

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO: 502013AP900032AXXMB
L.T. NO: 502013MM001127AXXMB

LASHUNDRIA NASHAE BROWN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

Opinion filed: NOV - 4 2014

Appeal from the County Court in and for Palm Beach County,
Judge Marni Bryson.

~~For~~ Appellant: Richard B. Greene, Esq.
Office of the Public Defender
421 Third Street, 6th Floor
West Palm Beach, FL 33401
appeals@pd15.state.fl.us

~~For~~ Appellee: Ari Goldberg, Esq.
Office of the State Attorney
401 N. Dixie Highway
West Palm Beach, FL 33401
agoldberg@sa15.org

PER CURIAM.

Defendant was charged with one count of battery after allegedly grabbing a check from the hand of a Publix store employee and leaving the store. At trial, the State requested a jury instruction on flight and consciousness of guilt. The trial court granted this request and gave the following instruction: "When a suspected person in any manner attempts to escape or evade a threatened prosecution by flight, concealment, resistance to lawful arrest or other indications after the fact of a desire to evade prosecution. Such fact is admissible, being relevant to the

consciousness of guilt which may be inferred from such circumstance.” Defendant was found guilty of battery and sentenced to five days in county jail.

Defense counsel objected to the flight instruction, specifically highlighting the potential for confusion between the charged crime of battery and evidence of a collateral, yet uncharged, crime of passing a bad check.

The Florida Supreme Court has held that, “In reconsidering the flight instruction, we can think of no valid policy reason why a trial judge should be permitted to comment on evidence of flight as opposed to any other evidence adduced at trial.” *Fenelon v. State*, 594 So. 2d 292 (Fla. 1992). Because the Supreme Court had previously found that “flight alone is no more consistent with guilt than innocence,” it held that going forward, “We are thus persuaded that the better policy in future cases where evidence of flight has been properly admitted is to reserve comment to counsel, rather than to the court.” *Fenelon v. State*, 594 So. 2d 292 (Fla. 1992). Therefore, the law is clear that a trial court should not give the jury an instruction on flight and consciousness of guilt.

The State must prove that the error is harmless beyond a reasonable doubt or there is no reasonable probability that the error contributed to the conviction. *State v. DiGuilio*, 491 So. 2d 1129, 1138 (Fla. 1986). In light of the evidence at trial, and in particular the potential for confusion between the charged crime of battery and the uncharged crime of passing a bad check, we cannot find beyond a reasonable doubt that the flight instruction did not contribute to the verdict. *See Crocker v. State*, 616 So. 2d 1180 (Fla. 1st DCA 1993); *see also Paulk v. State*, 618 So. 2d 795, 796 (Fla. 5th DCA 1993). Accordingly, we REVERSE Defendant’s conviction and REMAND for a new trial.

CROW, MILLER, and KROLL JJ. concur.