IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREGORY HANSON,

Defendant.

REPORT AND RECOMMENDATION

05-CR-106-C

REPORT

Before the court for report and recommendation is defendant Gregory Hanson's motion to suppress evidence seized following a traffic stop and the quasi-strip search by Beloit Police officers, who mistakenly assumed Hanson was a man named Curtis Dowthard.[1] *See* Dkt. 15. Because the police acted unreasonably in their attempts to identify Hanson, I am recommending that the court grant the motion and suppress the handgun discovered as a result of the improper seizure and search.

On September 30, 2005, this court held an evidentiary hearing. Having heard and seen the witnesses testify, having reviewed the exhibits, and having made credibility determinations, I find the following facts:

FACTS

Curtis Dowthard is an African American man who is 5' 10" tall and weighs about 200 pounds. He has these tattoos inked onto his body: on his left arm a dollar sign; on his right

[1] It turns out that Dowthard is Hanson's brother, although there is no evidence that the police knew this until later.

arm, a panther, woman and Chinese writing; on his chest, two hearts inscribed "Forever + CLT," as well as a six-point star and a banner with a tiger. In the late 80's Dowthard was convicted of murder by the State of Illinois. Although sentenced to forty years in prison, Dowthard subsequently was paroled, probably around August 2003.

Some time in late June or early July, 2005, the Illinois Department of Corrections (IDOC) issued a parole violation warrant for Dowthard and posted its warrant on the National Crimes Information Computer (NCIC). IDOC also telefaxed a flier directly to the Beloit Police Department (BPD) with a dark, grainy photo of Dowthard and some descriptive information, including height, weight and tattoos. IDOC advised BPD that Dowthard was on parole for homicide and might be armed and dangerous. Based on information that Dowthard might be staying at a lime green house in Beloit at which certain specified motor vehicles might be present, BPD officers located a house at 1164 Partridge Street where they thought Dowthard might be staying. They did not, however, seek a warrant to enter the house and search for Dowthard, nor did they attempt any sort of direct investigation such as a "knock and talk" by officers. Instead, they simply kept a loose watch on the premises in case someone spotted Dowthard.

During daylight hours on July 5, 2005, about a week after BPD received IDOC's fax, BPD Sergeant Danny Tilley of the Drug and Gang Unit, was driving by the green house on Partridge on his way somewhere else. As he drove past at about 25 MPH, he looked to his right; from a distance of about 75 feet for "a very short period of time" he saw a black man, about six feet tall, exiting the house toward the driveway. Although Sergeant Tilley hadn't

seen IDOC's flier recently and did not have it with him, he believed that this could be Dowthard because he was a larger African American man. The man and two women from the residence got into a minivan and drove west on White Avenue toward the Cub supermarket. Sergeant Tilley circled the block to follow, radioed in what he had seen, and directed that marked squad cars stop the vehicle and identify the male passenger.

Five or more uniformed officers in marked squad cars with emergency lights activated pulled the minivan over near the entrance to the supermarket parking lot. The officers drew their firearms and trained them on the stopped vehicle. Officer Thomas Halvorsen, a member of the Drug and Gang Unit, and his partner, Officer Arnold, approached the rear passenger side bumper area of the minivan and directed the male passenger to get out and walk backwards toward Officer Halvorsen with his hands showing. When the man was close enough, Officer Halvorsen handcuffed his hands behind his back.

Officer Halvorsen did not explain why they had stopped the car and he did not then (or ever) ask the man if he was Curtis Dowthard, even though he knew the only reason for the stop was to determine if the man in the car actually was Dowthard, as Sergeant Tilley suspected. Instead, Officer Halvorsen simply asked the man to identify himself. The man responded that he was Gregory Hanson. Officer Halvorsen also asked whether the man had anything on him Officer Halvorsen "should know about." It is not clear what answer, if any, the man provided. In any event, Officer Arnold patted down the suspect for weapons but found nothing. By then, Officer Halvorsen had reached into the man's pocket to remove his

billfold. Officer Halvorsen pulled out an Illinois identification card with the man's photograph on it, identifying him as Gregory Hanson. The wallet also contained a social security card and an Illinois driver's license with the man's photograph on it, both identifying the man as Gregory Hanson. Officer Halvorsen, however, did not see them because even though he expected that the wallet probably contained such documents, and even though a driver's license potentially would have made an NCIC check easier, he did not look further into the wallet for, nor did he ask for permission to remove, other identification documents.

Officer Halvorsen radioed dispatch for an NCIC query on Gregory Hanson. Dispatch radioed back to the scene and advised Officer Halvorsen that there was in fact a person on file named Gregory Hanson with the information contained on the Illinois ID card. Although Officer Halvorsen had the ability to obtain from dispatch and NCIC a physical description of this Gregory Hanson, he did not choose to do so at that time. In other words, Officer Halvorsen did not request of NCIC height, weight or other identifiers for Gregory Hanson. In Officer Halvorsen's estimation, the man he had handcuffed was approximately 6' 0" - 6' 2" tall. None of the officers on the scene had the physical description of Curtis Dowthard available to them at that time. Officer Halvorsen put the Illinois identification card back in the man's wallet and put the wallet back in the man's pocket.

Someone placed the suspect, still cuffed, in the back seat of a squad car. Another officer on the scene, Roel Benavides, then took the lead on deciding whether the seized man was Dowthard. It is not clear what happened to Officer Halvorsen, but no one told Officer

Benavides that the man in the back of the squad car already had identified himself as Gregory Hanson and possessed a photo-ID card backing up this claim. Officer Benavides never asked the man in the back seat whether he was Curtis Dowthard. Although Officer Benavides could not determine the suspect's weight or height because he was ensconced in the back seat of a squad car, he nevertheless categorized him as a larger man. Officer Benavides dispatched another officer to the police station, four blocks distant, to fetch IDOC's flier and bring it to the scene, rather than ask dispatch to radio the information. About ten minutes had passed from the initial stop until the officer left to retrieve the flier.

Upon the flier's arrival several minutes later, Officer Benavides used it to compare Dowthard's "facial features" to the seized man, and to learn if it listed any marks, scars or tattoos for Dowthard. In Officer Benavides's opinion, "there was a resemblance" between the man in the squad car and Dowthard's photos. A comparison of the IDOC photos of Dowthard (Gov. Exh. 1) to the BPD photos of Hanson (Def. Exh. 1) reveals at most a superficial resemblance between the two, but given the poor quality of the IDOC photos, it was not outside the realm of physical possibility for Officer Benavides to suspect that the IDOC photos might possibly depict Hanson.

Officer Benavides skipped to the flier's description of chest tattoos for Dowthard, believing this would be an easy way to identify the detained suspect because "not too many people have tattoos on their chest." (Ev. H'ng. Tr., dkt. 17, at 36).

Officer Benavides knew that the form for Dowthard indicated tattoos on both arms but he did not attempt to look for tattoos on the suspect's arms because they were covered by his shirt sleeves, which extended to halfway down his biceps. In Officer Benavides's opinion, it was easier to lift the front of the shirt, plus it was safer to him and less of an invasion of the personal space of the suspect to lift up his shirt than to lift up either one of the arms of his shirt.

So, Officer Benavides opened the back door of the squad car and lifted the front of the suspect's athletic jersey to look for tattoos on his chest. Officer Benavides did not first ask the suspect for consent to lift his shirt and look at his chest. Officer Benavides did not first ask the suspect whether the suspect had any tattoos on his chest.

Upon lifting the suspect's jersey, Officer Benavides saw a handgun wedged into the waistband of the suspect's pants which Officer Arnold had failed to detect during the weapons frisk.

One thing led to another: the suspect ultimately was identified as Gregory Hanson, the defendant in this case, who is 6'3" tall, five inches taller than Dowthard and 15 pounds heavier. By virtue of prior felony convictions, Hanson is a prohibited person under § 922(g); the instant prosecution followed.

ANALYSIS

Hanson alleges two separate but intertwined violations of his Fourth Amendment rights: first, the conditions of his seizure exceeded those permitted during an investigative detention and second, it was an unreasonable search for Officer Benavides to lift Hanson's shirt to look for chest tattoos. On the totality of circumstances presented in this particular case, Hanson is correct on both claims.

Block quotes can be tedious and off-putting, but here they seem appropriate to frame the analysis of Hanson's Fourth Amendment claims. With regard to Hanson's first claim,

> There is no doubt that at some point in the investigative process, police procedures can qualitatively and quantitatively be so intrusive with respect to a suspect's freedom of movement and privacy interests as to trigger the full protection of the Fourth and Fourteenth Amendments.

Hayes v. Florida, 470 U.S. 811 (1985):

With regard to Hanson's second claim,

> Detentions may be investigative yet violative of the Fourth Amendment absent probable cause. In the name of investigating a person who is no more than suspected of criminal activity the police may not carry out a full search of the person.

Florida v. Royer, 460 U.S. 491, 499 (1983).

In the instant case, the BPD officers all assumed that the large black man from the house on Partridge Street was Curtis Dowthard, so they approached their subsequent interaction with him as a result-oriented *fait accompli*. As is obvious now, their assumption was incorrect and the high-handed treatment of Hanson that resulted from it violated the

Fourth Amendment. Separate from this, but ultimately more damaging to the government's case, the officers failed to perform an adequate weapons frisk, which would have short-circuited the first problem. The result of all this was the violation of Hanson's Fourth Amendment rights and the suppression of evidence that otherwise would have been admissible against him.

Courts consider the totality of circumstances when assessing the reasonableness of a police search or seizure, including the methods they employ. *See Green v. Butler*, 420 F.3d 689, 694-95 (7th Cir. 2005), Each case requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it and the place in which it is conducted. *Bell v. Wolfish*, 441 U.S. 520, 559 (1979). As the Court stated in *Florida v. Royer*,

> The scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of each case. This much, however, is clear: . . . the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time. It is the State's burden to demonstrate that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure.

460 U.S. at 500. *See also United States v. Place*, 462 U.S. 696, 703 (1983) ("When the nature and extent of the detention are *minimally intrusive* of the individual's Fourth Amendment interests, the opposing law enforcement interests can support seizure based on less than probable cause") (emphasis added).

A review of the facts found in the previous section establishes that, wherever the outer borders of an investigative detention may lie, BPD officers crossed them in this case. They did not employ the least intrusive methods of establishing Hanson's identity, the seizure was not sufficiently limited in scope, and they subjected Hanson to a search that required–but by definition lacked–probable cause.

The circumstances relevant to the reasonableness of how the police treated Hanson date back to BPD's receipt of IDOC's flier. Upon surmising that Dowthard was staying at the lime green house on Partridge Street, did anyone at BPD make any effort to determine who else lived there? If not–and the record reveals no such effort–then it would be unreasonable to assume that any "large" African American man who entered or left the house could be Dowthard, and it would unfairly intrude on the other men's privacy interests to subject them to even an investigative detention simply because they were the same race, sex and general size as the suspect.[2] The record does not reveal whether Hanson resided in this house, but if he–or any other adult African American man did–then BPD should have noted this as a future "rule-out" fact before attempting to identify and arrest Dowthard based on his association with the residence.

Here's another least-intrusive methods question: before initiating a multi-squad car, lights-flashing, guns-drawn traffic stop with two women of no investigative interest in the stopped minivan, had BPD considered calling or visiting the residence to ask about

[2] Hanson is five inches taller and fifteen pounds heavier than Dowthard. All of the officers, however, considered this close enough to merit Hanson's investigative detention.

Dowthard? True, there were warnings from IDOC that Dowthard might be armed and dangerous, but based on what? Recent information or just the fact of his 1988 murder conviction? The safety of officers and the public always is paramount, but absent some factual basis to rule out less intrusive methods of investigating Dowthard's presence at the house, it was a debatable decision to start with extreme measures. This is all the more true given that Sergeant Tilley's order to stop and identify was based on his unexpected, fleeting observation of a too-tall African American man leaving the house as Sergeant Tilley drove by. Sergeant Tilley didn't have the flier on Dowthard with him and hadn't even looked at it in several days.

But sometimes good police work results from serendipity, so Sergeant Tilley cannot be faulted for ordering the traffic stop. However, he and his colleagues were obliged to be more deferential in their approach to the "suspect" because they had not sufficiently ruled out other logical alternatives as to who this man actually might be. Put another way, because the officers had not laid the groundwork to justify their obvious assumption that the man in the minivan really was Dowthard, the Fourth Amendment's reasonableness requirement mandated a less intrusive seizure than what occurred.[3]

[3] It is easy in hindsight to suggest a better course of police action at various points in the narrative, and some of the observations about front-end acts or omissions may seem inconsequential. Nothing that occurred (or failed to occur) during the initial phases by itself violated the Fourth Amendment. But in a totality of the circumstances analysis the little things add up and sometimes reach critical mass.

As a starting point, Sergeant Tilley, who set the seizure in motion, should have radioed dispatch to access IDOC's flier on Dowthard in order to refresh his recollection and to make the information available to the uniformed officers who actually seized Hanson. An oral recitation of the identifying information would have been a good start, and ordering the immediate dispatch of the flier to the scene of the stop would have been good follow up. Then the arresting officers would have known as soon as they saw the 6'3" Hanson standing up that he could not be Dowthard, who stands only 5'10".

To the same effect, although it may have been an overreaction to surround the minivan with police cars and to train so many handguns on the car's occupants, the Seventh Circuit has ruled that such stops do not necessarily convert an investigative detention into an arrest. *See United States v. Tilmon*, 19 F.3d 1221, 1225-27 (7th Cir. 1994). In *Tilmon*, however, the police had reasonable suspicions that they had stopped a uniquely-painted Mustang that had recently left a bank robbery in which the suspect had threatened to detonate a bomb. Here, however, there was no factual foundation for the claim that Dowthard might be "armed and dangerous," nor sufficient foundation for the belief that the man in the minivan really was Dowthard. So, the show of overwhelming force is problematic, although by itself not unconstitutional.

So too when the police handcuffed Hanson with his hands behind his back: this is not *per se* unreasonable, but neither is it *per se* reasonable. *See*, *e.g.*,*Tilmon*, 19 F.3d at 1224-25. In fact, the Seventh Circuit has *de facto* created a penumbral category between investigative

detention and full arrest where "stops too intrusive to be justified by suspicion under [*Terry v. Ohio*, 392 U.S. 1 (1968)] but short of custodial arrest, are reasonable when the degree of suspicion is adequate in light of the degree and the duration of the restraint." *United States v. Vega*, 72 F.3d 507, 515 (7th Cir. 1995). A seizure that was reasonable at its inception must remain reasonable throughout the encounter. *Id.* Was it necessary to handcuff Hanson during the identification stop? This is a valid question in this analysis because it flows from BPD's initial failure to narrow its pool of suspects to something less than all big, black men seen at the house on Partridge Street, coupled with the lack of foundation (in this record) for the belief that Dowthard was to be considered armed and dangerous at that time.

Here's another brick in the wall of unreasonable police behavior: none of the officers ever told Hanson why they had stopped the minivan or why they were handcuffing him. No one ever explained that this was an investigative detention, that the police were looking for Curtis Dowthard and that they believed that Hanson was Dowthard. Hanson had no clue as to why he was being subjected to restraint equivalent to a full custodial arrest. This not only compounded Hanson's apprehensions, it deprived him of any opportunity to attempt to educate the police as to their error. (Not that the police likely would have believed Hanson's protestations, but maybe he could have prodded them to undertake some of the other investigative steps that they skipped).

It *was* reasonable for Officer Arnold to pat down Hanson for weapons; indeed, this would have been a reasonable safety precaution regardless whether Officer Halvorsen had handcuffed Hanson. But once Officer Arnold was satisfied that Hanson did not possess a

weapon that could harm the officers, there was no further justification on these facts to keep Hanson handcuffed.[4] Keep in mind, the police merely *suspected* that the man in their custody was Dowthard; they did not yet have sufficient evidence even to establish that he *probably* was Dowthard (in part because no one thought to speed up the process by accessing the IDOC flier earlier). So, absent probable cause to believe that their suspect was subject to arrest, and having established to their satisfaction that their suspect was unarmed, the police had no valid reason to keep handcuffs on Hanson.

The unreasonableness of this degree of detention increased as objective evidence mounted that Hanson was *not* Dowthard. Officer Halvorsen asked Hanson who he was; Hanson gave his real name. Officer Halvorsen reached into Hanson's pocket, opened his wallet, and removed a photo-ID card issued by the State of Illinois. It identified Hanson as Hanson. Not believing his eyes–because sometimes criminals carry fake IDs–Officer Halvorsen radioed dispatch to ask if NCIC had a record of a Gregory Hanson who matched the information on the ID card. Dispatch responded affirmatively. Officer Halvorsen still was not convinced. But rather than asking dispatch to obtain NCIC descriptors for Hanson –or Dowthard, for that matter–in order to compare them to the man in front of him; rather than asking permission to delve deeper into Hanson's wallet for more identification; and

[4] Because Officer Arnold missed the handgun tucked in Hanson's waistband, in reality removing the cuffs would have exposed the officers to the very danger that a weapons frisk is intended to obviate. But the reasonableness of police action is not viewed in hindsight, and it would be no sale for the government to contend that a suspect remains dangerous notwithstanding a *Terry* frisk because sometimes officers don't do them right.

rather than explaining to Hanson what was happening to see if *he* had an explanation, Officer Halvorsen did . . . nothing.

Some other officer placed Hanson in the back seat of a squad car with his hands still cuffed behind his back. Why? Because another officer (Benavides) finally concluded that someone should bring the IDOC flier to the scene so that they could use it to confirm that Hanson was Dowthard. Ten minutes already had passed since the police stopped the minivan at gunpoint; it took "a couple of minutes" more to get the form to the scene. So, the stop had lasted about 15 minutes up to that point, with Hanson spending part of that time in a squad car and all of that time in handcuffs, never having been told the reason for his seizure. The length of the stop was due in part to the officers' failure to plan their investigative detention well and in part to their gut instinct that Hanson wasn't really Hanson: he was Dowthard, and they just needed a better opportunity to prove it.

When the IDOC flier arrived, Officer Benavides paid no mind to the height and weight information because Hanson had been placed in the back of a squad car, ready for transportation to the jail. If the officers had maintained open minds about Hanson's identity, then they probably wouldn't have put him in the squad car to begin with, or they would have removed him for a height check upon learning Dowthard's height, an immutable and easily observable characteristic. Even if the officers didn't want to go to the trouble of removing Hanson from the squad car, Officer Halvorsen already had estimated Hanson's height at between 6' 0 and 6 '2" but for unknown reasons he did not participate in this phase of the investigation although apparently he remained on the scene.

Officer Benavides took the lead during this phase: he compared the photographs of Dowthard to Hanson and decided that "there was a resemblance." I will take this to mean that Officer Benavides could not determine from the pictures whether or not Hanson was Dowthard. This would explain why Officer Benavides moved to the chest tattoos: they were a fairly permanent, hopefully unique identifier. It does not, however, justify Officer Benavides's conduct: it was unreasonable for Officer Benavides to lift Hanson's shirt to look at Hanson's bare chest without Hanson's permission. This act, by itself, constitutes a search unsupported by probable cause; in conjunction with the other police acts and omissions during this detention, it is the *coup de grace* on a finding of unreasonableness.

In *Pace v. City of Des Moines*, 201 F.3d 1050 (8th Cir. 2000), the court concluded in a civil lawsuit that it violated the Fourth Amendment for a police officer, without first having obtained a search warrant, to take a rape suspect outside, direct him to remove his shirt and photograph his tattoos for use at a line up:

> In this case, although it may be true that Officer Danner photographed Mr. Pace as quickly as possible, we believe that Officer Danner's actions were too intrusive to be considered merely part of an investigative stop rather than a search fully implicating Mr. Pace's Fourth Amendment rights. It is apparent to us that being ordered to go outside and to take off one's shirt so that a police officer can take pictures involves much more fear and humiliation than simply being asked questions or being compelled to identify oneself. We believe that a reasonable officer cognizant of clearly established law would realize that such an imposition requires a warrant . . . ."

Id. at 1054.

The government attempts to distinguish *Pace*, contending that Hanson was afforded greater privacy in the back of a squad car than the plaintiff who was taken outside. Actually, it is likely that more people examined Hanson's chest because more officers were on the scene; more critically, Hanson was subjected to the additional humiliation and helplessness attendant to having his shirt pulled up and his chest exposed for inspection by a half-dozen police while sitting handcuffed in a squad car, having received no explanation from anybody as to why this was happening. If this now qualifies as a constitutionally reasonable investigative detention, then Franz Kafka might be proud but the Founding Fathers are spinning in their graves like pinwheels.

The government argues that other circuits have found that lifting a suspect's shirt does not exceed the bounds of a *Terry* frisk. This is only true using a head-note briefing methodology as opposed to a review of the facts actually underlying the decisions. For instance, the court in *United States v. Reyes*, 349 F.3d 219 (5th Cir. 2003) held that a single agent, outnumbered 2 to 1 by suspects at a bus stop, could, within the bounds of *Terry*, direct a suspect to lift his own shirt to permit an inspection for weapons, since this was less intrusive than the pat-down search actually sanctioned in *Terry*. *Id.* at 225. Indeed, the court approved of this procedure in part because the agent allowed the defendant to lift his own shirt:

> At no time during the inspection for weapons did Agent Morales touch the defendant. Non-consensual touching of another in most cases is clearly more intrusive of an individual's personal security than is a request to raise a shirt or to empty pockets.

Id.

Similarly, in *United States v. Hill*, 545 F.2d 1191 (9th Cir. 1976), police officers were in hot pursuit of a bank robber who had claimed to possess a gun. An officer confronted the defendant in a parking lot and noticed that he had a large bulge in his waistband which the officer suspected was caused by a weapon. The officer lifted the defendant's shirt and found rolls of money. The court upheld the search, finding that it was a weapons search amply justified by the officer's concern for his own safety. *Id.* At 1192-93.

Here, the police already had handcuffed Hanson, performed a weapons frisk, checked his wallet, radioed dispatch, placed him in the back of a squad car, and compared his visage to the grainy picture of Dowthard on IDOC's flier. They had not explained to Hanson why they had stopped him, had not asked him whether he was Dowthard, had not checked his wallet for additional identification documents, had not checked NCIC for a description of Gregory Hanson and had not asked the women in the minivan who he was. The police did not lift Hanson's shirt in order to check for weapons or contraband, they lifted his shirt in order to view his bare chest because they had decided that this was the easiest way for them to determine if he was Dowthard. This was an investigative search of Hanson's body and the police undertook it for their own convenience without first exhausting less intrusive avenues of identification. The police had other reliable facts available on the scene by which they could have determined that Hanson was not Dowthard without partially undressing him.

For the same reason, it does the government no good to argue that the intrusion was reasonable because it was minimal: there were less intrusive techniques to complete the identification without resorting to lifting the front of Hanson's shirt to expose his chest for public inspection.[5] The case cited by the government, *Padilla v. Miller*, 143 F.Supp.2nd 453, 467-68 (M.D. Pa. 1999), is not to the contrary. There, the court found that it *was* unreasonable for a state trooper to direct a suspect to raise his shirt to reveal a scar because the trooper possessed other information sufficient to identify the suspect. The court hypothesized circumstances in which a scar check might be acceptable but found that none applied to the case at hand. The court held that on the facts before it, the trooper had not pointed to specific and articulable facts that "reasonably warranted the intrusion." This conclusion was "buttressed by the significantly heightened protection afforded against searches of one's person." *Id.* at 468. Although Hanson's situation arguably could fit within one of the court's hypotheticals, the totality of circumstances establishes that the police had less intrusive avenues of investigation available to them which they chose not to employ.

In conclusion, the police exceeded the bounds of a proper investigative detention. Notwithstanding the lack of foundational investigation at the house on Partridge Street and

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[5] At the evidentiary hearing the government explored with Officer Benavides why he didn't start with Hanson's arm tattoos. It is not necessary to discuss this at length. First, there is no case law to support the proposition that during an investigative detention police may move clothing covering any part of the suspect's body when the purpose is to obtain evidence as opposed to complete a weapons frisk. Second, Officer Benavides's explanation of his thought process was illogical: Hanson had tattoos on both arms. Therefore, on whichever side of the squad car Hanson was seated, it still would have been easier for Officer Benavides to lift the shirt sleeve of the outside arm rather than lift the front of Hanson's shirt.

the tentative nature of Sergeant Tilley's identification of Hanson, the police approached this stop with a show of force and disregard for Hanson's rights that are disturbing in their misguided self-assuredness. Because the police assumed that Hanson must be Dowthard, they ignored the contrary evidence and subjected him to a level of restraint and a search of his body that were unreasonable. This violated the Fourth Amendment.

On one level, this is a windfall for Hanson: although he remains presumed innocent until a jury decides otherwise, the evidence that he violated § 922(g) is inarguable. Ironically, however, the Fourth Amendment violation that developed over the course of Hanson's investigative detention would *not* have sufficed to stymie this prosecution: had Officer Arnold discovered Hanson's firearm during the weapons frisk, the investigative detention would have ended before a clear Fourth Amendment violation had occurred. But he didn't, and his fellow officers subjected Hanson to restraints that were too restrictive and a search that was too intrusive to withstand constitutional scrutiny.

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that this court grant defendant Gregory Hanson's motion to suppress evidence.

Entered this 20th day of October, 2005.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge

October 20, 2005

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Re: United States v. Gregory Hanson
Case No. 05-CR-106-C

Dear Counsel:

The attached Report and Recommendation has been filed with the court by the United States Magistrate Judge.

The court will delay consideration of the Report in order to give the parties an opportunity to comment on the magistrate judge's recommendations.

In accordance with the provisions set forth in the memorandum of the Clerk of Court for this district which is also enclosed, objections to any portion of the report may be raised by either party on or before October 31, 2005, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by October 31, 2005, the court will proceed to consider the magistrate judge's Report and Recommendation.

Sincerely,

Connie A. Korth
Secretary to Magistrate Judge Crocker

Enclosures
cc: Honorable Barbara B. Crabb, District Judge