

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

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THE STATE OF ARIZONA,  
*Appellee,*

*v.*

CORINA FAVELA CASTRO,  
*Appellant.*

No. 2 CA-CR 2012-0459  
Filed November 8, 2013

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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NOT FOR PUBLICATION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. CR20120056001  
The Honorable Ted B. Borek, Judge

**AFFIRMED**

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COUNSEL

Thomas C. Horne, Arizona Attorney General  
by Joseph T. Maziarz, Section Chief Counsel, Phoenix  
and Jonathan Bass, Assistant Attorney General, Tucson

*Counsel for Appellee*

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Lori J. Lefferts, Pima County Public Defender  
by David J. Euchner, Assistant Public Defender, Tucson  
and Elena M. Kay, Assistant Public Defender, Tucson

*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge Miller authored the decision of the Court, in which Chief Judge Howard and Presiding Judge Vásquez concurred.

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M I L L E R, Judge:

¶1 After a jury trial, appellant Corina Castro was convicted of two counts of aggravated assault for using a deadly weapon or dangerous instrument to cause serious physical injury to G.C., and one count of assault against N.I., each committed while Castro was on probation for a felony offense. The trial court imposed presumptive, concurrent terms of imprisonment of 7.5 years for the aggravated assaults and a six-month term of incarceration for the simple assault. On appeal, Castro argues the court erroneously denied her motion to suppress inculpatory statements she made to a Tucson Police Detective. She maintains the statements were inadmissible because they were involuntary and were obtained in violation of *Edwards v. Arizona*, 451 U.S. 477 (1981). For the reasons that follow, we affirm.

**Background**

¶2 At about 1:30 p.m. on December 25, 2011, Castro was walking on a residential street with her daughter and her niece when G.C. drove alongside them and spoke in a way that Castro characterized as “hitting on” her fourteen-year-old daughter. After Castro cursed G.C. and spit on his car, G.C. stopped his vehicle, got out, and confronted her. N.I., a friend of G.C.’s who lived in the neighborhood, approached G.C. and saw Castro speaking into her cellular telephone. Another car drove up and the driver spoke

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briefly to Castro, who pointed toward G.C. and N.I. and said, "That's the m \_\_\_\_\_ f \_\_\_\_\_ right there." The driver got out of the car wielding a baseball bat and struck N.I. in the head, knocking him to the ground. Castro yelled, "That's the wrong one," and the unknown man then began beating G.C. with the bat, hitting him multiple times in the head and back before getting back into his vehicle and driving away.

¶3 Tucson Police Department personnel responded, and Officer D. Lucas was walking over to speak with Castro near the scene when she said, "I'm going to tell you exactly what happened." She then told him she was drunk and said, "I'm not lying, guy. I hit him in the head with a baseball bat." She also told him she had thrown the bat into some bushes. Lucas noticed blood spots on Castro's sleeves and decided to detain her for further questioning. After Lucas had advised her of her rights pursuant to *Miranda*,<sup>1</sup> Castro stated, "[N]o, I don't understand. I want a f \_\_\_\_\_ lawyer."

¶4 Although Lucas asked no further questions, Castro told him she wanted to speak with a supervisor. Lucas complied with her request, and Castro told a police sergeant that she wanted to show Lucas where she had thrown the bat. Lucas then drove Castro to the area she indicated, and she told Lucas she had thrown the bat "in the bush right there," but Lucas found no bat. Castro continued to talk to Lucas while in his custody, telling him "she didn't know what to do" and asking his advice, which Lucas declined to give. She then complained of stomach pain and asked for medical attention; Lucas called for medical personnel and, at Castro's request, she was transported to a hospital.

¶5 Later that afternoon, Detective J. Bogdanowich went to the same hospital to conduct interviews with G.C. and N.I. G.C. could not be interviewed because he was unconscious; after Bogdanowich interviewed N.I., he tried to speak with Castro, but she was sleeping and did not rouse. Bogdanowich returned several hours later and found Castro awake and alert; in a tape-recorded interview, he advised Castro of her rights pursuant to *Miranda*, and

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

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she agreed to speak with him. During the interview, Castro admitted she had telephoned the man who had come to the scene with a baseball bat, whom she refused to identify, and also admitted she had kicked G.C. in the face while he was lying on the street.

¶6 Castro moved to suppress her statements to Bogdanowich on the ground that they had been obtained in violation of *Miranda* and *State v. Edwards*, 111 Ariz. 357, 529 P.2d 1174 (1974). At a hearing on the motion, Bogdanowich testified that he did not recall being told that Lucas had previously advised Castro of her *Miranda* rights or that she had invoked a right to counsel, and that he typically makes a note when he is made aware of prior *Miranda* warnings, which he did not do in this case. At the close of the hearing, Castro argued, for the first time, that her statements to Bogdanowich were inadmissible on the additional ground that they were involuntary due to her condition in the hospital. In an under-advisement ruling, the trial court wrote,

The defendant's earlier invocation of her *Miranda* rights would be controlling as to the statement she made to Detective Bogdanowich if the court determines that it is valid. While the defendant did invoke her rights initially, she immediately initiated conversation with the officer, through no prompting by him, by asking to speak to a supervisor, telling the officer she would show him where the bat was located, commenting about the victims, etc. This conduct constitutes a negation of the invocation of her *Miranda* rights and a waiver of the rights. *Edwards v. Arizona*, 451 U.S. 477 (1981) *State v. Burns*, 142 Ariz. 531 (1984).

When Detective Bogdanowich took her statement, there existed no operative invocation of [a right to counsel pursuant to] *Miranda*.

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The court also rejected Castro's allegation that her statements to Bogdanowich had been involuntary, citing its own review of the interview and Bogdanowich's testimony.

**Discussion**

¶7 "A trial court's ruling on the admissibility of a confession will not be reversed on appeal unless there has been clear and manifest error." *State v. Eastlack*, 180 Ariz. 243, 251, 883 P.2d 999, 1007 (1994). The inquiry into an alleged violation of *Miranda* is separate from the inquiry into voluntariness of a statement. *State v. Montes*, 136 Ariz. 491, 494, 667 P.2d 191, 194 (1983). A confession is "prima facie involuntary and the state must show by a preponderance of the evidence that the confession was freely and voluntarily made," *id.* at 496, 667 P.2d at 196; a statement is involuntary when, "given the totality of the circumstances, the defendant's will was overborne." *State v. Newell*, 212 Ariz. 389, ¶ 39, 132 P.3d 833, 843 (2006). In reviewing the denial of a motion to suppress, we look only at the evidence presented during the suppression hearing. *State v. Spears*, 184 Ariz. 277, 284, 908 P.2d 1062, 1069 (1996). We "defer to the trial court's factual findings that are supported by the record and not clearly erroneous" and review the court's legal conclusions de novo. *State v. Rosengren*, 199 Ariz. 112, ¶ 9, 14 P.3d 303, 307 (App. 2000).

¶8 In *Edwards v. Arizona*, the Supreme Court held that a suspect in custody who invokes his right to counsel after being read the *Miranda* advisory "is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." 451 U.S. at 484-85. This "rule limiting police re-initiation of questioning following the invocation of rights is designed 'to prevent police from badgering a defendant into waiving his previously asserted *Miranda* rights.'" *State v. Yonkman*, 231 Ariz. 496, ¶ 8, 297 P.3d 902, 904 (2013), quoting *Michigan v. Harvey*, 494 U.S. 344, 350 (1990).

¶9 But a defendant who has initially invoked a right to counsel may "waive[] his request by reinitiating a conversation with the police." *State v. Staatz*, 159 Ariz. 411, 414, 768 P.2d 143, 146

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(1988), *disapproved on other grounds by State v. LeBlanc*, 186 Ariz. 437, 440, 924 P.2d 441, 444 (1996). Although not all communications are sufficient to suggest such a waiver,<sup>2</sup> a request for counsel may be waived by statements that “represent a desire on the part of an accused to open up a more generalized discussion relating directly or indirectly to the investigation.” *State v. James*, 141 Ariz. 141, 144-45, 685 P.2d 1293, 1296-97 (1984), quoting *Oregon v. Bradshaw*, 462 U.S. 1039, 1045 (1983) (plurality opinion). Thus, “if the accused invoked his right to counsel, courts may admit his responses to further questioning only on finding that he (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right he had invoked.” *Smith v. Illinois*, 469 U.S. 91, 95 (1984); see also *Yonkman*, 231 Ariz. 496, ¶ 9, 297 P.3d at 904 (admissibility of statements made in response to police interrogation after invocation of right to counsel “turns on whether [the defendant] or the police reinitiated the contact, whether [the defendant] knowingly and voluntarily waived his [or her] *Miranda* rights, and whether the confession itself was voluntarily given”).<sup>3</sup>

¶10 In this case, after first requesting counsel, Castro clearly initiated communications relating directly to the investigation by asking to speak with Lucas’s superior officer, by directing Lucas to a location where she said the bat might be found, and by continuing to relate information about the events that had transpired. Lucas did not ask any questions of Castro during that time, and before

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<sup>2</sup> “[S]ome inquiries, such as a request for a drink of water or a request to use a telephone . . . , relating to routine incidents of the custodial relationship, will not generally ‘initiate’ a conversation in the sense in which that word was used in *Edwards*.” *Oregon v. Bradshaw*, 462 U.S. 1039, 1045 (1983) (plurality opinion).

<sup>3</sup> Castro relies on *State v. Edwards* for the proposition that her “volunteer[ing] some statements on [her] own does not deprive [her] of the right to refrain from answering any further inquiries until [s]he has consulted with an attorney and thereafter consents to be questioned.” 111 Ariz. at 360, 529 P.2d at 1177, quoting *Miranda*, 384 U.S. at 445. But that case, decided seven years before *Edwards v. Arizona*, and nine years before *Bradshaw*, does not reflect current law.

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Bogdanowich interrogated Castro, he again advised her of her rights pursuant to *Miranda*. The detective's actions here are readily distinguished from those of the police in *Edwards*, who had re-advised Edwards of his rights in order to attempt "further police-initiated custodial interrogation" after Edwards had invoked his right to counsel and had since remained silent. *Edwards*, 451 U.S. at 484. Because Castro had initiated communications about the case with Lucas and his sergeant, it was appropriate for Bogdanowich to ensure Castro had waived her *Miranda* rights before he interviewed her. In other words, this was not a matter of "badgering a defendant into waiving [her] previously asserted *Miranda* rights," *Harvey*, 494 U.S. at 350, but confirming that an accused who had already volunteered information to the police had understood and waived those rights.<sup>4</sup> See *Bradshaw*, 462 U.S. at 1044 (when accused initiates conversation after invoking right to counsel, "where reinterrogation follows, the burden remains upon the prosecution to show that subsequent events indicated a waiver of the Fifth Amendment right to have counsel present during the interrogation"). Competent evidence in the record supports the trial court's determination that, although Castro had initially invoked her right to counsel, she knowingly and voluntarily waived that right before speaking with Bogdanowich. The court neither erred nor abused its discretion in so ruling.

¶11 Similarly, we find no error in the trial court's determination, after an evidentiary hearing, that Castro's statements to Bogdanowich were voluntary. See *State v. Cota*, 229 Ariz. 136, ¶ 23, 272 P.3d 1027, 1035 (2012) (reviewing court upholds "factual findings as to the 'voluntary nature of a confession if the findings are supported by adequate evidence in the record'"), quoting *State v. Rhymes*, 129 Ariz. 56, 57-58, 628 P.2d 939, 940-41 (1981). Castro maintains that she "was clearly intoxicated" when she was detained by Lucas in the afternoon and that the state failed to prove "that she

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<sup>4</sup>Although Bogdanowich appears to have been unaware that Castro previously had been advised of her rights pursuant to *Miranda*, his interview questions suggest he was aware of some of the statements Castro had made to Lucas.

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was nonetheless able to understand the meaning of her communications with police.” But Bogdanowich testified that when he interviewed Castro—some six hours after Lucas had detained her—she was alert and responsive to his questions, and she did not appear confused or under the influence of drugs or alcohol. According to Bogdanowich, he neither threatened nor promised anything to Castro, and the interview lasted approximately twenty minutes. We have reviewed the recorded statement. Nothing in the record suggests Castro was “intoxicated to such an extent that [s]he was unable to understand the meaning” of Bogdanowich’s questions, *State v. Woodall*, 155 Ariz. 1, 5, 744 P.2d 732, 736 (App. 1987), or that her will was overborne. The record fully supports the finding, based on the totality of the circumstances, that Castro’s statements to Bogdanowich were voluntary.

**Disposition**

¶12 For the foregoing reasons, Castro’s convictions and sentences are affirmed.