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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

TYRELL RICARDO ALFORD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 2D18-1324

Opinion filed February 12, 2020.

Appeal from the Circuit Court for Polk County; William D. Sites, Judge.

Howard L. Dimmig, II, Public Defender, and Richard J. Sanders, Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Cerese Crawford Taylor, Assistant Attorney General, Tampa, for Appellee.

SLEET, Judge.

Tyrell Ricardo Alford challenges his conviction and sentence for attempted first-degree murder. He was convicted following a jury trial, and the trial court sentenced him to life in prison. Because the trial court erred in allowing the State to introduce evidence of Alford's move to Pennsylvania as consciousness of guilt without

establishing a nexus between the move and the specific crime charged, we must reverse.

The charges against Alford stem from the violent attack of Sandra Pace-Gaspar. On the night of September 20, 2015, Pace-Gaspar was looking for her nineteen-year-old son in their Lakeland neighborhood. She and her son knew Alford by the name "Trigger." Alford and his girlfriend lived in a duplex down the street from Pace-Gaspar, and she sometimes bought drugs from him. On the night of the attack, she knocked on the door of Alford's duplex to ask if he had seen her son. There was no answer, and when Pace-Gaspar turned to leave, Alford was standing behind her. He asked Pace-Gaspar if she had seen anything, and when she was confused by the question, he said, "Oh, nevermind." Pace-Gaspar then left to run an errand, and when she returned home, her roommate told her that Alford had come by looking for her. She then went next door to visit her neighbors for thirty to forty-five minutes, and when she returned, her roommate told her that Alford had come by a second time looking for her. She testified that she called Alford, and he told her to meet him at the empty duplex next to his. When Pace-Gaspar stepped on the back porch of the empty duplex, someone came from behind her and cut her throat. Her attacker then spun her around and started stabbing her. She testified that at that point she could see her attacker's face. She blacked out several times during the attack. Ultimately, a man from the neighborhood found her and called for help.

When police officers arrived, Pace-Gaspar told them that "Trigger" was the one who attacked her. Her son was there then, and he told police that Alford went by the nickname "Trigger" and that he lived at his girlfriend's duplex next door to the empty home where Pace-Gaspar was attacked. Police went to that duplex, but no one

was home. Police discovered droplets of fresh blood on a bicycle helmet and a cooler in the front yard and a smudge of fresh blood on the outside knob of the front door. The blood on the door matched Alford's, but police never tested the blood found in the yard and therefore never tied it to the crime. On the side of the unit, in a common area barbecue grill, police discovered clothing and a cell phone that had been recently burnt. The number for the cell phone was a number Alford had used in the past, although he denied having a cell phone at the time of the offense.

At Alford's trial, his girlfriend, Lisa Bartholomew, testified that on the night of the attack she told Alford she was going to take her child and stay at her mother's house. As she was leaving, Alford asked Bartholomew to take him to a friend's house in Sebring. She did not want to go that far out of her way, but she agreed to take him to his mom's house in another part of Lakeland. The next morning, police went back to Bartholomew's duplex. The officers spoke to Bartholomew, but Alford was not there. Bartholomew testified that the next time she spoke to Alford was in November and that he was in Pennsylvania.

Alford testified at trial that on the night of the incident, he asked Bartholomew to drop him at his mother's house because it was Bartholomew's duplex, not his, and he did not want to stay there if she was not going to be there. He further testified that he stayed with his mother for a day or two and then moved in with his sister, who lived in the same neighborhood as his mother; he stayed with her for a month before going to his brother's house. He then was in contact with his father in Pennsylvania, who told him he could come there to work. Alford testified that he moved to his aunt's house in Pennsylvania just before Thanksgiving 2015. He did not know about the attack on Pace-Gaspar and did not know that there was a warrant for his

arrest until police came to his father's house in Pennsylvania in July 2016. Once he learned of the warrant, he came back to Florida and turned himself in to police.

In its closing, the State argued that "leaving is consciousness of guilt" and that on the night of the attack, Alford "definitely wanted to go somewhere. Not a particular place. How about Sebring? No. All right. How about my mom's? He just wanted to leave and he never returns." Specifically, as to the move to Pennsylvania, the State argued as follows:

> And the next time Lisa even talks to him, he's in Pennsylvania. Lisa didn't even know he was going to Pennsylvania. Lisa who's in a relationship with him . . . when the next time Lisa talks to the defendant, he's in Pennsylvania. That's like, I don't know geography, that's like six states away.

Here, prior to trial, Alford moved to exclude any mention of his move to Pennsylvania. The trial court denied the motion, emphasizing that the fact that the police issued the arrest warrant within twenty-four hours of the assault "makes a significant difference." On appeal, Alford argues that the trial court erred in allowing the State to present evidence of his move to Pennsylvania without establishing a nexus between the move and the charged offense. We agree.

"Evidence of flight or concealment after a crime may be admissible to show consciousness of guilt." Williams v. State, 199 So. 3d 424, 427 (Fla. 2d DCA 2016) (citing Twilegar v. State, 42 So. 3d 177, 196 (Fla. 2010)). However, "[b]ecause evidence of flight creates an inference of consciousness of guilt, it may not be admitted unless there is evidence of a nexus between the flight . . . [and] the specific crimes charged. The ultimate issue regarding admissibility is whether the evidence of flight is relevant to the charged crimes." Id.

> [T]he cases in which flight evidence has been held inadmissible have contained particular facts which tend to detract from the probative value of such evidence. For instance, the probative value of flight evidence is weakened . . . 1) if the suspect was unaware at the time of the flight that he was the subject of a criminal investigation for the particular crime charged; 2) where there were not clear indications that the defendant had in fact fled; or, 3) where there was a significant time delay from the commission of the crime to the time of flight. The interpretation to be gleaned from an act of flight should be made with a sensitivity to the facts of the particular case.

Twilegar, 42 So. 3d at 196 (alteration in original) (quoting Bundy v. State, 471 So. 2d 9, 21 (Fla. 1985)).

Here, the State presented no evidence at trial showing that Alford was aware that he was a suspect in this crime prior to July 2016, when he learned about the warrant for his arrest. Although the trial court found it persuasive that police had issued a warrant for Alford's arrest within twenty-four hours of the attack, the State presented no evidence to establish that Alford was aware of the warrant. The investigating officer testified regarding his efforts to locate Alford but indicated that they were all unsuccessful. Although the officer spoke with Bartholomew the day after the attack, Bartholomew never testified that she told Alford anything about the crime or that there was a warrant out for his arrest. In fact, she did not even testify that she was aware of the warrant. The unrefuted evidence below was that Alford stayed with family members until he turned himself in to police in July 2016, but the investigating officer never indicated that he spoke with any of Alford's family until Alford's father was contacted just prior to Alford turning himself in.

Additionally, the State's evidence does not clearly indicate that Alford was fleeing a criminal investigation. While a "defendant's abrupt relocation to another state can . . . be evidence of flight," Williams, 199 So. 3d at 428, the record here does not

support the conclusion that Alford's move to Pennsylvania was abrupt. Although Alford did leave his girlfriend's duplex on the night of the attack, his unrefuted testimony was that he remained in Polk County for nearly two months after the September 20 incident and that during that time he stayed only with family members. Alford testified that when he did leave for Pennsylvania in mid-November, it was because his father indicated that there was a job for Alford there. The State presented no evidence to refute this claim or any evidence of "other incriminating behavior" by Alford. See id. ("In . . . cases [of abrupt relocation], there is generally evidence of some other incriminating behavior.").

Accordingly, the totality of the circumstances surrounding Alford's move to Pennsylvania render that evidence more prejudicial than probative. See id. ("Under the totality of the circumstances, the factors that weaken the probative value of evidence of flight make the evidence surrounding Williams' flight in this case more prejudicial than probative."). As such, it was error for the trial court to allow the evidence.

Furthermore, we cannot say that the error was harmless because the evidence of Alford's move suggested that he possessed a consciousness of guilt. See id. ("[B]ecause the evidence of flight established an inference of consciousness of guilt, we simply cannot say that this evidence did not contribute to the verdict."); see also Cooper v. State, 43 So. 3d 42, 43 (Fla. 2010) ("[T]he test [for harmless error] is 'whether there is a reasonable possibility that the error affected the verdict.' " (quoting State v. DiGuilio, 491 So. 2d 1129, 1139 (Fla. 1986))). This is especially so where the State's case was mostly circumstantial, no physical evidence tied Alford to the crime scene, and the only evidence connecting Alford to the crime was the identification made by Pace-Gaspar, which the defense attacked with impeachment evidence. See Williams, 199 So. 3d at 428. Furthermore, the State emphasized the evidence in its closing

argument, stating that on the night of the incident Alford "just wanted to leave and he never returns" and that "the next time Lisa even talks to him, he's in Pennsylvania." The State, however, failed to mention in its closing that it had no evidence to refute Alford's claim that he did not leave for Pennsylvania until mid-November. Because we cannot say that the error of admitting evidence of Alford's move was harmless, we must reverse Alford's judgment and sentence for attempted first-degree murder and remand for new trial.

Reversed and remanded.

LaROSE and MORRIS, JJ., Concur.