IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,
v.
DRAKE M. ROSLING,
Defendant-Appellant.
Marion County Circuit Court
15CR47066; A161382

Tracy A. Prall, Judge.

Argued and submitted April 4, 2017.

Jason E. Thompson argued the cause for appellant. With him on the brief was Ferder Casebeer French & Thompson LLP.

Lauren P. Robertson, Assistant Attorney General, argued the cause for respondent. With her on the brief were Ellen F. Rosenblum, Attorney General, and Benjamin Gutman, Solicitor General.

Before Hadlock, Chief Judge, and Aoyagi, Judge, and Schuman, Senior Judge.*

AOYAGI, J.

Affirmed.

---

* Aoyagi, J., *vice* DeHoog, P. J.

AOYAGI, J.

This appeal arises from the denial of a motion to suppress evidence. While driving behind defendant, a police officer observed defendant's vehicle touch the left lane line, then move across the lane and cross the right fog line for approximately 20 to 30 feet. The officer stopped defendant for violating ORS 811.370(1)(a), which requires drivers 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 on the ground that the officer lacked probable cause for the stop. The trial court denied the motion, and defendant ultimately was convicted of DUII, ORS 813.010. Defendant appeals the judgment of conviction, assigning error to the denial of his 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. 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 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.

Shortly after midnight on a Friday night, while en route to another call, Kelly, an officer of the Keizer Police Department, saw a blue Hummer pull out of a bar parking lot and drive in a manner that concerned him. Kelly radioed another officer, Powell, and suggested that Powell watch for the vehicle. Powell soon located the vehicle and began to follow it. The vehicle was traveling northbound in the farthest right lane of a multi-lane road.

As Powell followed the vehicle, he observed that it was drifting back and forth within its lane. It was a large vehicle—about nine to 10 inches wider than "a typical commuter car"—but there was room for the vehicle to stay in its lane and even drift. After a time, the road began to curve to the right, and the vehicle's left tires briefly contacted the

left lane line, which was a broken line separating two northbound lanes of traffic. The vehicle then moved right until its right tires crossed over the fog line (a solid white line) into the bike lane for approximately 20 to 30 feet. The vehicle then pulled back into its lane and stopped at a traffic light. When the light turned green, the vehicle proceeded through the intersection and activated its right turn signal as it approached a convenience store on the corner.[1] At that point, Powell stopped defendant for failing to drive within a single lane in violation of ORS 811.370. In the course of the stop, Powell obtained evidence that defendant was intoxicated and arrested him for DUII.

Before trial, defendant filed a motion to suppress the evidence obtained during the stop. Defendant argued that it is not a violation of ORS 811.370 to drive briefly outside a lane and that the officer therefore lacked probable cause to stop him. The trial court denied the motion, ruling that the officer had probable cause to stop defendant for violating ORS 811.370. Defendant entered a conditional guilty plea, preserving for appeal the suppression issue. *See* ORS 135.335(3).

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. Woodall*, 181 Or App 213, 217, 45 P3d 484 (2002).

---

[1] On appeal, defendant asserts that he activated his right turn signal *before* crossing the right fog line. The trial court found otherwise and that finding is supported by the record, particularly the officer's testimony and the video evidence, so it is is binding. *Ehly*, 317 Or at 75.

Defendant does not dispute that, at the time of the stop, Powell subjectively believed that defendant had violated ORS 811.370. The only issue on appeal is whether that belief was objectively reasonable, which depends on the correct construction of ORS 811.370. We therefore turn to the statute. In construing a statute, we consider the text, context, and any helpful legislative history. *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009). The statutory text is "the best evidence of the legislature's intent." *Dowell v. Oregon Mutual Ins. Co.*, 268 Or App 672, 676, 343 P3d 283 (2015), *aff'd*, 361 Or 62, 388 P3d 1050 (2017).[2]

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 construed the phrase "within a single lane" in ORS 811.370(1)(a) 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 construed "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 established that defendant did *not* keep his vehicle "within" the lane lines at all times. Nonetheless, defendant argues that the facts perceived by the officer did

[2] The parties have not cited, and we are not aware of, any helpful legislative history. As for the parties' discussion of out-of-state decisions, other states with similar laws have construed them in different and conflicting ways. The split in authority among courts of other states "provide[s] little reason to interpret our statute one way or the other." *State v. McBroom*, 179 Or App 120, 126 n 4, 39 P3d 226 (2002).

not satisfy the elements of an offense because, in his view, the legislature intended "as nearly as practicable" in ORS 811.370(1)(a) to mean that "brief, momentary, and minor" departures from a lane are permitted as a matter of course. The state counters that the statute requires drivers to stay within a single lane at all times unless it is impracticable for some articulable reason, such as a road hazard.

We agree with the state, although, in doing so, we need not reach the issue whether truly *de minimis* touching of a lane line is an offense under ORS 811.370. Like other cases we have considered in the past, this case does "not involve a single incident of defendant briefly driving onto a lane line." *State v. Vanlom*, 232 Or App 492, 498, 222 P3d 48 (2009). While it is true that defendant only briefly touched the left lane line with his left tires, he then moved across the entire lane and crossed the right fog line, such that his right tires entered the bicycle lane for approximately 20 to 30 feet. In other words, defendant moved outside both sides of his lane, in a short period of time, and one instance was relatively prolonged and involved not only touching but crossing.

ORS 811.370(1)(a) requires drivers to operate their vehicles "as nearly as practicable entirely within a single lane." The most obvious example of something that may make it impracticable to stay within a single lane is a road hazard, such as road debris, road damage, or a nearby vehicle operating outside its lane. *See McBroom*, 179 Or App at 124-25. Whatever the cause, however, we have previously construed and continue to construe ORS 811.370(1)(a) as requiring a driver to have "some *** valid reason" not to keep the vehicle entirely within the lane. *Id*. at 125.

Defendant has never offered any reason that he could not keep his vehicle in the lane, let alone a reason that would have been apparent to the officer such that the officer should have known from observation alone (without stopping defendant to investigate) that it was impracticable for defendant to stay in his lane. There was "no apparent reason" for defendant not to keep his vehicle within the lane. *Id.* (defendant "drove for more than 300 feet on the center line for no apparent reason"). There did not appear to be anything "beyond defendant's control" that prevented him

from keeping his vehicle within the lane. *Vanlom*, 232 Or App at 498 ("Because there was no evidence that something beyond defendant's control prevented him from operating his vehicle in his lane without touching the lane lines, [the officer] had probable cause to stop defendant for a violation of ORS 811.370.").

Under the circumstances, we conclude that the officer had probable cause to stop defendant for violating ORS 811.370(1)(a). In so holding, we reject defendant's argument that the statute applies differently to larger vehicles. While vehicle size may sometimes be relevant, ORS 811.370 itself precludes any reading of the statute as generally excusing operators of larger vehicles from driving within a single lane. *See* ORS 811.370(2) (providing very limited exception to ORS 811.370(1) for commercial vehicles in roundabouts only). Moreover, the court found—and the evidence supports—that the lane in which defendant was driving was sufficiently wide to accommodate his vehicle. We also reject defendant's request that we construe the statute as allowing drivers to operate a vehicle outside a single lane so long as there are few other vehicles, bicycles, or pedestrians on the roadway. The statute allows for no such consideration. Finally, we reject defendant's suggestion, not expressly stated but implicit in his position, that it is impracticable to expect *any* driver to stay entirely within a lane, even if nothing specific makes it impracticable to do so. Adopting such a view of ORS 811.370(1)(a) would be contrary to our prior case law.

In sum, the trial court correctly concluded that the officer had probable cause to stop defendant for a violation of ORS 811.370(1)(a). Because the stop was lawful, the court properly denied defendant's motion to suppress.

Affirmed.