

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
August 2, 2011

V

SHAWN WILLIAM BRISBOY,

Defendant-Appellant.

No. 298671
Ingham Circuit Court
LC No. 09-000638-FH

Before: BECKERING, P.J., and FORT HOOD AND STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of one count of third-degree criminal sexual conduct (CSC III), MCL 750.520d, and one count of fourth-degree criminal sexual conduct (CSC IV), MCL 750.520e(1)(a), arising from his sexual assault of a 14-year-old girl. Defendant was sentenced as a second habitual offender, MCL 769.10, to concurrent prison terms of 60 to 264 months for CSC III and 18 to 36 months for CSC IV, with credit for one day served. We affirm.

In April 2007, defendant was living at a house with a friend, Sherilyn Hart, and her two daughters. The victim, a friend of Hart's younger daughter, was spending the night at the Hart home when defendant sexually assaulted her by placing his finger in her vagina and touching her breast.

The victim's parents learned that defendant had sexually assaulted their daughter approximately one month later. Immediately after learning of the assault, the victim's parents contacted the police and drove to the Hart house to confront defendant. They found defendant at the Hart house, told him that they knew he had sexually assaulted their daughter, and indicated that the police were coming. After the confrontation, but before the police arrived, defendant fled the scene.

Defendant's only issue on appeal concerns the trial court's decision to read the following flight instruction based on CJI2d 4.4 to the jury:

There has been some evidence that the Defendant ran away or hid after being accused of the crime. This evidence does not prove guilt. A person may run or hide for innocent reasons, such as panic, mistake, or fear. However, a person may also run or hide because of a consciousness of guilt. You must decide whether the

evidence is true and, if true, whether it shows that the defendant had a guilty state of mind.

Defendant does not dispute that he left the scene after the victim's parents confronted him but before the police arrived. Instead, he argues that insufficient evidence was presented to show that he fled to evade prosecution or because he feared apprehension for sexual assault. Defendant claims that the evidence indicated that he fled because the victim's parents threatened him with harm and he feared a physical altercation with them. We disagree.

We review a trial court's determination whether a jury instruction is applicable to the facts of the case for an abuse of discretion. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006). A trial court may give the jury a particular instruction as long as there has been evidence presented at trial to support it; conversely, an instruction lacking evidentiary support should not be given. *People v Johnson*, 171 Mich App 801, 804; 430 NW2d 828 (1988); see also *People v Hawthorne*, 474 Mich 174, 182; 713 NW2d 724 (2006).

Michigan courts have long held that evidence of flight is admissible. See *People v Cammarata*, 257 Mich 60, 66; 240 NW 14 (1932); *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995); *People v Clark*, 124 Mich App 410, 413-414; 335 NW2d 53 (1983). "Flight" includes actions such as fleeing the scene, leaving the jurisdiction, running from police officers, resisting arrest, and attempting to escape from custody. *Coleman*, 210 Mich App at 4. In *Coleman*, this Court noted that "[s]uch evidence is probative because it may indicate consciousness of guilt, although evidence of flight by itself is insufficient to sustain a conviction." *Id.* Additionally, merely departing from the scene of a crime does not constitute "flight"; instead, there must be some evidence that permits an inference that the defendant feared apprehension when he left the scene. See *People v Hall*, 174 Mich App 686, 691; 436 NW2d 446 (1989). Further, "[t]he remoteness of the flight from the time of defendant's arrest [does] not affect the admissibility of the evidence, but [is] relevant only to the weight of the evidence." *People v Compeau*, 244 Mich App 595, 598; 625 NW2d 120 (2001).

Evidence presented at trial indicated that defendant fled the Hart home because he feared apprehension for sexual assault. When the victim's parents came to Hart's house, they directly confronted defendant, telling him that they knew that he had sexually assaulted their daughter and warning him that they had contacted the police and that officers were coming to the house. Further, both the victim's mother and Hart's older daughter testified that the victim's parents told Hart's older daughter to call the police again, and defendant claimed that he also told Hart's older daughter to call the police. Regardless, defendant disappeared immediately after the victim's parents left the house and just before the police arrived. Moreover, the investigating officer made several unsuccessful attempts to contact defendant in the ensuing weeks. This evidence is sufficient to permit a reasonable inference that defendant feared apprehension when he left the house and, consequently, that he "fled" the scene.

Admittedly, both defendant and Hart's older daughter, who was present during the confrontation, testified that the victim's parents were yelling and threatening physical violence toward defendant when they arrived at the house. Further, defendant claimed that he felt threatened by these remarks; that he decided to leave the house because he did not want to confront or fight the victim's parents and possibly get hurt; and that he did not know that the

police were coming when he left the house. While this evidence may permit a jury to conclude that defendant fled for reasons unrelated to guilt, it does not render the court's instruction improper where there was sufficient evidence that the flight resulted from a fear of apprehension.

Because there was evidence to support the flight instruction, the trial court did not abuse its discretion when it agreed to give the instruction. *Gillis*, 474 Mich at 113. Further, the instruction adequately protected defendant's rights by clarifying that although flight could indicate consciousness of guilt, defendant also could have fled for an innocent reason, such as panic, mistake, or fear. See *People v Martin*, 271 Mich App 280, 337-338; 721 NW2d 815 (2006).

Affirmed.

/s/ Jane M. Beckering
/s/ Karen M. Fort Hood
/s/ Cynthia Diane Stephens