

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 31, 2007

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP1856

Cir. Ct. No. 2005TR7321

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

CITY OF WAUKESHA,

PLAINTIFF-RESPONDENT,

V.

DAVID M. MATUSZEK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:
PAUL F. REILLY, Judge. *Affirmed.*

¶1 ANDERSON, J.¹ David M. Matuszek appeals from a judgment for violating WIS. STAT. § 346.63(1)(a). Matuzsek argues the trial court erred in

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

denying his motion to suppress evidence because, he asserts, the officer lacked the necessary reasonable suspicion to conduct the traffic stop. We disagree and affirm.

¶2 The facts are not in dispute. Shortly before midnight on June 22, 2005, an officer with the City of Waukesha Police Department turned westbound on River Place Boulevard and observed Matuszek's Ford Explorer parked at the curb. The vehicle was facing eastbound on River Place Boulevard with its fog lamps, but not its headlamps, illuminated. The officer passed Matuszek's vehicle, but then observed the vehicle pull away from the curb, make a legal U-turn and proceed westbound following behind the officer's squad car. The officer pulled to the side of the road, thinking Matuszek was lost and needed directions. Instead, Matuszek continued past the officer, traveling under twenty miles per hour with the fog lamps on his vehicle illuminated. The officer activated her emergency lights and siren with the intent of conducting a stop of the driver for operating a motor vehicle at night without its headlamps lit. Matuszek pulled into his own driveway and the officer ultimately arrested him for a violation of WIS. STAT. § 346.63(1)(a). Matuszek filed a motion to suppress, contending that the officer lacked reasonable suspicion justifying the traffic stop. The court denied the motion and Matuszek was convicted.

¶3 We review de novo questions of statutory construction when, as here, the facts are undisputed. *State v. Lenz*, 230 Wis. 2d 529, 533, 602 N.W.2d 173 (Ct. App. 1999). Furthermore, “[a] trial court’s determination of whether undisputed facts establish reasonable suspicion justifying police to perform an investigative stop presents a question of constitutional fact, subject to de novo review.” *State v. Sisk*, 2001 WI App 182, ¶7, 247 Wis. 2d 443, 634 N.W.2d 877. “A traffic stop is a form of seizure triggering Fourth Amendment protections from

unreasonable searches and seizures.” *State v. Gammons*, 2001 WI App 36, ¶6, 241 Wis. 2d 296, 625 N.W.2d 623. For a traffic stop to comport with the Fourth Amendment, “[t]he police must have a reasonable suspicion, grounded in specific articulable facts and reasonable inferences from those facts, that an individual is violating the law.” *Id.*

¶4 Matuszek contends that he did not violate the law when he drove less than twenty miles per hour at night with only his fog lamps illuminated. We are not persuaded. WISCONSIN STAT. § 347.06 provides that “no person may operate a vehicle upon a highway during hours of darkness unless all headlamps, tail lamps and clearance lamps with which such vehicle is required to be equipped are lighted.” The statute offers exceptions to this rule, including that “[h]ead lamps need not be lighted ... on a vehicle having at least 2 lighted adverse weather lamps on the front thereof and being operated under the circumstances described in s. 347.26(3)(b).” Sec. 347.06(2). WISCONSIN STAT. § 347.26(3)(b) provides that “[a]dverse weather lamps shall not be used in lieu of headlamps unless absolutely necessary in case of rain, snow, dust or fog” A headlamp is a “major lighting device used to provide general illumination ahead of a vehicle.” WIS. STAT. § 340.01(21). An adverse weather lamp is “a lamp specially designed to provide road illumination under conditions of rain, snow, dust or *fog*.” Sec. 340.01(1m) (emphasis added). Therefore, a fog lamp is not a “headlamp,” but rather an “adverse weather lamp.” *See id.*; *see also* WIS. ADMIN. CODE § TRANS 305.05(15) (May 2002) (noting that a fog lamp may also be referred to as an adverse weather lamp).

¶5 When read together, these provisions dictate that motorists, when operating their vehicles during hours of darkness, must have their headlamps illuminated unless the enumerated weather conditions demand otherwise. In this

case, Matuszek drove his car while it was dark outside with only his fog lamps illuminated. Matuszek does not contend that the weather on the night of his arrest necessitated the use of the fog lamps pursuant to the statutes. Therefore, when the officer observed Matuszek traveling without his headlamps lit, she had reasonable suspicion to believe that Matuszek was violating the law.

¶6 Matuszek directs us to WIS. STAT. § 347.10(4), which states:

Any motor vehicle may be operated during hours of darkness when equipped with 2 lighted lamps upon the front thereof capable of revealing persons and objects 75 feet ahead in lieu of lamps required by subs. (1) to (3) if such vehicle at no time is operated at a speed in excess of 20 miles per hour.

Matuszek points out that the officer reported his speed as being less than twenty miles per hour. Section 347.10, however, deals generally with headlamp and auxiliary lamp specifications. WISCONSIN STAT. §§ 347.06(2) and 347.26(3)(b) specifically articulate the conditions under which a motorist may operate his or her vehicle during the hours of darkness with only the “adverse weather lamps” illuminated. Sections 347.06 and 347.26(3)(b) therefore control. *See State v. Gillespie*, 2005 WI App 35, ¶¶7-8, 278 Wis. 2d 630, 693 N.W.2d 320, *review denied*, 2005 WI 60, 281 Wis. 2d 115, 697 N.W.2d 473 (where two statutes relate to the same subject matter, the specific statute controls the general statute).

¶7 Matuszek claims that our reading of the statutes would render WIS. STAT. § 347.10(4) superfluous because there would never be a situation when a vehicle could be operated legally at less than twenty miles per hour without headlamps activated. Again, Matuszek fails to persuade us. We have held only that, under the statutes, adverse weather lamps may not be used in lieu of

headlamps unless absolutely necessary due to rain, snow, dust or fog. It may very well be that other auxiliary lamps can be legally used under this statute.

¶8 The trial court properly concluded that the officer had reasonable suspicion to conduct the traffic stop and denied Matuszek's motion to dismiss. We affirm the judgment.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

