OFFICE OF THE CLERK
**WISCONSIN COURT OF APPEALS**
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

**DISTRICT III**

February 28, 2023

*To*:

Hon. James C. Babler
Circuit Court Judge
Electronic Notice

Sharon Millermon
Clerk of Circuit Court
Barron County Justice Center
Electronic Notice

Frances Philomene Colbert
Electronic Notice

John M. O'Boyle
Electronic Notice

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

---

2021AP1852-CR State of Wisconsin v. Lance R. Hovland (L. C. No. 2020CF192)

Before Gill, J.[1]

**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).**

Lance Hovland appeals from a judgment convicting him of one count of possession of amphetamine and one count of possession of drug paraphernalia. Hovland argues that the circuit court erred by denying his motion to suppress evidence that was discovered during a warrantless search of his person. Based upon our review of the briefs and record, we conclude that this case is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

At the hearing on Hovland's motion to suppress, Barron County Sheriff's Deputy Anthony Weigand testified that he responded to an attempted burglary complaint in Rice Lake on May 20, 2020. Before Weigand arrived on the scene, he learned from dispatch that the complaining witness had identified one of the men on her property as Hovland. Dispatch also informed Weigand that Hovland "did have an outstanding warrant for his arrest."

Weigand made contact with Hovland shortly after arriving at the complainant's property. Weigand testified that after Hovland identified himself, "I did place him in handcuffs behind his person, under arrest for the warrant." After placing Hovland in handcuffs, Weigand walked Hovland to the rear of his squad car and then "search[ed him] incident to arrest" before placing him in the squad car. Before performing the search, Weigand asked Hovland "if there was anything on him that I needed to know about … for safety reasons," and Hovland stated that he had a needle in his pocket because he was diabetic. Weigand then removed the needle from Hovland's pocket and noticed a "small crystal-like substance" inside the needle. Based on Weigand's training and experience, he concluded that the substance did not appear to be insulin and instead appeared consistent with methamphetamine. The substance later field tested positive for methamphetamine. Weigand continued searching Hovland's person and found a "smoking device" with "what appeared to be burnt marijuana in it."

After finding these items, Weigand placed Hovland in the back of his squad car. Weigand testified that dispatch subsequently informed him that the warrant for Hovland was "a municipal warrant through the Rice Lake Police Department and that it was, in fact, not valid." Weigand also testified that if a warrant is "not a Barron County warrant, it almost always in every instance needs to be confirmed with the agency where the warrant originated from."

Weigand indicated that if he had not found the needle and smoking device on Hovland's person, Hovland would have been released after dispatch confirmed that the warrant was not valid.

On cross-examination, Weigand conceded that the warrant reported by dispatch was "[t]he only reason" that he took Hovland into custody. When asked whether he had placed Hovland under arrest due to the outstanding warrant or had merely detained him "to determine the validity of the warrant," Weigand responded, "[T]ypically when we're given the information that a subject does have a warrant, by all intents and purpose, I do place them under arrest for that. The only thing that would change that is, obviously, if the warrant is not valid, then they will be unarrested and released." Weigand further testified that he "believe[d]" he had told Hovland that Hovland was under arrest.

Hovland's attorney then played a portion of Weigand's body camera video from the night in question. The video shows that after informing Hovland that he had a "municipal warrant," Weigand placed Hovland in handcuffs and stated, "So you're just now being detained. You're not charged with anything new right now. We're gonna wait for this warrant to come back, okay?" After viewing the video, Weigand acknowledged that at the time he placed Hovland in handcuffs, he knew that the warrant reported by dispatch was a municipal warrant. He also admitted stating that Hovland was "just being detained" and was not being charged with anything new.

On redirect examination, when asked whether he typically searches people before placing them in his squad car, Weigand responded, "I search them incident to arrest. And also before transporting anybody to the Barron County Jail, our policy says that people will be searched." Weigand also confirmed that he did not know "anything about the validity of [the warrant]" and

whether "it was valid or not" until after he had placed Hovland in his squad car. On recross-examination, Weigand agreed that there were "no facts" provided to him indicating that Hovland was "armed or dangerous."

Based on the evidence introduced at the suppression hearing, the State argued that Weigand's warrantless search of Hovland was a permissible search incident to arrest. Hovland disagreed, arguing that he was not searched incident to arrest because he was not arrested but was instead merely "detained pending confirmation of the warrant." Hovland further argued that the detention was tantamount to a ***Terry***[2] investigatory stop and that, in that context, there were no grounds for Weigand to frisk Hovland for officer safety because there was no indication that Hovland was armed or dangerous.

The circuit court concluded, as a matter of law, that Hovland "was under arrest" at the time of the search and "was not being merely detained." The court explained, "It doesn't matter what … words that the officer used. It's what a reasonable person under the circumstances would believe, but a reasonable person who was told that there's a warrant for his arrest [and] who's handcuffed would reasonably believe that he was under arrest." The court further stated that a reasonable officer "would have relied upon the Sheriff's Department dispatch to say that there was a warrant," and even though the warrant was later revealed to be invalid, "at the time[,] this officer and any reasonable officer would have done a search incident to the arrest." The court therefore denied Hovland's motion to suppress.

[2] *See* ***Terry v. Ohio***, 392 U.S. 1 (1968).

When the facts are undisputed, whether the circuit court properly denied a motion to suppress evidence is a question of law that we review independently. ***State v. Popenhagen***, 2008 WI 55, ¶31, 309 Wis. 2d 601, 749 N.W.2d 611. A warrantless search is presumptively unreasonable and is constitutional only if it falls under an exception to the warrant requirement. ***State v. Tullberg***, 2014 WI 134, ¶30, 359 Wis. 2d 421, 857 N.W.2d 120. One such exception exists for a warrantless search conducted incident to a lawful arrest. ***State v. Sykes***, 2005 WI 48, ¶14, 279 Wis. 2d 742, 695 N.W.2d 277.

Hovland argues that the search at issue in this case was not incident to a lawful arrest because he was "legally detained but not lawfully arrested at the time he was searched." Specifically, Hovland argues that he was not lawfully arrested because Weigand lacked probable cause "to believe [that] the information he had regarding the arrest warrant for … Hovland was sound." In other words, Hovland asserts that "because the officer had reason to believe that the warrant may be invalid, he did not have probable cause to arrest."[3]

We reject Hovland's argument that Weigand did not lawfully arrest him. A law enforcement officer may arrest a person when the officer "believes, on reasonable grounds, that a

[3] In its respondent's brief, the State argues Weigand's statement that Hovland was just "being detained" is not dispositive, and the circumstances overall show that Hovland was, in fact, arrested. In his reply brief, Hovland clarifies that he "is not arguing … that the word 'detained' turned an otherwise lawful arrest into a ***Terry***-stop." Instead, Hovland argues that no *lawful* arrest occurred because Weigand lacked probable cause to arrest him.

Hovland also argues that, in the absence of a lawful arrest, Weigand's search of Hovland was not a permissible ***Terry*** frisk because a reasonably prudent person in the same circumstances would not have been warranted in the belief that his or her safety or the safety of others was in danger. *See* ***Terry***, 392 U.S. at 27. Because we conclude that Weigand lawfully arrested Hovland, we need not address this alternative argument. *See* ***Turner v. Taylor***, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (court of appeals need not address all issues raised by the parties if one is dispositive).

warrant for the person's arrest has been issued in this state." WIS. STAT. § 968.07(1)(b). "[A]n officer need not have an arrest warrant in his or her possession in order to make a valid arrest." ***State v. Collins***, 122 Wis. 2d 320, 326, 363 N.W.2d 229 (Ct. App. 1984). Instead, the officer "may rely on information received through police department channels that a warrant exists." ***Id.*** "Suppressing evidence obtained in a situation where a reasonable officer would believe an arrest warrant existed would not help to deter misconduct by arresting officers, because there is no misconduct to deter." ***Id.***

As particularly relevant here, our supreme court has held that an officer may place an individual under arrest based on an active arrest warrant and may search that person incident to arrest, and evidence obtained during the search will not be suppressed, even if the arrest warrant is later deemed to be defective. *See* ***State v. Kerr***, 2018 WI 87, ¶¶8-10, 16, 22-24, 383 Wis. 2d 306, 913 N.W.2d 787. "As a practical matter, officers should be able to rely on dispatch in the same way they are able to rely on their computer records." ***Id.***, ¶22. Thus, an officer may rely on a report from dispatch stating that a person has an outstanding arrest warrant, and doing so does not constitute police misconduct warranting the suppression of evidence obtained during a search incident to an arrest on that warrant. *See* ***id.***

In this case, the undisputed facts show that Weigand lawfully arrested Hovland because he had reasonable grounds to believe that a warrant for Hovland's arrest had been issued in this state. *See* WIS. STAT. § 968.07(1)(b). Dispatch informed Weigand that there was an outstanding municipal warrant for Hovland's arrest. Weigand was entitled to rely on that information from dispatch, *see* ***Kerr***, 383 Wis. 2d 306; ¶22; ***Collins***, 122 Wis. 2d at 326, and the information provided reasonable grounds for him to believe that a warrant for Hovland's arrest had been issued.

Hovland argues that it was not reasonable for Weigand to believe that a warrant for Hovland's arrest had been issued because Weigand testified that he did not know anything about the validity of the warrant before he placed Hovland in the squad car. That testimony does not show, however, that Weigand questioned the validity of the warrant or had any reasonable basis to do so. Rather, Weigand's testimony shows that at the time of the arrest, he had no specific information one way or the other as to whether the warrant reported by dispatch was valid. Under these circumstances, Weigand was entitled to rely on the information from dispatch that Hovland was subject to an outstanding arrest warrant.

Hovland also cites Weigand's testimony that if a warrant is "not a Barron County warrant, it almost always in every instance needs to be confirmed with the agency where the warrant originated from." Hovland claims this testimony shows that "typical police practice in Barron County" required Weigand to confirm the validity of the warrant before arresting him on the warrant. Again, we disagree. Weigand's testimony about confirming the validity of warrants from other agencies does not show the existence of a policy or practice requiring Weigand to do so before making an arrest. Furthermore, the fact that Weigand testified that warrants from other agencies almost always need to be confirmed does not mean that such confirmation typically occurs—or must occur—before an individual is arrested on a particular warrant.

This court has previously stated that "[w]hen an officer runs a warrant check, the sole question is whether an existing order authorizes the [person's] arrest. The answer is either 'yes' or 'no,' and no additional investigation is required. If there is an existing warrant, the officer can immediately take the [person] into custody." ***State v. Davis***, 2021 WI App 65, ¶33, 399 Wis. 2d 354, 965 N.W.2d 84. In this case, dispatch told Weigand that there was an outstanding municipal warrant for Hovland's arrest, and Weigand had no specific information indicating that

the warrant was invalid. On these facts, Weigand had reasonable grounds to believe that a warrant for Hovland's arrest had been issued, and he could therefore lawfully arrest Hovland. *See* WIS. STAT. § 968.07(1)(b). Accordingly, the circuit court properly denied Hovland's suppression motion on the grounds that the warrantless search of Hovland's person was permissible as a search incident to a lawful arrest.

Upon the foregoing,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

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

---

*Sheila T. Reiff*
*Clerk of Court of Appeals*