

Not To Be Published:

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOEL GERARD AMELING and TINA
BROWN,

Defendants.

No. CR02-3005-MWB

**ORDER REGARDING
MAGISTRATE’S REPORT AND
RECOMMENDATION CONCERNING
DEFENDANTS’ MOTIONS TO
SUPPRESS**

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I. INTRODUCTION AND BACKGROUND

A. Procedural Background

On January 24, 2002, a five count indictment was returned against defendants Joel Gerard Ameling and Tina Brown charging Ameling with conspiracy to manufacture and possess with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), and 846, possessing methamphetamine with intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C), manufacturing or attempting to manufacture methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), and 846, maintaining a premises for the purpose of manufacturing, distributing or using methamphetamine, in violation of 21 U.S.C. § 856(a)(1), and possession of a firearm by a user of a controlled substance, in violation of 21 U.S.C. §§ 922(g)(3) and 924(a)(2). Defendant Brown is charged only with conspiracy to manufacture and possess with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), and 846.

On April 26, 2002, defendant Brown filed a motion to suppress. On May 1, 2002, defendant Ameling filed a motion to suppress. In their motions, defendants seek to suppress evidence seized after a traffic stop of the pickup truck in which they were riding. Defendants' motions to suppress were referred to United States Magistrate Judge Paul A. Zoss, pursuant to 28 U.S.C. § 636(b). On June 3, 2002, an evidentiary hearing was held. On June 26, 2002, Judge Zoss filed a Report and Recommendation in which he recommends that defendants' motions to suppress be granted. Judge Zoss concluded that the traffic stop of the pickup truck was invalid because the police did not have reasonable suspicion to stop the vehicle. Judge Zoss further recommended that statements made by Ameling after his arrest be suppressed as the fruit of the illegal traffic stop.

The government filed objections to Judge Zoss's Report and Recommendation on July 7, 2002. The government objects to one factual finding in Judge Zoss's Report and

Recommendation, as well as several legal conclusions reached by Judge Zoss. Defendant Ameling filed a resistance to the government's objections to Judge Zoss's Report and Recommendation on July 16, 2002. Defendant Brown filed a resistance to the government's objections to Judge Zoss's Report and Recommendation on August 5, 2002. The court, therefore, undertakes the necessary review of Judge Zoss's recommended disposition of defendants' motions to suppress.

B. Factual Background

In his Report and Recommendation, Judge Zoss made the following findings of fact:

On September 19, 2001, Van Pelt was working at the Target store in Fort Dodge, Iowa, in charge of store security, watching the video surveillance system monitors. The system is made up of several cameras, including stationary cameras, movable cameras that can be zoomed in or out, outdoor cameras, and public view monitors with a screen and a camera. The movable cameras can be controlled by Van Pelt from within the security office at the store, allowing him to follow people's movements both inside the store, and also outside at least as far away as the Hy-Vee store across the street from Target.

At about 2:45 p.m., while watching the monitors, Van Pelt saw a man and a woman, later identified as Ameling and Brown, in an aisle selecting multiple boxes of pseudoephedrine. Van Pelt testified he continued to watch the couple in order to prevent theft because the store had experienced a lot of theft of pseudoephedrine. In addition, Van Pelt had been through a training course given by the Fort Dodge Police Department that instructed participants to watch for people buying precursors for methamphetamine manufacture, including coffee filters, pill grinders, Coleman fuel, starter fluid, and multiple boxes of pseudoephedrine. Officers had advised store personnel that several people might come to the store together, and split up to purchase these items.

Van Pelt saw the couple walk together toward the

checkout lanes, and then they separated and each went into a separate checkout lane. Van Pelt could see that each individual was purchasing two boxes of pseudoephedrine. Brown finished paying for her purchase first, and she went outside and stood next to a pickup truck. Ameling paid for his purchase, went outside, and met Brown at the truck. Van Pelt saw Ameling open the truck's tool box located in the back of the truck, and he saw Brown and Ameling each place one Target bag into the tool box.

Van Pelt called Officer Mernka and told him two individuals each had purchased two boxes of pseudoephedrine at the Target store. He gave Officer Mernka a detailed description of Brown and Ameling, as well as a detailed description of their truck that included the license number, which was visible from the outdoor surveillance camera. He also told Officer Mernka how the individuals had split up and exited through separate checkout lanes. While Van Pelt was talking to Officer Mernka, he continued to watch as Brown and Ameling drove across the street, parked the truck in the Hy-Vee parking lot, got out of the truck, and entered the Hy-Vee store. Van Pelt reported this information to Officer Mernka.¹

When Officer Mernka received the call from Van Pelt, he got Officer Doty and the two drove to the Hy-Vee parking lot in an unmarked police vehicle. They located the truck Van Pelt had described and parked where they could watch it. While they were en route to Hy-Vee, Officer Doty called Karen Johnson, a pharmacy employee at Hy-Vee, gave her a physical description of Brown and Ameling, and alerted her that they might be buying lithium batteries or pseudoephedrine. A few minutes later, Johnson called Officer Doty on his cell phone and said Brown and Ameling had been spotted inside the store, and they were in the battery section buying a lithium battery. The officers saw Brown and Ameling exit Hy-Vee and

¹Van Pelt continued to watch the front of the Hy-Vee store until he saw Brown and Ameling emerge. He watched as an unmarked police car followed their truck out of the camera's range, and he was later notified that a traffic stop had been initiated and he might be called to testify about his surveillance of the defendants.

get into the truck. As they started to drive out of the parking lot, Officer Mernka pulled in behind the truck and followed. He called for a marked patrol car to stop the truck, and Officer Wilkins responded. Officer Wilkins stopped the truck, and the officers' vehicles were parked around the truck in such a way that Ameling and Brown reasonably would have believed they were not free to leave the scene.

Officer Mernka approached the driver's side of the truck and Officer Doty approached the passenger's side. Ameling asked why they had been² stopped, but Officer Mernka did not respond to the question.³ Officer Mernka testified Ameling seemed nervous.³ Ameling provided his name, driver's license, registration and insurance information. The officers verified that the truck was registered to Ameling, and the license plate number matched the number provided by Van Pelt. A check of wants and warrants revealed no outstanding warrants for Ameling or Brown, and Officer Mernka testified Ameling did not present himself as any threat to officer safety.

Officer Mernka asked Ameling to step out of the vehicle, and he asked Ameling what he and Brown were doing in town.⁴ Ameling said they had been shopping, not looking for anything in particular. He said they had to hurry home because they had to pick up a child. When asked, Ameling said they had not purchased anything at Target, and he did not remember buying anything at Hy-Vee. Officer Mernka told Ameling the officers knew he and Brown had purchased pseudoephedrine at Target, and Ameling did not respond. Ameling got back into the truck.

²The officers did not provide Ameling with a reason he had been stopped until two or three minutes into the stop.

³Officer Mernka agreed most people who are pulled over by law enforcement are nervous. He further agreed it would not be unusual for Ameling to be nervous because there were several officers present, all wearing visible sidearms.

⁴Officer Mernka stated he could tell from the truck's license number that it was from outside the county.

Meanwhile, Officer Doty was talking with Brown, who said they had been in town because she had a doctor's appointment. She said nothing about picking up a child. Brown said they bought donut holes and pop at Hy-Vee. She did not mention buying a battery; however, Officer Doty did not ask her if they had bought a battery. Brown said she had been looking at shoes in the Target store.

Officers Mernka and Doty conferred and learned Ameling and Brown had told them somewhat different versions of their activities. Officer Mernka asked Ameling if he could search the truck, and Ameling declined. Officer Mernka ordered Ameling out of the truck again, and the officers began to search the truck.

Officer Mernka testified the officers believed they had probable cause to search the truck because Brown and Ameling had bought precursors at Target and Hy-Vee (*i.e.*, the pseudoephedrine and what officers believed to be a lithium battery), they had exited through separate checkout lanes at Target, they had paid with cash, they told the officers inconsistent stories about their purchases and their activities, and they were acting nervous.

Officer Mernka started searching the cab of the truck. Under the seats, he saw two plastic bags, a box of pseudoephedrine, hose clamps, a straw, and a Marlboro pack. He pulled all the items out and he could see that the K-Mart bag contained a box of pseudoephedrine. The other bag, from Hy-Vee, contained a nine-volt battery, and a receipt (Defendant. Ex. A) showing the purchase of the battery, donut holes and pop. Officer Mernka testified he could see the battery as soon as he pulled the items out from under the seat, and he could tell it was not a lithium battery.⁵

Officer Mernka testified that even though the battery turned out not to be a lithium battery, he still felt they had probable cause to continue searching the truck because Ameling and Brown had told different stories about why they were in town, and the officers had an eye-witness report that they had

⁵No lithium battery was found anywhere in the truck.

bought four boxes of pseudoephedrine. The officer had only found two boxes under the seat, and he wanted to know where the other boxes were.

Officer Mernka looked inside the Marlboro pack and found a glass vial and a baggie containing methamphetamine. Officer Mernka stated the methamphetamine appeared to have been put in the vial wet and then had hardened. Other items found inside the truck cab included the donut holes and pop purchased at Hy-Vee, and an envelope containing X-rays.⁶

Another officer, Sergeant Porter, had arrived at the scene, and he searched the tool box in the back of the truck while Officer Doty prepared a written inventory of all the items seized from the truck. Inside the tool box, Sergeant Porter found six boxes of pseudoephedrine, a 20-gallon propane tank, rubber hosing,⁷ wrenches, and gloves. He also found a remote-controlled car.

At this point, Brown and Ameling were placed under arrest. The officers did not advise the defendants of their *Miranda* rights at the time of their arrest. Officer Mernka had Ameling empty his pockets, revealing no drug paraphernalia, controlled substances, or weapons.

Officer Mernka detected an odor from the propane tank that he thought could be anhydrous ammonia. Ameling was sitting in the back of the squad car, and Officer Mernka asked Ameling if the tank contained anhydrous ammonia. At first, Ameling did not respond. The officer asked the question again, and Ameling replied, "Not right now." Ameling later said there had been anhydrous in the tank in the past, but there was none in the tank at that time.⁸ Based on Ameling's response, Officer Mernka had the Fort Dodge Fire Department come to the scene and test the tank. The test confirmed there were

⁶Brown had told Officer Doty she was in town to have her arm X-rayed.

⁷Ameling told officers the battery they had purchased was for the toy car.

⁸These statements were made after Ameling had been placed under arrest, and he was sitting in handcuffs in the back of the patrol car, but before he had been *Mirandized*.

detectable levels of propane and anhydrous ammonia fumes emanating from the tank. Officer Mernka called his office for instructions and was told to bring the tank to the Law Enforcement Center for further handling.

The officers took Ameling and Brown to the Law Enforcement Center. While Officer Doty was completing his paperwork, Ameling made several statements in an attempt to exonerate Brown. He said Brown had no knowledge of the contraband found in the truck. He also said he had asked Brown to purchase some pseudoephedrine for him. He had not told her what the pills would be used for and she did not question him about his request. After Ameling had made similar statements three or four times, Officer Doty asked Ameling if he wanted to make a taped statement, and Ameling agreed. At this point, Officer Doty learned Ameling had not been *Mirandized*.⁹ Officer Doty read Ameling his rights, and then Ameling made statements about his relationship with Brown and her lack of knowledge about the incriminating items found in the truck. See Defendant. Ex. B. About 15 minutes elapsed from the time when Brown and Ameling arrived at the Law Enforcement Center until the time Ameling made his recorded statement.

After returning to the Law Enforcement Center, Officer Mernka faxed an affidavit to the Fort Atkinson authorities so they could obtain a search warrant for Ameling's house.¹⁰ Officer Leeps prepared the application for a search warrant based primarily on information provided by Officer Mernka. A warrant was obtained, and a search of Ameling's home was conducted at about 9:00 p.m. on September 19, 2001. The officers located numerous items used in the manufacture and distribution of methamphetamine, as well as a number of weapons. Officer Leeps testified the following weapons seized

⁹See Def. Ex. B, a transcript of the taped interview between Officer Doty and Ameling.

¹⁰At the scene of the stop, Officer Mernka had asked Ameling for permission to search his house, and Ameling had declined.

from Ameling's house were in plain view at the time the officers conducted their search: There was a shotgun in a rack hanging above the door between the dining room and kitchen area. In the corner of the dining room was an open gun rack containing numerous firearms, and other firearms were leaning against the gun rack. A scope and tripod were found in the dining room, next to the door that led to the kitchen area.

Other firearms were found in a closet between the dining room and kitchen, and a loaded handgun was found in the garage. Nothing belonging to Brown was found in Ameling's residence.

Report and Recommendation at pp. 3-10. Upon review of the record, the court adopts all of Judge Zoss's factual findings that have not been objected to by the government.

II. LEGAL ANALYSIS

A. Standard Of Review

Pursuant to statute, this court's standard of review for a magistrate judge's report and recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for review of a magistrate judge's report and recommendation on dispositive motions and prisoner petitions, where objections are made, as follows:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or

recommit the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b).

The Eighth Circuit Court of Appeals has repeatedly held that it is reversible error for the district court to fail to conduct a *de novo* review of a magistrate judge's report where such review is required. *See, e.g., Hosna v. Groose*, 80 F.3d 298, 306 (8th Cir.) (citing 28 U.S.C. § 636(b)(1)), *cert. denied*, 519 U.S. 860 (1996); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (citing *Belk v. Purkett*, 15 F.3d 803, 815 (8th Cir. 1994)); *Hudson v. Gammon*, 46 F.3d 785, 786 (8th Cir. 1995) (also citing *Belk*). As noted above, the government has filed objections to Judge Zoss's Report and Recommendation. The court, therefore, undertakes the necessary review of Judge Zoss's recommended disposition of defendants' motions to suppress.

B. Objections To Report And Recommendation

1. Law enforcement officers' basis for reasonable suspicion

The government initially objects to Judge Zoss's Report and Recommendation on the ground that in discussing whether the officers had reasonable suspicion to stop the pickup truck in which defendants were traveling, Judge Zoss did not mention that some of the items purchased by defendants are precursors for the production of methamphetamine and that the manner in which defendants procured the materials here, the use of multiple people to purchase pseudoephedrine products, is a common method by which methamphetamine manufacturers obtain such precursors. This objection is overruled. Although Judge Zoss did not mention in the legal analysis portion of his Report and Recommendation that pseudoephedrine is a precursor to the manufacture of methamphetamine, this fact was detailed in the report and recommendation, see Report and Recommendation at p. 4, and Judge Zoss noted that Lieutenant Mernka considered this fact in his decision that he had

probable cause to search the pickup truck.¹¹ Report and Recommendation at p. 6. Likewise, Judge Zoss noted that Van Pelt, the Target security officer, had been trained by law enforcement personnel to be on the lookout for individuals who might come into a store together and then split up to purchase precursors of methamphetamine production. Report and Recommendation at p. 4.

2. Reasonable suspicion to stop the pickup truck

The government next objects to Judge Zoss's conclusion that the law enforcement officers did not have reasonable suspicion to stop the pickup truck in which defendants were traveling. In *Warren v. City of Lincoln, Neb.*, 864 F.2d 1436 (8th Cir.) (en banc), *cert. denied*, 490 U.S. 1091 (1989), the Eighth Circuit Court of Appeals observed that the Supreme Court has identified three categories of police-citizen encounters, each justifying a different level of detention:

The first category consists of consensual communications between officers and citizens, involving no coercion or restraint of liberty. Such encounters do not constitute seizures and thus are beyond the scope of the fourth amendment. *See Florida v. Royer*, 460 U.S. 491, 497, 103 S. Ct. 1319, 1323, 75 L. Ed. 2d 229 (1983). The second category is the so-called *Terry* stop, *see Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1879-80, 20 L. Ed. 2d 889 (1968); *Florida v. Royer*, 460 U.S. at 498-99, 103 S. Ct. at 1324-25, pursuant to which an officer having a reasonable suspicion that a person has committed or is about to commit a crime may temporarily seize the person for limited investigative purposes. Finally, there are full-scale arrests, which must be supported by probable cause. [*United States*] v. *Poitier*, 818 F.2d 679, 682 [(8th Cir.1987), *cert. denied*, 484 U.S. 1006, 108 S. Ct. 700, 98 L. Ed. 2d 651 (1988).]

¹¹ Lieutenant Mernka was not asked at the evidentiary hearing the specific reasons on which he based his conclusion that he had reasonable suspicion to stop the pickup truck defendant Ameling was driving.

Id. at 1438-39.

Here, the second category of police-citizen encounters is at issue. The United States Supreme Court has described reasonable suspicion as "a particularized and objective basis" for suspecting criminal activity. *Ornelas v. United States*, 517 U.S. 690, 699 (1996) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)). The Eighth Circuit Court of Appeals recently explained that:

An officer who develops a reasonable, articulable suspicion of criminal activity may expand the scope of an inquiry beyond the reason for a traffic stop and detain a vehicle and its occupants for further investigation. *United States v. Poulack*, 236 F.3d 932, 935-36 (8th Cir. 2001), *cert. denied*, --- U.S. ----, 122 S. Ct. 148, 151 L. Ed. 2d 99 (2001). Whether an officer had reasonable suspicion to expand the scope of a stop is determined by looking at "the totality of the circumstances, in light of the officer's experience." *Id.* at 936 (quoting *United States v. Carrate*, 122 F.3d 666, 668 (8th Cir.1997)). *See also United States v. Morgan*, 270 F.3d 625, 631 (8th Cir. 2001) (Fourth Amendment is not violated if officer had reasonable suspicion to detain a vehicle for the length of time necessary to investigate).

United States v. Johnson, 285 F.3d 744, 748 (8th Cir. 2002). The Eighth Circuit Court of Appeals has also recently observed that:

Though each factor giving rise to suspicion might appear to be innocent when viewed alone, a combination of factors may warrant further investigation when viewed together. *United States v. Bloomfield*, 40 F.3d 910, 918 (8th Cir.1994) (en banc). An officer's suspicion of criminal activity may reasonably grow over the course of a traffic stop as the circumstances unfold and more suspicious facts are uncovered. *See United States v. Morgan*, 270 F.3d 625, 631 (8th Cir. 2001); *Poulack*, 236 F.3d at 936. *See also Barahona*, 990 F.2d at 416 ("[I]f the responses of the detainee and the circumstances give rise to suspicions unrelated to the traffic offense, an officer may broaden his inquiry and satisfy those suspicions.").

United States v. Linkous, 285 F.3d 716, 720 (8th Cir. 2002); see *United States v. Roggeman*, 279 F.3d 573, 578 (8th Cir. 2002) (“Reasonable suspicion is not a ‘finely tuned’ or bright-line standard; each case involving a determination of reasonable suspicion must be decided on its own facts.”); *United States v. Gray*, 213 F.3d 998, 1000 (8th Cir. 2000) (“When determining whether a police officer had reasonable suspicion of criminal activity, we must view the totality of the circumstances ‘as understood by those versed in the field of law enforcement.’”) (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)); *United States v. Beck*, 140 F.3d 1129, 1136 (8th Cir. 1998) (holding that “[t]he standard of articulable justification required by the fourth amendment for an investigative, *Terry*-type seizure is whether the police officers were aware of ‘particularized, objective facts which, taken together with rational inferences from those facts, reasonably warrant[ed] suspicion that a crime [was] being committed.’”) (quoting *United States v. Martin*, 706 F.2d 263, 265 (8th Cir. 1983)); *United States v. Dawdy*, 46 F.3d 1427 (8th Cir. 1995) (holding that “[f]or a *Terry* stop to be considered valid from its inception, ‘the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.’”) (quoting *Terry*, 392 U.S. at 21).

Here, the government contends that reasonable suspicion for the stopping of the defendants’ pickup truck arose from the following circumstances: (1) defendants each purchasing two boxes of pseudoephedrine; (2) defendants selected the pseudoephedrine products together and then separate at the check out lanes and made the purchases separately; (3) defendants then immediately traveled across the street to a grocery store where they were reported to have bought a lithium battery; (4) both pseudoephedrine and lithium batteries are precursor elements for the manufacturer of methamphetamine; and (5) law enforcement training and experience indicates that persons involved in the manufacture of methamphetamine sometimes disguise their purchase precursors through the use of multiple individuals making purchases, including the use of multiple checkout lanes, and at

several different stores.¹²

As the Eighth Circuit Court of Appeals has explained:

While we are mindful that "conduct which would be wholly innocent to the untrained observer . . . might acquire significance when viewed by an agent who is familiar with the practices of drug smugglers and the methods used to avoid detection," *United States v. Wallraff*, 705 F.2d 980, 988 (8th Cir. 1983) (internal quotation omitted), "it is 'impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation.'" *United States v. Wood*, 106 F.3d 942, 948 (10th Cir. 1997) (quoting *Karnes v. Skrutski*, 62 F.3d 485, 496 (3d Cir. 1995)).

Beck, 140 F.3d at 1137.

The court concludes that the totality of these circumstances fails to generate reasonable suspicion to warrant stopping the pickup truck. The first circumstance relied upon by the government to support a finding of reasonable suspicion is the fact that defendants each bought two packages of pseudoephedrine. The fact that two individuals, who are shopping together, would each purchase two packages of an over-the-counter medication does not strike the court as overtly suspicious. The Target store had no limit on the number of boxes of pseudoephedrine that a customer could purchase at any one

¹²As was noted above, defendants did not purchase any lithium batteries on September 19, 2001. Rather, the pharmacist at the Hy-Vee grocery store incorrectly told Officer Doty that defendants had purchased a lithium battery in the store. This misstatement may well have been precipitated by Officer Doty specifically asking the pharmacist whether defendants were purchasing pseudoephedrine or lithium batteries. Defendant Doty did not inquire of the pharmacist how she was able to ascertain that the battery that defendants had purchased was a lithium battery rather than the more common alkaline battery.

time.¹³ Thus, this is not a case where defendants' actions could be viewed as attempting to skirt limits imposed on the purchase of methamphetamine precursors by means of structuring their purchases. Moreover, the police had no knowledge what relationship defendants had to each other. Thus, the police did not know whether the pseudoephedrine was intended for the same household or use in multiple households. The purchase of four packages of pseudoephedrine for the same household is more suspicious than the purchase of four packages of pseudoephedrine for multiple household usage.¹⁴

The government's reliance on *United States v. Martinez*, 808 F.2d 1050, 1053 (5th Cir.), *cert. denied*, 481 U.S. 1032 (1987) is misplaced. In *Martinez*, an experienced special agent for the DEA noticed, while visiting a chemical supply company, a receipt for several chemicals on an employee's desk. *Id.* The agent knew from his experience and training that all the chemicals listed on the receipt were those used in the manufacture of methamphetamine and phenyl-2-propanone, also a controlled substance, and an immediate precursor to methamphetamine. *Id.* The receipt did not list the buyer's name, but indicated that the purchase was made for cash that day. The agent asked the employee who had bought the chemicals and was told that the purchaser was the driver of a maroon Oldsmobile parked in front of the business. The agent followed the defendant in his unmarked car until he realized that the defendant knew he was being followed. The agent then summoned for

¹³The court notes that there is nothing in the record which would indicate that defendants purchased the largest size package of pseudoephedrine available at the Target store.

¹⁴There are a number of innocent reasons why a person might purchase two packages of an over-the-counter medication: the medication is the subject of a "buy one get one free" sale, the price of the medication is particularly attractive, the individual lives in a rural area and wishes to stock up on the medication to ensure its availability, or the number of individuals in need of the medication in a particular household cannot be satisfied by the purchase of a single box of the medication.

a marked police car to stop the Oldsmobile. *Id.* The Fifth Circuit Court of Appeals found that the DEA agent had reasonable suspicion to stop the Oldsmobile:

The most prominent circumstance supporting the reasonableness of Harr's suspicion is Berryman's purchase of chemicals at Aldrich Scientific. The receipt listed the seven chemicals that Harr knew to be the ingredients for manufacturing phenyl-2-propanone and liquid methamphetamine. Although each of these chemicals has other, legitimate uses, Harr knew of no legitimate use for the particular combination of chemicals that Berryman purchased. We find that this observation, along with the other circumstances of the purchase, is sufficient to justify Harr's suspicion that the occupants of the Oldsmobile intended to use the chemicals to manufacture methamphetamine.

Id. at 1054 (footnotes omitted). Thus, the situation in *Martinez* involved the purchase in a single order of all the requisite chemicals for the manufacture of methamphetamine. Such a circumstance is a "red flag" fact which arouses suspicion. Here, on the other hand, each defendant merely purchased two boxes of an over-the-counter medication that can be used as a precursor for methamphetamine production. In *Martinez*, the DEA agent knew of no legitimate use for the particular combination of chemicals that the defendant in that case had purchased. *Id.* at 1054. The medication purchased by defendants in this case has a number of legitimate, non-criminal applications. The court concludes that the fact that each defendant purchased two boxes of an over-the-counter medication containing pseudoephedrine, standing alone, is not overly suspicious.

Similarly, the court concludes that defendants' action in splitting up to make the purchases of the packages of pseudoephedrine does not suggest criminal behavior. While law enforcement experience may attest to the fact that persons involved in the manufacture of methamphetamine sometimes disguise their purchase of precursors through the use of multiple individuals making purchases, including the use of multiple checkout lanes, an equally innocent reason exists for making purchases in such a manner; many individuals who

are shopping together use separate check-out lanes in order to speed up the process.

The government also relies on the fact that defendants immediately went across the street to a grocery store where they were reported to have bought a lithium battery as a circumstance establishing reasonable suspicion. Any suspicions generated by this circumstance, however, should have been largely dispelled by the fact that the defendants bought not only a single battery but food products. Moreover, defendants did not employ the same modus operandi that they used when making their purchases in Target. In the Hy-Vee store, defendants did not separate at the checkout counters. The fact that defendants went to a grocery store in order to purchase a couple food items and while there purchased a single battery is also entirely consistent with innocent behavior.

Based on the foregoing, the court concludes that the sum of the circumstances relied upon by the government do not give rise to a reasonable, articulable suspicion that defendants Ameling and Brown were engaged in criminal activity at the time that the pickup truck in which they were traveling was stopped.¹⁵ Therefore, the court concludes that the

¹⁵The facts in this case are distinguishable from the three state court decisions relied upon by the government: *State v. Vereb*, 643 N.W.2d 342 (Minn. Ct. App. 2002); *State v. Krumboltz*, No. 01-0220, 2002 WL 22057 (Iowa Ct. App. Jan. 9, 2002); and *State v. Monath*, 42 S.W.3d 644 (Mo. Ct. App. 2001), *cert. denied*, 122 S. Ct. 379 (2001). The decision in *Monath* most closely resembles the facts of this case. In *Monath*, the defendant and an acquaintance entered a convenience store and were immediately recognized by the convenience store's assistant manager as having been in the store two or three times to buy a cold medication containing pseudoephedrine. *Monath*, 42 S.W.3d at 646. The store had a policy that would not allow the sale of more than one bottle of the cold medication per customer per visit. Upon finding out that the store did not have the cold medication containing pseudoephedrine in stock, defendant and his associate left the convenience store. The convenience store manager reported to the police that the two men attempted "to buy large quantities of cold medicine." *Id.* Defendant and his associate then went to another store. Defendant went inside and went directly to the aisle containing cold and cough medicines where he picked up six packages of the store's nasal decongestant, a cold
(continued...)

police's stop of defendant Ameling's pickup truck was unjustified and in violation of the Fourth Amendment.

Since the stopping of defendant Ameling's pickup truck violated the Fourth Amendment, any evidence, information, or statements obtained as a result of that stop is tainted and must be suppressed. *See Wong Sun v. United States*, 371 U.S. 471 (1963). Thus, all evidence found during the illegal search of defendant Ameling's vehicle, as well as any statements he made to the police and evidence found during the subsequent searches

15 (...continued)

medicine containing pseudoephedrine, and took them to the front counter. The store's manager informed defendant of the store's policy prohibiting the purchase of more than three cold medicines at a time. Defendant then put three of the boxes back, purchased three, and left the store. *Id.* Defendant's associate then entered the store immediately after defendant made his purchase and also purchased three boxes of the cold medication containing pseudoephedrine. *Id.* Store employees were suspicious of defendant and contacted the police. A police dispatcher relayed that the men were attempting to purchase "large quantities of ephedrine." The car in which the defendant was riding was subsequently stopped by the police. The Missouri Court of Appeals found that reasonable suspicion existed to stop the car in which defendant was a passenger. *Id.* at 650. Unlike here, the defendant and his associate in *Monath* not only bought the maximum number of packages of cold medications containing pseudoephedrine that the store would permit but structured their purchases to permit them to evade the store's limit.

In *Krumboltz*, the Iowa Court of Appeals concluded that reasonable suspicion existed for a search of defendant's automobile based on the defendant's purchase of eight boxes of products containing pseudoephedrine plus evidence of methamphetamine manufacturing found during a search of a passenger in the car. *Krumboltz*, No. 01-0220, 2002 WL 22057, at *1. Here, in contrast, there was no link between defendants and the manufacturing of methamphetamine known to the police at the time they stopped the pickup truck. In *Vereb*, the Minnesota Court of Appeals found that reasonable suspicion existed for a search of defendant's automobile where defendant and an associate made repeated trips into a store to purchase more than 30 boxes of cold tablets containing pseudoephedrine and, when observed by the police, drove in an evasive manner at high speeds to prevent the police's pursuit. *Vereb*, 643 N.W.2d at 346. While the quantity of cold tablets alone involved in *Vereb* makes that case distinguishable, it is further distinguishable because defendant Ameling did not attempt to evade the police here.

of his residence is barred under the exclusionary rule. Defendants Ameling's and Brown's respective motions to suppress are therefore granted.

III. CONCLUSION

The court concludes, upon a *de novo* review of the record, that the police stopped the pickup truck in which defendants were traveling without a reasonable, articulable suspicion that defendants were engaged in criminal activity. Therefore, the court concludes the stopping of defendant Ameling's pickup truck violated the Fourth Amendment and any evidence, information, or statements obtained as a result of that stop is tainted and must be suppressed. Therefore, the court **grants** defendant Ameling's and Brown's motions to suppress.

IT IS SO ORDERED.

DATED this 22nd day of August, 2002.

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA