IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
V.	)	DEF. I.D.: 0008000995
	)	
JUAN COLON,	)	
	)	
Defendant.	)	

Date Submitted: September 17, 2001
Date Decided: November 29, 2001

Upon Consideration of
Defendant's Motion to Suppress.
DENIED.

Opinion After Trial.
GUILTY ON ALL COUNTS.

Joelle M. Wright, Esquire. Attorney for the State of Delaware.

J. Brendan O'Neill, Esquire. Attorney for the Defendant.

SLIGHTS, J.

I. INTRODUCTION

The defendant, Juan Colon ("Mr. Colon"), was indicted on August 28, 2000, charged with one count of Trafficking in Cocaine, one count of Possession with Intent to Deliver a Narcotic Schedule II Controlled Substance, one count of Possession of a Non-Narcotic Schedule I Controlled Substance, one count of Use of a Vehicle for Keeping Controlled Substances and one count of Possession of Drug Paraphernalia. The indictment followed an arrest of Mr. Colon on June 27, 2000. The arrest was the culmination of an investigation of the defendant by the "Governor's Task Force," a collaborative effort among various law enforcement agencies aggressively to address "street crimes," e.g., crimes of violence and drug crimes.

Mr. Colon has moved to suppress evidence seized from his vehicle and statements obtained from him during the course of the investigation. The Court conducted an evidentiary hearing and received submissions from the parties. Based on the evidence presented and the parties' contentions, the Court has framed the issues as follows: (i) whether Mr. Colon voluntarily consented to a search of his vehicle; (ii) whether the police officers could search Mr. Colon's vehicle incident to his arrest even though he had been separated from the vehicle and placed in handcuffs and the search did not take place until several minutes after the arrest; (iii) whether, under the totality of the circumstances, the police officers possessed probable cause to search

Mr. Colon's vehicle without a search warrant; and (iv) whether the so-called "inevitable discovery" rule can save the State in the event none of the other proffered justifications for the search and seizure carry the day.[1]

In advance of the suppression hearing, Mr. Colon elected in writing to waive his right to a trial by jury and to convert the previously scheduled suppression hearing into both a suppression hearing and bench trial.[2] The Court agreed to this process and took pains to compartmentalize the evidence in the context of the dual nature of the proceedings.[3] In this opinion, the Court will address the motion to suppress first and then render its verdict on the criminal charges accordingly.[4]

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[1]The Court has already determined that certain statements made by the defendant prior to the search of his vehicle should be suppressed as they were taken in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). (*See* Transcript at 103-04 (Sept. 7, 2001)).

[2]Transcript at 144-46 (August 16, 2001).

[3]*E.g. Id.* at 34.

[4]Mr. Colon's defense to the indicted charges is that the evidence seized from his person and his vehicle and the statements he made to police should be suppressed as the fruits of an unlawful

II. STANDARD OF REVIEW

search and unlawful interrogation, respectively. Absent the tainted evidence, Mr. Colon correctly observes that the State cannot prove his guilt beyond a reasonable doubt. Necessarily, then, the outcome of the motion to suppress may be dispositive of the guilt/innocence determination.

On a Motion to Suppress, the State bears the burden of establishing that the challenged search or seizure comported with the rights guaranteed Mr. Colon by the United States Constitution, the Delaware Constitution, and Delaware statutory law.[5] The burden of proof on a motion to suppress is proof by a preponderance of the evidence.[6] Of course, the burden of proof with respect to the charges themselves is proof of guilt beyond a reasonable doubt.[7]

III. FINDINGS OF FACT

A. Officer Sullivan's Observations Prior to the Search

[5] *Hunter v. State*, Del. Supr., No. 279, 2000, Steele, J. (Aug. 22, 2001)(Mem. Op. at 5-6).

[6] *State v. Bien-Aime*, Del. Super., Cr. A. No. 1K92-08-326, Toliver, J. (March 17, 1993)(Mem. Op.)(citations omitted).

[7] 11 *Del. C.* §301.

At approximately 11:30 p.m. on the evening of June 29, 2000, Corporal Siobhan Sullivan ("Corporal Sullivan"), along with other members of the Governor's Task Force, began an investigation of suspected illegal drug activity in the rear parking lot of the Motel 6 on Route 9 in New Castle County, Delaware. While surveying the parking lot, Corporal Sullivan observed a 1992 Dodge Caravan parked directly in front of a first-floor motel room. The ignition was "popped." [8] Corporal Sullivan knew from experience that a "popped" ignition was evidence that the vehicle had been stolen.[9] Accordingly, she began to conduct surveillance of the vehicle by positioning herself on the motel's second floor outer hallway directly above the vehicle.[10] From that location, Corporal Sullivan was able to look down through the vehicle's front windshield and side windows into the passenger compartment. The vehicle was illuminated by ample lighting in the parking lot and from the lights along the motel's outer walkway on the first floor.[11]

Approximately ten minutes into the surveillance, Corporal Sullivan observed a

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[8] A "popped" ignition describes a condition where the key hole has been forcibly removed from the ignition system so that someone without a key to the vehicle can attempt to start the engine. Transcript at 21-22 (Aug. 16, 2001).

[9] *Id.*

[10] Mr. Colon estimated that Corporal Sullivan was positioned approximately ten to fifteen feet above his vehicle. Transcript at 54 (Sept. 7, 2001).

[11] Transcript at 23 (Aug.16, 2001).

black male (whom she later identified as Mr. Colon) enter the vehicle and place something in a drawer-like compartment under the passenger seat. She then observed Mr. Colon retrieve a clear plastic baggy containing a "handful" of white powdery substance from behind the driver's seat. Based on her training and experience, she concluded the substance was likely cocaine.[12]

[12] *Id.* at 26-30.

Corporal Sullivan then observed Mr. Colon exit the vehicle and begin to walk around the exterior of the motel. She called her colleagues on a cell phone to advise them of what she had just observed and either directed the officers to stop Mr. Colon or was told by them that Mr. Colon had been stopped.[13] She then immediately went to the scene of the confrontation.

B. Mr. Colon is Confronted by the Officers

Corporal Sullivan's colleague, Detective Daniel Meadows ("Detective Meadows"), had been stationed with other officers in the parking lot adjacent to the motel while Corporal Sullivan surveilled the vehicle. Upon receiving Corporal Sullivan's cell phone call, Detective Meadows, along with other officers, stopped Mr. Colon as he was walking away from the vehicle.

[13]Corporal Sullivan's testimony was not consistent with her crime report in this regard. *Id.* at 94-95.

Mr. Colon's exact location in relation to the vehicle at the time of the stop was the subject of contradictory testimony at the suppression hearing. Corporal Sullivan recalled that Mr. Colon was approximately forty feet or more away from the vehicle when he was stopped by the officers.[14] Detective Meadows testified that Mr. Colon had just exited the vehicle and was standing next to it when he was stopped.[15] Mr. Colon testified that he was 20-30 feet from the vehicle when he first was confronted by the officers.[16] The Court cannot reconcile the conflicting testimony. Consequently, the Court must find the facts from the preponderance of the evidence.[17]

The more credible evidence indicates that Mr. Colon was at least forty feet from the vehicle when he was stopped by the officers. Corporal Sullivan, who had been stationed directly above the vehicle, testified that it took her some time to reach the scene of the confrontation after she phoned her fellow officers. Moreover, the evidence indicated that Mr. Colon exited the vehicle and immediately began walking away from it. Detective Meadows first received a phone call from Corporal Sullivan

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[14]Transcript at 97 (August 16, 2001).

[15]*Id.* at 158.

[16]Transcript at 64 (Sept. 7, 2001).

[17]As discussed below, the proximity of Mr. Colon to his vehicle at the time of the search may be relevant to the question of whether the search of the vehicle was lawful. The State has urged the Court to conclude that Mr. Colon was adjacent to the vehicle at the time he was confronted by the officers and at the time of the search.

and spoke with her (albeit briefly) before approaching Mr. Colon. Based on the foregoing, Detective Meadows' testimony that he confronted Mr. Colon immediately adjacent to his vehicle does not comport with the evidence.

C. Mr. Colon's Alleged Consent to Search the Vehicle

The events immediately following the initial confrontation also are not clear from the record. Detective Meadows testified that he approached Mr. Colon and immediately asked him if the vehicle and its contents belonged to him. When Mr. Colon responded affirmatively, Detective Meadows asked for Mr. Colon's consent to search the vehicle. Mr. Colon agreed. At no time during this exchange was Mr. Colon in handcuffs.[18] Only later, after consent to search was obtained, and after a DELJIS check revealed that Mr. Colon was wanted on a capias from the Newport Alderman's Court, was Mr. Colon placed in handcuffs.[19]

[18]Transcript at 158-59 (Aug. 16, 2001).

[19]*Id.* at 161-62.

Corporal Sullivan's testimony confuses the issue. She testified that she arrived at the scene of the confrontation within minutes of making the call to her fellow officers.[20] She immediately began to question Mr. Colon about the "popped ignition." She also asked him about what she had observed him doing in the vehicle and, in the course of this questioning, obtained a confession from Mr. Colon that he had cocaine in the vehicle. She then overheard the discussion between Detective Meadows and Mr. Colon regarding consent to search the vehicle. What is confusing about Corporal Sullivan's version of events is her testimony on at least two occasions that Mr. Colon *was* handcuffed when she questioned him and when Detective Meadows sought his consent to search the vehicle.[21] Confusing the picture further is the testimony of Detective Meadows and Sergeant W. Thomas Ford ("Sergeant Ford") to the effect that Corporal Sullivan had not yet arrived on the scene when Detective Meadows secured Mr. Colon's consent to the search.[22] Finally, the Court cannot ignore the fact that Corporal Sullivan's narrative report of the investigation, while detailed in many respects, says nothing of overhearing Mr. Colon give his consent to search the vehicle.

For his part, Mr. Colon confirms that Detective Meadows questioned him

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[20] *Id.* at 33.

[21] *Id.* at 38-40, 42-43.

[22] *Id.* at 162. *See also* Transcript at 13, 19 (Sept. 7, 2001)(Sergeant Ford's testimony).

briefly upon confronting him. It appears from his testimony that he believes that the request for consent to search the vehicle occurred at the end of this initial exchange. It also appears that he was not handcuffed at the time.[23]

Mr. Colon vehemently denies that he consented to the search of his vehicle. He acknowledges that he knew at the time he was confronted by the officers that narcotics were stored in the vehicle. Accordingly, understanding that he was acting within his rights, he declined to give his consent to search the vehicle when asked to do so.[24]

Once again, the Court is unable to reconcile the testimony. So, once again, the Court must weigh the conflicting testimony and find the facts in accordance with the preponderance of the evidence. And, once again, the Court must conclude that the preponderance of the evidence does not support the version of the facts proffered by the State. The State's inability to present a cohesive sequence of events with respect to the critical issue of consent tips the balance in favor of Mr. Colon with respect to this factual dispute. Moreover, Mr. Colon's testimony under the circumstances makes more sense. He admits he knew he was storing drugs in the vehicle. They were easily located when the vehicle was searched. While stranger things have happened, it

[23] *Id.* at 63.

[24] *Id.* at 49-50.

seems unlikely that he would unequivocally give consent to search the vehicle under these circumstances.

The Court also has considered the events which followed the purported consent when weighing the conflicting testimony. Specifically, it is rather curious that the vehicle was not immediately searched after Mr. Colon gave consent. Rather, when Detective Meadows consulted with Sergeant Ford about the events which had occurred prior to Sergeant Ford's arrival, including Mr. Colon's consent, Sergeant Ford directed that a dog trained in detecting narcotics be summoned to the scene.[25] Only after the dog "alerted" on the exterior of the vehicle did the search of the interior compartment commence.[26]

[25]Mr. Colon did not challenge the qualifications and/or training of the drug dog, named Olex, to conduct the search. Accordingly, the Court has assumed that Olex was properly trained and qualified to conduct a search for narcotics.

[26]Transcript at 6-7 (Sept. 7, 2001).

While the Court has concluded that the State failed to prove consent by the requisite standard of proof, this by no means should be read as a conclusion that the officers intentionally misstated the facts. The Court has drawn no such conclusion from the testimony. Rather, the Court's factual finding reflects a concern that the officers generally were confused about this and other aspects of the investigation.[27]

D. The Search and Arrest

After the dog reacted in a manner consistent with the presence of narcotics within the vehicle, the police commenced the search. Corporal Sullivan principally was responsible for searching the vehicle and logging its contents. The parties do not dispute that Corporal Sullivan located two scales and a box of plastic baggies, a small bag of marijuana and 18 individually packaged bags of a substance which later tested positive for cocaine with a total weight of 20.5 grams.

[27]By way of further example, Corporal Sullivan's report and her testimony demonstrate confusion about the date of the incident, the means by which Mr. Colon was apprehended, and the sequence of her search of the vehicle. These missteps indicate confusion and resulting mistakes, not dishonesty. Nevertheless, the Court is satisfied, at least with respect to the issue of consent, that the confusion in the testimony pertained to critical features of the overall picture the State was trying to paint. In this instance, therefore, the Court must reject the notion of a consensual search.

Mr. Colon was arrested and transported back to the police troop for processing. While there, he was questioned further after signing a *Miranda* waiver card. He again confessed that the narcotics found in the vehicle belonged to him.[28] A search of his person revealed $178 in currency which was seized as evidence.[29]

IV. DISCUSSION

A. The Parties' Contentions

Mr. Colon has moved to suppress all evidence seized from his vehicle and any statements made by him during the investigation. He alleges that the police officers lacked a reasonable, articulable suspicion that he was involved in criminal activity at the time they initiated their search of him, and also denies that he consented to the search of his vehicle. To the extent the police officers seek to justify their search of his vehicle on the bases of probable cause or a search incident to arrest, Mr. Colon alleges that neither justification can be advanced credibly in this case. Mr. Colon alleges that the statements he gave to the police officers after the search of his vehicle are the fruits of the unlawful search and arrest.

The State has proffered several justifications for the search: (i) first and

[28]Defendant's Ex. 3.

[29]Transcript at 48-52 (Aug. 16, 2001).

foremost, Mr. Colon voluntarily consented to the search of his vehicle; (ii) even if Mr. Colon did not consent to the search, the police officers had probable cause to search the vehicle based on Corporal Sullivan's observation of Mr. Colon's activity within the vehicle and the drug dog's positive "alert" on the vehicle prior to the search; (iii) even if Mr. Colon did not consent to the search, the officers lawfully conducted a search of the vehicle incident to Mr. Colon's arrest; and (iv) even if Mr. Colon did not consent to the search, and probable cause did not exist to search the vehicle, the Court may nevertheless uphold the search because the evidence inevitably would have been discovered in any event through legitimate police activity.

B. Prior Rulings

At the conclusion of the suppression hearing, the Court made several preliminary rulings in an effort to narrow the issues under submission. First, as already noted, the Court determined that the statements made by Mr. Colon to Corporal Sullivan and Detective Meadows prior to the search of the vehicle are suppressed because they were obtained in violation of *Miranda*.[30] Thus, the Court will not consider Mr. Colon's acknowledgment of ownership of the vehicle and its contents, or his admission that drugs were stored within the vehicle, either for purposes of determining the suppression issues or the guilt/innocence of the

[30]Transcript at 103-04 (Sept. 7, 2001).

defendant. The Court also concluded that this is not a "search incident to arrest case."[31] The Court stated, therefore, that it would focus its analysis on the question of whether probable cause existed to justify the search and whether a warrantless search of the vehicle was appropriate under the circumstances.[32] Because the Court recently articulated the so-called *"Belton* rule"[33] in a manner arguably inconsistent with its oral ruling in this case,[34] the Court will speak to the *Belton* issue again briefly. Otherwise, the oral rulings remain unchanged and the Court incorporates them in this opinion.

C. Consent to Search

The Court already has determined that the State has not carried its burden to prove consent by a preponderance of the evidence. Accordingly, the Court need not address the issue raised at the hearing regarding whether a voluntary consent can be obtained during questioning of a suspect in violation of *Miranda.* That issue -- if not already addressed elsewhere -- will be left for another day.

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[31] *Id.* at 104.

[32] *Id.* at 105.

[33] *New York v. Belton*, 453 U.S. 454 (1981).

[34] *See State v. Porter,* Del. Super., I.D. No. 0012006520, Slights, J. (Oct. 2, 2001)(Mem. Op.).

D. Search Incident to Arrest

The Court already has determined that Mr. Colon was not in close proximity to his vehicle at the time of the search. And the Court's oral ruling suggested that this fact would be fatal to the State's argument that the search of the vehicle was incident to a lawful arrest. The Court recently has concluded, however, that the "bright line" rule articulated in *Belton* did not incorporate a spacial proximity requirement in its prescribed analysis of the propriety of vehicle searches incident to arrest.[35] Thus, that the police separated Mr. Colon from his vehicle and placed him in handcuffs would not necessarily invalidate the *Belton* search.[36] Several other factors, however, indicate that *Belton* is not applicable here. First, Mr. Colon arguably had not been placed under arrest at the time of the search. Second, and more clearly *apropos* here, the search of Mr. Colon's vehicle occurred by all accounts at least 20 minutes if not longer after Mr. Colon exited the vehicle. While *Belton* may have done away with the notion of spacial proximity, the notion of temporal proximity is still at the core of the "bright line" rule.[37] The wait for Corporal Sullivan's arrival, coupled with the wait for the drug dog, clearly indicates that the search of Mr. Colon's vehicle was not

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[35] *Id.* at 15-18.

[36] *Id.*

[37] *Id.* at 18-20. *See also Belton*, 453 U.S. at 460 (search must be effected as a "contemporaneous incident" to arrest of a "recent occupant" of the vehicle).

a "contemporary incident" to any arrest that may have been effected. *Belton* does not apply.

E. The Warrantless Search of the Vehicle

The State contends that the officers possessed probable cause to search the vehicle notwithstanding Mr. Colon's consent to the search or lack thereof. It points specifically to Corporal Sullivan's clear observation of Mr. Colon as he entered a vehicle with a "popped" ignition and then handled and ultimately stored within the vehicle a clear plastic baggy containing a rather large quantity of what appeared to be cocaine. This observation was accented later by the drug dog's "positive alert" on the vehicle. Under the totality of theses circumstances, the State contends that the search of the vehicle was supported by probable cause.

Probable cause is measured not by precise standards, but by the totality of the circumstances through a case-by-case review of the 'factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'"[38] "A finding of probable cause does not require the police to uncover information sufficient to prove a suspect's guilt beyond a reasonable doubt or even to prove that guilt is more likely than not."[39] The totality of the circumstances need only suggest "a fair probability that the defendant has committed

[38]*See State v. Rooney,* Del. Super., Cr. A. No. N95-03-2080AC, Goldstein, J. (Oct. 31, 1995)(ORDER)(citing *State v. Maxwell*, Del. Supr., 624 A.2d 926, 928 (1993)).

[39]*Maxwell*, 624 A.2d at 930 (citation omitted).

a crime."[40]

The Court is satisfied that the State has established probable cause to search the vehicle. While Corporal Sullivan was confused in many respects of her testimony, she was clear, concise and consistent with respect to her observations of Mr. Colon once he entered his vehicle. The Court found her testimony in this regard to be credible. Indeed, it is quite likely that the Court would find her observations of Mr. Colon in such close proximity and from such a fortunate vantage point alone were sufficient to justify a finding of probable cause to search the vehicle. The positive result of the properly-conducted dog search, however, seals the deal.[41]

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[40] *Id.* (citations omitted).

[41] *See Florida v. Royer*, 103 S.Ct. 1319, 1329 (1983)(drug dog alert coupled with suspicious activity constituted probable cause); *State v. Nelson,* Del. Supr., No. 402, 1997, Walsh, J., ¶14 (March 30, 1998)(ORDER)(noting that officer's observation of suspicious behavior coupled with positive drug dog alert to vehicle constituted probable cause to effect warrantless search of the vehicle); *State v. Parker,* Del. Super., Cr. A. No. 96-10-0666, 1997 Del. Super. LEXIS 449, Graves, J., at *8-9 (Aug. 22, 1997)(Mem. Op.)(finding positive "hit" from drug dog on exterior of a vehicle alone constituted probable cause to search the vehicle); *State v. Torrence*, Del. Super., Cr. A. No. IN92-010564-66, 1992 Del. Super. LEXIS 264, Goldstein, J., at *13-14 (May 28, 1992)(Mem. Op.)(positive drug dog alert and officer's knowledge that suspect is suspected drug dealer constitute

probable cause).

The finding that probable cause existed to search the vehicle does not end the inquiry. The Court also must determine whether the failure to obtain a search warrant renders the search of the vehicle constitutionally infirm. "Generally, warrantless searches are presumed invalid. There are few exceptions."[42] A line of United States Supreme Court cases has emerged, however, starting with *Carroll v. United States,*[43] which stand for the proposition that a search of a vehicle based on probable cause need not be predicated upon a search warrant. The course charted by these decisions has been difficult to follow. Nevertheless, it now appears clear that the United States Supreme Court sanctions the search of a vehicle without a warrant on two grounds: (1) vehicles are "readily mobile" and, therefore, there is a significant risk that evidence will be lost while police attempt to obtain a warrant; and (2) "the expectation of privacy with respect to one's vehicle is significantly less than that relating to one's home or office."[44] Delaware courts have followed the Unites States Supreme Court's lead in *Carroll* and its progeny by applying an

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[42]*Caldwell v. State,* Del. Supr., 770 A.2d 522, 531 (2001).

[43]267 U.S. 132 (1925).

[44]*See California v. Carney*, 471 U.S. 798 (1985)(citations omitted).

"automobile exception" to the warrant requirement in appropriate circumstances.[45]

Here, the vehicle in question was located in a motel parking lot, not on private property. Outward appearances indicated that the vehicle may have been stolen, decreasing even further its occupant's reasonable expectation of privacy. Despite the "popped" ignition, there was no reason to believe that the vehicle was not "readily mobile." The "popped" ignition did not disable the vehicle; it simply allowed someone without a key to engage the vehicle's engine. Under these circumstances, a warrantless search of the vehicle was justified.[46]

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[45]*See Parson v. State*, Del.Supr., No. 192,1986, Horsey, J. (Apr. 24, 1987) (ORDER) (citing *Tatman v. State*, Del. Supr., 494 A.2d 1249, 1251 (1985)("So long as the police have probable cause to believe that an automobile is carrying contraband or evidence, they may lawfully search the vehicle without a warrant")(citations omitted)); *State v. Manley*, Del. Super., 706 A.2d 535, 539 (1996)(same)(citing *Carroll).*

[46]The Court must reject the argument that the warrantless search was unlawful because the police easily could have detained the vehicle while other officers secured the warrant. The United States Supreme Court has recognized the fallacy of this analysis: "For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment."

F. Inevitable Discovery

Chambers v. Maroney, 399 U.S. 42, 52 (1970).

Having concluded that the warrantless search of the vehicle was lawful, the Court need not address the State's argument that even if the search was not deemed justified by consent or probable cause, the evidence of contraband inevitably would have been discovered by lawful means.[47] But it goes without saying that absent probable cause to search the vehicle based on evidence already uncovered during the investigation, the likelihood that the evidence would have been discovered through "otherwise lawful means" is slim to none. By the time the search took place, the police had gathered most if not all of the incriminating evidence there was to gather at the scene.

G. The Arrest and Subsequent Interrogation

With the evidence seized from the vehicle in hand, combined with the other evidence developed during the investigation, the police possessed probable to arrest Mr. Colon for unlawful possession of controlled substances. They also properly arrested him on the outstanding Alderman's Court capias. The subsequent questioning of Mr. Colon at the police station after proper *Miranda* warnings were given also was proper.

[47] *See Nix v. Williams,* 467 U.S. 431, 446 (1984)("when ... the evidence in question would inevitably have been discovered without reference to police error or misconduct, there is no nexus sufficient to provide a taint and the evidence is admissible").

H. Mr. Colon's Guilt for the Offenses Charged

Defense counsel correctly acknowledged at oral argument that: "The reality is: this case rises or falls on the suppression issue."[48] Having concluded that the evidence was lawfully seized from the vehicle occupied by Mr. Colon, the Court concludes that the State has proven his guilt on all indicted charges beyond a reasonable doubt. To reiterate, in reaching this conclusion, the Court has not considered: (1) Mr. Colon's statements to Corporal Sullivan or Detective Meadows prior to the search of his vehicle; or (2) Mr. Colon's confession at the police station. With respect to the first statements, they were obtained in violation of *Miranda.* With respect to the statements obtained at the troop, the only clear evidence presented with respect to these statements was in the form of police narrative reports. These reports were received into evidence in the context of the suppression hearing (offered by the defendant). But no foundation was laid to support introduction of the reports for the guilt/innocence phase of the proceedings. Nevertheless, the Court is satisfied that the competent evidence presented established the elements of all crimes charged in the indictment beyond a reasonable doubt, including both possession and possession with intent to deliver cocaine. The bases for this finding are: (1) Corporal Sullivan's observations of Mr. Colon within the vehicle; and (2) the evidence

[48]Transcript at 148 (Aug. 16, 2001).

lawfully seized from Mr. Colon and his vehicle, including the individually packaged bags of cocaine, the scales to weigh the substance for sale, the extra plastic baggies, and the $178 in currency.

V. CONCLUSION

Based on the foregoing, defendant's motion to suppress evidence is **DENIED**. Upon consideration of the evidence, the defendant is adjudge **GUILTY** on all counts of the indictment. Sentencing is scheduled for **February 8, 2002 at 1:15 p.m.** A presentence investigation and report will be requested.

IT IS SO ORDERED.

Judge Joseph R. Slights, III

Original to Prothonotary