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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Case No. 2025AP001380 CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

JONATHAN GLEN BERBAUM,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION ENTERED
IN THE CIRCUIT COURT FOR OZAUKEE COUNTY, THE
HONORABLE SANDY A. WILLIAMS, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

Whether the law enforcement officer had sufficient reasonable suspicion, under the totality of the circumstances, to conduct a traffic stop on Berbaum's vehicle.

The circuit court answered yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State of Wisconsin does not request oral argument or publication. The parties present all issues in their briefs, and the case can be resolved by applying well established principles of law.

STATEMENT OF THE CASE

On March 31, 2023 at approximately 12:28 am, Deputy Alexander Nelson of the Ozaukee County Sheriff's Office was working patrol (R35 17:9-11). Deputy Nelson was notified of a driving infraction or complaint called in by a citizen witness (R35 17:12-15). The citizen witness identified himself to dispatchers and expressed a willingness to provide a statement to investigating officers (R35 17:16-25). The witness indicated that he had observed a vehicle swerving and striking some sort of barrier (R35 18:2-3) or possibly involved in an accident (R35 29:2-4) on I-43 somewhere between Mequon Road and State Highway 32 (R35 18:13-15). The witness provided identifying information of the suspect vehicle and a license plate number (R35 18:4-6).

The vehicle was then reported to have exited the freeway at State Highway 32, in a direction leading toward the City of Port Washington (R35 18:11-12, 16-18). Deputy Nelson ran the license plate record and learned the registered owner of the vehicle was a resident of Port Washington, so he requested the assistance from City of Port Washington Police in looking for the vehicle (R35 18:21-19:6), and, if

located, holding the vehicle until he arrived so that he could conduct his investigation (R35 19:18-19).

Officer Kirstin Larson of the Port Washington Police Department had been on patrol and was notified of the driving complaint received by the Sheriff's Office and the request for assistance in looking for the vehicle (R35 4:23-5:5). At the time, Officer Larson had 24 years of experience as a law enforcement officer, had received specific training in the investigation of offenses involving subjects who are under the influence, and had continued using that training throughout her lengthy career (R35 4:1-20). Officer Larson was made aware of the vehicle description and license plate (R35 5:6-8). Officer Larson had also been aware of the nature of the driving complaint; that being the vehicle involved in an accident on I-43 (R35 8:11-17) with the vehicle having been reported to have struck a rail or barrier (R35 7:13-15, 13:5-7).

Officer Larson observed a vehicle matching the description and license plate from the driving complaint operating in the area of West Grand Avenue and South Spring Street in Port Washington (R35 5:9-22, 7:2-3). At the time she observed the vehicle, it was parked in the middle of the roadway on South Spring Street, facing northbound (R35 5:13-15). Officer Larson saw the vehicle had its turn signal activated where there was no turn area, or nowhere to turn into (R35 5:15-16). Officer Larson continued to observe the vehicle as it proceeded northbound before turning eastbound onto West Grand Avenue (R35 5:17-19). Officer Larson turned around to get behind the vehicle and again observed it stopped in the eastbound lane of traffic, signaling a left turn, again in an area where there was no road or entryway to turn into (R35 5:24-6:2).

Officer Larson initiated a traffic stop by activating her squad lights and observed the vehicle begin to drive forward, then turn off its turn signal before eventually turning onto a side street and stopping (R35 6:2-4, 9:19-23). Officer Larson described the driving behavior she observed to be confusing (R35 7:23-24), unusual (R35 9:8-13, 12:24-13-2), and perhaps bizarre (R35 51:17-20). She further indicated

that she stopped the vehicle due to both her observations of the driving and at the request of the Ozaukee County Sheriff's Office (R35 8:18-9:3). The driver of the vehicle was identified as the defendant, Jonathan Berbaum (R35 6:14). Officer Larson notified the Ozaukee County Sheriff's Office that she had stopped the vehicle they were looking for (R35 7:15-17), and she remained with Berbaum until Deputy Nelson arrived to conduct his investigation of the original driving complaint (R35 7:17-18, 7:25-8:3).

After Deputy Nelson's investigation concluded, Berbaum was ultimately arrested (R35 28:10-12) and charged with Operating a Motor Vehicle While Under the Influence (3rd Offense) and Operating with a Prohibited Alcohol Concentration (3rd Offense) (R4). Berbaum filed a motion to suppress alleging lack of probable cause to arrest (R19). At an evidentiary hearing on January 22, 2024, Deputy Nelson and Officer Larson both testified (R35). On February 15, 2024, the circuit court made factual findings and issued its ruling denying the motion to suppress (R42 4:18-8:12). In addition to probable cause to arrest, the circuit court's factual findings and decision addressed reasonable suspicion for the stop (R42 4:23-6:15).

Berbaum filed an additional motion to suppress alleging lack of reasonable suspicion to conduct a traffic stop (R48, R51). Because the circuit court had already found reasonable suspicion for the stop, the State asked the circuit court to decide the second motion without a hearing and by a review of the January 22, 2024 transcript (R49). The circuit court agreed (R73 3:3-4:19) and issued its written decision on December 2, 2024, re-affirming its finding of reasonable suspicion for the stop and ultimately denying Berbaum's motion to suppress on that basis (R56).

Berbaum entered a guilty plea to Operating While Under the Influence (3rd Offense) and was convicted on March 17, 2025 (R62). He now appeals.

STANDARD OF REVIEW

The review of a circuit court's order granting or denying a suppression motion presents a question of constitutional fact. *State v. Dearborn*, 2010 WI 84, ¶13, 327 Wis. 2d 252, 786 N.W.2d 97. The appeals court “will uphold the court’s factual findings unless they are clearly erroneous,” but will “independently apply constitutional principles to those facts.” *State v. Coffee*, 2019 WI App 25, ¶6, 387 Wis. 2d 673, 929 N.W.2d 245.

ARGUMENT

I. The circuit court properly denied Berbaum’s motion to suppress because there was sufficient reasonable suspicion to conduct a traffic stop on his vehicle.

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; *State v. Post*, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634. While the temporary detention of an individual during an automobile stop constitutes a “seizure” within the meaning of the Fourth Amendment, the Wisconsin Supreme Court has held that “reasonable suspicion that a traffic law has been or is being violated is sufficient to justify all traffic stops.” *State v. Houghton*, 2015 WI 79, ¶29, 364 Wis. 2d 234, 868 N.W.2d 143.

Reasonable suspicion is based on an officer’s ability, based on training and experience, “to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Post*, 301 Wis. 2d 1, ¶¶10, 13 (citing *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)). “[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.

In establishing whether reasonable suspicion exists, law enforcement officers are within their authority to rely on knowledge obtained from other officers’ investigation. “For example, under the collective knowledge doctrine, an investigating officer with knowledge of facts amounting to reasonable suspicion may direct a second officer without such knowledge to stop and detain a suspect.” *State v. Pickens*, 2010 WI App 5, ¶12, 323 Wis. 2d 226, 779 N.W.2d 1 (2009). *See also*, *Tangwall v. Stuckey*, 135 F.3d 510, 517 (7th Cir.1998) (where arresting officer does not personally know the facts, an arrest is proper if the knowledge of the officer directing the arrest, or the collective knowledge of police, is sufficient to constitute probable cause).

Law enforcement may rely on information provided by citizen witnesses or informants when establishing reasonable suspicion, and officers are required to consider and evaluate the reliability before relying on the information as grounds to conduct a stop. *State v. Rutzinski*, 2001 WI 22, ¶17, 241 Wis. 2d 729, 623 N.W.2d 516 (2001). The Wisconsin Supreme Court discussed factors that affect the reliability of information provided:

In assessing the reliability of a tip, due weight must be given to: (1) the informant's veracity; and (2) the informant's basis of knowledge. *Id.* at 230. These considerations should be viewed in light of the "totality of the circumstances," and not as discrete elements of a more rigid test: "[A] deficiency in one [consideration] may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." *Id.* at 233. Although there is no per se rule of reliability, these considerations outline a general spectrum of potential types of tips that, under specific circumstances, can give rise to a reasonable suspicion.

Rutzinski, at ¶18 (citing *Illinois v. Gates*, 462 U.S. 213 (1983)).

“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, ¶32, 341 Wis. 2d 307, 815 N.W.2d 349 (2012). In *Miller*, the Wisconsin Supreme Court contrasted informants who provide their identities against those who choose to remain anonymous, implying stronger indicia of reliability for known informants because of consequences of providing false information. *Id.*, ¶33.

Under the totality of the circumstances, Officer Larson had sufficient reasonable suspicion to conduct a traffic stop on Berbaum’s vehicle. In the present case, the record demonstrates that at approximately 12:28 am, an identified caller contacted the Ozaukee County Sheriff’s Department to report that a vehicle was swerving and had struck a barrier while driving along I-43. The vehicle continued without stopping. The caller provided a description of the vehicle and a license plate number. The plate listed to an individual in Port Washington, the city immediately adjacent to the exit the vehicle had used to exit the highway.

This caller was able to provide sufficient information to establish his reliability, such that law enforcement could rely upon the information as a basis for reasonable suspicion. This is an individual who identified himself to law enforcement, putting himself at risk of consequences if he provided false information. He was able to provide vehicle descriptors, license plate information, and direction of travel consistent with the home area for the registered owner of the vehicle. Within minutes, Officer Larson was able to locate the vehicle in the City of Port Washington, consistent with the direction of travel described by the caller. Berbaum was the driver.

Berbaum seemingly implies that because the caller’s name was not specifically testified to at the motion hearing, his information should be considered less reliable. (Appellant’s Brief, p. 11). However, he does not present any legal authority establishing this as a requirement. The State is similarly unaware of any authority requiring the name of the caller to be placed on the court record. Rather, the consideration is simply whether the individual’s identity was known to law enforcement at the time of reliance upon the information provided.

Port Washington Police, including Officer Larson, were asked by the Sheriff's Office to look for the suspect vehicle in their city. By the time she observed the vehicle, Officer Larson was already aware of the driving complaint that came in and knew that the vehicle had struck a rail or barrier and continued without stopping. At a minimum, any law enforcement officer with collective knowledge of the incident had an objective basis to stop the suspect vehicle for multiple traffic infractions. Wis. Stat. § 346.69 provides:

Duty upon striking property on or adjacent to highway. The operator of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of the operator's name and address and of the registration number of the vehicle the operator is driving and shall upon request and if available exhibit his or her operator's license and shall make report of such accident when and as required in s. 346.70.

Wis. Stat. § 346.70(1) states:

Immediate notice of accident. The operator or occupant of a vehicle involved in an accident resulting in injury to or death of any person, any damage to state or other government-owned property, except a state or other government-owned vehicle, to an apparent extent of \$200 or more, or total damage to property owned by any one person or to a state or other government-owned vehicle to an apparent extent of \$1,000 or more shall immediately by the quickest means of communication give notice of such accident to the police department, the sheriff's department or the traffic department of the county or municipality in which the accident occurred or to a state traffic patrol officer....

Emphasis added.

Here, Berbaum did not stop or inform anyone. Berbaum exited from I-43 and proceeded to drive into the City of Port Washington. His vehicle was located and stopped by Officer Larson – this was not some circumstance where he was seeking out law enforcement to report the

accident as the law obligates him to do. Any law enforcement officer coming into contact with the suspect vehicle had sufficient reasonable suspicion to conduct a traffic stop on this basis alone.

Arguably, Officer Larson also had reasonable suspicion to stop the suspect vehicle with an objective basis to believe the driver may be impaired. The report that the vehicle had been swerving and involved in some sort of accident, striking a rail or barrier on the highway, came in at approximately 12:30 in the morning. There is an inference to be made that the reporting party was worried enough about the condition of the driver and the danger he presented to others when he called law enforcement to report this. When a vehicle leaves the scene of an accident without stopping, especially at that time of night, a reasonable officer trained in the investigation of impaired driving offenses could infer that the driver left the scene to avoid the legal consequences of his or her conduct. Alternatively, a driver may leave the scene unaware that they struck a barrier, which provokes a reasonable inference that the lack of awareness was the result of impairment, especially in conjunction with other available facts and information.

Further, when Officer Larson eventually located Berbaum's vehicle, she observed it operating in a "confusing" and "unusual" way. At two different points, the vehicle was parked in the roadway, signaling a turn into an area in which there was no entrance or roadway to turn into. Once such instance could suggest an innocent explanation, but two instances certainly would raise concerns for any reasonable officer who is already aware of the reported accident. Then, when Officer Larson initiated the traffic stop, Berbaum pulled forward and turned off the turn signal before then making a turn. Again, when combined with the driving behavior reported by the caller and that witnessed by Officer Larson, an objectively reasonable inference is that this vehicle's operator was under the influence or impaired.

Berbaum contends that the only available information was an unspecified driving complaint, which is insufficient to establish reasonable suspicion. (Appellant's Brief, p. 12-13). This severely understates the record as to what was reported, what Officer Larson

knew about the caller's report, and what facts the circuit court relied upon in its decision. It also ignores Officer Larson's other observations of Berbaum's driving.

Berbaum further argues that Officer Larson's testimony did not establish that she observed any traffic violations herself, pointing out that one of the bases for stopping the vehicle was an improper turn. (Appellant's Brief, p. 13). There is nothing that requires Officer Larson to have independently observed a traffic violation. As long as an officer has an objectively reasonable or proper legal basis to justify a traffic stop, the officer's subjective intent or reliance on an incorrect legal theory do not automatically result in suppression of evidence. *See State v. Baudhuin*, 141 Wis. 2d 642, 651 (1987). What matters is whether "...there were objective facts that would have supported a correct legal theory to be applied and as long as there existed articulable facts fitting the traffic law violation." *Id.*

Rather than solely relying on their own observations, officers can conduct stops based upon collective knowledge obtained from other law enforcement officers and upon reliable information provided by informants. Officer Larson testified that she stopped Berbaum's vehicle on behalf of the Ozaukee County Sheriff's Office, which was done as a result of a credible driving complaint received from an identified caller. That complaint established reasonable suspicion for multiple traffic infractions.

Essentially, Berbaum asks this Court to parse through each fact that the circuit court relied upon and to determine that, individually, they do not establish reasonable suspicion for the traffic stop in this case. Unfortunately for Berbaum, these evaluations require a consideration of the totality of the circumstances. Each factor, when considered in a vacuum, may not alone establish reasonable suspicion. However, when taken together and with reasonable inferences, the facts on this record were more than sufficient for the circuit court to find that reasonable suspicion existed and to properly deny Berbaum's motion to suppress.

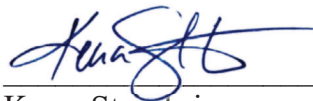
CONCLUSION

For the foregoing reasons, the State of Wisconsin respectfully requests that the Court of Appeals affirm the judgment of the circuit court.

Dated this 26th day of November, 2025.

Respectfully submitted,

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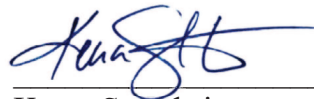
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CERTIFICATION REGARDING FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8) (b) and (c) for a brief produced with a proportional serif font. The word count of this brief is 2,980 words.

Dated this 26th day of November, 2025.



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