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

KEEL, J., filed a dissenting opinion.

DISSENTING OPINION

I disagree with the majority opinion's interpretation of Transportation Code Section 550.021. The statute prohibits a driver's knowing failure to stop at the scene of an accident. But in my view, that prohibition does not depend on the driver also knowing that the accident resulted or was reasonably likely to result in injury or death; it depends instead on whether—objectively—the accident did so result or was reasonably likely to so result. Under this reading, Appellant's mistake about the nature of his accident would not

negate the kind of culpability required for failure to stop and render aid (FSRA) and would not raise the defense of mistake of fact, so I would affirm the lower court's judgment.

A person commits FSRA if he "does not stop or does not comply with the requirements of this section." TEX. TRANSP. CODE § 550.021(c). Those requirements include stopping at the scene, returning to the scene, and offering any needed aid. *Id.* § 550.021(a). *Huffman v. State* confronted the question of whether those duties had to be proven conjunctively. 267 S.W.3d 902, 908 (Tex. Crim. App. 2008). In answering that question, *Huffman* held that the required culpable mental state of knowledge applied to both accident and injury. *Id.* But the statute has since been amended in a way that undermines *Huffman*'s holding.

The current statute imposes on a driver a new duty: to determine whether anyone else was involved in his accident. TEX. TRANSP. CODE § 550.021(a)(3). To give meaning to that duty, we must read the statute as we did pre-*Huffman*, i.e., as requiring proof only that the driver knew he had an accident. *Cates v. State*, 102 S.W.3d 735, 738 (Tex. Crim. App. 2003); *Goss v. State*, 582 S.W.2d 782, 785 (Tex. Crim. App. 1979) (panel op.).

The majority, however, reads it expansively to require proof that the driver also knew that the accident hurt or likely hurt another person. That makes meaningless "the current statute's directive that drivers 'immediately determine whether a person is involved in the accident.'" *Curry v. State*, 569 S.W.3d 163, 168 (Tex. App.—Houston

[1st Dist.] 2018).

Although the majority denies that its expansive reading renders the duty-to-determine part of the statute meaningless, it implicitly concedes the point when it says that it makes no sense to require a driver to determine if another was involved in his accident if the driver already knows that another person was injured. That conundrum is a necessary result of the majority's applying a *mens rea* to the injury element. By contrast, applying a *mens rea* only to the accident element gives meaning to the duty to determine if another person was involved in the accident.

The majority mistakenly claims that applying FSRA's *mens rea* only to the accident element and not to the injury element would trigger Section 550.021's duties in any kind of accident. But those duties would be triggered only if the accident caused or was reasonably likely to cause injury or death. If a driver knew he was involved in an accident, but the accident did not cause or was not reasonably likely to cause injury or death, then he would not be liable for FSRA even if he drove away and never looked back.

Under this reading of Section 550.021, Appellant's supposed mistake about the nature of his accident would not negate the kind of culpability required for FSRA, and so mistake of fact would not have been raised by his testimony. *See* TEX. PENAL CODE § 8.02(a). Consequently, I would affirm the lower court's judgment.

Filed: October 30, 2019

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