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COURT OF APPEALS

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

State of Wisconsin,

Plaintiff-Respondent,

v.

Jonathan Glen Berbaum,

Defendant-Appellant.

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

Defendant-Appellant's Reply Brief

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Argument

I. The state omits a key fact: the report was that Berbaum's vehicle "possibly" struck "some sort of barrier."

The state contends that Officer Larson had sufficient reasonable suspicion to stop Berbaum's vehicle. According to the state, "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." [Br. Resp. p. 10] From there, state asserts that Larson had reasonable suspicion to stop Berbaum for a violation of § 346.69, Stats (duty upon striking property on or adjacent to the highway), and/or a violation of § 346.70(1). Stats (failure to report an accident). [Br. Resp. p. 11]

Significantly, though, the state omits key words from the testimony of Deputy Nelson concerning the call. According to Nelson, "The driving complaint was called in on a vehicle that was swerving and *possibly struck some sort of barrier.*" [emphasis provided; R:35-18] In other words, the caller was not sure that the vehicle actually struck the barrier at all. Further, there was utterly no description of the type of barrier that may possibly have been struck.

Thus, Officer Larson (the arresting officer) admitted that, “*I don’t know what type of barrier it was*, that was the only information I had, I just made the observation that there was a small amount of damage to the vehicle that I observed.” [R:35-13] Officer Larson offered no description of the “small amount of damage” that she saw on Berbaum’s vehicle. Thus, the location of the damage on the car is unknown; the nature of the damage is unknown; and the apparent age of the damage is also unknown. A rusty scrape on the paint of the roof of the car would fit the description of a small amount of damage; but it certainly would not permit any inference that the damage was consistent with striking some sort of barrier. Additionally, since Larson admitted that she did not know what sort of barrier had *possibly* been struck, this precludes any finding of reasonable suspicion or probable cause that Berbaum had committed either of the traffic violations suggested by the state.

II. Berbaum’s driving, even in conjunction with the “possible” striking of the barrier, is insufficient to establish a reasonable suspicion that he was driving while impaired.

As a last resort, then, the state asserts that, “Arguably, Officer Larson . . . had reasonable suspicion to stop the suspect vehicle with an objective basis to believe the driver may be impaired.”¹ [Br. Resp. p. 12] To support this dubious assertion, the state suggests that, “When a vehicle leaves the scene of an accident without stopping, especially at that time of night . . .” it permits an inference that the driver was fleeing from his legal responsibilities. [Br. Resp. p. 12]

Here, though, as explained above, the information that the police possessed was only that an accident “possibly” happened, the nature and the extent of which was completely unknown. This is a far cry from the quantity and the quality of evidence necessary to support an inference that Berbaum displayed a consciousness of guilt by fleeing the scene of an accident.

So the state throws in Larson’s observation of Berbaum operating his vehicle in a “confusing and unusual” way. [Br. Resp. p. 12] This, of course, refers to the vehicle being stopped in the roadway with its left turn signal activated, and

¹ The use of the word “arguably” by the author of the state’s brief conveys a certain misgiving about the merit of the argument.

then pulling away as the squad arrived in the area. There was no testimony that the vehicle was stopped in an illegal manner (i.e. such as obstructing traffic or outside of its lane of travel). Thus, there was nothing illegal about the manner in which the vehicle was stopped. Likewise, there is nothing particularly unusual or suspicious about it either. Once the squad car pulled up, it was completely natural for the car to pull away. At that point, it may have obstructed traffic unless it moved.

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 9th day of December, 2025.

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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 967 words.

Dated at Milwaukee, Wisconsin, this 9th day of December, 2025.

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