

TO BE PUBLISHED

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STEVEN HIMES,

Defendant.

No. CR13-3034-MWB

**REPORT AND RECOMMENDATION
ON DEFENDANT'S MOTION TO
SUPPRESS**

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I. INTRODUCTION

Defendant Steven Himes is charged by indictment (Doc. No. 1) with (a) possession of explosives by a felon and (b) possession of ammunition by a felon. He has filed a motion (Doc. No. 18) to suppress evidence obtained as a result of a traffic stop and subsequent impoundment and inventory search of his vehicle on December 15, 2012. Plaintiff (the Government) has resisted the motion (Doc. No. 21). The Trial Management Order (Doc. No. 8) assigns motions to suppress to me to conduct any necessary evidentiary hearings and to prepare reports on, and recommended dispositions of, those motions.

I held an evidentiary hearing on December 16, 2013. Assistant United States Attorney Jamie Bowers appeared on behalf of the Government. Himes appeared personally and with his attorney, Joshua Weir. The Government called Officer Bo Miller with the Algona Police Department and Deputy Jacob Radmaker with the Kossuth County Sheriff's Office. The Government also introduced the following exhibits, all of which were admitted into evidence without objection.

Government Exhibit 1: Photocopies of two citations issued to Himes for failure to provide proof of insurance and operating without registration and two state criminal complaints against Himes for possession of stolen property and possession of burglar's tools

Government Exhibit 2: Photocopy of Iowa Code § 321.98

Government Exhibit 3: Photocopy of Iowa Code § 321.20B

Government Exhibit 4: Photocopies of the Vehicle Impound Record and the Inventory of Seized Property

Government Exhibit 5: Algona Police Department Inventory Policy

Doc. Nos. 21-1 through 21-5.¹ Himes did not call witnesses or offer evidence. His motion is now fully submitted.

II. SUMMARY OF EVIDENCE

On December 15, 2012, at approximately 1:45 a.m., Miller and another law enforcement officer were at a convenience store in Algona when Himes and a woman (later identified as Nicole Owens) entered. The officers briefly spoke with the couple. Miller noticed Owens was making involuntary movements in a manner consistent with those of a methamphetamine user. As he left the convenience store, Miller noted the license plate number of their vehicle. He then asked his dispatcher to run a check on that plate number. As Miller was driving away, he observed the Himes vehicle leaving the convenience store lot in an unusual fashion – making multiple turns to accomplish a single turn. Shortly thereafter, Miller was advised that the plates on the vehicle were expired. He then tracked the vehicle down and pulled it over.

Miller checked the tag on the license plate and approached the vehicle. Himes was in the driver's seat. Miller explained the reason for the stop and asked to see Himes's license, registration and proof of insurance. Himes stated he did not have insurance papers in the vehicle, but it was insured. Miller asked if there were any drugs or weapons in the vehicle and Himes answered "no." Miller asked if he could take a look for himself and Himes said "no," stating he had "stuff in the vehicle that he was embarrassed about."

Miller returned to his patrol car to write citations for failure to provide proof of insurance and operating a vehicle without registration. He testified that he decided to impound the vehicle as soon as he learned of these two violations. He stated that the Algona Police Department does not have a written or unwritten policy for when to

¹ The Government attached the transcript of a state court suppression hearing to its brief but did not introduce it into evidence at the hearing. Doc. No. 21-6. As such, that transcript is not part of the record for purposes of Himes's motion.

impound a vehicle, but it is his personal policy to impound a vehicle when there are “multiple infractions.”²

Meanwhile, Radmaker arrived at the scene. He had heard over his police radio that Miller was in the process of stopping a vehicle for an expired registration and that Himes was the registered owner of that vehicle. Radmaker knew Himes to be a suspect in various burglaries in the area. When Radmaker arrived, he asked if Miller knew the identity of the passenger and Miller stated that he did not. Radmaker offered to talk to her and Miller agreed. For several reasons, Radmaker became suspicious of criminal activity while he spoke with Owens. First, he (like Miller) observed Owens making involuntary movements that were consistent with methamphetamine use. Second, he noticed paper mâché dolls and various tools in the back of the vehicle, which he deemed suspicious. Third, Owens’s answers to Radmaker’s questions were inconsistent. For example, she told Radmaker that she and Himes came to town solely to pick up tampons, but she then admitted that she had not purchased tampons at the convenience store. She then stated that they were actually in town to get food, which was in the vehicle. Moreover, Owens and Himes would look at each other before Owens answered Radmaker’s questions, which led Radmaker to believe they were concealing something. During the discussion, Radmaker learned that Himes and Owens were returning to Owens’s residence in West Bend, Iowa, approximately 15 miles away.

Radmaker reported back to Miller that Owens and Himes seemed nervous and that their reasons for being in town were suspicious. Radmaker testified that at no time during the stop did he tell Miller that Himes was a suspect in his burglary

² On cross-examination, Miller admitted that his personal impoundment policy is not quite so absolute and that, in fact, he does *not* impound a vehicle each time there are two or more infractions. For instance, a broken taillight and another infraction will not result in impoundment. But if the infractions are “stuff like” driving without a license and failure to provide proof of insurance, then Miller does impound the vehicle. He testified that it is entirely within his discretion to determine whether the infractions justify impoundment under his policy.

investigation.³ Miller then gave the citations to Himes and asked again if he could search the vehicle. Himes again refused. Miller testified that he considered it suspicious that Himes would not consent to a search. Miller told Himes he was going to impound and inventory the vehicle. He advised Himes and Owens that they could take any items they wished out of the vehicle before it was towed. Owens took some items and put them in her purse. Radmaker offered to give Himes and Owens a ride to West Bend but they declined and said they would walk.

While the Algona Police Department does not have an impoundment policy, it does have a written inventory policy. Gov't Ex. 5, Doc. No. 21-5. Himes's vehicle was towed to an impound facility, where the officers performed an inventory pursuant to that policy. The policy provides that "all motor vehicles impounded or taken into lawful custody shall be completely inventoried." *Id.* The policy further states that the inventory must be in writing and "shall include all articles and containers in the vehicle, and shall include a list of the contents of each container in the vehicle." *Id.* Thus, once a vehicle is impounded the officers have no discretion as to whether or not to conduct a comprehensive inventory of its contents. The inventory "shall" occur and it "shall" include all items in the vehicle, including items stored in separate containers.

In this case, the inventory of items found in the Himes vehicle included:

- (a) 99 old postcards
- (b) ring of unlock keys
- (c) three paper mâché dolls

³ This testimony was aggressively attacked on cross-examination, for good reason. Radmaker acknowledged that he considers burglary to be a violent offense, yet denied advising Miller during the traffic stop that Himes was a burglary suspect. Himes's counsel noted the apparent incongruity of one officer not advising another officer that the driver of a stopped vehicle is suspected of committing a violent crime. Radmaker's response was that he was not concerned about Himes posing a safety hazard because he and/or Miller had "eyes on" Himes at all times. I find that the question of whether Radmaker told Miller of Himes's status as a burglary suspect is not determinative of Himes's motion. As such, I make no express finding on that issue of fact. I do find it somewhat difficult to believe, however, that Radmaker did not provide this information to Miller at some point during the course of this traffic stop.

- (d) an igloo cooler containing detonation cord and two clear plastic containers of Kinepak (explosives)
- (e) binoculars
- (f) a red tool bag containing assorted tools
- (g) antique glass with “Age of drinks” printed on it
- (h) a Godfather’s Pizza Badge of Courage award

Gov’t Ex. 4, Doc. No. 21-4. The explosives form the basis for one of the charges in this case. *See* Indictment, Count 1.

Himes argues that the seizure and search of his vehicle was unconstitutional and that all evidence found in the vehicle must be suppressed. Additionally, Himes seeks to exclude (a) evidence found later at his home and (b) statements he made to law enforcement after being arrested. He contends that all such evidence is “fruit of the poisonous tree.” The evidence found at his home includes ammunition that forms the basis of the other charge in this case. *Id.*, Count 2.

III. DISCUSSION

A. Did the Impoundment and Inventory Violate the Fourth Amendment?

1. Applicable Standards

The Fourth Amendment prohibits unreasonable searches and seizures. U.S. Const. amend IV. “Searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” *Katz v. United States*, 389 U.S. 347, 357 (1967). The exception at issue here allows law enforcement to search a lawfully impounded vehicle to compile an inventory of the vehicle’s contents. *South Dakota v. Opperman*, 428 U.S. 364, 376 (1976). During the hearing, the Government acknowledged that it has the burden of demonstrating that this exception applies.

In *Colorado v. Bertine*, 479 U.S. 367 (1987), the Supreme Court discussed the reasons for, and limits of, this exception. The Court explained that “inventory procedures serve to protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger.” *Id.* at 372. The Court distinguished “police caretaking procedures” from criminal investigations, finding that the policies behind the probable cause and warrant requirements that apply during investigations “are not implicated in an inventory search.” *Id.* at 371. The Court recognized that allowing law enforcement to exercise unfettered discretion in deciding whether or not to impound and inventory a vehicle could blur this distinction and allow the “caretaking” function to serve as a ruse for warrantless investigative searches. Thus, the Court made it clear that law enforcement’s discretion must be “exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity.” *Id.* at 375. Because the officers in *Bertine* acted pursuant to “standardized procedures,” the Court held that evidence gathered during an inventory search of the defendant’s vehicle should not have been suppressed. *Id.* at 375-76.

Under *Bertine*, then, “[t]he impounding of a vehicle passes constitutional muster so long as the decision to impound is guided by a standard policy—even a policy that provides officers with discretion as to the proper course of action to take—and the decision is made ‘on the basis of something other than suspicion of evidence of criminal activity.’” *United States v. Kimhong Thi Le*, 474 F.3d 511, 514 (8th Cir. 2007) (quoting *Bertine*, 479 U.S. at 375). Moreover, “as long as impoundment pursuant to the community caretaking [or public safety] function is not a mere subterfuge for investigation, the coexistence of investigatory and caretaking [or public safety] motives will not invalidate the search.” *United States v. Wallace*, 102 F.3d 346, 348 (8th Cir. 1996) (citing *United States v. Marshall*, 986 F.2d 1171, 1175-76 (8th Cir. 1993)).

The circuit courts of appeal differ on whether, and to what extent, police must rely on standard criteria in deciding whether to impound a vehicle pursuant to *Bertine*.

Compare United States v. McKinnon, 681 F.3d 203, 208 (5th Cir. 2012) (the inquiry should be focused on “the reasonableness of the vehicle impoundment for a community caretaking purpose without reference to any standardized criteria”), *United States v. Coccia*, 446 F.3d 233, 238 (1st Cir. 2006) (the absence of standardized criteria does not necessarily invalidate the impoundment as long as the impoundment was reasonable under the circumstances), *United States v. Smith*, 522 F.3d 305, 312 (3d Cir. 2008) (noting that the adoption of a standardized impoundment procedure “merely supplies a methodology by which reasonableness can be judged and tends to ensure that the police will not make arbitrary decisions in determining which vehicles to impound” and that a decision to impound a vehicle without a standardized procedure is not a *per se* constitutional violation), *United States v. Duguay*, 93 F.3d 346, 351 (7th Cir. 1996) (“‘[S]tandardized criteria or established routine must regulate’ inventory searches. Among those criteria which must be standardized are the circumstances in which a car may be impounded.”) (internal citation omitted), *United States v. Hockenberry*, 730 F.3d 645, 658 (6th Cir. 2013) (“[d]iscretion as to impoundment is permissible so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity”), *Sammons v. Taylor*, 967 F.2d 1533, 1543 (11th Cir. 1992) (“Even if an arrestee’s vehicle is not impeding traffic or otherwise presenting a hazard, a law enforcement officer may impound the vehicle, so long as the decision to impound is made on the basis of standard criteria and on the basis of ‘something other than suspicion of criminal activity.’”).

The Eighth Circuit recently restated its interpretation of *Bertine* as follows:

Some degree of “standardized criteria” or “established routine” must regulate these police actions, which may be conducted without the safeguards of a warrant or probable cause, to ensure that impoundments and inventory searches are not merely a ruse for general rummaging in order to discover incriminating evidence.

The requirement that discretion be fettered, however, has never meant that a decision to impound must be made in a “totally mechanical” fashion.... It is not feasible for a police department to develop a policy that provides clear-cut guidance in every potential impoundment situation.... [T]estimony can be sufficient to establish police [impoundment] procedures.... So long as the officer's residual judgment is exercised based on legitimate concerns related to the purposes of an impoundment, his decision to impound a particular vehicle does not run afoul of the Constitution.

United States v. Arrocha, 713 F.3d 1159, 1163 (8th Cir. 2013) (quoting *Petty*, 367 F.3d at 1012).

This standard is well-illustrated in *Petty*, where the court found that a policy was sufficiently “standardized” when it provided that a vehicle could be towed when it was abandoned or no one was available to drive it. 367 F.3d at 1012. The court noted that the officer had to exercise some discretion in determining whether the driver was “available” or the vehicle was “abandoned.” *Id.* As long as the officer’s “residual judgment” or discretion was exercised based on legitimate concerns related to the purposes of an impoundment, it was sufficient. *Id.* In *Petty*, the driver had been arrested, his female companion wanted nothing to do with the car, the car was a rental and it was left unattended at 1:30 a.m. in a business parking lot in an area known for narcotics and prostitution. *Id.* The court found that the police were appropriately concerned with protecting the property of the rental company from damage or theft and “[i]t was not unreasonable for the police, having just arrested the party who leased the vehicle, to feel that they were responsible for safeguarding the car until it could be retrieved by the owner.” *Id.* at 1013.

In short, for impoundment to be reasonable under Supreme Court and Eighth Circuit precedent, discretionary decisions to impound a vehicle must be guided by some degree of standardized criteria unless the reason for impoundment falls clearly within law enforcement’s community caretaking or public safety functions. In exercising his

or her discretion within those standardized criteria, the officer's decision to impound must be based on legitimate concerns related to the purposes of an impoundment. This "ensure[s] that impoundments and inventory searches are not merely a ruse for general rummaging in order to discover incriminating evidence." *Arrocha*, 713 F.3d at 1163.

2. *Analysis*

Himes contends his vehicle was unlawfully impounded because the decision to impound was not based on law enforcement's community caretaking or public safety function and Miller did not rely on any standardized criteria in deciding to impound the vehicle. Himes challenges the lawfulness of the impoundment in this case, not the resulting inventory. That is, he agrees that if the decision to impound was proper, then law enforcement had the right to conduct an inventory search. I will first address the question of whether the impoundment was clearly within the scope of the community caretaking or public safety function. If not, I will then consider whether the impoundment decision was, at least, made pursuant to standardized criteria.

a. Community Caretaking or Public Safety

Based on the undisputed evidence, I find that Miller did not impound the vehicle pursuant to law enforcement's legitimate community caretaking or public safety functions. He testified that the Himes vehicle was stopped in a residential neighborhood that was not known for crime. It was lawfully parked alongside a curb. Miller did not believe the vehicle presented a hazard to other drivers at that location or that it jeopardized public safety in any way. Nor did he believe that the vehicle was at risk of being stolen or vandalized at that location.

Indeed, Miller stated that his only concern about leaving it on the street was that Himes could have returned to the vehicle and driven it away after Miller left the scene. However, Miller admitted this reason did not relate to public safety. Indeed, he often

allows drivers to leave with a citation for an expired registration or the failure to provide proof of insurance.⁴ He agreed that neither infraction, whether alone or in combination, presents a public safety risk if the driver is allowed to leave the scene with the vehicle.

As discussed *supra*, law enforcement may impound a vehicle for reasons related to community caretaking or public safety. See *Opperman*, 428 U.S. at 368 (“The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge.”). Other reasonable circumstances for impounding a vehicle include when the driver has been arrested, when the driver’s license has been suspended, when no one is available to drive the vehicle or when there is a risk of theft or vandalism. See *Arrocha*, 713 F.3d at 1163 (“Police may take protective custody of a vehicle when they have arrested its occupants, even if it is lawfully parked and poses no public safety hazard.”); *United States v. Betterton*, 417 F.3d 826, 830 (8th Cir. 2005) (finding impoundment reasonable where car was stopped in a traffic lane in a no-parking zone and defendant could not drive the car because his license was suspended); *United States v. Garner*, 181 F.3d 988, 992 (8th Cir. 1999) (finding impoundment reasonable where vehicle was parked in no-parking zone on a busy street, was worth more than \$15,000 and was in a high-crime area); *Petty*, 367 F.3d at 1012 (impoundment reasonable when passenger refused to drive vehicle after driver was arrested).

Miller’s testimony demonstrates that no such caretaking or public safety reasons were present. Instead, he testified that he chose to impound the Himes vehicle solely because of own, personal policy of impounding when (certain) multiple infractions are

⁴ The “he could have come back and driven away” argument is circular. As I will address in the next section, *infra*, Miller’s options under the applicable Iowa statute were to either (a) let Himes drive off with a citation or warning or (b) impound the vehicle and conduct the mandatory inventory required by the Algona Police Department’s written inventory policy. Given these options, an argument that impound was necessary to prevent Himes from driving away is not an argument at all. It is simply a statement that Miller chose option (b) because he did not like option (a), for some reason.

present. Even if his testimony is accepted as true, his decision was constitutional only if it was made pursuant to standardized criteria.

b. Standardized Criteria

As noted above, Miller testified that the Algona Police Department has no written or unwritten impoundment policy. Nor has the Department's leadership provided any informal guidance to officers concerning impoundment. While this testimony seems to establish, rather pointedly, that Miller's impoundment decision was not guided by standardized criteria, the Government contends that the Iowa Code provides the standardized criteria in this case. This is plainly wrong. The Iowa statute cited by the Government includes absolutely no guidance or criteria as to when a vehicle should be impounded. Instead, it provides a law enforcement officer with four options for proceeding when a driver is unable to provide proof of insurance. *See* Iowa Code § 321.20B(4)(a)(1)-(4). The statute states that when confronted with such a situation, the officer "shall do one of the following:"

1. Issue a warning memorandum.
2. Issue a citation.
3. Issue a citation and remove the license plates and registration receipt.
4. Issue a citation, remove the license plates and registration receipt and impound the vehicle.

Id. The first three options allow the driver to leave the scene with the vehicle.⁵ Only the fourth option results in impoundment and, thereby, the possibility of an inventory search.

⁵ Even under option 3, wherein the officer takes the license plates and registration receipt, the vehicle "may be driven for a time period of up to forty-eight hours . . . solely for the purpose of removing the motor vehicle from the highways of this state." Iowa Code § 321.20B(4)(a)(3).

The statute simply gives law enforcement the *option* to impound a vehicle when the driver cannot provide proof of insurance. It offers no guidance as to when it might be appropriate to select that option. *See Miranda v. City of Cornelius*, 429 F.3d 858, 864 (9th Cir. 2005) (“the decision to impound pursuant to the authority of a city ordinance or state statute does not, in and of itself, determine the reasonableness of the seizure under the Fourth Amendment.”). This is precisely why standardized criteria are needed to “ensure that impoundments and inventory searches are not merely a ruse for general rummaging in order to discover incriminating evidence.” *Kimhong Thi Le*, 474 F.3d at 514.

No such criteria exist here. Miller agreed that each Algona police officer is free to make impoundment decisions based on his or her own personal criteria. He testified that it is his policy to impound a vehicle when there are multiple infractions, meaning two or more. However, when given examples of possible combinations of infractions, Miller acknowledged that his “multiple infraction” rule is not exactly clear-cut. For example, if one of the two infractions involves a broken taillight or a cracked windshield, he would not impound the subject vehicle. Thus, Miller’s own personal impoundment policy, formulated with no guidance from his department, includes his purely-subjective determination as to which infractions are serious enough to count towards the two or more that will cause him to select impoundment. Making matters worse, there is no evidence that his reasons are based on legitimate concerns related to the caretaking or public safety functions.⁶

This case presents the precise situation that the “standardized criteria” requirement is intended to prevent. Miller exercised unlimited discretion with no guidance or criteria in place that could protect against a pretextual impoundment

⁶ One could easily argue, for example, that a vehicle with a broken windshield or inoperable taillight presents more of a danger to the public than a vehicle with a recently-expired registration. Yet according to Miller, the registration violation counts while the other violations do not.

undertaken for the purpose of searching for incriminating evidence. Nothing in this record provides any assurance that the impoundment occurred for legitimate, non-investigatory reasons. It is undisputed that Miller suspected criminal activity based on his initial encounter with Himes and Owens at the convenience store. After learning of the expired registration and executing the traffic stop, Miller almost immediately sought permission to search the vehicle. Miller “thought it was weird,” and considered it to be suspicious, that Himes refused to give consent.⁷

Miller further acknowledges that he made a second request for consent to search the vehicle even after deciding that the situation met his subjective impoundment criteria. He clearly suspected criminal activity and was extremely curious to discover the contents of the vehicle. Meanwhile, Radmaker – the other law enforcement officer on the scene – considered Himes to be a suspect in a burglary investigation and independently became suspicious of criminal activity based on his discussion with Owens and observation of items in the back of the vehicle. Even if Radmaker did not tell Miller that Himes was suspected of burglary, he did tell him that he considered Himes’s and Owens’s behavior to be suspicious.

In short, both officers at the scene suspected that criminal activity was afoot and undoubtedly believed a search of the vehicle was likely to disclose evidence of that activity. If Miller had followed standardized criteria or towed the vehicle for a legitimate community caretaking purpose, this evidence would have little significance. *See Petty*, 367 F.3d at 1013 (“That an officer suspects he might uncover evidence in a vehicle, however, does not preclude the police from towing a vehicle and inventorying the contents, as long as the impoundment is otherwise valid.”). But without those

⁷ I am troubled by the fact that a law enforcement officer would form a suspicion based on an individual’s refusal to consent to a search. The law is quite clear – as it should be – that a refusal to give voluntary consent cannot form the basis of a reasonable suspicion under the Fourth Amendment. *See, e.g., Florida v. Bostick*, 501 U.S. 429, 437 (1991); *United States v. White*, 890 F.2d 1413, 1417 n. 4 (8th Cir. 1989); *United States v. Santos*, 403 F.3d 1120, 1125–26 (10th Cir. 2005) (“If refusal of consent were a basis for reasonable suspicion, nothing would be left of Fourth Amendment protections.”).

parameters, there is nothing to demonstrate that Miller's decision was based on "something other than suspicion of evidence of criminal activity." *Bertine*, 479 U.S. at 375.

Finally, the Government seems to find significance in the fact that the officers invited Himes and Owens to remove items from the vehicle before it was impounded. I find this invitation, such as it was, to be irrelevant. It is highly doubtful that any rational citizen would remove contraband, or even "embarrassing" items, while being watched by police officers. The Government cites no authority supporting a theory that inviting the occupants to remove items before a vehicle is impounded and searched cures the violation of their Fourth Amendment rights. I hold that it does not.

Because Miller's decision to impound was not based on community caretaking, standardized criteria or established routine, and his discretion otherwise does not reflect concern related to the legitimate purposes of an impoundment, the Government has not met its burden of demonstrating that the warrantless seizure and search in this case was reasonable. This finding requires me to recommend the suppression of all evidence discovered inside the vehicle during the inventory search. *See, e.g., Herring v. United States*, 555 U.S. 135, 139 (2009) (exclusionary rule forbids the use of improperly obtained evidence at trial).

B. Should Subsequently-Gathered Evidence be Suppressed?

Himes argues that other evidence discovered after the inventory search should be suppressed as "fruits of the poisonous tree." This includes (a) items found in his home, which was searched because of the items found in his vehicle, and (b) his statements to officers while in custody after being arrested. The Government's only response to this argument is to state that this evidence should not be suppressed because the impoundment and inventory search was lawful. Doc. No. 21 at 7.

I have determined that the impoundment and inventory search of Himes's vehicle was unconstitutional. Himes was arrested, and his home was searched, because of those improper actions. The Government has offered no reason as to why the subsequently-gathered evidence should not be considered fruit of an unreasonable search and seizure. I find that it is. *See United States v. Simpson*, 439 F.3d 490, 493-94 (8th Cir. 2006) ("Under the 'fruit of the poisonous tree' doctrine, the exclusionary rule bars the admission of physical evidence and live witness testimony obtained directly or indirectly through the exploitation of police illegality."). I must recommend that any items found during the search of Himes's home, and any statements Himes made while in custody, be suppressed as well.

IV. CONCLUSION

For the foregoing reasons, I RESPECTFULLY RECOMMEND that Himes's motion to suppress (Doc. No. 18) be **granted**. Objections to this Report and Recommendation must be filed by **January 13, 2014**. Responses to objections must be filed by **January 27, 2014**.

IMPORTANT NOTE: Any party planning to lodge an objection to this Report and Recommendation must order a transcript of the hearing promptly, but not later than **January 6, 2014, regardless of whether the party believes a transcript is necessary to argue the objection**. If an attorney files an objection without having ordered the transcript as required by this order, the court may impose sanctions on the attorney.

IT IS SO ORDERED.

DATED this 30th day of December, 2013.



LEONARD T. STRAND
UNITED STATES MAGISTRATE JUDGE