

IN THE COURT OF APPEALS OF IOWA

No. 1-115 / 90-838

FILED

APR 23 1991

CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

CARL JOHN LINGE,

Appellant.

277

Appeal from the Iowa District Court for Linn County,
Thomas M. Horan, Judge.

Carl Linge appeals his license revocation under Iowa
habitual offender driving statute. **AFFIRMED.**

Gerald J. Kucera of the Tom Riley Law Firm, P.C.,
Cedar Rapids, for appellant.

Bonnie J. Campbell, Attorney General, David A. Ferree,
Acting Special Assistant Attorney General, and Carolyn J.
Olson, Assistant Attorney General, for appellee.

Heard by Oxberger, C.J., and Hayden and Habhab, JJ.

HAYDEN, J.

Carl John Linge was adjudicated a habitual traffic offender pursuant to Iowa Code section 321.555(1)(b). He had three OWI convictions within a six-year period. Two of the prior OWI convictions were in Iowa, and one was in Florida.

Linge appealed. The thrust of his appeal is his Florida conviction should not have been considered. Without it, Linge would not have qualified as a habitual offender because he would not have had three OWI convictions within a six-year period. See Iowa Code section 321.555(1)(b).

Linge first contends out-of-state convictions should not be considered at all under section 321.555(1)(b). He notes the statute, by its terms, permits a habitual offender adjudication if a person has three or more convictions within six years for "operating a motor vehicle in violation of [Iowa Code] section 321J.2." He argues this language should be construed narrowly to cover only OWI convictions under the Iowa statute, rather than convictions under another state's statutes. He acknowledges the Iowa supreme court has rejected this position and has held out-of-state OWI convictions may be considered under section 321.555 in certain situations. State v. Peterson, 347 N.W.2d 398 (Iowa 1984). However, he suggests Peterson, a 5-4 decision, should be reconsidered and overruled.

Linge next contends even if out-of-state convictions may be considered in certain situations, his Florida conviction was not properly considered here. Peterson suggests an out-of-state conviction should be considered only if there is a showing Iowa and the other state require proof of essentially the same elements for an OWI conviction. Id., 347 N.W.2d at 401. Linge argues in the present case there was no proof the Florida statute required essentially the same elements for conviction as the Iowa OWI statute.

Finally, Linge contends the district court should have applied the doctrine of res judicata to this case. This issue arises under a rather unusual set of facts. Only a few days before the present habitual offender adjudication in Linn County, a Johnson County district court had considered whether Linge's Florida conviction should be included in determining whether Linge could be deemed a third-offense OWI offender under section 321J.4(3)(a).

The Johnson County case had been remanded after the Iowa Court of Appeals vacated Linge's license revocation. State v. Linge, No. 9-349 / 88-1660, slip op. at 14-15 (Iowa App. Jan. 25, 1990). In the original proceedings, the Johnson County court had revoked Linge's license for six years pursuant to section 321J.4(3)(a), he had been convicted of OWI third offense.

This court vacated Linge's license revocation because the State failed to introduce a certified abstract of

Linge's Florida conviction. Id. at 12. Instead, the State relied solely on the prosecutor's professional statement concerning the Florida OWI conviction. Id. at 12-13. This was insufficient under the guidelines established by our supreme court for interstate notification of motor vehicle matters. Id. (citing Shaw v. Department of Public Safety, 257 Iowa 30, 33, 131 N.W. 261, 263-64 (Iowa 1964)).

On remand, the Johnson County court held the Florida conviction could not be considered for that purpose because the Florida OWI statute and the Iowa OWI statute were dissimilar at the time of Linge's 1984 Florida conviction. In 1984 the time of Linge's Florida OWI conviction, the two statutes used different blood alcohol levels to establish a presumption of intoxication. In the present case Linge contends the Johnson County determination should be given res judicata effect and should preclude the use of the Florida conviction to support the present habitual offender adjudication under section 321.555(1)(b).

Our scope of review is on errors of law. Iowa R. App. P. 4. We are bound by the trial court findings of facts if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

I. Out-of-State OWI Conviction. We first address Linge's claim the Florida OWI conviction cannot be a predicate offense in calculating the required three OWI offenses necessary to trigger the habitual offender

statute, Iowa Code section 321.555(1). Linge concedes this point is controlled by the Iowa Supreme Court's ruling in Peterson. However, he requests we reconsider the supreme court's ruling in that case. We decline his request.

Peterson is a well-reasoned and fair decision. It requires the elements of the other state's OWI statute be similar to Iowa's to support a habitual offender finding. Id., 347 N.W.2d at 401; see also Dean v. Iowa Dept. of Transp., 415 N.W.2d 649, 650-51 (Iowa App. 1987). Linge argues the State failed to carry its burden to show the Florida statute was essentially similar to Iowa's OWI statute.

The supreme court has carefully spelled out the steps to be followed in applying Iowa's habitual offender statute, Iowa Code section 321.555. State v. Baudler, 349 N.W.2d 493 (Iowa 1984). By presenting the certified abstracts of conviction, the State establishes a prima facia case the respondent is an habitual offender. Id. at 496. The burden then shifts to the respondent to show the offenses come under some exception and should not be counted in determining his habitual offender status. Id. The respondent is only relieved of this burden if it can be determined from the face of the abstract some exception applies. Id. at 496-97. No exception is apparent here.

Linge did not offer any proof or even allege the elements of the Iowa and Florida statutes were different prior to or during the hearing. He essentially argues the

burden is on the State to come forward to show the elements are the same. Our reading of Baudler convinces us the respondent, rather than the State, must raise and prove an exception to the habitual offender statute. Linge did not do this. We affirm the trial court on this issue.

II. Res Judicata. Linge argues his habitual offender finding must be set aside due to the res judicata effect of the Johnson County district court ruling in his OWI criminal case. That ruling was delivered eight days prior to the ruling in this civil case in Linn County. Linge's residence is in Linn County.

Linge's OWI third offense license revocation in the Johnson County case had been remanded by us due to inadequate proof concerning Linge's Florida conviction. Linge, No. 9-349 / 88-1660, slip op. at 13-15. Upon remand, the Johnson County court held the Florida and Iowa statutes were dissimilar at the time of Linge's 1984 Florida conviction. That court reasoned the Florida OWI conviction would not support a driver's license revocation under Iowa Code section 321J.4(3) for third offense OWI. Neither party appealed this ruling.

Linge attempted to introduce this Johnson County ruling in his Linn County case in his motion for a new trial on the grounds of newly discovered evidence and res judicata. The trial court ruled against Linge on both grounds. We agree with the trial court there was no newly discovered

evidence, as the only material evidence was the two state statutes in 1984. We affirm the trial court's denial of Linge's motion for a new trial for newly discovered evidence.

The res judicata claim likewise is without merit. The Johnson County case was a criminal case arising under section 321J, a criminal statute. The Linn County case presently before this court is a civil case. Different issues and laws were before the respective courts.

In the absence of a statute to the contrary, as a general rule a judgment or sentence in a criminal prosecution is neither a bar to a subsequent civil proceeding founded on the same facts nor proof of anything in such civil proceedings.

50 C.J.S. § 754(b) (1947).

The Iowa Supreme Court recently considered a similar issue. State v. Landals, 465 N.W.2d 660 (Iowa 1991). In Landals, the district court held the prior application of the criminal penalties under section 321J.4(3)(a) precluded application of the civil penalties under section 321.556. Id. at 661. The supreme court reversed, reasoning the different statutes applied different sanctions and allowed the trial courts to fashion different remedies. Id. at 662.

There is an additional reason for not applying res judicata in this case. Res judicata is a rule of judicial economy. It is designed to prevent duplicative litigation of the same issues by the same parties in the same or

different forums. 46 Am. Jur. 2d Judgments § 395 (1969); see also Sea-Land Services v. Gaudet, 414 U.S. 573, 578-79, 94 S. Ct. 806, 811-12, 39 L. Ed. 2d 9, 17-18 (1974); Lynch v. Lynch, 250 Iowa 407, 414, 94 N.W.2d 105, 110 (1959). That reason would not be served in this case. Linge allowed the Linn County court to go forward with this civil case without ever informing it of the pendency of the Johnson County criminal case. He was represented by the same counsel in both cases. Linge appears to have played a waiting game, hoping the first court to render a decision would be in his favor. However, by not informing the Linn County court of the Johnson County criminal action, Linge essentially waived any claim he may have had under res judicata. He could have come forward at an earlier time to ask the Linn County court to stay its action pending the outcome of the Johnson County proceeding. He chose not to do so. Instead, he allowed both cases to go forward simultaneously, thus in essence acknowledging the cases had dissimilar issues.

We affirm the trial court's denial of Linge's motion for a new trial on the grounds of res judicata.

AFFIRMED.