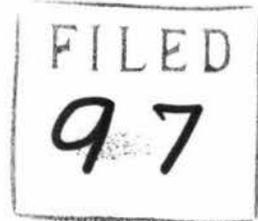


CRIMINAL LAW:

To sustain conviction of leaving scene of accident, defendant must have actual knowledge of the accident and injury to person or damage to property.

January 3, 1950



Honorable Homer F. Williams  
Prosecuting Attorney  
Bollinger County  
Marble Hill, Missouri

Dear Sir:

Your letter at hand requesting an opinion of this department which reads as follows:

"We have a party who is charged with leaving scene of accident without giving his name to the other party, and without reporting same to the nearest police office, etc.

"The defendant claims that he was unaware of the fact that his car had struck another car and shoved same off the highway at a very steep place, and it occurred while he was passing this car on this stretch of road, by side swiping it lightly.

"After the accident, the defendant had stopped at a road house about a mile away from the scene of the accident, and at that place a party there who came up while the defendant was there, told him that he had crowded this fellow off the highway back at the place but the defendant did not then make any effort to go back to the scene at all, but continued up the highway about 12 or 15 miles to another road house, where the officers got him.

"Would the fact that he failed to report the accident after he had been informed thereof, at the place one mile from the scene of the accident, make him guilty of this offense, if in fact he did not actually know that he had struck the car when he originally left the

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scene of the accident, and would this evidence otherwise be admissible for any purpose?"

The section of the statute defining the offense in question is Section 8401(f), R. S. Mo. 1939, which provides:

"Leaving scene of accident: No person operating or driving a vehicle on the highway knowing that an injury has been caused to a person or damage has been caused to property, due to the culpability of said operator or driver, or to accident, shall leave the place of said injury, damage or accident without stopping and giving his name, residence, including city and street number, motor vehicle number and chauffeur's or registered operator's number, if any, to the injured party or to a police officer, or if no police officer is in the vicinity, then to the nearest police station or judicial officer." (Underscoring ours.)

Section 8404(c), R. S. Mo. 1939, provides for the penalty when the above quoted statute is violated.

In the case of State vs. Harris, 357 Mo. 1119, 212 S.W. (2d) 426, the Supreme Court was considering the sufficiency of the evidence in the case where the defendant was charged with leaving the scene of an accident under the above quoted section. In defining the crux of the crime, the Court, at S.W. 1.c. 427, said:

" \* \* \* The crux of the crime with which defendant was charged and convicted was leaving the scene or place of injury without stopping and reporting the information as the statute requires. State v. Tippett, 317 Mo. 319, 296 S.W. 132; State v. Hudson, 314 Mo. 599, 285 S.W. 733. The offense was complete when the defendant, knowing a person had been injured, drove on without stopping and giving the information as required by the law. \* \* \*"  
(Underscoring ours.)

In the above case the Court clearly indicated that defendant's knowledge of the injury is a necessary element of the offense. It would logically follow that if the defendant did have knowledge of the injury inflicted on a person as a result of the accident that he would also have knowledge of the accident. As the Court held, "the offense was complete when the defendant knowing a person had

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been injured, drove on without stopping and giving the information as required by the law." Conversely, the offense would not have been complete had the defendant driven on without stopping and had not known that an accident had occurred and injury had been inflicted upon a person.

It is the rule in the construction of criminal statutes that they must be construed liberally in favor of the defendant and strictly against the state. Thus, in *State vs. Dougherty*, (Supreme) 216 S.W. (2d) 467, 471, it was stated:

"Criminal statutes are to be construed strictly; liberally in favor of the defendant, and strictly against the state, both as to the charge and the proof. No one is to be made subject to such statutes by implication.' *State v. Bartley*, 304 Mo. 58, 263 S.W. 95, 96; *State v. Taylor*, 345 Mo. 325, 133 S.W. 2d 336, 341. \* \* \* "

Again in the *Dougherty* case, the Court was considering a prosecution for leaving the scene of an accident under Section 8401 (f), supra, and in construing the word "knowing" as it was used in the statute, the Court at l.c. 472, said:

" \* \* \* We think the word 'knowing', as used in the statute, means actual knowledge rather than mere constructive knowledge, or such notice as would put one on inquiry, and more than mere negligence in failing to know, or the mere presence of facts which might have induced the belief in the mind of a reasonable person."

It would therefore appear that to sustain a conviction for leaving the scene of an accident, the defendant must have had actual knowledge of the accident and injury to person or damage to property as a result thereof. Under the facts which you have presented, it would seem that the defendant, being first notified of the accident a mile from the scene thereof, and that he did not actually know of its happening, would only amount to constructive knowledge thereof or such notice as would put him on inquiry. Under the *Dougherty* case, this would not be sufficient. Further keeping in mind that the statute in question must be liberally construed in favor of the defendant and strictly against the state, we believe that if the facts which you have presented would be the sole evidence in the case, then the defendant would not be guilty of the offense charged.

Of course, the question which you have presented is primarily a factual one, and had the defendant been stopped and notified of

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the accident at a place in closer proximity to the scene where he could have easily observed that an accident had occurred and then drove off without complying with the statute, a different opinion might be reached so far as warranting a prosecution for leaving the scene of an accident.

However, considering the facts which you have presented, in view of the recent decisions of the Supreme Court of Missouri we do not believe that the defendant is technically guilty of the offense with which you would charge him.

When the state has introduced evidence that the accident actually happened and that the defendant failed to stop, it is believed that the defendant's lack of knowledge is a matter of defense. If such defense is made, then the state on rebuttal might offer evidence of circumstances showing knowledge by the defendant of the accident. If when the defendant was informed of the accident his words and conduct were such as to constitute circumstances indicating his knowledge at the time of the accident, it would seem that such evidence would be admissible.

Respectfully submitted,

RICHARD F. THOMPSON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General