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MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
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**DISTRICT II**

December 18, 2019

To:

Hon. Gary R. Sharpe  
Circuit Court Judge  
Fond du Lac County Courthouse  
160 S. Macy St.  
Fond du Lac, WI 54935

Walter Arthur Piel Jr.  
Piel Law Office  
Ste. K-200  
500 W. Silver Spring Dr.  
Milwaukee, WI 53217

Ramona Geib  
Clerk of Circuit Court  
Fond du Lac County Courthouse  
160 S. Macy St.  
Fond du Lac, WI 54935

Eric Toney  
District Attorney  
Fond du Lac County  
160 S. Macy St.  
Fond du Lac, WI 54935

John W. Kellis  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707

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

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2019AP54-CR

State of Wisconsin v. Jason S. Guell (L.C. #2017CF196)

Before Neubauer, C.J., Reilly, P.J., and Davis, J.

**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).**

Jason S. Guell appeals from a judgment of conviction for operating a vehicle with a restricted controlled substance in his blood, fourth offense. Guell argues that the circuit court's denial of his motion to suppress was in error as the stop of Guell's vehicle was not supported by reasonable suspicion. Based upon 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 (2017-18).<sup>1</sup> We affirm.

On March 29, 2017, the Fond du Lac Police Department received a report of an unresponsive male driver “parked in the middle of 3rd Street.”<sup>2</sup> The female caller, who was not anonymous, reported that the car had been in the street for twenty-five minutes with the engine running. She provided a license plate number of the vehicle, which was registered to Guell. The caller made “several attempts to wake the driver” by “pounding on windows and things like that.” An officer and an ambulance were dispatched to the location, but, while en route, the driver woke up and drove off. The officer located the vehicle and conducted a traffic stop, confirming Guell was the driver.

Upon making contact with Guell, the officer noted the odor of marijuana and observed that Guell had “glassy eyes and was slurring his words” as well as “pin point pupils,” which, according to the officer’s training and experience, indicated drug use. The officer administered standardized field sobriety tests, which revealed indicators of impairment. Guell was arrested. The State charged Guell with operating a motor vehicle while intoxicated and operating with a restricted controlled substance in his blood, both fourth offenses.

Guell moved to suppress the evidence gathered as a result of the stop, arguing that the officer lacked reasonable suspicion to stop his vehicle. After a hearing, the circuit court denied the motion, concluding both that the officer was acting under his community caretaker function

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

<sup>2</sup> The officer testified that “[m]y understanding of it was that he wasn’t like in a parking space or parking lot. It was kind of out in the middle of traffic or at least partially out in traffic.”

and that there was reasonable suspicion based on the totality of the circumstances to stop Guell. Pursuant to a plea agreement, Guell pled no contest to operating a vehicle with a detectable amount of a restricted controlled substance in his blood, pursuant to WIS. STAT. § 346.63(1)(am), and the State dismissed the remaining charge. The circuit court withheld his sentence and placed Guell on probation for two years with conditions. Guell appeals.

We review an order denying a motion to suppress evidence under a two-step analysis: “First, we review the circuit court’s findings of historical fact under a deferential standard, upholding them unless they are clearly erroneous. Second, we independently apply constitutional principles to those facts.” *State v. Matalonis*, 2016 WI 7, ¶28, 366 Wis. 2d 443, 875 N.W.2d 567 (citation omitted). Guell argues that the officer was not justified in executing the traffic stop under the community caretaker exception and, in the alternative, that the officer did not have reasonable suspicion to stop Guell. For the reasons that follow, we conclude that the officer had reasonable suspicion to stop Guell’s vehicle.<sup>3</sup>

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<sup>3</sup> We also conclude that the officer was engaged in a bona fide community caretaker function. We note that “a police officer serving as a community caretaker to protect persons and property may be constitutionally permitted to perform warrantless searches and seizures.” *State v. Pinkard*, 2010 WI 81, ¶14, 327 Wis. 2d 346, 785 N.W.2d 592. We consider the reasonableness of a warrantless seizure on community caretaker grounds under a three-step test:

- (1) whether a search or seizure within the meaning of the Fourth Amendment has occurred;
- (2) if so, whether the police were exercising a bona fide community caretaker function; and
- (3) if so, whether the public interest outweighs the intrusion upon the privacy of the individual such that the community caretaker function was reasonably exercised within the context of a home.

*State v. Matalonis*, 2016 WI 7, ¶31, 366 Wis. 2d 443, 875 N.W.2d 567 (citation omitted). It is the State’s burden to establish these factors. *Id.* The parties agree that the first factor has been satisfied: a seizure occurred when the officer executed a traffic stop on Guell.

(continued)

A law enforcement officer may “conduct a traffic stop when, under the totality of the circumstances, he or she has grounds to reasonably suspect that a crime or traffic violation has been or will be committed.” *State v. Popke*, 2009 WI 37, ¶23, 317 Wis. 2d 118, 765 N.W.2d 569; *see also State v. Post*, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634. The officer, “in light of his or her training and experience,” “must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant’ the intrusion of the stop.” *Post*, 301 Wis. 2d 1, ¶¶10, 13 (citation omitted). “[P]olice officers are not required to rule out the possibility of innocent behavior before initiating a brief stop,” *State v. Waldner*, 206 Wis. 2d 51, 59, 556 N.W.2d 681 (1996), and “a driver’s actions need not be erratic, unsafe, or illegal to give rise to reasonable suspicion,” *Post*, 301 Wis. 2d 1, ¶24.

Here, the officer was aware of an unconscious driver behind the wheel of a vehicle parked, with the engine running, in the middle—or partially in the middle—of the street for at

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The officer in this case was engaged in a bona fide community caretaker function at the time he stopped Guell under the totality of the circumstances. *See id.*, ¶32. The caller reported a driver passed out in the middle of the street who was unable to be roused by banging on the windows of the vehicle. Based on the caller’s report, both the officer and an ambulance were dispatched to the location as, according to the officer’s testimony, the driver could have been suffering from any number of medical issues affecting his health and safety. The fact that Guell drove away from the scene did not alleviate concerns that Guell had suffered a medical event or was a danger to the public. *See State v. Gracia*, 2013 WI 15, ¶¶20-22, 345 Wis. 2d 488, 826 N.W.2d 87.

Under the third step, we must “balance the public interest or need that is furthered by the officers’ conduct against the degree and nature of the intrusion on the citizen’s constitutional interest.” *Pinkard*, 327 Wis. 2d 346, ¶41. To do so, we review four considerations. *Matalonis*, 366 Wis. 2d 443, ¶33. Addressing these considerations, we note that Guell was unconscious for a significant amount of time (twenty-five minutes) and he was operating a car, which poses a high degree of public interest both in his safety and the safety of others on the road. The officer executed a traffic stop on Guell without any unusual or unnecessary overt authority or force displayed. Guell was in his vehicle, where he has a lesser expectation of privacy. *See Pinkard*, 327 Wis. 2d 346, ¶56. Finally, conducting a brief investigatory stop on Guell was the most feasible and reasonable option under the circumstances as ignoring the situation would risk Guell injuring someone else in the community. We conclude that the State has met its burden, and the officer was justified in conducting a traffic stop on Guell under his community caretaker function.

least twenty-five minutes, impeding traffic. The officer also knew that the caller had tried to rouse the driver multiple times without success. It is undeniable that these specific and articulable facts suggest impairment from which a reasonable officer could infer that something unlawful might be afoot, warranting a brief investigatory stop. It matters little that Guell, after regaining consciousness, drove off on his own or that upon following Guell for approximately thirty seconds, the officer noticed no erratic or illegal driving. See *Post*, 301 Wis. 2d 1, ¶24. Following this lawful stop, the officer's additional observations of the odor of marijuana, glassy eyes, slurred speech, and pin-point pupils as well as the field sobriety tests provided the officer with probable cause to arrest Guell.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

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