

State v. Hardin, No. PD-0799-19 (Tex. Crim. App. Nov. 2, 2022)

Attorneys. Donald B. Edwards (Appeal). Andrew Palacios (Trial).

Issue & Answer. Does a driver commit a traffic offense if the car's right-rear tire briefly, but safely, touches and drives over the dividing line between the center and right lane of traffic? **No.**

Facts. Officers were looking for a driver of a U-Haul suspected of being involved in multiple burglaries. An officer found a U-Haul and followed the truck until the driver-defendant briefly straddled the lane divider while rounding a curve. The defendant did not veer or dash toward the other lane. The defendant was not driving erratically or unsafely.

Analysis. Texas Transportation Code § 545.060 provides in relevant part:

(a) An operator on a roadway divided into two or more clearly marked lanes for traffic:

(1) Shall drive as nearly as practical entirely within a single lane; and

(2) may not move from the lane unless that movement can be made safely.

There are several principles of statutory construction at play here: every word has meaning and should be given effect, statutory provisions should be harmonized, rules of grammar should be implemented, technical words have technical meanings, and non-technical words should be construed to common usage. "Nearly" means "almost but not quite." "Practical" means "having or displaying good judgment" and is synonymous with "sensible." "Safely means "free from harm or risk." Thus, Subsection (a)(1) does not require a motorist to always remain entirely within a lane; "[h]e or she must almost but not quite stay within the lane." Subsection (a)(2) prohibits lane departures that are unsafe whether they are complete lane departures or partial.

Considered in connection with subsection (a)(1), any unsafe weaving out of the lane violates the statute but weaving out of the lane without creating a safety risk does not violate the statute because incidental weaving is still staying "as nearly as practical" entirely within a single lane.

This is consistent with the legislature's intent because the legislature joined the two subsections with the word "and" making both subsections necessary to the commission of the offense. Reading the two subsections as independent requirements (independent offenses) would render (a)(1) unconstitutionally vague. "Even assuming a motorist has notice of when he or she is no longer being 'practical,' it is impossible to know what constitutes 'almost, but not quite' practical for purposes of avoiding criminal liability."

Concurring (Slaughter, J.). The State did not raise the "reasonable-mistake-of-law" doctrine. The State should have done that.

Dissenting (Keller, J.). What if a car straddles the lane safely for ten minutes? Clearly, you aren't supposed to do that but because it can be done safely, the majority opinion

would condone it. Section 545.060 is not a criminal statute it is a list of requirements that constitute the "Rules of the Road." As such a person commits a criminal offense (under a different statute) when they do not follow all of the rules of the road. Conjoining the two subsections with the word "and" merely lists multiple requirements – all of which must be met to be in compliance with the "Rules of the Road."

Dissenting (Yeary, J.). The first subsection is a requirement "drive as nearly as practical entirely within a single lane." The second subsection is a prohibition "may not move from the lane unless that movement can be made safely." The Court's perceived interconnectedness between the two subsections is flawed.

Comment. If "shall drive as nearly as practical entirely within a single lane" is "unconstitutionally vague," shouldn't making a right turn "as closely as practicable to the [left-hand or right-hand] curb or edge of the roadway" also be unconstitutionally vague. According to this opinion: yes. Time to start teeing up wide-turn traffic stops.