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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1374**

State of Minnesota,
Respondent,

vs.

Dakota Michael Merges,
Appellant.

**Filed February 18, 2014
Affirmed
Crippen, Judge***

Wright County District Court
File No. 86-CR-12-2652

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Thomas N. Kelly, Wright County Attorney, Aaron D. Duis, Assistant County Attorney,
Buffalo, Minnesota (for respondent)

Christopher J. Zipko, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Connolly, Judge; and Crippen,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

CRIPPEN, Judge

Because the district court found the arresting officer's testimony regarding an observed traffic violation credible, and this violation supports the stop at issue, we affirm appellant's convictions of first-degree driving while impaired and driving in violation of a restricted license.

FACTS

On May 5, 2012, shortly after one o'clock in the morning, Deputy Christopher Grew stopped a vehicle in Otsego, Minnesota and arrested its driver, appellant Dakota Michael Merges. The state charged Merges with two counts of first-degree driving while impaired and one count of driving in violation of a restricted license. Asserting that the seizure was unconstitutional, Merges moved the district court to suppress all resulting evidence.

At an omnibus hearing on the motion, the district court heard conflicting testimony regarding Merges's driving conduct, including at a stop-sign-controlled intersection. Deputy Grew testified that he observed Merges's vehicle drive through the intersection without stopping; he testified that the vehicle slowed to no less than 10 miles per hour and then "accelerated rapidly." Finding this testimony credible, and testimony to the contrary not credible, the district court denied Merges's motion to suppress.

Merges agreed to a trial on stipulated facts, thereby preserving the suppression issue for appeal. The district court found Merges guilty of one count of first-degree driving while impaired and one count of driving in violation of a restricted license. For

these two convictions, the district court sentenced Merges to 42 months' imprisonment, but stayed execution of the sentence and placed Merges on probation—including 180 days' local confinement—for seven years. This appeal followed.

DECISION

Merges argues that the district court erroneously considered evidence that was obtained during an unlawful seizure. *See* U.S. Const. amend. IV; Minn. Const. art. I, § 10 (protecting against unreasonable searches and seizures). “When reviewing a district court’s pretrial order on a motion to suppress evidence, we review the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted). We “defer to the district court’s credibility determination in resolving conflicting testimony.” *State v. Kramer*, 668 N.W.2d 32, 38 (Minn. App. 2003), *review denied* (Minn. Nov. 18, 2003).

Under Minnesota law, a law enforcement officer must have objective support for a traffic stop. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). This objective basis must be “more than a mere hunch,” but even a minor traffic violation can be sufficient. *Id.* Under Minnesota’s traffic regulations, a driver must stop at a stop sign. *See* Minn. Stat. § 169.06, subd. 4 (2012) (requiring drivers to “obey the instructions of any official traffic-control device”).

The district court based its decision against suppression exclusively on its finding that Deputy Grew initially observed Merges fail to make a complete stop at a stop sign. Merges first challenges the credibility of Deputy Grew’s testimony. But we defer to the

district court's credibility determinations and the district court expressly found Deputy Grew's testimony on this point credible. Merges next contends that the traffic stop lacks objective support because Deputy Grew "admitted that he simply stopped [Merges] on [a] 'hunch.'" Although the record confirms that Deputy Grew testified he had "a hunch" that Merges's vehicle was traveling with a second vehicle, this suspicion was wholly independent of the observed traffic violation and does not affect the objective support for the stop.

At oral argument, Merges argued that Deputy Grew improperly expanded the scope of the stop. Because Merges neither raised this issue to the district court nor briefed this issue on appeal, we decline to address it. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (an appellate court "generally will not decide issues which were not raised before the district court, including constitutional questions of criminal procedure"); *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997) (when an appellant "asserts error, but fails to address the error in his appellate brief, the issue is deemed waived"), *review denied* (Minn. Aug. 5, 1997).

Affirmed.