

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,  
Respondent,

v.

DARLENE GWENDOLYN HAYES,  
Appellant.

No. 39583-5-II

UNPUBLISHED OPINION

Van Deren, J. — Darlene Hayes appeals her Thurston County conviction of hit and run driving involving an injury. She contends that, because the second amended information was not filed with the trial court on the day she received it and entered her plea, she was not properly charged with a crime. She also argues that the trial court erred when it restricted her cross-examination of the victim. We affirm.<sup>1</sup>

**FACTS**

In the early afternoon of January 5, 2009, Hayes, driving a Honda station wagon, was waiting to enter Lilly Road in Olympia from a Key Bank parking lot, as John Owings was walking back to work from a nearby 7-Eleven store. When he crossed the access road to the parking lot,

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<sup>1</sup> A commissioner of this court considered this matter pursuant to RAP 18.14 and referred it to a panel of judges.

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Hayes began to pull forward and she ran into him. The car hit his left knee and the impact caused him to fall onto the hood of the car. He slid off the driver's side and ended up on the sidewalk in a sitting position. Hayes drove off without stopping.

Owings returned to work and told his supervisors what had happened, and they told him to call the police. Olympia Police Officer Steven Hurd responded. Owings described the car and the driver and gave Hurd the license number. He showed Hurd two cuts on his left knee.

After verifying that the license plate belonged to a white 1992 Honda Accord station wagon, Hurd went to the residence of the registered owner and found the car parked in the driveway. The engine was still warm, and there was a handprint on the passenger's side hood near the headlight. Hayes answered the door when Hurd knocked. As Hurd later testified, Hayes admitted that she had hit a pedestrian as she was trying to enter traffic from the Key Bank parking lot. She explained that she was looking toward the left, saw an opening, and started forward. She heard a noise, and when she looked forward, she saw a person lying on the hood of her car. She asked him if he was all right, and he said that he was. She drove away then, because there were cars behind her and she was in a hurry. She gave Hurd the contact information for her passenger, Eugene Dawson.

On April 9, 2009, the State charged Hayes with hit and run (injury), in violation of RCW 46.52.020(4)(b). The State amended the information on May 21, 2009, and again on the first day of trial, at which time the prosecutor served Hayes and her attorney with a copy of the second amended information. Defense counsel acknowledged receipt of the second amended information and Hayes entered a plea of not guilty. Trial proceeded.

At trial, Owings described the incident much as he had described it for Hurd on the day he

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was hit. He also testified that, as a result of that accident, he was having continuing problems with his back and knees. During cross-examination, defense counsel asked Owings who was paying his medical bills, whether he had sustained financial losses, and whether he had any intent to litigate the matter civilly. The trial court sustained the State's objections to these questions. The court explained, "Two things may occur, and that may be that they could see the evidence, that they would think it was beyond a reasonable doubt, but because this information is civil litigation they might let it go to the civil attorney." Report of Proceedings (RP) at 47.

Hayes testified that she "hit the brakes" as soon as she saw Owings. RP at 119. She said that he slammed his hands onto the hood of the car, that he was yelling and screaming, and that she could not understand what he was saying. She turned to talk to her passenger, and when she turned back, Owings had disappeared, so she left the scene. She said she had not seen Owings make contact with her car as she moved forward and did not know she had hit him.

Dawson, Hayes's passenger, said that he saw Owings and yelled for Hayes to stop; she did so, and they did not think they had hit him. He, too, said that Owings had yelled at them and then walked away.

#### ANALYSIS

Hayes first contends that the charging document was defective. The second amended information was not formally filed and, after trial, the State brought a motion to settle the record. On April 22, 2010, the trial court entered an order nunc pro tunc instructing the court clerk to file a substituted second amended information with a filing date of June 24, 2009.

Hayes points to constitutional and common law requirements that a charging document include the essential elements of the crime, but she does not allege that the language in the second

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amended information is in any way insufficient. She simply claims that the information is not a proper charging document because it was not filed on the day she was served in court and entered her not guilty plea.

Our Supreme Court has held that a properly amended information, not filed in the court file, is an effective information if it is “approved by the court, accepted by [defendant] at arraignment, and used by the trial court in presenting the case to the jury.” *State v. Eaton*, 164 Wn.2d 461, 465-66, 191 P.3d 1270 (2008) (quoting *State v. Barnes*, 146 Wn.2d 74, 88, 43 P.3d 490 (2002)). The record in this case clearly demonstrates that Hayes accepted the second amended information and that the court subsequently approved that information. When the trial court accepted the second amended information and proceeded with trial, Hayes was well apprised that the State was using that information for the presentation of the case to the jury and the trial court concluded as much when it entered its later order settling the record. There was no reversible error.

Hayes also claims that the trial court erred when it sustained the State’s objections to her questioning Owings about possible civil litigation during cross-examination. “Under the rules of evidence, a trial court may exclude relevant evidence if the probative value is outweighed by the dangers of confusion of the issues or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” *State v. French*, 157 Wn.2d 593, 605, 141 P.3d 54 (2006). “The trial court’s ruling is afforded great deference and is reviewed under an abuse of discretion standard.” *French*, 157 Wn.2d at 605.

However, a defendant has a constitutional right to present testimony relating to possible

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bias, and a trial court error in excluding such testimony is presumed prejudicial. *State v. Johnson*, 90 Wn. App. 54, 69, 950 P.2d 981 (1998). Reversal is required unless there is no reasonable doubt that the defendant would have been convicted if the error had not taken place. *Johnson*, 90 Wn. App. at 69.

In order to obtain a conviction, the State needed to prove: (1) an accident resulting in injury to a person; (2) the failure of the defendant driver to stop in order to provide contact information and to render reasonable assistance; and (3) the driver's knowledge of the accident. *State v. Sutherland*, 104 Wn. App. 122, 130, 15 P.3d 1051 (2001).

Regardless of Owings testimony, the jury heard testimony from Hurd that confirmed that Hayes knew she had hit Owings, and that Owings had shown him the injury to his knee. Hayes admitted in closing that she may have "bumped" Owings, although she argued that she did not know whether she had. RP at 174. Based on her own testimony and her argument, she knew there may have been an accident involving a pedestrian. This required her to stop, even if she did not know someone was injured. *See State v. Vela*, 100 Wn.2d 636, 640-41, 673 P.2d 185 (1983).

Moreover, the jury might have questioned Owings's credibility about the extent of his injuries based on the testimony it had already heard that he had consulted three doctors. The jury would nonetheless have had to conclude that there was an accident, which resulted in some level of injury, and that Hayes left the scene without stopping and remaining at the scene to provide

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contact information and render assistance as required by RCW 46.52.020.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Van Deren, J.

We concur:

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Penoyar, C.J.

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Worswick, J.