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**COURT OF APPEALS**

**State of Wisconsin  
Court of Appeals  
District 2  
Appeal No. 2025AP001380**

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State of Wisconsin,

Plaintiff-Respondent,

v.

Jonathan Glen Berbaum,

Defendant-Appellant.

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**On appeal from a judgment of the Ozaukee County Circuit  
Court, The Honorable Sandy Williams, presiding**

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**Defendant-Appellant's Brief and Appendix**

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Law Offices of Jeffrey W. Jensen  
161 S. First Street, Suite 200  
Milwaukee, WI 53204

414-224-9484  
jensen@milwaukeecriminaldefense.pro

Attorneys for the Appellant

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## **Statement on Oral Argument and Publication**

The issue presented by this appeal is controlled by well-settled law. Therefore, the appellant does not recommend either oral argument or publication.

## **Statement of the Issues**

Berbaum moved to suppress all evidence seized by police after a warrantless traffic stop. Berbaum asserted that the officer lacked reasonable suspicion to stop his vehicle. The court held a hearing on the motion, and denied it. Thus, the issue on appeal is whether the circuit court's findings of fact are sufficient to establish a reasonable suspicion to stop Berbaum's vehicle.

**Answered by the circuit court:** The officer had reasonable suspicion to stop Berbaum's vehicle.

## **Summary of the Argument**

The findings of fact made by the circuit court may be summarized as follows: Officer Larson received a "driving complaint" that a driver had struck the barrier and did not stop. Moments later, while on patrol, Larson saw a vehicle stopped in the middle of the road in a residential area. As Larson

approached, the vehicle drove away, and then Larson conducted a traffic stop.

As will be set forth in more detail below, even if none of the court's findings of fact are clearly erroneous, those facts are legally insufficient to establish a reasonable suspicion to stop Berbaum's vehicle.

## Statement of the Case

On April 4, 2023, the defendant-appellant, Jonathan Glen Berbaum (hereinafter "Berbaum") was charged with a third-offense operating an automobile while under the influence of alcohol. [R:4] According to the complaint, on March 31, 2023, at about 12:28 a.m., someone reported to law enforcement that another vehicle had struck a barrier while exiting from I-43. *Id.* While investigating, police stopped Berbaum's vehicle, and suspected that he was under the influence of alcohol. The officer conducted field sobriety tests on Berbaum, and then arrested him. *Id.*

Berbaum entered a not guilty plea to the charge.

On October 4, 2023, Berbaum filed a motion to suppress evidence. [R:19] The motion further alleged that the arrest was unreasonable because the police lacked probable cause.

The court conducted a hearing into Berbaum's motion on January 22, 2024. Testimony was received that on March 31,

2023, Officer Kristin Larson of the Port Washington Police Department was on routine patrol. [R:35-3, 4] Larson received a report from the Ozaukee County Sheriff's Department concerning a "driving complaint." [R:35-5] According to the report, "The vehicle supposedly was coming into our city and there were two officers in the area looking for this vehicle." [R:35-5] Larson testified that, "I was driving westbound on Grand Avenue. I had just left the police department, and observed a vehicle parked in the middle of the roadway in the northbound lane of South Spring Street. And this vehicle was stopped with its blinker on and there was no turn area. It was in front of a residence." [R:35-5] Larson pulled over and observed the vehicle. It drove away, and she noticed that the license plate matched the vehicle the sheriffs were looking for. *Id.* Larson followed the vehicle for a short distance, and then conducted a traffic stop. Later in her testimony, she claimed that she stopped Berbaum's vehicle for turning left without signaling. [R:35-9]

Concerning the "driving complaint", Deputy Alexander Nelson of the Ozaukee County Sheriff's Department testified that the sheriff's department received a "report of a possible driving infraction." [R:35-17] However, Nelson admitted that he did not get the name of the caller, nor a specific description of the supposed "driving infraction." [R:35-17] Nelson said that his understanding was that the caller said that the vehicle was

swerving and *possibly* struck some sort of barrier. [R:35-18]

At the conclusion of the hearing, the court took the motion under advisement, and ordered the parties to submit briefs. On February 15, 2024 the court conducted a decision hearing. At the outset, the court noted that Berbaum's motion to suppress only challenged the existence of probable cause to arrest, and it was not concerned with reasonable suspicion for the initial stop. [R:42-3, 4] The court made findings of fact, and then denied the motion to suppress. [R:42-8]

Later, with new counsel, Berbaum filed another motion to suppress, this time asserting that the officers lacked reasonable suspicion to stop him in the first instance. [R:48] The state filed a letter with the court indicating that a new evidentiary hearing was not necessary, and that the state would simply rely on the facts elicited at the first motion hearing. [R:49] Thus, the court agreed to resolve Berbaum's "reasonable suspicion" motion based on the transcript of the motion hearing. [R:73-4] Consequently, the parties then submitted briefs on the issue of reasonable suspicion to stop the vehicle.

Thereafter, on December 2, 2024, the court issued a memorandum decision denying Berbaum's motion to suppress for lack of reasonable suspicion for the initial stop. [R:56] According to the court, "The vehicle, after being reported to have struck either the rail or the barrier, continued without stopping and was heading into the City of Port Washington. And

that was information relayed by an identified citizen. So the officer was – had every reason to investigate that and to stop the vehicle. And I guess it really wasn't much of a stop because when she came upon the vehicle, it was stopped in the middle of traffic. She didn't have to pull the vehicle over." *Id.*

On March 17, 2025, Berbaum resolved his case with a guilty plea to count one (OWI). The parties jointly recommended that the court impose 60 days in jail, along with a fine and revocation of Berbaum's operating privileges. [R:67-2] The court imposed the recommended sentence. [R:67-8]

Thereafter, Berbaum filed a notice of intent to purpose postconviction relief. [R:60] There were no postconviction motions; rather, Berbaum filed a notice of appeal.

## Argument

### **I. The circuit court erred in denying Berbaum's motion to suppress.**

The findings of fact made by the circuit court may be summarized as follows: Officer Larson received a "driving complaint" that a driver had struck the barrier and did not stop. Moments later, while on patrol, Larson saw a vehicle stopped in the middle of the road in a residential area. As Larson

approached, the vehicle drove away, and then Larson conducted a traffic stop.

As will be set forth in more detail below, even if none of the court's findings of fact are clearly erroneous, those facts are legally insufficient to establish a reasonable suspicion to stop Berbaum's vehicle.

### ***A. Standard of appellate review***

"An order granting or denying a suppression motion presents a question of constitutional fact. [internal citation omitted] 'A question of constitutional fact is a mixed question of law and fact to which we apply a two-step standard of review. We review any challenges to the circuit court's findings of historical fact under the clearly erroneous standard, and we review independently the application of those facts to constitutional principles.'" *State v. Abbott*, 2020 WI App 25, P10, 392 Wis. 2d 232, 242, 944 N.W.2d 8, 13, 2020 Wisc. App. LEXIS 156, \*5

### ***B. Applicable law***

For an investigatory stop to be constitutionally valid, the officer's suspicion must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion" on the citizen's liberty. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). What constitutes

reasonable suspicion in a given situation depends on the totality of the circumstances. *State v. Post*, 2007 WI 60, ¶¶37-38, 301 Wis. 2d 1, 733 N.W.2d 634. There need not be a violation of the law to support an investigative stop. *State v. Anagnos*, 2012 WI 64, ¶47, 341 Wis. 2d 576, 815 N.W.2d 675. “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.” *State v. Waldner*, 206 Wis. 2d 51, 57, 556 N.W.2d 681 (1996).

Where, as here, an officer relies on information provided by dispatch, “reasonable suspicion is assessed by looking at the collective knowledge of police officers.” See *State v. Pickens*, 2010 WI App 5, ¶11 & n.1, 323 Wis. 2d 226, 779 N.W.2d 1 (2009). If a defendant moves to suppress, the prosecutor must prove that the collective knowledge supports the stop. *Id.*, ¶13.

Additionally,

When police have relied, at least in part, on information from an informant, we balance two factors to determine whether officers acted reasonably in reliance on that information. *Id.*,

The first is the quality of the information, which depends upon the reliability of the source. *Id.* The second is the quantity or content of the information. *Id.* There is an inversely proportional relationship between the quality and the quantity of information required to reach the threshold of reasonable suspicion. *Id.*

In other words, if an informant is more reliable, there does

not need to be as much detail in the tip or police corroboration in order for police to rely on that information to conduct an investigatory stop. On the other hand, if an informant has limited reliability—for example, an entirely anonymous informant—the tip must contain more significant details or future predictions along with police corroboration. The relevant question is whether the tip contained “sufficient indicia of reliability,” along with other information known to police, to support reasonable suspicion for an investigatory stop.

*State v. Miller*, 2012 WI 61, 341 Wis. 2d 307, 324-26, 815 N.W.2d 349, 358-59

Although one inference is that the caller provided the police with his/her name, the name was not testified to at the motion hearing.

The key to this analysis is the informant's knowledge or presumed knowledge that a consequence of disclosing his or her identity is accountability for providing a false tip. Stated differently, police may infer that an informant who risks disclosing his or her identity is more likely to be providing truthful information because the informant knows that police can hold him or her accountable for providing false information.

*Miller*, 2012 WI 61, 341 Wis. 2d 307, 327, 815 N.W.2d 349, 359-60.

***C. The officer lacked a reasonable suspicion to stop Berbaum's vehicle.***

In denying Berbaum's motion to suppress for lack of reasonable suspicion to stop his vehicle, the circuit court relied

upon the factual findings made on the record at the earlier motion hearing. Specifically, the court wrote:

Now in terms of the reason that Officer Larson got involved, I think there's sufficient information why she made the stop. She was following up on the driving complaint by assisting the Ozaukee Sheriff's Department when that call came in. The vehicle, after being reported to have struck either the rail or the barrier, continued without stopping and was heading into the City of Port Washington. And that was information relayed by an identified citizen. So the officer was – had every reason to investigate that and to stop the vehicle. And I guess it really wasn't much of a stop because when she came upon the vehicle, it was stopped in the middle of traffic. She didn't have to pull the vehicle over. She did observe some driving that was, I think her words were unusual. And I think all of that gave the Officer reason to address or talk to Mr. Berbaum.

[R:56-1]

Berbaum cannot demonstrate that any of the court's findings of fact are clearly erroneous; however, the court's findings of fact are legally insufficient to establish that the stop was constitutionally reasonable. The court of appeals must first look at the quality of the information provided to Officer Larson by the Sheriff's Department. Here, the only testimony was that there was a "driving complaint." According to the circuit court, the vehicle was reported to have struck either the "rail" or the barrier without stopping. There was no information concerning the severity of the purported collision. There is a world of difference between a slight scrape of the barrier, and a full-on

collision with it. The most Larson was able to say was that she “was aware of a driving complaint and a possible accident that occurred on the highway.” [R:35-8] Standing alone, an unspecified “driving complaint” is certainly insufficient to establish a reasonable suspicion to stop Berbaum’s vehicle.

Larson is always able to base a warrantless stop on her own observations; however, Larson did not testify to observing any traffic violations. It is not against the law to stop a vehicle in a roadway so long as the vehicle is not obstructing traffic. There was no testimony at the motion hearing that Berbaum’s vehicle obstructed any traffic. Similarly, making a left turn without signaling is a violation only if the turn may be affected by the turn. See, § 346.34(1)(b), Stats Larson did not testify that the left turn she observed Berbaum make was likely to affect any other traffic on the road; and, therefore, this is not a traffic violation. More importantly, Berbaum did not turn left until the officer had already initiated the traffic stop. [R:35-10]

Consequently, on this record, there was no reasonable suspicion to conduct a traffic stop on Berbaum’s vehicle.

## **Conclusion**

For these reasons, it is respectfully requested that the court of appeals vacate Berbaum’s guilty plea; and reverse the order of the circuit court denying his motion to suppress

evidence; and remand with instructions to the circuit court to enter an order granting the motion to suppress.

Dated at Milwaukee, Wisconsin, this 25th day of October, 2025.

Law Offices of Jeffrey W. Jensen  
Attorneys for Appellant  
*Electronically signed by:*  
Jeffrey W. Jensen  
State Bar No. 01012529

161 S. First Street  
Suite 200  
Milwaukee, WI 53204

414.224.9484  
jensen@milwaukeecriminaldefense.pro

## Certification as to Length and E-Filing

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm), and (c) for a brief. The length of this brief is 2596 words.

Dated at Milwaukee, Wisconsin, this 25th day of October, 2025.

Law Offices of Jeffrey W. Jensen  
Attorneys for Appellant  
*Electronically signed by:*  
Jeffrey W. Jensen  
State Bar No. 01012529

161 S. First Street  
Suite 200  
Milwaukee, WI 53204

414-224-9484  
jensen@milwaukeecriminaldefense.pro