DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

STATE OF FLORIDA,
Appellant,

v.

ANGELA DIANE SHELTON,
Appellee.

No. 4D18-3659

[March 26, 2020]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Indian River County; Cynthia L. Cox, Judge; L.T. Case No. 312017CF000108A.

Ashley Moody, Attorney General, Tallahassee, Melynda L. Melear, Senior Assistant Attorney General, West Palm Beach, for appellant.

Michael Ufferman of Michael Ufferman Law Firm, P.A., Tallahassee, for appellee.

PER CURIAM.

Affirmed.

WARNER, DAMOORGIAN and KUNTZ, JJ., concur.

*   *   *

Not final until disposition of timely filed motion for rehearing.

Filing # 82054368 E-Filed 12/13/2018 10:14:18 AM

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY, FLORIDA

STATE OF FLORIDA,

FELONY DIVISION
CASE NO. 312017CF000108A

vs.

ANGELA SHELTON,

Defendant.
_______________________________/

ORDER GRANTING MOTION FOR JUDGMENT OF ACQUITTAL AFTER THE VERDICT

THIS CASE came before the Court for a hearing on November 9, 2018, on the Defendant's Motion for Judgment of Acquittal After the Verdict filed on October 1, 2018, pursuant to Florida Rule of Criminal Procedure 3.380 and after considering the trial testimony and evidence, hearing argument of counsel, reviewing the case law and being otherwise duly advised in the premises, finds and orders as follows:

On September 20, 2018, a jury found the Defendant guilty of leaving the scene of a crash involving death. This post-verdict motion for judgment of acquittal is timely filed. *Fla. R. Crim. P.* 3.380(c).

The Defendant was charged under Florida's "hit and run" statute, subsection 316.027. The relevant portion of the statute provides as follows:

> (c) The driver of a vehicle involved in a crash occurring on public or private property which results in the death of a person shall immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and shall remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062. . . A person who *willfully* violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 . . .

§ 316.027, *Fla. Stat.* (2016).

Pursuant to Jury Instruction 28.4 to prove the crime of leaving the scene of a crash involving death or injury, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) was the driver of a vehicle involved in a crash occurring

on public or private property resulting in [injury to] [death of] any person.

2. (Defendant) knew that [he] [she] was involved in a crash.

3. a. (Defendant) *knew, or should have known* from all of the circumstances, including the nature of the crash, of the injury to or death of the person.

4. a. (Defendant) *willfully* failed to stop at the scene of the crash or as close to the crash as possible and remain there until [he] [she] had given "identifying information" to the [injured person] [driver] [occupant] [person attending the vehicle] and to any police officer investigating the crash.
[or]
b. (Defendant) *willfully* failed to render "reasonable assistance" to the injured person if such treatment appeared to be necessary or was requested by the injured person.

"Willfully" means knowingly, intentionally and purposely.

FL ST CR JURY INST 28.4

At trial, elements 1 and 2 were undisputed. The Florida Supreme Court in *Mancuso v. State*, 652 So. 2d 370, 372 (Fla. 1995) has held that criminal liability under Section 316.027 requires proof that the driver charged with leaving the scene *either knew the resulting injury or death or reasonably should have known from the nature of the accident.* As the *Mancuso* court found, knowledge of injury is a specific element of the offense because "the statute imposes a more severe criminal penalty for leaving the scene of an accident where personal injuries are involved than does a similar statute imposing sanctions only where property damage is involved." To meet the intent requirement of the statute as written, it is not enough for the State to prove that the Defendant was involved in a crash. When a rule of conduct is laid down in words that evoke in the common mind particular circumstances, the rule of strict construction precludes application of that rule of conduct to different circumstances. *McBoyle v. United States*, 283 U.S. 25 (1931). Because the statute imposes an affirmative duty to stop to exchange information or render aid, it necessarily follows that one must be aware of the facts giving rise to the affirmative duty in order to perform such a duty. *State v. Dorsett*, 158 So. 3d 557 (Fla. 2015). The Florida Supreme Court opined: "There are two primary rationales for interpreting the statute as requiring knowledge of injury: (1) The

statute imposes a more severe criminal penalty for leaving the scene of an accident where personal injuries are involved than does a similar statute which imposes sanctions where only property damage is involved and 2) a driver must be aware of the facts giving rise to the affirmative duties imposed by the statute in order to be held liable for not performing those duties." *State v. Dumas*, 700 So. 2d 1223, 1225-26 (Fla. 1997) quoting *Mancuso v. State*, 652 So. 2d at 372 (Fla. 1995).

The Defendant did not testify at trial. However, the State entered into evidence the Defendant's recorded and unrecorded statements to law enforcement that she believed she hit a sign and did not know that she hit a person before she left the scene of the crash. The theory of the State's case was that the Defendant knew or should have known that the crash resulted in injury or death to a person based upon the exterior damage to the vehicle, the extensive injuries to the victim and the lack of signs in the area of the crash.

The Defense argues that the State failed to establish that the Defendant knew or reasonably should have known of the victim's injuries or death from the nature of the accident. *McGowan v. State*, 139 So. 3d 934, 938 (Fla. 4th DCA 2014). Both *McManus* and *McGowan* are instructive and are binding judicial precedent. Like *McGowan,* the evidence in this case does not show how the Defendant *should have been* aware that she hit a person. Even viewing the evidence in the light most favorable to the State, there was no evidence showing that the Defendant saw or should have seen the victim before or after the crash given the dark of night, the lack of street lighting, the victim's clothing and the victim's presence on the swale side of the road opposite from the pedestrian sidewalk side of the road. It is unrebutted that the Defendant took her eyes off the road to tend to her dog immediately before the crash; that the air bags did not deploy as a result of the crash; that the only vehicle damage observable from the driver's seat was the passenger side mirror and that the Defendant stopped but remained in her vehicle until she arrived home. There was no sensory explanation of how the Defendant should have perceived the nature of the impact as striking a person versus striking a sign; that she could see the actual damage to her vehicle at the time; that she knew or should have known that there were no signs on the road near the crash; that she had an opportunity to see what hit her vehicle nor that she could reasonably expect a pedestrian

to be in that area of the dark highway at that time of night. Additionally, all of the evidence presented by the State was from the after-leaving-the-scene perspective imputing the Defendant's knowledge from vehicle damage observed in artificial light, traffic investigation details concerning the victim and autopsy results explaining the victim's injuries. None of the vehicle damage evidence, including the jurors' view of the vehicle, was from the Defendant's perspective in the driver's seat of the vehicle. Further, the troopers acknowledged that the Defendant immediately reported the crash upon arriving home (2 miles from the scene); that she believed that she had hit a sign; that she was not under the influence of any intoxicants and that she was hysterical when informed that she had hit a person, not a sign.

In conclusion, there was no evidence otherwise rebutting the Defendant's version of events and the State failed to offer evidence sufficient to support an essential element of the crime, i.e. that Defendant *knew of should have known* that the crash involved a *person*, thus necessitating her duty to stop. *McCowan*, supra. When the State fails to present evidence to support each and every element of its prima facie case, a judgment of acquittal should be granted. *Baugh v. State*, 961 So. 2d 198 (Fla. 2007).

IT IS THUS ORDERED AND ADJUDGED that:

1. The Defendant's motion for judgment of acquittal is GRANTED.
2. The Jury Verdict is vacated.
3. The sentencing hearing set for December 14, 2018 is hereby canceled.
4. The Defendant's bond is discharged and the Clerk of Court shall return her passport.

DONE AND ORDERED in chambers in Vero Beach, Florida, on December 13, 2018.

/s/ Cynthia L. Cox

CIRCUIT JUDGE

Copies to:
Kepler B. Funk, Esq.
Brian G. Workman, ASA