

State v. Scaturro Clarifies Duties of Drivers Involved in Injury Crashes

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The general rule for a driver involved in a crash in which a person is injured or at least \$1,000 in property damages occurs is this: The driver must stop his vehicle at the scene and must remain there with the vehicle until a law enforcement officer completes the crash investigation or authorizes the driver to leave and the vehicle to be removed. There is, however, an exception to this rule. That exception led to yesterday's court of appeals opinion in [State v. Scaturro](#), reversing a driver's conviction on charges that he left the scene of a crash.

What is the exception? A driver may leave a crash scene in his vehicle to call for a law enforcement officer, to call for medical assistance or treatment, or to remove himself or others from significant risk of injury. [G.S. 20-166](#). A driver who leaves for one of these purposes must return with the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer.

An additional responsibility. In addition to stopping and remaining at the scene, the driver of a vehicle involved in a crash must provide reasonable assistance to any person injured in the crash. Reasonable assistance includes calling for medical assistance.

What happened in *State v. Scaturro*? The defendant in Scaturro was driving his car in Wilmington, NC when he struck a boy riding a bicycle, who was making a U-turn around a median in the road. The boy was thrown from the bicycle, and the left side of his head, shoulder and elbow struck the pavement as he skidded across the road. His left ear was nearly severed in the fall.

The defendant got out of his car and saw that the boy was profusely bleeding. He gave the boy a rag to hold against his head. The boy called 911, but while he was on the phone, the defendant said he would take him to the hospital. The boy got into the defendant's car and the defendant drove "like a maniac to get [him] to the hospital." When the boy got out of the defendant's car at the hospital, he made note of the defendant's license plate number. The boy's torn ear was removed in surgery immediately following the accident, and he has undergone additional surgeries since that time.

Two days after the accident, a highway patrol trooper located the defendant and asked him about the accident. The defendant admitted his involvement, and was arrested. He was indicted for one count of felony hit and run resulting in serious bodily injury in violation of N.C.G.S. § 20-166(a). The indictment alleged that he "unlawfully, willfully, and feloniously did fail to remain at the scene" of a crash.

At defendant's trial on the hit and run charges, the court instructed the jury that, in order for the defendant to be guilty of the offense, the State was required to prove beyond a reasonable doubt that "defendant's failure to remain at the scene of the crash was willful, that is intentional." The court defined intent as "a mental attitude seldom provable by direct evidence" and explained that intent "must ordinarily be proved by circumstances from which it may be inferred."

Issue on appeal. The defendant argued on appeal that the trial court erred in failing to instruct the jury on willfulness. He argued that the evidence showed that he only left the scene of the accident to take the injured boy to the nearest

hospital, which is permitted under N.C.G.S. § 20-166(a) and (b), and therefore he did not willfully violate the statute. In response, the State argued that the defendant was not entitled to an instruction on willfulness because the statute does not permit a driver to leave the scene of an accident at all—not even to obtain medical assistance. Because the defendant did not object at trial to the jury instructions, the court of appeals considered whether the failure to instruct on willfulness was plain error. To meet that standard, it must be probable that absent the instructional error the jury would have returned a different verdict.

Court's analysis. The court of appeals quickly concluded that the trial court's jury instructions were erroneous as G.S. 20-166(a) penalizes only *willful* violations of the statute. To be willful, an act must be both intentional and without justification or excuse. Thus, the court explained, a defendant might leave the scene of an accident intentionally, but still not willfully violate G.S. 20-166(a) if the intentional departure was justified or with excuse.

In considering whether the error had a probable impact on the jury's verdict, the court noted that the defendant's sole defense to the charges was that he was authorized to leave the crash scene; indeed, the defendant said he was required to leave to procure medical help for the boy. The defendant further contended that his failure to return to the scene was not willful as he was in an extremely emotional state and was traumatized by the accident. There was evidence at trial to support the defendant's arguments.

The appellate court concluded that, given this context, the trial court's failure to provide an instruction on willfulness deprived the defendant "of the gravamen of his basis for acquittal." Had he received the instruction, the court reasoned, "it is at least probable that a jury would have concluded that [the] [d]efendant had a justification or excuse for leaving the scene and failing to return."

The court reversed the defendant's convictions and remanded for a new trial.

What is the scope of the exception? To "prevent further confusion and danger" the court went on to explain that a driver may lawfully leave a crash scene to obtain medical care for himself or another injured person. The court reasoned that even though G.S. 20-166(a) instructs that drivers may only leave the scene to call for aid, that authorization is expanded by subsection (b)'s *requirement* that drivers render reasonable assistance to any person injured in a crash, which can *include*, but is not limited to, calling for medical assistance.

The court explained that "taking a seriously injured individual to the hospital to receive medical treatment is not prohibited . . . in the event that such assistance is reasonable under the circumstances." In fact, the court noted, violation of the directive in G.S. 20-166(b) to provide reasonable assistance is itself a Class 1 misdemeanor.