

To: New Jersey Law Revision Commission
From: Whitney G. Schlimbach, Counsel
Re: Crime of Leaving the Scene of a Motor Vehicle Accident (N.J.S. 2C:11-5.1): Multiple Counts Arising from a Single Accident
Date: February 5, 2024

MEMORANDUM

Project Summary

In New Jersey, the crime of leaving the scene of a motor vehicle accident that results in death is a second-degree offense codified at N.J.S. 2C:11-5.1.¹ The statute punishes a motor vehicle operator “who knows he is involved in an accident and knowingly leaves the scene . . . if the accident results in the death of *another person*.”²

In *State v. Bell*, the New Jersey Supreme Court addressed whether a driver can be charged with two counts of leaving the scene, pursuant to N.J.S. 2C:11-5.1, when he has left the scene of a single accident resulting in two deaths.³ Informed by case law in other jurisdictions and public policy, including the doctrine of lenity, the Court examined the legislative history of the statute and its plain language.⁴

The Court held that “the Legislature intended to criminalize the act of leaving the scene of an accident resulting ‘in the death of another person,’ in violation of the tenets of order and civility codified under N.J.S.A. 39:4-129,[⁵] independent of the number of fatalities.”⁶

Statute Considered

N.J.S. 2C:11-5.1 provides, in relevant part:

A motor vehicle operator who knows he is involved in an accident and knowingly leaves the scene of that accident under circumstances that violate the provisions of R.S.39:4-129 shall be guilty of a crime of the second degree if the accident results in the death of another person.⁷

¹ N.J. STAT. ANN. § 2C:11-5.1 (West 2023).

² N.J. STAT. ANN. § 2C:11-5.1 (emphasis added).

³ *State v. Bell*, 250 N.J. 519, 522-23 (2022).

⁴ *Id.* (also “constru[ing] N.J.S.A. 2C:11-5.1 consistent with the rule against multiplicity derived from the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution, which prohibits ‘multiple punishments for the same offense’”).

⁵ N.J. STAT. ANN. § 39:4-129(a) & (c) (West 2023) (setting forth requirements for drivers “knowingly involved in an accident resulting in injury or death to any person” that include “immediately stop[ping] the vehicle at the scene of the accident or as close thereto as possible[;]” “giv[ing] his name and address and exhibit[ing] his operator’s license and registration certificate . . . to the person injured . . . and to any police officer or witness of the accident, and to the driver or occupants of the vehicle collided with[;] and render[ing] to a person injured in the accident reasonable assistance”).

⁶ *Bell*, 250 N.J. at 522-23.

⁷ N.J. STAT. ANN. § 2C:11-5.1.

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Background

In *Bell*, the car driven by Defendant hit two boys riding bikes on the roadway, killing both of them.⁸ Defendant and his passengers fled the scene on foot, and Defendant was identified following a search of the abandoned vehicle.⁹ He was subsequently arrested and “indicted on two counts of leaving the scene of an accident in violation of N.J.S.A. 2C:11-5.1,” among other charges.¹⁰

Defendant moved to dismiss one of the counts, arguing that N.J.S. 2C:11-5.1 was intended by the Legislature to “punish drivers for leaving the scene of a fatal accident or failing to report they were involved in such an accident, regardless of the number of fatalities caused by the accident.”¹¹ The State argued that the statutory language requiring that a driver “knowingly” leave the scene “under circumstances that violate the provisions of N.J.S.A. 39:4-129” indicated a legislative “intent to hold a defendant criminally responsible . . . for each death caused by the accident.”¹²

The trial court denied Defendant’s motion to dismiss, because the statute “‘imposes culpability’ when a driver leaves the scene of an accident that results in the death of ‘another person.’”¹³ The court therefore “inferred the Legislature intended ‘the death of each victim [to stand] as a separate and distinct element of two separate offenses that may be charged separately on the indictment.’”¹⁴

Defendant pled guilty to both counts of leaving the scene of an accident and was sentenced to two consecutive five-year prison terms.¹⁵ He appealed, and the Appellate Division reversed.¹⁶ The Appellate Division held that “the State may not properly charge . . . multiple counts of [leaving the scene of an accident] based on the number of victims who died in the accident.”¹⁷

⁸ *Bell*, 250 N.J. at 523-24 (one victim died at the scene and the other died of his injuries the next day).

⁹ *Id.* at 524-25.

¹⁰ *Id.* at 525 (“the grand jury returned an indictment charging defendant with two counts of second-degree leaving the scene of an accident in violation of N.J.S.A. 2C:11-5.1, and two counts of third-degree causing the death[s] of [the two boys] while operating a vehicle without a driver’s license, in violation of N.J.S.A. 2C:40-22(a)”).

¹¹ *Id.* (arguing that the judge must “dismiss the multiplicitous count because it would violate the ‘Double Jeopardy Clause’s protection against cumulative punishment”).

¹² *Id.*

¹³ *Id.* at 525-26.

¹⁴ *Id.* at 526 (finding “support for his analysis in the part of N.J.S.A. 2C:11-5.1 that prohibits a conviction of this offense to merge with other homicide offenses -- i.e., aggravated manslaughter, N.J.S.A. 2C:11-4, reckless vehicular homicide, N.J.S.A. 2C:11-5, or strict liability vehicular homicide, N.J.S.A. 2C:11-5.3 -- and expressly requires a court to impose a sentence for a violation of N.J.S.A. 2C:11-5.1 to run consecutively to multiple sentences of imprisonment for more than one offense”).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 527 (pointing out that, “as expressly permitted by N.J.S.A. 2C:11-5.1, the State may address the harm to [individual] victims by charging the defendant, as appropriate, with aggravated manslaughter under N.J.S.A. 2C:11-

The State filed a petition for certification, which the Supreme Court granted “to decide, as a matter of first impression, whether a vehicle operator who knowingly (1) is involved in an accident and (2) leaves the scene of that accident, . . . can be held criminally responsible for each fatality caused by the accident under N.J.S.A. 2C:11-5.1.”¹⁸

Analysis

On appeal, the State argued that the leaving the scene offense requires “that the accident resulted in the death of another person – not that it must result in ‘the death of another person or persons,’” and therefore “that each death caused by the accident may . . . be prosecuted separately.”¹⁹ Defendant asserted that the Appellate Division’s “construction [of N.J.S. 2C:11-5.1 was] consistent with ‘the overwhelming weight’ of judicial authority from other states with ‘very similar’ criminal statutes.”²⁰

The Supreme Court examined the legislative history of N.J.S. 2C:11-5.1, the statutory language, other jurisdictions’ interpretation of their own leaving the scene offenses, and the public policies underlying the statute.

Prior to the enactment of N.J.S. 2C:11-5.1 in 1997, leaving the scene of an accident was “a violation of the motor vehicle code under N.J.S.A. 39:4-129.”²¹ The crime of leaving the scene of an accident was adopted with the goal of “deter[ring] drivers from absconding from the scene of a fatal accident in defiance of the rules of the road.”²² The statute was originally a third-degree offense, and the Legislature has amended it twice “to augment its penal consequences.”²³ The Court noted, however, that “the increasingly severe penalties for flight do not change the focus of the offense from the flight itself to the number of victims left behind.”²⁴

Considering the “ordinary meaning and significance” of the words in N.J.S. 2C:11-5.1, the

4, reckless vehicular homicide under N.J.S.A. 2C:11-5, or strict liability vehicular homicide under N.J.S.A. 2C:11-5.3”).

¹⁸ *Id.*

¹⁹ *Id.* at 528 (citing the “increase in penalties over the years,” the State asserted the Legislature intended “to hold a driver who knowingly leaves the scene of a fatal accident criminally responsible for each life lost”). The Attorney General, as amicus curiae, distinguished the New Jersey offense from other jurisdictions that have “considered this issue [and] exclusively focused on the singular act of leaving the scene of an accident,” on the basis that N.J.S. 2C:11-5.1 uses the phrase “another person,” while other jurisdictions use the language “any person.” *Id.* at 530. The Attorney General interpreted the New Jersey language “to mean that a driver owes a duty to each victim who perishes in the accident.” *Id.*

²⁰ *Id.* at 529. As amicus curiae, the Association of Criminal Defense Lawyers of New Jersey (“ACDL”) “argue[d] that, when the legislative intent cannot be discerned from the plain language of the statute or other extrinsic factors, the rule of lenity requires [the statute be] construe[d] . . . in a manner most favorable to defendant.” *Id.* at 530.

²¹ *Id.* at 531 (violations of Title 39 “are tried in . . . municipal court[]” and carry a fine between “\$2,500 [and] \$5,000, or . . . imprison[ment] for a period of 180 days, or both”).

²² *Id.* at 531. *See* L.1997, c. 111, § 1, eff. June 4, 1997.

²³ *Bell*, 250 N.J. at 532. *See* L.2003, c. 55, § 2, eff. June 1, 2003 (removing the presumption of non-incarceration generally applicable to third-degree offenses); *see also* L.2007, c. 83, § 1, eff. May 4, 2007 (upgrading the offense to the second-degree).

²⁴ *Bell*, 250 N.J. at 538.

Bell Court set forth the four elements of a leaving the scene offense: “(1) the driver ‘knows’ the driver was ‘involved in an accident’; (2) the driver ‘knowingly’ leaves the scene of the accident; (3) the driver violates the requirements of N.J.S.A. 39:4-129; and (4) the accident ‘results’ in the death of another person.”²⁵ The Court concluded that the statutory language did not suggest that “the Legislature intended to charge a defendant based on the number of fatalities that result from the accident.”²⁶ Rather, the “statute’s plain language focuses on the driver’s response” to the accident.²⁷

In addition, the Court determined that its interpretation of the statute as focusing on the driver’s response to the accident, rather than the number of victims, is consonant with the approach of appellate courts in other jurisdictions.²⁸ Less than a year before *Bell*, the Supreme Court of Pennsylvania addressed the precise issue *Bell* raised: whether the defendant could be sentenced “to separate, consecutive sentences on three counts of [leaving the scene of] accidents involving death or personal injury.”²⁹

The Pennsylvania Supreme Court analyzed the language of the Pennsylvania statute and determined that “the unit of prosecution is **the act of leaving the scene of an accident without first rendering aid and providing the [required] information.**”³⁰ Therefore, because a “conviction does not depend upon the result of the accident, including the number of victims or the severity of their injuries,”³¹ the Court held the defendant “only violated [the leaving the scene of an accident provision] once.”³² The Pennsylvania Court further noted “[t]he vast majority of our sister states have likewise construed their similarly worded hit-and-run statutes to provide that leaving the scene of the crime alone violates the statute and that separate sentences may not be imposed for each victim in the accident.”³³

Addressing the policies underlying the statute, the *Bell* Court found that its interpretation of the statutory language is consistent with the goal of “deter[ring] drivers from absconding from the scene of an accident.”³⁴ This policy is reflected in the Legislature’s initial creation of a third-

²⁵ *Id.* at 535.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 535 (“most appellate courts in our sister states have found fleeing-the-scene violations to depend on the occurrence of a fatal accident rather than on the number of fatalities”).

²⁹ *Id.* at 536 (quoting *Commonwealth v. Satterfield*, — Pa. —, 255 A.3d 438 (2021)). See 75 PA. STAT. AND CONS. STAT. ANN. § 3742 (West 2023) (“[t]he driver of any vehicle involved in an accident resulting in injury or death of any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible . . .”).

³⁰ *Satterfield*, 255 A.3d at 447 (explaining that “[t]he common and approved usage of the important terms ‘accident’ and ‘scene’ are clear”).

³¹ *Id.* at 448.

³² *Id.* at 449.

³³ *Id.* at 449 n.19 (citing *State v. Powers*, 200 Ariz. 123, 126 (Ariz. Ct. App. 2001); *Commonwealth v. Newton*, 155 Cal. App. 4th 1000, 1002 (2007); *Brown v. State*, 339 Ga.App. 396, 404 (2016); *People v. Sleboda*, 166 Ill.App.3d 42, 57-58 (1988); *Commonwealth v. Henderson*, 89 Mass.App.Ct. 205, 210-11 (2016); *Firestone v. State*, 120 Nev. 13, 18 (2004); *Tooke v. Commonwealth*, 47 Va.App. 759, 765 (2006); *State v. Ustimenko*, 137 Wash.App. 109, 118 (2007); *State v. Stone*, 229 W.Va. 271, 281 (2012)).

³⁴ *Bell*, 250 N.J. at 538.

degree crime to “compel compliance with this critical part of the rules of the road,” as well as its subsequent “tighten[ing] of sanctions,” which also “reflect[] the continuing importance of deterrence.”³⁵

The Court noted that “[t]he State retains the authority to prosecute those drivers who violate the rights of the victims involved in an accident if the evidence so warrants,” including the specific “victim-centric offenses” identified in the statute itself.³⁶

Finally, the Court added that “[a]ny lingering ambiguities or uncertainties about the Legislature’s intent when adopting [N.J.S. 2C:11-5.1] are quickly overcome by the doctrine of lenity.”³⁷ When the plain text and extrinsic aids cannot supply a clear meaning, the statutory language of criminal offenses “must be resolved in favor of the defendant.”³⁸

Informed by “these fundamental principles,” the *Bell* Court held that N.J.S. 2C:11-5.1 “hold[s] a defendant responsible . . . for the singular act of fleeing the scene” of an accident resulting in injury or death.³⁹ The Court concluded that “if the Legislature intended [otherwise], then it is incumbent upon the Legislature to clarify ‘the contours of criminal activity.’”⁴⁰

Pending Bills

There are no pending bills that address the issue discussed by the Supreme Court in *Bell*.⁴¹

Conclusion

Staff requests authorization to conduct further research and outreach to determine whether N.J.S. 2C:11-5.1 would benefit from a modification clarifying that the statute imposes criminal sanctions for a driver’s response to an accident, rather than the number of victims of the accident, as held by the Supreme Court in *State v. Bell*.⁴²

³⁵ *Id.*

³⁶ *Id.* See N.J. STAT. ANN. § 2C:11-5.1 (“If the evidence so warrants, nothing in this section shall be deemed to preclude an indictment and conviction for aggravated manslaughter . . . , reckless vehicular homicide . . . or strict liability vehicular homicide Notwithstanding the provisions of N.J.S.2C:1-8 or any other provisions of law, a conviction arising under this section shall not merge with [those same offenses] and a separate sentence shall be imposed upon each such conviction.”).

³⁷ *Bell*, 250 N.J. at 539.

³⁸ *Id.* (quoting *State v. Gelman*, 195 N.J. 475, 482 (2008)).

³⁹ *Id.*

⁴⁰ *Id.* (holding additionally that the doctrine of multiplicity, which “protects against multiple punishments for the same offense,” “applies here because the offense committed by defendant is the act of knowingly leaving the scene of the accident without fulfilling the obligations imposed under N.J.S.A. 39:4-129,” and “revers[ing] . . . the Appellate Division’s decision to vacate one of defendant’s convictions and sua sponte resentence him to a five-year term of imprisonment . . . [because t]hat approach materially altered the terms of the plea agreement negotiated by the parties, and accepted by the trial judge, and is untethered to the sentencing guidelines codified in Title 2C”).

⁴¹ There is one pending bill that proposes increasing the offense level of leaving the scene of a motor vehicle accident to first-degree. Senate Bill 490, 220th Leg., 2022 Sess. (Jan. 11, 2022).

⁴² *Bell*, 250 N.J. at 522-23.