

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 6, 2015**

Diane M. Fremgen  
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 Nos. 2014AP1949  
2014AP1950**

**Cir. Ct. Nos. 2013TR3495  
2013TR3496  
2013TR3497**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ANDREW T. JODA,**

**DEFENDANT-APPELLANT.**

---

APPEALS from judgments of the circuit court for Waukesha County: JENNIFER DOROW, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.<sup>1</sup> Andrew T. Joda was convicted of operating a motor vehicle while intoxicated (OWI) and with a prohibited alcohol content (PAC) and making an illegal U-turn. Joda moved to suppress, arguing that the U-turn he made was not illegal and therefore there was no reasonable suspicion to justify the stop. The trial court denied Joda's motion, and, after a trial to the court, convicted him. Joda appeals.

### **BACKGROUND**

¶2 Deputy William Becker stopped Joda after he saw Joda make an illegal U-turn. When he stopped Joda and spoke with him, Becker detected signs of intoxication—odor of intoxicants coming from the car where Joda was the lone occupant, bloodshot eyes, and slurred speech. Becker had Joda perform field sobriety tests, formed the opinion that Joda was under the influence of an intoxicant, had Joda submit to a preliminary breath test, which showed a BAC of .173, and arrested Joda for OWI.

¶3 There is no dispute that Joda made a U-turn on Grandview Boulevard at an intersection with interstate highway I-94. The controversy lies in whether that turn was made north or south of the interstate highway. South of the interstate, there are stoplights that control the intersection of Grandview and the eastbound on and off ramp. At those stoplights there is a sign indicating that a U-turn is prohibited. North of the interstate, on the other side of the overpass, there is another set of stoplights. These control the intersection of Grandview with

---

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted. Joda's OWI/PAC case and his illegal U-turn case were consolidated on appeal.

the westbound on and off ramps. At that intersection, there is no sign indicating no U-turn. Joda testified that he made the U-turn north of the highway. Becker testified that he saw Joda make the U-turn south of the highway, but his written report states that Joda made the left U-turn at the intersection with the westbound off ramp. Becker recalled that he was taking a left turn onto southbound Grandview, coming off of the westbound off ramp, when he saw Joda at the stoplights south of the highway, in the left lane, with his left turn signal on. Joda's left turn signal caused Becker concern because Joda was either going to enter the eastbound off ramp, into oncoming traffic, or make an illegal U-turn. The potential danger drew Becker's attention. He then observed Joda make the illegal U-turn.

¶4 The trial court found Becker to be more credible than Joda due to the fact that Joda testified he had consumed six or seven drinks that night. The trial court also considered a gap in time in Joda's testimony; he said he left the pool hall, on Grandview south of Silvernail, where he was drinking "around midnight" and did not go anywhere between leaving the pool hall and getting stopped. [R.24:44,51] The stop was at 12:48 a.m. The trial court denied Joda's motion.

## DISCUSSION

¶5 The trial court's findings of fact made pursuant to a denial of a motion to suppress evidence "will be sustained unless against the great weight and clear preponderance of the evidence." *Bies v. State*, 76 Wis. 2d 457, 469, 251 N.W.2d 461 (1977). "Any conflicts in testimony will be resolved in favor of the trial court's finding." *State v. Flynn*, 92 Wis. 2d 427, 437, 285 N.W.2d 710 (1979). The credibility of witnesses testifying at the suppression hearing is for the trial court's determination. *Id.*

¶6 Here, the only issue is whether the trial court erred in finding Becker’s testimony more credible than Joda’s in regard to where Joda made his U-turn. Joda’s argument on appeal is that the trial court’s findings are clearly erroneous because of some discrepancies between Becker’s testimony and his written report, as well as Becker’s inability to remember exactly where he was when he saw Joda turn. Joda also points out contradictions between his own testimony and the trial court’s findings.

¶7 Joda’s arguments largely rely on his own testimony, and the trial court made a credibility determination that Becker was more believable. The trial court found that Becker was very clear in his testimony that when he first saw Joda’s vehicle it was at the stoplights on the south side of the highway. This conclusion is supported by Becker’s testimony and his report, which indicates that Becker saw Joda “on the south side of 94” and perhaps about to attempt to turn into an off ramp. And it makes sense that Becker would have a strong memory of that detail because of the potential danger of Joda making a left turn into oncoming traffic. Becker was also clear that Joda was not on Becker’s immediate left as Becker turned onto southbound Grandview off of I-94, but rather was on the south side of the I-94 overpass waiting with his left turn signal on. These are key facts that are significant and memorable—and upon which Becker insisted at the hearing.

¶8 The trial court found Becker’s testimony more credible than Joda’s because of the significant amount of alcohol that Joda had consumed that night—six or seven drinks by his own admission. The court also considered the time gap in Joda’s story. Joda says he left the pool hall “around midnight,” and the stop was not until 12:48 a.m., which the court found to be evidence of a flawed

memory. In contrast, there was no evidence that Becker had been drinking. The trial court also acknowledged that Becker’s report contained a discrepancy—presumably the court was referring to the misstatement that Joda was positioned to turn left into the westbound, rather than eastbound, off ramp—but found “the testimony of Deputy Becker more credible than Mr. Joda.” Becker “simply made a mistake in his reports. That doesn’t negate reasonable suspicion.” See *State v. Walli*, 2011 WI App 86, ¶14, 334 Wis. 2d 402, 799 N.W.2d 898 (“Where the underlying facts are in dispute, the trial court resolves that dispute by exercising its fact-finding function, and its findings are subject to the clearly erroneous standard of review.”). As the State aptly put it, “Although, a misstatement in Deputy Becker’s police report may support the defense’s theory that the U-turn was not illegal, it is not sufficient to support a holding that the trial Court’s factual findings are clearly erroneous.” Credibility determinations are for the trier of fact, and we will not overturn them unless they are against the great weight of the evidence. The trial court’s conclusions were supported by Becker’s testimony.

¶9 Joda points out that the report did not say, and Becker could not specifically recall, whether Joda was in front of or behind Becker when Joda made the U-turn. Becker was coming off the westbound off ramp and saw Joda about to make an illegal turn. Whether he saw him do it before or after he passed Joda does not alter Becker’s testimony that it happened.

¶10 The discrepancies do not take away from the key facts in the report and recalled by Becker in his testimony—that Joda was positioned at the stoplights south of the highway, about to turn into the oncoming traffic of the off ramp or make an illegal U-turn. Nor do they establish that Joda was north of the highway, absent Joda’s testimony, which the court did not find credible due to Joda’s own

report of having six or seven drinks and the preliminary breath test of .173. We affirm.

*By the Court.*—Judgments affirmed.

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

