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

HERVEY, J., delivered the opinion of the Court in which KELLER, P.J., KEASLER, RICHARDSON, YEARY, NEWELL, WALKER, and SLAUGHTER JJ., joined. YEARY, J., filed a concurring opinion. KEEL, J., filed a dissenting opinion.

O P I N I O N

Appellant, Steven Curry, was convicted of failure to stop and render aid after he hit a bicyclist, John Ambrose, who later died from his wounds. The jury sentenced Curry to six years' imprisonment. It did not fine him. On appeal, Curry argued that the evidence was legally insufficient and that he was entitled to a mistake-of-fact jury instruction. The court of appeals overruled Curry's points of error and affirmed his conviction. *Curry v.*

State, 569 S.W.3d 163 (Tex. App.—Houston [1st Dist.] 2018). Curry subsequently filed a petition for discretionary review asking us to examine the decision of the court of appeals, which we granted.

We agree with the court of appeals that the evidence is legally sufficient to support Curry's conviction for failure to stop and render aid, but we disagree with its conclusion that he was not entitled to a mistake-of-fact instruction. We will remand the cause for the court of appeals to assess whether Appellant was harmed.

FACTS AND PROCEDURAL HISTORY

We agree with the court of appeals's detailed recitation of the facts, so we quote it here:

> This case arises from a fatal hit-and-run accident [that took place on March 20, 2015]. []Curry was indicted for the felony offense of failure to stop and render aid to bicyclist John Ambrose. *See* TEX. TRANSP. CODE § 550.021(a), (c)(1). At trial, Curry did not dispute that he struck Ambrose with his truck and failed to stop and render aid. He conceded that Ambrose died as a result of complications arising from the medical treatment required by his injuries.
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> Curry, however, contended that he did not know at the time of the collision that he had struck a person who required his assistance.
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> J. Saldivar, an officer with the La Porte Police Department, arrived at the accident scene in response to a 911 call. When Saldivar arrived, Ambrose was unresponsive and in dire need of medical attention. Saldivar called emergency medical services personnel to the scene, who in turn summoned Life Flight to transport Ambrose to a hospital.
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> Ambrose had suffered a severe traumatic brain injury. He remained unresponsive, and he required a ventilator and feeding tube. After his discharge from the hospital, he was placed in a nursing home, where he later died.

Harris County Precinct 8 deputies investigated the accident due to their expertise in accident reconstruction. They concluded that a vehicle struck Ambrose from behind while he was bicycling in the northbound lane of a narrow, two-lane road. They based this conclusion on:

- the direction of the trail of debris in the road, including debris from the bicycle, which was predominantly in the northbound lane;
- the damage to the bicycle's rear tire, which was bent out of shape and had a cracked rim;
- the lack of damage to the bicycle's front wheel;
- gouges or scrapes in the road made when the front wheel of the bicycle detached as a result of the impact and its front forks hit the pavement; and
- the location of Ambrose and his bicycle after the accident.

The deputies concluded that a driver traveling in the northbound lane could have seen Ambrose because his bicycle had reflectors that were visible at night. In addition, they concluded that the driver who struck Ambrose was aware that the collision had occurred because the debris path showed that the driver had swerved.

The precinct circulated fliers seeking the public's help in identifying the driver who struck Ambrose. A citizen's tip lead deputies to Curry. The front passenger side of Curry's work truck was damaged, including its headlight assembly and the quarter panel. The headlight was broken. Police observed gouge marks on the fender beneath the broken headlight. R. Gallion, the La Porte Police Department crime scene investigator who examined the truck and processed the remaining evidence from the accident scene concluded that Curry struck Ambrose's bicycle from behind.

Curry testified that he did not think that he had been in an accident the night that he struck Ambrose. It was dark and the surrounding lighting was very poor around the accident scene. According to Curry, he did not see anything in the roadway and the passenger-side headlight suddenly burst. He "believed that somebody either threw something, or hit something, or

something hit my truck, or that it was just something that had just came up off the road." He conceded that he knew there had been a collision of some sort. Curry braked but did not stop, explaining that it was dark and he feared the possibility of an "altercation with someone else."

Curry's girlfriend, Rhonda San Felipo, also testified. San Felipo and Curry were returning from dinner out at a restaurant that evening. She was following him in her own car. They were traveling between 30 and 40 miles per hour. San Felipo could see the roadway beyond Curry's truck. She did not see a bicyclist in the road. According to her, Curry's headlight shattered, his truck "jerked a little bit," and he braked. She thought "somebody threw a bottle at him" from a nearby parking lot. San Felipo did not see Ambrose after the impact.

Curry and San Felipo drove on a short distance to his home where they inspected the truck.[1] Immediately afterward, they then returned to the accident scene in San Felipo's car to determine what had happened. They slowly drove by the area but they did not stop there. San Felipo said that she saw the silhouette of a man, whom she thought might have thrown the bottle. Aside from the remains of his headlight, Curry said that he did not see any debris in the road. Nor did he see Ambrose or his bike. He conceded, however, that he would have found Ambrose and known that Ambrose needed help if he and San Felipo had stopped and looked around for a few minutes.

Curry testified that he first learned of the true nature of the accident several days afterward when San Felipo called and told him of a newscast about it. He said that even then he still was not sure that he had struck Ambrose. Curry conceded, however, that he had contacted an attorney the day before San Felipo called him about the newscast.

Clyde Rooke, an accident reconstructionist, testified as a defense expert. He opined that Ambrose was not in the roadway immediately before the accident. Rooke concluded that Ambrose, whose blood alcohol content was more than twice the legal driving limit, had pulled out onto the road just as Curry's truck passed by him. Ambrose and his bike would have come to rest elsewhere if Curry had struck him from directly behind. In his opinion, the

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[1]Curry testified that the only damage he saw when he examined his truck at home after the accident was that the metal housing for the headlight was bent.

> bicycle's rear tire was too low to damage the truck's headlight. Because Curry's truck sustained so little damage, Rooke opined that a reasonable person could have believed that it struck something other than a person or another vehicle.
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> Rooke conceded that his testimony as to Ambrose's sudden entry onto the road was based on Curry's and San Felipo's statements, not any physical evidence. He also conceded that the physical evidence was consistent with the deputies' reconstruction of the accident. If Ambrose was already on the road when Curry approached, Rooke agreed that Curry would have been able to see Ambrose from a distance.

Id. at 165–67.

COURT OF APPEALS

On appeal, Curry argued that the evidence was insufficient because the State failed to prove that he was involved in an accident requiring him to stop and render aid. *Id.* at 165. He also argued that he was entitled to a mistake-of-fact instruction because, even if he was involved in an accident that would have required him to stop and render aid, he was reasonably mistaken in believing that he was not. *Id.* at 167–68. If the jury believed him, Curry contended, that reasonable belief would have negated the required *mens rea* that he knew that he was involved in an accident that required him to stop and render aid. *Id.* at 168.

a. Sufficiency of the Evidence

The first thing that the court of appeals had to do was construe the word "accident." Because "accident" is not defined by statute and does not have a technical meaning, the court of appeals relied on a dictionary to determine its ordinary meaning. *Id.*

at 167. According to the court, an accident "encompasses any 'unfortunate incident that happens unexpectedly and unintentionally, typically resulting in damage or injury.'" *Id.* (citing NEW OXFORD AMERICAN DICTIONARY 9 (3d ed. 2010)). Discussing our precedent, the lower court acknowledged that the State had to prove not only that an accident occurred, but also that the driver knew that he was involved in an accident,[2] but it held that the evidence was nonetheless sufficient on this point "[b]ecause [Curry] was aware that a collision of some kind had occurred . . . ." *Id.*

It next turned to Curry's argument that he was not required to stop and render aid because he did not know that the accident involved a person. In finding the evidence sufficient, the court of appeals explained that, although the State used to have to prove that the driver knew that a person was involved in the accident, it no longer has to in light of amendments to the statute. *Id.* at 167–68. According to the court of appeals, "the revised statute dispenses with the requirement that the State must prove that the defendant knew that another person was injured in the accident. A contrary interpretation would render meaningless the current statute's [new] directive that drivers 'immediately determine whether a person is involved in the accident.'" *Id.* at 168.

b. Mistake of Fact

The court of appeals also decided that Curry was not entitled to a mistake-of-fact instruction. Relying on its holding that the State no longer has to prove that the driver

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[2] *Curry*, 569 S.W.3d at 168 (relying on *Huffman v. State*, 267 S.W.3d 902, 908 (Tex. Crim. App. 2008)); *Goss v. State*, 582 S.W.2d 782, 785 (Tex. Crim. App. 1979).

knew that a person involved in the accident was injured or killed, it concluded that the evidence did not raise the issue because, "[e]ven if the jury had determined that Curry was simply mistaken in his belief that he had not struck a person, this mistake did not negate his knowledge that he had been in a collision that damaged his truck." *Id.* at 169.

DISCRETIONARY REVIEW

On discretionary review, Curry argues that the court of appeals erred when it construed the meaning of the word "accident" using a dictionary definition that was not given to the jury.[3] He further asserts that the lower court erroneously found that he was involved in an accident (as opposed to an incident) because he "did not believe that [he] hit a bicyclist but instead believed that someone standing near the road threw a beer bottle at [his] truck which caused the truck's minor damage." Curry's Brief on the Merits at 5. Curry also contends that the cases relied on by the court of appeals to determine that he was involved in an accident are distinguishable. *Id.* at 5–6 (citing *Curry*, 569 S.W.3d at 169 (relying on *Steen v. State*, 640 S.W.2d 912, 914 (Tex. Crim. App. 1982); *Sheldon v. State*, 100 S.W.3d 497, 500 (Tex. Crim. App. 2003); *Rivas v. State*, 787 S.W.2d 113, 115 (Tex. Crim. App. 1990))). Lastly, he asserts that the court of appeals erred in concluding that he was not entitled to a mistake-of-fact instruction because, if the jury believed that he was reasonably mistaken in thinking that he was not involved in an accident requiring

[3]Curry does not argue that the definition of "accident" adopted by the court of appeals is erroneous, only that the jury was not instructed on that definition, so we will assume for purposes of our analysis that the court of appeals's definition is an acceptable one.

him to stop and render aid, that would negate the necessary "knowledge" *mens rea*.

FAILURE TO STOP AND RENDER AID

To resolve Curry's two issues, like the court of appeals, we must construe the failure-to-stop-and-render-aid statute and review our caselaw. Statutory construction is a question of law we review *de novo*. *Harris v. State*, 359 S.W.3d 625, 629 (Tex. Crim. App. 2011). We begin by looking to the statutory language. *Id.* If the language is plain, we typically will effectuate that plain language. *Id.* But if the language is ambiguous or effectuating the plain language would lead to absurd results, we can resort to extra-textual sources to determine the intent of the legislators who voted in favor of enacting the law. *Id.*

a. This Court's Precedent

In *Goss*, this Court interpreted a former version of the statute stating that "[t]he driver of any vehicle involved in an accident resulting in injury to or death of any person shall . . . ." perform the duties imposed by the failure-to-stop-and-render-aid statute. *Goss*, 582 S.W.2d at 783. The statute did not require a culpable mental state, but the indictment nonetheless alleged that Goss intentionally and knowingly drove an automobile. *Id.* Goss argued that the indictment was fatally defective because driving a car is not a crime. *Id.* We agreed and explained that, while a culpable mental state had to be implied under Section 6.02(b) of the Penal Code,[4] the mental state attached to whether the driver knew

[4]Section 6.02 states in relevant part that,

that he was involved in an accident, not whether he intentionally or knowingly drove a vehicle. *Id.* at 785. We reasoned that failure to stop and render aid is a "circumstance surrounding the conduct" offense, meaning that otherwise lawful conduct (e.g., driving a vehicle) becomes criminal only under certain circumstances (e.g., the driver is involved in an accident and someone is injured or killed), and that the appropriate *mens rea* was that of knowledge. "Knowledge" was the correct culpable mental state, we said, because it would be unfair to impose strict liability on a driver who did not even know that he was involved in an accident. *Id.* at 784–85.

In *Huffman*, we interpreted another version of the failure-to-stop-and-render-aid statute that still included the same operative language from *Goss* that a driver who was involved in an accident that injured or killed someone shall stop and render aid. *Huffman*, 267 S.W.3d at 907–08. We reaffirmed our holding in *Goss* that the State must prove that the driver knew that he was involved an accident, but we further held that the State must also prove that the driver knew that someone involved in the accident was injured or

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> (a) [A] person does not commit an offense unless he intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires.
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> (b) 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.
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> * * *

TEX. PENAL CODE § 6.02(a)–(b).

killed. *Id.* We reasoned that the severity of the accident, like whether the driver was involved in an accident at all, was a focus of the statute, and consequently, a culpable mental state also attached to that circumstance. *Id.* at 908 (citing *McQueen v. State*, 781 S.W.2d 600, 603 (Tex. Crim. App. 1989)).

b. 2013 Amendments

In 2013, the legislature amended the statute. First, it added a second theory of liability: "[t]he operator of a vehicle involved in an accident that results *or is reasonably likely to result* in injury to or death of a person shall . . . ." Act of May 22, 2013, 83rd Leg., R.S., ch. 1099, § 1, 2013 Tex. Gen. Laws 2608, 2608 (amending TEX. TRANSP. CODE § 550.021(a)) (emphasis added). Second, it created a new provision that the driver must "immediately determine whether a person is involved in the accident, and if a person is involved in the accident, whether that person requires aid." *Id.* (amending TEX. TRANSP. CODE § 550.021(a)(3)).

c. The Current Statute

The current failure-to-stop-and-render-aid statute, which is applicable here, states in relevant part that,

> (a) [t]he operator of a vehicle involved in an accident that results *or is reasonably likely to result* in injury to or death of a person shall:
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> (1) immediately stop the vehicle at the scene of the accident or as close to the scene as possible;
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> (2) immediately return to the scene of the accident if the vehicle is not stopped at the scene of the accident;

> (3) *immediately determine whether a person is involved in the accident, and if a person is involved in the accident, whether that person requires aid*; and
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> (4) remain at the scene of the accident until the operator complies with the requirements of [S]ection 550.023.
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> * * *

TEX. TRANSP. CODE § 550.021(a)(1)–(4) (emphasis added).

d. Analysis

We agree with the court of appeals that, in light of the 2013 amendments, the State no longer has to prove that the driver knew a person involved in the accident was injured or killed (although such proof will still suffice). Now it can allege that a driver failed to stop and render aid because the driver knew that he was involved in an accident that was reasonably likely to injure or kill another person, if another person was involved. However, we disagree with the court of appeals that any kind of accident triggers the duties imposed by the failure-to-stop-and-render-aid statute. *Curry*, 569 S.W.3d at 168.

The former versions of the statute drew a black and white line: either the driver knew that he was involved in an accident and someone was injured or killed, or he did not. But in adding the "reasonably likely" theory, the legislature introduced probabilities into the statute where there previously were none. Now a driver must stop and render aid not only if the driver knows that he was involved in an accident and another person was injured or killed (*Goss*/*Huffman*),[5] but also if he knows that he was involved in an

[5] *Huffman*, 267 S.W.3d at 908; *Goss*, 582 S.W.2d at 785.

accident that was reasonably likely to result in injury to or the death of a person (2013 amendments). The corollaries to this are that a driver does not have to stop and render aid if he does not know that he was involved in an accident, if he knows that he was involved in an accident and knows that it did not result in injury to or the death of a person, or if he knows that he was involved in an accident, but it was not reasonably likely that the accident would result in injury to or the death of another person.[6]

Contrary to the conclusion of the court of appeals, our interpretation of the statute does not render the new requirement to determine if a person was injured or killed meaningless. It actually harmonizes the two provisions. It makes sense to require a driver to stop and determine if a person was involved in an accident if the accident was reasonably likely to hurt or kill another person. It makes less sense to require a driver to determine if a person was involved in an accident if the accident was not reasonably likely to injure someone. It makes no sense to require a driver to determine if another person was involved in the accident if the driver already knew that another person was involved and that the person was injured or killed.

With this understanding of the failure-to-stop-and-render-aid statute, we turn to Curry's sufficiency and mistake-of-fact issues.

SUFFICIENCY OF THE EVIDENCE

a. Standard of Review

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[6]Of course, the State can plead both theories of liability.

The State must prove each essential element of an offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979). When reviewing the sufficiency of the evidence, we consider all of the admitted evidence in the light most favorable to the verdict to determine whether, based on that evidence and the reasonable inferences therefrom, a jury was rationally justified in finding the defendant guilty beyond a reasonable doubt. *Id.* The jury is the sole judge of the witnesses' credibility and the weight to be given to their testimony. Juries can draw any reasonable inference from the facts so long as each inference is supported by the evidence. *Id.* at 319; *see Hooper v. State*, 214 S.W.3d 9, 16–17 (Tex. Crim. App. 2007). When the record supports conflicting, reasonable inferences, we presume that the jury resolved the conflicts in favor of the verdict. *Jackson*, 443 U.S. at 326. The evidence is not legally sufficient if it is based on only speculation. *Hooper*, 214 S.W.3d at 16.

b. Analysis

The court of appeals did not err when it construed the meaning of "accident" before assessing the sufficiency of the evidence. Reviewing courts measure the sufficiency of the evidence by comparing the admitted evidence to the essential elements of the offense, and the essential elements of an offense are determined by construing the applicable statute. *See Kirsch v. State*, 357 S.W.3d 645, 651 (Tex. Crim. App. 2012) ("[A]n appellate court may articulate a definition of a statutorily undefined, common term in assessing the sufficiency of the evidence . . . ."). The only words, terms, or phrases to

be defined in a jury charge are those that have an established legal or technical meaning. *Id.* at 650. "Accident" does not have an established legal or technical meaning, as the court of appeals noted, so it should not have been defined in the jury charge. *See Green v. State*, 476 S.W.3d 440, 445 (Tex. Crim. App. 2015) (words that are not defined by statute and have no legal or technical meaning should not be included in the jury charge). We also note that inclusion of a definition might have constituted a comment on the weight of the evidence. *Kirsch*, 357 S.W.3d at 651 ("[A] trial court's inclusion of [a statutorily undefined, common term] in a jury charge may constitute an improper comment on the weight of the evidence.").

We also agree with the court of appeals's conclusion that the evidence is sufficient to show that Curry was involved in an accident requiring him to stop and render aid. The issue here is one of credibility, which is the province of the jury. Viewing the evidence in the light most favorable to the conviction, we must presume that the jury believed (1) the State's experts that Curry could have easily seen Ambrose on his bicycle even though it was dark outside because the bicycle had reflectors, Curry's headlights were on, and Ambrose was bicycling in front of Curry's truck a few feet inside of the roadway; (2) that the right headlight shattered when Curry's truck hit the rear wheel of the bicycle, the bicycle seat, or Ambrose's body; and (3) that Curry and San Felipo were not telling the truth when they told Rooke that they never saw Ambrose or his bicycle. On the other hand, we must presume that the jury rejected Rooke's conclusion that a reasonable person

could have believed that he struck something other than a person or another vehicle based on the damage to the truck, and Curry's testimony that he thought that someone threw a beer bottle at his truck.

Consequently, we conclude that a rational jury could have found Curry guilty, either because he failed to stop and render aid even though he knew someone involved in the accident was injured or killed, or because he knew that he was involved in an accident that was reasonably likely to have injured or killed another person.[7]

MISTAKE-OF-FACT INSTRUCTION

a. The Law

A defendant is entitled to a mistake-of-fact instruction if the issue is raised by the evidence, even if that evidence is weak or controverted. *Allen v. State*, 253 S.W.3d 260,

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[7]We also note that the cases cited by Curry to show that he was not involved in an accident within the meaning of the statute are distinguishable. In *Steen*, a witness driving a semi-trailer truck saw Steen cause an accident when he tried to change lanes to pass the semi-trailer truck, but instead collided with a station wagon that was passing Steen's truck. *Steen*, 640 S.W.2d at 913 (the station wagon swerved away from Steen's vehicle and entered a north bound lane of traffic and collided head-on with another vehicle.) *Id. Sheldon* and *Rivas* both involved passengers jumping out of the appellants' vehicles to their death, and witnesses in both cases testified that the appellants knew that the passengers in their vehicles had jumped out. *Sheldon*, 100 S.W.3d at 502; *Rivas*, 787 S.W.2d at 114. Curry contends that *Steen* is distinguishable because Steen caused the accident, but was not otherwise involved in it, while Curry hit Ambrose. He claims that *Sheldon* and *Rivas* are distinguishable because, in his case, no eyewitness testified that Curry knew that he was in an accident and that someone was injured or killed.

There is no requirement under the statute that the driver cause the accident or that an eyewitness must see the accident and testify that the driver knew that he was involved in an accident. TEX. TRANSP. CODE § 550.021(a) (stating that a driver has certain responsibilities if he is involved in an accident, but not specifying how the accident must have been caused or how the driver was involved in the accident, only that he was involved).

267 (Tex. Crim. App. 2008). "It is a defense to prosecution that the actor through mistake formed a reasonable belief about a matter of fact if his mistaken belief negated the kind of culpability required for commission of the offense." TEX. PENAL CODE § 8.02(a).

b. Analysis

When the court of appeals determined that Curry was not entitled to a mistake-of-fact instruction, it erred. As we noted previously, not just any accident will trigger the failure-to-stop-and-render-aid duties. The accident must have resulted in injury to or the death of another person, or it must be the type of accident that was reasonably likely to have injured or killed another person. Consequently, the question is not whether Curry knew that he was involved in some kind of accident (he admitted that he was); it is whether he made a reasonable mistake in thinking that no one involved in the accident was injured or killed or in thinking that the accident was not reasonably likely to have injured or killed another person. We think Curry was entitled to the instruction.

Both Curry and his girlfriend testified that they never saw Ambrose, or anyone else, riding a bicycle. She thought that someone had thrown a beer bottle at Curry's vehicle. At one point, Curry testified that he was unsure of what happened, but he also testified that he believed that he either collided with road debris or a beer bottle and that he did not hit a person. They also both testified that they did not see Ambrose or his bicycle when they returned to the scene. We think that Curry's testimony is sufficient to raise the mistake-of-fact issue when viewing the evidence in the light most favorable to

the defense. *Allen*, 253 S.W.3d at 267. If the jury concluded that Curry reasonably believed that he was not involved in an accident that injured or killed someone, or that he reasonably believed he was not involved in an accident that was reasonably likely to injure or kill someone, that would negate the necessary *mens rea* to find Curry guilty of failing to stop and render aid. The jury did not have to believe that Curry was reasonably mistaken, but the issue should have been submitted for its consideration because it was raised by the evidence.

The next step of the analysis is to determine whether Curry was harmed by the failure to include a mistake-of-fact instruction, but we will not address that issue since the court of appeals did not reach it.

CONCLUSION

We agree with the court of appeals that the evidence is sufficient to support Curry's conviction, but disagree with its conclusion that Curry was not entitled to a mistake-of-fact instruction. Consequently, we reverse the judgment of the court of appeals and remand the cause for it to determine if Curry was harmed by the absence of the instruction.

Delivered: October 30, 2019

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