

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JACOB THOMPCKINS,

Defendant Below,
Appellant,

v.

STATE OF DELAWARE,

Appellee.

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No. 423, 2025

Court Below: Superior Court
of the State of Delaware

Cr. I.D. No. 2401004905 (K)

Submitted: September 30, 2026

Decided: October 9, 2026

Before **LEGROW, GRIFFITHS**, and **ZURN**, Justices.

ORDER

After consideration of the parties' briefs and the record on appeal, it appears to the Court that:¹

1. On January 11, 2024, Jacob Thompkins knocked on his neighbors' door and asked for help finding his cat, then forced his way into their home, stabbed the wife twice in the neck, and struck the wheelchair-bound husband on the head with a flowerpot.² Before leaving the home, Thompkins took the wife's debit card, phone,

¹ Citations in the form "A__" refer to the Appendix to Appellant's Opening Brief.

² A347; A348; A349; A353.

and car keys from her purse.³ He crossed the street, entered the couple's Chevy Equinox, and drove it away.⁴ Thompkins was missing a shoe when he left.⁵

2. The next day, Thompkins's sister forcibly brought him to the police station, where he was apprehended.⁶ He had keys to the victims' Chevy and to their home in his pants pocket.⁷

3. The husband and wife each identified their assailant as their neighbor, Thompkins.⁸ The wife saw him get in her car and drive away.⁹ Municipal surveillance showed a person crossing the street to the car and the car leaving just after the victims reported the crimes.¹⁰ Police confirmed with the wife that the recovered car keys were hers and that the house keys attached to them were to her home.¹¹

4. At the prayer conference, the State requested a flight instruction based on the wife's testimony that the assailant took the car and left, and based on predicted

³ A355; A356.

⁴ A358.

⁵ A357.

⁶ A157; A285; A286; A307.

⁷ A290; A311; A320–21; A296; A467–69, 501–02.

⁸ A195–96; A359–360.

⁹ A358.

¹⁰ A239; A244–45.

¹¹ A468–69.

testimony from Thompkins's sister.¹² The defense did not object.¹³ Thompkins's sister did not testify at trial.

5. The court delivered the following flight instruction:

The State contends the defendant took flight after committing the crimes. Evidence of flight is admissible as a circumstance tending to show consciousness of guilt. You may consider this evidence only for this limited purpose. You may not consider evidence of flight as proof that the defendant is a bad person, and, therefore, probably committed the crime.

The evidence of flight, if proved, may be considered by you in light of all other facts proven. Whether or not such evidence shows consciousness of guilt and the significance to be attached to such evidence are matters solely for your determination.¹⁴

The flight instruction was not accompanied by an instruction limiting its application to certain charges. The jury found Thompkins guilty on all counts: burglary, robbery, assault, possession of a deadly weapon, and theft of a motor vehicle.

6. Thompkins makes two arguments on appeal. First, he argues the court committed plain error by giving the instruction due to insufficient evidence to infer consciousness of guilt. He argues the evidence shows only that he departed the scene of a burglary, as all burglars eventually do.

¹² A444, A445.

¹³ A446.

¹⁴ A446, A562, A563.

7. When objections to jury instructions are not fairly preserved in the trial court, this Court reviews the instructions' content for plain error.¹⁵ Under that standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process. The doctrine of plain error is limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice.¹⁶ Even if jury instructions are erroneous, reversal is not required if the instruction did not affect the trial's outcome.¹⁷

8. "The motive of a defendant in fleeing is a question for the jury."¹⁸ The State must show there is "sufficient evidence" to warrant a flight instruction permitting a jury to infer consciousness of guilt from the defendant's departure from the scene.¹⁹ A flight instruction is appropriate when "there is a question as to

¹⁵ *Cosden v. State*, 319 A.3d 269, 2024 WL 1848602, at *3 (Del. Apr. 29, 2024) (TABLE).

¹⁶ *Id.* (quoting *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986)) (internal quotation marks omitted).

¹⁷ *Fink v. State*, 817 A.2d 781, 789–90 (Del. 2003); *Johnson v. State*, 342 A.3d 1157, 1165 (Del. 2025).

¹⁸ *Tice v. State*, 382 A.2d 231, 233 (Del. 1977).

¹⁹ *Staats v. State*, 902 A.2d 1125, 1129 (Del. 2006) (overruled on other grounds by *Wright v. State*, 953 A.2d 144 (Del. 2008)).

whether defendant departed the scene because of a consciousness of guilt and a desire to avoid an accusation based thereon, or for some other reason.”²⁰

9. Even if there was insufficient evidence to support the instruction here, there was no plain error. Thompkins has not shown prejudice to or deprivation of a substantial right. Evidence of his guilt was overwhelming: the wife made an in-court identification of Thompkins, her neighbor, as her attacker;²¹ medical and forensic evidence corroborated her testimony of the attack;²² street surveillance photos and camera footage showed an individual leaving the victims’ home just after the attack occurred, entering the victims’ Chevy, and driving away;²³ and police recovered the victims’ car and house keys from Thompkins after his sister forcibly brought him to the police station the day after the crimes.²⁴

10. Thompkins’s second argument on appeal is a constitutional one. He argues the flight instruction violated Article IV, Section Nineteen of the Delaware Constitution by commenting on the facts of the auto-theft count. He points out that theft of a motor vehicle “involves conduct that overlaps with the flight instruction

²⁰ *Tice*, 382 A.2d at 233.

²¹ A359–60.

²² A195–97; A348–53; A400–09.

²³ A243–45; A358.

²⁴ A467–69.

itself”: the act of driving off in the victims’ car.²⁵ He points out the flight instruction was not accompanied by a limiting instruction telling the jury not to apply the flight instruction to the auto-theft charge. And he points out that at closing, the State commented on the evidence showing Thompkins took the victims’ car, then immediately commented on the flight instruction.²⁶

11. Thompkins did not preserve his constitutional argument below. Constitutional challenges not raised below are reviewed for plain error.²⁷

12. Article IV, Section Nineteen of the Delaware Constitution states that “judges shall not charge juries with respect to matters of fact, but may state the questions of fact in issue and declare the law.”²⁸ This Court has explained that under Section Nineteen,

Trial judges may properly combine a statement regarding a fact in issue with a declaration of the law. Trial judges may not, however, comment on the facts in their charge to the jury. An improper comment or charge on matters of fact is an expression by the court, directly or indirectly, that may convey to the jury the court’s estimation of the truth, falsity or weight of testimony in relation to a matter at issue. However, a trial judge may explain the legal significance which the law attaches to a particular factual finding.²⁹

²⁵ Appellant’s Opening Br. at 16.

²⁶ A497.

²⁷ *Cosden*, 2024 WL 1848602, at *4.

²⁸ Del. Const. Art. IV, § 19.

²⁹ *Cap. Mgmt. Co. v. Brown*, 813 A.2d 1094, 1100 (Del. 2002) (internal quotations and citations omitted).

This Court held the flight instruction itself did not violate Article IV, Section Nineteen in *Robertson v. State* and *Cosden v. State*.³⁰ Those cases did not address whether the instruction improperly commented on the facts of another charge. In *Watson v. State*, this Court indicated a flight instruction was proper where it addressed a CCDW charge but not a resisting arrest charge.³¹

13. Thompson looks to *State v. Rivera*, out of the New Jersey Appellate Division.³² The defendant was charged with eluding and resisting arrest, and the judge gave a flight instruction that encompassed those charges.³³ The appellate court reversed, applying New Jersey law that evidence of flight or escape can demonstrate consciousness of guilt only for “flight which occurs subsequent to the offense charged,” and so could not apply where “the flight itself was the conduct alleged to

³⁰ *Robertson*, 41 A.3d at 409 (“The instruction properly explained the legal significance of the evidence of evasion of arrest and flight. Moreover, the Superior Court expressly limited the use of that evidence by instructing: ‘[e]vidence of evasion of arrest or flight, if proved, may be considered by you in light of all other facts proved. Whether or not such evidence shows consciousness of guilt and the significance to be attached to such evidence are matters solely for your determination.’”); *Cosden*, 2024 WL 1848602, at *4–5 (affirming over arguments that the instruction suggested a higher likelihood of guilt, highlighted guilt over all other inferences, and improperly generalized consciousness of guilt as pertaining to the charged offenses).

³¹ 340 A.3d 1133, 2025 WL 1100940, at *1, *4 (Del. Apr. 14, 2025) (TABLE) (noting the judge gave a flight instruction “explaining to the jury that it could infer that Watson’s flight showed ‘consciousness of guilt’ for possessing a firearm,” and that “the flight instruction was relevant only to the CCDW charge, not the resisting arrest charge” as the State’s argument connected flight only to the gun).

³² 2006 WL 3511525 (N.J. App. Div. 2006).

³³ *Id.* at *1–2.

be criminal.”³⁴ Thompkins infers the instruction in *Rivera* was an “indirect” and prejudicial comment on the evidence.³⁵ But *Rivera* did not hold the instruction was an improper comment on the evidence of the resisting arrest charge.

14. Here, whether the Superior Court improperly commented on the evidence comes down to the instruction’s plain text. Even though the flight instruction overlapped with the conduct of the auto-theft charge, and even in the absence of an instruction limiting the flight instruction to counts other than the auto-theft charge, the flight instruction did not comment on the facts of the auto-theft charge. The instruction told the jury how it could interpret evidence of flight, with an important caveat: if the State proved flight. *Robertson* approved similar language, noting it “expressly limited” use of any evidence of flight.³⁶ The Superior Court judge did not presume, suggest, or otherwise evaluate whether the State had proven flight or that Thompkins had taken the victims’ car. Instead, the instruction merely explained “the legal significance which the law attaches to a particular factual finding,” which it left for the jury.³⁷ “The trial judge’s instruction neither

³⁴ *Id.* at *3.

³⁵ Appellant’s Opening Br. at 17–18.

³⁶ 41 A.3d at 409.

³⁷ *Cap. Mgmt.*, 813 A.2d at 1100 (internal quotations and citations omitted); *see, e.g., Miller v. State*, 893 A.2d 937, 955–56 (Del. 2006) (finding the trial judge did not improperly comment on the evidence, even though he instructed the jury on the counts charged in the same form as the prosecutor and linked factual allegations with the

directly nor indirectly commented on the truth or falsity of the evidence nor on the weight to be given to the evidence.”³⁸

NOW THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Morgan T. Zurn
Justice

corresponding charge, because the instruction “ensured that the jury understood how the asserted facts, if true, related to each of the indictment counts”).

³⁸ *Cap. Mgmt.*, 813 A.2d at 1100.