IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action No. 02-CR-58-GMS
	)	
MARCUS SHARP,	)	
	)	
Defendant.	)	

MEMORANDUM AND ORDER

I. INTRODUCTION

On May 28, 2002, the Grand Jury for the District of Delaware indicted Marcus Sharp ("Sharp") on one count of possession of a firearm by a felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). On June 27, 2002, Sharp filed a motion to suppress evidence seized pursuant to his arrest on April 5, 2002. He also seeks to have statements he subsequently made suppressed. Specifically, Sharp argues that: (1) the police had no basis for performing the traffic stop; (2) the police officers exceeded the scope of a "wingspan" search; (3) the police improperly continued to question him after he had invoked his right to counsel; and (4) his statements to the law enforcement officers were coerced.

The court held an evidentiary hearing on this motion on October 3, 2002. After considering the testimony elicited during the hearing, and the arguments presented in the parties' briefs on these issues, the court will deny Sharp's motion to suppress in its entirety.

II. FACTUAL FINDINGS

On April 5, 2002, at approximately 11 p.m., New Castle County Police Officer Mark Alfree ("Alfree") saw a Honda Accord with only one working taillight on two occasions about one minute apart. *See* Transcript of Hearing on Defendant's Motion to Suppress at 4-6 ("Tr."). The second time

that Alfree saw the car, he stopped it. *See id*. at 6-7. Sharp was driving the car, and a juvenile was riding in the passenger seat. *See id*. at 7-8. When Alfree asked Sharp for his license, registration, and proof of insurance, Sharp stated that he did not have his license, that he could not find the registration or insurance, and that the car was not his. *See id*. at 7-8. Alfree then asked Sharp and the juvenile for their names and dates of birth, returned to his patrol car, and learned by computer that the juvenile was the subject of an outstanding capias. *See id*. at 8-9.

Alfree called for backup and waited in his car for the other officers to arrive. *See id*. at 9-11. During the several-minute wait, the juvenile turned in his seat and moved things around in the backseat while Sharp watched Alfree in the driver's-side mirror. *See id*. at 10. Once backup arrived, Alfree asked the passenger to step out of the car. *See id*. at 11. He then handcuffed him and placed him in a police vehicle, telling him he was under arrest. *See id*. at 11-12. During this time, Officer Diane Beckman ("Beckman"), who was standing at the rear of the car, saw Sharp reaching into the area behind the driver's seat, the passenger's seat, and the center console. *See id*. at 63-64, 70. After securing the juvenile, Alfree asked Sharp to step out. *See id*. at 12. He then handcuffed him and placed him in a police car. *See id*. Alfree informed Sharp that, although he was being detained, he was not under arrest. *See id.*

Alfree and Beckman then performed a "wingspan" search of the passenger compartment of the Accord. *See id*. at 13. As part of this search, Beckman knelt on the passenger's seat and felt under the front seats and around the center console. *See id*. at 65. When she removed her hand, she testified that the console caught on either her watch or her sleeve, such that she unintentionally lifted a portion of the console up, exposing the emergency brake mechanism. *See id*. at 65-67. She further testified that she did not use any additional force to lift the console, nor was she aware at that time

of what was happening. *See id*. at 66-67. The officers then found a handgun and a purple pill next to the emergency brake. *See id*. at 13-14, 66.

Alfree next transported Sharp to police headquarters and, with Detective Linda Scelsi ("Scelsi"), conducted a tape-recorded interview. *See id*. at 15. Alfree began by reading Sharp his rights from a printed form. *See id*. at 16-17. He then told Sharp that, after each right had been read, Sharp should orally state whether he understood that right and, if he did understand it, that he should write his initials next to it on the form. *See* Transcript of the Interview, at 1 ("Interview"). Alfree then read:

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one.
5. If at any time during this interview you wish to discontinue your statement, you have the right to do so.

Id. After reading each paragraph, Alfree asked, "[d]o you understand that?" *Id*. With regard to the first three rights, Sharp stated that he did and initialed next to the paragraph. *Id*. When Alfree asked whether Sharp understood the fourth paragraph, he responded, "[y]es. I can have a lawyer here?"[1] *Id*. In response, Alfree again asked, "[d]o you understand that?" *Id*. Sharp responded that he did. *See id*. After Sharp also affirmed orally, and in writing, that he understood the fifth listed paragraph, that he understood each of the rights that had been explained to him, and that he was willing to be interviewed, Alfree and Scelsi began to question Sharp. *See id*. at 1-2. The first forty-five minutes

[1]Sharp maintains that his statement was, "[c]an I have a lawyer now here?" However, after listening carefully to the tape recording of Sharp's April 6, 2002 interview, the court concludes that Sharp's actual words are as the government has transcribed them. Thus, the court will refer to the statement in question as "I can have a lawyer here?"

of this interview were tape recorded. The interview continued after the forty-five minute tape recording ends, but the government has stated that it does not seek to introduce any statements from the remainder of the interview. *See* Tr. at 16; *see also* Government's Opposition to Motion to Suppress at 3.

III. DISCUSSION

A. The Traffic Stop

A traffic stop requires reasonable suspicion of a traffic violation. *See United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995). In Delaware, every vehicle is required to have two working headlights. *See* 21 DEL. C. §§ 4331, 4333. At the hearing, Alfree testified that Sharp was driving a vehicle with only one working headlight on the night in question. *See* Tr. at 4-7. After listening to Alfree's testimony at the suppression hearing, and observing his demeanor, the court concludes that Alfree's account of the incident is credible. Because Alfree believed Sharp to be in violation of Delaware traffic regulations, he was justified in performing a traffic stop.

B. The Search of the Vehicle

The government maintains that Alfree's search of Sharp's car was a permissible search incident to the arrest of Sharp's juvenile passenger on the outstanding capias. The court need not inquire into whether the arrest of the juvenile passenger was constitutional, however, because such an arrest did not violate Sharp's own Fourth Amendment rights. He is thus precluded from challenging the constitutionality of that arrest. *See Minnesota v. Carter*, 525 U.S. 83, 88 (1998) (holding that a motion to exclude evidence allegedly seized in violation of the Fourth Amendment can be granted only if the defendant demonstrates a violation of "his (and not someone else's) Fourth Amendment rights . . . ."). Sharp does, however, retain standing to challenge the scope of

the search incident to the arrest. Thus, the court will now address that issue.

In *New York v. Belton*, the Supreme Court promulgated a bright-line rule that, incident to a lawful arrest, a police officer may conduct a contemporaneous search of the passenger compartment of an automobile and the containers therein. 453 U.S. 454 (1981). Because all articles within the passenger compartment of a car are "generally, even if not inevitably, within the area into which an arrestee might reach in order to grab a weapon or evidentiary item[,]", the officers are permitted to search the entire passenger compartment when an occupant is arrested. *See id*. at 460. Furthermore, the fact that the occupants of the car have been handcuffed and placed in patrol cars before the search begins, thus denying them actual access to the passenger compartment, does not affect the constitutionality of the search. *See United States v. Humphrey*, 208 F.3d 1190, 1202 (10th Cir. 2002); *United States v. Moorehead*, 57 F.3d 875, 877-878 (9th Cir. 1995); *United States v. Karlin*, 852 F.2d 968, 971 (7th Cir. 1988); *United States v. White*, 871 F.2d 41, 44 (6th Cir. 1989).

Belton also permits officers to search any "containers," open or closed, within the passenger compartment. *See Belton*, 453 U.S. at 460. "Container" is defined broadly to include "any object capable of holding another object." *Id*. The *Belton* Court specifically included the glove compartment in this description. *See id*. The rational behind this holding was the Court's concern that, "if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach." *Id*. Sharp now argues that the emergency-brake housing area under the center console is not part of the passenger compartment within the meaning of *Belton*. On the unique facts of this case, however, the court must disagree.

There is no dispute that the center console, unlike a glove compartment, was not specifically designed for storage purposes. Beckman, however, testified that she was not impermissibly testing

the console. Specifically, she testified that she was in the process of lawfully and intentionally searching the area around the center console when either her watchband or her sleeve caught on the console. As she lifted her hand to free herself, the console lifted open as well and revealed the gun lying inside it. While Sharp posits that this may not have been an accident, he has failed to point to any evidence from which the court could determine that her testimony as to these events is not credible. Thus, the court will credit her version of the events.

Sharp next argues that, even if the gun was truly found by accident, the court should nevertheless rule it inadmissible. In support of this proposition, he suggests that the following hypothetical would logically flow from a different ruling. In this hypothetical, an officer who is justified in searching the passenger compartment accidentally reaches between the rear seats and into the trunk. At this point, Sharp maintains, ruling against him on the present facts would allow the officer to continue to search the area of the trunk within that hand's reach because the officer's hand entered the trunk accidentally. Sharp contends that such a result is an end-run around the clearly established principle that it is impermissible to search the trunk during a search incident to an arrest.

The court disagrees that Sharp's hypothetical is even arguably analogous to the facts of the present situation. Here, as previously noted, Beckman's sleeve or watch caught on the console. As she lifted her hand to free herself, the console opened and revealed its contents with no further searching or action on her part. Indeed, upon her lifting her arm to free herself, the gun was revealed inside the console, laying in plain sight. Thus, Beckman's situation arose by happenstance. There is no evidence that she continued her search of the prohibited area once she realized what had happened. To rule in Sharp's favor on these facts would be tantamount to chastising Beckman for

not closing her eyes or turning her head at the moment she perceived that her watch or sleeve might have been caught on something. Neither the Constitution, nor the court, requires such an absurd result. Finally, by concluding that the gun is admissible, the court is not holding, as Sharp suggests, that an officer whose hand has accidentally slipped into a prohibited area may *continue* to search that area simply by virtue of the fact that the officer's hand was there. Therefore, on these specific facts, the court concludes that the accidental discovery of the gun does not violate Sharp's Fourth Amendment rights.

C. *Miranda* Waiver

The Fifth Amendment requires that police officers cease questioning a defendant if he invokes his right to counsel. *See Dickerson v. United States*, 530 U.S. 428 (2000); *Miranda v. Arizona*, 384 U.S. 436 (1966). Sharp now maintains that he invoked his right to counsel and was subsequently questioned without being afforded counsel. Specifically, Sharp contends that his statement, "I can have a lawyer here?" constitutes a valid assertion of his right to counsel. For the following reasons, the court must disagree.

Police are required to discontinue an interrogation only if a suspect "unambiguously" requests counsel. *See Davis v. United States*, 512 U.S. 452, 459 (1994) (holding that the statement, "[m]aybe I should talk to a lawyer" was too ambiguous to terminate questioning). In response to an ambiguous remark, the police may continue the questioning and need not stop to clarify what the suspect means. *See id*. at 461-462. Following this holding, courts of appeal have similarly upheld continued interrogation in response to questions about the possibility of getting a lawyer. *See e.g. Dormire v. Wilkinson*, 249 F.3d 801, 805 (8th Cir. 2001) ("Could I call my lawyer?"); *United States v. Posada-Rios*, 158 F.3d 832, 867 (5th Cir. 1998) (suspect commenting that she "might have to get

a lawyer then, huh?"); *Lord v. Duckworth*, 29 F.3d 1216, 1221 (7th Cir. 1994) ("I can't afford a lawyer, but is there any way I can get one?") The court concludes that Sharp's remark is not sufficient to support a finding that he "unambiguously" requested counsel. Rather than being a clear request for counsel, Sharp's statement merely reiterated the right of which Alfree had just informed him. The phrasing of the statement, coupled with its timing, makes clear that a reasonable police officer could have construed it merely as a clarifying remark, rather than a request for counsel.

Nor is there any merit to Sharp's contention that he did not understand his rights when he waived them. Notwithstanding his ambiguous question, to which Alfree responded by reiterating the right to counsel, Sharp confirmed, both orally and in writing, that he understood that he could have a lawyer present while being questioned and that he understood that a lawyer could be appointed to represent him before any questioning. Once all his rights had been explained to him, Sharp again confirmed, orally and in writing, that he understood each of them. In light of Sharp's repeated assurances that he understood his rights, and his ambiguous statement regarding counsel, the court concludes that he did not assert his right to counsel at that time.

D. Voluntariness of Sharp's Confession

A confession is involuntary if, considering the totality of the circumstances, "the defendant's will was overborne when he confessed." *Miller v. Fenton*, 796 F.2d 598, 604 (3d Cir. 1986). However, "[t]he policeman is not a fiduciary of the suspect. The police are allowed to play on a suspect's ignorance, his anxieties, his fears, and his uncertainties; they just are not allowed to magnify those fears, uncertainties, and so forth to the point where rational decision becomes impossible." *United States v. Rutledge*, 900 F.2d 1127, 1130 (7th Cir. 1990). Factors to consider in determining the voluntariness of a statement include:

> the youth of the accused; his lack of education or his low intelligence; the lack of any advice to the accused of his constitutional rights; the length of detention; the repeated and prolonged nature of questioning; and the use of physical punishment such as the deprivation of food or sleep.

Miller, 796 F.2d at 604 (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973)).

In the present case, Sharp, while a young man, is neither a child, nor immature. The defense concedes that Sharp is of normal intelligence. *See* Defendant's Reply Brief at 5. Furthermore, the interview was relatively brief, with the inculpatory statements occurring within forty-five minutes of the interview's commencement. The interview itself took place following only four or five hours of detention. Although the interview occurred in the early morning hours, this fact was a function of the time at which Sharp committed the offense. The tape recording captures no yawning or complaints of weariness, nor is there evidence that Sharp was deprived of food or sleep, or that he was physically abused.[2] The court concludes that each of these factors weighs against a finding that Sharp's will was overborne by the questioning.

An examination of the officer's questions and statements likewise reveals no application of unconstitutional pressures. Sharp maintains that the officers coerced his incriminating statements by "lead[ing] Mr. Sharp to believe that his pregnant girlfriend's safety could be in danger, and the only way Mr. Sharp would be able to see her again any time soon would be to tell the police what

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[2]Sharp did twice complain that he was "freezing." *See* Interview at 10, 14. However, this complaint occurred after he had already made an inculpatory statement. Moreover, there is no evidence that the officers deliberately kept the temperature low or that Sharp's focus was disrupted by the cold. Notably, his comments about the temperature came in response first to a request that he not put his hands in his pockets and then to a comment that he appeared nervous. He did not spontaneously remark on the cold as an independent problem, nor did he ask to cease the questioning. Thus, the court will afford the room's apparent chill only minimal weight in the totality of the circumstances test.

they wanted to hear. The officers told Mr. Sharp that if he cooperated, he would be able to go home and be present for the birth of his child." Defendant's Brief in Support of Motion to Suppress at 8. Sharp also briefly complains of "deception" and "lies." *See id*. at 7-8.

During the interview, Alfree told Sharp: (1) that he would be taken before a judge, (2) that the judge would not believe his story, (3) that Alfree and Scelsi did not believe his story, (4) that his bail would not be low, (5) that his bail money could otherwise have gone to his child, (6) that the officers wanted the truth so he could be home when his pregnant girlfriend gave birth, (7) that the alternative was to go to Gander Hill for lying, (8) and that Alfree believed that the owner of the car would not support Sharp's story. *See* Transcript of Interview at 5-7. Scelsi added that the officers already knew the answers to all the questions they asked, which was not true.[3] *See* Tr. at 21. The court concludes that, while these statements doubtless encouraged Sharp to abandon his initial version of the events, and to tell the truth, they did not coerce him.

In general, authorities may tell a defendant that cooperation or a confession will lead to a more favorable outcome in his criminal case. *See e.g. United States v. Ruggles*, 70 F.3d 262, 265 (2d Cir. 1995); *United States v. Nash*, 910 F.2d 749, 752-753 (11th Cir. 1990). Police officers are not surrogate defense lawyers and do not interrogate suspects in order to help them avoid conviction. Therefore, officers may tell a suspect that cooperation may assist him, even when the reverse is true and a confession will, on balance, be detrimental to the suspect. *Rutledge*, 900 F.2d at 1130-1131.

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[3]The officers made other false statements. Specifically, they stated that they had spoken to multiple people about the incident, and that those people provided information different from Sharp's story. *See* Tr. at 21. They further stated that a fingerprint analysis had been done on the gun, revealing only Sharp's fingerprints. *See id*. at 21-22. However, these statements were made only after Sharp's first inculpatory statement. Similarly, because Scelsi's discussion of Sharp's girlfriend occurred after Sharp's inculpatory statement, that discussion could not have coerced Sharp into confessing. *See* Interview at 14, 20-22.

Moreover, as the United States Court of Appeals for the Third Circuit has recognized, "indirect promises do not have the potency of direct promises." *Miller*, 796 at 610.

In the present case, it is undisputed that Alfree made several statements that permitted an inference that Sharp could go home, and be with his girlfriend when she gave birth, if he cooperated. *See* Defendant's Reply Brief at 6 (discussing the impact of the "statements inferring that Mr. Sharp would go home if he cooperated . . .") Such inferences, however, are not the same as outright, direct promises. Indeed, Sharp's experience with the criminal justice system indicates that he would have had a general understanding that an independent judicial officer would set his bail, not Alfree.[4] *See Miller*, 796 at 606, 612 (recognizing that a defendant's experience with the criminal justice system is a relevant consideration). Thus, the court is not persuaded that such inferences, in light of Sharp's age, intellect and experience, would have been sufficient to overbear his will.[5] *See also United State v. Robinson*, 698 F.2d 448, 455 (D.C. Cir. 1983) (upholding a confession made after an FBI agent falsely promised not to arrest the defendant on the same day.)

Sharp also argues that Alfree's comments to the effect that his girlfriend was crying at home and that the money Sharp would need for his bail could have otherwise gone to his child, were "extremely coercive tactics" used to overbear his will. The court must disagree. It is true that Alfree

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[4]Shortly before the interview, Sharp had been arrested and then released on bail in an unrelated matter. After his release, he had attempted to help a co-defendant make bail. *See* Interview at 6, 26-27, 28-20, 35.

[5]The court acknowledges that this is a somewhat closer question with regard to Sharp's statement toward the end of the interview where he says, "let's work out a deal here, all right? . . . because I need to get out of here." *See* Interview at 32. One could argue that this statement indicates that Sharp thought he was trading his statement for an early release. The court nevertheless concludes that Sharp's phraseology here is not enough to demonstrate that his will had been overborne.

acknowledged during the hearing that Sharp became visibly concerned when the officers were discussing his girlfriend. *See* Tr. at 51. However, "mere emotionalism and confusion do not necessarily invalidate" confessions. *See Miller,* 796 F.2d 613. Indeed, it is clear from the transcript of the interview that Sharp was making choices about what he was going to tell the officers, even during the portion of the interview where he expressed the most concern for his girlfriend. *See e.g.* Interview at 20-22. For example, at one point, Sharp agreed to tell the officers whether he spent time in Brookview, but only if the officers promised not to tell his girlfriend about the other women he was seeing there. *Id*. at 20. Sharp's insistence on limiting the officer's use of his statements indicates that he was aware of what he was doing and could act to protect his interests.

Furthermore, Sharp demonstrated the ability to distinguish between the types of incriminating information he was willing to provide. He refused to tell the officers what he would do if individuals referred to as "J" and "D" "came to his face again," because "[he's] not an idiot." *Id*. at 22. Thus, although this exchange occurred during a portion of the interview when Sharp was concerned about his girlfriend, he was still able to withhold information he considered inculpatory. Therefore, although Sharp may have misjudged the criminal implications of his various inculpatory statements, and may have made poor decisions about what to say and what to withhold, he was clearly making such decisions. This serves to indicate that his will was not overborne.

While the court does not doubt that Alfree's and Scelsi's actions may have played a part in Sharp's decision to make his statements, the decision was nevertheless the result of his own balancing of competing considerations. Accordingly, after considering the totality of the circumstances surrounding Sharp's inculpatory statements, the court cannot say that they were involuntary.

V. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. Marcus Sharp's Motion to Suppress (D.I. 12) is DENIED.

Dated: December 20, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE