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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0689**

State of Minnesota,
Respondent,

vs.

Dana Jo Way,
Appellant.

**Filed July 21, 2009
Affirmed
Collins, Judge***

Benton County District Court
File No. 05-CR-06-3405

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Tim Sime, Sauk Rapids City Attorney, Rinke-Noonan, Suite 300 US Bank Plaza, 1015 West St. Germain Street, St. Cloud, MN 56302; and

Casey C. Kolb, Assistant City Attorney, Kelm & Reuter, Suite 101, 1287 Second Street North, Sauk Rapids, MN 56379 (for respondent)

John D. Ellenbecker, 803 West St. Germain Street, St. Cloud, MN 56302 (for appellant)

Considered and decided by Minge, Presiding Judge; Toussaint, Chief Judge; and
Collins, Judge.

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

UNPUBLISHED OPINION

COLLINS, Judge

Appellant Dana Jo Way challenges her conviction of fourth-degree driving while impaired, asserting the district court erred by finding that there was a valid basis for the traffic stop. Because the district court's finding turns on a credibility determination and is amply supported by the evidence, we affirm.

DECISION

Appellant asserts that the district court erred by finding that the traffic stop was supported by sufficient evidence, arguing that “the state failed to offer evidence of specific facts sufficient to establish a particularized and objective basis suspecting appellant of criminal activity,” and therefore, the evidence obtained in the course of the traffic stop must be suppressed. When reviewing a pretrial order denying a motion to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred by not suppressing the evidence. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004).

The Fourth Amendment to the United States Constitution and article I, section 10, of the Minnesota Constitution protect against unreasonable searches and seizures. To lawfully stop a motorist, an officer must have a specific, articulable, and objective basis for suspecting the particular person stopped of criminal activity. *State v. Anderson*, 683 N.W.2d 818, 822-23 (Minn. 2004). “Generally, if an officer observes a violation of a traffic law, no matter how insignificant the traffic law, that observation forms the requisite particularized and objective basis for conducting a traffic stop.” *Id.* at 823; *see*

also *State v. Barber*, 308 Minn. 204, 207, 241 N.W.2d 476, 477 (1976) (upholding traffic stop based on officer's observation that vehicle's license plate was wired onto vehicle rather than bolted on); *Gerding v. Comm'r of Pub. Safety*, 628 N.W.2d 197, 201 (Minn. App. 2001) (upholding investigative stop based on officer's observation of an object hanging from vehicle's rearview mirror), *review denied* (Minn. Aug. 15, 2001). However, "an officer's mistaken interpretation of a statute may not form the particularized and objective basis for suspecting criminal activity necessary to justify a traffic stop." *Anderson*, 683 N.W.2d at 823-24.

At the evidentiary hearing on appellant's motion to suppress the evidence derived from the traffic stop, Officer Glen Bihler testified that in the darkness of early morning on December 7, 2006, he observed appellant's vehicle being driven on a city street without headlights on. After making a U-turn to follow the vehicle, Officer Bihler observed appellant travel "[h]alf a block to a block" before the headlights came on. Conversely, appellant testified that although she pulled out of her parking space at an off-street parking lot without her headlights on, she turned them on before exiting the parking lot and entering the street.

Because a violation of a traffic law "forms the requisite particularized and objective basis for conducting a traffic stop," and driving after sunset and before sunrise without headlights on is a traffic violation, Minn. Stat. §§ 169.49, .48, subd. 1(a)(1) (2006), the sole issue before us is whether the district court erred by finding that at the time and place specified appellant was driving a vehicle without its headlights on. After hearing the testimony of the only two witnesses, the district court explicitly favored that

of Officer Bihler, stating that “the officer’s testimony is the most believable testimony here today, and on that basis, observing for a half a block of driving on the roadway without lights on between sunset and sunrise is a violation of the law, so the officer had a probable cause to make the stop.” Credibility determinations are the province of the fact-finder, not this court on review. *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff’d*, *Minnesota v. Dickerson*, 508 U.S. 366, 113 S. Ct. 2130 (1993). The district court did not err by finding that there was a valid basis for the traffic stop and by admitting the evidence derived therefrom.

Affirmed.