

FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

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STATE OF HAWAII, Plaintiff-Appellee,
v.
EDWARD S. DAWSON, Defendant-Appellant

NO. 28406

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 05-1-2187)

April 8, 2009

NAKAMURA AND FUJISE, JJ., AND FOLEY, PRESIDING JUDGE, DISSENTING

OPINION OF THE COURT BY NAKAMURA, J.

A computer check for warrants revealed an outstanding warrant for Defendant-Appellant Edward S. Dawson (Dawson). Upon encountering Dawson, a police officer detained Dawson for a few minutes to confirm that the physical paper warrant was still in the files of law enforcement. During this detention, the officer observed Dawson remove a glass pipe, commonly used to smoke crystal methamphetamine, from Dawson's pocket and place it in a nearby package. Once the outstanding warrant was confirmed, Dawson was arrested on the outstanding warrant and for possession of the pipe. We hold that Dawson's detention was lawful and that the trial court properly denied Dawson's motion to suppress the pipe, which was found to contain methamphetamine.

Dawson appeals from the Judgment of Conviction and Sentence (Judgment) filed on January 17, 2007, in the Circuit

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Court of the First Circuit (circuit court).^{1/} Plaintiff-Appellee State of Hawai'i (State) charged Dawson by complaint with 1) promoting a dangerous drug in the third degree, for possessing methamphetamine (Count I) and 2) possession with intent to use drug paraphernalia (Count II). The charges were based on the methamphetamine pipe observed by the officer while Dawson was detained and later recovered after Dawson's arrest. After a jury-waived trial based on stipulated evidence,^{2/} the circuit court found Dawson guilty on both counts. The circuit court sentenced Dawson to five years of imprisonment on each count, to be served concurrently with each other and with a five-year term of imprisonment imposed in a separate case. The circuit court also imposed a one year mandatory minimum term on Count I based on Dawson's status as a repeat offender.

On appeal, Dawson argues that "[t]he existence of a 'possible warrant' did not constitute reasonable suspicion enabling the police to detain Dawson, thus the lower court erred in denying Dawson's motion to suppress the pipe containing residue which the police observed during his illegal detention." For the reasons set forth below, we disagree with Dawson's argument and affirm the circuit court's Judgment.

BACKGROUND

Prior to trial, Dawson filed a motion to suppress evidence, seeking to suppress a three-inch glass pipe and .075 grams of white residue containing methamphetamine found within the pipe. Dawson alleged that this evidence was the fruit of a detention that was unlawful because it was not supported by reasonable suspicion. The following evidence is pertinent to our

^{1/} The Honorable Michael A. Town presided.

^{2/} The parties agreed to permit the circuit court to decide the case based on evidence presented at prior hearings supplemented by additional exhibits admitted without objection.

review of the circuit court's denial of Dawson's suppression motion.^{3/}

I.

On October 14, 2005, around noon, Honolulu Police Department (HPD) dispatch directed officers to respond to 1421 Alapai Street to investigate the report of an outstanding stolen vehicle parked there. The address was that of an apartment complex referred to as Punchbowl Housing. Both HPD Officers Robyn Pacheco (Officer Pacheco) and Leo Kang (Officer Kang) responded to the call from dispatch.

While en route, Officer Kang asked dispatch to perform a warrant check on Edward Dawson. Officer Kang requested the warrant check because four or five months earlier, Officer Kang had participated in a car theft investigation in which Dawson was a suspect that involved the same 1421 Alapai Street address. Officer Kang knew that Dawson's girlfriend, Sandra Domingo (Domingo), lived in an apartment at that address. During the prior investigation, Officer Kang located a stolen truck in the parking lot at 1421 Alapai Street and then unsuccessfully chased after a man who ran from Domingo's apartment. When Officer Kang returned, the stolen truck was gone, and Domingo admitted that Dawson had taken the truck.

Officer Kang also recalled another incident in which he pulled over a van, apparently for expired registration and safety inspection certificates. Dawson, who had been driving the van, jumped out and ran away, and Domingo also emerged from the van.

After the stolen-truck incident, Officer Kang kept running Dawson's name in the HPD computers and frequently went back to the area in an attempt to find Dawson. Officer Kang

^{3/} In reviewing the circuit court's denial of a motion to suppress evidence, we consider both the record of the hearing on the motion to suppress and the record of the trial. State v. Kong, 77 Hawai'i 264, 266, 883 P.2d 686, 688 (App. 1994). In addition to the suppression hearing evidence, we therefore consider the evidence presented at trial, which included police reports, the outstanding arrest warrant for Dawson, and the preliminary hearing testimony of Officer Robyn Pacheco.

noticed that there was a "possible warrant" for Dawson about two weeks before he requested that dispatch perform a warrant check in this case.^{4/} Officer Kang testified that all his beat partners knew that Dawson was a car-theft suspect and that Officer Kang was looking for Dawson. Officer Kang acknowledged, however, that he did not state over the dispatch radio that Dawson was a car-theft suspect in connection with his request for the warrant check on October 14, 2005, while en route to 1421 Alapai Street.

Officer Pacheco was the first officer to arrive at 1421 Alapai Street. Officer Pacheco testified at the suppression hearing that prior to her arrival, she heard Officer Kang request a warrant check for "a previous UCPV^{5/} suspect" named Edward Dawson and heard dispatch state that Dawson had a "possible warrant."^{6/} Officer Pacheco did not know what the "possible

^{4/} The actual warrant was issued on October 3, 2005, eleven days before the events at issue in this case.

^{5/} UCPV is an acronym for the crime of unauthorized control of a propelled vehicle, commonly known as automobile theft.

^{6/} At Dawson's preliminary hearing, Officer Pacheco testified that another officer had requested a warrant check on Dawson because Dawson had run from the police in a previous auto theft recovery at the same address:

Q. [Defense counsel] . . . [W]hat knowledge or information did you have, you know, through dispatch before you arrived at Alapai?

A. [Officer Pacheco] Before arriving at Alapai, another officer had run a rap warrant on -- on Edward Dawson.

Q. Okay. What was the reason for running a rap warrant on Edward Dawson at that point?

A. Apparently, he was -- he ran from the police previously on an auto theft recovery at that same address.

Q. Okay. So did you have information that this Edward Dawson was at this Alapai Street address --

A. No.

Q. -- before you got there?

A. No, sir.

(continued...)

warrant" that dispatch had reported was for. Officer Pacheco had heard Dawson's name mentioned before that afternoon but had never seen Dawson before.

Upon arriving at 1421 Alapai Street, Officer Pacheco saw a vehicle matching the description of the stolen vehicle provided by dispatch parked in one of the stalls fronting the apartment complex. Officer Pacheco checked the vehicle's license plate and vehicle identification numbers and confirmed that the vehicle was the one reported stolen. Officer Pacheco then approached a man she saw standing outside one of the apartment units to see if he had any information that would aid her investigation. Officer Pacheco testified that when she approached the man, she did not know he was Dawson, she had no basis to suspect that the man was engaged in any criminal activity, and she did not consider the man to be a suspect in her investigation. She stated that the man could have been a witness or an innocent bystander.

Officer Pacheco asked the man for his name and he responded, "Eddie Dawson." Officer Pacheco immediately recognized that name from Officer Kang's warrant check request for Edward Dawson. Officer Pacheco asked dispatch to confirm the warrant for Dawson and told Dawson to sit down. According to Officer Pacheco, at that point, she detained Dawson to confirm the warrant and he was not free to leave. Officer Pacheco agreed with defense counsel's assertion that "by detaining Mr. Dawson, [she] suspended [her] investigation into the auto theft recovery case."

Officer Pacheco explained her understanding of the difference between a "possible warrant" and a "confirmed warrant." She testified that a possible warrant means that a

^{5/}(...continued)

Q. But just -- what, I mean, I'm to figure out why did Edward Dawson's name even come up.

A. Another officer ran it, because he had run from the police previously -- previously at that address.

computer search by HPD dispatch shows an outstanding warrant for the person. A warrant is confirmed when someone personally verifies that the physical paper warrant is still in the files located at HPD or the Sheriff's Department. Officer Pacheco testified in relevant part as follows:

Q. [Defense counsel] Now, what does it mean for someone to have a possible warrant?

A. [Officer Pacheco] That means that the dispatch shows the person has a warrant, but it needs to be confirmed.

Q. It means the person may or may not have a warrant?

A. No, it means the person -- it shows that the person has a warrant in their records, but we don't arrest until its confirmed.

Q. And --

A. They need to make sure it is actually there.

Q. So let me understand. It means -- your testimony says that it means they had a warrant at one time or another?

A. No, that means that right now there's a warrant for the arrest of the suspect.

. . . .

Q. . . . [I]n order to confirm the warrant, somebody actually has to go in and pull the piece of paper, pull a physical piece of paper?

A. Yes, sir.

Q. And is it correct the physical warrant may be either with HPD or with the sheriff's department?

A. Yes, sir.

Q. When an officer calls dispatch for a warrant check, the first thing that happens is dispatch pulls up potentially a possible warrant on the dispatcher's computer?

A. Yes, sir.

Q. And then -- I don't know, does the officer have to request a confirmation?

A. Yes, sir.

Q. All right. So the dispatch does not automatically ask for the confirmation?

A. Yes, sir.

. . . .

Q. . . . When you call for the confirmation, dispatch has to have somebody go look for the paper warrant[?]

A. Yes, sir.

Q. And this person either finds it or they don't find it, and they relay that back to dispatch?

A. Yes, sir.

Q. And then dispatch comes back to you and says yes or no?

A. Yes, sir.

Officer Pacheco stated that she will detain persons for whom dispatch reports a possible warrant, but she will not handcuff them. She testified that it was HPD's standard procedure not to arrest someone based on the possible warrant revealed through the computer check, but only to arrest after the existence of the physical warrant was confirmed. Officer Pacheco had experienced the situation in which a possible warrant was not confirmed because the "hard copy" could not be found. Officer Pacheco acknowledged that possible reasons why a warrant would not be confirmed included the cancellation of the warrant and time lags between when a warrant is served and when it is removed from the computer system. Officer Pacheco stated that the time necessary to confirm a warrant varies--it could be fast or could take 15, 20, or 25 minutes. An officer requesting a warrant confirmation does not know in advance how long it will take.

In this case, it took approximately four minutes for the outstanding arrest warrant for Dawson to be confirmed.^{2/} Officer Pacheco testified that while awaiting confirmation of the warrant, Dawson kept putting his hands in his pockets. Officer

^{2/} The circuit court found that Officer Pacheco approached Dawson at approximately 12:28 p.m. and that dispatch confirmed the outstanding warrant for Dawson at 12:32 p.m. Dawson does not challenge these findings and thus we are bound by them. Bremer v. Weeks, 104 Hawai'i 43, 63, 85 P.3d 150, 170 (2004).

Pacheco told Dawson to stop reaching into his pockets, but Dawson said he had to get a screwdriver. Officer Pacheco saw Dawson remove a glass pipe from his pocket and place the pipe in a plastic bag behind him. Officer Pacheco recognized the glass pipe as a pipe commonly used to smoke crystal methamphetamine. Officer Pacheco did not take any action upon seeing Dawson remove the glass pipe but waited until a back-up officer arrived.

Officer Kang arrived at around this time. As Officer Kang was approaching Officer Pacheco and Dawson, Officer Kang heard Officer Pacheco telling Dawson to keep his hands out of his pockets and saw Dawson take an object from Dawson's pocket and place it in a plastic bag. Officer Kang could not tell what the object was. After dispatch confirmed the outstanding warrant, Officer Pacheco placed Dawson under arrest for the warrant and "the drugs." Officer Kang assisted in arresting Dawson and recovering the glass pipe. The outstanding warrant was a bench warrant issued by circuit court Judge Rhonda A. Nishimura on October 3, 2005, for Dawson's failure to appear at a calendar call on pending third-degree theft and third-degree assault charges, with a bail amount of \$3,000.

II.

The circuit court denied Dawson's motion to suppress evidence. The court concluded in relevant part:

In the instant case, the police officers had specific and articulable facts to temporarily detain Defendant Dawson based on a reasonable suspicion that there was an outstanding warrant for his arrest and that he had been involved in an automobile theft. A car that was reported stolen was in fact found by Officer Pacheco at 1421 Alapai Street. Officer Kang knew Defendant Dawson was a suspect involved with car thefts. On prior occasions, Dawson had run from Police when HPD officers were sent to 1421 Alapai to investigate car thefts. For these reasons, it cannot be said that Defendant was not a suspect for the auto theft. Officer Kang specifically requested the warrant check because he knew that: (1) Defendant Dawson was seen in the past at 1421 Alapai Street[;] (2) Defendant Dawson was a suspect in other car theft cases; (3) he recalled that there was a warrant for Defendant Dawson and wanted to confirm that the warrant was still outstanding. The State asserts that the police did not detain Defendant Dawson solely to perform the check for outstanding warrants. Officer Pacheco's investigation was still in progress when the warrant confirmation was received. In requesting the

warrant check prior to his arrival at the scene, Officer Kang was attempting to minimize the length of any detention of Defendant Dawson.

Officer Pacheco [sic] actions during the warrant check were completely appropriate. She had to watch Defendant Dawson closely because he was placing his hands into his front pants pockets. For the safety of herself and Officer Kang, Officer Pacheco instructed Defendant Dawson to keep his hands out of his pockets. Despite this instruction, Defendant Dawson chose to place his hands into his pockets for a second time. After removing his hands from his pockets a second time, Defendant Dawson voluntarily removed a glass pipe with his right hand from his right pants pocket. He then reached for a plastic bag behind him in an attempt to conceal the glass pipe with residue into it. Because of her training and experience, Officer Pacheco quickly recognized what the glass pipe was. The discovery of the pipe was not the result of any search conducted by either officer. The pipe was discovered before Officer Pacheco and Officer Kang received confirmation of the outstanding warrant. Officer Pacheco's actions were in no way an attempt to lengthen Defendant Dawson's detention prior to receiving confirmation on the warrant. Based upon the confirmed warrant and the charge of Promoting a Dangerous Drug in the Third Degree, Defendant Dawson was arrested and the glass pipe was recovered and submitted as evidence.

ACCORDINGLY, Defendant Dawson's Motion to Suppress Evidence and Statements is hereby denied.

STANDARD OF REVIEW

Motions to Suppress Evidence

A trial court's ruling on a motion to suppress evidence is reviewed *de novo* to determine whether the ruling was "right" or "wrong." The proponent of the motion to suppress has the burden of establishing, by a preponderance of the evidence, that the statements or items sought to be excluded were unlawfully secured and that his or her right to be free from unreasonable searches or seizures was violated under the fourth amendment to the United States Constitution and article I, section 7 of the Hawai'i Constitution.

State v. Spillner, 116 Hawai'i 351, 357, 173 P.3d 498, 504 (2007) (citations omitted).

Appellate review of factual determinations made by the trial court deciding pretrial [suppression] motions in a criminal case is governed by the clearly erroneous standard. A finding of fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is left with a definite and firm conviction that a mistake has been made. The circuit court's conclusions of law are reviewed under the right/wrong standard.

State v. Balberdi, 90 Hawai'i 16, 20-21, 975 P.2d 773, 777-78 (App. 1999) (quoting State v. Anderson, 84 Hawai'i 462, 467, 935 P.2d 1007, 1012 (1997)).

DISCUSSION

Both Dawson and the State agree that the principal issue raised in this appeal is whether the existence of the "possible" outstanding warrant revealed by the computer check constituted sufficient reasonable suspicion to detain Dawson. Before we address this question, however, we must determine when Dawson was first seized.

I.

The police may temporarily seize or detain an individual to investigate possible criminal behavior based on reasonable suspicion, even if there is no probable cause for an arrest. Spillner, 116 Hawai'i at 357-58, 173 P.3d at 504-05; State v. Melear, 63 Haw. 488, 493, 630 P.2d 619, 624 (1981). To justify an investigative detention under the reasonable suspicion standard, "the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion." Terry v. Ohio, 392 U.S. 1, 21 (1968); Spillner, 116 Hawai'i at 357, 173 P.3d at 504; Melear, 63 Haw. at 493, 630 P.2d at 624.

It is clear that "not every street encounter between the police and the public constitutes a 'seizure.'" State v. Tsukiyama, 56 Haw. 8, 12, 525 P.2d 1099, 1102 (1974). "Only when the officer, by means of physical force or show of authority[,] has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." Id. (quoting Terry, 392 U.S. at 19 n.16). A court must evaluate the totality of the circumstances in determining whether a defendant was seized. Id. A defendant is seized "'only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he [or she] was not free to leave.'" State v. Quino, 74

Haw. 161, 169, 840 P.2d 358, 362 (1992) (quoting United States v. Mendenhall, 446 U.S. 544, 554 (1980)).

Relying on Quino, Dawson argues that he was seized the moment that Officer Pacheco walked up to him and asked his name. Dawson contends that because at this point Officer Pacheco did not know his identity, Officer Pacheco had no basis, much less reasonable suspicion, to detain him. The State, relying on Tsukiyama, contends that Dawson was not seized or detained until after Dawson identified himself and Officer Pacheco recognized Dawson's name and directed him to sit down. We agree with the State.

A.

In Tsukiyama, 56 Haw. at 12-17, 525 P.2d at 1102-05, the Hawai'i Supreme Court held that the on-the-street questioning of Tsukiyama, which included a request for identification, did not constitute a detention or seizure of Tsukiyama. At about 1:00 a.m., police officers encountered Tsukiyama among a group of people gathered around three parked vehicles, one of which appeared to be stalled. Id. at 9-10, 525 P.2d at 1100-01. Officer Kaalele asked Tsukiyama if he knew to whom the third parked vehicle belonged. Id. at 10, 525 P.2d at 1101. When Tsukiyama acknowledged owning the vehicle, Officer Kaalele asked who owned the bicycle in the back of the vehicle, and Tsukiyama responded that the bicycle belonged to one of his sons. Id. Officer Kaalele then asked Tsukiyama if he had some kind of identification, and Tsukiyama said that it was in the glove compartment of his car. Id. Officer Kaalele asked Tsukiyama if he would get it, and Tsukiyama proceeded to enter the vehicle and open the glove compartment. Id. As Tsukiyama did so, Officer Kaalele saw the butt of a revolver in the glove compartment and restrained and arrested Tsukiyama after a struggle. Id. at 11, 525 P.2d at 1101. A gun and drugs were recovered from the glove compartment and other areas of the vehicle, which led to

Tsukiyama's prosecution and conviction. Id. at 8-11, 525 P.2d at 1100-01.

The supreme court affirmed the trial court's denial of Tsukiyama's motion to suppress evidence. Id. at 18, 525 P.2d at 1105. The issue on appeal was whether the recovery of the contraband from Tsukiyama's vehicle was the fruit of an unlawful detention. The court framed the issue as whether Tsukiyama had been seized or detained by the police at any time before Officer Kaalele saw the gun in the glove compartment. Id. at 11, 525 P.2d at 1101-02. In support of its conclusion that Tsukiyama had not been seized or detained before Officer Kaalele saw the gun, the court noted, among other things, that: 1) "Officer Kaalele's questions to the defendant were not overbearing or harassing in nature, and the officer did not make a show of authority, make any threats or draw a weapon"; and 2) Officer Kaalele and the other officers at the scene did not know Tsukiyama before he was arrested. Id. at 13, 525 P.2d at 1102-03.

The supreme court stated that not every street encounter or personal intercourse between the police and the public constitutes a seizure. Id. at 12, 525 P.2d at 1102. The court held that "[t]he informal questions addressed to [Tsukiyama] by Officer Kaalele . . . [was] only a minimal intrusion on his privacy and did not rise to the level of a 'seizure' within the meaning of the Fourth Amendment." Id. at 13, 525 P.2d at 1103. The court reasoned that "there is no constitutional objection for a policeman merely to inquire of a person on the streets in a proper manner when the individual to whom the questions are addressed is under no compulsion to cooperate." Id. It concluded that "mere field interrogation, without more, by a police officer does not involve 'detention' in the constitutional sense so long as the officer does not deny the individual the right to move." Id. at 14, 525 P.2d at 1103.

Consistent with the decision in Tsukiyama, the United States Supreme Court and courts from other jurisdictions have similarly concluded that general on-the-scene questioning by a

police officer does not constitute a seizure. Florida v. Royer, 460 U.S. 491, 497 (1983) (stating that "law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, [or] by putting questions to him if the person is willing to listen"); Florida v. Bostick, 501 U.S. 429, 434 (1991) (stating that "a seizure does not occur simply because a police officer approaches an individual and asks a few questions"); In re Manuel G., 941 P.2d 880, 883, 889-91 (Cal. 1997) (same); People v. Daniels, 408 N.W.2d 398, 400 (Mich. Ct. App. 1987) ("[A] police approach for questioning on the street amounts to a consensual encounter, not a Terry stop, unless there exist intimidating circumstances leading the person to reasonably believe he was not free to leave"); State v. Mitchell, 638 So. 2d 1015, 1016 (Fla. Dist. Ct. App. 1994) (stating that an officer may address questions to anyone on the street and that such questioning will usually constitute a consensual encounter rather than a stop as long as the officer does not attempt to prevent the person from exercising his right to walk away).

B.

In Quino, 74 Haw. at 163-64, 840 P.2d at 360, the Hawai'i Supreme Court addressed the legality of HPD's "walk and talk" drug interdiction program. Under this program, narcotics/vice officers, without reasonable suspicion, would approach arriving passengers at the airport with the intent and purpose of investigating the passengers for drug trafficking. Id. at 163-64, 840 P.2d at 360. "Utilizing questions that gradually became more intrusive, the officers sought to bootstrap their investigation into discovery of possible criminal activity by the [passengers]." Id. at 172, 840 P.2d at 363. The officers were trained to ask a pre-determined series of questions leading to requests for consent to search the passengers' luggage and pat down their bodies. Id. at 164-65, 840 P.2d at 360.

The supreme court held that the situation presented by the "walk and talk" program was substantially different from the "field interrogation" found permissible in Tsukiyama. Id. at 171-72, 840 P.2d at 363. The court explained:

Quino's situation differs substantially from Tsukiyama because [the police officers in Quino] deliberately initiated their encounter with Quino and his companions for the specific purpose of investigating possible drug trafficking by them. Utilizing questions that gradually became more intrusive, the officers sought to bootstrap their investigation into discovery of possible criminal activity by the group. By contrast, the officers in Tsukiyama came upon the men by happenstance. The questions asked were general, non-intrusive and limited to a request for identification. No one in the group was under investigation for specific criminal activity until the gun was observed in the glove compartment.

Id. at 171-72, 840 P.2d at 363.

The court held that in the "walk and talk" situation, once the stop turned from general to inquisitive questioning, a reasonable person in Quino's position would not have believed that he was free to ignore the officer's inquiries and walk away. Although no physical force was used, given the totality of the circumstances, we hold that a seizure took place within the meaning of article I, section 7 of the Hawai['i] Constitution.

Id. at 173, 840 P.2d at 364.

C.

We conclude that Officer Pacheco's initial encounter with Dawson was a non-intrusive, on-the-street "field interrogation" found permissible in Tsukiyama. It was far different from the staged, police-controlled "walk and talk" encounter found unlawful in Quino, in which police officers deliberately targeted arriving passengers and questioned them for the specific purpose of developing evidence that they were drug traffickers. See Quino, 74 Haw. at 172-73, 840 P.2d at 363-64. Accordingly, Tsukiyama is the controlling precedent for this case.

When Officer Pacheco approached Dawson, she did not know who Dawson was and did not view him as a suspect in her auto theft recovery investigation. Officer Pacheco's purpose in approaching Dawson was to gather information about the stolen car

by seeing if Dawson knew anything about it. Unlike the "walk and talk" program, Officer Pacheco did not approach Dawson for the purpose of targeting him for investigation as part of a staged, pre-planned attempt to secure incriminating evidence against him. There is no evidence to suggest that Officer Pacheco drew her weapon, made any coercive displays of authority, or questioned Dawson in an overbearing or harassing manner. Instead, the evidence shows that Officer Pacheco approached Dawson as a potential witness who might be able to assist her in her investigation and that in that context, she asked him for his name and identifying information.

Under these circumstances, Dawson was not seized or detained when Officer Pacheco initially approached him and asked for his name. Rather, we conclude that Dawson was not seized until after he had disclosed his identity and Officer Pacheco realized who Dawson was and instructed him to sit down. It was only when Officer Pacheco directed Dawson to sit down that Officer Pacheco, by means of her show of authority, restrained Dawson's liberty and a reasonable person in Dawson's position would not have felt free to leave.

II.

The police are authorized to arrest a person on an outstanding bench warrant. Indeed, Hawaii Rules of Penal Procedure (HRPP) Rule 9(c)(3) provides that a warrant "shall be executed without unnecessary delay by the arrest of the defendant." Dawson does not dispute that the outstanding warrant on which Dawson was arrested was valid and that a valid warrant constitutes probable cause to arrest.

The decisive question raised in this appeal is whether Officer Pacheco's knowledge that a computer check by dispatch had revealed an outstanding warrant for Dawson was sufficient to constitute reasonable suspicion to detain Dawson. We conclude that such knowledge, at minimum, provided Officer Pacheco with reasonable suspicion. Thus, once Officer Pacheco learned that the man she had approached was Dawson, Officer Pacheco was

authorized to detain him. Accordingly, the circuit court properly determined that Dawson's detention was lawful.^{8/}

A.

The Hawai'i courts have not previously addressed the situation presented by this case. Previous cases have addressed the situation in which a warrant check was initiated or contemplated after the defendant was already detained in connection with an investigation of offenses unrelated to the warrant. The rule that emerged from these cases is that the police may conduct a warrant check pursuant to a lawful detention as long as the warrant check does not prolong the detention beyond the time necessary to perform the investigation that justified the detention.

In State v. Barros, 98 Hawai'i 337, 344, 48 P.3d 584, 591 (2002), the Hawai'i Supreme Court held that "an officer is not prohibited from requesting a warrant check incident to the issuance of a citation for a traffic violation when the check does not prolong the length of time needed to issue a citation."

In State v. Silva, 91 Hawai'i 111, 117, 979 P.2d 1137, 1143 (App. 1999) (Silva I), this court held that where the police had probable cause to arrest the defendant for a petty misdemeanor and a violation, and where under Hawaii Revised Statutes (HRS) § 803-6 (1993), the existence of outstanding arrest warrants was relevant to the officer's decision on whether to issue citations or arrest for these offenses, the police were authorized to conduct a warrant check. In support of our holding, we noted that the United States Supreme Court had "seemingly approved" and other courts had "generally upheld" the use of warrant checks to determine whether the person subject to a valid investigatory stop was wanted. Id. at 118, 979 P.2d at

^{8/} Dawson challenges a number of the circuit court's findings of fact and conclusions of law. Our response to the challenges that are material are subsumed within our analysis. Thus, we find it unnecessary to separately address each of Dawson's challenges to the circuit court's findings of facts and conclusions of law.

1144. The Hawai'i Supreme Court affirmed the result reached by this court in Silva I. State v. Silva, 91 Hawai'i 80, 81, 979 P.2d 1106, 1107 (1999) (Silva II). However, the supreme court clarified that it did not read this court's majority opinion "as generally allowing the police to prolong the detention of individuals subjected to brief, temporary investigative stops--once such stops have failed to substantiate the reasonable suspicion that initially justified them--solely for the purpose of performing a check for outstanding warrants." Id.

In State v. Ramos, 93 Hawai'i 502, 508, 6 P.3d 374, 380 (App. 2000), this court held that the initial detention of Ramos was lawfully based on reasonable suspicion that Ramos may have been chasing someone with a knife. However, after the police investigation had dispelled this reasonable suspicion, the police continued to detain Ramos to obtain identification from him that they could have used to check for outstanding warrants. Id. at 509-12, 6 P.3d at 381-84. This court held that the continued detention of Ramos without reasonable suspicion in order to demand identification from him was unlawful. Id. at 510-11, 6 P.3d at 382-83.

B.

Dawson's contention that these cases support his argument is unconvincing. In Barros, Silva I and II, and Ramos, the investigating officers had no information about whether the defendants had outstanding warrants before the defendants were detained. In Barros and Silva I and II, the warrant checks were initiated after the defendants were detained, and in Ramos, the identification information that could have been used to conduct a warrant check was requested after the defendant was detained. In Dawson's case, Officer Pacheco knew that a computer check by HPD dispatch had revealed an outstanding warrant for Dawson before Dawson was detained. We therefore consider a question not addressed by the previous cases, namely, whether Officer Pacheco's knowledge that an HPD computer check revealed an

outstanding warrant for Dawson constituted reasonable suspicion to support Dawson's detention. We hold that it did.

Other jurisdictions have concluded that computer checks which revealed outstanding warrants not only constitute reasonable suspicion to detain, but satisfy the more stringent standard of probable cause to arrest. United States v. Miller, 382 F. Supp. 2d 350, 367-69 (N.D.N.Y. 2005) (concluding that outstanding warrant revealed through computer warrant check constituted probable cause to arrest even before the warrant was confirmed), aff'd, 265 F. App'x 5 (2d Cir. 2008); State v. Stamp, 718 So. 2d 531, 533 (La. Ct. App. 1998) (concluding that outstanding arrest warrant revealed through computer check established probable cause to arrest); State v. Walkin, 802 So. 2d 1169, 1171 (Fla. Dist. Ct. App. 2001) (same); Gibson v. State, 733 N.E.2d 945, 954 (Ind. Ct. App. 2000) (same).

Miller is particularly instructive. In Miller, a New York federal district court held that a computer check which revealed an outstanding warrant constituted probable cause to arrest Miller, even before the computer check was verified. 382 F. Supp. 2d at 356-57, 368-69. Officer Morrow of the Watervliet Police Department saw Miller run a red light, followed him for a short time, then signaled Miller to pull over. Id. at 356. Officer Morrow approached Miller's car and obtained license, registration, and insurance information from Miller. Id. While Officer Morrow was speaking to Miller, they were approached by a pedestrian named Lewis, Miller's cousin, whom the officer recognized as a member of a violent street gang. Id. Each time Lewis approached, Officer Morrow ordered Lewis away. Id. Nervous about Lewis's intervention, Officer Morrow returned to his patrol car and asked for back-up. Id.

At the same time, Officer Morrow used the patrol car's computer to run a license check on the New York State Police Information Network (NYSPIN) and learned that there was an outstanding Troy, New York warrant authorizing Miller's arrest. Id. at 356-57. Officer Morrow then contacted dispatch to verify

that the Troy warrant was active. Id. at 357. It was the policy of the Watervliet Police Department to confirm that the jurisdiction issuing the warrant still wanted the subject before effecting an arrest based on the warrant. Id. Nevertheless, before Officer Morrow received confirmation of the warrant, Officer Morrow ordered Miller out of Miller's car, arrested Miller on the outstanding warrant, and searched him. Id. The search of Miller's person incident to his arrest resulted in the recovery of his wallet, a set of odd-shaped keys, and cash. Id. Subsequent to these actions, dispatch radioed that the Troy warrant had been confirmed. Id. The Troy warrant had been issued by a New York State Judge in connection with a misdemeanor assault charge. Id. at 359.

A subsequent search of Miller's car resulted in the recovery of a gun, ammunition, and drugs, including those found in a safe in the trunk that Officer Morrow unlocked with the keys he had seized from Miller. Id. at 358. Miller moved to suppress the evidence seized from his person and car. Id. at 359-60. The government sought to justify the recovery of this evidence on various grounds, including that 1) there was probable cause to arrest Miller based on the Troy warrant and 2) the searches of Miller's person and the interior of his car were justified as searches incident to Miller's lawful arrest. Id. at 360. Thus, one of the issues facing the court was whether Miller's arrest had been lawfully based on probable cause.

Miller argued that Officer Morrow lacked probable cause to arrest him because Officer Morrow arrested Miller before the Troy warrant had been confirmed. Id. at 368. The court rejected this argument. Citing numerous decisions of other courts in its circuit, the court held that "probable cause to arrest exists on the basis of a computer hit where there is no evidence that the information contained in the computer was false or invalid." Id. at 368-69. The court further held that Officer Morrow's subjective belief that, under Watervliet's policy and state procedures, he lacked authority to arrest Miller absent warrant

confirmation was irrelevant. Id. at 369. The court concluded that even if the Watervliet policy required confirmation of the warrant before effecting an arrest, that policy could not alter the court's determination that the outstanding warrant revealed through Officer Morrow's computer check established probable cause for Miller's arrest before the warrant was confirmed. Id. The court further noted that the mistaken belief of the police that they lack probable cause to arrest "is irrelevant to whether it legally existed." Id. at 366.^{9/}

C.

Miller supports our conclusion that Officer Pacheco's knowledge that a computer check run by dispatch had revealed an outstanding warrant for Dawson was, at minimum, sufficient to establish reasonable suspicion to detain Dawson.^{10/} Our conclusion is also supported by the other cited non-Hawai'i cases upholding the validity of arrests based on outstanding warrants revealed through computer checks. As in Miller, Officer Pacheco was entitled to rely on the "computer hit" to detain Dawson since she was not aware of any evidence suggesting that the computer information was false or invalid. Indeed, Officer Pacheco did precisely what we would want a law enforcement officer to do in her situation. We want officers to execute outstanding arrest warrants on wanted individuals whom the officers encounter. Consistent with HPD's apparent policy, Officer Pacheco proceeded cautiously in detaining rather than arresting Dawson until the outstanding warrant was confirmed.

It would be anomalous if notwithstanding Officer Pacheco's knowledge that a computer check showed an outstanding warrant for Dawson, Officer Pacheco was powerless to prevent

^{9/} In an unpublished decision, the United States Court of Appeals for the Second Circuit affirmed the district court's determination that there was probable cause for Miller's arrest. Miller, 265 F. App'x at 7.

^{10/} Because the issue raised by Dawson in this appeal only involves whether Dawson's detention was supported by reasonable suspicion, we need not decide whether the computer check revealing the "possible" warrant constituted probable cause to arrest Dawson.

Dawson from fleeing until confirmation of the physical paper warrant could be obtained. As noted by the Hawai'i Supreme Court:

Neither the fourth amendment nor the Hawai'i Constitution "require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, Terry recognizes that it may be the essence of good police work to adopt an intermediate response."

State v. Kaleohano, 99 Hawai'i 370, 380, 56 P.3d 138, 148 (2002) (block quote format changed) (quoting Adams v. Williams, 407 U.S. 143, 145 (1972)).

The fact that Officer Pacheco did not know how long it would take for the warrant to be confirmed, and that confirmation in certain cases could take as long as 25 minutes, does not affect our analysis. In this case, the length of Dawson's detention before the warrant was confirmed was only approximately four minutes. Thus, Dawson's detention was lawful. We need not determine whether a hypothetical longer detention in another case would be permissible.^{11/}

^{11/} We note that at the suppression hearing, Dawson introduced a February 19, 2006, article from the Honolulu Advertiser entitled, "Arrest warrants backlog tops 61,000." The article noted that "[t]o get a handle on the backlog, the Judiciary last year purged more than 25,000 old traffic warrants, some for major violations." Dawson presumably introduced the article to cast doubt on the validity of the information revealed through a computer check for warrants. We fail to see the probative value of this article and there is no indication that the circuit court gave it any weight in rendering its decision. The "purging" of a warrant does not mean that the warrant was invalid; it may simply mean that the State chose to dismiss or not pursue the underlying matter. Thus, even if the article accurately reported the Judiciary's "purging" of warrants, the article did not provide a sound basis for attacking the validity of the information revealed through a computer check for warrants.

We are also unpersuaded by the State's attempt to use the article to support its argument. On appeal, the State asserts that Dawson used the article to speculate that from one-third to one-half of the warrants entered into the system have been canceled. The State then attempts to turn Dawson's speculation into an argument that the probability that from one-half to two-thirds of the warrants in the computer system will be confirmed is sufficient to constitute reasonable suspicion. We conclude that the State's reliance on the article is unfounded.

III.

The circuit court ruled that Dawson's detention was justified based on reasonable suspicion that there was an outstanding warrant for his arrest and that he had been involved in an automobile theft. Our determination that Officer Pacheco had reasonable suspicion to detain Dawson based on the computer check which revealed an outstanding warrant provides a sufficient basis for us to affirm the circuit court's denial of Dawson's motion to suppress. We therefore decline to address the circuit court's additional conclusion that Dawson's detention was justified based on reasonable suspicion that Dawson had been involved in an automobile theft.

CONCLUSION

We affirm the January 17, 2007, Judgment of the circuit court.

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