

STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT 4

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Appeal No. 2018 AP 000555  
Jefferson County Circuit Court Case Nos.2017CV000392

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**CITY OF WATERTOWN,**

Plaintiff-Respondent,

v.

**JEFFREY DONALD PERSCHKE,**

Defendant-Appellant.

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**AN APPEAL FROM THE JUDGEMENT OF  
CONVICTION AND OF THE TRIAL COURT'S RULING  
DENYING THE DEFENDANT'S MOTION FOR  
SUPPRESSION OF EVIDENCE IN THE CIRCUIT  
COURT FOR JEFFERSON COUNTY, THE HONORABLE  
WILLIAM F. HUE, PRESIDING JUDGE**

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**THE REPLY BRIEF AND APPENDIX OF THE  
DEFENDANT-APPELLANT JEFFREY D. PERSCHKE**

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*City of Wauwatosa v. Collett*, 99 Wis.2d 522, 524, 299  
N.W.2d 620 (Ct.App. 1980) . . . . . 8

## ARGUMENT

The crux of the City's argument is that the Court's factual finding regarding the radar device was proper and supported by the great weight and clear preponderance of the evidence. Brief of Plaintiff-Respondent, page 4. This argument is not supported by the officer's testimony, he testified that the radar device integration was not working, and he had no clue why it was not working.

It's clear the radar device used to determine Mr. Perschke's speed was integrated into Officer Lochowitz's squad car. When working properly the radar interface should be mirrored on the heads up display. (R.28:11/ReplyApp.1). Evidence adduced at the motion hearing established the heads up display worked inasmuch as the heads up display mirrored the officer's speed when he pursued Mr. Perschke's vehicle. Lochowitz increased his speed to 38 miles per hour during the pursuit. The trial court acknowledged that the video evidence and testimony initially offered at the January 2, 2018 motion hearing would not have been sufficient to justify the stop. The Court reasoned "If all they had was this, I wouldn't give it to them..." (R.28:15/ ReplyApp. 2). The defense did not challenge

the reliability of the radar, but rather the fact it simply did not work properly on the day in question. see *City of Wauwatosa v. Collett*, 99 Wis.2d 522, 524, 299 N.W.2d 620 (Ct.App. 1980) (challenges to accuracy or reliability of stationary radar device is a matter for defense).

Contrary to the City's contention, the evidence adduced at the motion hearing did not establish the radar device was working properly. The factual finding is not supported by the great weight and clear preponderance of the evidence and thus is clearly erroneous.

## CONCLUSION

Because of the above, Officer Lochowitz did not possess the requisite level of suspicion to stop Mr. Perschke's vehicle. Thus, the trial court erred in denying Mr. Perschke's suppression motion. The Court should vacate the judgment of conviction and reverse the trial court's order.

Dated this 26<sup>th</sup> day of September, 2018.

Respectfully Submitted

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## FORM AND LENGTH CERTIFICATION

The undersigned hereby certify that this brief and appendix conform to the rules contained in secs. 809.19(6) and 809.19(8) (b) and (c). This brief has been produced with a proportional serif font. The length of this brief is 9 pages. The word count is 1127.

Dated this 26<sup>th</sup> day of September, 2018.

Respectfully Submitted

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**CERTIFICATION OF COMPLIANCE WITH RULE  
809.19(12)**

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 26<sup>th</sup> day of September, 2018.

Respectfully submitted,

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## **APPENDIX CERTIFICATION**

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains: (1) a table of contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or a judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 26<sup>th</sup> day of September, 2018.

Respectfully submitted,

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**APPENDIX**