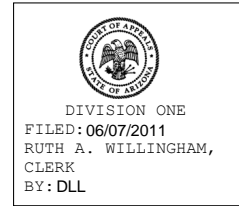


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 10-0549  
)  
Appellee, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication - Rule  
CHRISTOPHER LEO LINDQUIST, ) 111, Rules of the Arizona  
) Supreme Court)  
Appellant. )  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CR 2009-165628-001 DT

The Honorable F. Pendleton Gaines, Judge (Deceased)

**AFFIRMED**

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Thomas C. Horne, Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel  
Criminal Appeals/Capital Litigation Section  
and Aaron J. Moskowitz, Assistant Attorney General  
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix  
By Stephen R. Collins, Deputy Public Defender  
Attorneys for Appellant

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**N O R R I S**, Judge

¶1 Christopher Leo Lindquist timely appeals his conviction and sentence for aggravated assault, a class two dangerous felony. He argues the superior court committed

reversible error by instructing the jury, over his objection, on flight. We disagree. Lindquist's actions could reasonably be characterized as "eluding behavior" that supported the instruction, and thus the superior court did not abuse its discretion in instructing the jury on flight.

#### **FACTS AND PROCEDURAL BACKGROUND**

¶2 On October 11, 2009, Lindquist drove his Jeep erratically and at high speeds on his way home from a birthday party. A Phoenix police officer attempted to make a traffic stop, but Lindquist did not stop until he had pulled into the garage of what turned out to be his parents' home. Lindquist got out of the Jeep with a knife in his hand. The officer moved away from Lindquist, drew his firearm, and told Lindquist to drop the knife.

¶3 Lindquist continued advancing toward the officer with the knife in his hand in a stance that showed, according to the officer's testimony, Lindquist was preparing to fight. The officer described the situation as a "stand-off" in which one further move by Lindquist would have led to the officer shooting him. The officer again told Lindquist to drop the knife, and Lindquist tossed the knife away, turned, and ran into the home. Only a minute or so later, after at least one more police officer had arrived, Lindquist came out through the garage with his parents. After initially resisting, police arrested him.

¶4 The superior court instructed the jury on flight as follows:

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 of 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.

The jury convicted Lindquist of aggravated assault, finding the offense dangerous. The court sentenced Lindquist to a presumptive term of 10.5 years in prison.

#### **DISCUSSION<sup>1</sup>**

¶5 Whether a court should instruct the jury on flight depends on the facts in the case. *State v. Cutright*, 196 Ariz. 567, 570, ¶ 12, 2 P.3d 657, 660 (App. 1999), *disapproved on other grounds by State v. Miranda*, 200 Ariz. 67, 22 P.3d 506 (2001). Merely leaving the scene of a crime may not constitute flight, and thus the court must determine whether the defendant engaged in conduct intended to postpone or prevent apprehension. *Id.* "The key inquiry is whether the defendant engaged in some type of eluding behavior designed to camouflage his

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<sup>1</sup>We review a superior court's decision to give or refuse to give a jury instruction for an abuse of discretion. *State v. Hurley*, 197 Ariz. 400, 402, ¶ 9, 4 P.3d 455, 457 (App. 2000).

participation in a crime, thus manifesting a consciousness of guilt." *Id.*

¶6 Here, Lindquist advanced on the officer with the knife even after being told to drop it. Then, after obeying the command, he ran into the home rather than surrender. Lindquist's retreat into the home could reasonably be characterized as "eluding behavior" -- he would have been arrested immediately otherwise -- and thus demonstrated his consciousness of his guilt.

¶7 That Lindquist's retreat could reasonably be viewed as "eluding behavior" is further supported by the officer's actions after the "stand-off" and Lindquist's statements to police. The officer, believing Lindquist was attempting to avoid arrest, broadcast Lindquist's description to other officers and requested a perimeter around the home in order to catch him if he tried to escape. Even Lindquist himself suggested his retreat was "eluding behavior" by stating that, although he was not trying to avoid arrest, he thought it would be "safer" in the home.

¶8 Because Lindquist's retreat into the home could be characterized as "eluding behavior" that manifested a consciousness of guilt, the superior court reasonably concluded the facts supported a flight instruction. It did not, thus, abuse its discretion in instructing the jury on flight.

**CONCLUSION**

¶9 For the foregoing reasons, we affirm Lindquist's conviction and sentence.

/s/  
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PATRICIA K. NORRIS, Judge

CONCURRING:

/s/  
\_\_\_\_\_  
PETER B. SWANN, Presiding Judge

/s/  
\_\_\_\_\_  
DANIEL A. BARKER, Judge