

1 Terri Wood, OSB #88332
2 Law Office of Terri Wood, P.C.
3 730 Van Buren Street
4 Eugene, Oregon 97402
5 541-484-4171

6 Attorney for Karla Finley

7 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

8
9 STATE OF OREGON,
10 Plaintiff,

CASE No. 20-07-18814

11 -VS-

12 KARLA MARIE FINLEY,
13 Defendant

MEMORANDUM OF LAW IN SUPPOERT OF
MOTION *IN LIMINE* REGARDING “DUTIES”
OF DEFENDANT AND MISSTATEMENTS
OF THE LAW

14
15 INTRODUCTION

16 On August 19, 2006, at approximately 1:30 a.m., an accident occurred in the
17 intersection of Olympic and Mohawk in Springfield, Oregon, resulting in the death of
18 Randy Johnson. At the time of the collision, Karla Finley was starting a left-hand turn
19 from the southbound left-turn lane on Mohawk, heading eastbound on Olympic; she
20 drove a minivan, and was accompanied by an adult passenger, Laura McKean. Mr.
21 Johnson was northbound on Mohawk driving a vintage red Harley Davidson
22 motorcycle with a sidecar. The point of impact was the motorcycle’s right front
23 corner of the sidecar with the right rear quarter panel of Ms. Finley’s minivan, at the
24 wheel-well and bumper area. This was a glancing blow that resulted in minor damage
25 to Finley’s minivan and moderate damage to the motorcycle sidecar, which along with

1 the motorcycle continued northbound on Mohawk, crossing the median into the
2 southbound lanes, and remained upright, coming to rest approximately 120 feet
3 north of the intersection.

4 Ms. McKean, who was seated with the best vantage point, saw lights in her
5 peripheral vision right before impact, and exclaimed "Karla, we're going to get hit!"
6 Ms. Finley caught a partial glimpse of the vehicle, which she perceived to be a small
7 red sports car, about at the time of impact. The collision did not force Finley's vehicle
8 from her lane of travel or cause it to spin, nor did it impair the drivability of the
9 minivan, or cause any injury to Finley or her passenger. The collision caused Mr.
10 Johnson to be ejected over the handlebars of the motorcycle, with his body coming
11 to rest in the northbound lane near the concrete lane divider on Mohawk about 70
12 feet north of the intersection; he sustained injuries resulting in death shortly after
13 impact with the median and pavement.
14
15

16 Ms. Finley completed the turn through the intersection and stopped eastbound
17 on Olympic. She looked around the area of the intersection from the vantage point of
18 the driver's seat. She did not see the red car, or any other stopped vehicle or Mr.
19 Johnson's body in the roadway; he was clad in black from head to toe and was
20 facedown. Ms. McKean also looked around from the vantage point of the front
21 passenger seat, and did not see anything. Both women believed that a small sports
22 car had sideswiped their vehicle and continued on its way, i.e., that they were the
23 "victim" of a hit-and-run. After brief conversation regarding what had happened and
24 whether or not to call the police, Ms. Finley left the scene and drove back to Ms.
25 McKean's house, where she had planned to spend the night.

1 Several days later, Ms. McKean concluded from news accounts of the traffic
2 fatality that it must have been the accident they were involved in, due to police
3 seeking a light-colored minivan that had lost part of its hubcap at the scene; she
4 knew that Finley's vehicle had lost part of its hubcap. She called Ms. Finley, who lived
5 in Washington, and relayed this information and her fears. Ms. Finley later contacted
6 an attorney; she did not contact the police.
7

8 The indictment charges a single count of knowing failure to perform the duties
9 of a driver in an accident involving injury or death, in violation of ORS 811.705, and
10 further alleges the death of Randy Johnson.
11

12 That statute provides:

13 (1) A person commits the offense of failure to perform the duties of a driver
14 to injured persons if the person is the driver of any vehicle involved in an
15 accident that results in injury or death to any person and does not do all of the
16 following:

17 (a) Immediately stop the vehicle at the scene of the accident or as close
18 thereto as possible. Every stop required under this paragraph shall be made
19 without obstructing traffic more than is necessary.

20 (b) Remain at the scene of the accident until the driver has fulfilled all of
21 the requirements under this subsection.

22 (c) Give to the other driver or surviving passenger or any person not a
23 passenger who is injured as a result of the accident the name and address of
24 the driver and the registration number of the vehicle that the driver is driving
25 and the name and address of any other occupants of the vehicle.

 (d) Upon request and if available, exhibit and give to the persons injured or
to the occupant of or person attending any vehicle damaged the number of
any document issued as official evidence of a grant of driving privileges.

 (e) Render to any person injured in the accident reasonable assistance,
including the conveying or the making of arrangements for the conveying of
such person to a physician, surgeon or hospital for medical or surgical
treatment, if it is apparent that such treatment is necessary or if such
conveying is requested by any injured person.

1 (f) Remain at the scene of an accident until a police officer has arrived and has
2 received the required information, if all persons required to be given
3 information under paragraph (c) of this subsection are killed in the accident or
4 are unconscious or otherwise incapable of receiving the information. The
5 requirement of this paragraph to remain at the scene of an accident until a
6 police officer arrives does not apply to a driver who needs immediate medical
7 care, who needs to leave the scene in order to secure medical care for another
8 person injured in the accident or who needs to leave the scene in order to
9 report the accident to the authorities, so long as the driver who leaves takes
10 reasonable steps to return to the scene or to contact the nearest police
11 agency.

12 (2)(a) Except as otherwise provided in paragraph (b) of this subsection,
13 the offense described in this section, failure to perform the duties of a driver
14 to injured persons, is a Class C felony and is applicable on any premises open
15 to the public.

16 (b) Failure to perform the duties of a driver to injured persons is a Class B
17 felony if a person suffers serious physical injury as defined in ORS 161.015 or
18 dies as a result of the accident. [1983 c.338 §573; 1993 c.621 §1; 2001
19 c.919 §1]

20 Application of the statute is not dependent upon fault or causation of the
21 accident. The purpose of the statute “is to maximize protection of one injured in an
22 accident, and thus to require the operator involved to remain at the scene and to
23 ‘render to any person injured in such accident reasonable assistance’,” *State v.*
24 *Hulsey*, 3 Or.App. 64, 71 (1970)(discussing the predecessor statute, ORS 483.602).
25 A secondary goal is to deter “drivers from fleeing an accident scene without
performing required duties [to provide identifying information], and thereby escaping
financial responsibility for damage they have caused,” *State v. Hval*, 174 Or.App.
164, 170 (2001).

26 I. KNOWLEDGE OF INJURY AND KNOWLEDGE THAT THE OTHER DRIVER REMAINED
27 AT THE SCENE

Beginning with *State v. Corpus*, 49 Or.App. 811 (1980), and continuing

1 through the most recent reported case discussing the issue, *State v. Hval*, the courts
2 have required proof that the defendant knew that injury resulted from the accident.
3 *See Hval*, 174 Or.App. at 171. The State need not prove actual knowledge of injury,
4 but must “prove circumstances from which it can be inferred that [the defendant]
5 knew he was involved in an accident which was likely to have resulted in injury or
6 death to another person.” *Corpus*, 49 Or.App. at 820.

8 In *Corpus*, the Court of Appeals approved the trial court’s instruction that
9 “‘knowingly’ means that the driver of the vehicle involved knew that an accident
10 resulted in injury to or death of a person or knew that it was of such a nature that it
11 was probable that it resulted in injury or death to a person.” *Id.*, at 819.

13 *Corpus* went on to comment that if there is circumstantial evidence of
14 knowledge of injury, based on what the defendant knew about the nature of the
15 accident, “[t]he burden is on the driver involved in an accident to stay at the scene
16 and verify that no one was hurt or in need of assistance or to risk severe penalty. We
17 decline to put the burden on the state to prove that a driver knew another person
18 was injured.” *Id.*, at 820. This *dicta* in *Corpus* is another way of saying that willful
19 blindness by the defendant to the fact of injury is not a defense, when the defendant
20 knows the accident is of such a nature that injury would likely result, e.g., a head-on
21 collision, or knowing that his vehicle struck a pedestrian, or seeing the other driver
22 swerve to avoid the accident and strike a telephone pole.

24 The State’s contention that *Corpus* created a duty on the driver involved in an
25 accident to exit his vehicle and search the scene for anyone who may have been
injured, or otherwise relieved the State of its burden to prove knowledge of injury by

1 at least circumstantial evidence, is contrary to subsequent decisions by the Court of
2 Appeals. In *Hval*, the Court of Appeals approved of a prosecution for misdemeanor
3 hit-and-run, i.e., failure to perform the duties of a driver in an accident involving
4 property damage, in a case where the other driver had been injured, observing:

5 “As we have held, personal injury alone does not give rise to any duties under
6 ORS 811.705; rather, a defendant must be shown to have had knowledge of the
7 injury. As the state points out, that requirement forecloses a prosecution under the
8 felony ‘hit and run’ statute in many cases involving personal injury, either because a
9 driver who flees an accident scene may not, in fact, know that an injury was involved
10 or, at the least, the State may have difficulty proving the fact of the driver’s
11 knowledge.” 174 Or.App. at 171 (citations omitted). Thus, according to *Hval*, the
12 statute imposes no duties if the driver lacks actual or circumstantial knowledge of
13 injury.
14
15

16 In *State v. Monroe*, 101 Or.App. 379 (1990), the defendant was involved in a
17 two-car accident that caused damage to the other car, and was prosecuted for
18 misdemeanor “hit and run.” She testified that she stopped at the scene of the
19 accident, looked around, did not see the other car, and believed that it had left the
20 scene; she therefore drove home. Other witnesses testified that defendant stopped
21 only briefly or not at all. 101 Or.App. at 381. The Court of Appeals reversed the
22 conviction because the trial court had refused to give the defense instruction that an
23 honest but mistaken belief that the other driver had left the scene would discharge
24 the defendant’s duty to remain at the scene to exchange information. *Id.* at 384-385.
25

The duty to remain at the scene to exchange information in ORS 811.700 is also an

1 enumerated duty under ORS 811.705.¹ Thus, *Monroe* also contradicts the State's
2 contention that *Corpus* created an additional duty to exit one's vehicle and search for
3 other persons involved in the accident, before a defendant may claim lack of
4 knowledge as a defense.

5
6 In *State v. Rutley*, 202 Or.App. 639, 647 (2005), *rev. allowed*, 342 Or 344
7 (2007), the court concluded: "The most recent line of cases, then, establishes that
8 when a defendant is charged with a crime that specifies generally a culpable mental
9 state, *or* the charging instrument specifies one, that culpable mental state applies to
10

11
12 ¹ ORS 811.700 provides, in pertinent part:

13 (1) A person commits the offense of failure to perform the duties of a driver
14 when property is damaged if the person is the driver of any vehicle and the
15 person does not perform duties required under any of the following:

16 (a) If the person is the driver of any vehicle involved in an accident that
17 results only in damage to a vehicle that is driven or attended by any other
18 person the person must perform all of the following duties:

19 (A) Immediately stop the vehicle at the scene of the accident or as close
20 thereto as possible. Every stop required under this subparagraph shall be made
21 without obstructing traffic more than is necessary.

22 (B) Remain at the scene of the accident until the driver has fulfilled all of
23 the requirements under this paragraph.

24 (C) Give to the other driver or passenger the name and address of the
25 driver and the registration number of the vehicle that the driver is driving and
the name and address of any other occupants of the vehicle.

(D) Upon request and if available, exhibit and give to the occupant of or
person attending any vehicle damaged the number of any documents issued as
evidence of driving privileges granted to the driver.

* * * * *

(2) The offense described in this section, failure to perform the duties of a driver when
property is damaged, is a Class A misdemeanor and is applicable on any premises open
to the public. [1983 c.338 §572]

1 all elements of the crime that could be characterized as acts or circumstances.”
2 (Emphasis original). The State has alleged Ms. Finley knowingly failed to perform the
3 duties of a driver in an accident resulting in injury or death. The burden is therefore
4 on the State to prove Ms. Finley’s knowledge that the accident resulted in injury or
5 death, and to disprove her claim of mistaken belief that the other driver had left the
6 scene. *See, e.g., Rutley* (State must prove defendant’s knowledge that his drug crime
7 occurred within 1000 feet of a school); *State v. Dixon*, 191 Or.App. 503
8 (2004)(State must prove defendant’s knowledge that the person he allowed to
9 remain in a place where unlawful activity involving drugs occurred was under 18 years
10 old); *State v. Lane*, 198 Or.App. 173 (2005)(State must prove defendant’s
11 knowledge that what he escaped from was, in fact, a correctional facility).
12
13

14 Based on the defense accident reconstruction report, the nature of this
15 accident was minor and not suggestive of causing injury. Ms. Finley had no actual
16 knowledge of anyone being injured. Furthermore, based on the statements of Ms.
17 Finley’s passenger, as well as the accident reconstruction expert’s opinion, Ms. Finley
18 would not likely have observed the motorcycle before it struck her vehicle on the
19 right rear (passenger) quarter panel, and from the little she was able to see upon and
20 post-impact, reasonably believed that a small red car had side-swiped her and kept
21 going, i.e., that she was the “victim” of a hit-and-run causing minor damage to her
22 vehicle, and that she was not at fault for the accident.
23

24 II. NO DUTY TO REPORT ACCIDENT TO THE POLICE OR TURN SELF IN

25 The State and some of its witnesses also contend Ms. Finley had a duty remain
at the scene and summon police, or to report her involvement in the accident to the

1 police or voluntarily surrender days later, e.g., once her passenger learned of the
2 fatality on the news, and believed the vehicle police were looking for was Ms. Finley's,
3 and communicated that to Ms. Finley.

4 That issue is answered by examining the charging statute, which does not
5 include a duty to report the accident to the police; it only requires a driver to supply
6 identifying information to police at the scene, if the other persons involved in the
7 accident are unable to receive the information due to injuries or other incapacitation.
8 ORS 811.705(1)(f). See also, *Husley, supra*, where the appellate court approved the
9 trial court's instruction that it was no defense to felony hit-and-run that the
10 defendant voluntarily surrendered to police "at a place and time removed from the
11 occurrence of the accident. Such a surrender does not satisfy the requirements of
12 the laws of Oregon," 3 Or.App. at 70. See also, *State v. Larson*, 141 Or.App. 186,
13 193-195 (1996)(finding that ORS 811.705 does not require a defendant to report
14 information to the police and does not seek disclosure of information that is
15 inherently related to criminal prosecution, so as to trigger *Miranda*-like warnings from
16 officers who arrive at the scene).

17
18
19 Other Oregon statutes do impose a duty on a driver involved in an accident to
20 report the accident to the Department of Transportation and other agencies within
21 72 hours of the accident, and make violation a Class B traffic violation. See ORS
22 811.725.

23
24 Oregon's Constitution recognizes a citizen's right to remain silent pre-arrest,
25 by a person not in custody. *State v. Marple*, 98 Or.App. 662 (1989)(defendant's
constitutional right to remain silent was violated when State offered testimony that

1 he responded to officer's questions by stating "I'd rather not say," and prosecutor
2 argued defendant's failure to offer exculpatory explanation to officer as reason to
3 doubt defendant's testimony at trial). In *Marple*, the Court observed that "There is no
4 magic formula that defendant was required to use to assert his right to remain silent
5 under Article 1, section 12," and the State conceded that persons who are not in
6 custody can invoke their rights. 98 Or.App. at 666. Ms. Finley's decision to not report
7 her involvement in this accident to the police or otherwise turn herself if, is conduct
8 the equivalent of "I'd rather not say" in response to the police seeking information
9 about the identity of the driver via press releases.
10

11
12 RESPECTFULLY SUBMITTED this 3rd day of January, 2008.
13

14
15 _____
16 TERRI WOOD, OSB #88332
17 ATTORNEY FOR DEFENDANT

18
19 CERTIFICATE OF SERVICE

20 I hereby certify that I have made service of the foregoing Memorandum of Law,
21 by hand delivering on January 3, 2008, a true, full and exact copy thereof to the
22 Lane County District Attorney Office, 125 E. 8th Ave., Eugene, Oregon, 97401,
23 attorney for plaintiff.
24
25

TERRI WOOD, OSB #88332