

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	:
	:
Plaintiff,	:
	:
v.	: Criminal Action No. 01-66-JJF
	:
MARCUS P. BRUNSWICK,	:
	:
Defendant.	:

Colm F. Connolly, Esquire, United States Attorney, and Edmond Falgowski, Esquire, Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF DELAWARE, Wilmington, Delaware.
Attorney for Plaintiff.

Penny Marshall, Esquire, Acting Federal Public Defender, FEDERAL PUBLIC DEFENDER'S OFFICE, Wilmington, Delaware.
Attorney for Defendant.

MEMORANDUM OPINION

November 4, 2002
Wilmington, Delaware

FARNAN, District Judge.

Presently before the Court is Defendant Marcus P. Brunswick's Motion to Suppress Statements (D.I. 16). For the reasons set forth below, the Motion (D.I. 16) will be granted in part and denied in part.

INTRODUCTION

Defendant has been charged with seven counts of passing counterfeit obligations of the United States in violation of 18 U.S.C. § 472. Defendant moves, pursuant to Federal Rule of Criminal Procedure 12(b)(3) and the Fifth Amendment of the United States Constitution, to suppress any evidence directly or indirectly derived from statements of Defendant on or about August 15, 2001.

The Court held a hearing on the Motion to Suppress (D.I. 16) on March 20, 2002, and ordered the parties to submit proposed findings of fact and conclusions of law. This Memorandum Opinion sets forth the Court's findings of fact and conclusions of law regarding the instant Motion (D.I. 16).

FINDINGS OF FACT

1. During the summer of 2001, several New Castle County stores were victimized by people passing counterfeit currency. Suppression Hearing Transcript ("Tr.") at 4-6.

2. While investigating the counterfeit currency activity, Special Agent Jason Streeter, Secret Service, discovered that a

car seen leaving the scene was leased to Marcus Brunswick and was due to be returned to National Rental Car at the New Castle County Airport on August 15, 2001, at 11:30 a.m. (Tr. at 4-7). Agent Streeter was familiar with Mr. Brunswick's personal appearance because Agent Streeter viewed Mr. Brunswick on store security camera tapes. (Tr. at 4-7).

3. On August 15, 2001, Agent Streeter and Special Agent Patrick Fitch, Secret Service, arrived at National Rental Car at approximately 11:30 a.m. and approached Marcus Brunswick and his friend, Maurice Speight. (Tr. at 8, 56).

4. Agent Streeter identified himself, advised Mr. Brunswick that he was under investigation for passing counterfeit currency, and asked Mr. Brunswick and Mr. Speight to accompany the agents into the back offices of the rental facility. (Tr. at 10, 56).

5. While Agent Fitch and Mr. Speight remained in a hallway, Agent Streeter entered a room with Mr. Brunswick and asked him questions about his personal identification. (Tr. at 10-11, 57). Agent Streeter may have asked about Mr. Brunswick's sister and her involvement in the counterfeiting activity. (Tr. at 27, 30). Agent Streeter informed Mr. Brunswick that he wanted to speak with him at the Secret Service office (the "Office") in downtown Wilmington. (Tr. at 11).

6. Contemporaneously, without first advising Mr. Speight regarding his Miranda rights, Agent Fitch asked Mr. Speight

questions about his involvement in criminal activity. (Tr. at 57, 59). Eventually, Agent Fitch determined Mr. Speight was not a suspect and told him he was free to go. (Tr. at 34).

7. Agent Streeter and Mr. Brunswick emerged from the room within five to twenty minutes after entering. (Tr. at 28, 32, 57).

8. Agent Streeter testified that Agent Fitch then read Mr. Brunswick his Miranda warnings in a hallway at National Rental Car. (Tr. at 11-12). Agent Fitch did not testify at the suppression hearing. Mr. Speight testified that he did not hear Mr. Brunswick being read his rights. (Tr. at 59). Mr. Brunswick did not orally respond to the Miranda warnings. (Tr. at 11-12).

9. At approximately 11:50 - 11:55 a.m., Mr. Brunswick was handcuffed by two uniformed officers of the Delaware River and Bay Authority Police Department. Those officers then transported Mr. Brunswick from the Airport to the garage of the Secret Service office at One Rodney Square, which took approximately fifteen minutes. (Tr. at 13, 52, 54).

10. In the garage, Agents Streeter and Fitch took custody of Mr. Brunswick. While riding in the elevator from the garage to the fourth floor, Mr. Brunswick said "[h]ow did you catch me? How did I mess up?" to Agents Streeter and Fitch. (Tr. at 13-14, 52, 54).

11. Upon arriving at the Office, Mr. Brunswick was placed

in an interview room, and Agent Streeter briefed Special Agent John Guest, a senior agent in the Office. (Tr. at 14).

12. Agent Streeter then entered the interview room and recorded Mr. Brunswick's pedigree information on a form. (Tr. at 14, 41-42).

13. Next, Agent Streeter prepared a Miranda waiver form. (Gov. Ex. 2; Tr. at 15). Under the caption WARNING OF RIGHTS, Agent Streeter dated the form and wrote the time, 12:55. (Tr. at 15-17). Under the caption WAIVER, Agent Streeter placed the same date and time except that the time was written "12:5", leaving the last digit blank. (Tr. at 17-18). Agent Streeter then read aloud the entire form to Mr. Brunswick and handed it to him. (Tr. at 17).

14. Upon being read the form, Mr. Brunswick had no questions and did not ask for an attorney. (Tr. at 17). Mr. Brunswick signed the form on three separate signature lines under the captions WARNING OF RIGHTS, WAIVER, and CERTIFICATION. (Def. Ex. 1; Tr. at 16-17). Agent Streeter then signed the form in Mr. Brunswick's presence. (Tr. at 17-18).

15. The second witness line on the form was not filled in at the time of the interview, but rather Agent Guest signed it one to two weeks later. (Tr. at 19, 39). Agent Guest may not have been present when Mr. Brunswick signed the waiver of rights form. (Tr. at 19, 37-38). At the same time that Agent Guest

signed the form, Agent Streeter amended the time under the caption WAIVER from "12:5" to "12:55." (Tr. at 37).

16. After signing the Miranda waiver form, Agent Streeter interviewed Mr. Brunswick regarding the offense. (Tr. at 19). The interview lasted approximately three hours, and Agents Fitch and Guest were in and out of the interview room throughout. (Tr. at 19). During the interview, Mr. Brunswick confessed to passing counterfeit currency. (Tr. at 20, 34).

17. During the interview, Mr. Brunswick would not name the source of the counterfeit currency. (Tr. at 20). Agent Streeter offered Mr. Brunswick a recommendation of cooperation to the U.S. Attorney's Office in exchange for a name. (Tr. at 23). Mr. Brunswick agreed to consider the offer and return to the Office the next day. (Tr. at 21). Mr. Brunswick left the Office without having been formally charged or appearing before a Magistrate. (Tr. at 21).

18. On August 16, 2001, Mr. Brunswick returned to the Office and spoke with the agents for approximately an hour and a half. (Tr. at 22). Mr. Brunswick did not provide the agents with the source of the counterfeit currency. (Tr. at 22). Mr. Brunswick was not provided Miranda warnings at any time on August 16, 2001. (D.I. 25 at 5).

CONCLUSIONS OF LAW

1. The Fifth Amendment to the United States Constitution (the "Fifth Amendment") provides that "[n]o person ... shall be compelled in any criminal case to be a witness against himself" U.S. Const. amend. V.

2. The Supreme Court, in Miranda v. Arizona, 384 U.S. 436, 444-45 (1966), held that:

the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently.

Miranda, 384 U.S. at 444-45.

3. Custodial interrogation is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any way."

Oregon v. Mathiason, 429 U.S. 492, 494 (1977).

4. Interrogation occurs when a suspect is "subjected to

express questioning or its functional equivalent.” Rhode Island v. Innis, 446 U.S. 291, 300-01 (1980). The functional equivalent of interrogation consists of “words or actions on the part of police ... that the police should know are reasonably likely to elicit an incriminating response from the subject.” Id. at 301.

5. It is the Government’s burden, in accord with Miranda and its progeny, to prove that a waiver of rights was both: (a) voluntary; and (b) knowing and intelligent. First, the statements must be given voluntarily in the sense that it was the product of a free and deliberate choice rather than the result of intimidation, coercion or deception. Second, the waiver must be knowing and intelligent in the sense that it is made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. See United States v. Durham, 741 F. Supp. 498, 502 (D. Del. 1990).

6. A post-arrest statement, in addition to adhering to Miranda, must be voluntary. Townsend v. Sain, 372 U.S. 293, 307 (1963) (confession coerced by psychological pressure held involuntary). An involuntary statement violates due process. U.S. Const. amend. V; Jackson v. Denno, 378 U.S. 368, 376 (1964).

7. When evaluating the voluntariness of a statement, courts should look to the totality of the circumstances. Miller v. Fenton, 796 F.2d 598, 604 (3d Cir. 1986). The emphasis of the voluntariness test is whether the police interrogation was so

manipulative or coercive that the defendant was deprived of his ability to make an unconstrained, autonomous decision to speak with the police. Id. at 605.

8. The Government must prove the voluntariness of a statement by a preponderance of the evidence. Lego v. Twomey, 404 U.S. 477, 489 (1972).

9. As to the initial confrontation between the agents and Messrs. Brunswick and Speight at National Rental Car and the ensuing discussion in the back offices of National Rental Car, the Court concludes that the Government failed to meet its burden of demonstrating compliance with Miranda and its progeny. The Court concludes, and no party contests, that Mr. Brunswick was in custody from the time when Agent Streeter first confronted him at National Rental Car. The testimonial evidence demonstrates that Agent Streeter talked with Mr. Brunswick in a private office for five to twenty minutes without first providing him with Miranda warnings. During this discussion, which Agent Streeter described as a routine personal identity inquiry, Agent Streeter may have asked about Mr. Brunswick's sister's involvement in counterfeiting activity. While Agent Streeter talked with Mr. Brunswick, Agent Fitch remained in the hallway and interrogated Mr. Speight regarding his involvement in criminal activity without first providing him with Miranda warnings. Agent Streeter testified that after he and Mr. Brunswick returned to the

hallway, he heard Agent Fitch read Mr. Brunswick the standard Miranda warnings. However, Mr. Speight, who was in the hallway at the time, testified that he did not hear anyone read Mr. Brunswick his rights. Agent Fitch did not testify at the suppression hearing. Based on the above facts and the Court's evaluation of the witnesses' credibility, the Court concludes that the Government failed to meet its burden of demonstrating compliance with Miranda at National Rental Car. Agent Streeter went to National Car Rental because Mr. Brunswick was suspected of passing counterfeit currency. Additionally, Agent Streeter knew who Mr. Brunswick was and thus did not need to ask many questions to ascertain Mr. Brunswick's identity. Agent Streeter's indeterminacy regarding the substance of his discussion with Mr. Brunswick in the private office suggests that interrogation or its functional equivalent may have occurred in the absence of Miranda warnings. Additionally, the fact that Agent Streeter later repeated the personal identity inquiry at the Office undercuts the Government's assertion that the discussion in the National Rental Car office pertained only to personal identity information. Agent Fitch's contemporaneous interrogation of Mr. Speight further suggests that Agent Streeter interrogated Mr. Brunswick in the private office. Therefore, the Court concludes that Mr. Brunswick was subjected to custodial interrogation in the National Car Rental office without first

having been provided Miranda warnings.

10. In regard to Agent Fitch's reading of the Miranda warnings to Mr. Brunswick at National Car Rental, the Court, based on the conflicting evidence and the witnesses' credibility, concludes that the Government has failed to prove that it was more likely than not that such a warning occurred. Therefore, any statements made by Mr. Brunswick at National Rental Car that were the result of custodial interrogation are inadmissible; however, no such statements are at issue here. Nonetheless, the taint of the Miranda violation and the events at National Car Rental are relevant to evaluating the admissibility of Mr. Brunswick's subsequent statements to Agents Streeter and Fitch.

11. As to the incriminating statements Mr. Brunswick made in the elevator, the Government contends that the statements were not made in response to questions by Agents Streeter and Fitch, and thus, Miranda warnings were not required because there was no interrogation. Mr. Brunswick contends that he was subject to interrogation and that the statements should be suppressed. Based on the testimony regarding the agents' conduct at National Rental Car and the credibility of Agent Streeter's testimony, the Court concludes that Mr. Brunswick was subject to interrogation or its functional equivalent in the elevator. The Court is not persuaded that Mr. Brunswick spontaneously made incriminating statements in the elevator. First, Mr. Brunswick's statements

may have been in response to direct questions by the agents. Agent Streeter's inability to recall the specifics of any conversation that occurred in the elevator other than the exact incriminating words uttered by Mr. Brunswick's renders his testimony suspect. Second, Mr. Brunswick's statements may have been the result of the agents' words or actions at National Rental Car or in the elevator. Under Innis, interrogation includes any words or actions by law enforcement officers that the officers should know are reasonably likely to elicit an incriminating response from the suspect. For example, if Agent Streeter asked questions regarding Mr. Brunswick's sister's involvement in counterfeiting, those questions would be reasonably likely to elicit an incriminating response, as would any other questions Agent Streeter may have asked that did not relate to Mr. Brunswick's identity or pedigree. Even if such questions were only asked at National Rental Car, the short period of transit time would not ameliorate the effects of the interrogation so as to make Mr. Brunswick's subsequent statements in the elevator truly spontaneous. Regardless of what actually transpired in the elevator, the Court concludes the Government has failed to meet its burden of establishing compliance with Miranda and its progeny because the Government has failed to prove that it was more likely than not that Mr. Brunswick's statements were spontaneous. Because Mr. Brunswick's statements

in the elevator were made during custodial interrogation and without the benefit of Miranda warnings, the Court concludes that the statements were obtained in violation of the Fifth Amendment and must be suppressed.

12. Based on the relevant evidence and the applicable law, the Court concludes that Mr. Brunswick's statements in the elevator were not coerced in violation of the Due Process Clause of the Fifth Amendment. Mr. Brunswick's contention that Agent Streeter's inquiry about his sister's criminal activity subjected him to psychological pressure that coerced him into making incriminating statements is not persuasive. See United States v. Jackson, 918 F.2d 236, 241-42 (1990) (holding defendant's confession was voluntary where police threatened to arrest defendant's adult sister); but see Lynumn v. Illinois, 372 U.S 528 (1963) (holding mother's statement was involuntary where police threatened to take her children from her if she did not cooperate).

13. As to Mr. Brunswick's statements at the August 15, 2001, Secret Service office interview, Mr. Brunswick raises two contentions to dispute the authenticity of the waiver he signed: first, that the waiver produced at the hearing differed materially from that which was given to defense counsel during discovery, and second, that a second witness' signature provided for on the form is missing. Mr. Brunswick contends that the

Government has failed to meet its burden of proof regarding a knowing waiver because both discrepancies cast sufficient doubt on the legality of the waiver. Although the mere silence of the accused following the Miranda warnings is not sufficient to constitute a waiver, a signed waiver does support a knowing and intelligent relinquishment of one's rights. Importantly, Mr. Brunswick does not dispute the validity of his signature, but rather focuses on non-substantial discrepancies involving other information on the waiver form, e.g., Agent Guest's missing signature and the incomplete time under the caption WAIVER. Mr. Brunswick offers no evidence as to why such variances compromise the validity of his state of mind and attendant signature. Accordingly, the Court concludes that Mr. Brunswick intelligently, knowingly, and voluntarily waived his rights. Therefore, any statements Mr. Brunswick made during the August 15, 2001, interview after the waiver was executed are admissible.

14. Mr. Brunswick relies on his above contentions to argue that the statements he made during the August 16, 2001, Secret Service interview are also inadmissible. The Court concludes that Mr. Brunswick's appearance at the Secret Service office the following day, although undertaken to divulge information to the Secret Service concerning other possible suspects, was nonetheless voluntary and non-custodial. Specifically, the record demonstrates that Mr. Brunswick appeared, spoke with the

agents for an hour, and then left. Mr. Brunswick provided no evidence to establish that he was in custody during his visit. These facts support the Court's conclusion that Brunswick was not in custody during the August 16, 2001, interview. Accordingly, Miranda warnings were not required and any statements made by Mr. Brunswick are admissible.

CONCLUSION

For the reasons discussed, Defendant's Motion to Suppress Statements (D.I. 16) will be granted as to the statements Mr. Brunswick made in the elevator and will be denied as to the post-Miranda waiver statements made by Mr. Brunswick during his August 15, 2001, and August 16, 2001, interviews at the Secret Service office.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
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 v. :
 :
MARCUS P. BRUNSWICK, :
 :
 Defendant. :

ORDER

At Wilmington this 4th day of November, 2002, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

- (1) Defendant's Motion To Suppress Statements (D.I. 16) is **GRANTED** as to the statements Mr. Brunswick made in the elevator;
- (2) Defendant's Motion To Suppress Statements (D.I. 16) is **DENIED** as to the post-Miranda waiver statements made by Mr. Brunswick during his August 15, 2001, and August 16, 2001, interviews at the Secret Service office.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE