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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed October 19, 1978
vs.	)	
JOHN THOMAS NOWATZKE,	)	<u>637</u>
Appellant.	)	61536

Appeal from Shelby District Court - J. L. Larson, Judge.

Defendant appeals guilty plea claiming evidence of breath test results should have been suppressed on ground police did not have reasonable grounds to believe defendant was operating a motor vehicle while intoxicated. - Affirmed.

Bennett Cullison, Jr., of Cullison & Cullison, Harlan, for Appellant.

Richard C. Turner, Attorney General of Iowa, Ray Sullins, Assistant Attorney General, and J. C. Salvo, Shelby County Attorney, for Appellee.

Submitted to Donielson, Acting C.J., and Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendant John Thomas Nowatzke appeals his guilty plea to the crime of operating a motor vehicle while under the influence of an alcoholic beverage in violation of § 321.281, The Code. Nowatzke is not attacking the validity or the adequacy of the plea. The only issue raised on appeal is whether the police had reasonable grounds to believe defendant had been operating a motor vehicle under the influence of an alcoholic beverage and whether, as a consequence, the trial court erred in overruling defendant's motion to suppress breath test results prior to his plea of guilty.

The State argues Nowatzke has waived his right to assert this issue on appeal. It argues Nowatzke is barred both by the effect of his guilty plea and by his failure to comply with the procedural requirements of *State v. Reaves*, 254 N.W.2d 488, 493 (Iowa 1977). See *State v. Rhodes*, 243 N.W.2d 544, 545-6 (Iowa 1976); *State v. Findley*, 239 N.W.2d 852, 853 (Iowa 1976) (guilty plea waives all questions as to admissibility of any evidence the State may have offered). Defendant, on the other hand, attempts to distinguish *State v. Rhodes* in that his motion to suppress was not pending at the time the plea of guilty was entered as was the case in *Rhodes*.

We find merit in the State's contention. Although the trial court overruled defendant's motion to suppress, it retained the discretion to change its ruling until the time the evidence was actually introduced. In this matter, the instant case is not factually dissimilar from *Rhodes*. There the court stated that "because evaluations and predictions regarding admissibility of evidence inhere in the issue of wisdom of the plea, the trial court may assume, unless alerted to the contrary, that a defendant understands he waives challenges to admissibility of evidence when he waives trial." 243 N.W.2d at 545.

In the instant case, Nowatzke alleges he alerted the court to the contrary, that he did not waive his challenge to the admissibility of the breath test results and that he pled guilty in order to submit the issue for appellate review as quickly as possible. However, in *State v. Findley*, *supra*, the court stated "a plea of guilty, if voluntarily and intelligently made, eliminates all questions as to admissibility of any evidence the State might have offered . . . waives all defenses except that the

indictment or information charges no offense and, of course the right to challenge the plea itself, it is a submission of the issue of guilty without contest." 243 N.W.2d at 852 (emphasis added). See also Zacek v. Brewer, 241 N.W.2d 41, 48-50 (Iowa 1976).

Because defendant is not attacking the validity of the plea, nor has he followed the procedural prerequisites necessary to do so, State v. Reaves, supra, there is nothing for us to review. In passing, pursuant to our statutory duty to examine the record without regard to technical errors or defects, § 793J8, The Code, we find substantial compliance with § 321B.3, The Code. Cf. State v. Wallin, 195 N.W.2d 95 (Iowa 1972). Patrolman Holtmyer had reasonable grounds to believe defendant had been operating a motor vehicle while under the influence of an alcoholic beverage. He communicated that belief to the Harlan police radio dispatcher. The dispatcher then notified Officer Martin that he should invoke the implied consent statute if he thought defendant was intoxicated. By the time Martin made the written request, Holtmyer arrived and the latter administered the breath test. The trial court did not err in finding Martin had reasonable grounds in believing defendant was driving while intoxicated.

AFFIRMED.