Circuit Court for Prince George's County
Case No. C-16-CR-23-003209

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1401

September Term, 2024

DALANTE LEE ARRINGTON MOORE

v.

STATE OF MARYLAND

Nazarian,
Kehoe, S.,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: January 30, 2026

*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).

Appellant, Dalante Moore, was convicted by a jury in the Circuit Court for Prince George's County of two counts of transporting a handgun in a vehicle and two counts of transporting a loaded handgun in a vehicle. In this appeal, he argues that the trial court abused its discretion in instructing the jury on flight. The State concedes error but claims harmless error.

We hold that the jury instruction as to flight was not supported by the evidence, was error, and was not harmless error. Accordingly, we shall reverse and remand for a new trial.

I.

Appellant was indicted by the Grand Jury for Prince George's County of ten counts assault and handgun charges between appellant and Marvin Reyes. The jury acquitted appellant of the assault charges and convicted him of two counts of transporting a handgun in a vehicle and two counts of transporting a loaded handgun in a vehicle. Appellant was sentenced as follows: the court merged the two counts of transporting a handgun in a vehicle and merged the two counts of transporting a loaded handgun in a vehicle, sentencing appellant to two concurrent sentences of 3 years' incarceration with all but two years suspended. The court imposed forty hours of community service and 5 years' supervised probation.

The focus of the trial was an altercation between appellant and Marvin Reyes which occurred on April 18, 2022. According to the State, a young woman hit Mr. Reyes's parked car, and Mr. Reyes observed appellant encouraging her to leave the scene. Appellant subsequently threatened Mr. Reyes with a gun.

The State called three police officers and Mr. Reyes as witnesses at trial. Mr. Reyes testified that on April 18, 2022, he was at his home in Cheverly, Maryland, when his mother told him that someone had hit his parked car. Mr. Reyes did not witness the accident. He went outside and saw the young woman who had hit his car getting out of her vehicle and he observed a man telling the young woman to leave and that the "hit [was] nothing." Mr. Reyes informed the man that someone would have to pay for the damage to his car, and the man replied that there was nothing wrong with his truck because all he had suffered was a small ding to the door.

At this point, Mr. Reyes began to record the interaction on his phone. Mr. Reyes testified that the man began to walk away, and Mr. Reyes repeated that someone would have to pay for the damage. Mr. Reyes said he needed the man's information, and the man responded that he would pull a gun on Mr. Reyes if he did not get away from him. Mr. Reyes replied "well, do it then, is what I did tell him. And then he said, well, I will."

Mr. Reyes testified that the man then went to his car, which Mr. Reyes described as "a white Crown Vic or Ford Taurus type looking police interceptor vehicle." Mr. Reyes continued recording the man as he went to the car and opened the door and soon after, he saw "a green beam shine up at me." Mr. Reyes went back inside his house, the man "[got] back in the car, [made] a U-turn, [went] in front of [his] house, [dropped] the window down, flashe[d] the gun one more time, and then [left] after that." Mr. Reyes identified appellant in court as the man he saw.

Mr. Reyes testified that he called 9-1-1, and the audio of the call was admitted into evidence and played before the jury. In the call, Mr. Reyes recounted the events to the

operator, omitting his goading of appellant. He informed the operator that he had a video of the incident but did not catch the license plate number of appellant's car. He told the dispatcher that appellant had left: "I think he just left. He just left around the corner." He described the vehicle and noted that he saw the man parking across the street: "I have a video of him and him speeding out in his car and actually I can see him park right now. He's parking over there at the apartment complex. . . . I think he's parking over there. I think I just saw somebody park over there with the same car. Actually, that's the—yes, that's probably him." Mr. Reyes described that man as "black and has a yellow like sweatshirt on or like a zip-up sweatshirt on, yellow, and he has gray shorts with white and black flip flops" and in his twenties. He noted that appellant "end[ed] up pulling off." Police arrived approximately ten minutes after the call ended.

The video that Mr. Reyes took was admitted into evidence and played for the jury. In the video, Mr. Reyes is heard encouraging appellant to show him his gun: "Bring it out. Bring it out, [N-Word]. Come on (indiscernible) show me (indiscernible) find it." Mr. Reyes identified the point in the video at which he saw "a green laser being pointed at me." He identified another point in the video when he said that appellant pulled out the gun again. Mr. Reyes said that he was able to "just see the front end" when appellant rolled down his window.

Mr. Reyes testified that he had seen appellant prior to this incident: "He'd occasionally walk across that small little field in front—behind that church there. I would occasionally see him park the car, move it around a couple times. Never thought anything of it." When asked if he gave appellant permission to point the gun at him, Mr. Reyes

testified "No—well, yes, I would say yes." He testified that he gave appellant permission to point the gun at him because he did not believe appellant truly had a gun: "that's the only reason why I would ask him to do it is to see if he really had something like that or wanted to do something like that towards me."

On cross-examination, Mr. Reyes testified that appellant was a complete stranger, that they had never talked before, that the altercation took a little over a minute, that it never turned physical, and that for most of the interaction, the man was walking down the street.

Pursuant to a search warrant, Corporal Scott Anselmo testified to his search of appellant's vehicle. The search warrant and photos of the vehicle taken during the search, including a photo of the vehicle's registration, were entered into evidence. Corporal Anselmo testified that appellant owned the vehicle and that inside the vehicle, Corporal Anselmo found two loaded firearms and one drum magazine. He testified that one of the guns had a laser sight: "there was one of them that had a laser sight on the bottom of the barrel. If I'm correct, I believe it was a green laser sight, green in color when it's emitted."

Detective Robert Hartman compiled a photo array and showed it to Mr. Reyes. Mr. Reyes identified appellant as the individual who had pointed the gun at him. Detective Hartman searched appellant's vehicle and found two guns in the glove box, and the drum magazine in the back floorboard.

Corporal Leonardo Benitez, a patrol officer who responded to the scene, described the damage on Mr. Reyes' vehicle and watched Mr. Reyes's video of the altercation which showed appellant's car. Corporal Benitez described the car as a "sort of white Crown Vic,

tinted windows with some marks on the side." Corporal Benitez described the damage to appellant's car.

At the conclusion of the State's case, the court granted a motion for judgment of acquittal as to counts 4 (possession of a regulated firearm after having been convicted of a disqualifying felony), 7 (possession of a regulated firearm after having been convicted of a disqualifying felony), and 10 (illegal possession of ammunition).

The trial court discussed jury instructions with counsel. The State strenuously urged the reluctant court to instruct the jury as to flight and the implications of flight for the jury's consideration. The following discussion ensued:

> "[THE STATE]: Your Honor, I noticed that the proposed jury instructions are no—do not include two requests from the State, one being the flight instruction.
>
> THE COURT: And what was the flight? What was the evidence of flight?
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> [THE STATE]: Well, the evidence of flight was that the defendant drove away in his car after the commission of the alleged crime.
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> THE COURT: And that's what he did, he drove away in his car. When I think of a flight instruction—I looked at it and considered it, but I didn't—don't know if the testimony necessarily supported it. Well, what do you think, [DEFENSE COUNSEL]?
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> [DEFENSE COUNSEL]: No. I've long considered that flight—when you're discussing flight or concealment, there's got to be something more. I mean, obviously, if there was testimony that he saw law enforcement and he ran away or something like that, there's an issue about whether—obviously, there's a whole separate issue about whether the gentleman sitting to my right is even the person to begin with; that goes more to identification. But I just don't think that this fits with the spirit of what they contemplated with the—
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> THE COURT: And that's kind of what I figured, as well. I mean, he's driving by kind of slow, not real fast, he's showing him a gun. Well, that's what the State's case is and then he keeps going. I don't think there would be any

expectation that he would park his car and just sit there and wait. So I didn't view this as particular flight.

[THE STATE]: So may I speak?

THE COURT: Uh-huh.

[THE STATE]: I think if that was the case where there had to be an active pursuit, that would be actually stated explicitly in the jury instructions. It says defendant's flight or concealment.

THE COURT: No, I'm not even going along with that. I don't think there had to be some type of pursuit, but he drove off. What does the instruction say?

[THE STATE]: Well, it says: Defendant's flight and, in parentheticals or brackets, concealment, 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, concealment—

THE COURT: Well, definitely there's no concealment.

[THE STATE]: Understood. 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.

THE COURT: I just don't think that—I don't agree that the facts support that. Yes, go ahead.

[THE STATE] I guess, let me speak of a hypothetical. This jury instruction surely would not be available if, let's say, the defendant called 9-1-1 or the defendant stayed on the scene or when he saw law—I mean, there was—I understand that it's up to the jury, but what's alleged is that the defendant pointed a handgun at the victim, which is a—I mean, even from a common sense perspective, is an illegal action.

THE COURT: As he was driving his car. See, he's already in motion in the car. So it's—

[THE STATE:]: Well, twice because he pointed—what was testified to was that he pointed the handgun with the laser sight at the victim when he had—when he was already in the car while he was parked. And he testified that he cracked the door open and then pointed it. So the car wasn't driving off at that point in time. And then as he's driving off, then at that point, it's alleged that he rolled the window down and then pointed the handgun again. If the—

THE COURT: If you want me to give the instruction, I'll give it. I think it might be a little confusing for the jury. I mean, you're going to argue that he drove off, he fled.

[THE STATE]: Yes.

THE COURT: Okay.

[DEFENSE COUNSEL]: I mean, I would just say, as well—

THE COURT: And noting the defendant's objection. How do you want the instruction to appear and what number is it, again?

[DEFENSE COUNSEL]: 3:24.

THE COURT: Okay. So how—because it's got some stuff that I don't—I know does not apply, the concealment and all of that. So how do you want it to appear?

[THE STATE]: So when you can select the flight or concealment, just strike out concealment and put flight.

THE COURT: So that's 3:24, flight. So take out concealment, leave flight. Is there anything else that will come in or go out as far as it relates to that?

[THE STATE]: No, those are the only options.

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[DEFENSE COUNSEL]: . . . I objected to the flight instruction because I don't think that it fits this fact pattern, as the Court has already noted. And I will add further that they, really, the only testimony was, I think, that you can see they go to a car and they don't see anybody there. I don't even think there was any testimony about a search of the person who did it—

THE COURT: Noting the defendant's objection, I'll give the flight.

[DEFENSE COUNSEL]: Yeah, understood, Your Honor."

The court again noted defense counsel's objection at the close of the discussion on jury instructions. The court instructed the jury as follows:

> "Evidence of flight or flight or concealment of defendant. The 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 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 consider 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."

The jury convicted appellant as described above. This timely appeal followed.

II.

Before this Court, appellant argues that the trial court abused its direction in instructing the jury on flight. Appellant maintains that there was no evidence that appellant fled; rather he simply departed or continued on his way. Because the facts were not sufficient to support an inference of flight, appellant asserts, it was an abuse of discretion for the court to instruct the jury as to flight. This error, according to appellant, was not harmless. Appellant asserts that, on closing argument to the jury when discussing the gun charges, and to support the element that appellant was *knowingly* transporting the guns, the State referred to the flight instruction.

The State concedes that the trial court erred by instructing the jury on flight and to permit the jury to draw an inference of consciousness of guilt because there was insufficient evidence to establish that appellant fled the scene. The State asserts, however, that the error

was harmless beyond a reasonable doubt. The jury acquitted appellant on every offense that relied on Mr. Reyes's veracity when his video contradicted him. By contrast, there was strong documentary and physical evidence for the handgun convictions. The jury would not have relied on the flight instruction to convict appellant because the instruction could not logically establish any consciousness of guilt with respect to the handguns.

The State argues that appellant's challenge to the accuracy of his commitment record is moot on appeal because, after filing his appellate brief, the trial court corrected the commitment record in the manner appellant seeks here.

III.

Because the State concedes that the court erred in providing the flight instruction, and we agree, we proceed under a harmless error analysis. "An instruction which does not correctly state the law is erroneous and should be refused." *State v. Belcher*, 245 S.E. 2d 161, 164 (W. Va. 1978). Here, the trial judge was reluctant to give a flight instruction, but was led down the garden path and down the rabbit-hole by the prosecutor.

An error is harmless only when a reviewing court "is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict." *Dorsey v. State*, 276 Md. 638, 659 (1976). The State bears the burden of showing that the error was not prejudicial. *Id.* at 658-59. Where credibility is at issue in a criminal case, "an error affecting the jury's ability to assess a witness' credibility is not harmless error." *Dionas v. State*, 436 Md. 97, 110 (2013). In Maryland, "[t]he question is whether the error could have influenced the verdict, not whether there is evidence to support the verdict." *Taylor v. State*,

473 Md. 205, 236 (2021). An error is harmless when the error "would not have persuaded the jury to render a guilty verdict when it would not have otherwise done so." *Gutierrez v. State*, 423 Md. 476, 500 (2011). "[T]he issue is not what evidence was available to the jury, but rather what evidence the jury, in fact, used to reach its verdict." *Dionas*, 473 Md. at 109.

The *Dorsey* standard in Maryland for harmless error is a high bar. To reiterate, this Court must be satisfied *beyond a reasonable* doubt that the error did not contribute to the guilty verdict. As the Maryland Supreme Court noted in *Bellamy v. State*, 403 Md. 308, 333 (2008), the harmless error standard is highly favorable to the defendant. As appellant argues, the State relied on the flight instruction in closing argument to the jury about the gun charges. We cannot say that there is no reasonable *possibility* that the jury did not find appellant guilty of the handgun charges because he "fled" the scene to avoid anyone discovering the handguns in his automobile.

JUDGMENTS OF CONVICTION IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.