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COURT OF CRIMINAL APPEALS
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COURT OF CRIMINAL APPEALS
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IN THE COURT OF CRIMINAL APPEALS

OF TEXAS

STEVEN CURRY, Appellant

VS.

THE STATE OF TEXAS, Appellee

On Petition for Discretionary Review from
The First Court of Appeals
in No. 01-17-00421-CR Affirming
The 263rd Criminal District Court of
Harris County, Texas, Cause No. 1528845,
Honorable Jim Wallace, Judge Presiding

APPELLANT'S PETITION FOR DISCRETIONARY REVIEW

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Oral Argument Requested

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NAMES OF ALL PARTIES

Pursuant to Tex. R. App. P. 38.1(a), the following are interested parties:

Presiding Judge:	Jim Wallace 263rd Criminal District Court 1201 Franklin Street, 17th Floor Houston, Texas 77002
Appellant:	Mr. Steven Curry 5810 Coral Ridge Houston, Texas 77069
Attorneys for State:	Ms. Allison Buess District Attorney's Office 1201 Franklin Street, Suite 600 Houston, Texas 77002 Mr. Daniel McCrory (on appeal) District Attorney's Office 1201 Franklin Street, Suite 600 Houston, Texas 77002
Attorneys for Appellant:	Mr. Carl D. Haggard (trial) 8614 Hemlock Hill Houston, Texas 77083 Mr. Crespin Michael Linton (appeal) 440 Louisiana Street, Suite 900 Houston, Texas 77002

LIST OF AUTHORITIES

STATUTES

RULES

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Rule 39.1, Appellant requests oral argument.

STATEMENT OF THE CASE

The Appellant was charged with Accident Involving Injury – Failure To Stop And Render Aid. After a jury trial, the jury found Appellant guilty of Accident Involving Injury – Failure To Stop And Render Aid. The jury sentenced him to a term of 6 years in the Texas Department of Criminal Justice - Institutional Division.

PROCEDURAL HISTORY

All points of error were affirmed by the First Court of Appeals on May 8, 2018, in a published opinion. No motion for rehearing was filed.

GROUND FOR REVIEW

GROUNDS FOR REVIEW

THE COURT OF APPEALS ERRED IN DETERMINING THAT THE EVIDENCE WAS SUFFICIENT TO SUPPORT APPELLANT'S CONVICTION FOR ACCIDENT INVOLGING INJURY – FAILURE TO STOP AND RENDER AID.

THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S REFUSAL TO GIVE JURY INSTRUCTION ON MISTAKE OF FACT.

REASON FOR REVIEW

THE COURT OF APPEALS HAS DEPARTED SO FAR FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS OR SO FAR SANCTIONED SUCH A DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THE COURT OF CRIMINAL APPEAL'S POWER OF SUPERVISION.

STATEMENT OF FACTS

At around 8:00 p.m. on the evening of March 20, 2015, Appellant Curry was traveling home on Sens Road in La Porte, Texas in his vehicle, after having eaten dinner with his girlfriend, when he struck a bicyclist name John Ambrose who died months later from complications of the collision with Appellant's vehicle. Appellant testified that he did not stop to investigate the collision because he believed someone had thrown a beer bottle that hit his truck. He denied knowing that he hit a bicyclist and denied fleeing the scene of an accident. Appellant's girlfriend, Rhonda San Felipo, testified that she followed Appellant home from the restaurant in a separate vehicle and did not witness Appellant strike a bicyclist. She testified that she thought someone threw a beer bottle at Appellant's truck.

Harris County Deputy Clinton Poteet testified that the reconstruction of the accident showed that a vehicle collided with a bicycle and knocked the cyclist off the bicycle and under a truck parked in parking lot on the right side of Sens Road. Poteet also stated that the crash scene evidence showed that Appellant's vehicle swerved left in an attempt to avoid a collision with the bicyclist which signified that Appellant realized he was involved in an accident. Poteet concluded that the scene diagram with the extensive debris trail showed that Appellant would have known he was involved in an accident and should have stopped to investigate.

ARGUMENTS AND AUTHORITIES

GROUND FOR REVIEW ONE

THE COURT OF APPEALS ERRED IN DETERMINING THAT THE EVIDENCE WAS SUFFICIENT TO SUPPORT APPELLANT'S CONVICTION FOR ACCIDENT INVOLVING INJURY – FAILURE TO STOP AND RENDER AID.

GROUND FOR REVIEW TWO

THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S REFUSAL TO GIVE JURY INSTRUCTION ON MISTAKE OF FACT.

REASON FOR REVIEW

THE COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS OR SO FAR SANCTIONED SUCH A DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THE COURT OF CRIMINAL APPEAL'S POWER OF SUPERVISION.

DISCUSSION

The Court of Appeals incorrectly held that the evidence was sufficient to convict Appellant of Accident Involving Injury – Failure To Stop And Render Aid.

The test for reviewing the insufficiency of the evidence where a defendant has been found guilty is for the reviewing court to determine whether, after viewing the relevant evidence in the light most favorable to the verdict, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. **Brooks v. State**, 323 S.W.3d 893 (Tex. Crim. App. 2010)

Section 550.023 of the **Texas Transportation Code** provides that a person commits the felony offense of Accident Involving Injury – Failure To Stop And Render Aid if the operator of a vehicle involved in an accident that results or is reasonably likely to result in injury or death of a person fails to: 1) immediately stop the vehicle at the scene of the accident or as close to the scene as possible, 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,

whether that person requires aid, and 4) remain at the scene of the accident until the operator complies with the requirements of Section 550.023. (West 2017) The State must prove that the driver knew that an accident occurred. **Huffman v. State**, 267 S.W.3d 902, 908 (Tex. Crim. App. 2008).

While the Court of Appeals correctly acknowledged that the term "accident" was not statutorily defined, the Court of Appeals ruled that the New Oxford American Dictionary's definition of accident as an unfortunate incident that typically results in damage or injury would apply in this case. The Court of Appeals erred in its analysis by determining that the State proved Appellant was involved in an accident beyond a reasonable doubt even when viewing the following evidence in the light most favorable to the verdict by supporting the verdict with a dictionary's definition of the term accident that the jury did not have in the jury charge. Both Appellant and his girlfriend testified that they did not believe that Appellant hit a bicyclist but instead believed that someone standing near the road threw a beer bottle at Appellant's truck which caused the truck's minor damage.

The Court of Appeals further erred by incorrectly determining that Appellant's collision constituted an accident by citing three cases that held

that the Appellants were determined to be involved in accident under this statute even though none of them had collided with the victim in any of the cases. **See Steen v. State,** 640 S.W.2d 912, 914 (Tex. Crim. App. 1982); **Sheldon v. State**, 100 S.W.3d 497, 500 (Tex. App. – Austin 2003, pet. ref'd); **Rivas v. State**, 787 S.W.2d 113, 114 (Tex. App. – Dallas 1990, no. pet.) Unlike these 3 cases, Appellant testified that his truck collided with something, but he believed it was a beer bottle throw by a bystander not a bicyclist. In addition, both he and his girlfriend testified that they were scared to exit their vehicles to investigate the collision at night with the possibility of confronting a drunk person throwing beer bottles at passing traffic. Therefore, the Court of Appeals erred in determining that the evidence was sufficient to convict Appellant of Accident Involving Injury – Failure To Stop And Render Aid.

MISTAKE OF FACT JURY CHARGE

The Court of Appeals incorrectly affirmed the trial court's refusal to give jury instruction on the defense of Mistake of Fact.

An accused has the right to an instruction on any defensive issue raised by the evidence, whether the evidence is weak or strong, unimpeached or contradicted, and regardless of what the trial court may think about the credibility of the defense. **Granger v. State**, 3 S.W.3d 36, 38 (Tex. Crim. App. 1999)

Section 8.02 of the Texas Penal Code provides that it is a defense to prosecution that an 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. Pen. Code, Section 8.02(a) (West 2017)** "To raise the defensive issue of mistake of fact, there must be evidence which negates the culpable mental state, i.e., intentionally and knowingly, required for the offense." **Plummer v. State**, 426 S.W.3d 122, 127 (Tex. App. – Houston [1st Dist.] 2012, pet. ref'd)

The Court of Appeals incorrectly stated that Appellant argued that he was under the mistaken belief that he had hit a person when instead

Appellant argued that he was under the mistaken belief that he had been involved in an accident in the first place. While Appellant did testify that he did not believe that he had hit a bicyclist, he clearly testified that he did not believe that he had been involved in an accident which required him to stop and investigate because he thought someone threw a beer bottle at his truck. Appellant's testimony was supported by the testimony of his girlfriend. Because there was a conflicting evidence that he had been involved in an accident, the Court of Appeals erred in refusing to reverse the trial court's decision to deny submitting this defensive issue of Mistake of Fact to the jury. Appellant's mistaken belief that a beer bottle hit his truck negated the culpable mental state required by Section 550.023 of the Texas Transportation Code.

Appellant contends that the appellate court erred in siding with the trial court by preventing a jury from deciding whether Appellant's had a mistaken belief of fact about whether or not he had been involved in an accident. Therefore, the Court of Appeals erred in determining that there was no affirmative evidence to support the submission of the defensive charge of Mistake of Fact.

PRAYER FOR RELIEF

For the reasons stated, Appellant Curry prays the Court to grant his Petition For Discretionary Review, and after considering the grounds for review, reverse the judgment of the court of appeals and grant the relief requested.

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

I hereby certify that Appellant's Brief, as calculated under Texas Appellate Rule of Appellate Procedure 9.4, contains 2127 words as determined by the Word program used to prepare this document.

_/s/ Crespin Michael Linton
Crespin Michael Linton

CERTIFICATE OF SERVICE

I do hereby certify that on this the 5th day of July 2018, a true and correct copy of the foregoing Appellant's Brief was served by E-service in compliance with Local Rule 4 of the Court of Appeals or was served in compliance with Article 9.5 of the Rules of Appellate Procedure delivered to the Assistant District Attorney of Harris County, Texas, 1201 Franklin Street, Suite 600 Houston, TX 77002 at mccrory_daniel@dao.hctx.net and the State Prosecuting Attorney, P.O. Box 12405 Austin, Texas 78711 at information@spa.texas.gov.

__/s/_Crespin Michael Linton__
Crespin Michael Linton

APPENDIX A

Opinion In the Court of Appeals

For The First District of Texas

No. 01-71-00421-CR

Steven Curry,
Appellant

v.

State of Texas,
Appellee

Opinion issued May 8, 2018

In The

Court of Appeals

For The

First District of Texas

NO. 01-17-00421-CR

STEVEN CURRY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Case No. 1528845

O P I N I O N

A jury found Steven Curry guilty of the felony offense of failure to stop and render aid, and it assessed his punishment at six years' confinement. Curry appeals, contending that (1) the evidence is legally insufficient to support the jury's verdict,

and (2) the trial court erred in failing to instruct the jury as to his mistake-of-fact defense. We affirm.

BACKGROUND

This case arises from a fatal hit-and-run accident. Steven 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.

Curry, however, contended that he did not know at the time of the collision that he had struck a person who required his assistance.

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.

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 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. 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 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.

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.

DISCUSSION

I. Legal sufficiency

Curry contends that the evidence is legally insufficient to prove that he knew he had been in an accident requiring him to stop and render aid. Curry argues that the evidence shows that he did not realize he had struck anyone and that he therefore did not knowingly fail to stop and render aid to any person.

A. Standard of review and applicable law

In a review for legal sufficiency, we view the evidence in the light most favorable to the verdict to determine whether a rational factfinder could have found the essential elements of the crime beyond a reasonable doubt. *Gear v. State*, 340 S.W.3d 743, 746 (Tex. Crim. App. 2011) (relying on *Jackson v. Virginia*, 443 U.S.

307, 99 S. Ct. 2781 (1979)). We defer to the jury's resolution of conflicts in the evidence. *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010).

The statute criminalizing the failure to stop and render aid provides that drivers who are

> involved in an accident that results or is reasonably likely to result in injury to or death of a person shall:
>
> (1) immediately stop the vehicle at the scene of the accident or as close to the scene as possible;
>
> (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
>
> (4) remain at the scene of the accident until the operator complies with the requirements of Section 550.023.

TEX. TRANSP. CODE § 550.021(a). Among other things, drivers must "provide any person injured in the accident reasonable assistance." *Id.* § 550.023(3).

The State must prove that the driver knew that an accident had occurred. *Huffman v. State*, 267 S.W.3d 902, 908 (Tex. Crim. App. 2008). "Accident" is not statutorily defined and therefore bears its conventional meaning. *See* TEX. GOV'T CODE § 311.011(a). In general, the term encompasses any "unfortunate incident that happens unexpectedly and unintentionally, typically resulting in damage or injury." NEW OXFORD AMERICAN DICTIONARY 9 (3d ed. 2010). The term is equally broad in meaning, if not broader, in the context of automobile accidents. *See Sheldon v. State*,

100 S.W.3d 497, 500–04 (Tex. App.—Austin 2003, pet. ref'd) (affirming conviction for failure to stop and render aid; holding that "accident" encompassed situation in which passenger jumped to her death from car despite absence of collision); *Rivas v. State*, 787 S.W.2d 113, 114–16 (Tex. App.—Dallas 1990, no pet.) (same).

B. Analysis

Curry contends that the State had to prove not only that he knew he had been in an accident but also that the accident involved an injured person. This was true under a prior version of the offense. *See Huffman*, 267 S.W.3d at 907–08 (construing earlier version of offense to require proof that the defendant knew that he had been in an accident involving an injured victim). However, Section 550.021 has been amended since *Huffman* was decided. Unlike the earlier version, the current statute applies to accidents resulting in injury or death and to those reasonably likely to cause injury or death. *See* TEX. TRANSP. CODE § 550.021(a); *cf. Huffman*, 267 S.W.3d at 907–08 (construing prior version pertaining only to "an accident resulting in injury to or death of a person"). The current statute, which applies to Curry's offense, expressly requires drivers to determine whether a person was involved in any accident. *See* TEX. TRANSP. CODE § 550.021(a)(3).

Based on the recent revisions to the statute, our sister court has concluded that the State must prove that the defendant knew that he was involved in an accident and failed to stop, investigate, and render any necessary aid. *See Mayer v. State*, 494

S.W.3d 844, 849–51 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd). We agree that the revised statute dispenses with the requirement that the State prove that the defendant knew that another person was injured in the accident. A contrary interpretation would render meaningless the current statute's directive that drivers "immediately determine whether a person is involved in the accident."

To the extent that Curry contends that the evidence was legally insufficient to prove beyond a reasonable doubt that he knew he had been in any kind of accident, we disagree. Curry testified that he did not believe he had been in an accident at the time of the underlying events, but he acknowledged that his headlight "suddenly burst," and that he did not know what had happened. Curry testified that 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." Curry thus was aware that his truck came into contact with something that he could not identify and did so with enough force to damage the truck. This collision constitutes an "accident" for purposes of Section 550.021. *See Steen v. State*, 640 S.W.2d 912, 914 (Tex. Crim. App. 1982); *Sheldon*, 100 S.W.3d at 500; *Rivas*, 787 S.W.2d at 115.

Because he was aware that a collision of some kind had occurred, Curry was obliged to stop and determine whether a person was involved. *See* TEX. TRANSP. CODE § 550.021(a)(3). Curry failed to stop when the collision happened. Although he returned to the scene shortly after the collision to determine what had happened,

he once again did not stop and investigate. Under these circumstances, the jury reasonably could have determined that Curry knew he had been in an accident but failed to stop, investigate, and render any necessary aid. Accordingly, we hold that the evidence is legally sufficient to support the verdict.

II. Jury charge

Curry next contends that the trial court erred in refusing to instruct the jury as to his mistake-of-fact defense. He argues that there was conflicting evidence as to whether he knew that he had struck a person, and thus the trial court was required to instruct the jury to acquit if it had a reasonable doubt about whether Curry knew he had done so. *See* TEX. PENAL CODE § 8.02(a) (mistaken belief about matter of fact provides defense if belief negates culpability required by offense); *Goforth v. State*, 241 S.W. 1027, 1028 (Tex. Crim. App. 1922) (holding that trial court should have instructed jury to acquit if it had reasonable doubt that defendant knew he struck a person under prior version of failure-to-stop-and-render-aid statute). He further argues that the evidence suggests that he did not know that an accident had occurred.

As we have concluded that the current version of the offense does not require proof that Curry knew that his accident involved a person, his complaint about the trial court's jury instructions is without merit. *See Celis v. State*, 416 S.W.3d 419, 430–31 (Tex. Crim. App. 2013) (jury instruction on mistake-of-fact defense is required only if the mistake would negate the culpable mental state required by

offense). Even 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. That knowledge required him to stop, investigate, determine whether a person was involved, and render aid. *See* TEX. TRANSP. CODE § 550.021(a); *Mayer*, 494 S.W.3d at 849–51. In his testimony, Curry conceded that he knew that something had collided with his truck and broken his headlight. Thus, the evidence does not raise a fact issue as to whether an accident had occurred at all. *See Steen*, 640 S.W.2d at 914; *Sheldon*, 100 S.W.3d at 500; *Rivas*, 787 S.W.2d at 115. When the evidence viewed in a light favorable to the defendant does not establish a mistake-of-fact defense, no instruction is required. *Granger v. State*, 3 S.W.3d 36, 38 (Tex. Crim. App. 1999).

Accordingly, we hold that the trial court did not err in refusing to instruct the jury on Curry's mistake-of-fact defense.

CONCLUSION

We affirm the judgment of the trial court.

Jane Bland
Justice

Panel consists of Justices Bland, Lloyd, and Caughey.

Publish. TEX. R. APP. P. 47.2(b).