IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action No. 02-54-SLR
	)	
KENYA NASH,	)	
	)	
Defendant.	)	
	)	
	)	
	)	
	)	
	)	

Colm F. Connolly, United States Attorney, and Marc I. Osborne, Special Assistant United States Attorney, United States Attorney's Office, District of Delaware, Wilmington, Delaware. Counsel for Plaintiff.

Penny Marshall, Esquire, Acting Federal Public Defender, Federal Public Defender's Office, Wilmington, Delaware. Counsel for Defendant.

MEMORANDUM OPINION

Dated: November 6, 2002
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Defendant Kenya Nash moves to suppress evidence and statements obtained as a result of a search and seizure which occurred in January 2002. (D.I. 17) A hearing was held on August 26, 2002. (D.I. 25) Post-hearing briefing is complete. The court has jurisdiction pursuant to 18 U.S.C. § 3231. For the reasons that follow, defendant's motion to suppress is granted in part and denied in part.

II. BACKGROUND

Pursuant to Federal Rules of Criminal Procedure 12(e), the following constitutes the court's essential findings of fact. The government called one witness, Wilmington Police Detective Jeffrey Silvers. Detective Silvers[1] testified that on January 17, 2002 at 12:30 p.m., he was informed[2] that a silver Cadillac with a Delaware registration had a passenger inside in possession of a gun and drugs. (Id. at 4) The car was reported to be in the vicinity of A and South Claymont Streets in the City of Wilmington. At least five police officers, including Silvers,

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[1]Silvers has been a Wilmington Police officer for less than 5 years and prior to that was employed by the City of South Portland Maine Police Department for approximately 2 years. (Id. at 3)

[2]Specifically, Detective Sergeant Burke forwarded information to Detective Silvers from a Crime Stoppers call. Although not described in the record, the court understands this to be a police telephone line open to the public to encourage citizens to call with information regarding illegal activity.

traveled to the area in search of the vehicle. Silvers was not in uniform and was riding in an unmarked car. (Id. at 20, 4)

A Cadillac matching the description provided by the tipster was parked on the west side of the 400 block of South Claymont Street. (Id. at 4) A vehicle registration check revealed the Cadillac was registered to Wilmer and April Johnson and that the former's license had been suspended or revoked. (Id. at 5) Inside the Cadillac was one backseat passenger. There were also people standing around the outside of the Cadillac. Silvers parked and observed the Cadillac for about 5 to 10 minutes. Silvers then watched as a black male entered the front seat and the car began to move north on Claymont Street. (Id. at 6) There were three people in the Cadillac. Silvers' car and another unmarked police vehicle followed for approximately one block. The Cadillac then stopped at a stop sign.

At that point, Silvers testified another unmarked police car pulled directly up to the front bumper of the Cadillac so that the two vehicles were facing each other. (Id. at 6-7) Silvers averred that the front seat passenger, defendant, opened the front door and fled the Cadillac. Silvers and another officer chased after defendant. They ordered him to stop several times and identified themselves as police officers. (Id. at 8) Defendant continued to run. Another officer, coming from a different direction, exited his car and tackled defendant.

Defendant was carrying a small pink plastic bag and holding a marijuana cigarette when apprehended. (Id. at 9) Silvers opened the bag, without defendant's consent, and discovered a gun.[3]

III. STANDARD OF REVIEW

The Fourth Amendment, applicable to the states through the Due Process clause of the Fourteenth Amendment, guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV.; see Mapp v. Ohio, 367 U.S. 643 (1961). A search without a search warrant is intrinsically unreasonable and unconstitutional unless one of the exceptions to the warrant requirement is demonstrated. United States v. Place, 462 U.S. 696, 701 (1983); Katz v. United States, 389 U.S. 347, 357 (1967). Although the burden of proof in a suppression motion is on the defendant, United States v. Lewis, 40 F.3d 1325, 1333 (1st Cir. 1994), when a search is made without a warrant the burden shifts to the government to establish by a preponderance of the evidence that the warrantless search falls within one of the exceptions to the warrant requirement. Vale v. Louisiana, 399 U.S. 30, 34 (1970); United States v. Herrold, 962 F.2d 1131, 1137 (3d Cir. 1992).

[3]Although Silvers was never asked what was found inside the bag, the court surmises, in light of the charges filed against defendant, that there was a gun located inside the pink bag. (Id. at 15; D.I. 27 at 2)

In Terry v. Ohio, 392 U.S. 1 (1968),[4] the United States Supreme Court carved out one such exception to the Fourth Amendment's warrant requirement. Specifically, a law enforcement officer may conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot. Id. at 30. The Court defined "reasonable suspicion" as more than an "inchoate and unparticularized suspicion or hunch" of criminal activity. Id. at 27. Although not rising to the level of probable cause, reasonable suspicion requires that there be at least a minimal level of objective justification for making the stop. See United States v. Sokolow, 490 U.S. 1, 7 (1989).

The "reasonableness of official suspicion must be measured by what the officers knew before they conducted their search." Florida v. J.L., 529 U.S. 266, 271 (2000). A "reasonable suspicion of criminal activity may be formed by observing exclusively legal activity." United States v. Ubiles, 224 F.3d 213, 217 (3d Cir. 2000). The test requires a true examination of the totality of the circumstances. See United States v. Robertson, 305 F.3d 164 (3d Cir. 2002); United States v. Nelson, 284 F.3d 472 (3d Cir.), cert. denied, 2002 WL 31041357 (2002)

[4]The Court further decided that a search incident to a Terry stop is permissible only to the limited extent necessary to determine if a suspect is armed or can reach a weapon that might harm the investigating officer. Id. at 22-27; see Minnesota v. Dickerson, 508 U.S. 366 (1993)(Court developed "plain-feel rule").

(reasonable suspicion analysis requires deference to the officer's experience and knowledge of the nature and the nuances of the type of criminal activity).

Reasonable suspicion based on an anonymous tip was recently addressed by the United States Supreme Court in Florida v. J.L., 529 U.S. 266 (2000). There, an anonymous caller reported to the police that a young black male wearing certain clothes was carrying a gun and was standing at a bus stop. Id. at 268. The record did not reflect a recording of the tip call nor any information about the informant. Officers responded to the area and saw three black males, one wearing the shirt described by the tipster. The officers did not see defendant with a gun nor did they observe any illegal conduct. Nonetheless, an officer approached, then frisked the defendant and recovered a gun. The Court found the officers' suspicion that the defendant was carrying a weapon was based solely on a call made from an unknown location by an unknown caller. The Court concluded that this tip "lacked the moderate indicia of reliability" and had no predictive information from which police could test the informant's knowledge or credibility. Id. at 271. "All police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about [defendant]." Id.

Moreover, the fact that the tip matched the suspect's visible attributes was insignificant. According to the Court, this argument "misapprehends the reliability needed for a tip to justify a Terry stop." Id. at 272. Although a tip accurately describing a suspect's location and appearance enables the police to identify the person accused by the tipster, it does not demonstrate that the tipster has knowledge of concealed criminal activity.

Significantly, the Court specifically rejected arguments to create a "firearm exception" where a tip alleging the presence of a weapon would "justify a stop and frisk even if the accusation would fail standard pre-search reliability testing." Id. The Court determined an automatic exception would "rove too far" and "enable any person seeking to harass another to set in motion an intrusive, embarrassing police search of the targeted person simply by placing an anonymous call falsely reporting the target's unlawful carriage of a gun." Id. at 272-273; accord United States v. Roberson, 90 F.3d 75 (3d Cir. 1996)(Court rejected an anonymous tip particularly describing defendant located on a specific street corner as insufficient basis for reasonable suspicion). See also Alabama v. White, 496 U.S. 325 (1990)(Court developed totality of the circumstances test to determine whether an anonymous tip could provide reasonable suspicion for a Terry stop and concluded two factors are

important: (1) the ability to corroborate significant aspects of the tip; and (2) the tip's ability to predict future events.); Jones v. State, 745 A.2d 856 (Del. 1999)(anonymous 911 tip call describing suspicious male wearing certain clothes in a certain area found insufficient for reasonable suspicion). Compare Illinois v. Gates, 462 U.S. 213 (1983)(tip upheld was an anonymous letter which contained detailed information regarding the future travel plans and location of money of defendants); United States v. Robertson, 305 F.3d at 164 (Third Circuit found facts distinguishable from Florida v. J.L., even though an anonymous tip was involved because officers were in hot pursuit of robbery suspects who boarded a public bus with weapons).

IV. DISCUSSION

A. Cadillac Stop

Defendant argues the contraband found on him was obtained in violation of the Fourth Amendment since the stop of the car was based on an uncorroborated and vague anonymous tip. See Alabama v. White, 496 U.S. at 325; Florida v. J.L., 529 U.S. at 266; United States v. Roberson, 90 F.3d at 75. (D.I. 27) Defendant contends that, without reasonable suspicion, the officers had neither a basis for the car stop nor justification subsequently to open the bag he was carrying. (Id. at 22) Finally, defendant argues any statements he provided should be suppressed because there was no showing of a valid waiver of Miranda rights.

The government asserts that defendant was not seized when the car was stopped. (D.I. 29) Because defendant never actually stopped when the Cadillac was blocked but instead fled, the government maintains that defendant cannot argue the Cadillac stop was unreasonable. See California v. Hodari D., 499 U.S. 621 (1991); United States v. Valentine, 232 F.3d 350, 355 (3d Cir. 2000), cert. denied, 532 U.S. 1014 (2001). Even assuming the stop were unconstitutional, the government submits that defendant's flight from the car amounted to an intervening event, i.e., resisting arrest, which justified the officers' chase and arrest. Once stopped for that offense, the government asserts the search of the bag was valid as a search incident to an arrest. Finally, the government requests an opportunity to more fully respond to the Miranda issue.

Applying this authority, the court finds that the Cadillac was seized when the police car pulled directly in front of and prevented the Cadillac from moving. See Hodari D., 499 U.S. at 625-626. However, there is insufficient evidence of record to support a finding of reasonable suspicion to justify the stop of the Cadillac. Significantly, the tip at bar is similar to the fleshless tip in Florida v. J.L., criticized by the Supreme Court as lacking evidence of reliability and predictive information. Through no fault of his own, Detective Silvers was unable to provide any information about the tip, apparently because the

information was given to him by another officer, who did not testify at the hearing.[5] Moreover, the discovery of a revoked or suspended license by one of the Cadillac owners does not justify the stop because the initial tip was the impetus for the investigation of the vehicle.

B. Exclusionary Rule

Having concluded that the stop of the Cadillac was in violation of the Fourth Amendment, the issue now becomes whether the weapon and statements[6] obtained after defendant was arrested must be suppressed pursuant to the exclusionary rule. Wong Sun v. United States, 371 U.S. 471, 488 (1963); United States v. Burton, 288 F.3d 91, 99 (3d Cir. 2002). The "exclusionary rule mandates that evidence derived from constitutional violations may

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[5]The record does not establish anything about the Crime Stoppers tip line, in general, including the manner in which calls are processed and screened, the time period between a received call and a police response, any records revealing the number of calls made by a tipster, without compromising anonymity, as well as whether any monetary rewards are given. Missing, also, is crucial information about the tip itself, including the tipster's history of providing information, the tipster's relationship to the alleged activity, again without compromising identity, and whether additional details were provided in the call. The inability to illuminate these areas leaves the court with only a bare bones tip that, under Florida v. J.L. and its progeny, does not rise to the level of reasonable suspicion necessary to stop the car.

[6]Although discussed in detail later, the court recognizes the standard for applying the exclusionary rule differs between the Fourth and Fifth Amendments. See Dunaway v. New York, 442 U.S. 200, 259 (1979); Oregon v. Elstad, 470 U.S. 298, 306 (1985); U.S. v. Butts, 704 F.2d 701, 705 (3d Cir. 1983).

not be used at trial because illegally derived evidence is considered 'fruit of the poisonous tree.'" United States v. Pelullo, 173 F.3d 131, 136 (3d Cir.), cert. denied, 528 U.S. 824 (1999); see United States v. Howard, 210 F. Supp.2d 503, 518 (D. Del. 2002). The government bears the burden of persuasion to demonstrate that seized evidence is untainted by the illegal conduct. United States v. Ienco, 182 F.3d 517, 528 (7th Cir. 1999).

The exclusionary rule "serves to deter constitutional violations by denying the government the benefit of those violations" and its application is "restricted to those areas where its remedial objectives are thought most efficaciously served." Pelullo, 173 F.3d at 131, quoting, Segura v. United States, 468 U.S. 796, 804 (1984). "Even situations where the exclusionary rule is clearly applicable, [the Court] has declined to adopt a 'per se' or 'but for' rule that would make inadmissible any evidence, whether tangible or live-witness testimony, which somehow came to light through a chain of causation that began with an illegal arrest." United States v. Ceccolini, 435 U.S. 268, 276 (1978); United States v. Dudley, 854 F. Supp. 570 (S.D. Ind. 1994).

The scope of the exclusionary rule is determined by "whether, granting establishment of the primary illegality, the evidence to which objection is made has been come at by

exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the original taint." Wong Sun, 371 U.S. at 488. The Third Circuit has interpreted Wong Sun to involve two discrete inquiries:

> 1) the proximity of an initial illegal custodial act to the [acquired evidence]; and 2) the intervention of other circumstances subsequent to an illegal arrest which provide a cause so unrelated to that initial illegality that the acquired evidence may not reasonably be said to have been directly derived from, and thereby tainted by, that illegal arrest.

Burton, 288 F.3d at 99. The first question evaluates the attenuation between the "illegal police conduct and the evidence allegedly exploited from it." Id. at 100. The second inquiry involves "whether an independent source exists for that evidence." Id.

As detailed previously, Detective Silvers testified that after the Cadillac was stopped, defendant ran for a short distance and then was forcefully stopped by an officer. After this second stop, a search resulted in the discovery of a gun. Since the sequence of events was fluid, uninterrupted and occurred rapidly, the court concludes that the stop of the Cadillac and discovery of the gun were too closely connected to fit within the attenuation section.

Turning to the second element, the government argues defendant's dart from the Cadillac and continued flight, in defiance of police orders to halt, constitutes an intervening event and the crime of resisting arrest pursuant to 11 Del.C. § 1257.[7] The Delaware Supreme Court has concluded that a defendant can be found guilty of resisting an illegal arrest. Jones v. State, 745 A.2d at 872, n. 80. However, the Supreme Court cautioned that the admission of evidence seized from resisting an illegal arrest is inadmissible as a violation of the state constitution. Id. at 873. The Court wrote:

> The purpose behind the rule that resisting even an illegal arrest constitutes a crime is to foster the effective administration of justice, to deter resistance to arrest and to provide for the safety both of peace officers and the citizens of Delaware. In our view, this purpose cannot be used to allow an officer, lacking reasonable suspicion to effect a stop or search that leads to an illegal arrest, to contend that evidence seized incident to that illegal arrest is admissible. That would be a result reached by bootstrap analysis.

Id. at 873.

[7] "A person is guilty of resisting arrest when the person intentionally prevents or attempts to prevent a peace officer from effecting an arrest or detention of the person or another person or intentionally flees from a peace officer who is effecting an arrest. Resisting arrest is a class A misdemeanor."

The government urges this court to consider Jones as a validation of the resisting arrest statute and to reject the portion dealing with the Delaware constitution and evidence issue. In so doing, the government would gain the benefit of the resisting arrest statute to justify defendant's stop without the accompanying implications that the Cadillac search was unreasonable. The court is unconvinced that such a result is congruent.

Although the Third Circuit has not addressed a similar factual issue, the Court's recent restatement of the inquiries relevant to the exclusionary rule is helpful. Burton, 288 F.3d at 99. The Court stressed that the intervening event must provide a cause so unrelated to the illegal conduct that the evidence uncovered cannot reasonably be said to have derived from the illegality. Id. at 100. Weighing the facts herein against this standard, the court finds that no evidence of a "cause so unrelated" to the illegal stop of the Cadillac has been presented. Rather, defendant's flight was intimately related to that stop, and would not have occurred but for the police conduct.

The government argues that "[e]vidence of a separate, independent crime initiated against police officers in their presence after an illegal entry or arrest will not be suppressed under the Fourth Amendment." United States v. Waupekenay, 973

F.2d 1533, 1538 (10th Cir. 1992). However, such a determination is entirely fact specific, and is unsupported by the record developed at the suppression hearing. Specifically, there was no evidence presented regarding the reason the police chased defendant. For example, it is unclear whether they chased defendant to determine if he possessed the gun or drugs described in the anonymous tip or whether he was chased because he was resisting arrest. With respect to the latter reason, the record establishes that at the time of the Cadillac stop the police did not have probable cause to suspect illegal conduct beyond the anonymous tip. The suspended or revoked license was an issue concerning the driver of the car, not a passenger.

Moreover, the government's authority is factually distinct from the facts herein. First, in Waupekenay, the defendant aimed a semi-automatic rifle at police officers who entered his home, without consent, to investigate a domestic complaint. The Tenth Circuit found the evidence was not tainted by the illegal search because the defendant commenced the independent crime of assault after the police entered his home and fully cognizant of the police presence as well as their ability to see his actions. Id. at 1537. Defendant Silvers testified that defendant ran from the Cadillac without turning back to observe the officers or the situation. The stop, chase and arrest occurred quickly. Thus, the contemplation and recognition exhibited by the defendant in

Waupekenay and noted by the Court as a basis for the intervening crime of assault are not present here.

In United States v. Dawdy, 46 F.3d 1427 (8th Cir. 1995), a state trooper observed defendant sitting in a parked car in the parking lot of a pharmacy at about 10:00 p.m. The trooper knew that the pharmacy was not open and that there had been false burglary alarms reported several times there. As the trooper entered the lot to investigate, the defendant turned on the car lights and proceeded to an exit. When the trooper motioned for the defendant to stop, the defendant reversed his vehicle to avoid the command. The trooper then flashed his lights and the defendant stopped. A check for outstanding warrants was initiated by the trooper, who also noted that the defendant appeared nervous. Shortly after other officers arrived at the scene, a black bag, filled with narcotics, was recovered on the ground near defendant's car. The trooper tried to handcuff the defendant and a struggle ensued. The Eighth Circuit[8] held that a defendant's response to even an invalid arrest or stop may constitute independent grounds for arrest. Unlike the facts at bar, however, the interaction between the officer and the defendant in Dawdy did not transpire fluidly. Instead, there were a series of events, including the discovery of narcotics,

[8]The dissent emphasized the district court's finding that defendant's act of resisting arrest was quickly subdued after a brief struggle while the handcuffs were applied. Id.

that led to the defendant's arrest. Further, the Dawdy defendant's resistance to the arrest was more intimate as he was in the direct presence of several officers and knew their intent to arrest him. Conversely, since the officers in this case were in plain clothes and in unmarked cars, it is unclear whether defendant understood officers were pursuing him.

In United States v. Bailey, 691 F.2d 1009 (11th Cir. 1982), the defendant was illegally arrested in an airport based on a DEA agent's suspicion of drug trafficking. The defendant agreed to be searched and to accompany the agent to the police station. However, as they began their walk, the defendant dropped his luggage and fled the scene. Id. at 1012. Agents followed in hot pursuit and were able to pull defendant down from a fence as he tried to escape. As he was falling, the defendant began punching an agent and tried to remove the officer's gun. After he was subdued and arrested for resisting arrest, the agents conducted a search incident to that second lawful arrest and discovered narcotics. The Eleventh Circuit affirmed the district court's denial of the suppression motion primarily on policy grounds. Id. at 1017. Focusing largely on the defendant's violent response to the DEA agents and society's need to deter similar conduct, the Court wrote:

> To apply the exclusionary rule here where there has been a new and distinct crime and a legal arrest would exact from society

> a cost even greater than that involved in Ceccolini. Nor can we perceive that the rule we announce today will encourage illegal police conduct. Certainly the instances of forcibly resisting arrest are rare, and could hardly be counted on by police to resurrect an otherwise invalid arrest. Moreover, sound policy reasons obviously argue that the law should discourage and deter the incentive on the part of potential arrestees to forcibly resist arrest or to commit other new and separate crimes.

Id. The violent resistance to arrest in Bailey was not duplicated here. There was no evidence that defendant responded in any manner once he was tackled on the street. Accordingly, the policy considerations, which were paramount to the Eleventh Circuit's decision, are not applicable at bar.

In United States v, Garcia, 516 F.2d 318, 319 (9th Cir. 1975), the defendant was "driving a type of car with a deep trunk commonly used to smuggle aliens" when he approached a fixed border patrol checkpoint. The defendant's vehicle and conduct arose the suspicion of the border officer, who directed him to proceed to a second checkpoint. After stopping briefly at the second checkpoint, the defendant sped off and was followed by officers in a high speed chase. The agents stopped the defendant and determined he was an illegal alien; a search of his car revealed a large quantity of marijuana. The Ninth Circuit concluded that the illegal stop at the checkpoint was "no more

than part of a series of facts leading up to the subsequent flight." Id. at 320. The Court identified the defendant's "feigned compliance with the officer's order" and subsequent flight as suspicious and probative of criminal activity. Id. Again, the records are sufficiently distinguishable that the Court's finding of a new crime in Garcia is not persuasive.

For similar reasons the holding in United States v. Nooks, 446 F.2d 1283 (5th Cir. 1971), is unimpressive. There, the defendant was stopped as police were searching for fleeing bank robbery suspects. Although the Court did not reach the issue of whether the stop was illegal, it found the defendant's high speed flight from the first police stop and the shots he fired directly at a sheriff sufficient to attenuate any taint emanating from the initial stop. Id. at 1288. Again, the facts are sufficiently distinct to be unpersuasive.

Significantly, in a more recent case where the defendant fired shots at law officers, the court found this conduct did not establish an intervening event. United States v. Cabell, 1999 WL 1938855 (S.D. Ind. 1999). The district court determined that police violated the federal knock and announce rule, 18 U.S.C. § 3109, while attempting to effectuate a state search warrant. Once the inner door of the defendant's residence was forced opened, a shot was fired from inside and the agents returned fire. Id. at 2. After the defendant surrendered, the residence

was secured and the agents obtained another warrant to search for evidence of attempted murder. The defendant was charged with using deadly force to resist arrest by a law enforcement officer. 18 U.S.C. § 111(b). The district court concluded that the government failed to demonstrate that the defendant committed a new and distinct crime sufficient to dissipate the taint of the illegal entry because there was no evidence presented that the defendant fired the shots at the agents, knew the people entering his residence were law enforcement officers or even heard their shouts to him. See e.g. United States v. Dudley, 854 F. Supp. at 570 (court found initial illegality tainted evidence discovered through a chain of events all tightly connected to the initial conduct).

This sampling of cases establish that "this assessment is largely a matter of degree and invariably fact-specific." Burton, 288 F.3d at 100. Accordingly, on this record the court finds that the government has not carried its burden of demonstrating that defendant's flight from the Cadillac was an intervening event sufficient to purge the illegality of the stop.

C. Exceptions to the Exclusionary Rule

Having determined that the evidence discovered was a product of the unlawful stop, the issue becomes whether an exception to the exclusionary rule applies. Courts have adopted various exceptions to the exclusionary rule, including: 1) the

independent source doctrine;[9] 2) the inevitable discovery rule;[10] 3) the attenuation doctrine;[11] and 4) the good faith exception[12] to the warrant requirement. Howard, 210 F.Supp. 2d at 520. The "independent source, inevitable discovery, and attenuation doctrines recognize that where the causal link between the constitutional violation and later-revealed evidence is tenuous or, indeed non-existent" then the evidence may be admissible. United States v. Pelullo, 173 F.3d at 136. The court finds that the record does not support application of any of these exceptions because the events leading to the stop of the Cadillac, arrest of defendant and discovery of evidence occurred

[9]The independent source doctrine allows evidence that was discovered lawfully "and not as a direct or indirect result of illegal activity" to be admitted. United States v. Herrold, 962 F.2d 1131, 1140 (3d Cir. 1992).

[10]The inevitable discovery rule applies where the prosecution can establish by a preponderance of the evidence that the police would have discovered the evidence in issue by utilizing routine police procedures. United States v. Vasquez De Reyes, 149 F.3d 192, 195 (3d Cir. 1998).

[11]The attenuation doctrine applies where the connection between the evidence and illegal activity is so far removed that any taint is dissipated. See United States v. Cabell, 1999 WL 1938855 at 3.

[12]The good faith exception allows the admission of evidence that was discovered when an officer "executes a search in objectively reasonable reliance on a warrant's authority, even though no probable cause to search exists." United States v. Zimmerman, 277 F.3d 426, 436 (3d Cir. 2002). Since the search at bar was warrantless this exception is inapplicable.

rapidly and without a sufficient intervening event to purge the accompanying taint.

D. Statements

Turning to the statements defendant allegedly made, Detective Silvers testified that he read Miranda warnings[13] to defendant. (D.I. 25 at 22) However, there was no documentation presented establishing that defendant understood his rights or waived them, nor is it clear if the police actually used a form to review or waive Miranda rights. From this abbreviated testimony, the court cannot evaluate any of the essential inquiries under the Fifth Amendment, including: 1) the nature of the statements or the relationship to the Cadillac stop; 2) whether the statements were provided after a valid waiver; 3) if the statements were given during custodial interrogation; or 4) whether they were truly statements warranting warnings in the first instance. See United States v. Lacy, 2002 WL 982390, at 5-6 (D. Del. May 10, 2002)(court suppressed one of the defendant's statements); United States v. Howard, 210 F. Supp.2d at 519

[13]It is well-settled that the government may not present statements in its case-in-chief collected during custodial interrogation by law officers unless defendant has been advised of, and validly waived, his "Miranda" rights: (1) to remain silent and that any statements can be used as evidence against him; and (2) to the presence of retained or appointed counsel during questioning. See Miranda v. Arizona, 384 U.S. 436, 444 (1966).

(court found the exclusionary rule barred admission of weapon and statements which were tainted by unlawful seizure of money).

In light of the government's request to more fully address this area as well as the court's inability to discern even the content of the statements, additional briefing and supplementation will be entertained, if the admissibility of the statements has not been mooted by the court's rulings herein.

V. CONCLUSION

For the reasons stated, defendant's motion to suppress (D.I. 17) is granted in part and denied in part. An appropriate order shall issue.