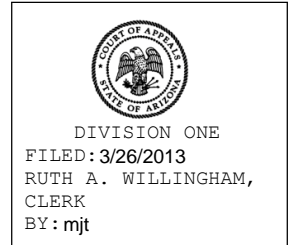


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Sup. Ct. 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 12-0256
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
JOSEPH VINCENT GOLDMEER,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)

Appeal from the Superior Court of Maricopa County

Cause No. CR2011-132690-001 DT

The Honorable Joseph C. Kreamer, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Kent E. Cattani, Division Chief Counsel,
Criminal Appeals/Capital Litigation Division
And Joseph T. Maziarz, Section Chief Counsel
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Terry J. Adams, Deputy Public Defender
Attorneys for Appellant

T H O M P S O N, Judge

¶1 Defendant Joseph Vincent Goldmeer appeals his convictions and sentences for three counts of aggravated assault. For the reasons that follow, we affirm.

¶2 Defendant was a cab driver. On the afternoon of June 26, 2011, defendant went to a Circle K convenience store near 15th Avenue and Indian School Road to get a soda and got into an argument with another customer, T.K. The men left the store after finishing their transactions at the counter and continued arguing heatedly in the parking lot. Defendant got into his cab, a van, and T.K. followed him to the driver's side door. Defendant started to drive away, but stopped when T.K. walked around the front of the van. T.K. slapped the hood of the van, and continued yelling at defendant. Defendant then drove forward, hitting T.K. T.K. flew up into the air and fell to the ground. The van paused. Defendant drove over T.K.'s body, drove over a curb, and took off rapidly down Indian School Road. T.K. suffered serious injuries. Police arrested defendant two to three hours later in Gilbert after the cab company provided the police with the van's GPS location.

¶3 The state charged defendant with two counts of aggravated assault, class 3 dangerous felonies, and one count of aggravated assault, a class 4 dangerous felony. A jury convicted defendant as charged. The trial court sentenced defendant to concurrent five-year mitigated sentences for counts one and two and a concurrent four-year mitigated sentence for count three, with credit for 208 days of presentence incarceration. Defendant timely appealed.

¶4 Defendant raises one issue on appeal: whether the trial court erred in giving the jury a flight instruction. The trial court gave the jury the following instruction, which defendant objected to:

In determining whether the State has proved the defendant guilty beyond a reasonable doubt, you may consider any evidence of the defendant's running away, hiding, or concealing evidence, together with all the other evidence in the case. You may also consider the defendant's reasons for running away, hiding, or concealing evidence. Running away, hiding, or concealing evidence after a crime has been committed does not by itself prove guilt.

¶5 We review the trial court's decision to give jury instructions for an abuse of discretion. *State v. Johnson*, 205 Ariz. 413, 417, ¶ 10, 72 P.3d 343, 347 (App. 2003). The trial court commits reversible error when it instructs the jury on an issue that is not supported by the evidence. *State v. Speers*, 209 Ariz. 125, 132, ¶ 27, 98 P.3d 560, 567 (App. 2004). Defendant argues that the flight instruction was not supported by the evidence because there was no evidence that he was fleeing as a result of an immediate pursuit, and there was no evidence of concealment.

¶6 In this case, the jurors could reasonably infer from the evidence that the way defendant left the scene evidenced a consciousness of guilt, and evidence of immediate pursuit was not required. See *State v. Salazar*, 173 Ariz. 399, 409, 844

P.2d 566, 576 (1992) ("If the evidence shows a defendant's manner of leaving the scene of a crime reveals a consciousness of guilt, even in the absence of pursuit, an instruction on flight is permissible.") (citation omitted). Although defendant maintained that he had no idea he had hit T.K., a defendant's alternative explanation for his actions does not preclude a flight instruction. See *State v. Hunter*, 136 Ariz. 45, 49, 664 P.2d 195, 199 (1983). Moreover, evidence of concealment is not necessary to justify a flight instruction. *State v. Thornton*, 187 Ariz. 325, 334, 929 P.2d 676, 685 (1996) (citation omitted). We find no abuse of discretion.

¶7 For the foregoing reasons, we affirm defendant's convictions and sentences.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Presiding Judge

/s/

DONN KESSLER, Judge

