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DISTRICT IV

June 11, 2026

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You are hereby notified that the Court has entered the following opinion and order:

2024AP2134-CR State of Wisconsin v. James A. Hughes, Jr. (L.C. # 2018CF14)

Before Graham, P.J., Nashold, and Taylor, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

James A. Hughes, Jr. appeals his judgment of conviction for operating while intoxicated as an 8th offense ("OWI 8th") in violation of WIS. STAT. § 346.63(1)(a) (2023-24),[1] challenging the circuit court's denial of his motion to suppress blood test evidence and a postconviction order denying the same. Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

Hughes argues that the circuit court erred in denying his motion to suppress the blood test evidence because no valid search warrant existed at the time of Hughes's blood draw. He argues that the search warrant the arresting officer secured was invalid due to the absence of a court commissioner's signature on the warrant, which Hughes alleges violated his Fourth Amendment rights under the United States Constitution. We reject Hughes's argument and affirm.

On an afternoon in February 2018, Sheriff's Deputy William Roesler was dispatched to a highway in the Town of Genoa after a witness reported that a car had crossed the road and possibly hit a propane tank.[2] The witness reported that the driver was attempting to leave the scene. Roesler responded to the scene and detained Hughes, who Roesler identified by driver's license. While questioning Hughes, Roesler observed that Hughes smelled of intoxicants, had glassy eyes and slurred his speech, and was unsteady on his feet. From a search in a police database, Roesler discovered that Hughes had seven prior OWI convictions. Hughes refused to participate in field sobriety tests, and Roesler arrested Hughes for operating while intoxicated.

After being read the Informing the Accused form, Hughes refused to consent to provide a blood sample. Pursuant to the duplicate original warrant process set forth in WIS. STAT. §968.12(3)(b)1., which we refer to as the duplicate warrant process, Deputy Roesler did the following. He completed a search warrant application that included his sworn affidavit; he contacted a court commissioner by phone, and the resulting call was recorded in its entirety; and he provided a sworn oral recitation of the facts to the commissioner from which the commissioner found probable cause that a blood sample could reveal evidence that Hughes had

[2] Hughes absconded from Wisconsin while this case was pending and was eventually extradited from Alabama to Wisconsin in 2022.

committed a crime. After Hughes's blood was drawn, Roesler signed the commissioner's name to the warrant as allowed by the duplicate warrant process. The commissioner never completed or signed an original warrant, as required by the duplicate warrant process.

A chemical test of Hughes's blood sample showed a blood alcohol concentration of 0.30 g/100mL, and the State charged Hughes with OWI 8th, failure to keep vehicle under control, and operating with a prohibited alcohol concentration as an 8th offense.

Hughes moved to suppress the blood test results, arguing that absent the court commissioner's signature on the search warrant prior to the blood draw, no valid warrant existed, rendering the blood draw an unconstitutional warrantless search that violated Hughes's Fourth Amendment rights. In support of his motion, Hughes filed copies of the warrant application and written warrant, the audio file of Roesler's recorded call with the court commissioner, and the video footage of the encounter from Roesler's body-worn camera. The parties made legal arguments at a suppression hearing, but no testimony was taken or other evidence introduced. The circuit court took the motion under advisement and later denied the motion.

Hughes pled no contest to OWI 8th, and the remaining charges were dismissed and read in for sentencing purposes. The circuit court found Hughes guilty of OWI 8th and sentenced him to four years of initial confinement and five years of extended supervision.

Hughes moved for postconviction relief, arguing that the circuit court erred by denying his motion to suppress without an evidentiary hearing or, alternatively, if the court found that Hughes forfeited his right to an evidentiary hearing because of the lack of a specific request, that Hughes's attorney provided ineffective assistance of counsel pursuant to ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979) in failing to make such a request. The State

opposed the postconviction motion, which the court denied without an evidentiary hearing. Hughes appeals.

This court reviews a circuit court's order denying a motion to suppress in two steps. ***State v. Roberson***, 2019 WI 102, ¶66, 389 Wis. 2d 190, 935 N.W.2d 813. First, we uphold the circuit court's findings of historical fact unless they are clearly erroneous. ***Id.*** Second, we apply constitutional principles to those facts independently. ***Id.***

The Fourth Amendment to the U.S. Constitution guarantees the right of persons to be secure from unreasonable government searches and seizures.[3] ***State v. Sveum***, 2010 WI 92, ¶18, 328 Wis. 2d 369, 787 N.W.2d 317. The Fourth Amendment specifically provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV. A warrantless search or seizure is presumptively unreasonable. ***Id.***, ¶18; *see* WIS. STAT. § 968.10 (setting forth statutory circumstances where searches and seizures are authorized).

[3] Our supreme court has generally interpreted Wisconsin's parallel constitutional protection against unreasonable searches and seizures, set forth in Article I, Section 11 of the Wisconsin Constitution, coextensively with the protections afforded by the federal constitution, ***State v. Sveum***, 2010 WI 92, ¶18 n. 7, 328 Wis. 2d 369, 787 N.W.2d 317, and guarantee the right of persons to be secure from unreasonable government searches and seizures. ***Id.*** at ¶¶2, 18.

Article I, Section 11 of the Wisconsin Constitution provides in full:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Because a blood draw physically intrudes into a person's skin and requires extraction of blood from a person's body, it is considered a search of a person subject to constitutional protections. ***State v. Forrett***, 2022 WI 37, ¶8, 401 Wis. 2d 678, 974 N.W.2d 422. As such, a person may exercise their constitutional right to refuse to consent to a search of their person via a blood draw, and a warrant must be obtained. ***Id.***; *see* ***Missouri v. McNeely***, 569 U.S. 141, 152 (2013) ("In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so.").

Whether a search and seizure pursuant to a warrant is constitutionally valid is a two-part inquiry. ***Sveum***, 328 Wis. 2d 369, ¶19. First, all warrants must be validly issued. ***Id.*** Second, warrants must be reasonably executed. ***Id.*** Here, we interpret Hughes's position on appeal as implicitly arguing that the search warrant, lacking a court commissioner's signature at the time of Hughes's blood draw, was not properly issued, thereby violating his Fourth Amendment rights and requiring suppression of the evidence which resulted from the blood draw.

To be constitutional, a warrant must have: "(1) prior authorization by a neutral, detached magistrate; (2) a demonstration upon oath or affirmation that there is probable cause to believe that evidence sought will aid in a particular conviction for a particular offense; and (3) a particularized description of the place to be searched and items to be seized." ***Id.***, ¶20.

One possible consequence of a search lacking a valid warrant is the suppression of evidence that results from the search. ***State v. Dearborn***, 2010 WI 84, ¶15, 327 Wis. 2d 252, 786 N.W.2d 97. Because the suppression of evidence is not a constitutional right, but rather a judge-made rule used to deter misconduct by law enforcement officials, suppression is only required

when evidence has been obtained in violation of a defendant's constitutional rights, or if a statute specifically provides for the suppression remedy. ***State v. Raflik***, 2001 WI 129, ¶15, 248 Wis. 2d 593, 636 N.W.2d 690 (citations omitted).

Hughes argues on appeal that the circuit court erred in denying his suppression motion because, at the time of the blood draw, the process for obtaining a duplicate warrant set forth in WIS. STAT. § 968.12 was violated and therefore, no valid search warrant existed due to the absence of the court commissioner's signature at the time of the blood draw. As a result, Hughes asserts that he was subjected to a warrantless search in violation of his Fourth Amendment rights, and the resulting evidence must be suppressed. *See* ***McNeely***, 569 U.S. 141, 145 (concluding no exigent circumstances justified warrantless, nonconsensual "search" of the defendant's blood and affirming suppression).

We conclude that although a signed search warrant did not preexist Hughes's blood draw, Hughes's Fourth Amendment rights were not violated. The suppression of evidence is only required when a statute specifically provides for the suppression remedy or the defendant's constitutional rights have been violated. ***Raflik***, 248 Wis. 2d 593, ¶15. Neither exists here.

To the extent that Hughes is arguing that the search warrant was statutorily invalid because it failed to comply with the duplicate warrant process, he does not show that he is entitled to the remedy of suppression as a result of this violation.

As noted, Wisconsin statutes set forth a duplicate warrant process for obtaining warrants by electronic means or by phone, as pertinent here. *See* WIS. STAT. § 968.12(3)(a) ("A search warrant may be based on sworn oral testimony communicated to the judge by telephone[.]"). Specifically, § 968.12(3)(b)1. states:

> The person who is requesting the warrant may prepare a duplicate original warrant and read the duplicate original warrant, verbatim, to the judge. The judge shall enter, verbatim, what is read on the original warrant. The judge may direct that the warrant be modified. If the judge determines that there is probable cause for the warrant, the judge shall order the issuance of a warrant by directing the person requesting the warrant to sign the judge's name on the duplicate original warrant. In addition, the person shall sign his or her own name on the duplicate original warrant. The judge shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued.

This was the statutory process Roesler utilized to obtain the search warrant at issue here.

The duplicate warrant process allows a person to remotely prepare a search warrant application and a duplicate original warrant, and swear to the facts supporting probable cause for the issue of the warrant by phone, which is memorialized by a recording. If a judge determines that probable cause exists to authorize the warrant, the requester may sign the judge's name on the duplicate original warrant. Meanwhile, the judge prepares an original warrant which mirrors the duplicate original warrant prepared by the requester. Although Hughes is correct that the duplicate warrant process was not fully followed here because the court commissioner never signed an original warrant and Roesler did not sign the commissioner's name until after the blood draw, Hughes directs us to no statutory authority in support of his argument that a violation of the duplicate warrant process requires suppression. We need not further consider arguments which are unsupported by applicable legal authority. ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

Moreover, the uncontested facts here underscore that the process by which the warrant was authorized met the constitutional requirements for its issue: Roesler had probable cause to arrest Hughes for driving while intoxicated; Hughes refused to consent to a blood draw; Roesler completed a warrant application for a blood draw and chemical test of Hughes's blood; Roesler

provided sworn testimony to a court commissioner via phone about the facts underlying the request for the warrant; the call was recorded; the commissioner found probable cause for the search warrant; and Roesler transported Hughes to a hospital where his blood was drawn. This sequence of events establishes compliance with Fourth Amendment requirements for the issuance of a search warrant because: (1) there was "prior authorization by a neutral detached magistrate"—the commissioner authorized the blood draw prior to the draw itself; (2) there was "a demonstration [of probable cause] upon oath or affirmation"—Roesler was sworn and the court commissioner found probable cause based on Roesler's testimony that the search would reveal evidence of a crime; and (3) the warrant contained "a particularized description of the place to be searched and items to be seized"—Roesler identified to the commissioner that the warrant was for a draw of Hughes's blood. ***Sveum***, 328 Wis. 2d 369, ¶20. Hughes fails to cite any legal authority supportive of his position that a judge's signature is a necessary component for a search warrant to pass constitutional muster.

Instead, Hughes directs us to ***State v. Tye***, 2001 WI 124, 248 Wis. 2d 530, 636 N.W.2d 473, and ***State v. Hess***, 2010 WI 82, 327 Wis. 2d 524, 785 N.W.2d 568, for support of his argument that his Fourth Amendment rights were violated and the suppression of the blood test results required because the warrant lacked the court commissioner's signature as required by the duplicate warrant process. Neither of these cases are factually analogous.

In ***Tye***, our supreme court concluded that evidence must be suppressed when the warrant authorizing the search was not supported by a sworn statement under oath or affirmation. ***Tye***, 248 Wis. 2d 530, ¶3. The court reasoned that a sworn statement supporting the existence of probable cause "is an essential component of the Fourth Amendment" that "preserves the integrity of the search warrant process." ***Id.***, ¶19. Here, there is no dispute that Roesler gave

sworn testimony to the court commissioner in support of his request for a search warrant and, as discussed, there is no Fourth Amendment violation.

In ***Hess***, a circuit court issued a civil warrant when the defendant in a criminal case failed to appear for a meeting with the investigator writing a presentence investigation report. ***Hess***, 327 Wis. 2d 524, ¶8. The State conceded on appeal that the warrant was defective because the court had no statutory authority to issue a civil arrest warrant in a criminal proceeding and because the warrant was not supported by an oath or affirmation. ***Id.***, ¶¶20, 22. Neither circumstance is present in Hughes's case. Hughes makes no argument that the court commissioner lacked statutory authority to issue the warrant and, again, the warrant was supported by Roesler's sworn statements.

In sum, we reject Hughes's argument that his blood test results needed to be suppressed statutorily or because of a Fourth Amendment violation. Therefore, the decision on whether to suppress the blood draw evidence was left to the sound discretion of the circuit court. ***State v. Popenhagen***, 2008 WI 55, ¶68, 309 Wis. 2d 601, 749 N.W.2d 611. Hughes has failed to advance any argument that the court erroneously exercised its discretion in denying his suppression motion. Accordingly, we affirm.

Based on the foregoing,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals