

Hit and Run

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Hit and run is a term used to describe several felony and misdemeanor offenses set forth in G.S. 20-166, a statute in which neither the term “hit” nor “run” appears. G.S. 20-166 criminalizes a driver’s failure to stop at the scene of a crash in which the vehicle he or she is driving is involved, a driver’s failure to remain at the scene of such a crash, and a driver’s facilitating of the premature removal of his or her vehicle from the scene. The last type of violation was created in 2005 in response to the death of twenty-seven-year-old Stephen Gates.

In the early morning hours of October 4, 2003, Gates, a reporter for the Tar Heel Sports Network, was changing a tire on his car on the side of Interstate 40 near Hillsborough, NC, when he was struck by Cadillac Escalade driven by Emily Caveness. See Benjamin Niolet, *Jury Rejects Hit and Run*, *The News & Observer*, Nov. 13, 2004 (as modified October 22, 2005) (The facts set forth in this post relating to the accident in which Jones was killed and the ensuing criminal prosecutions are drawn from Niolet’s article.). The door to Gates’ car was ripped off by the impact, and Gates was killed. Caveness stopped her vehicle some distance from the crash. Rabah Samera, who had been asleep in the front passenger seat until the crash, got out of the car and saw that the front of the Escalade was mangled. Samera got into the driver’s seat and drove the Escalade to Raleigh, accompanied by Caveness and two other passengers who had been riding in the backseat of the car. Samera stopped at a well-lit gas station in Raleigh and saw, for the first time, blood on the car.

Caveness pled guilty to the misdemeanor offense of failing to report an accident pursuant to G.S. 20-166.1. (A post about that offense is available [here](#).) She testified against Samera, who was tried for felony hit and run pursuant to G.S. 20-166. Since G.S. 20-166 requires the driver of a car involved in a crash in which a person is injured to stop and remain at the scene, and Samera was not driving at the time of the crash, the State apparently proceeded to trial on the theory that Samera aided and abetted Caveness in committing the offense. Samera was acquitted.

The year after Samera’s acquittal, the General Assembly enacted S.L. 2005-460: “An Act to Make It Unlawful to Drive Away From or Otherwise Leave the Scene of a Motor Vehicle Accident in Certain Circumstances.” The Act amended G.S. 20-166 to require that the driver of a vehicle involved in an accident or collision remain “with the vehicle” at the crash scene and to prohibit a driver from “facilitat[ing], allow[ing], or agree[ing] to the removal of the vehicle from the scene.”

S.L. 2005-460 further enacted new G.S. 20-166.2, prohibiting the passenger of a vehicle involved in a crash from “willfully leav[ing] the scene of the accident by acting as the driver of a vehicle involved in the accident” and from “facilitat[ing], allow[ing], or agree[ing] to the removal of the vehicle from the scene.” G.S. 20-166.2, like G.S. 20-166, sets forth felony and misdemeanor offenses. A willful violation of G.S. 20-166.2(a) “is a Class H felony if the accident or collision is described in G.S. 20-166(a).” This cross reference raises a couple of interesting issues. First, G.S. 20-166 delineates felony and misdemeanor offenses depending upon whether a person was injured in the crash and whether the driver knew or had reason to know of that injury. Thus, the passenger’s level of culpability depends upon the driver’s knowledge, which is an unusual formulation. Furthermore, G.S. 20-166 was amended in 2008 to set forth in subsection (a) a Class F felony for a driver’s failure to stop or leaving the scene of a crash resulting in *serious bodily injury* or death. New G.S. 20-166(a1) sets forth a Class H felony for hit and run in crashes resulting in lesser injuries. No corresponding amendments were made in 2008 to G.S. 20-166.2, which continues to refer solely to subsection (a).

There are no appellate court decisions applying G.S. 20-166.2. Readers, if you have prosecuted or defended charges under this statute or have thoughts about whether its presence has altered the crash-scene conduct of drivers and passengers, we'd love to hear what you have to say.