

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL
ALLEN BLUMENTHAL, No. 110243
180 Howard Street
San Francisco, California 94105-1639
Telephone: (415) 538-2000

FILED
MAY 18 2017
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

IN THE STATE BAR COURT OF THE STATE BAR OF CALIFORNIA

IN THE MATTER OF THE) Case No. 16-C-11372
CONVICTION OF:)
)
) Transmittal of Records of Conviction of Attorney (Bus. & Prof.
MICHAEL RICHARDS,) Code §§ 6101-6102; Cal. Rules of Court, rule 9.5 et seq.)
No. 229790,)
)
) [] Felony;
) [X] Crime(s) involved moral turpitude;
A Member of the State Bar.) [] Probable cause to believe the crime(s) involved moral
) turpitude;
) [X] Crime(s) which may or may not involve moral turpitude or
) other misconduct warranting discipline;
_____) [X] Transmittal of Notice of Finality of Conviction.

To the CLERK OF THE STATE BAR COURT:

1. Transmittal of records.

- [] A. Pursuant to the provisions of Business and Professions Code, section 6101-6102 and California Rules of Court, rule 9.5 et seq., the Office of Chief Trial Counsel transmits a certified copy of the record of convictions of the following member of the State Bar and for such consideration and action as the Court deems appropriate:
- [] B. Notice of Appeal
- [X] C. Evidence of Finality of Conviction (Notice of Lack of Appeal)
- [] D. Other

Name of Member: Michael Richards

Date member admitted to practice law in California: January 6, 2004

Member's Address of Record: Michael Richards

825 Pelton Avenue

Santa Cruz, CA 95060-6409

kwiktag® 211 099 998



2. Date and court of conviction; offense(s).

The record of conviction reflects that the above-named member of the State Bar was convicted as follows:

Date of entry of conviction: January 28, 2016

Convicting court: Santa Cruz Superior Court

Case number(s): 16CR00539

Crime(s) of which convicted and classification(s): Vehicle Code section 20002(a) [Hit and Run Property Damage], one count, a misdemeanor that involves moral turpitude per se.

The State Bar submits that a conviction for violating Vehicle Code section 20002(a) [hit and run] is a conviction involving moral turpitude or dishonesty per se. The State Bar recognizes that in an unpublished Opinion this Court found that hit and run does not inherently involve moral turpitude, but the State Bar asks this Court to reconsider its conclusion in light of the authorities and arguments presented below.

Whether an offense necessarily involves moral turpitude is a question of law. (*In re Lesansky* (2001) 25 Cal.4th 11, 16.) An offense necessarily involves moral turpitude if the conviction would in every case evidence bad moral character. (*Lesansky, supra*, 25 Cal.4th at 16, citing *In re Hallinan* (1954) 43 Cal.2d 243, 249.) However, the ability to imagine a set of facts that do not involve moral turpitude is not the measure of moral turpitude. All that is required is that the elements of the offense without regard to the particular facts can reasonably infer the presence of moral turpitude. (*People v. Bautista* (1990) 217 Cal.App.3d 1, 7.)

For example, in *In re Grant* (2014) 58 Cal.4th 469, the attorney posited two scenarios where his conviction for the possession of child pornography would not constitute moral turpitude. The Supreme Court rejected those scenarios as a basis for not finding moral turpitude and found that despite those possible scenarios the conviction involved moral turpitude per se. In one of the scenarios, the court noted that the hearing department found not credible Grant's claim that he immediately destroyed the pictures. The court also rejected the contention that an innocent person could be convicted of possessing child pornography, i.e. by immediately destroying the pictures, as unfounded and inconsistent with Grant's plea. In the other scenario, Grant contended that the individual could be convicted even though the possession of the pictures could be of a person on the cusp of majority and, therefore, not patently offensive, just unlawful. The Court rejected this scenario as indicating that the crime was not moral turpitude per se because the Legislature had determined that pornography is linked to child abuse whether it involves a child aged 11 or 17.

Moral turpitude as used in Business and Professions Code section 6102 does not encompass all acts that might be understood to violate societal precepts of morality. Rather, "[a]s applied to licensing attorneys, an act of moral turpitude is one which bears a direct relationship to the individual's fitness to practice law. It must reflect on the individual's honesty and veracity or demonstrate that the individual is unfit for the proper discharge of the individual's duties as an attorney." (*In re Johnson* (1992) 1 Cal.4th 689, 698-699.) Thus, "[c]riminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession." (*In re Lesansky, supra*, (25 Cal.4th at 16.)

A conviction for violating Vehicle Code section 20002(a) [hit and run] inherently involves dishonesty or fraud and, as such constitutes moral turpitude per se. It is also a serious breach of the duties a person owes to others and a flagrant disrespect for the law and societal norms. (See *In re Grant, supra*, 58 Cal.4th at 480-481; *People v. Valdez* (2010) 189 Cal.App.4th 82, 86-7.)

Although violations of Vehicle Code sections 20002 or 20001 are popularly denominated “hit-and-run,” violations the act made criminal is more accurately described as fleeing the scene of an injury accident. (*People v. Valdez, supra*, 189 Cal.App.4th at 84 and 86-87.) That is, the act made criminal is not the “hitting” but the “running.” (*People v. Valdez, supra*, 189 Cal.App.4th at 86; *People v. Carbajal* (1995) 10 Cal.4th 1114, 1124.)

In order to be convicted of a violation of Vehicle Code section 20002 [hit and run] a defendant must 1) have at least constructive knowledge that he or she was involved in an accident that caused property damage; and 2) failed to provide the owners of the property with the information they need to pursue their civil remedies. (*People v. Carbajal, supra*, 10 Cal.4th at 1124.)

Vehicle Code section 20002 [hit and run] is designed to prevent the driver of a vehicle involved in an accident from leaving the scene *without furnishing information as to his or her identity and to prevent him or her from escaping liability*. That is, the purpose of Vehicle Code section 20002 is to provide the owners of property damaged in traffic accidents with the information they need to pursue their civil remedies. (*People v. Carbajal, supra*, 10 Cal.4th at 1124; see also *People v. Bautista, supra*, 217 Cal.App.3d at 7.) Thus, the legislative purpose of Vehicle Code section 20002 is to prevent the driver involved in an injury-causing accident from attempting to avoid possible civil or criminal liability for the accident by failing to identify oneself. (*People v. Carbajal, supra*, 10 Cal.4th at 1124.)

Leaving the scene of an accident without providing identification information is an act which reflects adversely on one’s honesty and integrity and, thus, involves moral turpitude per se. This is because one who leaves the scene of an accident without providing the required information is fraudulently attempting to escape liability, i.e. seeking to evade civil or criminal prosecution by concealing one’s identity. (See *People v. Bautista, supra*, 217 Cal.App.3d at 7; *Frederickson v. Superior Court* (Ariz. 1996) 928 P.2d 697; *Cambas v. Dept. of Business and Professional Regulation* (Fla. 2009) 6 So.3d 668, 670-671. See also *State v. Horton* (S.C. 1978) 248 S.E.2d 263, 263-264 [one who leaves the scene of an accident is fraudulently attempting to relieve himself of any liability]; *Oklahoma Bar Association v. Rogers* (Okla. 2006) 142 P.3d 428, 434 [under the circumstances of this case an attorney’s conduct in leaving the scene of an accident found to be an act of dishonesty because his actions demonstrate an attempt to evade a DUI arrest].)

In *People v. Bautista, supra*, 217 Cal.App.3d at 7, the California Court of Appeals found that leaving the scene of an accident was a crime of moral turpitude because it more likely involves an evil intent. (See also *People v. Dewey* (1996) 42 Cal.App.4th 216, 221-222 [fleeing or attempting to elude a police officer by driving in willful or wanton disregard for the safety of others or property involves moral turpitude as supported by fact that it always involves an attempt to evade.]

In contrast, the Ninth Circuit Court of Appeals has found otherwise. It concluded that the plain language of Vehicle Code section 20001, could be violated by mere negligence in failing to exhibit his or her driver’s license. Even if improbable, the person would be convicted for mere negligence. (*Cerezo v. Mukasey* (9th Cir. 2008) 512 Fed.3d 1163.). The District of Columbia Court of Appeals has found that under the record before it a felony hit and run was a crime of moral turpitude and disciplined an attorney accordingly. (*In re Tidwell* (D.C. 2003) 831 A.2d 953, distinguishing *In re Reynolds* (D.C. 2000) 763 A.2d 713 [misdemeanor for hit and run, not moral turpitude per se].)

The State Bar submits that the court in *People v. Bautista* and those cases that have made similar findings have the correct and better interpretation of whether a hit and run is an act of moral turpitude for State Bar purposes. As the court stated in *People v. Bautista, supra*, 217 Cal.App.3d at 7, "At the very least then, a person convicted of violating section 20001 has exhibited an intent and purpose of concealing his identity and also his involvement in an injury-accident. One can certainly infer that such a mental state indicates a "general readiness to do evil or moral turpitude." While respondent's conviction is for Vehicle Code section 20002 because it only involved property damage, it still is an attempt to evade detection and civil liability.

Moreover, the California Supreme Court and this Court have found that similar violations involve moral turpitude. (See *In re Young* (1989) 49 Cal.3d 257 [accessory to a felony to impede justice is moral turpitude per se]; *In re Lindgren* (1979) 25 Cal.3d 65 [accessory after the fact to an obstruction of a criminal investigation is moral turpitude per se]; *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767, 776 [aiding and abetting a client to evade a court order for support constituted moral turpitude]; *the Matter of Petila* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231 [an attempt to escape civil liability by borrowing money without the intent to repay is moral turpitude]. However, see *Navarro-Lopez v. Gonzalez* (9th Cir. 503 Fed.3d 1063 [conviction for accessory after the fact was not offense necessarily involving base, vile or depraved conduct, nor an offense necessarily contradicting moral standards, and thus did not qualify on that basis as crime of moral turpitude under Immigration and Nationality Act]).

A hit and run is a serious breach of the duties a person owes to others and a flagrant disrespect for the law and societal norms. (See *In re Grant, supra*, 58 Cal.4th at 480-481.) By leaving the scene without providing identification respondent causes significant harm. (See *People v. Carbajal, supra*, 10 Cal.4th at 1124 [by leaving the scene of an accident, the fleeing driver at the very least deprives the person who does not flee of his or her right to have responsibility for the accident adjudicated in an orderly way according to the rules of law. This commonly entails a real economic loss, not just an abstract affront. It imposes upon the non-fleeing person the additional costs of locating the fleeing driver and, in some cases, the total costs of the accident. It also imposes upon every law-abiding driver increased insurance premiums].)

Even if this Court finds that a violation of Penal Code section 20002 is not moral turpitude per se, it is "more likely that one who is involved in an injury-accident and leaves the scene before giving the required identifying information is seeking to evade civil or criminal prosecution." (*People v. Bautista, supra*, 217 Cal.App.3d at 7.) Thus, there is probable cause to believe that respondent's conviction involved moral turpitude and, therefore, this Court should place respondent on interim suspension. (Business & Professions Code section 6102(a).)

3. Compliance with Rule 9.20. (Applicable only if checked.)

We bring to the Court's attention that, should the Court enter an order of interim suspension herein, the Court may wish to require the above-named member to comply with the provisions of rule 9.20, California Rules of Court, paragraph (a), within 30 days of the effective date of any such order; and to file the affidavit with the Clerk of the State Bar Court provided for in paragraph (c) of rule 9.20 within 40 days of the effective date of said order, showing the member's compliance with the provisions of rule 9.20.

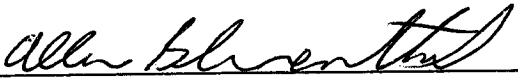
4. Other information to assist the State Bar Court

DOCUMENTS TRANSMITTED:

Complaint filed 1/27/16
Minute Order dated 1/28/16
Probation/Conditional Sentence Order dated 2/29/16
Notice Of Lack Of Appeal dated 6/28/16

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: May 18, 2017

BY: 
Allen Blumenthal
Senior Trial Counsel

A copy of this transmittal and its
Attachments have been sent to:

Michael Richards
825 Pelton Avenue
Santa Cruz, CA 95060-6409

DECLARATION OF SERVICE BY CERTIFIED MAIL

CASE NUMBER: 16-C-11371

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of San Francisco, on the date shown below, a true copy of the within

TRANSMITTAL OF RECORDS OF CONVICTION OF ATTORNEY, including:

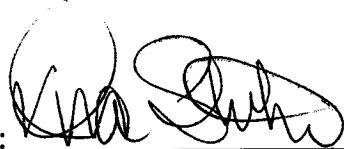
Complaint filed 1/27/16
Minute Order dated 1/28/16
Probation/Conditional Sentence Order dated 2/29/16
Notice Of Lack Of Appeal dated 6/28/16

in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 9414 7266 9904 2069 9458 60, at San Francisco, on the date shown below, addressed to:

Michael Richards
825 Pelton Avenue
Santa Cruz, CA 95060-6409

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California, on the date shown below.

DATED: May 18, 2017

Signed: 

Ina M. Strehle
Declarant