



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT IV

April 3, 2025

To:

Hon. Nicholas J. Brazeau Jr.
Circuit Court Judge
Electronic Notice

Hector Salim Al-Homsi
Electronic Notice

Kimberly Stimac
Clerk of Circuit Court
Wood County Courthouse
Electronic Notice

Jeremiah W. Meyer-O'Day
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2023AP1754-CR

State of Wisconsin v. Tammi S. Miller (L.C. # 2021CF666)

Before Graham, Nashold, and Taylor, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Tammi Miller appeals a judgment of conviction. The issue is whether a police officer had reasonable suspicion to stop the vehicle that Miller was driving. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ We affirm.

Miller pled no contest to one count of operating a motor vehicle with a prohibited alcohol concentration, as a fourth offense. Before doing so, she filed a motion to suppress evidence,

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

which the court denied. Miller appeals, notwithstanding her plea, under WIS. STAT. § 971.31(10).

The circuit court held that the traffic stop was supported by reasonable suspicion. The parties do not dispute the applicable law related to reasonable suspicion and traffic stops, or that whether reasonable suspicion existed for the stop is an issue that we review independently.

We conclude that reasonable suspicion was present in two ways. The first is that the police officer had reasonable suspicion that Miller violated the statute that sets the location at which a driver must stop for an official stop sign at a railroad crossing. The statute provides that a vehicle must stop before crossing a stop line that is “clearly marked,” and then further provides: “If there is no clearly marked stop line, the operator shall stop the vehicle not less than 15 nor more than 50 feet from the nearest rail.” WIS. STAT. § 346.46(3).

The police officer testified that Miller did not stop before the stop line in this case, but the parties dispute whether the officer had reasonable suspicion that the line was “clearly marked.” We assume, without deciding, that the stop line was not clearly marked, and therefore Miller was instead required to stop not less than 15 feet from the nearest rail.

The police officer’s body camera video shows that Miller was driving a minivan. The officer testified that when Miller stopped, the minivan’s rear tires were ahead of the stop line. There was no evidence disputing this testimony. The officer testified that he could not say how many feet away the minivan was from the rail, but that it was close enough to cause him concern that it would be a safety hazard if a train approached. A photograph in the record gives a sense of the relative positions of the stop line and the rail nearest to where Miller’s minivan was stopped. This photographic evidence confirms that, if its rear wheels were past the stop line, the

front of the minivan would have been quite close to the rail. This method does not allow for a definite statement that the front of the minivan was closer than 15 feet to the rail, but it is close enough to fall within the range of reasonable suspicion. The officer was not required to use a tape measure to obtain proof beyond a reasonable doubt before making the traffic stop.

The second basis for reasonable suspicion to make the traffic stop was the police officer's belief that the exhaust noise on Miller's minivan was excessive or unusual. The applicable statute provides in relevant part: "No person shall operate on a highway any motor vehicle subject to registration unless such motor vehicle is equipped with an adequate muffler in constant operation and properly maintained to prevent any *excessive or unusual noise* or annoying smoke." WIS. STAT. § 347.39(1) (emphasis added). We note that "unusual" does not necessarily mean loud, and that a specific muffler sound might reasonably be described as unusual, even if not loud.

The police officer testified that when Miller's vehicle passed him in the opposite direction, and the vehicle accelerated, he heard "like, a rattling noise." When asked if it was a typical sound that he would hear from passing vehicles, he said it was not, and it "got my attention." The officer does not appear to have testified expressly that the exhaust noise was excessive or unusual.² However, it is reasonable to infer from the testimony that the officer believed the sound was at least unusual, as the concept of "not typical" is essentially the same concept as "unusual."

² The State's brief asserts that the police officer testified that, quoting the brief, "the noise was louder than the noise that would typically come from a vehicle's muffler," but we have not located such testimony at the record location cited by the State or elsewhere.

Miller argues that this perception by the police officer was not a basis for reasonable suspicion because the officer did not testify that he knew what amount of noise would be normal for her vehicle. However, that knowledge was implied in the question about whether it was “a typical sound,” and in the officer’s answer that it was not and that it drew his attention. The officer’s answer implied that he had a sense of what a typical sound would be for a minivan, which is a type of vehicle that would be familiar to an officer.

Miller argues that this case is analogous to *State v. Conaway*, 2010 WI App 7, 323 Wis. 2d 250, 779 N.W.2d 182, which addresses window tints. We disagree. The statute at issue here does not set forth a numerical, technical standard, but is instead a subjective one about noise that is “excessive or unusual.” No special measuring device or technique is required to form a reasonable belief that a noise is excessive or unusual, as compared to other vehicles of that type.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals