

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0044**

State of Minnesota,
Respondent,

vs.

Kenneth Carl Hamilton,
Appellant.

**Filed June 21, 2021
Affirmed
Connolly, Judge**

Otter Tail County District Court
File No. 56-CR-20-440

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michelle M. Eldien, Otter Tail County Attorney, Benjamin G. Olson, Assistant County Attorney, Fergus Falls, Minnesota (for respondent)

Luke T. Heck, Drew J. Hushka, Vogel Law Firm, Fargo, North Dakota (for appellant)

Considered and decided by Connolly, Presiding Judge; Segal, Chief Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges his conviction of driving while impaired, arguing that the deputy lacked a reasonable, articulable suspicion for the traffic stop that resulted in the

conviction. Because we see no clear error in the findings of fact and conclude that the arresting deputy had a reasonable suspicion to stop appellant, we affirm.

FACTS

At about 10:37 p.m. on August 13, 2020, a sheriff's deputy was driving south on a county highway. He noticed another vehicle going south ahead of him. It was travelling below the posted speed limit, its lights were fluctuating, and it was weaving between the center line and the fog line of its lane. The squad car video shows the vehicle weaving from one side of the lane to the other; the deputy testified that the vehicle's left rear tire crossed the center line and its right rear tire crossed the fog line.

The deputy initiated a stop of the vehicle, which was being driven by appellant Kenneth Hamilton, who was arrested after he admitted consuming alcohol at a bar and at home and displayed indicia of intoxication. A breath test about two hours after the stop revealed an alcohol concentration of 0.17.

Appellant was charged with two counts of driving while intoxicated (DWI) and one count of possession of an open bottle. Prior to trial, he moved unsuccessfully to suppress the evidence, arguing that the stop of his vehicle was not supported by a reasonable, articulable suspicion. He was found guilty at a trial conducted under Minn. R. Crim. P. 26.01, subd. 4 (setting out the procedure to preserve a dispositive issue for appellate review).

Appellant challenges the denial of his motion to suppress the evidence, arguing that the deputy did not have a reasonable suspicion for the stop.

DECISION

Reasonable suspicion must be based on specific, articulable facts that allow the officer to be able to articulate at the omnibus hearing that he or she had a particularized and objective basis for suspecting the seized person of criminal activity. The reasonable suspicion standard is not high. But although it is less demanding than the standard for probable cause or a preponderance of the evidence, reasonable suspicion requires at least a minimal level of objective justification for making the stop. A hunch, without additional objectively articulable facts, cannot provide the basis for an investigatory stop.

State v. Diede, 795 N.W.2d 836, 842-43 (Minn. 2011) (quotations and citations omitted).

“We undertake a de novo review to determine whether a search or seizure is justified by reasonable suspicion.” *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005). “We review a district court’s denial of a motion to suppress de novo, accepting the district court’s factual findings unless they are clearly erroneous.” *Soucie v. Comm’r of Pub. Safety*, 957 N.W.2d 461, 463 (Minn. App. 2021).

It is undisputed that the squad car video of appellant’s vehicle is of poor quality. However, while the district court noted that “the squad [car] video does not fully corroborate [the deputy’s] testimony” and that it was not clear from the video whether appellant’s vehicle crossed or touched the center and fog lines, the district court also observed, “[i]t is clear . . . that the vehicle was weaving in a suspicious manner, and that the road was clear of obstacles that would explain this behavior.” Weaving within a lane has been held to justify an officer’s stop of a vehicle. *See, e.g., State v. Richardson*, 622 N.W.2d 823, 826 (Minn. 2001); *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983); *State v. Ellanson*, 198 N.W.2d 136, 137 (Minn. 1972) (concluding that officer who had observed

a vehicle “weaving within its lane . . . had a right to stop [the vehicle] in order to investigate the cause of the unusual driving”); *see also Soucie*, 957 N.W.2d at 464 (concluding that “a lane is comprised of the area *between* the painted lines that demark it and does not include the lines themselves”).

The deputy’s testimony corroborates the squad car video as to the fact that appellant’s vehicle was weaving within its lane. This provided the deputy with a reasonable suspicion that appellant was driving under the influence; his stop of appellant was not based merely on a “hunch.” *See Diede*, 795 N.W.2d at 843. Because the stop was supported by a reasonable, articulable suspicion, we affirm appellant’s conviction.

Affirmed.