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 II

August 12, 2020

To:

Hon. Robert J. Wirtz
Circuit Court Judge
Fond du Lac County Courthouse
160 S. Macy St.
Fond du Lac, WI 54935

Walter Arthur Piel Jr.
Piel Law Office
11414 W. Park Pl., Ste. 202
Milwaukee, WI 53224

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

Sonya Bice Levinson
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707

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

2019AP1342-CR State of Wisconsin v. Jason S. Guell (L.C. #2017CF383)

Before Neubauer, C.J., Gundrum and Davis, 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).

Jason S. Guell appeals from a judgment of conviction and the denial of a motion to suppress evidence. Upon reviewing the briefs and the record, we conclude at conference this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21.[1] We affirm.

[1] All references to the Wisconsin Statutes are to the 2017-18 version.

On July 14, 2017, police were called to Kidz Choice Learning Center in Fond du Lac to investigate potential child neglect. The reporting officer, Officer Jonathan Williams, soon learned that the child's parent was Jason Guell. On this occasion, Guell was over two hours late picking up his child; Williams also learned from personnel at the center that Guell was habitually late in picking up his child. Williams was familiar with Guell, as Williams had participated in a traffic stop of Guell a few months prior. During that previous encounter, Guell was arrested for operating while intoxicated (OWI).

Guell arrived at the center fifteen or twenty minutes after Williams responded to the scene. Williams met Guell in the parking lot as Guell was arriving. Williams immediately noticed that Guell's pupils were constricted and his speech slurred and that he was having a hard time keeping his balance. Guell admitted to taking one of his methadone pills.

Given these visible signs of impairment, and taking into account his prior contact with Guell, Williams put Guell through field sobriety tests. Upon the completion of the field sobriety tests, Williams determined that Guell was not able to safely operate a motor vehicle. Guell was then arrested for OWI.

Prior to trial, Guell moved to suppress all evidence obtained as a result of his detention on the grounds that it was procured without reasonable suspicion. The circuit court determined that Guell's delay of over two hours in picking up his child was "highly excessive" and "need[ed] police intervention" and that consequently, the detention was a lawful ***Terry*** stop. *See* ***Terry v. Ohio***, 392 U.S. 1 (1968). The circuit court further found that although the stop began due to the possibility of neglect, it "morphed into an OWI investigation." The court concluded that all of the evidence of the investigative detention was admissible at trial. Guell then pled no

contest to felony bail jumping and operating with a restricted controlled substance (5th or 6th offense). *See* WIS. STAT. §§ 946.49(1)(b), 346.63(1)(am).

The review of a decision on the suppression of evidence involves a question of constitutional fact, which requires a two-step analysis. ***State v. Matalonis***, 2016 WI 7, ¶28, 366 Wis. 2d 443, 875 N.W.2d 567. This court applies a deferential standard to the circuit court's findings of historical fact. ***Id.*** We independently apply the relevant constitutional principles to these facts. ***Id.***

The Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution protects people against unreasonable searches and seizures. U.S. CONST. amend. IV; WIS. CONST. art. I, § 11. An investigatory stop, although a "seizure," is not considered "unreasonable" if based on reasonable suspicion. ***Terry***, 392 U.S. at 30. This means that the investigative stop must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." ***Id.*** at 21.

The constitutional standard for an investigative stop is reasonableness under the totality of the circumstances *known to the officer*. ***State v. Williams***, 2001 WI 21, ¶23, 241 Wis. 2d 631, 623 N.W.2d 106. Judging reasonableness requires us to apply the principle outlined in ***State v. Waldner***, 206 Wis. 2d 51, 58, 556 N.W.2d 681 (1996):

> The building blocks of fact accumulate. And as they accumulate, reasonable inferences about the cumulative effect can be drawn. In essence, a point is reached where the sum of the whole is greater than the sum of its individual parts. That is what we have here. These facts gave rise to a reasonable suspicion that something unlawful might well be afoot.

Finally, the observed conduct itself does not have to be unlawful to give rise to a reasonable suspicion. ***Waldner*** clarifies that "the law allows a police officer to make an investigatory stop based on observations of lawful conduct so long as the reasonable inferences drawn from the lawful conduct are that criminal activity is afoot." ***Id.*** at 57.

There is no question that a seizure occurred here, and the State does not suggest otherwise. The question is whether there was reasonable suspicion to justify it. Guell argues that Williams did not have reasonable suspicion to detain him based on his being over two hours late to pick up his child from daycare. We disagree. Williams' knowledge that Guell left his toddler at daycare for hours without explanation, his independent knowledge of a previous OWI, his knowledge that Guell was habitually late in picking up his child, and his observation of Guell driving into the parking lot added up to at least some concern that child neglect may be occurring or about to occur. *See* WIS. STAT. § 948.21(2) ("Any person who is responsible for a child's welfare who, through his or her action or failure to take action, for reasons other than poverty, negligently fails to provide [necessary care], so as to seriously endanger the physical, mental, or emotional health of the child, is guilty of neglect ...."). At the point at which Williams stopped Guell in the parking lot, the facts had sufficiently accumulated for Williams to have a reasonable suspicion of possible child neglect. *See* ***Waldner***, 206 Wis. 2d at 58.

We do not conclude that being late—even more than two hours late—to pick up one's child would, in and of itself, create reasonable suspicion of criminal activity. Here, there was more than that, including a consistent pattern of unexplained troubling behavior concerning child pick-up, as reported by the child care center and the officer's prior encounter with Guell. This was enough to justify brief questioning, at the very least. With additional facts evidencing intoxication gleaned almost immediately at the time of the detention, it is clear that Williams had

reasonable suspicion to initiate the stop, and quickly gathered reason to extend it to include field sobriety tests, which led to Guell's arrest and subsequent conviction. ***State v. Hogan***, 2015 WI 76, ¶35, 364 Wis. 2d 167, 868 N.W.2d 124 (officer may expand the scope of a stop if additional suspicious information comes to the officer's attention). The circuit court did not err in so finding.

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.

Sheila T. Reiff
Clerk of Court of Appeals