

LEAVING THE SCENE OF AN ACCIDENT INVOLVING PERSONAL INJURY

G.L. c. 90, § 24(2)(a½)(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 four 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 the defendant knowingly collided with or otherwise injured another person;**

***Fourth:* 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) 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. *Duty to provide means of identification.*

The purpose of this statute is to enable anyone who has been injured 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 to immediately stop at the scene and offer the specific information required, in order to identify (him) (her) and to make it simple to find (him) (her) 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 (1913).

2. *To whom information must be given.*

By plain implication, the statute requires that the specified information must be given to the person who 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, 213 Mass. at 236.

3. Extent of injury.

The extent of the 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, 918-19 (1980), or that the defendant was the operator, *Commonwealth v. Smith*, 368 Mass. 126, 128 (1975); *Commonwealth v. Rand*, 363 Mass. 554, 561-62 (1973); *Commonwealth v. Swartz*, 343 Mass. 709, 712 (1962); *Commonwealth v. Henry*, 338 Mass. 786 (1958). *But see Commonwealth v. Shea*, 324 Mass. 710, 712-14 (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, 201-02 (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, 561 (1935).
3. **Constitutionality.** The statutory obligation does not violate the privilege against self-incrimination. *California v. Byers*, 402 U.S. 424 (1971); *Commonwealth v. Joyce*, 326 Mass. 751, 753-57 (1951).
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, 446-48 (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. *Commonwealth v. Joyce*, 326 Mass. 751, 752-53 (1951); *Commonwealth v. Lewis*, 286 Mass. 256 (1934). *Commonwealth v. Horsfall*, 213 Mass. 232, 237 (1913), 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, 243-44 (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, 561-62 (1996).
7. **Causal Relationship.** The Commonwealth must prove that the accident caused the injury (where that is the basis of criminal liability). *Commonwealth v. Velasquez*, 76 Mass. App. Ct. 697, 699-701 (2010) (property damage case).
8. **Offering information without more violates statute.** A motorist must actually provide the required information. Merely offering to provide it is not sufficient to avoid liability under G.L. c. 90, § 24(2)(a). It remains undecided whether an emergency or event such as road rage would excuse a motorist from compliance. *Commonwealth v. Martinez*, 87 Mass. App. Ct. 582, 585-86 & n.12, *rev. denied*, 473 Mass. 1101 (2015).

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9. **Unit of prosecution is incident-based.** The offense is defined by the act of leaving the scene of the accident, not by the number of people injured. See *Commonwealth v. Constantino*, 443 Mass. 521, 524-27 (2005); see also *Commonwealth v. Henderson*, 89 Mass. App. Ct. 205, 209-11 (2016) (leaving scene of multi-vehicle crash constitutes a single offense).

10. **Only one penalty may be assessed.** “Only one penalty may be assessed . . . for a single act of leaving the scene . . . because ‘the proscribed act is scene related, not victim related.’” *Commonwealth v. Henderson*, 89 Mass. App. Ct. 205, 210 (2016) (quoting *Commonwealth v. Constantino*, 443 Mass. 521, 524 (2005)).

11. **Statutory language “not resulting in death” is not element of offense.** See *Commonwealth v. Muir*, 84 Mass. App. Ct. 635, 639 (2013). This offense is a lesser included offense of leaving the scene of personal injury causing death. *Id.* See G.L. c. 90, § 24(2)(a¹/₂)(2). The District Court does not have jurisdiction over the latter offense. G.L. c. 218, § 26.