

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>UNITED STATES OF AMERICA,</b>	)	<b>CASE NO. 8:07CR337</b>
	)	
<b>Plaintiff,</b>	)	
	)	<b>MEMORANDUM</b>
<b>vs.</b>	)	<b>AND ORDER</b>
	)	
<b>MATTHEW N. BATTLES,</b>	)	
	)	
<b>Defendant.</b>	)	

This matter is before the Court on the Report and Recommendation (Filing No. 34) issued by Magistrate Judge Thomas D. Thalken recommending denial of the Defendant's motion to suppress (Filing No. 24). No objections have been filed to the Report and Recommendation as allowed by 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3(a).

The Defendant seeks an order suppressing evidence seized during the August 27, 2007, search and seizure of his person. Judge Thalken concluded that, although the government produced insufficient evidence suggesting that a frisk was lawful, Officer Platt saw Battles jaywalk and could have arrested him for that traffic infraction. Therefore, Judge Thalken further concluded that probable cause existed for Battles's arrest for the offense of jaywalking, and Battles's arrest and the search incident to arrest, during which contraband was found on Battles's person, were lawful.

Notwithstanding the absence of objections, pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3, the Court has conducted a de novo review of the record. The Court has read the parties' briefs (Filing Nos. 25, 27) and the transcript (Filing No. 33). Because Judge Thalken fully, carefully, and correctly applied the law to the facts, the Court adopts

the Report and Recommendation in its entirety. The denial of the Defendant's motion is without prejudice pursuant to the Court's previous order. (Filing No. 38.)

IT IS ORDERED:

1. The Magistrate Judge's Report and Recommendation (Filing No. 34) is adopted in its entirety; and
2. The Defendant's motion to suppress (Filing No. 24) is denied without prejudice to reassertion if the Defendant does not plead guilty or his anticipated guilty plea is not accepted.

DATED this 2<sup>nd</sup> day of June, 2008.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge