

68929-1

68929-1

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION I

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

SARAH S. HUFFMAN,

Defendant/Petitioner.

No. 68929-1-1

Snohomish County No. 11-1-00676-4

BRIEF OF APPELLANT

FILED  
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COURT OF APPEALS  
DIVISION I  
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## INTRODUCTION

This appeal flows from a traffic stop of Ms. Huffman which occurred in Snohomish County on October 18, 2010. Ms. Huffman was driving southbound on SR 9 and her vehicle was observed by Trooper Eberle to briefly cross the centerline by approximately a tire width for a distance of car length of travel or 6 inches for less than a second as she was traveling the speed limit.

Ms. Huffman was thereafter pulled over and a DUI investigation unfolded.

The Trial Court Dismissed the prosecution on Defendant's Motion to Suppress Evidence based upon an unreasonable search and seizure in violation of article 1 § 7 of the Washington State Constitution.

Thereafter the State sought review on RALJ Appeal and the Order of Suppression was reversed by the Snohomish County Superior Court, the honorable George Appel.

The matter is before this court on Discretionary Review.

## ASSIGNMENTS OF ERROR

### III. ISSUES PRESENTED FOR REVIEW

Does an inherent conflict exist between the Lane Travel Statute, RCW 64.61.140 which contemplates operation of a motor vehicle within its lane of travel *as nearly as practicable* and the Centerline Statute, RCW 46.61.100 which calls upon drivers to stay right of the centerline and fails to specifically mention the *as nearly as practicable*, language.

Does a single crossing of the centerline by a tire width for less than  $\frac{1}{2}$  second which fails to imperil other traffic on the roadway amount to probable cause to stop for violation of RCW 46.61.100?

## STATEMENT OF THE CASE

### DECISION BELOW

Commencing with the trial court, the Snohomish County District Court, Evergreen Division, the Honorable Stephen Clough, determined after an evidentiary hearing that the DUI charges pending against Ms. Huffman should be dismissed for want of probable cause to stop. The essence of the trial court's ruling was that the driving behavior observed by the arresting officer did not give rise to probable cause to stop. (vis a vis *State v Prado*) Subsequent to this decision the State sought a RALJ Appeal to the Snohomish County Superior Court. The Honorable George Appel ruled that probable cause did exist by virtue of the single brief crossing of the centerline and reversed the trial court. This Appeal and Motion for Discretionary review followed.

Ms. Huffman was observed by Trooper Eberle driving southbound in Snohomish County on State Route 9 (a two lane highway) she was pulled over after she briefly deviated across the centerline by a tire width for less than a second under circumstances where there was no oncoming traffic. It is her position that this behavior did not support probable cause for a traffic stop.

The long recognized practical reality of motor vehicle operation is that they do not travel in perfect vectors down the roadway. *United States v. Lyons*, 7 F.3d 973, 976 (10th Cir.1993) . Minor brief deviations from one's lane of travel have been considered tolerable if not acceptable unless of course the behavior is egregious and/or poses risks to others in proximity to the behavior. This belief is fortified by the language employed in our Lane Travel Statute (RCW

46.61.140 as borrowed from the Uniform Vehicle Code) which prescribes driving “as nearly as practicable” entirely within a single lane of travel. This general rule is recited within the context of RCW 46.61.140 and is given generic endorsement in the preamble to RCW 46.61 which has overreaching influence upon the rest of the rules of the road to include RCW 46.61.100 and RCW 46.61.670.

This practical reality has been given due consideration by the National Committee on Uniform Traffic Laws and Ordinances (NCUTLO) who crafted the Uniform Vehicle Code which is the benchmark for The Rules of the Road (RCW 46.61) as enacted by our legislature.

The issue in this case has been narrowed to whether a traffic stop for a very brief crossing of the centerline is justified under Article 1 Section 7 of the Washington State Constitution. The trial court dismissed the charge pending against Ms. Huffman based upon the absence of Probable Cause to Stop, the argument at the trial court focused upon this court’s holding in *State v Prado*. The *Prado* decision involved an interpretation of the Lane Travel Statute RCW 46.61.140, particularly the aspect of whether the involved driver Prado had maintained his lane of travel “as nearly as practicable”. The State contends that the present case is distinguishable from *Prado* by virtue of this being a centerline violation and that the language “as nearly as practicable” speaks only to the Lane Travel Statute and has no bearing upon the Centerline Statute RCW 46.61.100.

## 2. Factual Statement

Sarah Huffman, was initially stopped by Trooper Eberle of the WSP on October 18, 2010. It is worthy of note that at the time of this stop Trooper Eberle although he was a trained Washington State Patrol Trooper he was a virtual rookie as he had been in service for only 4 months at the time of this October 18, 2010 traffic Stop. (VRP P6 L21). Ms. Huffman was

observed traveling southbound from approximately MP 14 on Highway 9 to its intersection with Highway 2, the Stevens Pass Highway, a distance of approximately two miles. Over this course, Highway 9 is a two lane highway with a posted speed limit of 55 mph. Trooper Eberle testified that he observed Ms. Huffman's vehicle to be weaving within its lane (VRP P 9 L 4). The trooper testified however, that he did not consider such weaving to be a traffic infraction. (VRP P 17 L23 – P 18 L 1). Trooper Eberle testified that he **did not** consider the weaving sufficient enough to warrant a traffic stop (VRP P 25 L 5-9). Significantly, Trooper Eberle did not indicate that he considered her weaving to be the basis for an investigative, *Terry Stop* (VRP P 25 L 5-9).

Trooper Eberle also testified that he observed her vehicle to almost cross the centerline on three separate occasions (VRP P10 L 15-16). In like fashion Trooper Eberle did not consider the approaches to the centerline and recovery back into the lane of travel to be traffic infractions for purposes of Probable Cause to Stop (VRP P 17 L 23 – P 18 L 1, VRP P23 L 11-14 and VRP P 25 L 5-9). Trooper Eberle had no recollection of vehicles traveling in the opposite direction (VRP P10 L 23-25).

Trooper Eberle testified that Ms. Huffman was traveling at the posted speed limit of 55 mph. (VRP P 23 L 19-23). Near the end of his observation of Ms. Huffman, Trooper Eberle testified that she did cross the centerline by approximately a full tire width (VRP P 11 L 15-20). Trooper Eberle did not remember whether the centerline was a dashed or double yellow line at the point where her vehicle crossed the centerline. (VRP P15 L21-23) The Trooper did describe the roadway as being a fairly straight section of roadway. (VRP P15 L11). After this brief crossing of the centerline Trooper Eberle activated his emergency lights and stopped Ms. Huffman's vehicle. When questioned further the following details were elicited; Trooper Eberle agreed that, at 55 mph a vehicle travels approximately 80 feet in one second (VRP P24 L3-11). Trooper Eberle agreed

that this crossing of the centerline, which covered a distance of perhaps a vehicle length at 55 mph, would equate to approximately 1/3 of a second. (VRP P 24 L 3-19). Trooper Eberle testified that there were no other vehicles oncoming or that her crossing of the centerline posed any immediate threat to another vehicle. (VRP P 12 L 7). Subsequent to the centerline crossing, Ms. Huffman was stopped and thereafter investigated on what developed to be suspicion of DUI.

In summary, Trooper Eberle answered affirmatively to the following question:

Q: So I'm accurate in my understanding that Miss Huffman's vehicle crossed the centerline by one tire width; that there was no vehicles oncoming, otherwise those clearly would have been noted in your report; and that she did so for less than a second's time before returning to her lane; and thereafter you elected to stop her car.

(VRP P24 L12-17).

At the time of this traffic stop Trooper Eberle had been working the road as a WSP Trooper for about 4 Months having been commissioned in June of 2010 (VRP P6 L19 and P 7 L24).

Trooper Eberle testified at the hearing that he had no memory of the Ms. Huffman coming close or causing any direct peril to any other cars on the roadway (VRP P12 L4-7).

Trooper Eberle observed no other infractions that would have served as probable cause for him to stop her vehicle (VRP P25 L 10-14). Upon seeing Ms. Huffman's vehicle cross the centerline Trooper Eberle activated his emergency lights and stopped Ms. Huffman. Trooper Eberle testified that "the crossing of the centerline" was the reason that he chose to stop Ms. Huffman's vehicle because prior to that point he observed no infractions (VRP P14 L 13-16); Trooper Eberle testified, "It's not illegal to -- to weave in your lane." Trooper Eberle did not

consider the weaving in the lane or the approaching the centerline and jerking back into the lane to be infractions which would prompt him want to stop the vehicle (VRP P25 L5-9).

## ARGUMENT

The brief incursion over the centerline in this matter posed no threat to others on the roadway and did not offer probable cause for a lawful stop of Ms. Huffman's vehicle.

The long recognized practical reality of motor vehicle operation is that they do not travel in perfect vectors down the roadway. United States v. Lyons, 7 F.3d 973, 976 (10th Cir.1993) .

Minor brief deviations from one's lane of travel have been considered tolerable if not acceptable unless of course the behavior is egregious and/or poses risks to others in proximity to the behavior. The Rules of the Road have been crafted with an eye upon vehicle safety. Ms. Huffman's crossing of the centerline did not pose a threat to others on the roadway.

This belief is fortified by the language employed in our Lane Travel Statute (RCW 46.61.140) which proscribes driving "as nearly as practicable" entirely within a single lane of travel. This general rule is recited within the context of RCW 46.61.140. Not only is this language recited in §140 but it is implicitly present in other sections of the Rules of the Road, RCW 46.61. The language is incorporated by reference. RCW 46.61.120, the Lane Travel Left of Centerline section incorporates several sections by specific reference. According to §120 any person driving left of center is obligated to comply with RCW 46.61.100 through §160 and RCW 46.61.212. Clearly both §100 and §140 are incorporated by reference under the provisions of §120; and clearly these various sections were intended to be read together and not intended to be read and applied in isolation but in a manner to harmonize with each other. Both §100 and §140 contemplate lawful operation (without threat to others) and all three sections contemplate travel left of center and this much was clearly stated. Common sense and practical experience tell us that motor vehicles are subject to modest wandering and will travel across the centerline for

various lawful (contemplated) reasons and motor vehicles assuredly do not travel in perfect vectors.

The preamble language found in the Lane Travel Statute, RCW 46.61.140 reads in pertinent as follows:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules **in addition to all others consistent herewith shall apply:**

(emphasis added)

This language in the context of our present considerations further fortifies this argument that maintaining ones lane of travel (§140) and staying to the right of centerline (§100) are not mutually exclusive and in fact are to be given consideration consistent with one another. Application of both rules consistent with one another compels each driver on the road to maintain their own lane of travel as they should with an eye in particular toward vehicle safety.

This practical reality of vehicular safety has been given due consideration by the National Committee on Uniform Traffic Laws and Ordinances (NCUTLO) who crafted the Uniform Vehicle Code which is the benchmark for The Rules of the Road (RCW 46.61) as enacted by our legislature.

The issue in the present case has been narrowed to whether a traffic stop for a very brief crossing of the centerline which does not threaten or imperil any other vehicle is justified under Article 1 Section 7 of the Washington State Constitution. The trial court dismissed the charge pending against Ms. Huffman based upon the absence of peril to others on the roadway during a brief crossing of the centerline. Ruling that no Probable Cause to Stop existed, the argument at the

trial court focused particularly upon the “as nearly as practicable” language of §140 and this court’s holding in *State v Prado*, 145 Wn.App. 646, 186 P.3d 1186 (Div I, 2008).

The *Prado* decision involved a single violation of the lane lines on an exit. Of particular consideration at the trial court as well as in *Prado* was the absence of any threat to other vehicles on the roadway. In *Prado*, this court stated, in reference to the considered lane travel violation, “This is particularly so as the officer testified that there was no other traffic present and no danger posed to other vehicles”. *Prado*, supra at 1187.

Does the centerline statute contemplate "strict liability" for crossing the centerline? No, not necessarily, specifically the Centerline Statute, §100 specifically allows for and tolerates exceptions as does the left of centerline statute § 120 which also sets forth exceptions and specifically states that multiple sections are to be given consideration so as to render consistent application of the various sections of the Rules of the Road dealing with Lane Travel . Thus strict liability is not mandated by § 100 as the various sections are be read together to render consistency.

The State contends or will contend that the present case, as a centerline violation is distinguishable from *Prado* by virtue of this being a centerline violation and that the language “as nearly as practicable” speaks only to the Lane Travel Statute and has no bearing upon a Centerline statute RCW 46.61.100. The essence of the states argument is that § 100 is to be read in isolation and any consideration of "driving as nearly as practicable" must be limited to Lane Travel violations under § 140. The Trial Court herein found that Ms. Huffman’s stop was unlawful as a traffic stop premised on RCW 46.61.140 as well as RCW 46.61.100; the superior court however agreed in part, concluding that the defendant’s incursion(s) (*sic*) over the

centerline did not comprise a violation of RCW 46.61.140. The Superior Court however felt that the brief centerline violation offered a lawful basis for a traffic stop under §100. The superior court did not ignore the *as nearly as practicable* language and found that Ms. Huffman's driving was indeed as nearly as practicable within her lane and not a violation of §140. The superior court considered the centerline violation in isolation. This strict application of RCW 46.61.100 to the exclusion of other lane travel sections including §120 and §140 was error. The Rules of the Road were not meant to be considered in isolation and the legislature has stated as much.

The single de minimis crossing of the centerline in this matter offered no threat to others on the roadway in much the same manner as would a well orchestrated crossing of the centerline during a passing maneuver. A pass however obviously would involve a much more dramatic crossing of the centerline than that found in the present facts.

ALL EVIDENCE OBTAINED FOLLOWING THE SEIZURE OF SARAH HUFFMAN SHOULD REMAIN SUPPRESSED BECAUSE THE SEIZURE VIOLATED WASHINGTON STATE CONSTITUTION, ART. 1. SEC. 7.

Any traffic stop in Washington State must satisfy the state constitutional requirement, of article I, section 7. *Seattle v. Messiani*, 110 Wn.2d 454, 456 (1998). Article I, section 7 of the Washington State Constitution, reads: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." *Id.* The textual language of article 1, section 7 provides greater protection to individual privacy interests than the Fourth Amendment. *Id.* Article 1, section 7 protects against warrantless searches and seizures, with no express limitations. *Id.* From the earliest days of the automobile in this state, this court has acknowledged the privacy interest of individuals and objects in automobiles. *Id.* at 456-57. An automobile stop based upon a

reasonable articulable suspicion that a traffic infraction has occurred is an exception to the warrant requirement. *Id.* However, the burden is **always** on the State to prove one of the narrow exceptions to the warrant requirement under the Fourth Amendment and State Constitution. *Id.*; *State v. Ladson*, 138 Wn.2d 343, 350, 979 P.2d 833 (1999). The state has not met its burden with regard to a violation of RCW 46.61.100. The crossing of the centerline was very brief and did not justify a belief that Ms. Huffman was operating her vehicle unlawfully.

The use of traffic stops must remain limited and must not encroach upon the right to privacy except as is reasonably necessary to promote **traffic safety and to protect the general welfare** through the enforcement of traffic regulations and criminal laws. Although traffic stops are legally authorized for the investigation of traffic infractions or criminal activity, each such investigative stop must be justified at its inception and must be reasonably limited in scope-based on whatever reasonable suspicions legally justified the stop in the first place.

*State v. Arreola*, 176 Wash.2d 284, 293-294, 290 P.3d 983 (Wash., 2012) (emphasis added)

There was admittedly no peril visited upon other vehicles on the roadway in the case at hand.

The roadway was straight and offered a view down the roadway. There were no other cars on the roadway which the trooper recalled that were imperiled.

*Arreola* further discusses whether traffic stops are constitutional under article 1 section 7 as *investigative stops* but only subject to limitations based upon reasonable articulable suspicion of either criminal or activity or a traffic infraction, and if reasonably limited in scope.

*See Ladson*, 138 Wash.2d at 350, 351–52, 979 P.2d 833 (citing *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)); RCW 46.61.021(2); *see also Snapp*, 174 Wash.2d at 197–98, 275 P.3d 289; *State v. Doughty*, 170 Wash.2d 57, 62, 239 P.3d 573 (2010); *Day*, 161 Wash.2d at 896, 168 P.3d 1265; *Duncan*, 146 Wash.2d at 173–74, 43 P.3d 513; *cf. State v. Nichols*, 161 Wash.2d 1, 13, 162 P.3d 1122 (2007) (warrantless traffic stop is constitutional if based upon probable cause that a traffic infraction occurred). The narrow exception to the warrant requirement for investigative stops has been extended beyond criminal activity to the investigation of traffic infractions because of “the law enforcement exigency created by the ready mobility of vehicles and governmental interests in ensuring safe travel, as evidenced in the broad regulation of most forms of transportation.” *State v. Day*, 161 Wash.2d at 897, 168 P.3d

1265 (2007) (quoting *State v. Johnson*, 128 Wash.2d 431, 454, 909 P.2d 293 (1996)); *State v. Duncan*, 146 Wash.2d at 174, 43 P.3d 513.

*State v. Arreola*, 176 Wash.2d 284, 293, 290 P.3d 983 (Wash., 2012)

The particular stop of Ms. Huffman has never been labeled an investigative stop and is further distinguished from *Arreola* in that Ms. Huffman was not a mixed motive stop. Her stop was based upon a belief that probable cause existed for the commission of an infraction in Trooper Eberle's presence.

The trial court was in the best position to view the credibility of the Trooper Eberle's testimony and the trial court concluded that no infraction was committed in the trooper's presence.

RCW 46.61.021(1) authorizes law enforcement to stop motor vehicles, without a warrant, for traffic infractions. In this case, Trooper Eberle testified that he justified the stop of Ms. Huffman's vehicle based on his observations of a single brief incursion across the centerline by one tire width; i.e. a centerline violation, RCW 46.61.100 or a lane travel violation, RCW 46.61.140. Trooper Eberle acknowledged that the observed driving behavior posed no direct threat to any other vehicles on the roadway. Trooper Eberle did not suggest that he suspected Ms. Huffman to be operating under the influence for purposes of an investigatory *Terry Stop* or that he suspected she might be fatigued and he elected to pull her over for purposes of "community care-taking". He indicated that he made this stop based upon her crossing the centerline for a very brief instance by a single tire width.

Does a single brief crossing of the centerline under circumstances where no threat is visited upon oncoming traffic amount to the commission of an infraction in the officers presence which would justify a lawful stop? No

The ultimate inquiry becomes whether this driving behavior offered sufficient justification to effect a traffic stop of Ms. Huffman's vehicle given the statutory framework provided in the Rules of the Road. This statutory framework recognizes that automobiles do not travel in perfect vectors down the roadway and this is reflected in the language found in RCW 46.61.140 which contemplates vehicles shall be driven *as nearly as practicable* within their lane of travel. As such the legislature has embraced the understanding that motor vehicles as we know them do not travel on train tracks down the roadway. This court has also contemplated this very issue in the context of a traffic stop for a lane travel violation as noted in *Prado*.

RCW 46.61.100 admittedly does not specifically contain the "as nearly as practicable" language found in the lane travel statute RCW 46.61.140 and as such the Superior Court ruled that the stop was lawful based upon the absence of this language, thus reversing the trial court. Ironically enough §100 does allow for crossing of the centerline. Inherent within the centerline statute is the consideration of vehicle safety, which is made manifest within the exceptions noted in the Centerline Statute. Vehicle Safety is pervasive throughout the Rules of the Road. A centerline violation of Ms. Huffman's nature does not offer an absolute right to stop as various exceptions exist in RCW 46.61.100 the Centerline Statute as well as 46.61.120 the Left of Centerline Statute which authorizes driving to the left of center. A driver may overtake and pass another vehicle driving in the same direction under the rules governing such movement; a driver may travel left of center under circumstances where an obstruction exists yet in doing so must yield the right of way to all vehicles traveling in the proper direction (oncoming traffic) on the

unobstructed portion of the highway within such distance as to constitute an immediate hazard. This restates the obvious that being the overriding concern for vehicle safety as expressed by the two sections in question as well as the parameters expressed along with the exceptions. Of further significance is the language found at RCW 46.61.120, which discusses specifically driving left of center to effect a pass and reference is made to the various rules found in §100 through §160 and §212. This includes § 140 specifically as nearly as practicable.

As noted the facts of the matter at hand do not include any vehicles to have been placed in peril by Ms. Huffman's brief centerline violation. There were no vehicles observed by Trooper Eberle to be oncoming so as to even be remotely in the realm of danger from Ms. Huffman's brief crossing of the centerline.

A Centerline Violation was not entirely remote from this court's considerations in *Prado*. The *Prado* court discussed opinions from other states that had also ruled upon lane travel issues and thus looked at the Texas appellate opinion of *State v. Cerny*, 28 S.W.3d 796 (Tex.App.-Corpus Christi, 2000). The facts of *Cerny* predominantly involved a Lane Travel Statute similar to Washington's. Additionally, the facts of *Cerny* suggested that a centerline violation had occurred, albeit the *Cerny* court addressed questions of officer credibility with regard to an alleged centerline violation. The Texas Court of appeals deferred to the trial court's determination regarding the officer's credibility as it pertained to the centerline allegation. The *Cerny* decision additionally gave consideration to three fog line violations as well the **peril he presented to others on the roadway**. In both instances, *Prado* and *Cerny*, there was no evidence of any peril to other vehicles on the roadway. The same is true in the matter at hand, no direct peril to others was testified to by Trooper Eberle as a result of Ms. Huffman's driving. The operative language in both the Washington and Texas lane travel statutes dealt with the "as

nearly as practicable” language. Ms. Huffman did remain within her lane of travel as nearly as practicable and whether the basis for the stop is RCW 46.61.140 Lane Travel or RCW 46.61.100 Right Half of the Roadway the behavior was de minimis and posed no threat to any other vehicle then present on the roadway as such the stop was unlawful.

#### STATUTORY INTERPRETATION

Does an inherent conflict exist between RCW 46.61.100 which facially may suggest that any crossing of the centerline is an absolute violation and RCW 46.61.140 which offers latitude in remaining within ones lane *as nearly as practicable* and not moving from ones lane until a determination has been made that it is safe to do so.

As a practical matter, reversing the superior court given the de minimis nature of this behavior does not force law enforcement to wait for either a near miss or a head on accident , but officers in the field are left with a *Terry Stop* analysis as well as *Community Caretaking* considerations, the problem here is the brief crossing with no threat to others on the roadway.

As noted above the Lane Travel Statute (§140) is not inconsistent with the Centerline Statute (§100) as both sections very clearly promote travel safety upon the roadway and both incorporate either directly or by inference an understanding that motor vehicles will wander upon the roadway whether intentionally or by happenstance. Clearly deviations to the right on two lane roadways do not pose the same risk as deviations to the left of centerline. The risk of peril to others is always a consideration in whether a lane is maintained as nearly as practicable or when a deviation left of center occurs. In either circumstance the question of proximity to others is always a consideration. This is undeniable. In either scenario the officer in the field must undertake a risk analysis; does a brief deviation pose a risk to others immediately present or within a reasonable distance. Does the observed behavior – the totality of the circumstances –

raise a reasonable suspicion that a crime/infraction is being committed or about to be committed. Under either statute whether it be right or left of the centerline it becomes a matter of risk analysis. Crossing to the left of center offers much greater potentials for risk to others on the roadway as does the crossing of the fog line under normal circumstances. Yet neither statute is mutually exclusive, they function in concert.

State Route 9 is divided into two lanes of travel over the entire distance Ms. Huffman was observed to be driving including the point where the brief crossing occurred. The lines of sight are lengthy as well. Trooper Eberle made no note of any peril to others on the roadway over the two miles that he observed Ms. Huffman's driving.

In construing the statutory scheme of the Rules of the Road as codified in RCW 46.61, the question of whether § 100 should be given "stand alone" consideration for a strict liability conclusion or be considered in concert with other sections of the Rules of the Road. How should the court consider the various sections of the Rules of the Road, particularly whether the *as nearly as practicable* language applies to the centerline.

In cases of statutory interpretation, "[t]he court's fundamental objective is to ascertain and carry out the Legislature's intent." *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wash.2d 1, 9, 43 P.3d 4 (2002) (citing *State v. J.M.*, 144 Wash.2d 472, 480, 28 P.3d 720 (2001)).

*State v. Pannell*, 173 Wash.2d 222, 267 P.3d 349 (Wash., 2011)

The legislative intent is manifest with the language highlighted in §140 above which indicates that the as nearly as practicable language shall "apply to all others (sections) consistent therewith", §120 further supports this contention of harmonization of the various lane travel sections of RCW 46.61.

We must construe statutes so that all the language used is given effect, with no portion rendered meaningless or superfluous. *Whatcom County v. City of Bellingham*, 128 Wash.2d 537, 546, 909 P.2d 1303 (1996). Courts should interpret statutes in a way that avoids a strained or unrealistic interpretation. *In re Pers. Restraint of Brady*, 154 Wash.App. 189, 224 P.3d 842 (2010) (citing *State v. Tejada*, 93 Wash.App. 907, 911, 971 P.2d 79 (1999)). **Statutes on the same subject matter must be read together to give each effect and to harmonize each with the other.** *US W. Commc'ns, Inc. v. Utils. & Transp. Comm'n*, 134 Wash.2d 74, 118, 949 P.2d 1337 (1997).

*State v. Yon*, 159 Wash.App. 195, 246 P.3d 818 (Wash. App., 2010) (emphasis added)

These two provisions §100 and §140 should be read together to give each effect and harmonize one with the other. To suggest that a brief incursion across the centerline which does not imperil other vehicles on the roadway is an infraction fails to harmonize §100 with §140 and would render the *as nearly as practicable* language of §140 superfluous. Which is inappropriate in light of the legislative mandate found in the preamble to §140 and fortified by the language in §120. The superior court in reaching its decision on RALJ appeal ignored both the plain meaning of §140 in light of its application to §100 and thus ruling that the trooper did have probable cause by virtue of the brief incursion of Ms. Huffman across the centerline.

Statutory interpretation is a question of law, subject to de novo review. E.g., *City of Olympia v. Drebeck*, 156 Wash.2d 289, 295, 126 P.3d 802 (2006). Our purpose when interpreting a statute is to "discern and implement the intent of the legislature." *Id.* at 295, 126 P.3d 802 (quoting *State v. J.P.*, 149 Wash.2d 444, 450, 69 P.3d 318 (2003)). Where the meaning of statutory language is plain on its face, we must give effect to that plain meaning as an expression of legislative intent. *Id.* **In discerning the plain meaning of a provision, we consider the entire statute in which the provision is found, as well as related statutes or other provisions in the same act that disclose legislative intent.** *Id.*; *Advanced Silicon Materials, L.L.C. v. Grant County*, 156 Wash.2d 84, 89-90, 124 P.3d 294 (2005); *Ellerman v. Centerpoint Prepress, Inc.*, 143 Wash.2d 514, 519, 22 P.3d 795 (2001). When a statute is ambiguous, we then resort to aids of construction, including legislative history. *Drebeck*, 156 Wash.2d at 295, 126 P.3d 802; *Advanced Silicon*, 156 Wash.2d at 90, 124 P.3d 294. (emphasis added)

*City of Spokane v. County of Spokane*, 146 P.3d 893, 158 Wn.2d 661 (Wash., 2006).

There is no real ambiguity to the statute in question; the error is found in the Superior Court's failure to give consideration to the complete statute and basing its ruling upon an isolated section of the statute. The superior court agreed that under *Prado*, given the broad interpretation which the court inferred this would not be a lawful stop. Yet went onto distinguish the stop as being a lawful stop under RCW 46.61.100. A narrow reading of §100 led to this conclusion. Such a reading does not harmonize the two statutes. Such an interpretation fails to recognize that the state while arguing the application of §100 over §140 did not meet its burden with regard to showing the absence of the exceptions noted to the centerline statute.

The state will further argue a narrow interpretation of *Prado* as applying only to violations of the fog line, despite the implications found in the opinion (language to the contrary regarding centerline crossings). Furthermore, the state is correct that the "as nearly as practicable" language is not specifically present in §100 on centerline, yet it is implicitly present when the Rules of the Road are read as a whole. The overarching concern of the Rules of the Road is traffic safety. It is apparent and implicit in the exceptions that were drafted that driving right of centerline is not an absolute to be strictly construed. The centerline statute indicates that a vehicle shall be driven on the right half of the roadway and then sets forth five exceptions to the general rule. More importantly the exceptions as well as the rule contemplate the safe operations of motor vehicles as the overriding concern. §100 (b) in particular provides that anyone crossing the centerline shall yield right of way to vehicles traveling in the opposite direction ... "within such distance as to constitute an immediate hazard." It cannot be said that crossing of the centerline was not given consideration. The primary consideration when it comes to traffic enforcement is that of traffic safety. In this instance the driving behavior did not pose

any immediate or unreasonable peril to others on the roadway. Allowing defendants to be pulled over for a single brief crossing of the centerline without more would allow essentially unfettered discretion and permit the arbitrary invasions of privacy by government officials addressed by the Fourth Amendment and Article I, Section 7. Further it would negate the legislative intent manifest in the exceptions to the centerline statute as well as the legislative intent of the *as nearly as practicable* language. finally such stops would run afoul of common sense. Motor vehicles do not run straight down their lanes of travel. A brief incursion might well be anticipated and perhaps even expected given the nature of automobiles. These two statutory provisions should be considered in concert and in harmony with one another.

If a failure to maintain ones lane of travel and permitting a traffic stop based upon a brief crossing of the centerline without more such as an unreasonable risk to others on the roadway would lead to many more people being subjected to unreasonable searches and seizures. The facts of the case at hand (being nominal brief incursions of the centerline) involve relatively frequent occurrences, as such those drivers would find themselves subjected to frequent traffic stops despite having never imperiled another by their brief incursion.

**Lane Travel and Centerline questions have been addressed in other states.**

### **Kansas**

The appellate court in Kansas considered what was initially mischaracterized as a “centerline violation” in *State v Marx*, 215 P.3d 601 (Kan. 2009). In *Marx* the Supreme Court of Kansas addressed a left hand lane line violation as well as a fog line violation. The *Marx* case involved a motor home with California plates traveling on a four lane, Kansas Turnpike, as it

drove past a Lyon County Deputy Sheriff it lost a hubcap which the officer retrieved and then followed the motor home. As he followed the Marx vehicle he observed the motor home to cross the fog line and overcorrect to cross the "centerline". Which observation prompted the deputy to activate his emergency lights. With further clarification the deputy referred to the centerline as the dividing line between the two northbound lanes of I-35. In considering the Kansas Lane Travel Statute, K.S.A. 8-1522 which was patterned after §11-309 of the Uniform Vehicle Code (which likewise served as the model for RCW 46.61.140); the *as nearly as practicable* language, served as the basis for the court to conclude that more than incidental and minimal lane breach would be necessary for a lawful stop.

The Kansas lane travel statute, K.S.A. 8-1522(a) provides:

"Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith shall apply.

"(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." K.S.A. 8-1522.

The court did offer an intriguing comment similar to the repeated comment from Lyons which embraced the same practical reality of motor vehicle operation. The panel noted that

**“automobiles, unlike railway locomotives, do not run on fixed rails”**. *State v. Ross*, 37

Kan.App.2d 126 at 129, 149 P.3d 876, rev. denied 284 Kan. 950 (2007).

*State v. Marx*, supra at 606 and 607.

## **Iowa**

*State v Tague*, 676 N.W.2d 197 (2004) is yet another case from the Midwest involving perhaps another mischaracterization of driving left of centerline and interpretation of the Centerline Statute. The facts of *Tague* involve a police officer who observed a vehicle being driven on a four lane roadway with two lanes headed north and two lanes headed south. A painted median divided the four lanes of travel. The officer followed the vehicle for about a mile and observed the left tires to cross over the left edge line of the roadway and return to its lane of travel at which time the officer stopped the vehicle. The *Tague* opinion discussed the stop of the vehicle as a violation of Iowa Code §312.297 prohibition from driving left of center (similar to RCW 46.61.100) as well as the Iowa Code §312.306 regulating lane travel (similar to RCW 46.61.140). Of great significance was the courts consideration of the plain meaning of the statutes, without resort to speculation; legislative intent is to be gleaned from the statute as a whole, not from a particular part only. If the language of the statute is clear and unambiguous, the Iowa court applies a plain and rational meaning consistent with the subject matter of the statute.

*Tague*, Supra at 202-203.

The *Tague* Court observed that the left edge line crossing was not a centerline crossing in ultimately finding that probable cause to stop did not exist.

The following quote from *Lyons* is found at page 205 -206 of *Tague*, supra.

"[I]f failure to follow a perfect vector down the highway or keeping one's eyes on the road [was] sufficient [reason] to suspect a person of driving while impaired, a substantial portion of the public would be subject each day to an invasion of [its] privacy." *United States v. Lyons*, 7 F.3d 973, 976 (10th Cir.1993).

**Ohio**

Ohio has had a series of cases involving application of Travel Safety Statutes, similar statutes as those employed in Washington State, all derived from the Uniform Vehicle Code.

The various Ohio cases start with, *State v. Gullett* (1992), 78 Ohio App.3d 138, 144-145, 604 N.E.2d 176 which was also cited as authoritative in *Prado*. *Gullett*, involved application of the *as nearly as practicable* language and from a factual standpoint the driving behavior involved a crossing of the right side edge line (Fog line). The trial court ruled the stop to be unlawful and this ruling was upheld on appeal.

A second opinion followed out of the Ohio appellate courts, *State v. Drogi* (1994), 96 Ohio App.3d 466, *Drogi* was a mischaracterized “centerline violation” as well as a fog line violation.

While approaching appellant's vehicle on the interstate, the trooper observed the left front tire drive one foot over the center line. Appellant's vehicle then went right towards the edge line, then left without crossing the center line and eventually across the right edge line. The trooper did not indicate how far appellant drifted right across the edge line.

The court does note that this occurred on a four-lane divided interstate and no one was threatened or endangered by the actions. The court further comments, “Appellant was driving his vehicle, for the most part, within a single lane of traffic on a four-lane divided highway. Absent the observation of erratic driving or traffic violation, appellant’s right to privacy outweighs any general suspicion a police officer may have.” *Drogi*, supra at 469-470.

Progressing to *State v. Johnson* (1995), 105 Ohio App.3d 37, the *Gullett* decision continues to be upheld. The Court in *Johnson* stated as follows:

[I]n interpreting R.C. 4511.33, the court in *State v. Gullett* (1992), 78 Ohio App.3d 138, 144-145, 604 N.E.2d 176, 180-81, concluded that while a mere crossing of the right edge line technically constitutes a marked-lane violation, it does not follow that every crossing of the edge line, regardless of circumstances, constitutionally justifies a stop of the vehicle. In *Gullett*, the

court upheld a motion to suppress evidence in connection with a DUI charge where the defendant was stopped for twice crossing the right-edge line, and the evidence failed to show how long or how far the defendant crossed the line or any other evidence of erratic driving. *Id.* at 145, 604 N.E.2d at 181. As *Gullett* indicates, where a driver commits only a *de minimis* marked-lanes violation, some other evidence to suggest impairment is needed before an officer is justified in stopping the vehicle.

*State v. Johnson* (1995), 105 Ohio App.3d 37

Despite being from the early to mid 90's the Ohio appellate decisions continue to adhere to the same principals relied upon back to *Gullett*.

More recently came the decision *State v. Phillips*, 2006 Ohio 6338 (Ohio App. 12/4/2006).

R.C. 4511.33(A) does not proscribe all movements across lane lines. Rather, it apparently is intended to require, as nearly as "practicable," that a driver maintain his vehicle in one lane of travel, and if a change of lanes is to be made, the driver first must ascertain that it can be made with safety. As a result, a driver's simply crossing a lane line in itself is insufficient to establish a prima facie violation of R.C. 4511.33(A); the evidence must address additional conditions of practicality and safety, for which the state bears the burden of proof.

*State v. Phillips*, 2006 Ohio 6338 (Ohio App. 12/4/2006)

Likewise, in this matter the state should also bear it's burden and demonstrate through evidence what concerns exist for practicality and safety. In the present circumstance Ms. Huffman's driving did not imperil any other vehicle on the roadway.

The most recent Ohio appellate decision of significance for these concerns is *State v. Houck*, 2011 Ohio 6359 (Ohio App., 2011). The particular facts of *Houck* would suggest that the officer perhaps embellished his report, as the video evidence did not support his contention of a centerline violation. The court did however give a lucid discussion of various factors to be considered in passing upon a lane violation.

"In Ohio, when a driver commits only a *de minimis* marked-lanes violation, there must be some other evidence to suggest impairment before an officer is justified in stopping the vehicle. See *State v. Gullett* (1992), 78 Ohio App.3d 138, 145, 604 N.E.2d 176, 180-181. In *Gullett*, the Fourth District Court of Appeals concluded that the mere crossing of an edge line on two occasions did not constitutionally justify the stop. Similarly, this court has held that where there is no evidence of erratic driving, 'other than what can be considered as insubstantial drifts across the lines,' there is not sufficient evidence to justify an investigative stop. *State v. Drogi* (1994), 96 Ohio App.3d 466, 469, 645 N.E.2d 153, 155. However, as discussed above, under certain circumstances, an incident or incidents of crossing lines in the road may give a police officer reasonable suspicion to stop a vehicle, depending on those factors that indicate the severity and extent of such conduct. *Id.*; *State v. Johnson*, 105 Ohio App.3d at 40, 663 N.E.2d at 677."

{¶ 17} When reviewing the traffic stop in the case sub judice under the totality of the circumstances, we agree with the trial court the officer did not have a reasonable, articulable suspicion upon which to base the initial stop of Appellee. Accordingly, Appellant's sole assignment of error is overruled.

*Houck*, supra.

The crossing of the centerline particularly as alleged herein was *de minimis* and for purposes of vehicle safety did not imperil others on the roadway. As noted above the *Prado* opinion does suggest that the violation and safety concerns are important in the consideration.

#### The Rules of the Road

Broadly speaking The Rules of the Road as adopted in Washington State by our Legislature and codified under RCW 46.61 were borrowed from the Uniform Vehicle Code which was prepared by the National Committee on Uniform Traffic Laws and Ordinances. The Lane Travel Statute RCW 46.61.140 mirrors UVC 11-309 and RCW 46.61.100 the Centerline Statute mirrors UVC 11- 301.

#### MAINE

The case of *State v. Caron*, 534 A.2d 978 (Me., 1987) offers a "true" centerline violation and of particular note is the absence of threat to other vehicles on the roadway figureing prominently in the courts rationale.

Caron was stopped on Route 202 in Alfred in the early morning hours of November 15, 1986, after a Maine state trooper observed him straddle the center line of the road for 25 to 50 yards and then steer back into the proper lane of travel. There was no oncoming traffic nor vehicles passing Caron at the time of the straddling, nor any other operation that was in any way erratic or unusual.

A vehicle's brief, one time straddling of the center line of an undivided highway is a common occurrence and, in the absence of oncoming or passing traffic, without erratic operation or other unusual circumstances, does not justify an intrusive stop by a police officer.

*State v. Caron*, 534 A.2d 978 (Me., 1987)

Noteworthy in this opinion is the commonality of the crossing of the centerline and consideration of the absence of other traffic.

## CONCLUSION

Ms Huffman briefly crossed the centerline of State Route 9, a two lane highway in Snohomish County; and covered a distance of one car length by approximately one tire width.

This was a de minimis violation which posed no threat to others on the roadway.

The Centerline Statute (RCW 46.61.100) is not an absolute which mandates strict adherence; contained within this section are various exceptions. The Left of Centerline Statute (RCW 46.61.120) states that such maneuver is not authorized unless it complies with RCW 46.61.100 through 46.61.160 and 46.61.212. The clear implication being that the rules of the road as they pertain to lane travel are to be read in concert. The Lane Travel Statute, RCW 46.61.140, incorporated by reference through §120, contemplates the realities of motor vehicle travel, that operation *as nearly as practicable* within ones lane of travel should be a factor whether left or right of centerline.

Ms Huffman was operating her vehicle *as nearly as practicable* within her lane of travel as found by both the trial court as well as the superior court on RALJ appeal.

The Superior Court Erred when it found that a single crossing of the centerline by one tire width amounted to an infraction and thus concluding the ensuing traffic stop was lawful.

The Centerline Statute, RCW 46.61.100 does not stand alone and it should be read so as to harmonize it with other sections of the Rules of the Road. RCW 46.61.100 does embrace the *as nearly as practicable* language through incorporation by reference through §120. The Rules of the Road as codified in RCW 46.61 contemplate application of the *as nearly as practicable* language throughout those provisions of the Rules which affect vehicle operation. The Rules of the Road in Washington State did not intend for a single de minimis crossing of the centerline

without more to serve as a basis for a lawful stop. For the reasons stated herein this matter should be reversed with directives to the trial court to dismiss.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Stephen G. Smith". The signature is written in a cursive style with a horizontal line underneath it.

Stephen G. Smith, WSBA # 11185  
Attorney for Sarah Huffman

## APPENDIX

Attached hereto are copies of the following:

RCW 46.61.100

RCW 46.61.120

RCW 46.61.140

RCW 46.61.100

Keep right except when passing, etc.

(1) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

(a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(b) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, **any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;**

(c) Upon a roadway divided into three marked lanes and providing for two-way movement traffic under the rules applicable thereon;

(d) Upon a street or highway restricted to one-way traffic; or

(e) Upon a highway having three lanes or less, when approaching a stationary authorized emergency vehicle, tow truck or other vehicle providing roadside assistance while operating warning lights with three hundred sixty degree visibility, or police vehicle as described under \*RCW 46.61.212(2).

## **RCW 46.61.120**

### **Limitations on overtaking on the left.**

No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing other traffic proceeding in the same direction unless authorized by the provisions of RCW 46.61.100 through 46.61.160 and 46.61.212 and unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any traffic approaching from the opposite direction or any traffic overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within two hundred feet of any approaching traffic.

[2007 c 83 § 3; 2005 c 396 § 2; 1965 ex.s. c 155 § 19.]

#### **Notes:**

**Rules of court:** Monetary penalty schedule -- IRLJ 6.2.

RCW 46.61.140

Driving on roadways laned for traffic.

**Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:**

(emphasis added)

- (1) A vehicle shall be **driven as nearly as practicable** entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.
- (2) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.
- (3) Official traffic-control devices may be erected directing slow moving or other specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such device.
- (4) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device.