

<b>STATE V. HOLGUIN</b>
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**STATE OF NEW MEXICO,  
Plaintiff-Appellant,  
v.  
CRUZ HOLGUIN,  
Defendant-Appellee.**

No. A-1-CA-36112

COURT OF APPEALS OF NEW MEXICO

December 26, 2017

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY, Mary L. Marlowe,  
District Judge

**COUNSEL**

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Defender, Santa Fe, NM, for Appellee

**JUDGES**

J. MILES HANSIEE, Judge. WE CONCUR: TIMOTHY L. GARCIA, Judge, M. MONICA  
ZAMORA, Judge

**AUTHOR:** J. MILES HANSIEE

**MEMORANDUM OPINION**

**HANISEE, Judge.**

{1} The State has appealed from a suppression order. We previously issued a notice of proposed summary disposition in which we proposed to reverse. Defendant has filed

a memorandum in opposition. After due consideration, we remain unpersuaded. We therefore reverse and remand for further proceedings.

{2} To very briefly reiterate the pertinent background information, Officer Galeado initiated a traffic stop after observing Defendant repeatedly weaving within his lane of travel, including touching both the broken line separating the lanes and the solid “fog” line. [MIO 5-7] In its docketing statement the State indicated that the officer observed Defendant’s vehicle “cross the white painted edge line” on the road. [DS 3] In his memorandum in opposition Defendant disputes this proposition. [MIO 5-6] Because it is unclear whether the tires of Defendant’s vehicle actually crossed over either of the lane lines, we will assume that they did not. *See generally State v. Gonzales*, 2011-NMSC-012, ¶ 16, 150 N.M. 74, 257 P.3d 894 (“Although our appellate determination of reasonable suspicion is based on a de novo review, we review any factual questions under a substantial evidence standard, looking at the evidence in the light most favorable to the prevailing party.”). Below, the district court concluded that the traffic stop was unsupported by reasonable suspicion. [MIO 8] *See generally State v. Yazzie*, 2016-NMSC-026, ¶ 20, 376 P.3d 858 (“A traffic stop is justified at its inception if it is supported by reasonable suspicion that a law has been violated.”). The State has challenged that determination. [DS 4]

{3} In our notice of proposed summary disposition we posited that Officer Galeano’s observations appeared to be sufficient to support a reasonable suspicion that Defendant had violated numerous provisions within the Motor Vehicle Code, including NMSA 1978, Section 66-7-317 (1978) (failure to maintain lane), NMSA 1978, Section 66-8-102 (2016) (driving while intoxicated), and NMSA 1978, Section 66-8-114(A)-(B) (1978) (careless driving). [CN 2-4]

{4} In his memorandum in opposition Defendant contends that the officer’s observations should not be said to support a reasonable suspicion that Defendant violated Section 66-7-317, because weaving within a lane is not clearly prohibited, and under the circumstances presented in this case it did not endanger other traffic. [MIO 8-17] Defendant further contends that, to the extent Officer Galeano premised the traffic stop on a reasonable mistake of law relative to the applicability of Section 66-7-317, the stop should be regarded as impermissible under the New Mexico Constitution. [MIO 17-22] For the sake of argument, we will assume (without deciding) that this is so.

{5} Officer Galeano observed Defendant’s vehicle for roughly two and a half minutes, during which period of time the vehicle wove from side to side within its lane of travel no less than half a dozen times, and to such extent that the tires touched both the broken lane dividing line and the fog line. [MIO 5-7] “Although such behavior may not *always* be the result of impaired function of the driver” it certainly *may* be, and reasonable suspicion does not depend upon certainty. *Apodaca v. N.M. Taxation & Revenue Dep’t*, 1994-NMCA-120, ¶ 6, 118 N.M. 624, 884 P.2d 515 (emphasis added); *and see generally State v. Hernandez*, 2016-NMCA-008, ¶ 16, 364 P.3d 313 (observing parenthetically that “the process of developing reasonable suspicion sufficient to justify a brief investigatory stop does not deal with hard certainties, but with probabilities

developed from common sense conclusions about human behavior as understood by those versed in the field of law enforcement” (internal quotation marks, ellipses, and citation omitted)). We have previously held that an officer’s observation of weaving may justify the initiation of a traffic stop to determine whether the driver is intoxicated. See, e.g., *State v. Ruiz*, 1995-NMCA-098, ¶¶ 3, 24, 120 N.M. 534, 903 P.2d 845 (holding that an officer’s “observations of Defendant’s car weaving” supplied reasonable suspicion to initiate a traffic stop and to conduct a DWI investigation) *abrogated on other grounds by State v. Martinez*, 2007-NMSC-025, 141 N.M. 713, 160 P.3d 894. Although Defendant contends that his driving was not “so erratic” as to give rise to reasonable suspicion of impaired driving, [MIO 22] in light of the prolonged, wide-ranging, and repeated nature of the weaving that was observed, we conclude otherwise. See *id.* (indicating that weaving observed over the course of approximately four blocks was sufficient to support a reasonable suspicion that the driver was intoxicated); see also *State v. Salas*, 2014-NMCA-043, ¶¶ 2, 15, 321 P.3d 965 (characterizing the defendant’s driving as “erratic” based on a single instance of failure to maintain lane and an illegal turn, and holding that these observations gave rise to a “legitimate and reasonable suspicion of impairment,” such that the ensuing traffic stop “advanced the public interest well over the minimal intrusion into Defendant’s liberty interest”); cf. *Apodaca*, 1994-NMCA-120, ¶¶ 2, 6, (observing that continuous “weaving from the right side of his traffic lane to the left side” constituted “peculiar driving behavior” which was “not normal”).

**{6}** In light of the foregoing, we conclude that the traffic stop was valid. The fact that the officer also premised the stop on the potentially erroneous belief that Defendant violated Section 66-7-317 is immaterial. See *State v. Mosley*, 2014-NMCA-033, ¶ 15, 320 P.3d 517 (“[I]f an officer mistakenly believes that certain conduct violates one statute, but that conduct in fact violates a different statute, reasonable suspicion exists to stop the suspect despite the officer’s mistake of law.”); *State v. Anaya*, 2008-NMCA-020, ¶ 13, 143 N.M. 431, 176 P.3d 1163 (holding that an incorrect understanding of the law does not render a traffic stop invalid when the observations of an officer provide reasonable grounds to believe another statute was being violated) *abrogated on other grounds by State v. Dopslaf*, 2015-NMCA-098, 356 P.3d 559.

**{7}** Accordingly, for the reasons stated, we conclude that Defendant’s motion to suppress was improperly granted. We therefore reverse and remand for further proceedings.

**{8} IT IS SO ORDERED.**

**J. MILES HANSIEE, Judge**

**WE CONCUR:**

**TIMOTHY L. GARCIA, Judge**

**M. MONICA ZAMORA, Judge**