeant Curtis Gorman joined the pursuit. The emergency lights and siren on Gorman's vehicle were activated. Other marked patrol vehicles joined in the pursuit. Chiesa was driving in excess of 80 to 100 miles per hour. Chiesa eventually evaded the officers that were following him. A few minutes later Johnson located the vehicle abandoned on the street. A perimeter was set up in an attempt to locate Chiesa, but the officers could not find him. Nothing was located inside the vehicle when it was searched.

Chiesa stipulated through defense counsel that his driver's license had been suspended by the Department of Motor Vehicles prior to the date of the pursuit.

Rodriguez testified in a manner consistent with Johnson in all significant respects. Gorman caught a brief glimpse of the driver of the vehicle as it passed him and identified the driver as Chiesa.

Chiesa's defense was, in essence, a claim of mistaken identity. In cross-examination of the police officers, defense counsel attempted to demonstrate that the officers made their identification of Chiesa under difficult circumstances, focusing on the distance between the officers and the perpetrator as well as the very short time period the officers had to identify the perpetrator.

In his defense, Chiesa's mother, Kathleen Gary, testified that Chiesa was home the day in question and did not leave the house until well after the incident occurred. Atkinson testified her car had been stolen that day while she was at work in Atwater. She

reported the theft to the police well after the incident took place. Mark Venegas, the boyfriend of Chiesa's daughter, testified he also was at Gary's house the day of the incident and Chiesa was present at the house at the time the incident occurred.

After a short deliberation, the jury found Chiesa guilty of the charged crime. Chiesa waived his right to a jury trial on the bifurcated enhancement allegations, and the trial court found each of the enhancements true based on the certified records introduced by the prosecution. The trial court imposed and suspended a seven-year sentence and ordered Chiesa to serve five years on probation, with the condition that he spend the first two years in an inpatient drug treatment program.

DISCUSSION

As stated in the introduction, appellate counsel filed a brief asserting she did not identify any arguable issues in this case. After a thorough review of the record, we concur with appellate counsel.

The issues in this case were straightforward. There was only one count. Chiesa did not contest the fact that a high-speed chase occurred, but instead attacked his identification as the driver of the vehicle evading the police. The officer's testimony provided compelling evidence identifying Chiesa as the driver of the vehicle. The jury instructions were complete. The enhancements were supported by certified documents establishing Chiesa fell within the parameters of Penal Code section 667.5, subdivision (b). The sentence imposed was within the trial court's discretion, and it left Chiesa no room for complaint.

DISPOSITION

The judgment is affirmed.