

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALAN ARMBRUST,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36675

FILED

NOV 22 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary. The district court sentenced appellant to serve 16 to 72 months in prison.

Appellant's sole contention is that the district court erred in giving a flight instruction.¹ In particular, appellant argues that a flight instruction was unwarranted because the State failed to establish that appellant's conduct upon the arrival of police officers at the scene of the burglary indicated any consciousness of guilt. Rather, appellant argues that the eyewitness identification of him was not strong and that the evidence adduced at trial suggests that he might have avoided the officers because he was homeless and trying to avoid a warning and possible arrest for vagrancy. We conclude that appellant's contention lacks merit.

¹The district court instructed the jury as follows:

The flight of a person immediately after the commission of a crime, or after he is accused of a crime, is not sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in light of all other proved facts in deciding the question of his guilt or innocence. Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to such a circumstance are matters for your deliberation.

The giving of a flight instruction should not be based on mere speculation. See *Guy v. State*, 108 Nev. 770, 777, 839 P.2d 578, 583 (1992). However, it is not error to give such an instruction "if evidence of flight has been admitted." *Potter v. State*, 96 Nev. 875, 875-76, 619 P.2d 1222, 1222 (1980). "Flight is more than merely leaving the scene of the crime. It embodies the idea of going away with a consciousness of guilt and for the purpose of avoiding arrest." Id. at 876, 619 P.2d at 1222. Because a flight instruction may place too much emphasis on one aspect of the evidence, "we will carefully scrutinize it to be certain that the record supports the conclusion that appellant's going away was not just a mere leaving but was with a consciousness of guilt and for the purpose of avoiding arrest." *Miles v. State*, 97 Nev. 82, 85, 624 P.2d 494, 496 (1981).

Our review of the record discloses that there was evidence sufficient to support at least an inference that appellant fled with a consciousness of guilt and for the purpose of avoiding arrest. Kristen Salka testified that she saw appellant use a traffic barricade to break the window of World Merchant Importers, remove items from the store and take the items to a public parking garage near the store. Salka witnessed appellant making at least two trips between the store and the parking garage. Salka contacted the police, who arrived while appellant was still in the area.

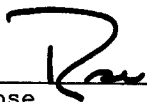
Upon seeing the police car, appellant, who had been standing in front of the store, began to walk quickly away from the police car. The officer in the car activated his patrol lights and ordered appellant to stop and get on the ground. Appellant did not comply with the order. Another officer arrived with his patrol lights activated, and drove up to appellant. Appellant jogged away from the second patrol

car. The second officer exited his car and yelled for appellant to stop, but appellant did not comply. After a foot chase, the officers apprehended appellant who was combative and had to be taken to the ground to be handcuffed.

We conclude that these facts justified giving the flight instruction. "It was for the jury to decide whether the facts warranted an inference of flight." *Hutchins v. State*, 110 Nev. 103, 113, 867 P.2d 1136, 1142-43 (1994). We therefore conclude that this assignment of error is without merit.

Having considered appellant's contention and concluded that it lacks merit, we affirm the judgment of conviction.

It is so ORDERED.


_____, C.J.
Rose


_____, J.
Young


_____, J.
Becker

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk