

**IN THE COURT OF APPEALS OF IOWA**

No. 9-1004 / 09-0255  
Filed February 24, 2010

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**KEVIN BRUCE HESTON JR.,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Jefferson County, Lucy J. Gamon,  
District Associate Judge.

Kevin Heston Jr. appeals following his conviction, judgment, and sentence  
for leaving the scene of a personal injury accident. **REVERSED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau,  
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney  
General, Karla Baumler, Legal Extern, Timothy W. Dille, County Attorney, and  
Patrick McAvan, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Huitink, S.J.\*

Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**POTTERFIELD, J.**

This appeal requires us to decide the sufficiency of the evidence the State must present to show a driver's knowledge that an accident in which the driver was involved caused a personal injury, giving rise to the duties to give information and reasonable assistance under Iowa Code section 321.263 (2007).

**I. Background Facts and Proceedings**

On May 10, 2007, at approximately 9:45 p.m., motorist Kevin Heston Jr. was driving on Grimes Street in Fairfield, and struck bicyclist Joshua Street from behind. Street was preparing to make a left hand turn and was veering away from the far right lane without a hand signal. The contact between the car and the bicycle was not forceful. Street testified that the car "bumped the back tire of the bicycle." However, it caused Street to lose his balance and fall into the curb. The impact did not tear Street's clothing and did only very minor damage to the bike. Street testified he did not at first think his bike was damaged, but the officer later saw "little scratches." Street testified that Heston immediately pulled over and parked, bringing his car to a stop in front of Street's bike. Heston's stop was brief, about five minutes. Heston did not give any information other than his name, which Street understood to be Kevin Harris or Harrison.<sup>1</sup>

Street contradicted himself in his testimony about Heston's statements after he stopped. On direct examination, Street testified that Heston approached him, stated he was an officer in pursuit, and left without inquiring as to his physical well-being or offering to help. On cross-examination, however, Street testified that Heston asked whether he was okay. Street informed Heston that he

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<sup>1</sup> Street testified Heston identified himself as "Kevin something, like Harris or something."

was fine and testified that Heston had no reason to believe Street was injured. Street further admitted he testified at deposition that Heston did not claim to be an officer.

After the accident, Street walked his bike the rest of the way to his job at the Super 8 Motel. Street's knee started to hurt "after awhile," and he called the police at about 1:30 a.m. Street later underwent surgery to his knee to repair a torn meniscus.

After trial, a jury submitted a general verdict finding Heston guilty of leaving the scene of a personal injury accident in violation of Iowa Code sections 321.263, 321.261(1), and 321.261(2). Heston appeals, arguing: (1) there was insufficient evidence to support the verdict, and (2) his counsel was ineffective for failing to object to the marshalling instruction for leaving the scene of a personal injury accident. Because we reverse on the first argument, we do not reach his claim that counsel provided ineffective assistance.

## **II. Standard of Review**

We review sufficiency-of-evidence claims for correction of errors at law. *State v. Johnson*, 770 N.W.2d 814, 819 (Iowa 2009). If the jury's findings are supported by substantial evidence, we will not disturb the findings on appeal. *Id.* Evidence is substantial if, when viewed in the light most favorable to the State, it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Id.*

## **III. Sufficiency of the Evidence**

Heston argued in his motion for directed verdict and now argues on appeal that the State failed to present sufficient evidence to show that he knew or

reasonably should have known Street had been injured and so was required to stay at the scene and render aid.

Our supreme court interpreted the standard for knowledge that an accident has caused a personal injury within the meaning of Iowa Code section 321.263 in terms of a “reasonable person.” See *State v. Carpenter*, 334 N.W.2d 137, 140 (1983). The *Carpenter* court concludes by saying, “For the duty of reasonable assistance to arise, it is not necessary for the driver to diagnose the injury. It is only necessary that the driver know or be reasonably charged with knowledge that the person has been injured.” *Id.* at 141 (citing *State v. Miller*, 308 N.W.2d 4, 7 (Iowa 1981)). *Miller* approved a standard from a California case that criminal liability attaches to a driver who leaves the scene of the accident if he or she “actually knew of the injury or . . . knew that the accident was of such a nature that one would reasonably anticipate that it resulted in injury to a person.” *Miller*, 308 N.W.2d at 7 (quoting *People v. Holford*, 403 P.2d 423, 427 (Cal. 1965)).

The State argues that a reasonable person knows that any bicycle/car accident will result in injury and that Heston was required to inquire further of Street whether he was hurt and to call an ambulance or take Street to the hospital. We disagree. Although Street’s testimony was inconsistent as to whether Heston asked him if he had been injured, Street testified there was no reason for Heston to believe he was injured and that he told Heston he was okay at the accident scene. Nothing in the record suggests he appeared to be injured. Reviewing the evidence in the light most favorable to the State, we conclude that the information available to Heston at the scene did not trigger the duties listed in

Iowa Code section 321.263. In finding the evidence insufficient, we are mindful of the policy reasons for requiring drivers to provide name, address, and insurance information after any accident. However, the criminal statute for which Heston was convicted specifies “an accident resulting in injury . . . or death.” Because the State failed to prove that Heston knew or should have reasonably anticipated the accident resulted in injury to Street, his conviction must be reversed.

**REVERSED.**