Circuit Court for Wicomico County
Case No.: C-22-CR-20-000204

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2069

September Term, 2021

ROBERT L. GLORIUS

v.

STATE OF MARYLAND

Wells, C.J.,
Tang,
Meredith, Timothy E.,
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 2, 2022

*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.

Convicted by a jury, in the Circuit Court for Wicomico County, of attempted second-degree murder, Robert Glorius, appellant, presents a single question for our review: Did the trial court err in propounding a flight instruction? For the following reasons, we shall affirm.

In April 2020, Glorius and his girlfriend, Emily Skelton, got into a dispute with Jason Thompson over Thompson allegedly giving them fake drugs. The dispute ended when Glorius splashed Thompson with gasoline and tossed a match at him—instantly lighting Thompson on fire. At trial, Thompson testified that Glorius then began "running towards the car, to run away." Skelton testified that once Glorius was back in the car, they "took off." And another witness testified that she heard squealing tires as Glorius and Skelton drove away from the scene. Skelton further testified that on the way back to their house, Glorius stated that he needed to get out of town. But the police were already at the house waiting, and they took Glorius and Skelton into custody.

On appeal, Skelton asserts this evidence did not warrant a flight instruction. We disagree. A court is required to give a requested instruction if: (1) it is a correct statement of the law; (2) it is applicable under the facts of the case; and (3) its content was not fairly covered in another instruction. *Ware v. State*, 348 Md. 19, 58 (1997). Glorius disputes only the second prong.

An instruction is applicable "if the evidence is sufficient to permit a jury to find its factual predicate." *Bazzle v. State*, 426 Md. 541, 550 (2012). This preliminary determination "is a question of law for the judge[,]" and on appellate review, 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." *Id.* (cleaned up). This threshold is low, in that the requesting party must only produce "some evidence" to support the requested instruction. *Id.* at 551 (cleaned up). Upon our review of whether there was "some evidence," we view the facts in the light most favorable to the requesting party, here being the State. *Hoerauf v. State*, 178 Md. App. 292, 326 (2008).

A flight instruction is warranted when four inferences may reasonably be drawn from the evidence: "[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 321-22 (cleaned up). Glorius's arguments speak to the first and second inferences.

As to the first inference, "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." *Id.* at 323 (cleaned up). As to the second inference, the movement also "must reasonably justify an inference that it was done with a consciousness of guilt and [in] an effort to avoid apprehension or prosecution based on that guilt." *Id.* at 324. To this end, there is a distinction between mere departure from the crime scene and actual flight. Mere departure, without any attendant circumstances that reasonably justify an inference that the leaving was done with a consciousness of guilt and in an effort to avoid apprehension or prosecution based on that

guilt, is not "flight," and thus does not warrant the giving of a flight instruction. *Id.* at 325–26.

Glorius analogizes this case to *Hoerauf v. State*, 178 Md. App. 292 (2008), and *State v. Shim*, 418 Md. 37 (2011), *abrogated on other grounds by Pearson v. State*, 437 Md. 350 (2014), where a flight instruction was held not warranted. But the facts before us are distinguishable. In *Hoerauf*, the defendant simply walked away from the crime scene with a group of individuals who had just committed robberies. When he left the scene, the police had not arrived, nor was their arrival imminent. There was also no evidence that the defendant attempted to flee the neighborhood or to secrete himself from public view to avoid apprehension. Similarly, in *Shim*, the "evidence demonstrated only that the shooter left the . . . facility after the shooting [but] . . . [t]here was no evidence that the shooter fled." 418 Md. at 59 (cleaned up).

In contrast, the evidence here included testimony that Glorius ran, not walked, to the car immediately after lighting Thompson on fire. He also drove away from the scene fast enough to make his tires squeal. Moreover, although the police had not arrived when Glorius began driving away, it would be fair to presume that authorities would be arriving to the scene shortly, given the amount of noise the dispute made in a trailer park. Indeed, the evidence reflected that the trailer in front of which the events took place was occupied, and the police arrived within minutes. In addition, despite Glorius's contention that he merely drove home rather than leaving the state, his statement that he needed to get out of town indicated that was his plan had he not been apprehended upon arriving home.

We have recognized that one of the "classic" instances 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." *Hoerauf*, 178 Md. App. at 324. That is what the evidence here reflected. It therefore supported a finding of all four inferences articulated above. Consequently, when viewing the facts in the light most favorable to the State, we conclude that there was "some evidence" that Glorius's departure from the scene was accompanied with attendant circumstances that could reasonably justify an inference of a consciousness of guilt and an effort to avoid apprehension based on that guilt. The trial court thus did not err in delivering the flight instruction.

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