

UNPUBLISHED

**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. **CR02-3005MWB**

**REPORT AND RECOMMENDATION
ON DEFENDANTS' MOTIONS TO
SUPPRESS**

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I. INTRODUCTION

This matter is before the court on motions to suppress evidence filed by the defendants Tina Brown (“Brown”) and Joel Gerard Ameling (“Ameling”). Brown filed her motion and a supporting brief on April 26, 2002 (Doc. Nos. 27 & 28), and Ameling filed his motion and a supporting brief on May 1, 2002 (Doc. Nos. 30 & 31). The plaintiff (the

“Government”) has filed a separate resistance and brief as to each of the defendants’ motions (Doc. Nos. 37 & 38 as to Brown; Doc. Nos. 44 & 45 as to Ameling). Pursuant to the trial scheduling order entered April 2, 2002 (Doc. No. 16), motions to suppress in this case were assigned to the undersigned United States Magistrate Judge for the filing of a report and recommended disposition.

The court held a combined hearing on the motions on June 3, 2002, at which Assistant United States Attorney Shawn Wehde appeared for the Government; Ameling appeared in person with his attorney, Alfred E. Willett; and Brown appeared in person with her attorney, R. Scott Rhinehart. The Government offered the testimony of the following witnesses: Mike Van Pelt (“Van Pelt”), who is in charge of store security at the Target store in Fort Dodge, Iowa; Lieutenant Dennis Paul Mernka (“Officer Mernka”) of the Fort Dodge Police Department; Officer Ryan Joseph Doty (“Officer Doty”) of the Fort Dodge Police Department; Captain Warren Leeps (“Officer Leeps”) of the Decorah Police Department; and Special Agent Scott Green (“Agent Green”) of the Iowa Division of Narcotics Enforcement.

The following exhibits were admitted without objection from any party: Gov’t Ex. 1, a video surveillance tape from the Target store in Fort Dodge, Iowa; Gov’t Ex. 2, a photograph showing four boxes of Suphedrine (the Target store brand for pseudoephedrine), and two boxes of Sudafed (a brand name for pseudoephedrine); Gov’t Ex. 3, two receipts from Target showing purchase of Suphedrine on September 19, 2001; Gov’t Ex. 4, a photograph showing two plastic sacks from Target and one plastic sack from K-Mart; Gov’t Ex. 5, a photograph of a Marlboro pack, hose clamps, and a Duracell Coppertop nine-volt battery; Gov’t Ex. 6, a photograph showing a glass vial and a baggie; Gov’t Ex. 7, a photograph showing rubber tubing; Gov’t Ex. 8, a photograph showing a propane tank; Gov’t Ex. 9, Property Inventory dated 9-19-01; Gov’t Ex. 10, a rough drawing of the layout of Ameling’s residence; Gov’t Ex. 11, an application for a search warrant of Ameling’s house,

with attachments; Gov't Ex. 12, Search Warrant issued for a search of the residence and outbuildings located at 1321 255th Avenue, Fort Atkinson, Iowa, and certain vehicles; Gov't Ex. 13, Record of Evidence, showing items seized in execution of the search warrant (Gov't Ex. 12); Defense Ex. A, a Hy-Vee receipt dated 09/19/01, showing purchase of a Duracell nine-volt battery, 24 donut holes, and Mountain Dew; and Defense Ex. B, a transcript of an audiotaped interview of Ameling conducted by Officer Doty, dated 9-20-01.

The court has reviewed the parties' briefs and carefully considered the evidence, and now considers the motions ready for decision.

II. FACTUAL BACKGROUND

The same factual background is relevant to both defendants' motions. 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

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.

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 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 been stopped, but Officer Mernka did not respond to the question.² 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.

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.

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.

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 (Def. 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 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, wrenches, and gloves. He also found a remote-controlled car.⁷

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.

⁵No lithium battery was found anywhere in the truck.

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.

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 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 Def. 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.

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*.

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

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 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.

III. DISCUSSION

Both Ameling and Brown seek to suppress all evidence seized from the truck. In addition, Ameling seeks to suppress all evidence seized at his residence, and his statements to the officers both before and after he was advised of his rights. Both defendants argue the initial, investigatory stop and the search of Ameling's vehicle were unconstitutional. They argue further that because the initial stop was illegal, all the evidence seized from the truck and from Ameling's residence, as well as Ameling's pre- and post-*Miranda* statements, must be suppressed as fruit of the poisonous tree.

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

Because the court finds the validity of the investigatory stop is dispositive of the issues relating to the physical evidence seized from the truck and Ameling's residence, and to Ameling's pre-*Miranda* statements, the court will address that issue first. The court will address Ameling's post-*Miranda* statements separately.

A. *Constitutionality of Investigatory Stop and Search*

The officers' stop of Ameling's truck was, without question, an investigatory stop; there is no claim by the Government that the stop was initiated due to a traffic violation.¹¹ In determining whether the investigatory stop was proper, the analysis begins with the defendants' right to be free from unreasonable searches and seizures. "The authority and limits of the [Fourth] Amendment apply to investigative stops of vehicles such as occurred here." *United States v. Sharpe*, 470 U.S. 675, 682, 105 S. Ct. 1568, 1573, 84 L. Ed. 2d 605 (1985), applying *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), and citing *United States v. Hensley*, 469 U.S. 221, 226, 105 S. Ct. 675, 679, 83 L. Ed. 2d 604 (1985); *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 694, 66 L. Ed. 2d 621 (1981); *Delaware v. Prouse*, 440 U.S. 648, 663, 99 S. Ct. 139, 140, 69 L. Ed. 2d 660 (1979); *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 880, 95 S. Ct. 2574, 2578, 2579, 45 L. Ed. 2d 607 (1975).

As the Eighth Circuit Court of Appeals explained in *United States v. Wheat*, 278 F.3d 722 (8th Cir. 2001)¹²,

¹¹The officers could have stopped Ameling for any traffic violation, however minor. See, e.g., *United States v. Perez*, 200 F.3d 576 (8th Cir. 2000) (following too close); *United States v. Beatty*, 170 F.3d 811 (8th Cir. 1999) (no working light illuminating license plate); *United States v. Lyton*, 161 F.3d 1168 (8th Cir. 1998) (following too close).

¹²The appellant, Wheat, was convicted of possessing cocaine base after a jury trial before Chief District Judge Mark W. Bennett. Among other things, Wheat appealed the court's denial of his motion to suppress all evidence seized from a car in which Wheat was a passenger. Relying on *Terry*, *supra*,

When a law enforcement officer directs a motor vehicle to stop by the side of the road and detains its occupants for questioning, such an investigatory stop constitutes a search and seizure under the Fourth and Fourteenth Amendments, “even though the purpose of the stop is limited and the resulting detention quite brief.” *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979); accord *Whren v. United States*, 517 U.S. 806, 809-10, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996); see also *Thomas v. Dickel*, 213 F.3d 1023, 1024 (8th Cir. 2000). Under *Terry* and its progeny, “[a]n investigatory stop is permissible under the Fourth Amendment if supported by reasonable suspicion.” *Ornelas v. United States*, 517 U.S. 690, 693, 116 S. Ct. 1657, 134 L. Ed. 2d 911 (1996); see also *United States v. Sharpe*, 470 U.S. 675, 682, 105 S. Ct. 1568, 84 L. Ed. 2d 605 (1985); (applying *Terry* to investigatory stop of vehicle); *United States v. Bell*, 183 F.3d 746, 749 (8th Cir. 1999) (An investigative stop does not violate the Fourth Amendment if the police have reasonable suspicion that the vehicle or its occupants are involved in criminal activity.”). If the investigatory stop is not justified by reasonable suspicion or if the investigating officers exceed the stop’s proper scope, any evidence derived from the stop is inadmissible at trial. See, e.g., *Wong Sun v. United States*, 371 U.S. 471, 484, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963); *United States v. Ramos*, 42 F.3d 1160, 1164 (8th Cir. 1994). A passenger in a motor vehicle has standing to challenge the stop of that vehicle. See *United States v. Lyton*, 161 F.3d 1168, 1170 (8th Cir. 1998).

Wheat, 278 F.3d at 726.

“Under well-settled Fourth Amendment case law, both investigative stops and arrests are ‘seizures,’ but an investigative stop must be supported by reasonable, articulable suspicion that criminal activity may be afoot, whereas an arrest must be supported by probable cause.” *United States v. Miller*, 974 F.2d 953, 956 (8th Cir. 1992) (citing *Terry*,

Wheat argued the police lacked a reasonable suspicion to stop the car solely on the basis of an anonymous “911” call that the car was being driven erratically on the highway.

supra, 392 U.S. at 25-31, 88 S. Ct. at 1882-85). “[R]easonable suspicion is a less demanding standard than the probable cause required for an arrest, [and] it ‘can arise from information that is less reliable than that required to show probable cause,’ including an anonymous tip. *Alabama v. White*, 496 U.S. 325, 330, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990).” *Wheat*, 278 F.3d at 726.

In this case, the officers stopped Ameling’s vehicle based on a tip from a known source, not an anonymous informant. Van Pelt, the head of security at the Target store, had notified Officer Mernka on prior occasions when he had observed what he believed to be suspicious activity. On this occasion, Van Pelt saw Ameling and Brown pick up multiple boxes of pseudoephedrine, then separate and exit through separate checkout lanes. They rejoined at the truck, placed their bags into the tool box, and then drove across the street and entered Hy-Vee. Van Pelt provided the officers with physical descriptions of Ameling and Brown, and a description of the truck including the license number. The officers located a truck identical to Van Pelt’s description, bearing the same license number, and saw two individuals matching Ameling’s and Brown’s descriptions come out of Hy-Vee and get into the truck. Except for the defendants’ purchases of the pseudoephedrine, all of Van Pelt’s other observations were corroborated by the officers.

The question, then, is whether the information Officer Mernka had at the time of the stop was enough to give rise to “a reasonable suspicion of criminal activity based on contemporaneous observations” sufficient to “justify a temporary stop and detention for the purpose of investigating that suspicion, even though the officer [did] not have probable cause to believe that a particular crime [had] been committed.” *United States v. Martinez*, 808 F.2d 1050, 1053 (5th Cir. 1987) (citing *Terry, supra*). Officer Mernka was acting on the following information, believing it to be true:

Ameling and Brown each had purchased two boxes of pseudoephedrine at Target. They had shopped together, separated and

made their purchases at separate checkout lines, rejoined at the truck outside the store, and placed their Target sacks into the tool box in the rear of the truck. Ameling and Brown got into the truck and drove across the street. They parked in the Hy-Vee parking lot and entered the Hy-Vee store. A Hy-Vee employee saw Ameling and Brown buy a battery, and reported to the officers that it was a lithium battery.

Officer Mernka had no other information upon which to base a reasonable suspicion of criminal activity. All he had was a report that Ameling and Brown had purchased a few boxes of pseudoephedrine, they had completed their purchases at separate checkout lines, and they had purchased a lithium battery. The court finds this limited information did not rise to the level of particularized and articulable, objective facts which, taken together with rational inferences from those facts, reasonably warranted the suspicion that Ameling and Brown either were, or were about to be, engaged in criminal activity. *See, e.g., United States v. Amaya*, 52 F.3d 172 (8th Cir. 1995) (investigatory stop based on reciprocal information from informant and anonymous tipster); *United States v. Williams*, 714 F.2d 777, 779-81 (8th Cir. 1983) (investigatory stop based on officer's own observations); *Martinez, supra* (investigatory stop based on agent's own observation of driver's activities).

Even if the officers were justified in stopping the truck, they needed probable cause to search the truck. The test to determine whether they had probable cause "is the same as that applied in determining whether there were sufficient objective facts to support the issuance of a warrant." *Amaya, supra*, 52 F.3d at 174. The court has found that the defendants' purchase of pseudoephedrine at different checkout lines in one store, and the purchase of what the officers thought was a lithium battery at another store, were not enough to support even the reasonable suspicion necessary to justify an investigatory stop of the truck. The additional fact that the defendants gave conflicting information to the

officers at the scene of the stop did not elevate the officers' suspicions to a point sufficient to constitute probable cause to support issuance of a search warrant for the truck.

The court finds all the evidence seized from the truck should be suppressed as fruit of the illegal stop and search. Furthermore, the officers testified the primary basis for the application for a warrant to search Ameling's home was the evidence found in their search of the truck. Therefore, the evidence seized in the search of Ameling's home also should be suppressed as fruit of the poisonous tree.

The court turns now to consideration of whether Ameling's statements should be suppressed.

B. Ameling's Pre-Miranda Statements

At the scene of the stop, Ameling responded to questions about whether the propane tank found in the truck's tool box contained anhydrous ammonia. Officer Mernka testified he asked the question for purposes of officer safety in handling the propane tank. However, the court has found the search itself was illegal, and the discovery of the propane tank was the direct result of that illegal search. As a result, the court also finds Ameling's pre-*Miranda* statements at the scene must be suppressed as fruit of the poisonous tree.

C. Ameling's Post-Miranda Statements

After Ameling and Brown were taken to the police station, Ameling made several incriminating statements in an effort to exonerate Brown. Officer Doty learned Ameling had not been *Mirandized*. He advised Ameling of his rights and then Ameling gave a recorded statement in which he again attempted to exonerate Brown of any wrongdoing. The recorded statement was made about 15 minutes after Ameling arrived at the Law Enforcement Center. In the statement (Defense Ex. B), Ameling mentions his own drug use, but he never admits to ownership of the methamphetamine found in the truck, or to

manufacturing methamphetamine. To the extent Ameling's recorded statement can be a considered a confession to criminal activity, the court will analyze whether the confession should be suppressed.

In *Brown v. Illinois*, 422 U.S. 590, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975), the United States Supreme Court held "a confession obtained through custodial interrogation after an illegal arrest should be excluded unless intervening events break the causal connection between the illegal arrest and the confession so that the confession is 'sufficiently an act of free will to purge the primary taint.'" (quoting *Wong Sun v. United States*, 371 U.S. 471, 486, 83 S. Ct. 407, 416, 9 L. Ed. 2d 441 (1963)). Since *Brown*, when a confession follows a Fourth Amendment violation, "a finding of voluntariness is merely a threshold requirement in determining whether [the] confession may be admitted in evidence. Beyond this, the prosecution must show a sufficient break in events to undermine the inference that the confession was caused by the Fourth Amendment violation." *Oregon v. Elstad*, 470 U.S. 298, 306, 105 S. Ct. 1285, 1291, 84 L. Ed. 2d 222 (1985) (citing *Taylor v. Alabama*, 457 U.S. 687, 690, 102 S. Ct. 2664, 2667, 73 L. Ed. 2d 314 (1982)); see *Dunaway v. New York*, 442 U.S. 200, 217-218, 99 S. Ct. 2248, 2259-2260, 60 L. Ed. 2d 824 (1979); *Brown*, 422 U.S. at 599, 95 S. Ct. at 2259.

The court finds the 15-minute break between Ameling's illegal arrest and his recorded statement was not a sufficient break in the events to undermine the inference that his confession was the result of the Fourth Amendment violations that took place at the time of the stop and search. The court therefore finds the recorded statement should be suppressed.

IV. CONCLUSION

For the reasons discussed above, **IT IS RECOMMENDED**, unless any party files objections¹³ to the Report and Recommendation in accordance with 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), within ten (10) days of the service of a copy of this report and recommendation, that both defendants' motions to suppress evidence (Doc. Nos. 27 & 30) be **granted**.

IT IS SO ORDERED.

DATED this 26th day of June, 2002.

PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT

¹³Objections must specify the parts of the report and recommendation to which objections are made. Objections also must specify the parts of the record, including exhibits and transcript lines, which form the basis for such objections. See Fed. R. Civ. P. 72. Failure to file timely objections may result in waiver of the right to appeal questions of fact. See *Thomas v. Arn*, 474 U.S. 140, 155, 106 S. Ct. 466, 475, 88 L. Ed. 2d 435 (1985); *Thompson v. Nix*, 897 F.2d 356 (8th Cir. 1990).