STATE OF MINNESOTA
IN COURT OF APPEALS
A06-1991

Benjamin Alan Reese, et. al., petitioners,
Appellants,

vs.

Commissioner of Public Safety,
Respondent.

Filed January 8, 2008
Affirmed; motion to strike granted
Randall, Judge

Otter Tail County District Court
File Nos. C7-06-433, C9-06-434

Peter J. Timmons, 7900 Xerxes Avenue South, Suite 800, Minneapolis, MN 55431 (for appellants)

Lori Swanson, Attorney General, Martin A. Carlson, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101, (for respondent)

Considered and decided by Randall, Presiding Judge; Kalitowski, Judge; and Hudson, Judge.

U N P U B L I S H E D O P I N I O N

RANDALL, Judge

Appellants Mark Jeremy Reese and Benjamin Alan Reese challenge identical district court orders sustaining the revocation of their driver's licenses under the implied

consent law for driving their snowmobiles while impaired. Appellants argue that their stop was not justified because the officer lacked a reasonable and articulable suspicion that they were engaged in criminal activity. We affirm. The officer approached already-stopped snowmobiles. The encounter was not a *Terry* stop and no reasonable and articulable suspicion was required. Appellants also filed a motion to strike a portion of respondent's brief. We grant appellant's motion to strike.

FACTS

At approximately two in the morning an informant identifying himself by name called 911 from Playtime Bar. He called to report that eight or nine snowmobilers driving "all pretty much black or red" Polaris snowmobiles were leaving the bar and heading west. He said "[t]he guys were damn near falling out the door when they left and they [were] getting on their snowmobiles to leave [the bar]." He said the snowmobilers had "[e]vidently" been in the bar since early afternoon. He told the dispatcher three of the snowmobilers had already left and the others were still at the bar trying to leave. He said they looked like "out of town guys." The caller told the dispatcher he did not want to be the reporting party "ha ha ha" so the dispatcher told him he would be anonymous.

Heading west from the bar the road came to a T-intersection. "[A]bout ten minutes" after the officer received the dispatch call he saw appellants and a third individual "parked" in a ditch by the T-intersection. The three men were off of their snowmobiles but their snowmobiles' engines were still running and their lights were on. A fourth snowmobiler was stopped in the road and the officer saw the taillights of a fifth riding away. The fourth snowmobiler drove away, continuing even after the officer

shined his spotlight at his snowmobile. The snowmobilers were within the lights of the bar "[a]bout a quarter mile" away. No other snowmobilers were in the area. The officer did not see appellants drive their snowmobiles.

As the officer approached appellants, keeping the lights of his squad car on, he observed that their snowmobiles were red and black Polarises and he thought they might be part of the group who had just left the bar. The officer testified that he wanted to ask them if they were having snowmobile problems and to see where they were coming from. And the officer explained he left his emergency lights on out of a concern for safety because it was icy and his squad was in the roadway. The officer testified that when he began talking to the snowmobilers he noticed they were slurring their speech and swaying. At this point the officer had them take off their helmets. While doing so all three became so off-balance they nearly fell to the ground. "After they took their helmets off … [the officer] believed that they were intoxicated to the point where [he] wouldn't let them leave."

Appellants' driver's licenses were revoked and those revocations were sustained by the district court because it found that the officer had a reasonable and articulable basis for the stop. This appeal followed.

D E C I S I O N

I.

Appellants do not argue their seizure[1] lacked justification. Rather, appellants argue that the district court erred in finding that the informant's tip provided the officer with a reasonable and articulable basis for the initial stop.[2] We disagree. The United States and Minnesota Constitutions protect against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. But constitutional protections are not violated when an officer simply walks up and talks to a person standing in a public place or to a driver seated in an already-stopped car. *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980). An officer may approach a vehicle even when there is no indication that its occupants are engaged in criminal activity to determine whether they need assistance. *Kozak v. Comm'r of Pub. Safety*, 359 N.W.2d 625, 628 (Minn. App. 1984) (holding that the officer "had not only the right but a duty" to reasonably investigate a vehicle, legally parked along a roadway, to determine if assistance is needed). And an officer's use of his flashing red lights behind a stopped vehicle on the shoulder of the highway at night does not necessarily subject the encounter to Fourth Amendment scrutiny. *State v. Hanson*, 504 N.W.2d 219, 220 (Minn. 1993) (holding that an officer's use of flashing lights may be designed to warn oncoming motorists).

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[1] Their seizure occurred when the officer told appellants to remove their helmets and they were no longer free to leave. *See In re Welfare of E.D.J.*, 502 N.W.2d 779, 780 (Minn. 1993) (holding that a seizure occurs when a reasonable person would not have felt free to leave).

[2] In substance appellants are challenging the stop although their brief uses the word "seizure."

Here the officer was not required to have a reasonable articulable suspicion when he approached appellants. Appellants' snowmobiles *were already parked*. *See Vohnoutka* at 292 N.W.2d at 757. Appellants were not "stopped by the officer." The officer merely approached appellants as they stood in a ditch next to a public roadway. Although the officer suspected that appellants may have been part of the group reported by the 911 tipster, that does not automatically transform their encounter into a *Terry* stop. The officer could have been reasonably concerned that the group, stopped in a ditch at two in the morning, might need assistance. The lit emergency lights on the officer's squad car were not necessarily directed towards appellants as a show of police authority (they might well have thought so), but rather to alert on-coming motorists to the existence of his vehicle partially on an icy roadway at two in the morning. The officer's use of his spotlight was directed at stopping the departing fourth snowmobiler, not appellants (they were already stopped). The officer justifiably approached appellants. A reasonable articulable suspicion that they were engaged in criminal activity was not required.

Appellants did not challenge their subsequent seizure so we decline to evaluate it. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (holding that this court will generally not consider matters not argued and considered in the court below). We affirm the district court's orders sustaining the revocations of appellants' driver's licenses.

II.

Appellants filed a motion requesting that a portion of respondent's brief that referenced facts outside the record be stricken. This court may selectively disregard improper references to evidence outside the record without striking the entire brief.

AFSCME, Council No. 14 v. Scott County, 530 N.W.2d 218, 222-23 (Minn. App. 1995), *review denied* (Minn. May 16 and June 14, 1995). The record on appeal consists of "[t]he papers filed in the [district] court, the exhibits, and the transcript of the proceedings . . . ." Minn. R. Civ. App. P. 110.01. We grant appellants' motion to strike the requested portion of respondent's brief.

Affirmed; motion to strike granted.