

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

BRANDY CHARLINE HUSK,
Defendant-Appellant.

Lane County Circuit Court
201501342; A159265

Jay A. McAlpin, Judge.

Argued and submitted January 31, 2017.

Erik Blumenthal, Deputy Public Defender, argued the cause for appellant. With him on the brief was Ernest G. Lannet, Chief Defender, Criminal Appellate Section, Office of Public Defense Services.

Jacob Brown, Assistant Attorney General, argued the cause for respondent. With him on the brief were Ellen F. Rosenblum, Attorney General, and Benjamin Gutman, Solicitor General.

Before DeHoog, Presiding Judge, and Hadlock, Chief Judge, and Aoyagi, Judge.*

AOYAGI, J.

Affirmed.

* Hadlock, C. J., *vice* Flynn, J. pro tempore; Aoyagi, J., *vice* Sercombe, S. J.

AOYAGI, J.

This appeal arises from the denial of a motion to suppress. Defendant was driving down the road when the lane in which she was traveling split into two lanes. Defendant briefly “straddled” the new lane line before moving fully into the left lane. A police officer stopped defendant for violating ORS 811.370(1)(a), which requires a driver to operate a vehicle “as nearly as practicable entirely within a single lane.” The traffic stop led to the discovery of evidence that defendant was driving under the influence of intoxicants (DUII). Defendant moved to suppress that evidence, arguing that the officer lacked probable cause to stop her for a traffic violation. The trial court denied the motion. Defendant was ultimately convicted of DUII, driving while suspended or revoked, and reckless driving. Defendant appeals the judgment of conviction, assigning error to the court’s denial of her motion to suppress. We conclude that, on the facts of this case, the officer had probable cause to stop defendant for violating ORS 811.370. The stop therefore was lawful and the motion correctly denied. Accordingly, we affirm.

We are bound by the trial court’s findings of fact so long as those facts are supported by the record. *State v. Ehly*, 317 Or 66, 75, 854 P2d 421 (1993). When the record is silent as to how the court resolved a pertinent factual dispute, we presume that it found the facts consistently with its ultimate conclusion. *Id.* We state the facts in accordance with our standard of review.

Late at night, Cooper, an officer with the City of Eugene Police Department, encountered defendant driving her vehicle. Cooper had previously received a citizen report informing him that a woman owning a vehicle of the same description frequently drove intoxicated in that area, so he followed the vehicle. As defendant was driving, the single lane in which she was traveling widened until, immediately past an intersection, it divided into two, marked lanes. Defendant ultimately chose the left lane but, as she drove to that side, the right tires of her vehicle crossed over the dividing line. More specifically, as she left the intersection and entered the divided segment of the roadway, her vehicle “straddled” the new lane line briefly before she pulled completely into the

left lane. As a result, Cooper stopped defendant for violating ORS 811.370, which requires motorists to drive “as nearly as practicable entirely within a single lane.”

During the traffic stop, the officer obtained evidence that defendant was intoxicated and lacked a valid driver’s license. Before trial, defendant moved to suppress that evidence on the ground that the officer did not have probable cause for the stop. The trial court disagreed and denied defendant’s motion. Defendant was subsequently convicted of one count of DUII, ORS 813.011, one count of criminal driving while suspended or revoked, ORS 811.182, and one count of reckless driving, ORS 811.140. This appeal followed, in which defendant assigns error to the denial of her motion to suppress.

Under Article I, section 9, of the Oregon Constitution, before a police officer may stop a citizen for a traffic violation, the officer must have probable cause to believe that a violation occurred. *State v. Gordon*, 273 Or App 495, 500, 359 P3d 499 (2015), *rev den*, 358 Or 529 (2016). An officer has probable cause when two conditions are met. First, the officer must subjectively believe that an offense occurred. *State v. Boatright*, 222 Or App 406, 409, 193 P3d 78, *rev den*, 345 Or 503 (2008). Second, the officer’s subjective belief must be objectively reasonable; that is, the facts as the officer perceived them must satisfy the elements of an offense. *Id.* at 410. Whether the facts establish probable cause to stop someone for a traffic violation is a question of law that we review for legal error. *State v. Hall*, 238 Or App 75, 77, 241 P3d 757 (2010), *rev den*, 349 Or 664 (2011).

Defendant does not dispute that Cooper subjectively believed that she had violated ORS 811.370(1)(a) at the time of the stop. The only issue on appeal is whether that belief was objectively reasonable. We therefore turn to ORS 811.370. In construing a statute, we examine the statute’s text, context, and any helpful legislative history to determine the enacting legislature’s intent. *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009).

ORS 811.370(1) provides, in relevant part:

“[A] person commits the offense of failure to drive within a lane if the person is operating a vehicle upon a roadway

that is divided into two or more clearly marked lanes for traffic and the driver does not:

“(a) Operate the vehicle as nearly as practicable entirely within a single lane; and

“(b) Refrain from moving from that lane until the driver has first made certain that the movement can be made with safety.”

We have previously interpreted the phrase “within a single lane” to mean that drivers must stay “within” the lines, which does not include driving “on” the lines. *State v. McBroom*, 179 Or App 120, 124, 39 P3d 226 (2002). We have interpreted “practicable” to mean “possible to practice or perform,” “capable of being put into practice, done or accomplished,” or “feasible.” *Id.* at 124-25 (internal quotation marks and citations omitted). What is “practicable” while operating a vehicle depends on the circumstances of each case. *Id.* at 125.

Here, it is undisputed that defendant did not operate her vehicle entirely within a single lane. When the lane in which she was driving split into two lanes, defendant “straddled” the new lane line briefly before moving completely into the new left lane. Nonetheless, defendant argues that the officer did not have probable cause to stop her for violating ORS 811.370 because, in defendant’s view, a “momentary crossing of a lane marker” does not violate the statute, at least when the road requires drivers to do something other than “simply drive straight ahead.” The state counters that ORS 811.370(1)(a) requires drivers to stay entirely within their lane at all times unless there is some articulable reason that it is impracticable to do so.

We conclude that, on the facts of this case, the officer had probable cause to stop defendant. In *McBroom*, we interpreted ORS 811.370 to require a driver to operate his or her vehicle entirely within a single lane unless (1) something makes it impracticable to do so, such as a road hazard or “some other valid reason,” or (2) the driver is moving from one lane to another and first makes certain that the movement can be made safely. 179 Or App at 125-26. Here, defendant has not identified any reason that it was impracticable for her to operate her vehicle entirely within a single

lane, *i.e.*, to complete the movement into the new left lane in a timely manner and thereby avoid straddling two lanes for a period. To the contrary, defendant argues only that it was, essentially, inconvenient to do so. That is insufficient under *McBroom*.¹

We also reject defendant's argument that the conduct should not be deemed a violation of ORS 811.370 because of the officer's testimony that the police vehicle committed the same violation as it was following defendant and that people "naturally" do so at that place in the road "depending on the traffic flow." The frequency with which a violation is committed on a particular road has no bearing on our analysis, unless something about the road makes it "impracticable" to stay within a single lane at that point. Defendant has identified nothing of that sort.

Under the circumstances, the officer's belief that defendant had violated ORS 811.370 was objectively reasonable. The stop therefore was lawful, and the trial court correctly denied the motion to suppress.

Affirmed.

¹ We do not address ORS 811.370(1)(b), regarding lane changes, because defendant affirmatively denies that she was changing lanes and never argues that the lane-change exception applies.