

*This opinion is nonprecedential except as provided by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
A24-1394**

State of Minnesota,
Respondent,

vs.

Richard Allan Mortensen,
Appellant.

**Filed August 25, 2025
Affirmed
Wheelock, Judge**

Murray County District Court
File No. 51-CR-22-173

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

Travis J. Smith, Murray County Attorney, Slayton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Amy Lawler, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Wheelock,
Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this direct appeal from the judgment of conviction for first-degree driving while under the influence (DWI) and driving after cancellation of his driver's license as inimical to public safety, appellant argues that the district court erred in denying his motion to

suppress evidence, challenging the constitutionality of law enforcement's traffic stop, the expansion of the traffic stop's scope, and the seizure of appellant. We conclude that law enforcement had reasonable, articulable suspicion to stop appellant and that he did not properly preserve his remaining arguments for appeal. We affirm.

FACTS

During the afternoon of August 4, 2021, a Murray County law-enforcement officer saw a tractor driven by appellant Richard Allan Mortensen swerve across the center line of Broadway Avenue in Lake Wilson. The officer recognized Mortensen and knew that his driver's license had been canceled as inimical to public safety.¹ The officer stopped the tractor.

The officer learned that Mortensen was on probation and contacted Mortensen's probation agent, who asked the officer to obtain a preliminary breath sample and urine sample from Mortensen. The officer administered a breathalyzer test to Mortensen, the results of which indicated that he had no alcohol in his system.

The officer then took Mortensen to a gas station to obtain a urine sample from him. Because Mortensen had trouble providing a sample, the officer had Mortensen drink a soda pop to facilitate collection of the sample. Mortensen eventually provided a urine sample that tested positive for methamphetamine and amphetamine. The officer then took Mortensen to the county sheriff's office and obtained a warrant for a blood or urine sample from Mortensen. After Mortensen provided another urine sample, the officer sent that

¹ Mortensen had prior convictions for a felony DWI and two felony DWI test refusals.

sample to the Minnesota Bureau of Criminal Apprehension (BCA) for testing. The BCA reported that “both methamphetamine and amphetamine were present in Mortensen’s urine.”

Respondent State of Minnesota charged Mortensen with first-degree driving while under the influence of a controlled substance in violation of Minn. Stat. § 169A.20, subd. 1(2) (Supp. 2021), first-degree driving while his body contained any amount of a schedule I or II drug other than marijuana in violation of Minn. Stat. § 169A.20, subd. 1(7) (Supp. 2021), and driving after cancellation of his license in violation of Minn. Stat. § 171.24, subd. 5 (2020). The state later amended its complaint to remove the charge for first-degree driving while under the influence of a controlled substance.

Mortensen failed to appear before the district court multiple times as this case proceeded toward trial. However, at an omnibus hearing in November 2022, Mortensen explained to the district court that he intended to represent himself until he could retain a private attorney. The district court engaged Mortensen in a colloquy to waive representation by a public defender, during which it explained that it might “not delay the proceedings for [Mortensen to hire a private attorney] so if [he was] going to do that, [the district court was going to] keep moving along with the[] proceedings.”

After Mortensen waived counsel, the district court explained that Mortensen had an opportunity to argue over “any evidentiary issues like . . . if you didn’t think there was enough evidence to support the charge or—charges or you thought some of the evidence should be suppressed” and that “this is the hearing where you would raise those issues.”

Mortensen responded that he was taking issue with his arrest because the officer “said I was pulled over because I was swerving and I wasn’t.” The district court understood Mortensen’s argument to be challenging whether law enforcement had a proper basis for Mortensen’s traffic stop. The district court then asked Mortensen if he had “any other omnibus issues that [he] want[ed] to raise.” Mortensen said that he did not.

The state responded that, if Mortensen would like “to challenge the basis for the stop then [the state] would ask that the court continue the Omnibus Hearing” so the parties could “have a contested Omnibus Hearing and [the state] can have the officer present to testify and present other evidence.” The district court continued the matter for a contested omnibus hearing.

Mortensen represented himself at the contested omnibus hearing. The state called the arresting officer to testify. The officer testified that, while on patrol, he saw Mortensen driving a tractor southbound on Broadway Avenue. He knew that Mortensen’s license previously had been cancelled as inimical to public safety, and he saw Mortensen “swerve over [the] center lane . . . indicating that the driver could . . . be on his phone, not paying attention, . . . [or] intoxicated.” Based on this, the officer testified, he conducted a traffic stop.

Mortensen then testified on his own behalf, explaining that he “was going southbound on the gravel road right before town.” Mortensen’s testimony conflicted with the officer’s testimony; Mortensen asserted that the officer “said that I crossed the center line but . . . that’s not where I had met him.” Mortensen maintained that he met the officer on a gravel road a half mile out of town. He said that he was hauling his baler into town

to get it welded, that he did not need a driver's license to drive his tractor for farm work, and that he never swerved because he was on a gravel road.

After receiving this evidence, the district court asked Mortensen if there was "anything else that you want to tell me about this stop issue that . . . you haven't told me?" Mortensen explained that he thought law enforcement was allowed to conduct only one type of controlled-substance test but that he could not find information about this rule in advance of the hearing. The district court then explained that the issue of law enforcement's tests was "not an issue that [Mortensen] raised" and that, in the previous hearing, Mortensen had raised only the validity of law enforcement's stop. The district court then informed Mortensen that if he had "other issues then [Mortensen will] have to ask to re-open the omnibus hearing."

The district court then heard argument on whether law enforcement had reasonable, articulable suspicion to stop Mortensen. The state explained why the officer had reasonable, articulable suspicion to stop Mortensen, and Mortensen responded that, because he was transporting a baler to get it fixed, he had the "privilege of driving" a tractor without a license. He reiterated that law enforcement saw him on a portion of the road that was gravel, so there was no center lane to cross. In its order following the contested omnibus hearing, the district court determined that law enforcement had reasonable, articulable suspicion to stop Mortensen, crediting the officer's testimony.

Mortensen failed to appear for his next hearing, and the district court issued a warrant for Mortensen's arrest. Mortensen then appeared before the district court for a scheduling conference. A public defender represented Mortensen at the hearing.

Following this hearing, Mortensen hired a private attorney, and the district court granted Mortensen's request to continue his jury trial to allow Mortensen's new attorney time to prepare for trial. Mortensen failed to appear for the first day of his jury trial. The district court again issued a warrant for his arrest.

Mortensen's jury trial ultimately occurred in April of 2024 and lasted one day. The jury found Mortensen guilty of driving with a controlled substance in his body and driving after cancellation of his license.

Mortensen appeals.

DECISION

Mortensen makes several arguments on appeal challenging the constitutionality of law enforcement's traffic stop, the expansion of the traffic stop's scope, and the seizure of Mortensen. We first analyze whether law enforcement had reasonable, articulable suspicion to stop Mortensen, and we conclude that it did. We then turn to Mortensen's remaining arguments about expansion of the stop and the seizure of his person, concluding that Mortensen did not properly preserve these issues for appeal because he did not raise them before the district court.

I. Law enforcement had reasonable, articulable suspicion to stop Mortensen.

Mortensen argues that law enforcement lacked reasonable, articulable suspicion to stop him for three reasons. Specifically, he contends that (1) Minnesota law allows "vehicles to cross the center line under certain circumstances," (2) "Minnesota law concerning a vehicle's obligation to stay within a lane on an unmarked road is limited by

statute,” and (3) he was not required to have a license to drive his tractor because he was conducting farm work.

“When reviewing a pretrial order on a motion to suppress evidence, [appellate courts] review the district court’s factual findings under a clearly erroneous standard and its legal determinations de novo.” *State v. deLottinville*, 890 N.W.2d 116, 119 (Minn. 2017). “Whether there is reasonable suspicion is a mixed question of fact and constitutional law.” *State v. Lugo*, 887 N.W.2d 476, 487 (Minn. 2016). “When reviewing a district court’s determinations of the legality of a limited investigatory stop, the district court’s findings of fact will not be set aside unless they are clearly erroneous.” *Id.* (quotation omitted). Appellate courts review “questions of reasonable suspicion de novo.” *Id.* (quotations omitted).

The United States and Minnesota Constitutions prohibit “unreasonable searches and seizures” by the government. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. An officer may lawfully conduct a brief investigative seizure or stop if it is supported by reasonable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 20-22 (1968); *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004) (adopting the *Terry* framework for “evaluating the reasonableness of seizures during traffic stops”). To be reasonable, a law-enforcement officer’s suspicion of criminal activity must be based on specific, particularized, and objective facts. *State v. Diede*, 795 N.W.2d 836, 842-43 (Minn. 2011). While this is a “low hurdle,” the officer’s suspicion must be based on more than a mere hunch, whim, or curiosity. *State v. Taylor*, 965 N.W.2d 747, 757 (Minn. 2021); accord *State v. Johnson*, 444 N.W.2d 824, 827 (Minn. 1989). “Ordinarily, if an officer observes a violation of a

traffic law, however insignificant, the officer has an objective basis for stopping the vehicle.” *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). “Crossing the center line is a violation of the traffic laws and will usually provide the officer with an objective, reasonable suspicion to conduct an investigatory stop.” *State v. Wagner*, 637 N.W.2d 330, 336 (Minn. App. 2001).

As to Mortensen’s first argument, the officer testified that he saw Mortensen swerve across the center line of Broadway Avenue, and the district court credited the officer’s testimony. Because swerving over the center line is a traffic violation, *id.*, we conclude that law enforcement had reasonable, articulable suspicion to stop him.

As to Mortensen’s second argument that Minnesota law concerning a vehicle’s obligation to stay within a lane on an unmarked road is limited by statute, Mortensen testified at his contested omnibus hearing that he did not swerve because he was driving on a gravel road. The officer testified, however, that he pulled Mortensen over on a paved road with a center line. We defer to the district court’s credibility determination. *See State v. Smith*, 448 N.W.2d 550, 555 (Minn. App. 1989) (“Determinations of credibility of witnesses at the omnibus hearing are left to the trial court, and those determinations will not be overturned unless clearly erroneous.”), *rev. denied* (Minn. Dec. 29, 1989). Because the district court credited the officer’s testimony over Mortensen’s and evidence in the record supports the district court’s finding, we do not find Mortensen’s argument persuasive.

Finally, we do not reach Mortensen’s third argument because, even if, as he argues, he has the privilege of driving his tractor while conducting farm work without a license,

we conclude that law enforcement had reasonable, articulable suspicion to stop Mortensen based solely on his observed driving conduct.

II. Mortensen did not preserve for appeal his claims that law enforcement unlawfully expanded the stop and unconstitutionally seized him.

Mortensen argues that the officer expanded the scope of the stop without the reasonable articulable suspicion and that the officer unconstitutionally seized Mortensen when he brought him to a gas station to collect a urine sample. In raising these arguments on appeal, Mortensen asserts that he properly preserved them by raising them at his omnibus hearing. He contends that he “attempted to raise the issue of the expansion of the stop, and attempted to offer testimony about how after he had blown a zero on the breath test, the officers had ordered him to follow them to a gas station in Lake Wilson to give a urine test.” Based on this, he maintains that the district court “failed to make findings and determinations on the legitimate issue Mortensen had raised.” The state argues that Mortensen’s arguments are not preserved for appeal because he did not raise them before the district court.

Appellate courts generally do not “consider issues raised for the first time on appeal.” *State v. Williams*, 794 N.W.2d 867, 874 (Minn. 2011). In other words, appellate courts “must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” *State v. Smith*, 876 N.W.2d 310, 335 (Minn. 2016) (quotations omitted). Minnesota Rule of Criminal Procedure 10.01, subdivision 2, provides that all “[d]efenses, objections, issues, or requests that can be determined without trial on the merits must be made before trial by a motion to dismiss or

to grant appropriate relief.” And in felony cases, “motions must be made in writing and served upon opposing counsel no later than three days before the Omnibus Hearing unless the court for good cause permits the motion to be made and served later.” Minn. R. Crim. P. 10.03, subd. 1(a). Moreover, “a pretrial motion to suppress should specify, with as much particularity as is reasonable under the circumstances, the grounds advanced for suppression in order to give the state as much advance notice as possible as to the contentions it must be prepared to meet at the hearing.” *State v. Needham*, 488 N.W.2d 294, 296 (Minn. 1992).

At the omnibus hearing, the district court explained to Mortensen that, regarding “evidentiary issues like . . . if you didn’t think there was enough evidence to support the charge or—charges or you thought some of the evidence should be suppressed this is the hearing where you would raise those issues.” Mortensen explained that he took issue with his arrest because law enforcement “said I was pulled over because I was swerving and I wasn’t.” The district court interpreted this as Mortensen challenging whether law enforcement had probable cause or a basis for the traffic stop. The district court then asked Mortensen if he had “any other omnibus issues that [he] want[ed] to raise.” Mortensen said that he did not.

The district court then continued the matter for a contested omnibus hearing on the issue Mortensen raised: law enforcement’s initial basis for the traffic stop. At that hearing, the district court received evidence and oral argument from both parties on that issue. The district court then asked Mortensen if there was “anything else that you want to tell me about this stop issue that . . . you haven’t told me?” Mortensen explained that he thought

law enforcement was allowed to conduct only one type of controlled-substance test, but that he could not find information about this rule in advance of the hearing. In response, the district court explained that the issue of law enforcement's tests was "not an issue that [Mortensen] raised" when required to do so and that, at the previous hearing, Mortensen indicated only that he was challenging the validity of law enforcement's stop. The district court then informed Mortensen that if he had "other issues, then [Mortensen would] have to ask to re-open the omnibus hearing." Mortensen has not shown, and we cannot find in the record, a request to reopen the omnibus hearing to submit these other issues to the district court. We therefore conclude that both Mortensen's claim that law enforcement unlawfully expanded the scope of the traffic stop and that law enforcement unlawfully seized Mortensen are not preserved for appeal. *See Smith*, 876 N.W.2d at 335.

Affirmed.