UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0974

September Term, 2015

DEMAR ANTHONY BRUNSON

v.

STATE OF MARYLAND

Meredith,
Nazarian,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: April 13, 2016

Convicted, following a bench trial in the Circuit Court for Worcester County, of driving while his license was suspended, Demar Anthony Brunson, appellant, noted this appeal, raising a single question—whether the evidence was sufficient to sustain his conviction. Because the evidence was sufficient, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

At Brunson's bench trial, two witnesses testified: Officer Erika Specht, of the Ocean City Police Department, and Brunson himself.

Officer Specht testified that, on the evening of December 26, 2014, she observed Brunson driving his 2003 Acura southbound on Coastal Highway, near the intersection with 113th Street, in Ocean City. Using the "mobile command terminal" in her police cruiser, she checked the Acura's registration through the NCIC[1] database. That registration check disclosed that the observed license plate matched a 2003 Acura, registered to Brunson, and that his driver's license was then suspended. The information Officer Specht received, during the registration check, also included a photograph depicting Brunson, which matched the appearance of the man she observed driving down Coastal Highway.

At that time, Officer Specht was also driving southbound on Coastal Highway, in lane 1, the left-most lane of the four-lane street,[2] just behind Brunson, who was driving in lane

[1]"NCIC" stands for the National Crime Information Center, "an electronic clearinghouse of crime data that can be tapped into by virtually every criminal justice agency nationwide, 24 hours a day, 365 days a year." *National Crime Information Center*, available at https://www.fbi.gov/about-us/cjis/ncic (last visited March 18, 2015).

[2]Verified with Google® Maps and "Street View." *See* Md. Rule 5-201(b), (c), (f).

2. Officer Specht decided to effect a traffic stop, but, before she could activate her emergency equipment, Brunson abruptly made a right turn into the parking lot of the Comfort Inn, at 112th Street. While Officer Specht maintained visual contact with Brunson's vehicle, she observed him stop briefly, make a U-turn in the parking lot, and then re-emerge on Coastal Highway, traveling once again in the southbound direction.

Meanwhile, Officer Specht made a U-turn, traveled a few blocks north on Coastal Highway, and made a second U-turn "to get repositioned behind" Brunson. She then activated her emergency lights and conducted a traffic stop of Brunson's vehicle, finally catching up to him at 77th Street.

Officer Specht asked Brunson whether he had recently "received any parking tickets, traffic violations, within the State of Maryland," which were still outstanding. He replied that he had not. Upon further inquiry, however, Brunson acknowledged to Officer Specht that "he had received a traffic citation a few months" beforehand but that "he did not pay it." When Officer Specht asked Brunson whether he knew that his license was suspended, he "stated that he was not suspended," that he was "unsure if he had requested a hearing waiver for that citation," and that he was "waiting for a letter in the mail from the [Motor Vehicle Administration ("MVA")] in reference to the citation."

Brunson testified that he was "familiar" with his driving record (which had been admitted into evidence in the State's case-in-chief) because he had been "pulled over" "[m]any times" prior to the traffic stop at issue. When asked to elaborate, he acknowledged

that he had previously been cited for speeding, "[f]ailure to come to a complete stop," and "[f]ailure to display driver's license." Indeed, Brunson testified that, upon receiving a letter from the MVA, notifying him of the fine due for the speeding citation (citation number 10Z0H7S), he traveled to the MVA's Salisbury office and paid that fine, and a cancelled check, dated November 10, 2014 (six weeks before the traffic stop at issue), memorializing that transaction, was admitted into evidence.

According to Brunson, he also offered to pay the fine for a second speeding citation (citation number 4550AL9), but the clerk at the MVA office "couldn't pull it up for some reason." When asked what he expected to happen next, given his inability to pay the second fine (presumably through no fault of his), Brunson stated that he expected "to receive a letter in the mail for it."

Then, according to Brunson, on December 13, 2014, he was pulled over, in Ocean City, and received a "traffic violation warning" but was not, at that time, informed that, effective December 10, his driver's license had been suspended. The warning Brunson received, on December 13, was also admitted into evidence.

On cross-examination, Brunson acknowledged that his driver's license had previously been suspended "approximately four times," the earliest suspension having occurred in 1998.[3] Brunson further acknowledged that, on each prior occasion, he had received a letter

[3]Brunson's driving record disclosed a lengthy succession of moving violations, resulting in multiple license suspensions.

from the MVA, notifying him of the suspension, had thereafter paid the associated fine, and then his license was "cleared." Indeed, Brunson admitted that he was "familiar with the consequences of not getting [his] license cleared and then driving[.]"

After argument by both parties, the circuit court found Brunson guilty of driving while his license was suspended, addressing Brunson as follows:

> Sir, your driving record demonstrates that on many, many occasions, as a matter of fact, more often than not, it would appear, you get a traffic ticket. You don't pay it. You don't appear in court. A -- your license is suspended. A notice of suspension is sent out. You then pay it and the suspension is withdrawn.
>
> The evidence before this Court reveals that on multiple occasions right around, that is in the month before, you were stopped on this -- by this police officer. You received notices from the Motor Vehicle Administration that your license was going to be suspended for failure to comply.
>
> Your assertion is that you went to the Motor Vehicle Administration and attempted to pay two tickets, one of which you successfully paid and the other in which there was some sort of administrative confusion, according to your recollection.
>
> You certainly could not have been confused as to the status of your license based on your experience with the M.V.A., based on your knowledge from the M.V.A. that on multiple occasions just before this your license was suspended.
>
> And, indeed, it's -- the driving maneuver that was described by the police officer is consistent with someone who sees a police officer cruising near them, behind them, whatever, and wants to remove themself from the view of the police officer. You're southbound on Coastal Highway. You make a turn fairly abruptly, it would appear, into a parking lot of a hotel or motel. You essentially make a U-turn in the parking lot,

> come back out at the Coastal Highway, and turn back, heading in the same direction as you were heading before.
>
> You had a chance to testify. I heard your testimony.
>
> The police officer proceeds up the road, makes a U-turn, makes another turn, gets behind you.
>
> Frankly, that issue is not determinative, but it is suspicious. But you knew. You had to know. There's no reason why you would not have known that your license was suspended on the occasion that you were driving. The fact that you got a warning some time before suggests to me that the police officer probably didn't run your driving record. Every time I ever get stopped, I never get a warning. I always get a ticket, which leads me to believe -- and it's not been that many times, but it -- in 50 years of driving, it's happened more than once.
>
> I suspect that some police officers when they stop somebody and decide they're only going to give them a warning don't bother to run their driving record. Maybe that was it, but that doesn't matter.
>
> You got lucky once. You didn't get lucky this time because this police officer ran your driving record, and you were suspended. And you've had ample experience at driving while suspended. In the Court's view, you knew that your license was suspended. I find you guilty of the charge.

The circuit court then imposed sentence of ten days' incarceration, along with fines and court costs totaling $445. Brunson thereafter noted this timely appeal.

DISCUSSION

I.

The standard of review, in an appeal from a judgment entered following a bench trial, is governed by Maryland Rule 8-131(c), which provides:

> **(c) Action Tried Without a Jury.** When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

This rule has been interpreted to allow a claim of evidentiary insufficiency to be raised, on appeal, regardless of whether a defendant has moved for a judgment of acquittal below. *Ennis v. State*, 306 Md. 579, 595 (1986) (interpreting former Rules 886 and 1086, substantially identical predecessors to Rule 8-131(c)). As to the appellate standard of review applicable to such a claim, we must determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

II.

Brunson was convicted of a single charge of driving while his license was suspended. To prove his guilt of that offense, the State was required to show that Brunson: (1) was driving a vehicle; (2) that, at the time he was driving, his driver's license was suspended; and

(3) that, at that time, he knew that his license was suspended. *Steward v. State*, 218 Md. App. 550, (2014).

The knowledge element may be proved in one of two ways: (1) the State may "present evidence that the defendant . . . had actual knowledge that his or her driver's license was suspended"; or (2) it may show "that the defendant was deliberately ignorant or willfully blind to the suspension." *Id.* at 560. "Actual knowledge," in turn, exists when the defendant has "an actual awareness or an actual belief that a fact exists." *Id.* (citation and quotation omitted). "Deliberate ignorance [or willful blindness], on the other hand, exists when the defendant believes it is probable that something is a fact but deliberately shuts his or her eyes or avoids making reasonable inquiry with a conscious purpose to avoid learning the truth." *Id.* (citation and quotation omitted).

Brunson acknowledges that the evidence was sufficient to prove the first two elements and limits his challenge only to the third—that is, the issue before us is solely whether there was sufficient evidence for the fact finder to conclude, beyond a reasonable doubt, that Brunson, at the time of the traffic stop, knew that his driver's license was suspended.

III.

Brunson asserts that there was "absolutely no evidence of 'deliberate ignorance' or 'willful blindness'" and that, therefore, the evidence was insufficient to prove that he had knowledge that, at the time of the traffic stop, his license was suspended. (He ignores the possibility that there was circumstantial evidence from which the fact finder could infer that

he had actual knowledge.) The State counters that there was sufficient circumstantial evidence of Brunson's knowledge that, at the time of the traffic stop, his license was suspended. We agree with the State.

In our view, the following facts support the inference that, at the time of the traffic stop, Brunson was actually aware that his license was suspended: (1) testimony of Officer Specht that, on the evening in question, Brunson, having apparently observed her police cruiser following him, abruptly turned into a parking lot, made a U-turn, and ultimately exited the parking lot back onto Coastal Highway, traveling in the same direction as he had previously—in other words, Brunson, upon observing a police officer immediately behind him, took evasive action; (2) the circuit court's disbelief of Brunson's testimony, in which he claimed that he had no prior knowledge that his license was suspended; (3) Brunson's acknowledgment that he was "familiar" with the procedures involved in "clearing" a license suspension, which he had been required to do several times during the preceding two decades; and (4) Brunson's driving record, which was admitted into evidence.

Regarding Brunson's evasive action, immediately before the traffic stop on December 26, 2014, it is clear that his attempt to avoid Officer Specht supports an inference of guilty knowledge, although perhaps of what specific guilt, one cannot say, on the basis of that action alone.

Regarding the circuit court's disbelief of Brunson's testimony, that he did not know of his license suspension, we may consider that as evidence supporting the opposite

conclusion. Although, generally, disbelief of a witness's testimony may not support a finding that the opposite of what that witness testified is, in fact, true, Maryland courts have recognized a scienter exception to this general rule. *See, e.g.*, *Hayette v. State*, 199 Md. 140, 145 (1952) ("Ordinarily disbelieving evidence is not the same thing as finding evidence to the contrary. But on questions of scienter reason for disbelieving evidence denying scienter may also justify finding scienter."); *Marini v. State*, 30 Md. App. 19, 30-31 (1976) ("Generally, disbelieving evidence provides no basis for finding evidence to the contrary; however, there is an exception involving *scienter* or guilty knowledge, *i.e.*, reasons for disbelieving a denial of *scienter* may provide a basis for finding *scienter*.") (quoting *Carter v. State*, 10 Md. App. 50, 53 (1970)); *see also* Joseph P. Murphy, *Maryland Evidence Handbook*, § 409[C] ("Disbelief of Witness"), at 167 (4th ed. 2010).

In *Carter*, this Court explained:

> In order to find a defendant's story so inherently improbable as to justify finding *scienter* from defendant's denial, there must be some additional circumstance establishing the inherent improbability of defendant's denial. If defendant merely denied all guilty knowledge and no evidence, from either the defense or the State, put that denial in the position of being more than merely disbelievable, a finding of *scienter* from such a denial will not be allowed to stand.

10 Md. App. at 54. In the instant case, Brunson's lengthy traffic record, and his acknowledged familiarity with the mechanics of license suspension upon failure to pay fines, followed by reinstatement after paying arrearages, provides an "additional circumstance

establishing the inherent improbability of" his denial of knowledge that his license was suspended at the time of the December 26, 2014 traffic stop.

Finally, Brunson's driving record, which was part of the evidence before the circuit court, stated that, on November 19, 2014, a suspension letter corresponding to citation number 4550AL9, the unpaid citation which resulted in the license suspension at issue, was mailed to Brunson. Under Maryland law, when a document is properly mailed, a rebuttable presumption arises that the mail was delivered and that the recipient received the document. *Border v. Grooms*, 267 Md. 100, 104 (1972). Although this piece of evidence, alone, does not establish that Brunson actually read the suspension letter, we may consider this fact as evidence of, at minimum, deliberate ignorance, the alternative method of proof of knowledge.

Taken in its entirety, and construed in the light most favorable to the State, *Jackson v. Virginia*, *supra*, 443 U.S. at 319, the evidence adduced at Brunson's trial was sufficient to sustain his conviction.

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED. COSTS ASSESSED TO APPELLANT.