

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID MICHAEL DORTON, JR.,

Defendant-Appellant.

UNPUBLISHED

July 12, 2005

No. 252542

Wayne Circuit Court

LC No. 03-006483-01

Before: Cooper, P.J., and Fort Hood and R.S. Gribbs*, JJ.

MEMORANDUM.

Following jury trial, defendant was convicted of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to consecutive prison terms of 2-1/2 to 6 years for the armed robbery conviction and two years for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant alleges that the trial court erroneously instructed the jury on flight in the absence of any evidence supporting the instruction. We disagree. "Questions of law, including questions of the applicability of jury instructions, are reviewed de novo." *People v Perez*, 469 Mich 415, 418; 670 NW2d 655 (2003). To give a particular instruction to the jury, there must be evidence to support it. *People v Johnson*, 171 Mich App 801, 804; 430 NW2d 828 (1988). "Flight" evidence is admissible because it may indicate consciousness of guilt. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). The term "flight" includes leaving the jurisdiction. *Id.*

In the present case, defendant gave a statement to police indicating that he left for Kentucky after learning that the police were looking for him following the robbery. This evidence supports the trial court's decision to instruct on flight, leaving it for the jury to decide if defendant did in fact flee to Kentucky and, if so, whether his flight was indicative of guilt. The evidence that defendant voluntarily returned to Michigan did not preclude an inference of consciousness of guilt when defendant initially left. *Johnson, supra* at 804.

Although defendant asserts that he is not contesting the substance of the trial court's flight instruction, he nonetheless alleges that the trial court incorrectly assessed the evidence as indicating that he left town after being accused of the crime. Because this assessment was made

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

in the jury instruction, it implicates the substance of the flight instruction, not merely the evidentiary basis for the instruction. The substantive issue is whether defendant's statement that he left town after learning that the police were looking for him was accurately characterized in the jury instruction as evidence that he left town "after he was accused of the crime."

To the extent that defendant's argument implicates the accuracy of the flight instruction, the issue is reviewed under the plain error doctrine because defendant did not object on this basis at trial. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). "An objection based on one ground is usually considered insufficient to preserve an appellate attack based on a different ground." *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004). Having considered the jury instructions in their entirety, there is no basis for appellate relief under the plain error doctrine. *People v Aldrich*, 246 Mich App 101, 124-125; 631 NW2d 67 (2001). Even assuming that the trial court mischaracterized the flight evidence, the jury was instructed, "You are the only judges of the facts and you should decide this case on the evidence." Further, the trial court's instruction, that flight does not prove guilt and that a person may run or hide for innocent reasons, was sufficient to protect defendant's rights. Viewing the jury instructions in their entirety, defendant's substantial rights were not affected by the instruction as read. Hence, reversal is not warranted. *Aldrich, supra*.

Affirmed.

/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood
/s/ Roman S. Gribbs