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**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II**

**Appeal No. 2025AP134
Calumet County Circuit Court Case No. 23CT72**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ROBERT W. BERGHUIS,

Defendant-Appellant.

**AN APPEAL FROM THE JUDGEMENT OF
CONVICTION IN THE CIRCUIT COURT FOR
CALUMET COUNTY, THE HONORABLE CAREY J.
REED, JUDGE, PRESIDING**

**THE REPLY BRIEF OF THE DEFENDANT-APPELLANT
ROBERT W. BERGHUIS**

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ARGUMENT

The State makes two arguments in its response brief. First, the evidence was sufficient for a jury to find that Mr. Berghuis' operated his vehicle on a "roadway" as that term is used in Wis. Stat. §340.01(22) when he tried to move the vehicle in the field, and second, that even if the vehicle had not been on a roadway, the evidence was sufficient to establish Mr. Berghuis was impaired when he drove from the softball game in Shawano to the location where the vehicle ended up. (See Brief of Plaintiff-Respondent page 3).

Addressing each argument, first, the evidence adduced at trial is contrary to the State's position as to the location of the vehicle. Testimony was received from Ms. Rowe, Deputy Beattie and Mr. Berghuis. Ms. Rowe testified on her way home from work, she observed a vehicle in a farm field. (R.54:15/Reply App.1). She drove past the location of the vehicle and returned. She specifically did not observe the vehicle traveling on any roadway or highway. (R.54:15/Reply App.1).

Rowe testified the vehicle was in the farm field, and it looked like the vehicle simply drove into the farm field, which was consistent with the testimony of Mr. Berghuis that he was checking the field. (R.54:15/Reply App.1). She believed the vehicle was stuck in the mud, because she observed the vehicle tried to move and the tires spun in the mud. When Rowe asked Mr. Berghuis where he was going, she could not remember if he said "nowhere" or "anywhere".

Deputy Beattie's testimony also supported the proposition that the vehicle was not on the roadway as that term is defined by statute. On cross-examination defense counsel questioned

Deputy Beattie about whether the field was slick. Defense counsel asked “but where the vehicle was actually located was slick’ is that right?” (R.54:42/Reply App.4). Deputy Beattie responded “In the grass part, field part, yeah.” (R.54:42/Reply App.4). At no point did Beattie challenge the assertion that the vehicle was in the field. Even on direct, he admitted the front of the vehicle was either at the “edge of the field or in it.” (R.54:25/Reply App.2). More importantly, the State put forth no evidence as to the boundary lines of the field from the ditch line. In summary, Rowe testified the vehicle was in the field, Mr. Berghuis testified the vehicle was in the field, the officer during cross-examination admitted the vehicle was in the grassy portion of the field.

The State failed to establish the location of the vehicle met the definition of roadway under Wis. Stat. §340.01(22). Even viewing the evidence most favorably to the State and giving deference to the jury decision, no jury acting reasonably based on the evidence presented could find Mr. Berghuis’ vehicle was being operated on a roadway when Ms. Rowe arrived on the scene or when Deputy Beattie observed Mr. Berghuis’s reverse lights activate. See *State v. Poellinger*, 153 Wis.2d 493, 507, 451 N.W.2d 752 (1990).

In terms of the second argument, both State’s witnesses came upon the vehicle as it was in the farm field. Neither witness observed the vehicle traveling on County Highway D or any other roadway. According to Deputy Beattie, Mr. Berghuis admitted to coming from Shawano. (R.54:30/Reply App.3). Beattie also agreed he did not know how long the vehicle had been at the location. (R.54:44/Reply App.5). Mr. Berghuis testified he drove

into the field that they own between 10:15 and 11:00 p.m. to check on the field for which they do combine work. (R.54:51-52/Reply App.6-7). Prior to driving into the field, he was at a softball game in Shawano which is about one hour away. The softball game ended at approximately 8:00 p.m., and Mr. Berghuis stayed at the game and consumed a couple beers and then drove to the field.

As he was driving home, Mr. Berghuis testified he had no issues in driving. (R.54:53/Reply App.8). The State did not specifically establish when Mr. Berghuis drove to the location. Furthermore, the evidence presented was insufficient to establish he was impaired at that moment.

CONCLUSION

Because the evidence presented at trial was insufficient to establish Mr. Berghuis' vehicle was on a roadway when the officer arrived, and insufficient to establish Mr. Berghuis was impaired when he drove his vehicle into the field to check it, the Court should reverse the conviction and dismiss the charge.

Dated this 4th day of June, 2025.

Respectfully Submitted

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FORM AND LENGTH CERTIFICATION

The undersigned hereby certifies 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 10 pages. The word count is 1544.

Dated this 4th day of June 2025.

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.

Dated this 4th day of June 2025.

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 4th day of June, 2025.

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