FILED
SID J. WHITE
MAY 19 1994
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,572

STATE OF FLORIDA,

Petitioner.

vs.

DENNIS MANCUSO,

Respondent.

****

ON APPEAL FROM THE CIRCUIT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

****

PETITIONER'S BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

JOAN FOWLER
Senior Assistant Attorney General
Chief, Criminal Law,
West Palm Beach Bureau
Florida Bar No. 339067

MELYNDA L. MELEAR
Assistant Attorney General
Florida Bar No. 765570
1655 Palm Beach Lakes Blvd.
Third Floor
West Palm Beach, Florida 33401
Telephone: (407) 688-7759

Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF CITATIONS

FLORIDA STATUTES:

OTHER AUTHORITIES:

PRELIMINARY STATEMENT

Petitioner was the Appellee and Respondent was the Appellant in the Fourth District Court of Appeal; Respondent was the Defendant and Petitioner was the prosecution in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Broward County, Florida. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Petitioner may also be referred to as the State.

In this brief, the symbol "R" will be used to denote the record on appeal.

All emphasis in this brief is supplied by Petitioner unless otherwise indicated.

STATEMENT OF THE CASE

Respondent was charged in an information with leaving the scene of an accident involving death or personal injury, pursuant to Section 316.027, Florida Statutes (1991). After trial, the jury returned a verdict of guilty as charged (R. 478), and the trial court adjudicated Respondent accordingly (R. 539). The trial court sentenced Respondent to five years probation, with special conditions that he serve one year in the county jail, to be followed by ten months community control II, and that he perform 400 hours of community service (R. 70-72, 539-540).

Respondent appealed his conviction and sentence to the Fourth District Court of Appeal (R. 58-59). Among other points, Respondent argued that the trial court erred in denying his request to instruct the jury in accordance with his proposed instruction on the leaving the scene of an accident involving death or personal injury, and instead reading the State's requested instruction on the offense. The Fourth District reversed and remanded the case to the trial court, holding that the trial court erred in not instructing the jury on "constructive knowledge" of death or personal injury.[1] On the State's motion to certify as a question of great public importance, the Fourth District certified the following question for this court's consideration:

> IN A PROSECUTION FOR VIOLATION OF SECTION 316.027, FLORIDA STATUTES

---

[1] The court rejected Respondent's other claims in regard to the conviction, and said that the issue in regard to the sentence was rendered moot by its opinion.

(1991), MUST THE STATE SHOW THAT THE DEFENDANT KNEW OR SHOULD HAVE KNOWN OF THE INJURY OR DEATH; AND THE JURY BE SO INSTRUCTED?

STATEMENT OF THE FACTS

On December 6, 1992, at approximately 4:30 a.m., Thomas Schweig, a Gray Line Bus Tours driver, called in an emergency on his CB radio, after realizing that the white El Camino that had been travelling in front of him, in the center lane heading northbound on I-95, had hit two pedestrians (R. 169-171). Mr. Schweig testified that the El Camino, driven by Respondent, suddenly began to slow down, and that he observed that the car's windshield was smashed and that steam was coming out of the front of it (R. 166-169). He noticed something come out of the back of the El Camino, which he soon recognized to be a body "cartwheeling" through the air (R. 167).

Although Mr. Schweig had passed the car by pulling over into the left lane (R. 168-169), as he exited the bus, the El Camino passed him (R. 169, 171). Mr. Schweig ran behind his bus to see if there was anything he could do to assist another bus driver who had been travelling behind him, Frank Rivera, in preventing the bodies on the ground from being hit by other cars (R. 171-173).

Frank Rivera, the other bus driver, testified that when he saw Schweig's bus pull hard to the left, he observed the white El Camino with "two black things" behind it (R. 194). As he pulled around the car, he saw hair (R. 194). Mr. Rivera parked his bus and ran back to the bodies (R. 195). The first girl that he approached did not have any vital signs, but the second one was alive (R. 195). He protected her from the oncoming traffic (R. 195-196).

Officer Robert Peterson of the Palm Beach Gardens Police Department was dispatched to the accident scene at 4:29 a.m. (R. 215), and was there when the Trauma Hawk helicopter arrived (R. 225). At 5:28 a.m., Corporal Robert Borman of the Florida Highway Patrol arrived at the scene as a traffic homicide investigator (R. 241). He estimated that the distance between the collision and ultimate place of rest was about four-tenths of a mile (R 251-252), while the distance between the place of rest and the next interstate exit, PGA Boulevard, was about a mile or a mile and a half (R. 252-253). The skidmarks indicated that Respondent, the driver of the El Camino, braked after the collision occurred (R. 256-257).

The El Camino was disabled (R. 255). There was blood on the windshield and the bed of the truck (R. 258). There was a head imprint on the roof, and hair hanging off the left door mirror (R. 258). Although he could not see the hair in the darkness, Corporal Borman said that he could see the blood (R. 259).

Sometime around noon on the day of the accident, Corporal Borman learned that Respondent was at the Palm Beach Gardens Police Station (R. 263). He went to the station and took Respondent's statement (R. 264-266). In the interview, Respondent said, "Those girls didn't die, did they?", and when Corporal Borman asked which ones, Respondent replied, "The ones that I hit." (SR. 5). Although Respondent indicated in the interview that the officer had told him that two girls had been hit (SR. 6), at trial, Corporal Borman contended that he had not told Respondent about the girls (R. 318-323).

In his statement, Respondent explained that he had passed out or fallen asleep behind the wheel of his car, until he heard a loud noise (SR. 8). He woke up, and saw that his windshield was smashed (SR. 8). He stated that his car started to "die," so he pulled over to the side of the road (SR. 9). He walked up I-95, across PGA Boulevard, straight up to Hood Road, west to Central, and then to his home in a development off of Donald Ross Road (SR. 10). He arrived home sometime between 5:00 and 6:00 a.m. (SR. 11).

Respondent told Corporal Borman that he came to the station "Because I was worried about if I hurt somebody" (SR. 15). He said that he knew there was an accident but that he did not know what he hit (SR. 17, 18). He recalled seeing one bus, and acknowledged that there was some traffic (SR. 15-16, 17).

At trial, Respondent testified that on December 5, 1992, the day before the accident, he worked from 5:00 a.m. to 11:00 a.m. and then went home (R. 355). At some point, he took a three hour "nap," and left the house at 10:00 p.m. to go to a nightclub called the "Dirty Duck" (R. 355-357). At midnight, he went to a lounge called the "Plus 2 Lounge," and stayed there until about 3:00 a.m. (R. 356-357). He had two beers at each club (R. 390-391).

Once on I-95, Respondent grew tired, and had trouble keeping his eyes open (R. 359). He testified that there were no cars in front of him or to the side of him, but said that he was aware of vehicles behind him because he saw their headlights (R. 360). Although he did not see his vehicle hit anything, or see

what caused the damage to it (R. 362), Respondent said that he heard a loud noise, and then everything went black and his windshield cracked (R. 361). He stated that at the time of the impact, he noticed traffic going by him (R. 363), but not when he got out of his car (R. 364).

Respondent got out of the driver's door and looked around (R. 363-365). He testified that there appeared to be a large bus at the top of the hill (R. 365). He did not walk southbound from where he had been travelling because he did not see anything around (R. 367). He did not think that he had hit anyone (R. 366). After seeing no debris in the road, Respondent decided to walk home (R. 368). He walked north to the PGA Boulevard and Military trail intersection, and from there, north to Donald Ross Road to home (R. 368-371). It took Respondent two hours to get home, having walked at least three and one half miles (R. 371).

Athough Respondent passed hotels with telephones, he did not call the police because he did not think it was an emergency (R. 372-373). At about 11:00 a.m., he went to the police station and reported that something had smashed his windshield (R. 374). He admitted having been concerned about whether anyone was going to die as a result of the collision prior to going to the station (R. 377). The thought that somebody may have been injured had crossed his mind (R. 405).

The trial court instructed the jury:

> Before you can find the defendant guilty, of leaving the scene of an

> accident, involving death or personal injury, the State must prove the following three elements beyond a reasonable doubt --
>
> First, that Dennis Mancuso was the driver of a vehicle, involved in an accident, resulting in injury and/or death of Heather Brashear and/or Natacha Decelle;
>
> Second that Dennis Mancuso knew or should have known that he was involved in that accident;
>
> And three, that Dennis Mancuso, willfully failed to stop and remain at the scene of the accident or as close thereto as possible until he had given his name, address, vehicle registration number and displayed his driver's license, and render assistance to any person injured, and/or furnish such information to any police officer at the scene of the accident, or who is investigating the accident

(R. 466).

The trial court went on to define "willfully" as "intentionally and purposely" (R. 467).

SUMMARY OF THE ARGUMENT

The State argues that the certified question in this case should be answered in the negative. It contends that all that is necessary to make a driver responsible to perform the duties outlined in section 316.027, Florida Statutes (1991), is knowledge, or constructive knowledge, that an accident has occurred. To hold otherwise, i.e. to hold that knowledge of injury or death is also necessary, would only thwart the purpose of section 316.027, to encourage drivers to investigate accidents and act accordingly. Hence, the State maintains that "willfully," as used in section 316.027, just calls for a finding by the jury that the accused intentionally and deliberately, and not involuntarily, failed to comply with the statute.

ARGUMENT

IN A PROSECUTION FOR VIOLATION OF SECTION 316.027, FLORIDA STATUTES (1991), MUST THE STATE SHOW THAT THE DEFENDANT KNEW OF THE INJURY OR DEATH.

The Fourth District certified the following question as one of great public importance:

> IN A PROSECUTION FOR VIOLATION OF SECTION 316.027, FLORIDA STATUTES (1991), MUST THE STATE SHOW THAT THE DEFENDANT KNEW OF THE INJURY OR DEATH; AND THE JURY BE SO INSTRUCTED?

The State argues that this court should answer the certified question in the negative. It contends that all that is necessary for section 316.027, Florida Statutes (1991), to be implicated is that an accused, having knowledge of an accident, willfully left the scene of the accident without adhering to the dictates of the statute. In support of its argument, the State relies on traditional rules of statutory construction, out-of-state case law construing similar statutes, and Florida case law analyzing related issues under the statute.

In State v. Moss, 206 So. 2d 692, 697 (Fla. 2d DCA 1968), the court indicated that the leaving the scene of an accident statutes were in para materia. Therefore, they should be construed together and compared with each other. See generally Scates v. State, 603 So. 2d 504, 505 (Fla. 1992)(statutes relating to same subject should be construed together); Ferguson v. State, 377 So. 2d 709, 710-711 (Fla. 1979)(statutes in para materia should be construed together and compared to each other). Section 316.027, on accidents involving personal injury or death, reads in part as follows:

> (1) The driver of any vehicle involved in an accident resulting in injury or death of any person shall immediately stop such vehicle at the scene of the accident, or as close thereto as possible, and shall forthwith return to, and in every event shall remain at the scene of, the accident until he has fulfilled the requirements of section 316.062.
>
> (2) Any person willfully failing to stop or to comply with the requirements of subsection (1) under such circumstances is guilty of a felony of the third degree, punishable as provided in section 775.082, section 775.083, or section 775.084.

(emphasis supplied).

On the other hand, section 316.061, Florida Statutes, on accidents involving property damage to an attended vehicle, provides in part:

> (1) The driver of any vehicle involved in an accident resulting only in damage to a vehicle or other property which is driven or attended by any person shall immediately stop such vehicle at the scene of the accident or as close thereto as possible, and shall forthwith return to, and in every event shall remain at, the scene of the accident until he has fulfilled the requirements of section 316.062. Any person failing to stop and comply with said requirements shall, upon conviction, be punished by a fine of not more than $500 or by imprisonment of not more than 60 days or by both such fine and imprisonment. . . .

While both statutes impose the same requirements, that a person involved in an accident return and remain at the scene

of the accident, and that he comply with section 316.062, Florida Statutes, the statutes differ in a few respects: a violation under section 316.027 constitutes a felony to be punished accordingly, whereas section 316.061 constitutes a misdemeanor subject to fine and minimal imprisonment; section 316.027 punishes willfull[y] noncompliance, whereas section 316.061 does not explicitly so provide; and section 316.027 may cover both personal and property damage, whereas section 316.061 covers only property damage.

Given the difference in the degree of penalty associated with the statutes, it is not surprising that the legislature explicitly included an intent requirement to be found guilty under section 316.027, but did not do so in section 316.061. In Morissette v. United States, 342 U.S. 246, 264 72 S.Ct. 240, 96 L.Ed. 288 (1952), the United States Supreme Court noted:

> Congress has been alert to what often is a decisive function of some mental element in crime. It has seen fit to prescribe that an evil state of mind, described variously in one or more such terms as "intentional," "wilful," "knowing," "fraudulent," or "malicious," will make criminal an otherwise indifferent act or increase the degree of the offense or its punishment.

(emphasis supplied).

In Morissette, the court acknowledged a category of crimes, sometimes called "public welfare offenses," which create new duties that disregard any ingredient of intent. 342 U.S. at

253-255.[2] With these types of offenses, the offense is in the nature of inaction where the law imposes a duty, and legislation does not specify intent as a necessary element of the crime. Id. at 255-256.[3] The idea is that the offenses do not result in direct or immediate injury, but merely create the danger of it which the law seeks to minimize. Id. Hence, penalties for the offenses are commonly relatively small. Id.

The court in State v. Dyer, 289 A. 2d 693, 694 (Me. 1972) determined that the Montana statute on leaving the scene of an accident resulting in property damage to an attended vehicle, containing substantially similar language as the Florida statute, created a malum prohibitum offense. The State believes that a violation pursuant to section 316.061 also falls within this category of crime, but that a violation pursuant to section 316.027 requires a showing of criminal intent, for the later violation obviously poses a more substantial risk.

At one time, a dichotomy was recognized by the district courts in this state in regard to the two subsections under section 316.027, based solely on the use of "willfully in subsection (2), but not in subsection (1). Prior to this court's decision in Stanfill v. State, 384 So. 2d 141 (Fla. 1980), courts held that the use of "unlawfully" charged a misdemeanor under

---

[2] These offenses are also known as malum prohibitum crimes. Morissette, 342 U.S. at 259.

[3] Although no specific intent is needed, some cases have indicated that the State must show general intent; however, intent is inferred from the act itself. State v. Oxx, 417 So.2d 287, 289 n.2 (Fla. 5th DCA 1982). See also State v. Gray, 435 So.2d 816, 819 (Fla. 1983).

section 316.027(1), while the use of "willfully" charged a felony under section 316.027(2). Stanfill, 384 So. 2d at 142 n.2.

Why, then, does the standard jury instruction on section 316.061 include knowledge, or constructive knowledge, of the accident as an element of the crime? See Florida Standard Jury Instructions in Misdemeanor Cases (1991); Matter of Use by Tr. Cts. of Stand. Jury Inst., 431 So. 2d 594, 595-596 (Fla. 1981). Appellee submits that it is considered an element only because knowledge of the accident is inherent in the crime of leaving the scene of an accident. An analogy can be drawn to a violation of the National Firearms Act in which it is not required that an accused have knowledge that a firearm has not been registered, but it is required that he have knowledge that the instrument possessed was a firearm . See United States v. Freed, 401 U.S. 601, 607, 91 S.Ct. 1112, 28 L.Ed. 2d 356 (1971). Like leaving a scene of an accident with knowledge of the accident, an accused would hardly be surprised to learn that the subject act, possession of hand grenades, is not innocent. Freed, 401 U.S. at 607.

Additionally, such knowledge alone is not as high on the hierarchy of criminal intent as "willfully." See United States v. Bailey, 444 U.S. 394, 404, 100 S.Ct. 624, 62 L.Ed. 2d 575 (1980). "In a general sense, "purpose" corresponds loosely with the common-law concept of specific intent, while "knowledge" corresponds loosely with the common law concept of general intent." 444 U.S. at 405. Here, intent was specifically made part of section 316.027, and not section 316.061, so that the

former statute requires something more than just knowledge of the accident.

The State contends that "willfully" in section 316.027 does not serve to broaden the knowledge requirement to include knowledge of the result of the accident, but instead merely mandates a showing that an accused intentionally failed "to stop or to comply with the requirements under subsection (1)." Certainly, one can intentionally and deliberately leave the scene of an accident, i.e. with full knowledge of impact, and yet have no concern for, or knowledge of, the extent of damage done or the consequences of his actions. Under such circumstances, the accused would nonetheless have an awareness of wrongdoing, which is the conventional mens rea for criminal conduct. See Morissette, 342 U.S. at 260.

Black's Law Dictionary, Third Edition, defines "willful" as proceeding from a conscious motion of the will; voluntary; intentional; designed; not accidental or involuntary. See also Brown v. State, 334 So. 2d 597, 599 (Fla. 1976)(a statement made through error, inadvertence, or mistake is not one made willfully); Linehan v. State, 442 So. 2d 244, 247 (Fla. 2d DCA 1983), affirmed, 476 So. 2d 1262 (Fla. 1985)("[a] willful act is one done intentionally, not accidentally"). See generally State v. Stewart, 374 So. 2d 1381, 1383 (Fla. 1979)(words in statute should be given their plain and ordinary meaning); Tatzel v. State, 356 So. 2d 787, 789 (Fla. 1978)(same). That definition does not contain an "acquaintance with fact or truth," which is the definition of "knowledge" in Black's Law Dictionary, Third

Edition. The State argues that if the legislature wished knowledge of injury or death to be a requisite of section 316.027, it would have included in the statute, "with knowledge of the injury or death."[4] As it is, under the existing statutory scheme, the only time that knowledge of injury would be necessary is once the driver has fulfilled the primary requirements of section 316.062[5], and is faced with the decision of whether he needs to render assistance to an injured person pursuant to section 316.062(1).

The State points out that the knowledge requirement, as expressed in the standard jury instruction, was read into section 316.061, for the statute does not contain an express requirement. The same element, knowledge of the accident, can, and should, be read into section 316.027 in the same way it is read into section 316.061. Therefore, "willfully" does not trigger the inclusion of knowledge. "Willfully" does not even relate to the nature of the accident, described in section 316.027(1), because it only relates to the act of failing to stop and comply with the requirements of subsection (1), pursuant to section 316.027(2). The last antecedent rule of statutory construction makes clear that qualifying phrases should not be construed as extending to remote phrases in a statute. Kirksey v.

---

[4] For instance, this language is included in similar statutes in New York and Montana. In some states, like Rhode Island and Georgia, similar statutes use "knowingly" as a qualifier.

[5] Regardless of whether there is injury, section 316.062(1) requires a person involved in an accident to give other such persons, certain information, and if those persons are unable to receive it, then section 316.062(2) requires that person to "forthwith" report the accident to the nearest police station.

State, 433 So. 2d 1236, 1241 (Fla. 1st DCA 1983). See also Brown v. Brown, 432 So. 2d 704, 710 (Fla. 3d DCA 1983).

The State urges that "willfully," as used in section 316.027 means that an accused was capable, and did, form an intent to leave the scene of the accident. After all, that statute, unlike section 316.061, anticipates injury. Circumstances can be imagined where an injured person who has been involved in accident may not be physically or mentally capable of complying with section 316.027. Indeed, section 316.064, Florida Statutes, exempts persons who are physically incapable from meeting the reporting requirements, by drivers who have been involved in accidents resulting in injury or death, of sections 316.065 and 316.066, Florida Statutes.

No such provision relates to section 316.027. In Martin v. State, 323 So. 2d 666, 667 (Fla. 3d DCA 1976), the defendant argued that the evidence was insufficient to support a conviction under section 316.027 because he lacked the willfulness required by statute, for he claimed that his head was injured so that he was unable to form the necessary "criminal intent." The court stated that lack of mental capacity was an affirmative defense to the offense, and that the issue of intent was a factual determination to be made by the jury. A like point was presented in Williams v. State, 505 So. 2d 478, 479 (Fla. 2d DCA 1987), approved, 520 So. 2d 276 (Fla. 1988), in which the court relied on Martin when deciding that the trier-of-fact had sufficient evidence on which to reject the intoxication defense.

Requiring a knowledge of injury or death under section 316.027, in addition to knowledge of the accident, would not further the purpose of the legislature in enacting the statute. See Smith v. City of St. Petersburg, 302 So. 2d 756, 757 (Fla. 1974)(a statute is to be construed to give effect to the legislative purpose); Devin v. City of Hollywood, 351 So. 2d 1022, 1023 (Fla. 4th DCA 1976)(the primary guide to statutory interpretation is to determine the purpose of the legislature). The purpose of section 316.027 is to assure that any injured person is rendered aid and that all pertinent information concerning insurance and names of those involved in the accident be exchanged by the parties. Herring v. State, 435 So. 2d 865, 866 (Fla. 3d DCA 1983). With knowledge of the accident as the only requirement, a person involved in an accident is encouraged to investigate an accident, instead of guessing whether any injury resulted.

Consistent with this reasoning, the court in Tuchman v. District of Columbia, 370 A. 2d 1321, 1322 (D.C. 1977) decided that given the actions of the pedestrian who was hit by the defendant's vehicle, the defendant should have stopped and inquired about any injuries, rather than "hastily leave the scene without identifying himself." It referred to a prior decision by the court in which it opined, "if there is any doubt about it he should obey the statute and not take the chance involved in leaving the accident." Tuchman, 370 A. 2d at 1322. Along those lines, the court in Com. v. Kauffman, 470 A. 2d 634, 640 (Pa. Super. 1983), construing the Pennsylvania hit-and-run statute on

property damage only, held that the duty to stop arises whenever a driver in the exercise of reasonable care should know that he has been involved in an accident. It explained, "To hold otherwise would advise drivers to remain oblivious, howsoever unreasonably, to the effects of their driving on fellow motorists." Kauffman, 470 A. 2d at 640.

Similarly, in People v. Nunn, 396 N.E. 2d 27, 31 (Ill. 1979), the court stated, in regard to the defendant's claim that a statute like the instant one should require knowledge of injury or death, "To require this additional proof would impose a burden that would be unrealistically difficult to sustain and would tend to defeat the public interest which is served by requiring persons involved in vehicle collisions to stop and provide identification and other personal information and to be available to render assistance if required." (emphasis supplied).[6] Likewise, the court in State v. Vela, 673 P. 2d 185, 188 (Wash. 1983) declined to adopt an element of constructive knowledge of injury or death in Washington's hit-and-run statute relating to accidents resulting in personal injury or death, in part because

---

[6] Below, Respondent suggested that Nunn did not hold that knowledge of injury or death was not a requisite for finding a defendant guilty of leaving the scene of an accident resulting in personal injury or death. However, many Illinois cases relying on Nunn clarify that knowledge of injury or death is not necessary. See, e.g., People v. Janik, 537 N.E.2d 756, 760 (Ill. 1989); People v. Hileman, 541 N.E.2d 700, 703 (Ill. 5th Dist. 1989); People v. McCracken, 535 N.E.2d 36, 41 (Ill. 1st Dist. 1989); People v. Martinez, 458 N.E.2d 27, 31 (Ill. 1st Dist. 1983). Moreover, these cases talk about knowledge of "an accident or collision," rather than knowledge of the accident resulting in injury or death.

"such a requirement would practically destroy the purpose of the statute."[7] The court reasoned:

> The statute requires the motorist to stop and investigate. This serves the underlying rationale of facilitating investigation of accidents and providing immediate assistance to those injured. To require an additional element of knowledge would tend to defeat the public interest which is served by requiring persons involved in vehicle collisions to stop and provide identification and other personal information and to be available to render assistance if required. (cite omitted).
>
> The Holford [constructive knowledge] rule *encourages* a driver to remain ignorant of the actual consequences of the accident. If he does not stop to investigate, he will likely not have knowledge whether anyone was injured or killed and is thereby guilty at most of a misdemeanor. Such a result would reward a motorist who deliberately remains ignorant of the results of his accident.

Vela, 673 P. 2d at 188-189.

Significantly, under the Washington statutory scheme, like under Florida's, if constructive knowledge of injury or death was required, and a person involved in an accident were to remain oblivious to the results of the accident, should there have been any resulting injury or death, then the person would

---

[7] The Fourth District placed emphasis on the fact that the Washington statute does not have the term "willfully." However, what the Washington statute has instead, that section 316.027 does not, is a provision that the statute does not apply to "any person injured or incapacitated by such accident to the exent of being physically incapable of complying herewith." See Vela, 673 P.2d at 186-187 n.1.

not be held liable under the hit and run statutes. Section 316.061, as the comparable Washington statute, covers situations in which the "only" result is property damage. As the court in Vela noted, courts should not interpret statutes in such a way as to create absurd or insensible consequences. See City of St. Petersburg v. Siebold, 48 So. 2d 291, 294 (Fla. 1950)(courts will not ascribe to legislature an intent to create an absurd consequence so an interpretation avoiding absurdity is always preferred). The court in Vela addressed this anomaly:

> The conclusion to draw regarding RCW 46.52.020 is that the statute cannot be construed to require knowledge of injuries. Reason dictates that the Legislature intended to punish hit-and-run drivers involved in accidents resulting in either property damage or injury to some person. Knowledge of the accident is all the knowledge that the law requires. If a motorist knows he has been involved in an accident and fails to stop, he is guilty of violating RCW 46.52.-020. If only property damage is done in the accident, he is guilty of a misdemeanor for failure to stop. If injury or death to a person results from the accident, he is guilty of a felony for failure to stop.

673 P. 2d at 188. See also State v. Fearing, 284 S.E. 2d 487, 494 (N.C. 1981), J. Huskins, dissenting.

Most recently, the court in State v. Johnson, 630 A. 2d 1059 (Conn. 1993) held that the Connecticut hit-and-run statute on accidents resulting in injury or death does not require that a person know about the injury, but just the accident, notwithstanding that the statute reads, "Each person operating a motor vehicle who is knowingly involved in an

accident which causes physical injury. . . ." See Johnson, 630 A. 2d at 1060 n. 2. It concluded that in enacting the statute, the legislature must have intended a "mandatory "stop, ascertain and assist" statute." Id. at 1063. The court offered the following reasoning:

> This interpretation is consistent not only with its legislative history but also with the purposes of statutes on evading responsibility. The purpose of the statute on evading responsibility is to ensure that when the driver of a motor vehicle is involved in an accident, he or she will promptly stop, render any necessary assistance and identify himself or herself. The essence of the offense of evading responsibility is the failure of the driver to stop and render aid. (cite omitted). Knowledge of the precise nature of the injury or damage serves no useful function in the fulfillment of the principal purpose of the statute.

Id. at 1064.

Other states seem to agree that all that is necessary to implicate statutes on leaving the scene of an accident involving injury or death is knowledge of the accident. In Goss v. State, 582 S.W. 2d 782, 785 (Tex. Crim. App. 1979)(en banc), the court stated that the mental state of such a statute was knowledge that "an" accident had occurred. See also Brown v. State, 600 S.W. 2d 834 (Tex. Crim. App. 1980); Williams v. State, 600 S.W. 2d 832, 833 (Tex. Crim. App. 1980). Compare State v. Fearing, 284 S.E. 2d 487, 495, J. Huskins, dissenting (discussion of use of "the" accident and "that" accident in the jury instruction). Also, the court in State v. Feintuch, 375 A. 2d

1223, 1226 (N.J. Super. A.D. 1977) ruled that one who knows of "an" accident, but nevertheless fails to report it or render assistance, is subject to punishment under the New Jersey hit-and-run statute on accidents resulting in injury or death. See also State v. Walten, 575 A. 2d 529, 531 (N.J. Super. A.D. 1990)

Making its holding clearer, the New Jersey court concluded that proof of impact alone is sufficient to raise an inference of knowledge, and affirmed the trial court's decision, "Once there is an impact, he has to stop and he has to exchange registration etcetera and having not done that, I find him guilty." Feintuch, 375 A. 2d at 1227-1228. Additionally, the court in State v. Wall, 482 P. 2d 41, 44-45 (Kan. 1971) determined that there must be awareness on the part of the driver of the fact "of collision," or that he has been involved in "a" collision.[8] It said:

> We think it sufficient if the circumstances are such as to induce in a reasonable person a belief that collision has occurred; otherwise a callous person might nullify the humanitarian purpose of the statute by the simple act of immediate flight from an accident scene without ascertaining exactly what had occurred. (cite omitted). We hold then that knowledge of collision is an essential element of the offense of hit-and-run driving.

---

[8] A later case by a Kansas district court of appeal interpreted Wall as merely creating an affirmative defense in a situation where a defendant claims that he was rendered unaware of an accident due to injuries sustained in the accident. See City of Overland Park v. Estell, 653 P.2d 819, 823 (Kan. App. 1982). It stated that the Kansas statute was one of strict liability. Id. See also City of Wichita v. Hull, 724 P.2d 699, 702 (Kan. App. 1986).

Wall, 482 P. 2d at 45. (emphasis supplied).

Finally, a couple of Florida appellate court opinions have implied that knowledge of an accident is all that is necessary for a person to be responsible under section 316.027. In State v. Moss, 206 So. 2d 692, 697 (Fla. 2d DCA 1968), the Second District, in upholding the constitutionality of section 317.071 (now 316.027), noted that the appellee conceded that the legislature probably intended that the burden under the statute was placed on a driver involved in an accident to stop and determine whether someone has been injured, rather than that the burden turn on the fact of injury or death. The court seemed to suggest that such a burden was clear when reading the statute in para materia with section 317.081 (now 316.061) because both statutes were premised on the language, "The driver of any vehicle involved in an accident. . . ." Moss, 206 So. 2d at 697. Subsequently, the Fourth District in Bolen v. State, 375 So. 2d 891, 892 (Fla. 4th DCA 1979) construed Moss as having "squarely" supported the following jury instruction in a prosecution pursuant to section 316.027:

> The driver of an automobile need only be aware that he was involved in an accident and with such knowledge, willfully left the scene of the accident, without fulfilling the requirement of F.S. 316.062. The driver need not know that such accident resulted in the injury or death of any person.

(emphasis included in opinion).

The Fourth District declined consideration of the issue because it held that the appellant had not properly preserved it for appeal. Bolen, 375 So. 2d at 892.

In addition, the Third District in Martin v. State, 323 So. 2d 666, 667 (Fla. 3d DCA 1976), held that the State had sufficiently proved the willfulness element under section 316.027 based on a presumption that the defendant intended the "ordinary results of his acts." It stated, "The State's case was proved when it was established that the defendant, as the driver of the automobile, drove into the side of another car where the damage was extensive and a person therein was injured and that, thereafter, without making any investigation, he drove away." Martin, 323 So. 2d at 667. (emphasis supplied).

In the trial court, the defense relied on Haire v. State, 155 So. 2d 1 (Fla. 1st DCA 1963). The First District in Haire construed a hit-and-run- statute which, at the time, contained the requirements of both section 316.027 and section 316.061. See Section 186.0180(1), Florida Statutes (1961). The court did nothing more than to hold that the statute had a knowledge requirement, "the defendant's knowledge that his car had caused personal injuries or property damage." Haire, 155 So. 2d at 2. The State maintains that by "caused," the court was referencing the accident which resulted or "caused" injury or property damage. Notably absent from the court's discussion of knowledge is the requirement that the driver have knowledge of the accident, which the court surely did not mean to exclude.

As for the instruction at issue in the instant case, the State argues that the trial court accurately instructed the jury on the elements of the hit-and-run offense under section 316.027. It commanded a finding by the jury that Respondent knew, or should have known, of the accident (R. 466). It also required a finding by the jury that Respondent "willfully" failed to stop and remain at the scene of the accident, and to comply with the dictates of section 316.062 (R. 466). Consistent with the State's definition of the term, the trial court told the jury that "willfully" means "intentionally and purposely" (R. 467).

CONCLUSION

WHEREFORE, based upon the foregoing arguments and the authorities cited therein, Petitioner respectfully requests this Court **REVERSE** the decision of the Fourth District Court below.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

JOAN FOWLER
Senior Assistant Attorney General
Chief, Criminal Law
West Palm Beach Bureau
Florida Bar No. 339067

MELYNDA L. MELEAR
Assistant Attorney General
Florida Bar No. 765570
1655 Palm Beach Lakes Blvd.
Third Floor
West Palm Beach, Florida 33401
(407) 688-7759

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing "Petitioner's Brief on the Merits" has been furnished by courier to: **PAUL PETILLO**, Assistant Public Defender, 421 3rd Street, West Palm Beach, Florida 33401 this 17th day of May, 1994.

Of Counsel

/ka