

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Appellee,*

*v.*

JOE L. MEDINA,  
*Appellant.*

No. 2 CA-CR 2013-0395  
Filed September 22, 2014

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See* Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24.

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Appeal from the Superior Court in Pima County  
No. CR20114074001  
The Honorable Howard Hantman, Judge

**AFFIRMED**

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COUNSEL

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*Counsel for Appellee*

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**MEMORANDUM DECISION**

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

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M I L L E R, Presiding Judge:

¶1 Joe Medina was convicted after a jury trial of second-degree murder, attempted second-degree murder, aggravated assault, and possession of a deadly weapon by a prohibited possessor. He was sentenced to concurrent and consecutive sentences totaling twenty-six years' imprisonment. On appeal, Medina contends his statements to police and to a victim's widow should have been suppressed because they were involuntary. He also claims the trial court erred when it precluded the precise nature of the victims' criminal histories, which he contends were relevant to his justification defense. Finally, he alleges the consecutive sentence on the prohibited possession count was error pursuant to A.R.S. § 13-116. For the following reasons, we modify Medina's sentence on the prohibited possessor count to run concurrently to the sentence for second-degree murder, but otherwise affirm his convictions and sentences.

**Factual and Procedural Background**

¶2 We view the facts in the light most favorable to sustaining the jury's verdict and resolve all reasonable inferences against the appellant. *State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). In November 2011, Medina shot two men, M.G. and J.C., in the parking lot of an apartment complex. M.G. died at the scene and J.C. recovered from his injuries. Several days later, Medina was arrested and confessed to detectives that he shot both victims. He was charged with first-degree murder, attempted first-degree murder, aggravated assault, and possession of a deadly weapon by a prohibited possessor.

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¶3 At trial, Medina admitted he had shot the men, but argued the shootings were justified to prevent them from assaulting him. He was convicted and sentenced as described above, and this timely appeal followed.

**Voluntariness of Confessions**

¶4 Medina argues he was coerced into confessing to detectives by the environment of the interrogation and impermissible police questioning. He also contends inculpatory statements he made to M.G.'s widow were tainted by the detectives' interrogation.

¶5 We presume confessions are involuntary, and the state has the burden of proving voluntariness by a preponderance of evidence. *State v. Scott*, 177 Ariz. 131, 136, 865 P.2d 792, 797 (1993). We review a trial court's determination of voluntariness for clear and manifest error, looking at the totality of the circumstances to determine "whether the will of the defendant has been overborne." *State v. Blakley*, 204 Ariz. 429, ¶¶ 26-27, 65 P.3d 77, 84 (2003), quoting *State v. Lopez*, 174 Ariz. 131, 137, 847 P.2d 1078, 1084 (1992). To make this determination, we must consider several factors, including whether *Miranda*<sup>1</sup> warnings were given, the environment and duration of the interrogation, and whether there was impermissible police questioning. *Id.*

¶6 Witnesses gave detectives Medina's name, and the detectives obtained an arrest warrant. Four days after the shooting, Medina was arrested and taken to a police station, where two detectives read him his *Miranda* rights and proceeded to interview him. The interview lasted about fifty minutes. Two months later, M.G.'s widow visited Medina in jail, and he again admitted he had shot M.G., but said he did it to protect himself. Before trial, Medina moved to suppress both statements.

¶7 In a video of the police interrogation played at the suppression hearing, the detectives repeatedly told Medina that it was his chance to tell his version of what happened, and that if he

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<sup>1</sup>*Miranda v. Arizona*, 384 U.S. 436 (1966).

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did not answer, the officer would have to rely on the word of the other witnesses, who did not “give a s--- about” Medina, and would act in their own interests. The detectives also told him they would have to talk to his friends, saying: “[E]verybody . . . in your life that you’ve known since you got out of prison you’re going to drag into, into your issues, into your drama.” Additionally, when Medina asked what charges he was facing, a detective told him, “Right now you’re being detained. I’m trying to decide what to charge you with because I want to hear your side of the story. If I don’t hear your side of the story I told you I’m going to go with what they tell me.”

¶8 The trial court ruled the statements were voluntarily given. It determined the detectives’ statements that they would bring in Medina’s friends were not coercive, distinguishing them from cases Medina cited in which officers threatened to arrest family members as accomplices. The court also held that the confession to the victim’s widow was not tainted by the first confession.

¶9 On appeal, Medina concedes he agreed to talk after he was read his *Miranda* warnings, but argues the environment of the interrogation was coercive because he was taken to a police station, did not have a lawyer present, and was not told what charges might be brought. He does not cite any authority in which those factors weighed against finding a confession voluntary where a defendant agreed to answer questions after stating that he understood the *Miranda* warnings. Further, the detective explained to Medina that he could not tell him the charges because he did not know them yet. Medina does not argue that the detective was lying to him, nor does he contend that he was held for a long time in extreme conditions, or deprived of food or sleep. The conditions of the confession and refusal to inform Medina of his charges did not make it involuntary. *See State v. Amaya-Ruiz*, 166 Ariz. 152, 164-65, 800 P.2d 1260, 1272-73 (1990) (confession voluntary where suspect left in room in border patrol station for nine hours wearing only blanket and underwear); *State v. Tison*, 129 Ariz. 526, 536-37, 633 P.2d 335, 345-46 (1981) (statements not involuntary when made after detention for seven hours wearing only blanket).

¶10 Medina also argues the detectives’ repeated references to bringing in his friends were false statements or promises intended

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to coerce him to confess. He argues the friends were like family, and relies on several cases addressing coercion of suspects by using threats or promises regarding relatives. To determine whether comments about a suspect's relatives were improper, we look at whether the defendant agreed to answer questions following *Miranda* warnings, whether the defendant initiated the conversation about the relative, and whether the officers were honest with the defendant. *Scott*, 177 Ariz. at 137, 865 P.2d at 798.

¶11 Here, the detectives initiated the discussion about the friends, but did not make promises or lie; rather, they stated that if he did not tell his story, they would talk to his friends. As the trial court noted, the implication is that they would have to continue their investigation into his involvement, not that they would arrest his friends for the crime. Medina points to no evidence that the detectives' statements were false. The detectives' questioning of Medina was not improper, and Medina's statements to them were voluntary. *See Scott*, 177 Ariz. at 137, 865 P.2d at 798 (detective's statement that officers would speak to suspect's elderly mother to verify statement not coercive); *State v. Ferguson*, 119 Ariz. 55, 60, 579 P.2d 559, 564 (1978) (confession voluntary even where jailing relative mentioned if not a threat or promise to induce confession, but "only to point out the obvious fact that if the guilty person is found it will be unnecessary to hold others").

¶12 Finally, regarding the inculpatory statements made to M.G.'s widow while he was in jail, Medina contends the initial involuntary confession tainted the statements because he would not have made the statements – particularly to a "complete stranger" – if he had not been coerced in the first place. Assuming for the purpose of argument that the confession directly led to the statement, the argument nevertheless fails because the first confession was voluntary. The trial court did not err in denying Medina's motion to suppress the statements.

### **Victims' Criminal Histories**

¶13 Medina contends the trial court erred by precluding evidence that the victims had both served time in prison for sexual assault. We review a trial court's ruling on the admissibility of

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evidence for abuse of discretion. *State v. Buccheri-Bianca*, 233 Ariz. 324, ¶ 7, 312 P.3d 123, 127 (App. 2013).

¶14 Before trial, the state moved to preclude evidence of the full criminal histories of M.G. and J.C. Medina argued the histories were relevant because the victims and Medina had been discussing their criminal backgrounds and gang affiliations as a means of “sizing each other up” just before the shooting. Medina contended that M.G. began to call him an “S.O.,” a prison term meaning “Sex Offender,” which he understood as a threat. Medina argued the victims’ criminal histories, which included sex offenses, supported his argument that they knew the allegation of being an “S.O.” should be interpreted as a threat. In its written order, the trial court concluded the criminal histories were admissible to the extent Medina was aware of them because they showed his state of mind at the time of the shooting.

¶15 Medina subsequently moved to admit evidence about the victims’ sexual offenses. While admitting he did not know their specific offenses at the time of the shooting, Medina argued he was not attempting to bring in the evidence to show a propensity for sexual offenses or to prove the victims’ character, but because the nature of the convictions made it “much more likely that [the victims] understood the seriousness and the threatening nature of calling someone an S-O.” The trial court affirmed its earlier ruling because the defendant was not aware of the status. Medina ultimately testified that the victims told him they had been in prison, and J.C. testified that he and M.G. had been in prison together, but the precise nature of the victims’ crimes was not introduced. On appeal, Medina makes the same argument presented to the trial court.

¶16 Irrelevant evidence is not admissible, and evidence is relevant only if it has a tendency to make a fact of consequence more or less probable. Ariz. R. Evid. 401, 402. Because Medina argued a justification defense, the question before the jury was whether Medina “reasonably believe[d] that physical force or deadly physical force [was] immediately necessary to prevent the other’s commission of . . . aggravated assault.” A.R.S. § 13-411(A).

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¶17 Medina was not aware of the precise criminal histories; therefore, they could not have influenced his decision to use physical force. *See State v. Connor*, 215 Ariz. 553, ¶ 15, 161 P.3d 596, 602 (App. 2007) (records of victim’s violent tendencies inadmissible to support self-defense argument where defendant unaware of tendencies). Medina appears to argue that the sexual offender history was important to determine the victims’ intent rather than Medina’s state of mind, but in a justification defense the two issues are not necessarily linked. *Cf. State v. Fish*, 222 Ariz. 109, ¶ 45, 213 P.3d 258, 272 (App. 2009) (under Rule 404(b), Ariz. R. Evid., intent to show victims’ motive through prior bad acts “necessarily relates to the Defendant’s state of mind and as such, to be admissible the Defendant must have known of the prior specific conduct”). The nature of the crimes was irrelevant to the jury’s determination of whether Medina reasonably believed physical force was necessary. *State v. Taylor*, 169 Ariz. 121, 124, 817 P.2d 488, 491 (1991); *State v. Zamora*, 140 Ariz. 338, 340-41, 681 P.2d 921, 923-24 (App. 1984) (victim’s reputation for carrying gun or violent nature inadmissible where defendant not aware of reputation, but specific instances of gun possession admissible where defendant was aware).<sup>2</sup> The trial court did not err in precluding the specific criminal histories.

**Prohibited Possessor Sentence**

¶18 Finally, Medina argues the trial court erred when it ordered his prison term on the prohibited possessor count be served consecutively to the first three counts. Medina did not raise the issue before the trial court, but an illegal sentence constitutes

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<sup>2</sup>In certain contexts, other bad acts or propensity for violence unknown to the defendant will be admissible to show the victim was the initial aggressor or to corroborate the defendant’s version of events. *See Fish*, 222 Ariz. 109, ¶¶ 25, 49, 213 P.3d at 267, 274. Medina did not make those arguments before the trial court or on appeal.

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fundamental, reversible error.<sup>3</sup> See *State v. Forde*, 233 Ariz. 543, ¶ 137, 315 P.3d 1200, 1231 (2014). The state concedes the error.

¶19 Section 13-116, A.R.S., precludes the imposition of consecutive sentences if the defendant's offenses arise from a single transaction. *State v. Carreon*, 210 Ariz. 54, ¶ 102, 107 P.3d 900, 920 (2005). To determine whether the conduct is a single act, we consider the facts of each crime separately, "subtracting from the factual transaction the evidence necessary to convict on the ultimate charge . . . . If the remaining evidence satisfies the elements of the other crime, then consecutive sentences may be permissible." *State v. Gordon*, 161 Ariz. 308, 315, 778 P.2d 1204, 1211 (1989). The second prong of the *Gordon* test requires courts to consider whether it was factually impossible to commit the ultimate crime without committing the secondary crime. *Id.* The third prong is whether the defendant's conduct in committing the secondary crime caused the victim to suffer an additional risk of harm. *Id.*

¶20 Here, the second-degree murder of M.G. is the ultimate crime. Medina is a prohibited possessor and he used a gun to kill M.G. Under these facts, it was impossible for Medina to shoot and kill M.G. without violating the prohibited possessor statute. Cf. *Carreon*, 210 Ariz. 54, ¶ 108, 107 P.3d at 921 (factually impossible to commit attempted murder with gun without violating prohibited possessor statute). Additionally, the misconduct involving weapons did not expose M.G. to a risk greater than the murder itself. *Id.* ¶109. Thus, under the second and third prongs of *Gordon*, the sentence on the prohibited possessor charge should have run concurrently to the sentence on the murder charge. We therefore modify Medina's sentence on Count 4 accordingly. See *id.*

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<sup>3</sup>Medina contends the issue is not waived, citing *State v. Vermuele*, 226 Ariz. 399, 249 P.3d 1099 (App. 2011), because at the sentencing, he requested concurrent sentences. He did not, however, argue this pursuant to A.R.S. § 13-116, as he does now. Additionally, because he argues his sentence is illegal, not merely excessive, he could have challenged it under Rule 24.3, Ariz. R. Crim. P., but he did not. See *Vermuele*, 226 Ariz. 399, ¶ 7, 249 P.3d at 1102.

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(modifying sentence after *Gordon* error without remand); *State v. Gourdin*, 156 Ariz. 337, 339, 751 P.2d 997, 999 (App. 1988) (recognizing A.R.S. § 13-4037(A) allows court of appeals to modify illegal sentence).

**Disposition**

¶21 For the foregoing reasons, we order that Medina's sentence on Count 4 run concurrent with that imposed for Count 1. Medina's convictions and sentences are otherwise affirmed.