Circuit Court for Baltimore City
Case No. 120009016

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2024

September Term, 2021

RONALD A. BROWN

v.

STATE OF MARYLAND

Graeff,
Leahy,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: January 6, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

In September 2021, a jury in the Circuit Court for Baltimore City convicted appellant, Ronald A. Brown, of second-degree murder and use of a dangerous weapon with intent to injure. The court sentenced appellant to imprisonment for 25 years on the conviction for second-degree murder and three years, concurrent, on the conviction for use of a dangerous weapon with intent to injure. On appeal, appellant contends that the trial court erred in propounding a jury instruction on flight. For the reasons set forth below, we disagree, and therefore, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

The Underlying Incident

In December 2019, appellant lived in a room on the first floor of a two-story row house on North Payson Street in Baltimore City. Felicia Savage and her boyfriend of 16 years, William Scott, lived in the rear room on the second floor.

Ms. Savage testified that, on December 7, 2019, Mr. Scott came home from work at approximately 5:00 p.m. He went downstairs to the first floor, met with appellant, and the two talked. Appellant gave Mr. Scott some money and "sent him to go out to purchase some drugs." Mr. Scott left, and Ms. Savage remained in the second-floor room watching television.

At some point between 2:00 and 2:30 a.m. on December 8, 2019, Ms. Savage heard "somebody . . . coming through the door" and "rumbling and [tussling] up the stairs." As the commotion moved closer to the second-floor room, Ms. Savage observed appellant and

Mr. Scott fighting on the floor. Appellant "had Mr. Scott in the front entrance of [her] door on his back," and he struck Mr. Scott twice in the face. Appellant eventually got up and went downstairs to the first floor. Mr. Scott went into the second-floor room with Ms. Savage. He was upset and agitated, and he was screaming at appellant, who was downstairs.

While Mr. Scott was yelling and screaming, appellant came back upstairs and entered the second-floor room. He asked Mr. Scott "where was his stuff at." Mr. Scott stated that "he didn't know" or "he didn't have it." Appellant then pulled Mr. Scott's pants off and started checking his pockets. The two "just started tussling again."

During the fight in the second-floor room, "Mr. Scott had twisted [appellant] around, and then [appellant] had twisted Mr. Scott around, and they fell towards the bed." At that point, Ms. Savage observed that appellant had a knife.[1] She then ran out of the second-floor room.

Ms. Savage's cell phone did not have service. At approximately 3:00 a.m., she went to a nearby Maryland Transit Administration ("MTA") bus station, and she asked a mobility driver to call for help. She told the mobility driver that she needed someone to call an ambulance or the police because "there was a dire situation . . . at 516 Payson Street."

[1] Ms. Savage described the knife as a "kitchen knife" that was approximately six inches long. The police never recovered the knife.

Ms. Savage then left the MTA station and walked to the alley behind 516 North Payson Street. After waiting there for approximately 30 minutes, she went to the front of the row house and tried to gain access to the residence. While in front of the house, she heard Mr. Scott screaming "help me, help me," from inside the second-floor room.

Ms. Savage returned to the back alley and waited in the cold for approximately two hours "to see if the ambulance or the [police] or somebody was going to come." She was still scared for her life. After Ms. Savage "got [her]self together," she walked up North Payson Street towards Edmondson Avenue to "try to find somebody that had a phone."

At approximately 5:00 a.m., Ms. Savage approached a uniformed police officer, Huy Dinh. She informed Officer Dinh that her "friend was stabbed." She asked whether the police received a call about North Payson Street, and "they didn't say no." Ms. Savage led the police to the row house at North Payson Street. They went inside at approximately 5:27 a.m., and Mr. Scott's body was on the bed in the second-floor room. He had nine stab wounds.

The police transported Ms. Savage to the Homicide Unit at the Baltimore Police Department for questioning. During the interview, Ms. Savage provided appellant's name to the police and stated:

> I didn't – I really didn't think that [appellant] had actually meant to kill him, but because of his attitude and the way his character and by [Mr. Scott] being an alcoholic and mistreating everybody around him, that's the way – he – you know, he pretty much brought that on himself.

She identified appellant from a photo array as the individual who stabbed Mr. Scott, writing the following under appellant's picture: "Live in same rooming house with tenant. Saw stabbing my boyfriend. I know him as . . . Brown."

II.

Trial

Trial began in September 2021. The State's theory at trial was that appellant stabbed and killed Mr. Scott. The defense was that Ms. Savage, not appellant, stabbed and killed Mr. Scott, with defense counsel stating that there was a history of domestic violence between Ms. Savage and Mr. Scott, and their relationship was "very rocky."

Ms. Savage testified that, when appellant and Mr. Scott were fighting in the second-floor room, she observed that appellant had a knife. When the prosecutor asked Ms. Savage what appellant did with the knife, she stated: "I really – I couldn't say, because I was – I had left the – I had headed out." She denied seeing appellant stab Mr. Scott. She also denied reporting that appellant had stabbed Mr. Scott. When asked about telling the police that her friend had been stabbed, however, she said: "[Appellant] did stab Mr. Scott, before I had left out. And that's the reason why I had left out. Because I was terrified of my life."

Officer Dinh testified that he was working the midnight shift on December 8, 2019. Ms. Savage approached him and stated that her friend had been stabbed. Ms. Savage was wearing a T-shirt, sweatpants, socks, and no shoes, which he thought was "a little odd" for mid-December. He and other police officers followed Ms. Savage back to North Payson Street to render assistance. The front door of the row house was locked, and Ms. Savage

did not have her key, so Officer Dinh and other officers tapped on the windows and "banged on the door loudly, seeing if anybody can answer." They eventually called the Baltimore City Fire Department, requesting a ladder truck for a forced entry to the row house. When the ladder was placed above the door to go up to one of the windows, a resident opened the door, and Officer Dinh and other officers were able to enter the row house.

Once inside the row house, Ms. Savage told the police that her boyfriend was on the second floor. Officer Dinh went upstairs and discovered Mr. Scott's body lying on the bed in the second-floor room. There was a trail of blood leading from the second-floor room to the front of the row house.

The police conducted a "conditions check" of the row house. As part of the search, Officer Dinh went down to the basement of the row house and found a man and a woman. He collected their identification, ran their information in the National Crime Information Center's database, and ascertained their identities. He did not see any blood trails leading down to the basement. There also was a man in the front room on the second floor, down the hall from the rear room occupied by Ms. Savage and Mr. Scott. Officer Dinh did not see any blood trails leading to that room.

Detective Andre Parker testified that he arrived at North Payson Street between 7:00 and 8:00 a.m. on December 9, 2019. He observed suspected blood on the marble steps leading to the front door of the row house. There also was suspected blood on the stairway railings, the foyer wall, and the door and doorframe area of the first-floor room. The police

observed a suspected bloody footprint in the middle of the doorway leading into the first-floor room. The footprint was approximately 12 inches long. The police located several pairs of men's shoes on the floor of the first-floor room, which were size 12. They also found postmarked mail addressed to appellant in the first-floor room.

Police officers observed footprints leading into and out of the second-floor room "that had suspected blood within those footprints." The footprints on the second floor had the same pattern as the suspected blood footprint in the doorway of the first-floor room.

Detective Parker interviewed appellant on December 16, 2019. He obtained from appellant a "personal information sheet," in which appellant provided background information about himself, including his cell phone number.

Dr. Theodore King, an Assistant Medical Examiner with the Office of the Chief Medical Examiner, testified as an expert in forensic pathology. He performed an autopsy of Mr. Scott on December 9, 2019. Dr. King was unable to determine an exact time of death for Mr. Scott, explaining that the "best we can do" is provide "ranges of time of death" based on factors such as rigor mortis and lividity. He opined that Mr. Scott died sometime between 11:40 p.m. on December 7, 2019, and 3:40 a.m. on December 8, 2019.

Suzanne Grey, a forensic scientist with the Baltimore Police Department's crime laboratory, testified as an expert in DNA analysis. Swabs from Mr. Scott's pants pockets "yielded a DNA profile of a mixture consisting of a major male contributor and at least two minor contributors." Mr. Scott was identified as the major contributor, and appellant matched the "inferred genotype" of a minor contributor. The match to appellant was

> 4.05 thousand times more probable than a coincidental match to an unrelated individual in the African American population. 38.8 thousand times more probable than a coincidental match to an unrelated individual in the Caucasian American population. And 36.1 thousand times more probable than a coincidental match to an unrelated individual in the Hispanic American population.

Special Agent Matthew Wilde, a member of the Federal Bureau of Investigation's Cellular Analysis Survey Team, testified for the State as an expert in historical cell site analysis. Agent Wilde reviewed the "call detail records" for the cell phone number that appellant provided to the police and generated "a series of maps to show the general location of the cell sites being used by the phone in relation to the crime scene in the case." Between 10:31 p.m. on December 7, 2019, and 4:49 a.m. on December 8, 2019, the phone used two cell towers, located to the west and northwest of North Payson Street. Between 5:05 and 5:48 a.m. on December 8, 2019, the phone used two other cell towers, located to the northeast of 516 North Payson Street. This location was "nowhere near" the row house.

III.

Flight Instruction

The State requested a jury instruction on flight. Defense counsel objected, arguing that there was no evidence that appellant had "fled the scene immediately after the commission of the crime or being accused of the crime in this particular case." The prosecutor responded that Ms. Savage's testimony indicated that "she witnessed [appellant] actually stab the victim in this case," noting that, "although she did leave the location, the victim was found stabbed multiple times," and "upon officers' arrival, [appellant] was not present at the scene . . . . He was nowhere to be found."

The court overruled the objection and gave the jury the Maryland Pattern Jury Instruction on flight, as follows:

> 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 then must decide whether this flight shows a consciousness of guilt.

MPJI-Cr 3:24. Defense counsel again noted his exception to this instruction.

DISCUSSION

Appellant contends that the circuit court erred in propounding the jury instruction on flight. He argues that the State's evidence at trial was insufficient to generate a flight instruction because there was no evidence of flight "other than the fact that [he] left the town house." He argues that mere departure from the scene after a crime has been committed does not warrant an inference of flight.

The State contends that the circuit court properly exercised its discretion in giving the jury instruction on flight. It argues that the facts and circumstances of the present case, i.e., appellant's "unexplained departure from his residence in the middle of the night or early morning near the time that someone was stabbed to death in that residence, near [appellant's] room," give rise to the inference that the purpose of leaving was to avoid arrest. Thus, it asserts that the evidence was sufficient to meet the low threshold of "some evidence" to generate the flight instruction. In any event, the State argues that, even if the

court erred in giving the flight instruction, any error was harmless beyond a reasonable doubt.

We typically "review a trial court's decision to give a particular jury instruction for abuse of discretion." *Wright v. State*, 474 Md. 467, 482 (2021). A "court abuses its discretion if it commits an error of law in giving an instruction." *Id.*

Pursuant to Maryland Rule 4-325(c), a judge is required to give a requested jury instruction when "'(1) the requested instruction is a correct statement of the law; (2) the requested instruction is applicable under the facts of the case; and (3) the content of the requested instruction was not fairly covered elsewhere in the jury instruction actually given.'" *Rainey v. State*, 480 Md. 230, 255 (2022) (quoting *Ware v. State*, 348 Md. 19, 58 (1997)).

Here, there is no dispute that the flight instruction was a correct statement of the law. In *Thompson v. State*, 393 Md. 291, 307 (2006), the Supreme Court of Maryland[2] held that the pattern jury instruction on flight was a correct statement of the law, noting that the instruction "attempts to insure that the jury does not imbue evidence of flight with more weight than it deserves." Appellant also does not dispute that the substance of the instruction was not covered elsewhere in the circuit court's instructions.

[2] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

Appellant's argument addresses the second requirement of the rule. He asserts that the flight instruction was not applicable under the facts of this case. Thus, the only issue before us is whether the instruction was generated by the evidence.

"'A requested jury instruction is applicable if the evidence is sufficient to permit a jury to find its factual predicate.'" *Page v. State*, 222 Md. App. 648, 668 (quoting *Bazzle v. State*, 426 Md. 541, 550 (2012)), *cert. denied*, 445 Md. 6 (2015). The "determination of whether the evidence is sufficient to generate the desired instruction is a question of law." *Hayes v. State*, 247 Md. App. 252, 288 (2020) (quoting *Bazzle*, 426 Md. at 550) (cleaned up). *Accord Rainey*, 480 Md. at 255, 268. The threshold is low, as "[t]he requesting party must only produce 'some evidence' to support the requested instruction, and [the appellate court] views the facts in the light most favorable to the requesting party." *Rainey*, 480 Md. at 255.

In *Thomas v. State*, 372 Md. 342, 352–53 (2002), the Supreme Court adopted the four-part test set forth in *United States v. Myers*, 550 F.2d 1036, 1049 (5th Cir. 1977), *cert. denied*, 439 U.S. 847 (1978), in assessing whether a flight instruction is appropriate under the facts of a particular case. The Court subsequently explained in *Thompson*, 393 Md. at 312, that an instruction on flight properly may be given only if "the following four inferences" reasonably can be drawn from the facts of the case:

1. The behavior of the defendant suggests flight.
2. The flight suggests a consciousness of guilt.
3. The consciousness of guilt is related to the crime charged or a closely related crime.

4. The consciousness of guilt of the crime charged suggests actual guilt of the crime charged or a closely related crime.

Id.

Here, appellant asserts that the facts did not support the first inference, i.e., that his behavior suggested flight. In *Hoerauf v. State*, 178 Md. App. 292, 323 (2008), this Court noted: "[E]vidence 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." (quoting 22 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 5181 (1978 & Supp. 2007)). "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." *Id.* at 323–24. Appellant argues that the evidence here showed only a mere departure from the scene of the murder.

This Court has recognized that "[d]eparture from the scene after a crime has been committed, of itself, does not warrant an inference of guilt." *Id.* at 324 (quoting *State v. Lincoln*, 164 N.W.2d 470, 472 (Neb. 1969)). "[F]or 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 (quoting *Lincoln*, 164 N.W.2d at 472). "[T]he 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." *Id.* at 324. An accused's departure from the scene, however, "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." *Id.* at 325–26.

In *Hoerauf*, the appellant's friends robbed juvenile victims. *Id.* at 297–98. When the group left the scene, prior to the police arriving, Hoerauf walked away from the scene of the crime with them. *Id.* at 298. We held that Hoerauf's "behavior did not constitute flight, and the trial court erred in giving the flight instruction." *Id.* at 326. We explained: "[A]ppellant simply walked away from the scene of the crime with the group of individuals who had just perpetrated the robberies." *Id.* At that time, "the police had not arrived, nor was their arrival imminent," and "[t]here was no evidence that appellant attempted to flee the neighborhood or to secrete himself from public view to avoid apprehension." *Id.* Under these circumstances, we held that "there were no circumstances attendant to appellant's departure from the scene of the crime that would reasonably justify the inference of a consciousness of guilt," and therefore, "appellant's behavior did not constitute flight." *Id.*

In addition to *Hoerauf*, appellant relies on *State v. Shim*, 418 Md. 37 (2011), *abrogated on other grounds by Pearson v. State*, 437 Md. 350 (2014), in support of his argument that there was not sufficient evidence of flight here. In that case, the victim was shot at night while she was working as a security guard at a FedEx facility. *Id.* at 40–41.

Surveillance cameras showed a sedan pulling up to the guard shack at 2:30 a.m. and leaving six minutes later. *Id.* at 41. The victim's coworker found her at 7:20 a.m. *Id.* The Supreme Court held that a flight instruction should not have been given because the evidence showed only that the shooter left the FedEx facility after the shooting; it did not show that the shooter fled. *Id.* at 59. Evidence that Shim "took steps to avoid being apprehended did not amount to flight." *Id.*

The present case is distinguishable from *Hoerauf* and *Shim*, and appellant's behavior shows more than mere departure.[3] There was "some evidence" here that reasonably justified an inference that appellant left the scene with a consciousness of guilt and pursuant to an effort to avoid apprehension based on that guilt.

The time and place of the crime here constitute "attendant circumstances" that warrant an inference of consciousness of guilt. The crime in *Hoerauf* occurred at a commuter train station in the early afternoon, 178 Md. App. at 297, and it is not typical for a person to remain at such a location for an extended time. The crime in *Shim* occurred at the guard shack of a FedEx facility at approximately 2:30 a.m., 418 Md. at 40–41, and leaving shortly after arrival reflects, by itself, "only departure." Here, by contrast,

[3] Appellant does not dispute that there was evidence of departure. Ms. Savage saw appellant fighting with Mr. Scott at the scene of the murder, and appellant's presence at the scene was corroborated by Agent Wilde's historical cell site analysis of the phone number provided by appellant, which placed the cell phone in the vicinity of the row house around the time when Mr. Scott was murdered. When the police subsequently arrived at North Payson Street at approximately 5:27 a.m., however, appellant "was not present at the scene" and "was nowhere to be found." Agent Wilde's historical cell site analysis placed the cell phone "nowhere near" the row house between 5:00 and 5:30 a.m.

appellant left his own residence at approximately 5:00 a.m., after a person who he had been seen fighting with hours earlier was stabbed to death.

Moreover, in both *Hoerauf* and *Shim*, there was no reason to believe that the police were coming to the scene. Here, by contrast, Ms. Savage witnessed the victim fighting with appellant, who had a knife in his hand, and she then left the premises. Under these circumstances, there was reason to assume that the police would be responding to the residence soon. *See Page*, 222 Md. App. at 670 (flight instruction proper where, after Page fired several gunshots in a public place, he ran to his apartment, and it was "fair to presume that authorities would be arriving to the scene shortly").

In assessing whether the behavior of the defendant suggests flight, we look to whether there was "some evidence" to support that inference, when viewing the evidence in the light most favorable to the State. *See Rainey*, 480 Md. at 255. In *Hallowell v. State*, 235 Md. App. 484, 495 (2018), the appellant went to the fire department shortly after midnight and told a volunteer firefighter that there was someone who needed help, but he "wouldn't elaborate on what exactly was wrong." In the parking lot next to the fire department, firefighters discovered the victim slumped in a car, suffering from a gunshot wound to the head. *Id.* At that time, Hallowell was observed across the street at a nearby convenience store. *Id.* He never returned to the scene. *Id.* at 512. This Court held that "the circumstances reasonably justified an inference that [Hallowell] left the scene with consciousness of guilt . . . and to avoid apprehension," noting that, in addition to testimony that Hallowell "made incredibly good time" in leaving the scene, he never identified

himself to the firefighters, he did not lead them to the vehicle, and he did not remain at the scene to find out whether his companion would survive. *Id.*

Similarly, here, there was "some evidence" from which the jury could reasonably infer that appellant left the residence with a consciousness of guilt and pursuant to an effort to avoid apprehension or prosecution. Appellant left his own residence at approximately 5:00 a.m. on a night where someone was stabbed to death and the person who saw him fighting with the victim left, presumably to get help from the police. Whether appellant's leaving of his residence constituted flight was a factual issue appropriate for the jury's consideration. The flight instruction was applicable under the facts of this case, and the circuit court did not err or abuse its discretion in giving that instruction to the jury.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.