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**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV**

**Appeal No. 2025AP1037
Jefferson County Circuit Court Case Nos. 2025TR572**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JACOBE MICHAEL GIMMEL,

Defendant-Appellant.

**AN APPEAL FROM THE JUDGEMENT OF
CONVICTION STATUS REPORT AND COURT'S
FINDING THAT MR. GIMMEL REFUSED CHEMICAL
TESTING IN JEFFERSON COUNTY, THE HONORABLE
ROBERT F. DEHRING, JR., JUDGE, PRESIDING**

**THE BRIEF OF THE DEFENDANT-APPELLANT
JACOBE MICHAEL GIMMEL**

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TABLE OF CONTENTS

	<u>Page No.</u>
TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES.....	3
STATEMENT OF THE ISSUES.....	4
STATEMENT AS TO ORAL ARGUMENT AND PUBLICATION.....	4
STATEMENT OF THE CASE/FACTS.....	5
STANDARD OF REVIEW.....	9
ARGUMENT.....	9
BASED ON THE FACTS ADDUCED AT THE REFUSAL HEARING, THE COURT ERRED IN FINDING OFFICER SAUTER HAD THE REQUISITE LEVEL OF SUSPICION TO STOP MR. GIMMEL'S VEHICLE	
CONCLUSION.....	15
FORM AND LENGTH CERTIFICATION.....	17
CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12).....	18
APPENDIX CERTIFICATION.....	19

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page No.</u>
<i>Terry v. Ohio</i> , 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L. Ed. 889 (1968)	11
<u>Wisconsin Supreme Court</u>	
<i>In re Smith</i> , 2008 WI 23, 308 Wis.2d 65, 746 N.W.2d 243.	9
<i>State v. Anagnos</i> , 2012 WI 64, 341 Wis.2d 574, 815 N.W.2d 675.	10
<i>State v. Blatterman</i> , 2015 WI 46, 362 Wis.2d 138, 864 N.W.2d 26.	9
<u>Wisconsin Court of Appeals</u>	
<i>State v. Anderson</i> , 155 Wis.2d 77, 454 N.W.2d 763 (1990)	11
<i>State v. Below</i> , 226 Wis.2d 90, 593 N.W.2d 499 (Ct. App. 1999)	11
<i>State v. Krier</i> , 165 Wis.2d 673, 478 N.W.2d 63 (Ct. App. 1991)	10
<i>State v. Meddaugh</i> , 2022 WI App 12, 401 Wis.2d 134, 972 N.W.2d 181.	13
<i>State v. Richardson</i> , 156 Wis.2d 128, 139, 456 N.W.2d 830 (1980)	11
<u>Unpublished Wisconsin Court of Appeals</u>	
<i>State v. Mauermann</i> , Appeal N0. 2012AP2568-CR, unpublished slip op, (WI App July 25, 2013)	12,14
<u>Wisconsin Constitution</u>	
Article I, Section 11.	10
<u>United States Constitution</u>	
Fourth Amendment.	10

STATEMENT OF THE ISSUES

1. Did City of Watertown Police Officer Casey Sauter have the requisite level of suspicion to stop Mr. Gimmel's vehicle?

The trial court denied yes.

STATEMENT AS TO ORAL ARGUMENT AND PUBLICATION

Because this is an appeal within Wis. Stat. §752.31(2), the resulting decision is not eligible for publication. Because the issues in this appeal may be resolved through the application of established law, the briefs in this matter should adequately address the arguments; oral argument will not be necessary.

STATEMENT OF THE CASE/FACTS

The defendant-appellant, Jacobe M. Gimmel (Mr. Gimmel) was charged with having operated a motor vehicle while under the influence of an intoxicant (OWI) contrary to Wis. Stat. §346.63(1)(a), with operated a motor vehicle with a prohibited alcohol concentration (PAC) contrary to Wis. Stat §346.63(1)(b), both as second offenses and with refusing to submit to a chemical test in violation of Wis. Stat. §343.305(9) on January 2, 2025.

The defendant, by counsel, timely filed a written request for a Refusal Hearing on January 9, 2025. A Refusal Hearing was held on May 8, 2025, the Honorable Robert F. Dehring, Jr, Judge, Jefferson County Circuit Court, presiding. On said date, the Court found Officer Sauter had the requisite level of suspicion to stop Mr. Gimmel's vehicle and found Mr. Gimmel unlawfully refused chemical testing. (R21:27/App.16) The Court revoked Mr. Gimmel's operating privilege for a period of two years. A conviction status report was entered on May 9, 2025

On May 9, 2025, Mr. Gimmel, by trial counsel, timely filed a Notice of Appeal.

Pertinent facts in support of this appeal were adduced at the Refusal Hearing held on May 8, 2025 and were introduced through the testimony of City of Watertown Police Officer Casey

Sauter. Officer Sauter testified he had been an officer for the City of Watertown for two and one half years. (R.21:5/App.2). He further testified that he was familiar with the municipal code ordinances of Watertown.

Sauter testified that on January 2, 2025, he was working for the City of Watertown in said capacity and at approximately 6:20 p.m. on that date he was dealing with an unrelated complaint. (R.21:5/App.2). He returned to his squad car when he observed a black pick-up truck on Market Street at Third Street in the City of Watertown. (R.21:5/App.2).

Sauter advised he observed the truck accelerate rapidly, squealing the back tires and then proceed through the intersection. (R.21:6/App.3). Sauter indicated as soon as he turned on his headlights, the truck “leveled off”. He testified he observed the front end of the truck lifted higher off the ground and then once the officer turned his headlights on the truck came back to a normal level. (R.21:6/App.3). Sauter testified that the City of Watertown had an ordinance that prohibits any person from squealing their tires in any manner. (R.21:6/App.3). Sauter said in this case there was an audible squeal. *Id.*

Sauter said he saw and heard the truck at the same time. (R.21:7/App.4). Sauter also acknowledged he does have a squad

video camera in his vehicle (Trial court exhibit 1) and that camera did capture the vehicle as it proceeded through the intersection but the camera did not record audible sound. (R.21:9/App.5).

On cross-examination, Officer Sauter conceded the vehicle did not fishtail or lose traction. (R.21:14/App.6). Sauter also said Mr. Gimmel's tires squealed before he entered the intersection. (R.21:16/App.7). Sauter also conceded he did not know the exact sound that came from the vehicle but said he "did hear an audible sound" (R.21:17/App.8). Additionally, Sauter conceded the vehicle did not leave black markings on the road, and he did not observe smoke coming from the tires. (R.21:17/App.8)

Sauter also testified as Mr. Gimmel entered the intersection, "there was no noise in, um, reference to the tires." But he could hear the acceleration of the truck engine as it got louder. Sauter "felt that the squealing tires is what [he] heard and what [he] observed." (R.21:21/App.10). More importantly, Sauter testified he would stop any vehicle if it made such a noise regardless of the duration of the noise. (R.21:21/App.10).

The State argued the evidence sufficiently established a violation of the Watertown City ordinance prohibiting tire squealing.(R.21:22/App.11) The defense argued that while the officer observed a noise coming from the vehicle he did not know

for how long he heard it. Furthermore, the video evidence showed Mr. Gimmel's vehicle moving through the intersection at practically the same speed as the vehicle that went through before the defendant's. Defense argued the evidence was insufficient to stop Mr. Gimmel, arguing if this evidence is sufficient, officers will have unfettered discretion to stop motorists. (R.21:22/App.11).

The Court found Mr. Gimmel's vehicle moved through the intersection similarly to the other vehicles (R.21:24/App.13) But, the Court also found the car may have left faster from the stop sign. Furthermore, the Court found Mr. Gimmel's vehicle did not leave any marks on the roadway but found consistent with the officer's testimony that Mr. Gimmel's vehicle's front end rose up as it went through the intersection indicating a quicker start without fishtailing. (R.21:25/App.14). The Court quoted the relevant portion of the Watertown ordinance stating "no person shall make or cause to be made any noise disturbance within the City of such volume or nature as to annoy or disturb any other reasonable person of normal sensitivities." (R.21:26/App.15). The Court found the evidence adduced through Officer Sauter's testimony was sufficient and the stop was justified.

(R.21:26/App.15). The Court ordered among other things, a two-year revocation of Mr. Gimmel's driver's license.

Mr. Gimmel appeals the Court's decision finding Officer Sauter had the requisite level of suspicion to stop Mr. Gimmel's vehicle. Mr. Gimmel through counsel timely filed a Notice of Appeal on May 9, 2005.

STANDARD OF REVIEW

When reviewing the circuit court's finding of a refusal, an appellate court will uphold the lower court's finding of facts unless they are clearly erroneous but independently reviews application of those facts to constitutional principles, as questions of law. See *State v. Blatterman*, 2015 WI 46, 362 Wis.2d 138, 864 N.W.2d 26, *In re Smith*, 2008 WI 23, ¶16, bri308 Wis.2d 65, 746 N.W.2d 243.

ARGUMENT

Pursuant to Wis. Stat. §343.305(9)(a)5, a Court considers three issues at a Refusal Hearing. First, "whether the officer had probable cause to believe the person was driving or operating a motor vehicle while under the influence of alcohol...and whether the person was lawfully placed under arrest for a violation of Wis. Stat. §346.63(1)." Whether the officer had the requisite level of suspicion to stop a vehicle is appropriately considered under this

first issue. See *State v. Anagnos*, 2012 WI 64, ¶4,42, 341 Wis.2d 574, 815 N.W.2d 675. Second, whether the officer provided the implied consent warning as required under Wis. Stat. §343.305(4). Third, “whether the person refused to permit the test.”

Mr. Gimmel challenges only the first issue, specifically that Officer Sauter did not have the requisite level of suspicion to stop his vehicle.

A. BASED ON THE FACTS ADDUCED AT THE REFUSAL HEARING, THE COURT ERRED IN FINDING OFFICER SAUTER HAD THE REQUISITE LEVEL OF SUSPICION TO STOP MR. GIMMEL’S VEHICLE

The Fourth Amendment to the United States Constitution protects citizens from unreasonable government seizures. Investigatory stops of citizens in motor vehicles fall under the protection of the Fourth Amendment.

A temporary detention of an individual during a traffic stop is a seizure and falls under the protections of the Fourth Amendment to the United States Constitution and Article I Sec. 11 of Wisconsin Constitution. An investigatory seizure is reasonable where an officer possesses a reasonable suspicion that an individual committed, was committing or as about to commit an offense. *State v. Krier*, 165 Wis.2d 673, 678, 478 N.W.2d 63

(Ct. App. 1991). “The question of what constitutes reasonableness is a common-sense test.” *State v. Anderson*, 155 Wis.2d 77, 83, 454 N.W.2d 763 (1990). “What would a reasonable police officer reasonably suspect in light of his or her training and experience?” *Id.* at 83-84.

To justify an investigatory seizure, an officer “must be able to point to specific and articulable facts, which taken together with rational inferences from those facts, reasonable warrant” the seizure. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L. Ed. 889 (1968). An “inchoate and unparticularized suspicion or hunch” is not sufficient justification supporting an investigative seizure. *Id.* at 27. An officer must have reasonable suspicion that “some kind of [illegal] activity has taken or is taking place.” *State v. Richardson*, 156 Wis.2d 128, 139, 456 N.W.2d 830 (1980). “There is no question that a police officer may stop a vehicle when he or she reasonably believes the driver is violating a traffic law.” *State v. Below*, 226 Wis.2d 90, 93, 593 N.W.2d 499 (Ct. App. 1999).

The alleged violation herein was of City of Watertown noise ordinance 410-40. (R.11:1). The relevant portion of the ordinance reads “Watertown Ordinance 410-40, Loud and unnecessary noise...No person shall intentionally cause a vehicle

to accelerate, brake or make a turn at such rate in such manner as to cause its tires to squeal, except in reaction to a situation which reasonably prudent operator would perceive to be necessary to protect against harm to a person or property.” (R.21:25/App.14) . The ordinance preamble reads “No person shall make or cause to be made any noise disturbance within the City of such volume or nature as to annoy or disturb any other reasonable person of normal sensitivities.” (R.21:26/App.15). Thus, any violation should be of such a degree as to annoy or disturb any other reasonable person of normal sensitivities.

In *State v. Mauermann*, Appeal N0. 2012AP2568-CR, , unpublished slip op, ¶13 (WI App July 25, 2013) the Court addressed the constitutionality of a similar municipal noise ordinance. In *Mauermann*, “the deputy witnessed the vehicle accelerate through the intersection, producing a loud squealing of tires. The deputy stated the duration of the squeal was longer than that produced by someone turning sharply or pumping the accelerator by accident and that the squeal continued as the vehicle travelled entirely through the intersection.” *Id* at ¶3.

The *Mauermann* Court turning to the definition of “squeal” in Webster’s Third New International Dictionary Unabridged 2215 (1993) *Id.* at ¶15 determined “squeal” as

defined by Webster's is "a shrill sharp somewhat prolonged...noise." *Id.* ¶15. The Court recognized "it may be true that, at some point, a squeal-like tire noise might be so short in duration as to raise a difficult question regarding whether it violates those standards or fits the ordinary understanding of a "squeal". *Id.* ¶19. However, the Court found the ordinance constitutional.

Not every noise from a vehicle rises to the level of a violation of the municipal ordinance. The City of Watertown ordinance protects against loud and unnecessary noise. The ordinance prohibits squealing of the tires in a manner that would cause a disturbance. The noise must be of such volume or nature to annoy or disturb someone of normal sensitivities. The State has the burden to put forth sufficient evidence to establish a violation. *State v. Meddaugh*, 2022 WI App 12, ¶13, 401 Wis.2d 134, 972 N.W.2d 181.

Officer Sauter's observations did not amount to a sufficient reason to believe Mr. Gimmel violated the City of Watertown municipal ordinance. Officer Sauter mistakenly believed any noise from the tire is sufficient reason to stop a vehicle, even if just for a "half a second or a millisecond." (R.21:21/App.10). Sauter's belief that any noise from a tire is

sufficient to establish a violation is wrong. The rationale in *Mauermann* supports the conclusion that this is not the case. While the ordinance prohibits squealing of tires, not every noise from a tire is a violation. The dictionary definition of “squeal” is a “shrill, sharp somewhat prolonged noise.” See Webster’s Third New International Dictionary 2215 (1993). A squawk or chirp from a tire would not necessarily rise to the level of a violation. In *Mauermann*, the defendant squealed his tires through the intersection attempting (according to the deputy) to leave a skid mark. *Mauermann*, at ¶3. It was a prolonged squeal.

The noise observed by Officer Sauter was a brief noise from Mr. Gimmel’s tires. However Sauter could not even accurately characterize his observations. When asked about the noise, Officer Sauter testified “I don’t remember the exact sound, but I know I did hear an audible sound coming from his tires.” (RH 17). Sauter also testified he did not recall for how long he heard the noise. (R.21:20/App.9). Unlike, the noise in *Mauermann*, it did not continue across the intersection, and according to Officer Sauter did not continue through the intersection. Sauter testified the noise he heard occurred before Mr. Gimmel entered the intersection. While the noise was

audible, the testimony did not establish that it was a prolonged squeal.

The State has the burden to produce sufficient evidence that Mr. Gimmel violated the City of Watertown ordinance prohibiting against loud and unnecessary noise. Here, the evidence adduced at the Refusal Hearing did not meet that burden. Because of this, the Court erred when it found Officer Sauter had the requisite level of suspicion to believe Mr. Gimmel violated the noise ordinance.

CONCLUSION

Because the State failed to establish Mr. Gimmel violated the City of Watertown noise ordinance, the trial court erred in finding Officer Sauter had the requisite level of suspicion to stop Mr. Gimmel's vehicle. The Court should reverse and vacate the refusal.

Dated this 14th day of July, 2025.

Respectfully Submitted

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FORM AND LENGTH CERTIFICATION

The undersigned hereby certify that this brief conform to the rules contained in secs. 809.19(8) (b), (bm) and (c). This brief has been produced with a proportional serif font. The length of this brief is 20 pages. The word count is 3673.

Dated this 14th day of July, 2025.

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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 14th day of July, 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 14th day of July, 2025.

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