UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1779

September Term, 2015

SHARNIELI NATHANIEL BINGHAM

v.

STATE OF MARYLAND

Krauser, C.J.,
Woodward,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: September 13, 2016

*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 Anne Arundel County convicted Sharnieli Nathaniel Bingham ("Bingham") of second-degree assault. The court thereafter imposed a sentence of six years incarceration. In this timely appeal, Bingham raises the following question:

Did the trial court commit reversible error by giving a flight instruction?

We shall answer that question in the negative and affirm Bingham's conviction.

I.

EVIDENCE INTRODUCED AT TRIAL[1]

In August 2014, Bingham and Dabo Hayghe ("Ms. Hayghe") were in an on and off romantic relationship. On the evening of August 22, 2014, Ms. Hayghe went to a party at the home of a person named "Buzzy." Buzzy's home was located on Camp Road in Pasadena, Anne Arundel County, Maryland. According to Ms. Hayghe's subsequent testimony, five to eight other individuals were at the party.

While in attendance at the party, Ms. Hayghe received a phone call from Bingham. The two then argued over the phone.

Subsequently, Bingham arrived at the party and became confrontational with Ms. Hayghe. Bingham next kicked Ms. Hayghe with such force that she was propelled from the

[1] Because Bingham does not challenge the sufficiency of the evidence to convict him, we have made no attempt to recap all of the evidence presented at trial. Instead, we have summarized only facts proven at trial that are relevant to the question presented and those facts that put such evidence in context.

kitchen into the living room. Bingham then beat Ms. Hayghe while she was on the floor, striking her in her face, stomach and ribs.

One of the attendees at the party was Denise Kelson. When Ms. Kelson saw Bingham beating up Ms. Hayghe, she intervened by pulling Bingham off of the victim. According to Ms. Kelson's testimony, Bingham then "ran out" of the house and she did not see him again that night.

Police officers were called and, on the night of the assault, they took statements from the victim and two other witnesses. One of the investigating officers testified that to the best of his knowledge he responded promptly to the call and that the defendant was not present when he arrived.

Ms. Hayghe declined medical attention initially, but went to a hospital a few days later for injuries caused by the beating. Photographs were taken by the police which showed various marks and bruises upon Ms. Hayghe that were caused by Bingham's assault.

II.

THE FLIGHT INSTRUCTION

At the end of the evidentiary phase of the trial, the prosecutor asked the court to give a flight instruction in accordance with Maryland Criminal Pattern Jury Instructions 3:24, which reads:

> A person's flight immediately after the commission of 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 then must decide whether this flight shows a consciousness of guilt.

Defense counsel objected to a flight instruction being given, maintaining that all the State had proven was that subsequent to the assault the defendant had simply departed from the scene. The trial court disagreed and stated:

> There's clear testimony from a witness that she [Ms. Kelson] was intervening in the alleged assault, and as a result of that intervention, the [d]efendant left the scene and left the home prior to the police coming, coupled with the fact that the police officer indicated to the best of his knowledge he had a prompt response to the home, and the [d]efendant was not there, which infers that he did not linger, he did not stay in the yard, he was not where he was easily found in the area that might negate the inference of flight.

The flight instruction later given was in exact accord with the instruction the State requested.

III.

DISCUSSION

The Court of Appeals has adopted a "four-prong" test for assessing whether the evidence is sufficient to support a flight instruction. *Thompson v. State*, 393 Md. 291, 311 (2006); *see also Thomas v. State*, 372 Md. 342, 352-56 (2002) (adopting four-prong test from *United States v. Myers*, 550 F.2d 1036 (5th Cir. 1977)). The test requires that before

a flight instruction can be given, the evidence reasonably must support four inferences. *See Thompson*, 393 Md. at 311-12. The four inferences are:

> [1] that the behavior of the defendant suggests flight; [2] that the flight suggests a consciousness of guilt; [3] that the consciousness of guilt is related to the crime charged or a closely related crime; and [4] that the consciousness of guilt of the crime charged suggests actual guilt of the crime charged or a closely related crime.

Id. at 312; *accord Hoerauf v. State*, 178 Md. App. 292, 321-22 (2008).

These aforementioned inferences need not be supported by any particular quantity of evidence, instead, they need only be "'sufficient to furnish reasonable support for all four of the necessary inferences.'" *Thompson*, 393 Md. at 312 (quoting *Myers*, 550 F.2d at 1050).

In this appeal, Bingham contends that the State did not prove the first element, i.e., "that the behavior of the defendant suggests flight"[.] Moreover, according to Bingham, because the first element was not proven, the remaining three elements were not proven either.

In *Hoerauf*, we said:

> Flight is defined as an "act or instance of fleeing, esp. to evade arrest or prosecution . . . . Also termed *flight from prosecution; flee from justice*." Professor Wigmore employs the term "flight from justice":
>
> > Flight from justice and its analogous conduct, have always been deemed indicative of a consciousness of guilt. "The wicked

> flee, even when no man pursueth; but the righteous are bold as a lion." . . .
>
> > It is universally conceded today that the fact of an accused's flight, escape from custody, resistance to arrest, concealment, assumption of a false name, and related conduct, are admissible as evidence of consciousness of guilt, and thus of guilt itself[.]
>
> "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." This additional proof of other than normal human 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. **In the context of leaving the scene of a crime, the classic case of flight is where 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. . . .
>
> [W]e hold that an accused's 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.

178 Md. App. at 323-26 (footnote and internal citations omitted; emphasis added).

Also in *Hoerauf*, we stated:

> The Supreme Court of Nebraska [in *State v. Lincoln*, 164 N.W.2d 470 (1969)], decided that a flight instruction was proper where the defendant's conduct was "clearly sufficient to sustain an inference of flight as distinguished from mere departure from the scene of a crime." *Id*. [at 472]. The Court drew a distinction between the meaning of the words "flight" and "departure:"

> The term "flight" is often misused for the word "departure." **Departure from the scene after a crime has been committed, of itself, does not warrant an inference of guilt**. "Flight" may be established by a broad range of circumstances. **We believe the proper rule to be that for departure to take on the legal significance of flight, there must be circumstances present and unexplained which, in conjunction with the leaving, 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. at 324-25.

In this case, the evidence taken in the light most favorable to the State, was sufficient to prove the first element. That evidence showed that appellant brutally beat up Ms. Hayghe in front of several witnesses. He then "ran out" of Buzzy's house as soon as Ms. Kelson pulled Bingham off the victim. Thus, appellant: 1) moved from one location to another, and 2) his movement was not "simply normal human locomotion" - he ran. Moreover, appellant's act of running from the scene of the crime was unexplained. In view of appellant's unexplained actions, the jury could legitimately infer that he ran because he did not want to be arrested for his assault of Ms. Hayghe. Thus, appellant's flight suggests a consciousness of guilt (element two), which was obviously related to the assault on the victim (element three). Lastly, taking the evidence in the light most favorable to the State, appellant's action of running from the scene of the assault suggests his guilt of that crime.

Appellant's entire complaint concerning the giving of the flight instruction is based upon his assertion that the State's proof merely showed that appellant "left the scene" of the

crime. That assertion overlooks two key facts concerning his departure, *viz*.: 1) the temporal element (he left as soon as he completed his criminal conduct), and 2) he did not merely leave - he ran.

Thus, the trial judge did not err in giving the flight instruction.

In light of our holding that appellant's claim of instructional error is without merit, we need not address the State's argument that the issue was not preserved for appellate review because, although appellant objected before the flight instruction was given, his counsel did not object once again at the end of the court's instruction.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.