FILED
APR 25 1989
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	
JAMES NATHAN WILSON,	)	9-57 88-220
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Polk County (CR OM21343), Theodore H. Miller, Judge.

Defendant appeals his conviction, following a bench trial, for third-offense OWI. **AFFIRMED.**

Joseph G. Bertogli, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Julie A. Halligan, Assistant Attorney General, for plaintiff-appellee.

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

SCHLEGEL, J.

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Defendant James Nathan Wilson appeals his conviction, following a bench trial, for third offense OWI. He contends the district court should have stricken one of his prior convictions used to elevate this charge to a third offense. He also contends the district court should have suppressed all evidence resulting from the stop of his car; he asserts there was no reasonable ground for the stop. We affirm the conviction.

Defendant had been convicted of OWI on two prior occasions: January 6, 1982, and February 15, 1984. On July 31, 1987, at approximately 10:42 p.m., Iowa Highway Patrol Officer Loren Achenbach was piloting a plane above Highway 141 in Polk County at a level of approximately 2000 feet. Officer Achenbach testified at trial that he observed defendant's vehicle on the highway and calculated that the vehicle was traveling at a speed of 73 miles per hour in a 55 mile per hour speed zone. Achenbach then used his radio to alert Officer Jon Neuschwanger on the ground. Neuschwanger stopped defendant's vehicle and requested defendant to perform certain sobriety tests and the defendant was later placed under arrest. The defendant thereafter consented to the withdrawal of a blood sample, wherein it was determined that defendant had a blood alcohol content of .170. Following a bench trial, the defendant was convicted of third offense OWI.

I. Wilson contends that the district court should have sustained his motion to strike one of his prior OWI convictions used to elevate the present charge to third offense. He bases this argument on Iowa Code section 321J.2(3), which provides, in relevant part:

> No conviction for, deferred judgment for, or plea of guilty to, a violation of this section which occurred more than six years prior to the date of the violation charged shall be considered in determining that the violation charged is a second, third, or subsequent offense.

Wilson claims that "the manner in computing enhancement charges goes from the date of one violation to the date or dates of other subsequent violations," and since, in the instant case, Wilson's first violation occurred on July 31, 1981, and his third violation occurred on July 31, 1987, more than six years passed between violations and it was improper for the court to charge Wilson with third offense OWI.

In support of his argument, Wilson seeks reconsideration of the Iowa Supreme Court's decision in State v. Raim, 381 N.W.2d 635 (Iowa 1986). In Raim, the supreme court held that under a substantially similar predecessor statute to section 321J.2(3), Iowa Code section 321.281(2)(c) (1983), the phrase "which occurred more than six years prior to the violation charged" modifies the word "conviction." As Raim is controlling precedent on this court, we find Wilson's claim to be without merit.

II. In addition to seeking a reconsideration of Raim, Wilson also argues that the construction placed on section 321J.2(3) under Raim denies him equal protection, due process, and the constitutional right to counsel. In support of this argument, Wilson presents a hypothetical situation where two persons are arrested for OWI offenses on the same day but have different conviction dates. A careful reading of Raim indicates that the supreme court was faced with a similar issue:

> Defendant makes the final contention that two persons arrested for an OWI violation on the same day may have convictions entered on different dates and, thus, would be subject to different levels of punishment if they were arrested on a similar violation six years later. We fail to perceive how this situation is at odds with the legislative purpose in enacting section 321.281, as defendant suggests. The statute operates in a manner so as to effect those persons who have committed OWI offenses on the basis of whether they are convicted of OWI, not whether they are only alleged to have committed such an offense. (Emphasis in the original). Such a scheme appears consistent with the legislative purpose of providing a system of punishment for OWI offenses. See State v. Soppe, 374 N.W.2d 649, 653 n.4 (Iowa 1985); State v. Blood, 360 N.W.2d 820, 822 (Iowa 1985).

Raim, 381 N.W.2d at 638. We thus find defendant's second claim under Raim to be without merit.

III. Wilson finally argues that the district court should have suppressed all evidence resulting from the stop of his car. He asserts there was no reasonable ground for the stop and challenges the reliability of the observations and conclusions of the highway patrol pilot.

In making this determination, we review the record de novo. State v. Brown, 253 N.W.2d 601, 603 (Iowa 1977). In the instant case, Officer Neuschwanger stopped Wilson's car based solely upon information given to him by Officer Achenbach. Wilson claims that the reliability of Officer Achenbach's observations were highly questionable. Upon consideration of the requisite fourth amendment principles, see Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L.Ed.2d 889, 906 (1968), we find that the information provided by Achenbach to Neuschwanger provided a "specific and articulable cause to support a reasonable belief that criminal activity may have occurred." State v. Lamb, 322 N.W.2d 48, 51 (Iowa 1982) (citing State v. Aschenbrenner, 289 N.W.2d 618, 619 (Iowa 1980)).

We affirm Wilson's conviction of third offense OWI under Iowa Code section 321J.2(3).

AFFIRMED.