IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,	)	No. 64802-1-I
	)	
Respondent,	)	
	)	
v.	)	
	)	
ANDREW ARCHULETA,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: March 14, 2011
	)	

Ellington, J. — Andrew Archuleta challenges his juvenile adjudication for driving without a valid operator's license, arguing that the trial court should have suppressed all evidence as the fruit of an unlawful traffic stop, and alternatively challenging the admission of a Department of Licensing (DOL) record as a violation of his right to confrontation. The State's evidence at the suppression hearing failed to justify the traffic stop under State v. Prado,[1] and we reverse and remand.

BACKGROUND

On September 11, 2008, City of Pacific police officer David Newton was patrolling the West Valley Highway when he observed a driver commit what he considered a violation of the lane travel statute, RCW 46.61.140. He stopped the vehicle and recognized the driver from earlier contacts as a juvenile under the age of

[1] 145 Wn. App. 646, 186 P.3d 1186 (2008).

16 who did not possess a valid driver's license.

The State charged Archuleta with the misdemeanor traffic offense of operating a motor vehicle without a valid operator's license, RCW 46.20.005. Archuleta moved to suppress all evidence as the fruit of an unlawful detention, and alternatively moved to suppress the DOL documentation the State intended to use to show Archuleta had no driver's license.

During the suppression hearing, the State elected to rely entirely on Officer Newton's written report.[2] The relevant portion of the report stated:

> On 091108, at about 0101 hours, I observed a blue Oldsmobile driving in the 400 Block of West Valley Highway S in Algona, King County, Washington. I closed distance with the vehicle and was observing its driving as it proceeded north on the roadway. I observed the right tires of the vehicle cross the white "fog line" in its lane of travel. From 1st Ave N to the 800 block of West Valley Highway, the vehicle's right tires touched or crossed the fog line at least 3 times in a quarter mile. I stopped the vehicle.[3]

Citing Prado, the defense argued the stop was unreasonable because the lane travel statute does not create a strict liability offense and there was no evidence that Archuleta's incursions onto or over the fog line endangered himself or any other traffic on the road. The State responded that Prado should be distinguished because that case involved only one violation and this case involved three.

The trial court denied the motion to suppress and Archuleta's motion regarding the DOL record, found Archuleta had committed the offense, and imposed a standard disposition. Archuleta appeals.

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[2] It appears from the record that Officer Newton was present and ready to testify.

[3] Clerk's Papers at 41.

Suppression Motion

Archuleta contends the stop was an unconstitutional seizure of his person. The Fourth Amendment guarantee against unreasonable searches and seizures requires either a warrant or a showing that the seizure fits one of a few limited and jealously guarded exceptions to the warrant requirement.[4] One such exception is an officer has a valid, articulable suspicion of unlawful conduct by a driver.[5]

The pertinent statute here is RCW 46.61.140(1), which provides:

> 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:
>
> (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.[6]

This statute, and particularly the phrase "as nearly as practicable," was interpreted for the first time in Washington by this court in Prado.[7] There, an officer observed the defendant's vehicle cross a lane divider line in an exit lane by approximately two tire widths for one second.[8] The officer stopped the defendant, which eventually led to evidence supporting his district court prosecution and

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[4] State v. Williams, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984).

[5] State v. Ladson, 138 Wn.2d 343, 349–50, 979 P.2d 833 (1999); Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Our review here is de novo because there were no disputed facts and the only issue before us is the trial court's legal conclusion that the State justified Archuleta's warrantless detention. State v. Ross, 106 Wn. App. 876, 880, 26 P.3d 298 (2001).

[6] (Emphasis added.)

[7] 145 Wn. App. at 648.

[8] Id. at 647.

conviction for driving under the influence. The defendant appealed, and the superior reversed on RALJ appeal, concluding that the statutory language required an analysis of the totality of the circumstances, which in this case did not justify a stop without evidence of erratic driving or safety problems.[9]

This court granted discretionary review and affirmed the RALJ court. Because the statute had not been previously interpreted in Washington, the court in Prado looked to other states with similar statutory language and found consistent holdings that minor incursions over a lane line did not provide a sufficient basis for a stop when there was no proof that traffic had been endangered as a result of the defendant's driving.[10] Finding those cases persuasive, the court in Prado reasoned that the statute did not create a strict liability offense and that the defendant's act of "crossing over a lane once for one second by two tire widths [did] not, without more, constitute a traffic violation justifying a stop by a police officer."[11]

The State's analysis and argument regarding Prado begins and ends with the contention that this case is factually distinguished because it involved three incursions, not one, and thus necessarily includes the "more" lacking in Prado to justify the traffic stop in that case. As Archuleta, argues, however, in holding that the lane travel statute does not establish a strict liability offense, Prado actually follows many other states to

[9] Id. at 647–48.

[10] Id. at 648 (citing State v. Livingston, 206 Ariz. 145, 75 P.3d 1103 (Ct. App. 2003); State v. Cerny, 28 S.W.3d 796, 800–01 (Tex. App. 2000); State v. Gullett, 78 Ohio App.3d 138, 604 N.E.2d 176, 180–81 (1992)).

[11] Id. at 647.

establish a totality of the circumstances test, including consideration of whether the driver's actions constituted a danger to others and requiring a more sophisticated analysis than just counting the number of times a driver might touch the lane line. Notably, the out-of-state cases that the Prado court found persuasive included factual scenarios that involved more than one instance of touching or crossing a lane divider line, which were nonetheless still insufficient to justify a stop under statutes similar to ours.[12]

In attempting to meet its burden of justifying a warrantless seizure here, the State established only that Archuleta drove once over the fog line by an unstated margin for an unstated length of time, and then twice more drove so that he touched the line, again for an unstated length of time. There was no evidence that this driving imperiled any other traffic or property on the road or off the road, or that the officer recognized this type of driving as suggesting impairment or inattention on the part of the driver. Nor does the record support such inferences. The very limited evidence presented here established no more than "brief incursions over the lane lines." As the Prado court found, this does not constitute a violation of the lane travel law.[13]

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[12] See Gullett, 78 Ohio App.3d at 143 ("two incidents of crossing the edge line" held not to justify a traffic stop without any development of the record as to risk to other drivers, or the duration and magnitude of the incursion, or any suggestion that the officer believed the manner of driving evidenced impairment of the driver); see also Livingston, 206 Ariz. at 148 (citing Rowe v. Maryland, 363 Md. 424, 769 A.2d 879, 883-89 (Spec.App.2001) (momentary crossing the shoulder line twice not a violation of statute which required vehicle to stay within lane "'as nearly as practicable'") (quoting Md.Code.Ann. § 21-309(b))); Crooks v. Florida, 710 So.2d 1041, 1042–43 (Fla.Dist.Ct.App.1998) (no violation of statute nearly identical to Arizona and Washington statutes even when driver crossed edge line three times).

[13] Prado, 145 Wn. App at 649.

Because the State failed to justify the traffic stop, the resulting evidence must be suppressed.[14] We reverse and remand. We need not reach Archuleta's confrontation claim.

Ellington, J.

WE CONCUR:

Dwyer, C.J.

Becker, J.

[14] State v. Larson, 93 Wn.2d 638, 645-46, 611 P.2d 771 (1980) (where initial stop was improper, all evidence seized as a result of that stop must be suppressed); State v. Byrd, 110 Wn. App. 259, 265, 39 P.3d 1010 (2002) (evidence seized as a result of an invalid vehicle stop excluded).