

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

April 15, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**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 § 808.10 and RULE 809.62, STATS.

**No. 97-3570-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RICHARD W. FOELKER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Winnebago County: WILLIAM H. CARVER, Judge. *Affirmed.*

SNYDER, P.J. Richard W. Foelker appeals from a judgment of conviction for one count of operating a motor vehicle without a valid driver's license, third offense, contrary to § 343.05(3)(a) and (5)(a)3, STATS. He argues that the arresting officer lacked both reasonable suspicion and probable cause to stop his vehicle, and, therefore, any evidence derived from the stop should be suppressed. We disagree and affirm the judgment of conviction.

At 7:48 p.m. on May 8, 1997, Officer Mark Tilkens observed a car approach his squad car with its high-intensity headlights activated. When the driver failed to dim the headlights as he passed Tilkens, the officer turned his squad around and stopped the car. According to Tilkens, it was dusk when he stopped the car. The driver was subsequently identified as Foelker. Tilkens said he stopped the car because Foelker had failed to dim his headlights within 500 feet of oncoming traffic in violation of § 347.12(1), STATS.

When the officer ran a record check, he discovered that Foelker's driver's license had been revoked. Foelker was subsequently charged with one count of operating a motor vehicle without a valid driver's license, third offense.<sup>1</sup> Prior to trial, Foelker moved to suppress the evidence derived from the stop of his vehicle, arguing that the officer lacked both reasonable suspicion and probable cause to effect the stop. The trial court denied this motion and instead found that the officer's actions were reasonable. Foelker then entered a no contest plea and was convicted. He now appeals.

The question presented by this appeal is whether the officer's actions were reasonable under the facts and circumstances present at the time of the stop. Whether the facts presented to the trial court satisfy this constitutional requirement is a question of law subject to de novo review by this court. *See State v. Ford*, 211 Wis.2d 739, 743, 565 N.W.2d 286, 288 (Ct. App. 1997).

It is well settled that stopping an automobile and detaining its occupants constitutes a seizure under the Fourth Amendment. *See State v.*

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<sup>1</sup> A check of Department of Transportation records revealed that Foelker had been previously convicted for the same offense on two occasions in the past three years.

*Baudhuin*, 141 Wis.2d 642, 648, 416 N.W.2d 60, 62 (1987). The validity of such a stop depends upon whether the individual was lawfully stopped. *See id.* An officer has authority to stop a vehicle where the officer has reasonable grounds to believe that a violation of a traffic regulation has occurred. *See id.* The test for determining the constitutionality of an investigative stop is an objective test of reasonableness. *See State v. Guzy*, 139 Wis.2d 663, 675, 407 N.W.2d 548, 554 (1987). As long as there exist a correct legal theory to justify the stop and articulable facts fitting a traffic law violation, the stop is legal. *See Baudhuin*, 141 Wis.2d at 651, 416 N.W.2d at 63.

Tilkens stopped Foelker's car on the basis that he had violated § 347.12, STATS., which provides in relevant part:

**Use of multiple-beam headlamps.** (1) Whenever a motor vehicle is being operated on a highway during hours of darkness, the operator shall use a ... composite beam ... of sufficient intensity to reveal a person or vehicle at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(a) Whenever the operator of a vehicle equipped with multiple-beam headlamps approaches an oncoming vehicle within 500 feet, the operator shall dim, depress or tilt the vehicle's headlights so that the glaring rays are not directed into the eyes of the operator of the other vehicle.

Tilkens testified that he stopped Foelker because he had violated this section by failing to dim his high-beam headlights. Foelker focuses on the phrase "during hours of darkness" in subsec. (1) and argues that because the time of the stop did not fit the statutory definition of "hours of darkness," Tilkens' stop was not constitutional. *See* § 347.12(1).

Section 340.01(23), STATS., defines "hours of darkness" as follows:

[T]he period of time from one-half hour after sunset to one-half hour before sunrise *and all other times when there is*

*not sufficient natural light to render clearly visible any person or vehicle upon a highway at a distance of 500 feet.*  
[Emphasis added.]

Foelker argues that because he was stopped at 7:48 p.m., and sunset on that day did not occur until 8:01 p.m., the above statute does not provide a legal basis for the stop. We disagree. We read § 347.12(1), STATS., as applying to *when* a driver is required to employ headlights, i.e., “[w]henever a motor vehicle is being operated on a highway during hours of darkness ....” However, once a driver has chosen to use the headlights on his or her vehicle, their use is then subject to certain requirements which are enumerated in the next two paragraphs. Paragraph (a) specifies that the operator of a vehicle who is using high-beam headlights “shall dim, depress or tilt the vehicle’s headlights so that the glaring rays are not directed into the eyes of the operator of the other vehicle.” Section 347.12(1)(a). This is the provision which provides the justification for Tilkens’ stop.

“As long as there was a proper legal basis to justify the intrusion, the officer’s subjective motivation does not require suppression of the evidence or dismissal.” *Baudhuin*, 141 Wis.2d at 651, 416 N.W.2d at 63. As long as there exist articulable facts fitting a traffic law violation and which would have supported a correct legal theory, the stop is justified. *See id.* The officer observed facts which demonstrated to him that Foelker was violating a traffic law by failing to lower his high-beam headlights. The statute requires that a driver who is using high-beam headlights dim the vehicle’s headlights whenever he or she approaches an oncoming vehicle. *See* § 347.12(1)(a), STATS. Foelker’s failure to dim his high-beam headlights when he passed Tilkens was in violation of the statute, whether or not Foelker was required under § 347.12(1) to use his headlights at the time of the stop. We conclude that Tilkens’ stop was legally justified.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

