Circuit Court for Prince George's County
Case No. CT220935X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1308

September Term, 2023

AAREN ANTONIO BUTLER

v.

STATE OF MARYLAND

Wells, C.J.,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: July 10, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Following a jury trial in the Circuit Court for Prince George's County, the appellant, Aaren Antonio Butler, was convicted of second-degree murder and use of a firearm in the commission of a crime of violence. The jury acquitted the appellant of first-degree murder. The court sentenced the appellant to sixty years of imprisonment with all but thirty-five years suspended and three years of supervised probation upon release.

On appeal, the appellant presents one question for our review:

> Did the circuit court err in giving a flight instruction where, before leaving the scene of the shooting, Appellant asked his co-workers to call an ambulance for the alleged victim and to "clock him out" of work?

For the reasons to follow, we shall affirm the judgments of the circuit court.

BACKGROUND

On July 14, 2022, the appellant shot and killed Fred Jerome Graham, his co-worker at a Domino's Pizza franchise in Forestville. Because the appellant admitted to shooting Graham, the issue for the jury was whether the State proved that the appellant did not act in self-defense or imperfect self-defense.

Factual Background

The appellant and Graham were both delivery drivers at Domino's. The appellant had worked there for four years and trained other drivers, including Graham, who had worked there for about six months. Graham and the appellant had a history of workplace disagreements, particularly regarding delivery assignments. The appellant testified that Graham "exceedingly [took] unassigned orders as far as there was a limited amount of drivers. [Graham] was taking more that [sic] he was supposed to in orders."

On the day of the shooting, the appellant was "filling in for another driver[.]" The appellant testified that he arrived at Domino's for the "morning shift, so probably about 10 o'clock [a.m.,]" and "[i]f [he] was arriving at 10:00 [a.m.], [he] would more likely stay to 10:00, 11:00 at night." That afternoon, the appellant confronted Graham because Graham was not wearing his required Domino's visor.[1]

The appellant testified that Graham "blew [him] off." The appellant then went outside the store and called the general manager on speaker phone. According to the appellant's trial testimony, Graham[2] then came outside, heard the general manager's voice, yelled at the appellant, and threatened to "fuck [the appellant] up" "[f]or snitching[.]" The appellant testified that he felt "cornered in" and believed that Graham "was going to inflict serious bodily harm to [his] person." The appellant further testified that he "got scared, so [he] pulled out [his] gun[3] and shot [Graham] one time" in the chest.[4] The shooting occurred around 5:45 p.m.

[1] The appellant explained that the store could receive a bonus based on a good health inspection grade and that Graham's failure to wear the required visor could have negatively impacted a random health inspection.

[2] The appellant testified that Graham's stature was much larger than his.

[3] The appellant testified that he had obtained the gun in December 2021 because he had been robbed several times while working for Pizza Boli's, and he felt that his job was very dangerous.

[4] Dr. Joseph Mininni, a forensic pathology fellow with the Office of the Chief Medical Examiner, testified that Graham died from a single gunshot wound to the torso. The bullet traveled from front to back through Graham's chest, striking vital organs, including his heart, resulting in extensive blood loss. The manner of death was ruled a homicide.

After the shooting, the appellant went back into the store and told the manager to call an ambulance for Graham and to "clock [the appellant] out" of work. The appellant testified that he left to see his daughter after the shooting, knowing that he would soon be arrested. Following the shooting, the appellant "was scared" and, because of that emotion, he threw his gun into a body of water in the District of Columbia. Police arrested the appellant the day after the shooting. Police recovered no firearms during the investigation.

Procedural Background

During a bench conference about proposed jury instructions, the State requested a flight instruction. At that time, the following exchange occurred:

> [DEFENSE COUNSEL]: Your Honor, he admits to disposing of the gun, so I don't have an issue in terms of concealment or destruction of evidence. In terms of flight or concealment of the defendant, he said he went home, the police came the next day. It doesn't say anything about him fleeing from the police. So I would take exception to 3:24.[5]
>
> THE COURT: Mr. [State]?

[5] The Criminal Pattern Jury Instruction 3:24, entitled "Flight or Concealment of Defendant" states as follows:

> Defendant'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.

Maryland Pattern Jury Instructions – Criminal 3:24.

[THE STATE]:	Let me check again, Your Honor.
THE COURT:	Mm-hmm.
[THE STATE]:	The instruction does not specify that has [sic] to be flight from police, just that --
THE COURT:	Left the [scene]?
[THE STATE]:	Left the scene after the commission of a crime.
THE COURT:	Over your objection I will -- over defense's objection I will allow the State to have that instruction.

Later that day, the court reviewed the instructions, and defense counsel reiterated that the court would give the flight instruction "over [his] objection." The court confirmed that it would give the instruction "[o]ver the defense objection."

The next morning, the court instructed the jury on flight as follows:

> Now a person's flight immediately after the commission of the crime or after being accused 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 must decide whether this flight shows a consciousness of guilt.

After the court completed its instructions to the jury, the court asked counsel whether they had "[a]ny exceptions to the jury instructions[.]" Defense counsel responded: "No, Your Honor."

DISCUSSION

The appellant contends that the trial court erred in giving the flight instruction because the evidence showed "mere departure" rather than flight. The State responds that

the issue is unpreserved for our review because, after the jury had been instructed, defense counsel failed to object and advised the court that he had no exceptions to the court's instructions. In the alternative, the State argues that the court properly gave the flight instruction to the jury.

Preservation

"No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." Md. Rule 4-325(f). Substantial compliance with the Rule, however, can suffice under certain circumstances:

> there must be an objection to the instruction; the objection must appear on the record; the objection must be accompanied by a definite statement of the ground for objection unless the ground for objection is apparent from the record and the circumstances must be such that a renewal of the objection after the court instructs the jury would be futile or useless.

Horton v. State, 226 Md. App. 382, 414 (2016) (quoting *Gore v. State*, 309 Md. 203, 209 (1987)). Even "a cryptic objection 'substantially complies' with . . . the rule . . . if 'the ground for objection is apparent from the record.'" *Taylor v. State*, 473 Md. 205, 227 (2021) (quoting *Gore*, 309 Md. at 209). "If the record reflects that the trial court understands the objection and, upon understanding the objection, rejects it, [an appellate court] will deem the issue preserved for appellate review." *Watts v. State*, 457 Md. 419, 428 (2018).

Here, defense counsel objected to the flight instruction, arguing that the evidence did not show flight from the police. The State argued that the flight instruction does not require evidence that the defendant fled from the police. The court overruled the objection.

Later that day, defense counsel and the court confirmed that it would give the flight instruction over defense counsel's objection. Because the court twice rejected defense counsel's objection to the instruction, any further objection would have been futile. Although defense counsel stated "[n]o, Your Honor" when asked about exceptions to the jury instructions, that statement occurred after the court had twice rejected defense counsel's objection to the flight instruction. Thus, defense counsel substantially complied with Rule 4-325(f).[6]

Merits

Generally, a trial court's decision to give a jury instruction is reviewed for abuse of discretion. *Wright v. State*, 474 Md. 467, 482 (2021). "On review, we determine whether the requesting party produced the minimum amount of evidence necessary to generate the instruction[,]" which is a question of law reviewed *de novo*. *Hayes v. State*, 247 Md. App. 252, 288 (2020). We "independently determine 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." *Rainey v. State*, 480 Md. 230, 255 (2022) (cleaned up). The requesting

[6] Arguably, the narrow ground of defense counsel's objection limits the scope of appellate review under Maryland Rule 8-131(a). Defense counsel contended that the instruction was unwarranted because the evidence contained nothing "about [the appellant] fleeing from the police." This objection may have been premised on the incorrect belief that flight instructions require evidence of flight from law enforcement in active pursuit. Under a broader interpretation, however, the objection may have been premised on the argument that mere departure, without more, does not generate a flight instruction. At any rate, there was ample evidence supporting the flight instruction under the legal standard in *Thompson v. State*, 393 Md. 291 (2006) and *Hoerauf v. State*, 178 Md. App. 292 (2008).

party must only produce "some evidence" to support the instruction. *Bazzle v. State*, 426 Md. 541, 551 (2012).

To generate a flight instruction, the evidence must support the following four inferences:

> circumstantial evidence of guilt depends upon the degree of confidence with which four inferences can be drawn: (1) from the defendant's behavior to flight; (2) from flight to consciousness of guilt; (3) from consciousness of guilt to consciousness of guilt concerning the crime charged; and (4) from consciousness of guilt concerning the crime charged to actual guilt of the crime charged.

Thompson v. State, 393 Md. 291, 312 (2006) (quoting *United States v. Myers*, 550 F.2d 1036, 1049 (5th Cir. 1977)).

The appellant is correct that flight requires more than mere departure from the scene. *Hoerauf v. State*, 178 Md. App. 292, 325 (2008). However, the "accused's departure from the scene of a crime" may warrant a flight instruction when there are "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[.]" *Id*.

Here, the attendant circumstances supported the flight instruction. The appellant testified that he left the scene because he "knew [he] was going to get locked up[.]" After the shooting, the appellant told his manager to "clock [him] out[,]" signifying a hasty and early exit from work rather than mere departure. Indeed, the appellant testified that when "arriving at 10:00 [a.m.]" for the morning shift, as he did on the day of the shooting, he "would more likely stay to 10:00, 11:00 at night." Nevertheless, the appellant left work

after shooting Graham around 5:45 p.m. Most significantly, sometime after leaving the scene, the appellant disposed of his gun in a "body of water" "[s]omewhere in D.C."[7] because he "had shot [Graham] with it and [he] was scared."[8]

These circumstances demonstrate that the appellant's departure was motivated by consciousness of guilt and an effort to avoid apprehension based on that guilt. *Hoerauf*, 178 Md. App. at 325. The evidence provided reasonable support that the appellant fled the scene while conscious of his guilt concerning the crimes charged, which supported the inference that the appellant was guilty of the crimes charged. *Thompson*, 393 Md. at 312. The fact that the appellant asked his manager to call an ambulance for Graham before leaving the scene does not alter our conclusion. While that action may have supported the appellant's self-defense claim, it does not eliminate the reasonable conclusion that his hurried departure, which allowed him to dispose of the gun before apprehension, was

[7] The appellant testified that he lived in Maryland at the time of the shooting. Thus, his disposal of the gun in a different jurisdiction further demonstrates consciousness of guilt and flight rather than mere departure from the scene.

[8] The appellant's reliance on *State v. Shim*, 418 Md. 37, 43 (2011), and *Hoerauf*, 178 Md. App. at 324, is unavailing. In *Shim*, the evidence showed that the perpetrator drove to a FedEx facility guard post, killed the victim, and then left six minutes after arriving. 418 Md. at 41. In *Hoerauf*, the accused "simply walked away from the scene of the crime with the group of individuals who had just perpetrated the robberies." 178 Md. App. at 326. Flight instructions were unwarranted in *Shim* and *Hoerauf*.

In contrast, here, the appellant shot his co-worker outside their workplace, requested to be "clock[ed] . . . out" of work after the shooting, crossed jurisdictions to D.C. to dispose of the gun because he "shot [Graham] with it and [he] was scared[,]" and the appellant acknowledged that he knew he would be arrested. These circumstances show the appellant's departure was flight motivated by consciousness of guilt rather than mere departure from the scene.

motivated by consciousness of guilt. The jury was properly instructed that flight "may be motivated by a variety of factors, some of which are fully consistent with innocence" and to weigh the evidence accordingly. *See* Maryland Pattern Jury Instructions – Criminal 3:24.

For all these reasons, the court did not err in overruling defense counsel's objection to the flight instruction. There was sufficient evidence to generate the flight instruction.

CONCLUSION

Having preserved his challenge to the flight instruction through his counsel's objections, the appellant cannot prevail on the merits. The flight instruction was properly given based on "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[.]" *Hoerauf*, 178 Md. App. at 325.

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