

A05-1394

STATE OF MINNESOTA

IN SUPREME COURT

OFFICE OF
APPELLATE COURTS
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FILED

State of Minnesota,

Appellant,

vs.

Mohammed G. Al-Naseer,

Respondent.

APPELLANT'S REPLY BRIEF

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ARGUMENT

As explained in appellant's principal brief, in considering what level of knowledge, if any, is required for a person to be guilty of leaving the scene of an accident, it is helpful to consider the statute as if it is on a continuum from the narrowest to the broadest interpretation. The narrowest interpretation is the one applied by the court of appeals, requiring the driver to stop only if he knows or has reason to know that the accident "caused bodily injury to or death to a person." *State v. Al-Naseer*, 721 N.W.2d 623, 627 (Minn. Ct. App. 2006) (hereinafter *Al-Naseer II*).

Respondent Al-Naseer does not advocate for this narrow interpretation; in fact Al-Naseer acknowledges that the statutes at issue "do not necessarily mandate that interpretation" (Resp. Br. 21).¹ Appellant's brief describes the absurd results created by the *Al-Naseer II* court's interpretation of the statute (App. Br. 15-19).² Courts in other jurisdictions have likewise concluded that requiring knowledge of injury creates absurd results and is contrary to public policy. *See, e.g., State v. Vela*, 673 P.2d 185, 188 (Wash. 1983); *Dettloff v. State*, 97 P. 3d 586, 594 (Nev. 2004).

At the other end of the spectrum is a strict-liability interpretation. Respondent is critical of this being mentioned in appellant's brief (Resp. Br. 24-25). This Court granted review of the state's petition for review to consider "what *mens rea* requirement, if any,

¹ "Resp. Br." refers to Respondent Al-Naseer's brief. "App. Br." refers to the state's principal brief.

² The hypothetical involving an unborn child demonstrates one of the problems with the *Al-Naseer II* court's interpretation (App. Br. 16).

is required for a person to be guilty of leaving the scene of an accident” (PFR 10).³ Since this Court’s review is *de novo*, it is helpful to consider all possible interpretations of the statute at issue.⁴ In any event, as stated in appellant’s principal brief, the state is not necessarily advocating for this interpretation (App. Br. 27-28).

Instead of an interpretation of the leaving-the-scene statute as narrow as the court of appeals’ interpretation or as broad as a strict-liability interpretation, the interpretation applied by the trial court in this case is more consistent with principles of statutory construction. In describing this interpretation, Al-Naseer incorrectly states throughout his brief that the trial court concluded that Al-Naseer was guilty of criminal vehicular homicide because he knew he hit “something” and left the scene (Resp. Br. 4, 11, 13).

The trial court determined that Al-Naseer was “aware of the accident” (T. 283). The court found that Al-Naseer “knew that he had been involved in a motor vehicle accident and was trying to evade responsibility” for it (*Id.*). The court interpreted the statute as requiring a defendant to “know that he was involved in a motor vehicle collision,” not that he knew he struck a person and killed him (T. 284). The court concluded that the state proved beyond a reasonable doubt that Al-Naseer “was aware

³ “PFR” refers to the state’s petition for review.

⁴ Some courts from other jurisdictions have applied a strict interpretation of their state’s “hit and run” statute. *See, e.g., People v. Manzo*, 144 P.3d 551 (Colo. 2006); *City of Overland Park v. Estell*, 653 P.2d 819, 823 (Kan. Ct. App. 1982); *Stivers v. State*, 118 S.W.3d 558, 562 (Ark. 2003). Other courts, however, have required some knowledge. For a thorough discussion of various interpretations of hit-and-run statutes, *see*, Majorie A. Caner, Annotation, *Necessity and Sufficiency of Showing, in Criminal Prosecution under “Hit-and-run” Statute, Accused’s Knowledge of Accident, Injury, or Damage*, 26 A.L.R. 5th 1 (1995 & 2007 Supp.).

that he was involved in an accident” (*Id.*). In its written findings, the trial court stated that Al-Naseer “was aware and/or conscious that he had been involved in a motor vehicle accident and consciously and intentionally left the scene of the accident in violation of Minn. Stat. § 609.21, subd. 1(7)” (verdicts at 6). Thus, the trial court clearly based its guilty verdict on more than a finding that Al-Naseer hit “something” and left the scene.⁵

The trial court based its verdict on the fact that Al-Naseer knew he was involved in a motor vehicle accident or collision. Courts in other jurisdictions have also stated that the only knowledge required for a hit-and-run conviction is knowledge of the accident. *See, e.g., Vela*, 673 P.2d at 188 (“Reason dictates that the Legislature intended to punish hit-and-run drivers involved in accidents resulting in either property damage or injury to some person. Knowledge of the accident is all the knowledge that the law requires. If a motorist knows he has been involved in an accident and fails to stop, he is guilty of violating [the statute]. If only property damage is done in the accident, he is guilty of a misdemeanor for failure to stop. If injury or death to a person results from the accident, he is guilty of a felony for failure to stop”); *Goar v. State*, 68 S.W.3d 269, 272 (Tex. Ct. App. 2002) (the mental state required for failure to stop and provide aid is proven by showing the defendant “had knowledge of the circumstances surrounding his conduct, meaning the defendant had knowledge that an accident occurred”) (internal quotations omitted).

⁵ Even if the trial court’s decision can be viewed as requiring a duty to stop when knowingly hitting “something,” such an interpretation supports a conviction for leaving the scene. This is explained at pages 25-27 of appellant’s principal brief.

By concluding that Al-Naseer knew he was involved in a “motor vehicle accident” or collision and tried to evade responsibility for it, the trial court in essence determined that Al-Naseer knew he hit something triggering a duty to stop -- a person, an attended vehicle, or an unattended vehicle. Al-Naseer argues that “knowledge of a motor vehicle accident casts an awfully wide net for a homicide statue” (Resp. Br. 24). He incorrectly claims that a person “who reasonably thinks he hit a hubcap in the middle of a dark and quiet road is guilty of homicide” (*Id.*). If a driver in such a scenario “reasonably thinks” he hit a hubcap, he would not be guilty because he did not know or have reason to know he struck the type of thing triggering the duty to stop.

In this case, Al-Naseer knew he struck the type of thing triggering the duty to stop. In summary, the facts supporting the verdict are as follows: T ██████’s car was highly visible on the highway; T ██████ should have been visible as defendant approached; L ██████ should have been visible at the time of impact; Al-Naseer’s car crossed over the fog line by a foot; Al-Naseer’s car hit T ██████ and T ██████’s tire; Al-Naseer’s car dragged the tire, causing a gouge and smudge on the road;⁶ T ██████ was thrown between the two cars; Al-Naseer would have experienced a significant jolt upon impact; the accident caused moderate to heavy damage to defendant’s car;⁷ there were 22 items in

⁶ Al-Naseer suggests that the evidence does not support this fact because it is based on the testimony of Deputy Todd and not the accident reconstructionists (Resp. Br. n.2). Reconstructionist Randall Harms testified that the gauge and smudge on the road were caused when the victim’s tire was forced down by Al-Naseer’s car (T. 148-51, 175-76).

⁷ Al-Naseer claims that the photographs of Al-Naseer’s car show that damage to the car would not have been visible to Al-Naseer (Resp. Br. 28). His claim is contradicted by the testimony of Harms, who said depending on the darkness, a driver should be able to see (Footnote Continued on Next Page)

the debris field and pieces from Al-Naseer's car were thrown over 100 feet from the point of impact; Al-Naseer corrected his direction of travel and turned back onto the highway; Al-Naseer had no working headlights and his tire was flat or losing air; Al-Naseer traveled down the highway with his hazard lights activated.⁸ These facts contradict Al-Naseer's suggestion that he had a "reasonable but mistaken belief" that he struck something other than a person or a vehicle (Resp. Br. 23).

Under the trial court's interpretation of the statute, a person who knows he has struck the type of thing triggering the duty to stop must stop and determine what was hit (if it is not known already), and provide the appropriate notice or assistance. *See* Minn. Stat. § 169.09, subds. 1, 2, and 4. Appellant agrees with Al-Naseer that "[c]learly, the legislature decided that it is more serious for a driver to leave the scene of an accident involving a person than it is for a driver to leave the scene of an accident involving mere property damage." (Resp. Br. 20). Accordingly, a person who knows they have hit something triggering a duty to stop must stop at the scene and follow the other requirements of the statute. This interpretation is consistent with public policy because it

(Footnote Continued From Previous Page)

the damage (T. 173). He also pointed out that the lack of headlights and condition of Al-Naseer's tire would have been apparent to him (T. 171-73).

⁸ The fact Al-Naseer traveled down the road with his hazards on (T. 91) contradicts his assertion that he drove as if nothing happened (Resp. Br. 7). Al-Naseer also incorrectly claims that when he did realize his headlights were not working, he pulled over to examine his car, and as he pulled over voluntarily, Officer Froemke pulled up behind him (Resp. Br. 7). Officer Froemke's testimony, however, established that Al-Naseer was still driving and that Officer Froemke initiated a traffic stop (T. 92, 104). The trial court expressly found that Officer Fromke "stopped the Defendant's vehicle that was traveling at a speed of approximately 45 miles per hour with no front headlights and a flat right front tire" (verdict at 5-6).

can potentially save a victim's life. In addition, if the driver has consumed drugs or alcohol, it results in testing the driver before such evidence dissipates. Al-Naseer argues that the statute requires the driver to specifically know what was hit; this interpretation is contrary to public policy because it encourages drivers to remain ignorant and to continue driving, even if the victim can be saved with prompt medical attention.

The trial court's interpretation is likewise consistent with principles of statutory construction. It is well settled that courts should give a reasonable and sensible construction to criminal statutes, and must presume that the legislature does not intend an absurd result. *See e.g., State v. Murphy*, 545 N.W.2d 909, 916 (Minn. 1996); *Twin Ports Convalescent, Inc. v. Minnesota State Bd. of Health*, 257 N.W.2d 343, 348 (Minn. 1977) (“We will not construe the statute to reach an absurd result nor one that contravenes the manifest intention of the legislation.”). “Absurd” results are to be avoided even when the language at issue is “clear and unambiguous.” *See State v. Hanson*, 572 N.W.2d 307, 310 (Minn. 1997).

Application of the statute as Al-Naseer proposes would violate this rule against absurdity. Under his interpretation, if a driver hits an attended car that appears to be unattended, and leaves the scene, he is not guilty of leaving the scene. The driver cannot be charged with leaving the scene of an accident involving a person because the driver does not know a person is in the car. The driver cannot be charged with leaving the scene of an accident with an attended vehicle because the driver does not know the car is attended. The driver cannot be charged with leaving the scene of an unattended vehicle because the car was actually attended.

Al-Naseer claims that this hypothetical is “farfetched” (Resp. Br. 22). This situation is not out of the ordinary, however, as the following scenarios illustrate. A car pulled over onto the shoulder may have a passenger, who is not obviously visible to persons driving by, sitting in it while the driver of that vehicle has gone for assistance. A car pulled over onto the shoulder may have its trunk open so that persons inside the car are not obvious to persons driving by. A car parked in a parking lot may have passengers not obviously visible to other drivers. These examples all highlight the absurdity of requiring a driver to stop only if he knows specifically what he hit.

Under the trial court’s interpretation of the statute, however, a driver who knows he has been an accident with the type of thing triggering the duty to stop -- a person, an attended vehicle, or an unattended vehicle -- is required to stop even if he does not specifically know which of those three things is involved.

In arguing that the driver must know he has struck a person, Al-Naseer suggests that some form of gross negligence is required in order for criminal vehicular homicide (leaving the scene) to be consistent with the other criminal vehicular homicide provisions (Resp. Br. 16-19) (stating, “where a driver knew or had reason to know that he had an accident with an occupied car or a pedestrian, few would disagree that leaving the scene would be grossly negligent”). This argument is problematic for a number of reasons.

First, not all criminal vehicular homicide provisions require gross negligence. Some of the provisions require only ordinary negligence. Minn. Stat. § 609.21, subd. 1(2), (5), and (6) (2000). Two provisions do not require any negligence. Minn. Stat. § 609.21, subd. 1(3) and (4). In fact, only one provision, subdivision 1(1), requires gross

negligence. Obviously, the legislature explicitly stated when gross negligence was required. Therefore, it is contrary to principles of statutory construction to assume gross negligence is required for a person to be guilty of leaving the scene of an accident.

Second, the trial court in this case interpreted the leaving-the-scene provision as requiring the defendant to *know* he has been in a motor vehicle accident and to *intentionally* leave the scene of the accident (T. 283-84; verdicts at 6). Because Al-Naseer knew he had been in a motor vehicle accident and intentionally left the scene, there is no additional requirement that his conduct also be grossly negligent. *Cf. State v. Benniefield*, 678 N.W.2d 42, 49 (Minn. 2004) (holding that because *mens rea* is an implied element with respect to possession of drugs, “we see no basis for requiring the state to demonstrate an additional *mens rea* element with respect to location”).

Third, even if some form of negligence is required, it is present in this case. Al-Naseer assumed the risk he would hit something when he became inattentive and drifted over the fog line over a foot. *Cf. State v. Miller*, 395 N.W.2d 431, 433 (Minn. Ct. App. 1986) (holding driver in position to prevent events causing the speeding violation by not driving with hot coffee). The impact with T [REDACTED] and the tire created a jolt, resulted in Al-Naseer having a flat tire and no headlights, created an extensive debris field, and resulted in T [REDACTED] being thrown between his and Al-Naseer’s cars. After such an impact, Al-Naseer was negligent in not stopping to determine precisely what he hit and to provide assistance.

Al-Naseer further argues that the heading of the leaving-the-scene provision at issue here, Minn. Stat. § 169.09, subd. 1 (2000), supports his interpretation of the statute

(Resp. Br. 19). Under principles of statutory construction, however, “[t]he headnotes printed in boldface type before sections and subdivisions in editions of Minnesota Statutes are mere catchwords to indicate the contents of the section or subdivision and are not part of the statute.” Minn. Stat. § 645.49 (2006).

If this Court does examine the headings of the leaving-the-scene statute, however, the headings actually support the trial court’s interpretation of the statute. The heading preceding Minn. Stat. § 169.09 is “Traffic Accidents,” and the statute itself is entitled “Accidents.” Minn. Stat. § 169.09 criminalizes leaving the scene of an “accident,” when the driver has struck a human being, an attended vehicle, or an unattended vehicle. Minn. Stat. § 169.09, subds. 1, 2, and 4. Thus, if the driver knows or has reason to know he has been in an “accident” -- which under the statute involves a person, an attended vehicle or an unattended vehicle -- he is required to stop.

Finally, Al-Naseer argues that the evidence was insufficient to prove beyond a reasonable doubt that he knew or should have known he had an accident with a person (Resp. Br. 26-28). Al-Naseer does not appear to dispute that the evidence was sufficient to support the trial court’s conclusion that Al-Naseer knew he had been in a motor vehicle accident and intentionally left the scene. Instead, he argues that the evidence did not establish that he knew or should have known he struck a person.

This sufficiency issue is not properly before this Court; this Court granted review to determine what *mens rea*, if any, is required for a person to be guilty of leaving the scene of an accident. Al-Naseer did not ask the trial court to determine whether or not he knew or had reason to know he had been in an accident with a person. Defense counsel

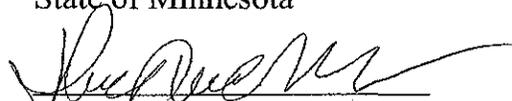
argued in closing that the court had to determine whether Al-Naseer knew he had an accident (T. 267). Therefore, it is not fair to consider whether the evidence supports Al-Naseer's different interpretation of the statute on appeal.

In conclusion, the trial court's interpretation of the leaving-the-scene statute conforms with principles of statutory construction and is consistent with public policy. Both the court of appeals' and Al-Naseer's narrow interpretations of the statute create absurd results and are contrary to the public policy of providing potentially life-saving medical attention to a person injured in an accident. Appellant respectfully requests that this Court affirm Al-Naseer's conviction for criminal vehicular homicide, leaving the scene of an accident.

Dated: March 6, 2007

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