**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**May 4, 2016**

**Diane M. Fremgen**
**Clerk of Court of Appeals**



**Appeal No. 2015AP1238-CR** **Cir. Ct. No. 2013CF385**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT II**

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RAUL H. ALONSO,**

**DEFENDANT-APPELLANT.**

APPEAL from a judgment of the circuit court for Waukesha County: KATHRYN W. FOSTER, Judge. *Affirmed*.

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

¶1 PER CURIAM. Raul Alonso appeals from a judgment convicting him of possession with intent to distribute THC, possession with intent to distribute cocaine, and maintaining a drug trafficking place. Alonso argues that the circuit court erred when it denied his motion to suppress statements he made

during an interview with two police officers and an unidentified immigration officer. He argues that he did not knowingly and intelligently waive his ***Miranda***[1] rights and that his subsequent inculpatory statements were involuntary. We affirm.

## I. Background

¶2 Alonso is an immigrant here illegally. Prior to his arrest, he lived in Waukesha for more than ten years. His primary language is Spanish, and he maintains that his English is very poor. Police arrested Alonso in connection with a drug investigation involving a house in Waukesha that Alonso shared with another person. A search of the property resulted in the recovery of substantial amounts of marijuana, cocaine, and $4000 cash.

¶3 Two detectives interviewed Alonso: Detective Aaron Hoppe and Detective Servando Benitez. Though not certified, Benitez acted as translator for the interview. An unidentified federal officer—who later stated that he was "from immigration"—was also present. Hoppe read Alonso his ***Miranda*** rights in English, which Benitez translated into Spanish. Alonso indicated that he understood his rights and was willing to talk to the officers. He also signed a written waiver indicating that he understood his rights. Later, Alonso testified that he "didn't put [his] real signature down" because he thought that would help him later.

¶4 Before the unidentified immigration officer began asking questions, Alonso emphatically denied any involvement in drug activity, though he did admit

[1] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

that he allowed Otilio Gonzalez—an acquaintance he would later accuse of selling drugs—to have access to the Waukesha home and to store things in the house. Alonso declared that he found out Gonzalez was storing drugs in the house only a few days prior. Additionally, Alonso affirmed that he paid rent on the property and kept some of his things there.

¶5 At this point, approximately thirty-one minutes into the interview, the unidentified immigration officer spoke up: "I'm from immigration," the officer informed Alonso. "There's also the immigration side of this. And the way that we handle your case depends a lot on the level of cooperation that we see you giving the detective. So, I mean, you really are helping yourself out."

¶6 Still, Alonso continued to hold his ground and insist that he was not involved in any drug activity. Alonso doubled down on his insistence that he had been truthful up to that point. In response to further questioning, Alonso denied being involved in a drug deal or selling weapons. However, when confronted with a picture of him holding a weapon, he admitted to being present when the weapon was sold along with marijuana and cocaine. Hoppe asked Alonso if he had ever been to a Wal-Mart with Gonzalez, and Alonso initially denied that he had. When asked again, Alonso did admit to going to the Wal-Mart where Gonzalez conducted a drug transaction but denied being involved in the transaction. Alonso also stuck with his story about not knowing that Gonzalez was bringing drugs into the house until a few days before the interview. Alonso maintained that he repeatedly told Gonzalez to take the drugs out of the house once he did find out. Although he admitted to purchasing cocaine for personal use, Alonso never admitted to selling drugs or assisting Gonzalez in doing so.

¶7 The State charged Alonso with possession with intent to distribute THC, possession with intent to distribute cocaine, and maintaining a drug trafficking place. Alonso moved to suppress the statements on two grounds, asserting: (1) he did not knowingly and intelligently waive his ***Miranda*** rights and (2) his statements were not voluntary because the unidentified immigration officer impliedly threatened to deport him if he did not cooperate. The circuit court rejected Alonso's arguments, holding that Alonso had been informed of his rights and waived them, and that his statements were voluntary. A jury convicted Alonso of all counts.

## II. Discussion

¶8 On appeal, Alonso again challenges the admissibility of his statements given during the interview with police and the unidentified immigration officer. We conclude that Alonso knowingly and intelligently waived his ***Miranda*** rights and that his statements during the interview were voluntary. Thus, the circuit court properly denied Alonso's motion to suppress.

### A. Alonso Knowingly and Intelligently Waived his *Miranda* Rights

¶9 Alonso concedes that the proper ***Miranda*** warnings were given to him.[2] He nevertheless maintains that his waiver was invalid. Both the Fifth

[2] Alonso makes some reference to his purported language barrier. He admits in his brief-in-chief that his ***Miranda*** argument "does not concern whether [the detective] translated the ***Miranda*** rights faithfully," yet he vaguely claims that it is "significantly concerning" that the detective was not a certified translator. However, he states in his reply brief that he agrees with the circuit court's finding that the translation properly conveyed the ***Miranda*** warnings. This concession defeats any relevance of Alonso's purported language barrier.

(continued)

Amendment of the United States Constitution and article I, section 8 of the Wisconsin Constitution prohibit compelled self-incrimination. U.S. CONST. amend. V; WIS. CONST. art. I, § 8. As part of this guarantee, the United States Supreme Court has held that when police subject a person to a custodial interrogation, they must be given the well-known ***Miranda*** warnings—which includes the ubiquitous admonition that he or she has the right to remain silent. ***Miranda***, 384 U.S. at 478-79. If the proper warnings are not given, the person's statements are inadmissible. ***State v. Grady***, 2009 WI 47, ¶14, 317 Wis. 2d 344, 766 N.W.2d 729. On review before us, we defer to the circuit court's findings of evidentiary and historical facts and apply constitutional principles to the facts de novo. ***Id.***, ¶13.

¶10 Alonso first argues that the waiver was invalid because the mere presence of an immigration officer itself renders any waiver involuntary. This argument is a nonstarter. It is misguided factually because Alonso waived his ***Miranda*** rights *before* the unidentified immigration officer said a thing or even identified himself during the interview. The argument is also baseless legally because the law eschews bright-line rules and embraces an individualized totality of the circumstances analysis. *See* ***Grady***, 317 Wis. 2d 344, ¶17. No matter how

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Even if he did not concede this point, Alonso overplays the role of language in his alleged confusion. The circuit court expressed its opinion, based on the testimony, that Alonso knew more English than he wanted to admit. The court noted that Alonso had lived in the United States for more than ten years and had a long-standing girlfriend who only spoke English. The court also pointed out that Alonso answered questions in English during the interview, and that during the suppression hearing, Alonso would sometimes answer questions before they were translated. Alonso's fake signature on his ***Miranda*** waiver also showed he understood more than he let on. The court reasonably concluded that any language problems were remedied by the use of a translator during the interview. Moreover, the ***Miranda*** warnings were given in Spanish by Benitez. Absent a translation objection, it is difficult to see how his English language deficiencies are relevant.

much Alonso may wish that the law gave special treatment to immigration-related offenses, it does not. There is simply no merit to the contention that suspects are constitutionally unable to agree to questioning following the administration of ***Miranda*** warnings with an immigration officer in the room. We will not invent such a rule here.

¶11 Alonso also challenges the waiver of his ***Miranda*** rights because the police recklessly withheld information regarding "the true nature of this investigation." Failure to convey that this was a criminal investigation, he maintains, made his waiver unknowing and therefore invalid. Once again, neither the law nor the facts support this proposition. A defendant has no right to know what an investigation is about or understand police strategy. ***Moran v. Burbine***, 475 U.S. 412, 422 (1986) (The Constitution does not demand "that the police supply a suspect with a flow of information to help him calibrate his self-interest in deciding whether to speak or stand by his rights."). Withholding information is "only relevant to the constitutional validity of a waiver if it deprives a defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them." ***Id.*** at 424. Moreover, the proposition that Alonso did not know why he was being interrogated—irrelevant to this inquiry though it is—does not pass the smell test.[3]

[3] Through the translator, the interviewing detective—before asking any other questions—informed Alonso that the detective was with the "Metro Drug Unit." Alonso later admitted to knowing that Gonzalez was selling drugs which were stored at his house and even purchased some from him. Alonso clearly had at least some idea of what he was there for.

### B. Alonso's Statements Were Voluntary

¶12 Because defendants have a constitutionally protected right against compelled self-incrimination, "compelled or involuntary testimony is inadmissible at trial for any purpose." ***State v. Schultz***, 152 Wis. 2d 408, 415-16, 448 N.W.2d 424 (1989). Just like our standard of review for ***Miranda***, we defer to the circuit court's findings of historical and evidentiary fact and apply constitutional principles to these facts de novo. ***State v. Brockdorf***, 2006 WI 76, ¶35, 291 Wis. 2d 635, 717 N.W.2d 657. In order to use a defendant's statements, the State must prove by a preponderance of the evidence that the statements were voluntarily made. ***State v. Agnello***, 226 Wis. 2d 164, 182, 593 N.W.2d 427 (1999).

¶13 The inquiry is individualized, examining the totality of the circumstances to determine whether the suspect's will was overborne. *See* ***State v. Clappes***, 136 Wis. 2d 222, 236, 401 N.W.2d 759 (1987). Psychological pressure by itself—an inherent component of any interrogation—is not enough. ***United States v. Jobin***, 535 F.2d 154, 159 (1st Cir. 1976). Indeed, all interrogation-related confessions are, in one sense, caused by the interrogation. ***Holland v. McGinnis***, 963 F.2d 1044, 1051 (7th Cir. 1992). Thus, the threshold question is whether there is coercive or improper police conduct. ***Clappes***, 136 Wis. 2d at 239. If improper tactics are used, the court reviews the defendant's response to the

police pressures to determine whether the confession was voluntary. ***Id.*** at 236-37.[4]

¶14 Alonso argues that the unidentified immigration officer's statements were a tangible threat of deportation which overcame his will. Specifically, he argues that the officer's statement that "the way that we handle your case depends a lot on the level of cooperation that we see you giving the detective" was really an implicit threat that Alonso would be deported if he did not talk to the police. Alonso contends that the totality of the circumstances—the language barrier, his limited education, limited exposure to the criminal justice system, lack of citizenship and fear of deportation—shows that his statements were not voluntary. He specifically relies upon the timing of his "confession" to show that his statements were the result of the implied threat. Alonso also implores us to adopt a "new rule" that "authorities from immigration should never be present" when the police interrogate a noncitizen. Thus, he requests a holding that the presence of immigration agents per se renders a confession involuntary.[5]

[4] *See*, e.g., ***United States v. Jacques***, 744 F.3d 804, 811 (1st Cir. 2014) (holding that a defendant's statements were voluntary because the alleged threats did not inspire "demonstrable anxiety"); ***United States v. Tingle***, 658 F.2d 1332, 1334-37 (9th Cir. 1981) (holding that a confession was involuntary because the defendant sobbed and was "noticeably shaking," and "[s]he continued to cry for at least ten minutes" before confessing).

[5] Alonso also raises a new argument on appeal that a true totality of the circumstances analysis requires consideration of a full interpreted transcript (both English and Spanish words actually said), and possibly a full review and understanding by the court of the audio interview. This argument was not raised clearly in the circuit court or in the initial brief to this court, nor was it addressed in the reply brief in a comprehensive way. Under these circumstances, we will not entertain this new issue. *See* ***Village of Trempealeau v. Mikrut***, 2004 WI 79, ¶¶15-16, 273 Wis. 2d 76, 681 N.W.2d 190 (explaining the purpose of forfeiture rule is to give both parties and the court notice of the issue as well as a fair opportunity to address it); ***State v. Caban***, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997) ("The general rule is that issues not presented to the circuit court will not be considered for the first time on appeal.").

¶15 We reject Alonso's invitation for us to adopt a per se rule. Even if we concluded that Alonso's statements were involuntary, it is absurd to suggest as a matter of law that any confession made by a noncitizen in the presence of an immigration officer is involuntary. Such a bright-line rule makes no sense and is inconsistent with the proper legal standard—the totality of the circumstances—which necessitates an individualized determination.

¶16 As to his claim that his statements were involuntary, Alonso's argument fails because he has not shown any evidence of improper coercion. Contrary to Alonso's position, the statement of the unidentified immigration officer was not an impermissible and tangible threat. There were no promises of lesser charges or other specific consideration for Alonso's cooperation. The immigration officer offered no tangible benefit, only the generalized suggestion that Alonso's cooperation would help him with immigration.

¶17 Even assuming the immigration officer's comments constituted improper law enforcement conduct, the evidence betrays no indication that Alonso's will was overborne. As the circuit court observed, Alonso did not cave when confronted by the unidentified immigration officer; rather, he "held his ground in his responses." The picture Alonso paints is that once he was threatened with deportation, he "immediately" spilled the beans. Not so. He never confessed to selling drugs. He repeatedly denied his involvement in Gonzalez's drug sales and attempted to posture himself as an unknowing bystander. Rather than immediately backtracking on his prior statements, he repeatedly insisted he was telling the truth. While he did incrementally disclose inculpatory information, it was not immediately after the immigration officer's comments, but immediately after being confronted with evidence that contradicted his story. For example, he denied ever being involved in the sale of weapons or drugs, but was forced to

admit that he was present for the sale of a weapon and drugs when confronted with a picture of him holding the gun. Alonso's version of events simply does not line up with reality.

¶18 Alonso also makes much of the dual nature of the investigation (both immigration and criminal), asserting that this made the interview too confusing for him to make a voluntary statement. But we fail to see how this is different from any case in which a suspect is being investigated for multiple violations of the law. In fact, the criminal aspect of Alonso's case involved three separate charges: possession with intent to deliver THC, possession with intent to deliver cocaine, and maintaining a drug trafficking house. Alonso does not suggest that the police were obligated to inform him about which specific crime they were investigating. This only shows that Alonso had multiple concerns, not that his will was overborne.

¶19 Viewing the totality of the circumstances, it is clear that Alonso was not forced to confess due to improper police conduct. The immigration officer's statement was not an improper tangible threat of deportation. And even if it was, his inculpatory statements were voluntarily given.

## III. Conclusion

¶20 Alonso was caught and convicted of committing three crimes. His convictions rested in part on voluntary inculpatory statements made during questioning following his assent to continue conversation after being given the ***Miranda*** warnings. The circuit court correctly denied Alonso's motion to suppress these statements. We affirm.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.