IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-0577-18

STEVEN CURRY, Appellant

v.

THE STATE OF TEXAS

ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW FROM THE FIRST COURT OF APPEALS HARRIS COUNTY

YEARY, J., filed a concurring opinion.

CONCURRING OPINION

In *Goss v. State*, 582 S.W.2d 782, 784 (Tex. Crim. App. 1979), we construed the failure to stop and render aid statute in light of provisions appearing in the then-new penal code. Because there was no culpable mental state appearing anywhere in the statute as it read at that time,[1] the Court invoked Section 6.02(b) of the Penal Code to hold that, to be guilty under the statutes, the actor must have "knowledge of the circumstances surrounding his

[1] *See* former Article 6701d, §§ 38 & 40, V.A.C.S.

conduct . . . i.e., ha[ve] knowledge that an accident had occurred." *Id*. at 785.[2] After the statute was re-codified in the Transportation Code, we adhered to this construction. *See Huffman v. State*, 267 S.W.3d 902, 908 & n.29 (Tex. Crim. App. 2008) (construing Section 550.021 of the Transportation Code as originally enacted by Acts 1995, 74th Leg., ch. 165, § 1, p. 1692, eff. Sept. 1, 1995); TEX. TRANS. CODE § 550.021. Because a mistake of fact instruction should be given whenever, among other things, that mistake of fact "negated the kind of culpability required for commission of the offense[,]" TEX. PENAL CODE § 8.02(a), a driver who introduced evidence to show he was reasonably mistaken to believe that an accident had *not* occurred would be entitled to a mistake of fact instruction.

The failure to stop and render aide statute was amended again in 2013. Acts 2013, 83rd Leg., ch. 1099, § 1, p. 2608, eff. Sept. 1, 2013. The revision still contains no explicit culpable mental state, but it also still fails to "plainly dispense" with one. Although there is some suggestion in the legislative background that the Legislature intended by its 2013 amendment to dispense with the previous judicial recognition of a culpable mental state,[3] the statute does not "plainly" do so. Accordingly we are bound by the statutory language (Section

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[2] Section 6.02(b) read at that time as it does today: "If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element." TEX. PENAL CODE § 6.02(b).

[3] The House Research Organization bill analysis accompanying the 2013 legislation contains language suggesting that "supporters" of the bill would construe it to do away with any requirement that the actor left the scene of an accident "knowing that another person was involved." Even assuming that this assertion accurately reflects the intent of the Legislature, the statute as written fails to accomplish this end.

550.021 of the Transportation Code in light of Section 6.02(b) of the Penal Code) to read a culpable mental state into Section 550.021. The circumstance surrounding conduct that presently makes the failure to stop an offense is that the vehicle that the actor is driving is "involved in an accident that results or is reasonably likely to result in injury to or death of a person[.]" TEX. TRANSP. CODE § 550.021(a). To be guilty under the present statute, then, the actor must have been aware that he has been in an accident that resulted, or was reasonably likely to have resulted, in injury or death to a person. A reasonable mistake of fact with respect to these circumstances should entitle him to a mistake of fact instruction under Section 8.02(a).

Nor is such a scienter requirement necessarily at odds with another addition made by the 2013 amendment to Section 550.021: that the actor "determine whether a person is involved in the accident, and if [so], whether that person requires first aid[.]" TEX. TRANSP. CODE § 550.021(a)(3). There is nothing inherently contradictory in requiring that the actor know that an accident was *reasonably likely* to have caused injury or death, and then requiring the actor to actually ascertain whether some person was *in fact* injured or killed. And to the extent that the actor may already *know* that an injury or death has already *occurred* when he stops, that just means that the statute incorporates a trivial redundancy, while still requiring the actor to determine whether aid is necessary. (After all, any injury does not have to be *serious*.)

With these additional observations, I join the Court's opinion.

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