

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 18, 2001

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 01-0443

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KENNETH S. MEIDENBAUER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:
JAMES R. KIEFFER, Judge. *Affirmed.*

¶1 BROWN, P.J.¹ Kenneth S. Meidenbauer appeals from his conviction for making an illegal U-turn at a prohibited place on a highway,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

contrary to WIS. STAT. § 346.33(1)(d). The location was a cross-over area connecting the eastbound and westbound lanes on I-94. These cross-overs typically have signs saying that U-turns are prohibited and that the cross-over area is restricted for use by maintenance and police-authorized vehicles. Meidenbauer argues that he did not make an illegal U-turn as a matter of law because he stopped in the cross-over median as part of an emergency stop before proceeding in the opposite direction. We do not agree and affirm.

¶2 Meidenbauer testified that he was traveling eastbound from Madison. Just east of the Highway 83 exit, he heard a noise in the left rear wheel and decided to pull into the cross-over to see if he could locate the source of the noise. Meidenbauer testified that he could not locate the problem and decided to drive westbound back to the Highway 83 exit to investigate further. A state trooper saw this maneuver and issued him a citation for an illegal U-turn.

¶3 Meidenbauer's theory as to why he did not make an illegal U-turn consists of two distinct arguments. One argument is based on his definition of a U-turn. He notes that the Wisconsin Supreme Court has taken judicial notice of information found in the Motor Vehicle Department Handbook. *Drake v. Farmers Mut. Auto Ins. Co.*, 22 Wis. 2d 56, 65, 125 N.W.2d 391 (1963), *as modified by* 128 N.W.2d 41 (1964). He cites the revised version of the 1997 edition as defining a U-turn to mean a turn "within the road, made in one smooth U-shaped motion, so as to end up traveling in the opposite direction." Meidenbauer appears to suggest that because he made an emergency stop, he did not make one smooth U-shaped motion.

¶4 Meidenbauer's reliance upon the handbook is misplaced. The portion of the handbook that he cites does not "define" a U-turn as that word is

used in WIS. STAT. § 346.33. Rather, the handbook merely describes the kinds of turns that a motorist usually makes. On the same page as the description of the U-turn, the handbook describes a “left turn,” “multiple lane turns” and “Y-turns.”

¶5 “U-turn” is not defined in the statutes. When a word or term is not defined in a statute and the word is not a term of legal art but is one used in the common everyday parlance of the English language, the courts may use a recognized dictionary for the definition of the word. *Ervin v. City of Kenosha*, 159 Wis. 2d 464, 483-84, 464 N.W.2d 654 (1991). In WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2526 (1993), a “U-turn” is defined as a turn “by a vehicle traveling along one side of a way by crossing the lane of oncoming traffic and turning into and proceeding along a lane on the other side of the way in a direction exactly opposite to the direction of movement at the start of the turn.” Under this definition, Meidenbauer made a U-turn.

¶6 Meidenbauer’s other argument is that since it is legal to make an emergency stop and since this is what he did, the emergency trumps the U-turn and the U-turn was actually a continuation of the emergency. He points to WIS. STAT. §§ 346.51(1) and 346.52(1)(h), which disallow stopping or standing on any portion of the highway where prohibited by official signs. But he then observes that WIS. STAT. § 346.50 provides exceptions for these stopping restrictions. The relevant provisions read as follows:

- (1)(a) The vehicle becomes disabled while on the highway in such a manner or to such an extent that it is impossible to avoid stopping or temporarily leaving a vehicle in the prohibited place; or
- (b) The stopping of the vehicle is necessary to avoid conflict with other traffic or to comply with traffic regulations

Id. Meidenbauer argues that, under these two exceptions, he was not prohibited from stopping in the cross-over. Meidenbauer reasons that since the turn into the cross-over was for emergency purposes, it was proper. He asserts that the stop itself was also lawful. Finally, he posits that when he made the decision to turn back in the opposite direction, that turn was a separate and distinct decision which took place following the emergency stop.

¶7 We agree with Meidenbauer that the statute he relies upon does allow him to park in the cross-over on a temporary basis. But he was not given a citation for parking in the cross-over. He was charged with making an illegal U-turn. On its face, WIS. STAT. § 346.50 does not excuse the completion of a U-turn because the operator has to make an emergency stop. As the trial court said, Meidenbauer's options were to wait for a law enforcement person or to continue going eastbound to the next exit going in that direction. Meidenbauer chose an option which violated the traffic code.

¶8 Although he does not specifically argue it, Meidenbauer's brief appears to assert that he did not intentionally make a U-turn but rather made the turn in a good faith effort to exit the interstate at the nearest point, Highway 83. This court has sympathy for this argument as it appears that the trooper's discretionary decision to issue him a ticket was unusually petty, given the circumstances. This is especially so where the trooper first observed Meidenbauer stopped with his door open. Obviously, this was not a situation where the operator simply was using the cross-over to go the other way without first exiting and then re-entering the interstate.

¶9 Nonetheless, the discretionary choice is the trooper's to make. Courts, and appellate courts in particular, have no authority to second-guess the

decision. Making an illegal U-turn is a strict liability offense. *C.f. State v. Collova*, 79 Wis. 2d 473, 485, 255 N.W.2d 581 (1977). Scienter is not an element of the offense because the penalty for the violation does not require the exercise of liberty interest considerations. The lack of a scienter requirement has been deemed a reasonable price to pay for the public benefit of the high standard of care that we expect of persons driving on our highways. *Id.* Given this state of the law, this court must affirm the judgment.

By the Court.—Judgment affirmed.

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

