

Circuit Court for Prince George's County  
Case No. CT160972X

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1405

September Term, 2017

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MAURICE JOHNSON

v.

STATE OF MARYLAND

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Woodward, C.J.,  
Kehoe,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: June 14, 2018

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury, in the Circuit Court for Prince George’s County, convicted Maurice Johnson, appellant, of second-degree assault and reckless endangerment. Johnson was sentenced to a total term of ten years’ imprisonment, with all but 5 years suspended. In this appeal, Johnson presents the following question for our review: “Did the trial court err in giving a flight instruction to the jury?” For reasons to follow, we answer Johnson’s question in the negative and affirm the judgments of the circuit court.

Johnson was arrested and charged following an altercation with an individual, Antwone Glover. At trial, Glover testified that, on the night of the altercation, he was at his home with his fiancée and his fiancée’s daughter, whom Johnson was dating at the time. At one point during the evening, Glover looked out his bedroom window and saw Johnson arguing with someone. A short time later, Johnson entered Glover’s home and “kicked the bedroom door in.” Glover and Johnson then “got to tussling.” The altercation eventually “led outside,” at which point Johnson “pulled out a gun.” Glover tried to run away, but Johnson tripped him and struck him on the head with the gun. Glover then “heard two shots” and was struck by a bullet in the wrist and upper arm. According to Glover, Johnson then “ran off” while Glover “ran another way . . . to get help.”

Johnson also testified. He explained that he and Glover did get into a fight and that Glover struck him in the head several times with a metal object. Johnson also claimed that Glover was the one who brandished a gun, which he ultimately fired at Johnson. According to Johnson, he then ran away, flagged down a passing ambulance, and was taken to the hospital for treatment, where he was arrested.

At the close of all evidence, the trial court, over objection, gave the following instruction to the jury:

Now, a person’s flight immediately after the commission of a crime or after being accused of committing a crime is not enough by itself to establish guilt, but it is a fact that may be considered by you as evidence of guilt. Flight under these circumstances may be motivated by a variety of factors, some of which are fully consistent with innocence. You must first decide whether there is evidence of flight. If you decide there is evidence of flight, you must then decide whether this flight shows a consciousness of guilt.

In this appeal, Johnson argues that the trial court erred in giving the above instruction. Johnson avers that there was not sufficient evidence to support an inference that his behavior on the night of the shooting constituted flight or consciousness of guilt. We disagree.

Generally, a trial court is required to give a requested jury instruction if, among other things, the instruction is applicable under the facts of the case. *Page v. State*, 222 Md. App. 648, 668 (2015), *cert. denied*, 445 Md. 6; *See also* Md. Rule 4-325(c). In determining whether a requested instruction is applicable under the facts of a case, we look to whether the requesting party “produced the minimum threshold of evidence necessary to establish a *prima facie* case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired.” *Bazzle v. State*, 426 Md. 541, 550 (2012) (citations omitted). “This threshold is low, in that the requesting party must only produce ‘some evidence’ to support the requested instruction.” *Page*, 222 Md. App. at 668. Moreover, “we view the facts in the light most favorable to the requesting party, here being the State.” *Id.* at 669. Although we review a trial court’s decision to give a jury instruction under the abuse of discretion standard, the court’s preliminary

determination as to whether the evidence supports a particular instruction “is a question of law for the judge[.]” *Bazzle*, 426 Md. at 550 (citations omitted); *Hallowell v. State*, 235 Md. App. 484, 510 (2018) (“We review a trial court’s decision whether to give a flight instruction for abuse of discretion.”).

“Under ‘appropriate circumstances where the evidence supports an inference of consciousness of guilt,’ a trial court may give a flight instruction to a jury in a criminal case.” *Hallowell*, 235 Md. App. at 510 (citations omitted). For a flight instruction to be appropriate, however

four inferences must reasonably be able to be drawn from the facts of the case as ultimately tried: that the behavior of the defendant suggests flight; that the flight suggests a consciousness of guilt; that the consciousness of guilt is related to the crime charged or a closely related crime; and that the consciousness of guilt of the crime charged suggests actual guilt of the crime charged or a closely related crime.

*Thompson v. State*, 393 Md. 291, 312 (2006) (citations omitted).

“As to the first inference, ‘[f]light is defined as an act or instance of fleeing, esp. to evade arrest or prosecution . . . [a]lso termed *flight from prosecution*; *flee from justice*.’” *Page*, 222 Md. App. at 669 (citations omitted) (emphasis in original). “As to the second inference, the movement also ‘must reasonably justify an inference that it was done with a consciousness of guilt and pursuant to an effort to avoid apprehension or prosecution based on that guilt.’” *Id.* (citations omitted). “‘At its most basic, evidence of flight is defined by two factors: first, that the defendant has moved from one location to another; second, some additional proof to suggest that this movement is not simply normal human locomotion.’” *Hoerauf v. State*, 178 Md. App. 292, 323 (2008) (citations omitted).

Moreover, “there is a distinction between mere departure from the crime scene and actual flight.” *Page*, 222 Md. App. at 669. In other words, departure from the scene of a crime, “without any attendant circumstances that reasonably justify an inference that the leaving was done with a consciousness of guilt and pursuant to an effort to avoid apprehension or prosecution based on that guilt, does not constitute ‘flight,’ and thus does not warrant the giving of a flight instruction.” *Hoerauf*, 178 Md. App. at 325-26. As we explained in *Hoerauf*:

In the context of leaving the scene of a crime, the classic case of flight is whether a defendant leaves the scene shortly after the crime is committed and is running, rather than walking, or is driving a speeding motor vehicle. On the other hand, merely walking away from the scene of a crime ordinarily does not constitute flight.

*Id.* at 324.

Here, we are persuaded that the trial court did not err in giving a flight instruction. The victim, Antwone Glover, testified that Johnson shot him and then “ran off.” Viewing that testimony in a light most favorable to the State, a reasonable inference can be drawn that Johnson fled the scene of the crime with a consciousness of guilt and pursuant to an effort to avoid apprehension or prosecution. *See Page*, 222 Md. App. at 670 (flight instruction was appropriate where the defendant “ran, not walked, away immediately after the shooting.”); *Compare to State v. Shim*, 418 Md. 37, 59 (2011)<sup>1</sup> (flight instruction was inappropriate where the evidence showed only that the defendant “left” the scene of a crime and there was no evidence that he “fled.”); *Hoerauf*, 178 Md. App. at 326 (flight instruction

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<sup>1</sup> Abrogated on other grounds by *Pearson v. State*, 437 Md. 350 (2014).

was inappropriate where the defendant “simply walked away from the scene of the crime with the group of individuals who had just perpetrated the [crimes].”). Moreover, given that the shooting occurred outside of Glover’s home and with other individuals present, it is reasonable to assume that the police would have responded to the scene shortly after the shooting. *See Page*, 222 Md. App. at 670 (“[A]lthough the police had not arrived when [the defendant] began running away, it would be fair to presume that authorities would be arriving to the scene shortly, given the number of gunshots fired in a public place.”). In short, Glover’s testimony that Johnson shot him and then ran away was, under the circumstances, sufficient to support the trial court’s giving of a flight instruction. That Johnson provided conflicting testimony as to why he left the scene is immaterial. *See Bazzle*, 426 Md. at 552 (noting that, in evaluating whether there is “some evidence” to support an instruction, “[i]t is of no matter that the [requesting party’s claim] is overwhelmed by evidence to the contrary.”) (citations omitted).

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