Circuit Court for Prince George's County
Case No. CT190328X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1767

September Term, 2019

JOHN DAVID MUELLER

v.

STATE OF MARYLAND

Graeff,
Leahy,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: December 23, 2020

On the evening of August 1, 2018, Christian Guerreiro and Ryan Eades were driving a red 1991 Mazda Miata over the Woodrow Wilson Bridge on their way from Virginia to Maryland. The car began overheating, and they were forced to pull to the side of the bridge on the northbound outer loop of I-495 near National Harbor. Shortly after they pulled over, a Nissan Pathfinder collided with the Miata. The collision killed Guerreiro and left Eades seriously injured.

Approximately one hour after the first 911 call, a Maryland State Police ("MSP") officer encountered John David Mueller, Jr. on a footpath near the crash. Mr. Mueller ran from the officer but was apprehended. It was later discovered that Mr. Mueller's address matched the address on the registration for the Pathfinder. Mr. Mueller was taken into custody.

On March 19, 2019, a grand jury indicted Mr. Mueller of numerous offenses, including the six offenses under Maryland Code (1977, 2012 Repl. Vol., 2019 Supp.) Transportation Article ("TR"), § 20-102 that are at issue in this appeal. During his four-day trial in the Prince George's County Circuit Court, Mr. Mueller requested that the jury be instructed that each of the six TR § 20-102 offenses includes a mens rea element; namely, that to be guilty, Mr. Mueller was required to have knowledge of the underlying accident and injury or death. The trial court refused to instruct the jury according to Mr. Mueller's requests. On August 2, 2019, Mr. Mueller was convicted of all but three of the charged offenses, including all six counts under TR § 20-102.

Mr. Mueller presents the following question for our consideration: "Did the trial court err when it failed to instruct the jury that Mr. Mueller's knowledge of the underlying

accident as well as his knowledge of the underlying injury and/or death are necessary elements to convict under the § 20-102 Counts?"

We hold that the circuit court's jury instructions on the TR § 20-102(b) offenses (accidents resulting in death), were sufficient to fairly cover the law, including the requisite mens rea elements. We further hold that, although the circuit court erred in omitting the mens rea elements from the jury instructions on the TR § 20-102(a) offenses (accidents resulting in bodily injury), the error was harmless because the court included the mens rea elements in the instructions for accidents resulting in death, and because the same evidence, which in this case was overwhelming, supported both the injury and the death. The jury could not have come to any conclusion other than Mr. Mueller knew or should have known that the accident was serious enough to cause injury where the jury found that Mr. Mueller knew or should have known that the accident was serious enough to cause death. *DeHogue v. State*, 190 Md. App. 532, 550 (2010).

BACKGROUND

On March 19, 2019, a grand jury sitting in Prince George's County indicted Mr. Mueller of the following offenses: 1) manslaughter by vehicle—gross negligence; 2) failure to immediately stop vehicle at scene of accident involving death (knowing); 3) failure to immediately return and remain at scene of accident involving death (knowing); 4) failure to immediately stop vehicle at scene of accident involving death; 5) failure to immediately return and remain at scene of accident involving death; 6) homicide by motor vehicle while under the influence of alcohol in violation of 2-503(a)(2) of the Criminal Law Article; 7) homicide by motor vehicle while impaired by alcohol in violation of CR-

02-504 of the Criminal Law Article; 8) manslaughter by vehicle—criminal negligence in violation of 2-210 of the Criminal Law Article; 9) failure to immediately stop vehicle at scene of accident involving bodily injury; 10) failure to immediately return and remain at scene of accident involving bodily injury; 11) driving a motor vehicle on highway without required license and authorization in violation of Section 16-101(a) of the Transportation Article.[1]

The following background is drawn from the testimony and other evidence presented over four days, beginning on July 29, 2019, during Mr. Mueller's jury trial.

A. The Accident

The fatal accident occurred on the evening[2] of August 1, 2018, on the Woodrow Wilson Bridge near National Harbor. At approximately 10:55 p.m., the MSP duty officer informed Corporal Byron Tribue of the crash by radio as Corporal Tribue was on his way to work.

Trooper Norman Murry of the MSP testified that he received a call to respond to the crash site at 11:02 p.m. and arrived at approximately 11:13 p.m. Trooper Murray testified that, upon arriving at the scene, he observed a red Mazda Miata with "severe rear damage on the shoulder." He noted that there was a person "who was pinned underneath the

[1] Counts 2-5, 9 and 10 are all charged as violations of Maryland Code (1977, 2012 Repl. Vol., 2019 Supp.) Transportation Article ("TR"), § 20-102.

[2] There is no agreement as to when the accident occurred. The first 911 call about the accident was received at either 10:43 or 10:44 p.m. on August 1. The State appears to disagree with this estimate, pointing out that Corporal Zarzecki testified that the earlier phone call for the crash was at 10:46 p.m.

vehicle" and several ambulances and emergency medical personnel already present. By the time he arrived, the other victim had already been transported to the hospital. Upon assessing the gravity of the situation, Trooper Murray radioed Corporal Tribue and informed him that they would need a crash team to perform further investigation.

Corporal Tribue arrived at the scene shortly after Trooper Murray at 11:15 p.m. At approximately 11:25 p.m., Trooper Murray was notified by ambulance personnel that there was a second vehicle, a Nissan Pathfinder, "approximately 2,000 feet north of [his] location . . . disabled in the roadway." Upon locating the Pathfinder, Trooper Murray testified that he ran the registration on the vehicle through the MVA database and determined that it was registered to Linda Carol Schrader of 25816 Ricky Drive, Hollywood, Maryland. The vehicle had not been reported stolen. Trooper Murray notified Corporal Tribue about the Pathfinder.

Corporal Tribue testified that the Pathfinder was approximately a quarter mile beyond the Miata, that it had "heavy front end damage" and that the "[a]irbags were deployed." When he arrived, the Pathfinder was unoccupied and some of the doors were open.

Corporal Kevin Zarzecki of the MSP Crash Team testified as an expert in the field of collision analysis and reconstruction. When he arrived at the crash scene to investigate the collision, he saw that the Miata was "severe[ly] damage[d]" and that one of the Miata's occupants was under the right rear axel. He explained that, from his analysis of the scene, it was clear that neither Guerreiro nor Eades had been ejected from the car; rather, both were already out of the car at the time of the accident.

According to Corporal Zarzecki, the tire marks leading to the final resting place of the Miata indicated that it was on the shoulder of the road when the crash occurred. He explained that the Miata appeared to have been propelled into the barrier by the force of the collision. He further expounded that bodily fluids were present along with the Miata's tire marks, suggesting that Guerreiro was dragged underneath the Miata. He noted that there were scrape marks on the Miata that were left by the Pathfinder.

After hitting the Miata, the Pathfinder left a 1,189-foot trail of fluid, eventually determined to be coolant. The Pathfinder's fender was located in the middle of the fluid trail. There was significant damage to the right front and rear sides of the Pathfinder and very little damage to the left front side. According to Corporal Zarzecki, the damage indicated that the Pathfinder was driving partially on the shoulder of the road at the time of the accident, and that the damage to the Pathfinder's hood was consistent with a pedestrian "wrapping" onto it. Corporal Zarzecki explained that evidence showed that the "leading edge of the front bumper" struck Guerreiro in the lower leg, swept his legs out from underneath him, caused him to wrap onto the hood, and then projected him forward onto the asphalt. The Pathfinder subsequently hit the Miata and pushed it over Guerreiro. There was a red substance on the lower portion of the Pathfinder's bumper that was not paint transfer.

Finally, Corporal Zarzecki testified that, at the time the Pathfinder's front airbag was deployed, the driver's seatbelt was in use. He also pointed out that the passenger airbag did not deploy, which indicated that there was no front seat occupant. He further opined that there was no sign of anyone in the back seat of the Pathfinder.

B. Apprehension and Arrest

At approximately 11:50 p.m., Corporal Tribue was notified about a shirtless individual walking along a nearby footpath towards the bridge. Corporal Tribue testified that he drove about twenty seconds past the Pathfinder to access the footpath. He then walked for about thirty seconds down the footpath before noticing Mr. Mueller, whom he described as a "white male, no shirt, blue jeans, walking on the footpath" around 100 feet from him. When Corporal Tribue identified himself as MSP and called out to Mr. Mueller, Mr. Mueller "took off." Corporal Tribue pursued Mr. Mueller and eventually caught up to him when he reached the interstate and had to slow down to avoid oncoming traffic.

Mr. Mueller's jeans were soaking wet and he had "a few markings on his torso area." Corporal Tribue radioed Trooper Murray for assistance. Mr. Mueller gave Corporal Tribue his name and date of birth, but he did not have a driver's license with him at the time.[3] Mr. Mueller told the officers that he had walked from Old Alexandria to take a bath in the river. When Corporal Tribue and Trooper Murray ran Mr. Mueller's name in the MVA database, their search revealed a photo of Mr. Mueller and an address. The address matched the address to which the Pathfinder was registered, but when asked about the address, Mr. Mueller clamed not to recall it.

Corporal Tribue reported that he did not smell alcohol on Mr. Mueller or notice any signs of poor balance. Trooper Murray, on the other hand, stated that he "immediately

[3] Corporal Zarzecki testified that Mr. Mueller did not have a driver's license, but did have an identification card. He also testified that Mr. Mueller's identification card stated that his driver's license is suspended.

detected an odor of alcohol emanating from [Mr. Mueller's] breath" and noticed that Mr. Mueller's eyes were bloodshot and glassy. Mr. Mueller was also covered in scratches and red marks. Corporal Tribue advised Trooper Murray to take Mr. Mueller back to the Forestville Barrack to perform a field sobriety test. Corporal Tribue explained that he did not want to perform the tests at the scene of the accident because of concerns that Mr. Mueller might try to escape if they removed his handcuffs.

Trooper Adam Baldi was at the Barracks when Trooper Murray and Mr. Mueller arrived. He testified that he detected a "very strong smell of alcoholic beverage emanating from [Mr. Mueller's] person." He also observed that Mr. Mueller was lethargic and had bloodshot and glassy eyes. Trooper Baldi testified that Trooper Murray had to support Mr. Mueller so that Mr. Mueller could move around without falling over, and that both officers had to help Mr. Mueller into his cell.

Approximately five hours after the crash, Corporal Zarzecki arrived at the Forestville Barrack in order to prepare a briefing and document Mr. Mueller's injuries from the collision. He reported that Mr. Mueller's injuries included a diagonal mark on the right side of his torso indicative of wearing a seatbelt in the driver's seat of a vehicle. He also testified that burns on Mr. Mueller's forearms were consistent with and could have been caused by airbag deployments. Finally, he observed that, although Mr. Mueller was sleeping when he entered the cell, upon waking, Mr. Mueller appeared unsteady, was swaying, and smelled of alcohol. He also testified that Mr. Mueller's eyes were glassy and bloodshot.

At approximately three o'clock in the afternoon on August 2, 2018, Trooper Murray obtained a search warrant and took Mr. Mueller to get his blood drawn at Southern Maryland Hospital. The blood test—based on blood drawn approximately sixteen hours after the collision—revealed no alcohol concentration and no other drugs in Mr. Mueller's system. Dr. Barry Levine, an expert in toxicology, testified that a person with a .08 blood alcohol concentration[4] would likely have a zero blood alcohol concentration sixteen hours after he stopped drinking.

DNA evidence from the driver's side airbag in the Pathfinder showed DNA profiles from two contributors, one male and one female. Dr. Leslie Mounkes, an expert in the field of forensic serology and STR DNA analysis, testified that Mr. Mueller could not be excluded as a contributor from the DNA profiles.

C. Problems with the Investigation

MSP's handling of the accident led to an MSP Internal Affairs investigation. No investigation reports were entered into evidence at trial, but testimony revealed flaws in MSP's response to the accident.[5]

For instance, MSP was accused of responding improperly to reports of the accident. Allegedly, despite receiving at least three 911 calls, the MSP late shift supervisor on duty

[4] Dr. Levine testified that zero point eight blood alcohol concentration is the requisite amount for the offense of driving under the influence.

[5] Mueller's motion to compel discovery on this point was denied.

at the time ordered a "standdown order" to the officers nearing the end of their shifts.[6] In other words, instead of dispatching the officers on duty at the time of the crash, the supervisor apparently ordered them to wait and allow the night-shift officers to respond to the crash instead. As a result, no police officers were dispatched to the scene before 10:55 p.m.

Additionally, some reports of the accident were submitted late, contrary to the MSP Operations Directive, which requires that Troopers responding to serious crashes submit reports within ten days of a crash. For instance, Corporal Tribue's report was submitted several months after the crash in response to the internal affairs investigation. Tribue also claimed under oath not to have made notes of the accident, but later found notes that he had written on August 3, 2018. Trooper Murray testified that he left certain details, such as arrival times at the scene, out of his report so as not to "hurt [his] agency."

Further, no field sobriety tests were ever performed on Mueller, and the blood test was administered nearly sixteen hours after the crash. Corporal Zarzecki testified that there are guidelines to be followed around "impaired driving enforcement," and that standardized field sobriety tests should be administered immediately, or, if not safe to do so on the scene, as soon as possible at the Barracks. At the latest, such tests should be administered within two hours of the apprehension of someone suspected to be under the influence of alcohol. According to Corporal Zarzecki, no field sobriety tests had been

[6] It is not clear whether MSP contacted any of the 911 callers who witnessed the crash. Corporal Zarzecki's testimony indicates that he did not reach out to or interview any of the three witnesses who called to report the accident. At least one witness, "Rex," supplied a return telephone number.

performed on Mr. Mueller when he arrived at the Barracks, approximately five hours after the collision. There is no indication than any field sobriety tests were ever performed.

D. Jury Instructions

During the jury trial, Mr. Mueller requested that the element of "knowledge" be included in jury instructions for each of the six TR § 20-102 offenses. Mr. Mueller, through counsel, explained that, although no mens rea elements appear in TR § 20-102, Maryland courts have interpreted the statute to include a scienter requirement: to be guilty of any offense under TR § 20-102, a defendant is required to have knowledge of both the underlying accident and injury or death.

In refusing Mr. Mueller's request, the court explained that it distinguished *Comstock v. State,* 82 Md. App. 744 (1990), on which Mr. Mueller relied, because that case "dealt with an individual who . . . initiated a chain reaction, [and] the court found unless there was a knowing that there had been an accident that had occurred, then this [TR] 20-l02 would be strict liability." When Mr. Mueller protested further, the court explained that the State's proposed instructions encompassed exactly what is in the Transportation Article and fairly and accurately presented the law.

The court gave the following jury instructions:

[THE COURT]:

> …Number five, **failure to stop at the scene of the accident resulting in death, knowing.** The State must prove that the defendant failed to stop his vehicle as close as possible to the scene; **that the defendant knew or reasonably should have known that the accident might result in the death of another person; and that death actually occurred to another perso**n.

You also have failure to stop at the scene of an accident resulting in death. The State must prove that the defendant failed to stop his vehicle as close as possible to that scene of the accident; and that the accident resulted in the death of another person.

And that would bring us to questions five and six. If your answer to question number five is not guilty, then you would proceed to number six . . . .

Numbers seven and eight are failure to return and remain at the scene of an accident. **To convict the defendant of failure to return and remain at the scene of an accident resulting in death, knowing,** the State must prove that the defendant failed to return and remain at the scene of an accident until the driver had complied with Maryland Transportation Article 20-104; **that the defendant knew or reasonably should have known that the accident might result in the death of another person; and that the death actually occurred to another person.**

Failure to remain at the scene of an accident resulting in death, the State must prove that the defendant failed to return and to remain at the scene of the accident; and that the accident resulted in the death of a person.

If your answer to number . . . seven is not guilty, then proceed to question eight.

If your answer is guilty to seven, skip eight, and proceed to question number nine.

Numbers nine and ten, fail to return and remain at the scene of an accident resulting in bodily injury. In order to convict the defendant of failing to return and remain at the scene of an accident resulting in bodily injury, the State must prove that the defendant failed to return and remain at the scene of an accident until the driver had complied with Maryland Transportation Article Section 20-104; and that the accident resulted in bodily injury.

Fail to stop at the scene of an accident resulting in bodily injury. In order to convict the defendant of failing to stop at a scene of an accident resulting in bodily injury, the State must prove that the defendant failed to stop his vehicle as close as possible to the scene of the accident; and that the accident resulted in bodily injury of another person.

> In order to convict the defendant of failing to return and remain at the scene of an accident resulting in bodily injury, the State must prove that the defendant failed to return and remain at the scene of the accident until the driver had complied with Maryland Transportation Article 20-104; and that the accident resulted in bodily injury of another person.

(Emphasis added).

Mr. Mueller strongly objected to the instructions in their offered form.

E. Verdict and Sentencing

On August 2, 2019, the jury found Mr. Mueller guilty of criminally negligent manslaughter; driving without a license, and the six counts in violation of TR § 20-102. The jury acquitted Mr. Mueller of grossly negligent vehicular manslaughter, homicide by a motor vehicle while under the influence of alcohol, and homicide by a motor vehicle while impaired by alcohol.

Several months later, the court sentenced Mr. Mueller to an aggregate of 14 years and 60 days, which included consecutive sentences of 10 years for failure to stop at the scene of the accident resulting in death, knowing; 5 years for negligent manslaughter, suspend all but three; one year for failure to stop at the scene of an accident involving bodily injury; and 60 days for driving without a license. The remaining convictions under TR § 20-102 merged with Mr. Mueller's conviction for failure to stop at the scene of the accident resulting in death, knowing.

On October 23, 2019, Mr. Mueller noted this timely appeal.

DISCUSSION

I.

Jury Instructions

A. TR § 20–102 Offenses

The parties' contentions and our ensuing discussion are focused on discerning the correct interpretation of TR § 20-102. We begin with the plain language:

> **§ 20–102. Driver to remain at scene—Accidents resulting in bodily injury or death.**
>
> (a) *Bodily injury.* — (1) The driver of each vehicle involved in an accident that results in bodily injury to another person immediately shall stop the vehicle as close as possible to the scene of the accident, without obstructing traffic more than necessary.
>
> (2) The driver of each vehicle involved in an accident that results in bodily injury to another person immediately shall return to and remain at the scene of the accident until the driver has complied with § 20-104 of this title.
>
> (b) *Death.* — (1) The driver of each vehicle involved in an accident that results in the death of another person immediately shall stop the vehicle as close as possible to the scene of the accident, without obstructing traffic more than necessary.
>
> (2) The driver of each vehicle involved in an accident that results in the death of another person immediately shall return to and remain at the scene of the accident until the driver has complied with § 20-104 of this title.
>
> (c) *Penalties for violation of section: penalty for causing serious bodily injury.* — (1) In this subsection, "serious bodily injury" means an injury that:
>
> (i) Creates a substantial risk of death;
>
> (ii) Causes serious permanent or serious protracted disfigurement;
>
> (iii) Causes serious permanent or serious protracted loss of the function of any body part, organ, or mental faculty; or
>
> (iv) Causes serious permanent or serious protracted impairment of the function of any body part or organ.
>
> (2)(i) Except as provided in paragraph (3) of this subsection, a person convicted of a violation of subsection (a) of this section is subject to imprisonment not exceeding 1 year or a fine not exceeding $3,000 or both.
>
> (ii) Except as provided in paragraph (3) of this subsection, a person convicted of a violation of subsection (b) of this section is subject to imprisonment not exceeding 5 years or a fine not exceeding $5,000 or both.
>
> (3)(i) A person who violates this section and who knew or reasonably should have known that the accident might result in serious bodily injury to another person and serious bodily injury actually occurred to another person,

> is guilty of a felony and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding $5,000 or both.
> (ii) A person who violates this section and who knew or reasonably should have known that the accident might result in the death of another person and death actually occurred to another person, is guilty of a felony and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding $10,000 or both.

B. Parties' Contentions

In his opening brief, Mr. Mueller argues that the trial court committed reversible error when it failed to instruct the jury that, to be found guilty under TR § 20-102, the State had to show that he knew or should have known of the accident and the underlying injury or death. He contends that knowledge of both the accident and the injury are necessary elements of the TR § 20-102 (a) and (b) counts. Although the statute does not contain an express requirement of knowledge of the collision or resulting injury or death in subsections (a) or (b), he explains, Maryland courts have held that TR § 20-102 is not a strict liability statute. Relying on *Comstock v. State,* 82 Md. App. 744 (1990), Mr. Mueller argues that proof of the defendant's knowledge of both (1) the accident or collision and (2) the resulting injury is required to convict a defendant under the statute.

Mr. Mueller contends that, despite three separate colloquies on the inclusion of a knowledge element in the jury instructions, insufficient instructions were nonetheless given. The court's instructions, argues Mr. Mueller, did not fairly and accurately present the law for the jury to return a verdict in the case. The court, posits Mr. Mueller, may not relieve the State of its burden to prove a defendant's guilt beyond a reasonable doubt by omitting a crime's elements from the jury instructions.

At oral argument, Mr. Mueller's counsel further refined his challenge to the instructions given by the trial judge by asserting that the language—"knew or reasonably should have known that the accident might result in the death of another person"—was a "diluted" version of the mens rea requirements in *Comstock.* He contended that the instructions given "minimized" the responsibility of the State to prove beyond a reasonable doubt that Mr. Mueller had knowledge or should have had knowledge of the underlying death, because they required only that the State prove that the defendant had knowledge that an accident "might" result in death, rather than that the defendant actually knew or should have known about the death.

The State responds that the trial court properly exercised its discretion in instructing the jury. The State contends that the court's chosen jury instructions should not be taken out of context; the adequacy of jury instructions is determined by viewing them as a whole. The State continues that a court determines whether a trial court has abused its discretion in deciding whether to grant or deny a request for a particular jury instruction by considering (1) whether the requested instruction was a correct statement of law; (2) whether it was applicable under the facts of the case; and (3) whether it was fairly covered in the instructions actually given.

The State agrees that the offenses set out in TR § 20-102 contain an implied knowledge element, and that Mr. Mueller's requested instructions were a correct statement of law based on *Comstock v. State*. The additional instruction requested by Mr. Mueller, however, was not applicable on the facts because the determination of whether an instruction must be given turns on whether there is any evidence in the case to support the

instruction. The State contends that *Comstock* is distinguishable from this case because, in *Comstock*, the defendant caused an accident that he was not physically involved in. Therefore, argues the State, his knowledge of the accident was at issue. The State contends that, contrastingly, this case does not raise the same concern of strict liability because Mr. Mueller was directly involved in a collision with the victim's car and, therefore, Mr. Mueller's knowledge of the accident or injury is not in question.

Further, the State maintains that even if the additional instruction was applicable under the facts, the issue of knowledge was fairly covered in the instructions given. Here, the State insists, the instructions given by the court mirrored the language of the statute, including the statute's penalty provision, TR § 20-102(c)(3). The State points out that for a driver to violate TR § 20-102(c)(3) and be liable for the heightened penalties therein, the court must find knowledge of both the accident and injury on the part of the driver. The State notes that two of the jury instructions given by the court— Count 5 for failure to stop and Count 7 for failure to return and remain at the scene of an accident resulting in death— contained the knowledge instructions laid out in TR § 20-102(c)(3). The defendant's knowledge of the underlying accident and injury or death, the State asserts, was thus fairly covered in the instructions given to the jury.

Finally, according to the State, no Maryland case delineates exactly what jury instructions are needed for a TR § 20-102 violation. Therefore, the trial court had discretion to deny Mr. Mueller's request and instruct the jury using the language of the statute.

C. Analysis

We generally review a trial court's decision whether to give a jury instruction under the abuse of discretion standard. *Page v. State*, 222 Md. App. 648, 668 (2015). Looking at whether the trial court abused its discretion in this context, we consider whether: (1) the instruction is a correct statement of law; (2) the instruction is applicable to the facts of the case; and (3) the content of the instruction was fairly covered elsewhere in instructions actually given. *Carroll v. State*, 428 Md. 679, 689, 53 A.3d 1159 (2012) (quotations and citations omitted). "It is well established that '[a]n improper, objectionable instruction includes one that serves to relieve the state of its burden to prove a defendant's guilt beyond a reasonable doubt.'" *Steward v. State*, 218 Md. App. 550, 565 (2014) (quoting *Stabb v. State*, 423 Md. 454 (2011)). Accordingly, the omission of an element of an offense from a jury instruction is subject to harmless error review. *Nottingham v. State*, 227 Md. App. 592, 610 (2016).

Maryland Rule 4-325(c) provides that, "[t]he court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding." The court, however, "need not grant a requested instruction if the matter is fairly covered by instructions actually given." Md. Rule 4-325.

When we review jury instructions, we read them

> . . . . together, and if, taken as a whole, they correctly state the law, are not misleading, and cover adequately the issues raised by the evidence, the defendant has not been prejudiced and reversal is inappropriate. Reversal is not required where the jury instructions, taken as a whole, sufficiently protect[ed] the defendant's rights and adequately covered the theory of the defense.

Cost v. State, 417 Md. 360, 369 (2010).

Here, both parties agree that Mr. Mueller's requested instructions constitute a correct statement of the law. TR § 20–102 creates offenses meant to "discourage the driver of a vehicle which has been involved in an injury-causing accident from abandoning persons who are in need of medical care, and to prevent that same driver from attempting to avoid possible liability." *DeHogue v. State*, 190 Md. App. 532, 550 (2010). To this end, the legislature created various duties for drivers involved in such accidents, the breach of which can result in prison time, fines, or both. TR § 20–102(c).

Although no scienter requirement is explicitly provided in TR § 20–102, this Court stated in *Comstock v. State* that "knowledge of both the underlying accident and injury is logically and legally necessary for one to be guilty of leaving the scene of a personal injury accident under § 20–102." 82 Md. App. 744, 755 (1990). In that case, the victim was killed after she swerved to avoid the defendant's car, lost control of her vehicle and crashed into an oncoming tractor trailer moving in the opposite direction. *Id.* at 748. The defendant's car did not collide with the victim's car and no accident occurred as between the victim and the defendant. *Id*. at 749. The defendant did not see the accident and there was also a question as to whether he heard the "'very loud'" sound of the collision. *Id*. at 748.

At trial, the defendant argued that evidence was legally insufficient to support his conviction under TR § 20–102, because "knowledge of the occurrence of the accident and resulting injury is an element of the offense, and . . . there was insufficient evidence presented at trial that he knew the accident had occurred." *Id*. at 755. On appeal, we observed that "[o]n its face, § 20–102 prescribes no particular mental state. Obviously,

however, one cannot stop at or return to the scene of a personal injury accident he does not know has occurred." *Id*. at 756. We held that "[c]ognizance of the accident, then, is implicit in the obligations imposed by statute" and that, before any defendant is convicted under TR § 20–102, the State must prove that the defendant had knowledge, or should have had knowledge, of the underlying accident and injury. *Id*. at 756-757. We explained that the "mere absence of the word "knowingly" from the language of § 20–102 should not be construed as evidencing a legislative intent to create a strict liability offense." *Id*. Rather, we concluded that "before a defendant can be convicted under a "hit and run" statute, the State must first show knowledge by the accused of the "hit," and that the "run" or leaving was also knowing." *Id*. at 756-757. We also instructed that evidence of knowledge could be either actual or circumstantial. *Id* at 757.

This Court's interpretation of the statute was later confirmed by the Court of Appeals in *General v. State*[7] and applied by this Court in *DeHogue v. State*.[8] Accordingly, the scienter element, as laid out in *Comstock v. State*, remains a part of all TR § 20–102 offenses and must be proved by the State beyond a reasonable doubt.

[7] The Court confirmed that "Sections 20-102 and 20-104 [of the Transportation Article] require knowledge that the accident resulted in injury or death to a person, or property damage, respectively." *General*, 367 Md. 475, 480 n. 4, 488 (2002).

[8] Here, the Court reiterated that that "[k]nowledge of both the underlying accident and injury is logically and legally necessary for one to be guilty of leaving the scene of a personal injury accident under [§ 20–102]. Where conditions are such that the driver should have known that an accident occurred, or should have reasonably anticipated that the accident resulted in injury to a person, the requisite proof of knowledge is present." *DeHogue*, 190 Md. App. at 550 (2010) (internal citations omitted).

The State argues that Mr. Mueller's requested scienter instructions were inapplicable to the facts of the case. The State claims that, in contrast to the facts in *Comstock*, "Mueller was physically involved in a violent collision with the victims' car," meaning that the "evidence in this case did not support the inclusion of [the] additional [knowledge] instruction." But, in *Comstock*, this Court instructed that "knowledge" is an element of any offense under § 20–102. *Id*. at 755-56. It therefore does not matter whether Mr. Mueller offered sufficient evidence to generate a "knowledge" instruction; "knowledge" is an element of any § 20–102 offense that "like any element of a charged offense, must be proven by the State, beyond a reasonable doubt." *Nottingham v. State*, 227 Md. App. 592, 604 (2016). Because "knowledge" is an element of every TR § 20–102 offense, we disagree with the State's contention that a "knowledge" instruction was not generated on the facts of this case. Our analysis, however, does not end here.

As long as the law is fairly covered by the jury instructions, reviewing courts will not disturb them. *Smith v. State*, 403 Md. 659, 663 (2008). "If, however, the instructions are "ambiguous, misleading or confusing" to jurors, those instructions will result in reversal and a remand for a new trial." *Id*. To determine whether the law is fairly covered by the instructions, the instructions must be read in context and considered as a whole. *Id*.

The State argues that, taken together, the instructions fairly cover the issue of knowledge. The State notes that knowledge elements were explicitly included in two of the jury instructions: Count 5) failure to immediately stop vehicle at scene of accident involving death, knowing; and Count 7) failure to immediately return and remain at scene

of accident involving death, knowing. This language, notes the State, mirrors that of the statute's penalty provisions, and is enough to fairly cover any knowledge element.

Mr. Mueller disagrees, insisting that the instructions for Counts 5 and 7 covered "only one knowledge element: that the State prove beyond a reasonable doubt that [Mr. Mueller] knew or reasonably should have known of death" and omitted that the State must prove that Mr. Mueller "knew or reasonably should have known of the underlying accident."

TR § 20-102(b)

We agree that the instructions given by the court were sufficient to cover the knowledge element for the convictions under TR § 20–102(b), relating to an accident resulting in death. We start by acknowledging that TR § 20–102(c)(3) contains enhanced penalty provisions incorporating knowledge elements that did not exist at the time *Comstock* was decided in 1990. The penalties were created by the legislature in 2002, *see* 2002 Md. Laws, ch. 461 (S.B. 345), and provide that:

> (i) A person who violates this section and *who knew or reasonably should have known* that the accident might result in serious bodily injury to another person and serious bodily injury actually occurred to another person, is guilty of a felony and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding $5,000 or both.
>
> (ii) A person who violates this section and who *knew or reasonably should have known* that the accident might result in the death of another person and death actually occurred to another person, is guilty of a felony and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding $10,000 or both.

TR § 20–102(c)(3)(i)-(ii) (emphasis added).[9]

The instructions for Counts 5 and 7, relating to accidents resulting in death, echoed exactly the language of § 20–102(c)(3)(ii). The trial court instructed that, to convict Mr. Mueller of failure to stop at the scene of an accident resulting in death, the State must prove that Mr. Mueller "failed to stop his vehicle as close as possible to the scene; that the defendant knew or reasonably should have known that the accident might result in the death of another person; and that death actually occurred to another person." For failure to return and remain at the scene of an accident resulting in death, the court required that the State prove that Mr. Mueller "failed to return and remain at the scene of an accident until the driver had complied with Maryland Transportation Article 20-104; that the defendant knew or reasonably should have known that the accident might result in the death of another person; and that the death actually occurred to another person."

Although Mr. Mueller's requested instructions are a correct statement of law under *Comstock*, the language used in jury instructions must not necessarily replicate the language found in appellate decisions, as long as the jury is instructed correctly and fairly. *Acquah v. State*, 113 Md. App. 29, 55 (1996). To determine whether the instruction that was given fairly covers knowledge of both the underlying accident and death, it is instructive to look more closely at the language of § 20–102(c)(3)(ii).

[9] These penalty provisions were originally codified at TR §§ 27-113 and 27-101(o). 2002 Md. Laws, ch. 461 (S.B. 345). In 2017, the legislature consolidated and re-codified the penalty provisions in TR § 20–102(c) without substantive change. 2017 Md. Laws, ch. 55 (S.B. 165).

When we interpret statutes, the "cardinal rule . . . is to ascertain and effectuate the legislative intention." *Privette v. State*, 320 Md. 738, 744 (1990). "The language of the statute itself is the primary source of this intent; and the words used are to be given 'their ordinary and popularly understood meaning, absent a manifest contrary legislative intention.'" *Id*. Thus, "where the language of the statute is free from ambiguity, courts may not disregard the natural import of the words used in order to extend or limit its meaning." *Id*. at 745. If the language is unclear or subject to multiple interpretations, we try "to resolve that ambiguity by looking to the statute's legislative history, case law, and statutory purpose, as well as the structure of the statute." *State v. Neiswanger Mgmt. Servs., LLC*, 457 Md. 441, 459 (2018) (quoting *State v. Ray*, 429 Md. 566, 576 (2012)) "The interpretation must be reasonable, not 'absurd, illogical, or incompatible with common sense.'" *Id*.

The purpose of the penalty provisions in TR § 20–102(c) was to create

> …felonies for a person involved in a vehicular accident who leaves the scene of the accident ("hit and run") and who knew or reasonably should have known that the accident might result in 1) serious bodily injury to another person, and serious bodily injury actually occurred to another person; and (2) the death of another person, and death actually occurred to another person.

Maryland Fiscal Note, 2002 Sess. H.B. 256.

Based on the language of the statute and its stated purpose, to argue that the language under § 20–102(c)(3)(ii) requires only that the State prove beyond a reasonable doubt that the defendant knew or should have known of death resulting from an accident is an illogical interpretation of the statute. On its face, the language "who knew or reasonably should have known that the accident might result in the death of another person" suggests both

that (1) the person knew or should have known of the accident and (2) the person knew or should have known that the accident might result in death. A person cannot know that an accident might result in the death if that person does not first know about the accident. We therefore hold that the jury instructions taken directly from the language of § 20–102(c)(3)(ii) were sufficient to fairly cover the relevant law, including the mens rea requirements laid out in *Comstock*.

TR § 20–102(a)

We do not agree that the requisite knowledge element was included in Counts 9 and 10, relating to TR § 20–102(a). When instructing the jury as to these offenses, the court stated that Mr. Mueller could be convicted of failing to stop at a scene of an accident resulting in bodily injury if the State proved that he "failed to stop his vehicle as close as possible to the scene of the accident; and that the accident resulted in bodily injury of another person." The court further stated that to convict Mr. Mueller of failing to return and remain at the scene of an accident resulting in bodily injury, the State was required to prove that Mr. Mueller "failed to return and remain at the scene of the accident until the driver had complied with Maryland Transportation Article 20-104; and that the accident resulted in bodily injury of another person."

As explained above, although there remains no statutory scienter requirement for accidents resulting in non-serious bodily injury, Maryland courts continue to apply the mens rea requirements elucidated in *Comstock* when determining whether a person is guilty of any § 20–102 offense. *See DeHogue*, 190 Md. App. at 550. Again, any jury instructions omitting these elements misstate applicable law. *See Steward*, 218 Md. at 567; *see also*

Nottingham v. State, 227 Md. App. at 604, 607. It is clear that the jury instructions given on Counts 9 and 10 did not contain any scienter requirements, and that those given in Counts 5 and 7 relate to a separate offense. Accordingly, we hold that the jury instructions as to Counts 9 and 10 failed to fairly cover the law, and the trial court therefore erred when it failed to include any scienter or knowledge requirements in the instructions for these counts. Given this holding, we now consider whether this error was harmless.

II.

Harmless Error

Mr. Mueller insists that the incorrect jury instructions are not harmless error, because the State did not establish overwhelming evidence of Mr. Mueller's knowledge of the underlying accident and injury and/or death. He agrees, however, that, if a court concludes beyond a reasonable doubt that an element omitted from a jury instruction was supported by overwhelming evidence, such that the jury verdict would have been the same without the error, then the erroneous instruction is harmless.

Mr. Mueller argues that, here, the State did not produce overwhelming evidence of his knowledge of the accident and the injury or death. For example, he contends, the State provided no direct evidence and no statements from Mr. Mueller about his knowledge of the accident. Further, he claims that there is insufficient circumstantial evidence of Mr. Mueller's knowledge, and, pointing to the many police procedural failures in the investigation, maintains that what evidence exists comes from MSP members who lack credibility and offered inconsistent testimony.

The State responds that, to the extent that the trial court abused its discretion, any error was harmless because, clearly, the jury's guilty verdicts on Counts 5 (failure to stop, knowing) and 7 (failure to return and remain at the scene, knowing) indicated that they found Mr. Mueller to have requisite knowledge to be convicted under the statute. Further, avers the State, the evidence was overwhelming that Mr. Mueller had knowledge of the accident and resulting injuries. In support of this argument, the State cites evidence adduced at trial, including evidence indicating that Mr. Mueller was driving the Pathfinder that collided with the victims' Miata; expert testimony on how Guerreiro was killed; the marks on Mr. Mueller's body from the airbags; Mr. Mueller's presumed actions after the collision; and his flight from Corporal Tribue. The State purports that where conditions are such that the driver should have known that an accident occurred, or should have reasonably anticipated that the accident resulted in injury to a person, the requisite proof of knowledge is present. Here, concludes the State, based on the evidence, a contrary finding could not be made with respect to the omitted knowledge element.

As stated above, the omission of an element of an offense from a jury instruction is subject to harmless error review. *Nottingham*, 227 Md. App. at 610. Harmless error review is "the standard of review most favorable to the defendant short of an automatic reversal." *Porter v. State*, 455 Md. 220, 234 (2017) (quoting *Bellamy v. State*, 403 Md. 308, 333 (2008)). When a trial court errs in a criminal case, we must reverse "unless the error did not influence the verdict." *Id.* An error does not contribute to a verdict when the error is "unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record." *Id*. In other words, if "'a reviewing court concludes beyond a

reasonable doubt that the omitted element was uncontested and supported by overwhelming evidence, such that the jury verdict would have been the same absent the error, the erroneous instruction is properly found to be harmless.'" *Nottingham*, 227 Md. App. at 611 (quoting *Neder v. United States*, 527 U.S. 1, 17 (1999)). The State carries the burden of proving beyond a reasonable doubt that the error is harmless. *Porter*, 455 Md. at 234.

In *Nottingham v. State*, the defendant got into a fist fight with his friend, Mr. Post, that ended when he punched Mr. Post and Mr. Post sustained fatal head injuries. 227 Md. App. at. 598. The fight began inside a bar, but the fatal blow was struck by the defendant outside the bar without anyone else present. *Id*. at 599-601. The defendant was charged with involuntary manslaughter, assault in the second degree, reckless endangerment, intoxication, and affray. *Id*. At trial, he was convicted of all charges except intoxication. *Id*. at 598, 601.

On appeal, the defendant argued that the jury instruction for the crime of affray was incorrect because it omitted an element of the crime, "namely, that to convict a defendant of affray, the State must prove that the fighting was 'to the terror of the people.'" *Id*. at 602. This Court agreed with the defendant that the trial court erred because, by omitting the "terror of the people" element, the instruction was an incorrect statement of law. *Id*.

In applying harmless error analysis to the defendant's conviction for affray, we reasoned that the State "was required to show that Nottingham engaged in affray, that is, 'the fighting together of two or more persons, either by mutual consent or otherwise, in some public place, to the terror of the people.'" *Id*. at 611. This Court held that "the part

of the fighting when the fatal blow was struck occurred outside, in the winter, at an early morning hour." *Id*. We reasoned that, although some of the fighting occurred inside the bar around other persons, and there was sufficient evidence to establish that the acts could have "struck terror" in anyone, we "[could not] say "that this evidence was "overwhelming," or that "no rational jury could have concluded otherwise." *Id*. at 611-612 (internal citations omitted). This Court therefore vacated the defendant's affray conviction, but did not disturb the other three convictions, because "terror to the people" was not an element of either reckless endangerment or second-degree assault, and the conviction for involuntary manslaughter could have been based on any of the three other offenses. *Id*.

The case at bar is distinguishable from *Nottingham v. State*. While we have established that the trial court erred in omitting the knowledge instructions from the jury instructions for Counts 9 and 10, in this case, we hold that the error is harmless. Here, the State was required to show that Mr. Mueller failed to stop and remain at the scene of the accident resulting in bodily injury, TR § 20–102(a), and that Mr. Mueller knew about both the underlying accident and injury. *Comstock*, 82 Md. App. at 748. Unlike in *Nottingham*, in this case, knowledge of the underlying accident and death was an element of another charged offense. Based on the adequate instructions provided for the TR § 20–102(b) offenses, it is clear that the jury determined that Mr. Mueller possessed the requisite knowledge of the accident and resulting death to convict him under § 20–102(b)—a greater offense and subject to greater penalty than one under TR § 20–102(a). *See* TR § 20–102(c)(3)(i)-(ii).

In this case, unlike the offenses in *Nottingham*, the evidence supporting a conviction under TR § 20–102(a) would be nearly identical to the evidence supporting a conviction under TR § 20–102(b). Both Guerreiro's death and Eades's injuries were caused by the same accident. If the jury determined that, based on "an examination of the circumstances of the event that a defendant knew that an accident occurred," *Comstock*, 82 Md. App. at 757, this determination applies to the TR § 20–102(a) offenses quite as much as it applies to those under TR § 20–102(b).

This analysis finds support in *DeHogue v. State*, in which the defendant was making a left turn when she hit a woman and a stroller. 190 Md. App. at 538. The woman was injured and the stroller contained a young child, who later died from his injuries. *Id*. at 536-537. The defendant was later convicted under TR § 20-102(a) and (b) of "'Driver to remain at scene—Accident resulting in Bodily Injury" (TRANSP. § 20–102(a))…'Driver to remain at scene—Accident resulting in Death' (TRANSP. § 20–102(b)),…'Driver to Remain at Scene' (TRANSP. § 27–113(b)), and… 'Driver to Remain at Scene' (TRANSP. § 27–113(c))." *Id*. at 550.

The defendant was aware of both an accident and bodily injury caused to the woman. *Id*. at 548, 551. The defendant, however, claimed to be unaware that the stroller contained a young child. *Id*. at 551. The defendant argued that there was therefore insufficient evidence to convict her under TR 20-102(b) for failure to remain at the scene of the accident resulting in death. *Id*. The Court ultimately disagreed with this argument, explaining that, because the defendant "had actual knowledge that she had hit [the woman]," a "rational trier of fact could have found beyond a reasonable doubt that

appellant knew or should have known that death or serious bodily injury was the foreseeable result of hitting a person with her large truck." *Id.* Further, the Court explained, the evidence "clearly demonstrates that serious bodily injury actually occurred to [the woman], and death occurred to [the child], as a result of the defendant's actions." *Id*. The Court concluded that the evidence was therefore sufficient to convict the defendant of all the TR § 20-012 offenses, because her "failure to remain at the scene of the accident when she knew or should have known that a serious bodily injury or death had occurred was sufficient to support the convictions for failure to remain at the scene of an accident." *Id*.

Similarly, in the case at bar, if, in relation to Guerreiro's death, the jury determined that Mr. Mueller either knew or should have known that the "conditions [were] such that the driver…should have reasonably anticipated that the accident resulted in" death, *DeHogue*, 190 Md. App. at 550, then, a fortiori, the jury also determined that Mr. Mueller either knew or should have known that the accident was serious enough to cause injury to Eades. We are offered overwhelming evidence that the Pathfinder was the vehicle that crashed into the Miata: there was damage to both vehicles consistent with a crash; the trajectory of the Pathfinder indicated that it hit the Miata while it was on the shoulder of the road and then travelled on from there; and damage to the Pathfinder and evidence from the surrounding area indicate that the Pathfinder struck Guerreiro and dragged the Miata over him. To the extent that there was evidence that Mr. Mueller may have been impaired from drinking alcohol or may have suffered a head injury, the jury weighed that evidence

and decided that Mr. Mueller possessed the requisite knowledge of the accident and resulting death to convict him under § 20–102(b).

Further, the evidence linking Mr. Mueller to the scene of the crime was abundant: his address matched the address to which the Pathfinder's registration was linked; he was near the crash site shortly after the accident occurred; he had injuries possibly consistent with a serious car accident; DNA evidence could not rule him out as a suspect; and he ran from Corporal Tribue.

Because the jury concluded that the above evidence was sufficient to convict Mr. Mueller of failing to stop and remain at the scene of an accident resulting in death, and the same evidence would support the conviction for failing to stop and remain at the scene of the same accident resulting in bodily injury, we determine that the omission of the knowledge elements from the instructions for Counts 9 and 10 was harmless. Therefore, we conclude that the omission does not constitute reversible error. *See Lucas v. State*, 116 Md. App. 559, 565-566 (1997) (holding that the trial court's failure to instruct the jury that appellant had to know that he possessed an illicit substance in order to be convicted of drug possession was harmless error because appellant was at the scene to purchase cocaine and knew that it was on his hands); *see also Heckstall v. State*, 120 Md. App. 621, 628-629 (1998) (holding that the trial court's failure to include a "knowledge" element in their supplemental instruction on possession was harmless error because, on the evidence, the jury could not have come to any conclusion other than that appellant was aware of the character and illicit nature of the substances being sold).

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.