

LEAVING THE SCENE OF AN ACCIDENT

I. LEAVING THE SCENE OF PROPERTY DAMAGE

G.L. c. 90, § 24(2)(a)

The defendant is charged with knowingly leaving the scene of an accident involving property damage. In order to prove the defendant guilty of this offense, the Commonwealth must prove five things beyond a reasonable doubt:

First: That the defendant operated a motor vehicle;

Second: That he (she) operated it (on a way) (or) (in a place where the public has a right of access) (or) (in a place where members of the public have access as invitees or licensees);

Third: That while the defendant was operating the vehicle, he (she) caused damage to another vehicle or property either by colliding with it or in some other way;

Fourth: That the defendant *knew* he (she) [had collided with another's property], (or) [had in some way caused damage to another's property]; and

Fifth: That after causing such damage, the defendant did not stop

and make known his (her) name, home address, and the registration number of his (her) motor vehicle.

At this point, the jury must be instructed on the definitions of "Operation of a Motor Vehicle" (Instruction 3.200) and "Public Way" (Instruction 3.280).

II. LEAVING THE SCENE OF PERSONAL INJURY NOT RESULTING IN DEATH

G.L. c. 90, § 24(2)(a $\frac{1}{2}$)(1).

The defendant is charged with knowingly leaving the scene of an accident involving personal injury. In order to prove the defendant guilty of this offense, the Commonwealth must prove five things beyond a reasonable doubt:

First: That the defendant operated a motor vehicle;

Second: That he (she) operated it (on a way) (or) (in a place where the public has a right of access) (or) (upon a way or in a place where members of the public have access as invitees or licensees);

Third: That while the defendant was operating the vehicle, he (she) caused injury to another person by either colliding with that person or in some other way;

Fourth: That the defendant *knew* he (she) [had collided with another

person], (or) [had in some way caused injury to another person]; and

***Fifth:* That after such collision or injury, the defendant did not stop and make known his (her) name, home address, and the registration number of his (her) motor vehicle.**

At this point, the jury must be instructed on the definitions of "Operation of a Motor Vehicle" (Instruction 3.200) and "Public Way" (Instruction 3.280).

Statute 1991, c. 460 (effective January 30, 1992 at 3:22 P.M.) removed the offense of leaving the scene of personal injury from G.L. c. 90, § 24(2)(a) and bifurcated it into two offenses: (1) the misdemeanor of leaving the scene of personal injury "not resulting in the death of any person" (G.L. c. 90, § 24[2][a½][1]), and (2) the felony of leaving the scene of personal injury resulting in a death in order "to avoid prosecution or evade apprehension" (G.L. c. 90, § 24[2][a½][2]). The District Court lacks final jurisdiction over the felony branch.

SUPPLEMENTAL INSTRUCTIONS

1. *Purpose of statute.*

The purpose of this statute is to enable anyone whose person has been injured or property damaged by a motor vehicle to obtain immediate and accurate information about the person in charge of that motor vehicle. It imposes an active and positive duty on the driver immediately to stop at the scene and offer the specific information required by the statute, in order to identify him and to make it simple to find him later. The statute is not satisfied by stopping at some remote place or

by being passively willing to answer inquiries.

Commonwealth v. Horsfall, 213 Mass. 232, 236, 100 N.E. 362, 374 (1913).

2. To whom information must be given.

By plain implication, the statute requires that the specified information must be given to the person whose person or property has been injured, if reasonably possible, and if not, to someone acting in their interest or to some public officer or other person at or near the place at the time of the injury.

Horsfall, supra.

3. Knowledge.

The Commonwealth must prove that the defendant “knowingly” collided with or otherwise caused injury to (another vehicle or property) (another person). This requires the defendant to have known either that he (she) had been involved in a collision or that he (she) had caused such injury in some other way.

Note that these are alternatives. If the defendant knew that he (she) had been in a collision, it is not necessary that he (she)

also knew that an injury had resulted from the collision. It is also not necessary that the defendant have intended to violate the law.

Commonwealth v. McMenimon, 295 Mass. 467, 469-470, 4 N.E.2d 246, 247-248 (1936) (discussing prior statute); *Commonwealth v. Nurmi*, 250 Mass. 128, 145 N.E. 39 (1924).

4. *Extent of injury.* The extent of the damage or injury is not relevant except to the extent that it may be circumstantial evidence of whether or not the defendant knew that there had been a collision.

NOTES:

1. **Circumstantial evidence.** Circumstantial evidence may support an inference that the defendant did not make himself known, *Commonwealth v. LaVoie*, 9 Mass. App. Ct. 918, 404 N.E.2d 114 (1980), or that the defendant was the operator, *Commonwealth v. Smith*, 368 Mass. 126, 330 N.E.2d 197 (1975); *Commonwealth v. Rand*, 363 Mass. 554, 561-562, 296 N.E.2d 200, 205 (1973); *Commonwealth v. Swartz*, 343 Mass. 709, 180 N.E.2d 685 (1962); *Commonwealth v. Henry*, 338 Mass. 784, 153 N.E.2d 751 (1958). But see *Commonwealth v. Shea*, 324 Mass. 710, 88 N.E.2d 645 (1949) (defendant not shown to be driver where unknown person had been driving vehicle three hours earlier, and no evidence that defendant operated vehicle on that date).

2. **Collision.** "Collide" means to strike together. The statute applies whenever the defendant is in some way an actor, a partial cause in the collision, but not where the defendant is merely a passive participant (e.g. where a pedestrian falls or walks into the defendant's stopped vehicle). *Commonwealth v. Bleakney*, 278 Mass. 198, 179 N.E. 400 (1932). An owner-passenger can be found guilty if he or she retained control over his chauffeur's operation of the vehicle. *Saltman, petitioner*, 289 Mass. 554, 194 N.E. 703 (1935).

3. **Constitutionality.** The statutory obligation does not violate the privilege against self-incrimination. *California v. Byers*, 402 U.S. 424, 91 S.Ct. 1535 (1971); *Commonwealth v. Joyce*, 326 Mass. 751, 753-757, 97 N.E.2d 192, 194-195 (1961).

4. **Fault.** The statute applies whether or not the defendant was at fault, since the statute "focuses on causation, not fault." *Commonwealth v. Robbins*, 414 Mass. 444, 446-448, 608 N.E.2d 735, 737-738 (1993).

5. **Good faith mistake.** It is not a defense that the defendant believed that he or she was known to persons at the scene. *Joyce*, 326 Mass. at 752-753, 97 N.E.2d at 194; *Commonwealth v. Lewis*, 286 Mass. 256, 190 N.E. 513 (1934). *Horsfall*, 213 Mass. at 237, 100 N.E. at 364, held that the defendant's good faith belief that he had taken the necessary steps to make himself known was a defense, but the statute was subsequently amended and that defense is no longer available, *Commonwealth v. Coleman*, 252 Mass. 241, 243-244, 147 N.E. 552, 553 (1925).

6. **Not a continuing offense.** For purposes of the statute of limitations, the crime of leaving the scene of an accident is not a continuing offense. *Commonwealth v. Valchuis*, 40 Mass. App. Ct. 556, 561-562, 665 N.E.2d 1030, 1034 (1996) (offense involving personal injury).

7. **Causal Relationship.** The Commonwealth must prove that the accident caused property damage. *Commonwealth v. Velasquez*, 76 Mass. App. Ct. 697, 925 N.E.2d 558 (2010).