Circuit Court for Howard County
Case No. 13K16056540

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2109

September Term, 2016

JAMAR LEWIS GOMEZ

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: September 8, 2017

*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 Howard County convicted Jamar Lewis Gomez, appellant, of possession of cocaine. The court sentenced him to a six-month prison term, consecutive to any sentence appellant was then currently serving. He noted this appeal and asks whether there was sufficient evidence to generate the concealment of evidence jury instruction, which was given at trial. Finding that there was sufficient evidence to generate this instruction, we affirm.

BACKGROUND

On the evening of March 9, 2016, several members of the Howard County Police Department were surveilling the Sleep Inn in North Laurel. Around 11:00 P.M., PFC Michael Pickett observed what he thought was a drug transaction involving people in and around a black Chevrolet sedan. Following the suspected drug transaction, the Chevrolet moved to the rear of the hotel where it parked momentarily next to Corporal Jamie Machiesky's unmarked vehicle. Corporal Machiesky attempted to stop the sedan, but he was unable to turn on his vehicle's lights and sirens. After a series of maneuvers in the parking lot, the Chevrolet drove past Corporal Machiesky and went north on Route 1. Corporal Machiesky followed.

The sedan, however, did a U-turn and travelled south on Route 1. At this point, PFC Pickett joined the pursuit in an unmarked vehicle with lights and sirens activated. The Chevrolet led the officers into the side streets of Laurel in Prince George's County, where the driver of the vehicle attempted to elude the officers by making several quick turns, driving down alleyways, and turning the headlights off. After a brief pursuit in Laurel, the Chevrolet got back onto Route 1, heading north into Howard County. As the sedan drove

across a bridge spanning an access road, PFC Pickett observed a "white ball with a tail on it" fly out of the passenger side. The pursuit ended shortly after that, when the driver of the Chevrolet, identified as appellant, stopped near where the pursuit began. During the pursuit, appellant sped and ran stop signs. Officers arrested appellant and three other occupants of the vehicle at 11:30 P.M. The vehicle was registered to appellant at an address near the Sleep Inn, and appellant was also a registered guest of the hotel.

Several officers returned to the service road to find the object PFC Pickett had seen thrown from the Chevrolet. At approximately 2:30 A.M., officers located a "ball-sized rocklike substance in a baggie" in the middle of the access road below the bridge. PFC Pickett identified the object as the one he had seen. Testing revealed that the bag contained 6.75 grams of cocaine. Appellant was convicted and sentenced as indicated above.

DISCUSSION

Over objection, the court instructed the jury as to the concealment of evidence, Maryland Criminal Pattern Jury Instructions ("MPJI-Cr") 3:26, as follows:

> You have heard that the Defendant concealed evidence in this case. Concealment or destruction of evidence is not enough by itself to establish guilt, but may be considered as evidence of guilt. Concealment or destruction of evidence may be motivated by a variety of factors, some of which are fully consistent with innocence.
>
> You must first decide whether the Defendant concealed evidence in this case. If you find that the Defendant concealed evidence in this case, then you mu[s]t decide whether that conduct shows a consciousness of guilt.

On appeal, appellant contends that there was insufficient evidence to generate this instruction, and, therefore, the court erred in giving it. Specifically, appellant asserts that there was no evidence that he attempted to conceal evidence. Appellant was the driver of

the Chevrolet, and the baggie came from the passenger side, and the State could not demonstrate that appellant ordered any of the occupants to dispose of the bag. The State maintains that the court properly instructed the jury as requested because appellant acted to conceal the evidence by driving erratically, speeding, leading officers on a pursuit, and turning his headlights off in an attempt to elude the officers.

"[I]n reviewing a trial court's decision to grant, or deny, a requested instruction, we consider '(1) whether the requested instruction was a correct statement of the law; (2) whether it was applicable under the facts of the case; and (3) whether it was fairly covered in the instructions actually given.'" *Porter v. State*, 230 Md. App. 288, 307 (2016) (quoting *Stabb v. State*, 423 Md. 454, 465 (2011)), *cert. granted*, 451 Md. 578 (2017). The Court of Appeals has observed that for an instruction to be applicable, there needs to be "'some evidence' support[ing] the giving of the instruction." *Preston v. State*, 444 Md. 67, 81 n.16 (2015) (quoting *McMillan v. State*, 428 Md. 333, 355 (2012)). This threshold is not a high one: "'Some evidence is not strictured by the test of a specific standard. It calls for no more than what it says – some, as that word is understood in common, everyday usage.'" *Jarrett v. State*, 220 Md. App. 571, 586 (2014) (quoting *Malaska v. State*, 216 Md. App. 492, 517 (2014)).

In reviewing whether there was some evidence to generate the instruction, "we view the facts in the light most favorable to the requesting party," and "we must determine whether the requesting party 'produced that 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.'" *Page v. State*, 222 Md. App. 648,

668-69 (quoting *Bazzle v. State*, 426 Md. 541, 550 (2012)), *cert. denied*, 445 Md. 6 (2015). We review the decision to give a jury instruction for abuse of discretion. *Howard v. State*, 232 Md. App. 125, 163, *cert. denied*, 453 Md. 366 (2017).

Appellant contends that in order for a concealment instruction to be applicable, the State must present evidence sufficient for the jury to draw four inferences from appellant's behavior: 1) appellant's behavior suggests concealment; 2) that concealment suggests a consciousness of guilt; 3) that the consciousness of guilt is related to the charged crime; and 4) that the consciousness of guilt suggests guilt. In *Jarrett*, *supra*, this Court observed that these are the inferences that must be established to generate a flight instruction, as stated by the Court of Appeals in *Thompson v. State*, 393 Md. 291, 311-12 (2006). *Jarrett*, 220 Md. App. at 590-91. We remarked that there are no cases applying the flight inferences to a concealment instruction. *Id.* at 591.

Assuming *arguendo* that the flight inferences apply, we are persuaded that there was sufficient evidence of concealment to generate the instruction. A jury could have rationally concluded that appellant was attempting to conceal evidence by running from the police; attempting to elude his pursuers by driving erratically, making sharp turns, driving down alleyways, and turning his headlights off; and by speeding. Appellant focuses on the moment the drugs flew out of the window by someone's hand, but the concealment instruction was applicable because of all of the appellant's actions leading up to that moment.

Accordingly, there was some evidence of the applicability of the concealment instruction, and we do not perceive an abuse of the court's discretion in giving it.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.