FILED
JAN 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed January 29, 1985
vs.	)	4-493 84-818
MYRON W. FOX,	)	
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Marshall County, Sandra J. Holien, Judge.

Defendant appeals from his conviction of driving a motor vehicle while license is suspended, denied or revoked, asserting that the trial court allowed testimony as to the basis of his license revocation contrary to Iowa Rule of Evidence 404(b). AFFIRMED.

Barry S. Kaplan of Fairall, Fairall & Kaplan, Marshalltown, for defendant-appellant.

Thomas J. Miller, Attorney General, and Steven K. Hansen, Assistant Attorney General, for plaintiff-appellee.

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

OXBERGER, C.J.

The defendant presents on appeal one concise question: Is it prejudicial to the defendant when he is charged with operating a motor vehicle when his license is suspended, pursuant to Chapter 321B, to present evidence that the basis of the revocation was an arrest for OWI, or is that evidence a necessary element in proving the crime? We hold that such proof is a necessary element of the crime and affirm the trial court.

The defendant, Myron Fox, was charged with violation of Iowa Code § 321B.38 (1983) which provides in part:

> Any person whose license or driving privilege has been denied or revoked as provided in this chapter, and who drives any motor vehicle upon the highways of this state while the license or privilege is denied or revoked is guilty of a serious misdemeanor.

(emphasis added). The basis for such revocation under the chapter is found at Iowa Code § 321B.16 (1983);

> Upon certification by the peace officer that there existed reasonable grounds to believe the person to have been operating a motor vehicle in violation of section 321.281 and that the person submitted to chemical testing and the test results indicate ten hundredths or more of one percent by weight of alcohol in the person's blood, the department shall revoke the person's license or permit to drive.

Fox's license had been revoked after a conviction for drunk driving in October 1983, and he was stopped by an officer who reported seeing him driving a vehicle on January 19, 1984. During his trial for driving while his license was suspended, his counsel objected to any reference to the fact that the reason Fox's license was revoked was a prior OWI conviction. He contended the proof would be prejudicial, and instead asked the court limit any reference to indicate only that the defendant's license was suspended "pursuant to Chapter 321B." The defendant claims that any reference to the OWI would violate Iowa Rule of Evidence 404(b) which prevents introduction of evidence of other crimes, wrongs, or acts to prove

the character of the person or show conformity, except where introduced for other purposes.

We agree with the trial court that the State had to show proof that Fox's license was revoked because of an OWI conviction. The supreme court has indicated that when proof must be presented that a license is revoked "under this chapter" that a conviction cannot be upheld unless there is evidence of a violation under that specific chapter. State v. Sonderleiter, 99 N.W.2d 393, 395 (Iowa 1959). There the court did not allow a conviction to stand under Chapter 321A when the State presented proof and the defendant was convicted under Chapter 321, noting "Chapter 321 and chapter 321A are two separate chapters of the Code." Id.

There is only one way to revoke a license under Chapter 321B, and that is when the defendant has been stopped for driving while intoxicated. The State would have failed in its proof if it had not shown evidence of the underlying OWI charge.

The State points out the similarity between this statute and the habitual offender statute. Proof that the defendant has two prior felony convictions is, alone, not enough to warrant conviction under the statute. State v. Walton, 311 N.W.2d 110, 112 (Iowa 1981). Rather, the prior convictions should be shown by presentation of a copy of the judgments, which would reveal the underlying conviction. Id. The Walton case also indicated that while proof of other crimes is prohibited, it does not include a crime which is an element of the underlying offense. Id.

Our courts have indicated that where proof of other crimes is necessary in proving a material fact or elements of the case, it does not violate rules of evidence. Tucker v. U.S., 30 F.2d 363, 371 (8th Cir.) certiorari denied 389 U.S. 888, 88 S. Ct. 128, 19 L.Ed.2d 189 (1967); State v. Gibb, 303 N.W.2d 673, 682 (Iowa 1981); State v. Powell, 256 N.W.2d 235, 237 (Iowa 1977).

We affirm the trial court's determination to allow the evidence and uphold the conviction of defendant.

AFFIRMED.