

## Ask the Lawyer: What if a Driver Flees the Scene of an Accident?

By Mathew Tully

Q. Are there any circumstances where a driver could flee from the scene of an accident and not get in trouble?

A.

Fleeing the scene of an accident usually involves a split-second decision where a driver's fear of getting caught colludes with the belief that he or she can get away with it. There may be circumstances where a hit-and-run accident will not rise to the level of violating Article 134 of the Uniform Code of Military Justice. However, there are several factors drivers must weigh to determine whether they would be criminally liable for leaving the scene of an accident. That is a lot of information to process in a split second. Therefore, it is inadvisable to leave the scene of an accident.

According to the Manual for Courts-Martial, to commit the offense of fleeing the scene of an accident, a service member must be the driver of a vehicle involved in an accident. The driver must know he or she was involved in the accident and he or she must wrongfully leave the scene without assisting injured people or providing identifying information. Lastly, the fleeing must be prejudicial to good order and discipline or of a nature to bring discredit on the armed forces.

This offense is primarily concerned with property other than the driver's vehicle and injuries to third parties rather than the driver and his passenger. The case of *U.S. v. Littleton* (NMCCA, 2004) involved a Marine Corps private first class who pleaded guilty to, among other things, fleeing the scene of an accident. The Marine, who lacked a valid license and was drunk, got into an accident while operating a borrowed car. He was speeding and being chased by police when he failed to negotiate a turn and hit a curb. With his car damaged, he fled on foot. The Navy-Marine Corps Court of Criminal Appeals found the Marine's guilty plea to be improvident because this hit-and-run incident did not involve the injury of anyone other than the driver or a passenger in his vehicle or cause damage to any property other than his own vehicle. Consequently, the court set aside and dismissed the guilty finding to the fleeing the scene charge.

Causing actual damage or injury is another important component to this Article 134 offense. For example, *U.S. v. Holbrook* (CGCCA, 2007) involved a Coast Guard Seaman who bumped into the vehicle in front of his own. The two vehicles were stopped at a stop light when the Seaman's foot slipped off the brake, causing his vehicle to hit the other vehicle's rear at a speed of one mile per hour. The Seaman then backed up and, not seeing any damage to the other vehicle, drove away. He later crashed into a house while attempting to flee. He later

pleaded guilty to, among other things, fleeing the scene of an accident. The Coast Guard Court of Criminal Appeals found this guilty plea to be improvident because there was no indication the other vehicle had been injured in the bumping incident. The court set aside the guilty finding for this charge.

Service members who have been charged with fleeing the scene of an accident should immediately consult with a military law attorney. Depending on the circumstances, a lawyer could show that the government failed to prove the driver knew an accident had occurred, that no damage occurred other than to the drivers vehicle, or that only the driver and/or a passenger in his vehicle was injured in the accident.