UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1134

September Term, 2015

RUSSELL HENRY JOHNSON

v.

STATE OF MARYLAND

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

JJ.

Opinion by Nazarian, J.

Filed: March 24, 2016

Russell Henry Johnson was convicted by a jury sitting in the Circuit Court for Wicomico County of burglary, theft, trespassing, and driving on a suspended and revoked license. He contends on appeal that the evidence presented by the State was insufficient to support his conviction. We disagree and affirm.

I. BACKGROUND

On the night of August 24, 2014, James Wenzel's toolbox was stolen from his residence in Salisbury, where he lived with his wife, Catherine Nock, and his sister-in-law, Amanda Nock.[1] Amanda testified that on several occasions, Mr. Johnson stopped by the house to inquire whether the toolbox, which Mr. Wenzel kept in his back yard, was for sale. On each occasion, Amanda testified, Mr. Johnson drove a white pickup truck that was distinctive because it sat lower to the ground than most trucks. Each time, Amanda told Mr. Johnson that the toolbox belonged to Mr. Wenzel and that she would tell Mr. Wenzel of his interest.

Evidently Mr. Wenzel did not respond to these inquires, and on the night of August 24, Catherine was startled by the sound of "something dragging out of the yard." She looked out the window and saw a figure dragging the toolbox toward a white pickup truck on the side of the road. Catherine testified that it was too dark for her to see the person dragging the toolbox, but that she had seen the white truck at the house on the same occasions that Amanda had spoken to Mr. Johnson about the toolbox. Mr. Wenzel

[1] We will refer to Catherine and Amanda Nock by their first names to avoid confusion.

contacted the police, who put out a broadcast description of the white pickup truck and toolbox.

Shortly thereafter, Detective Anthony Foy of the Salisbury City Police Department pulled over a white pickup truck that matched the description of the broadcast and had a toolbox in the back. Mr. Johnson was driving the truck, and during the course of the stop, Detective Foy discovered that his license had been suspended and revoked. The police department then contacted Mr. Wenzel, who came to the scene and identified the toolbox as his. It was returned within an hour of it being taken.

Mr. Johnson was charged with fourth-degree burglary, conspiracy to commit burglary, theft of less than $1,000, conspiracy to commit theft, trespassing, driving while suspended, and driving while his license was revoked. During his trial, the State introduced Mr. Johnson's driving record, which revealed that his license was revoked and suspended, and that he applied for, but had not received, a new license on January 24, 2011.[2] Mr. Johnson was acquitted of the conspiracy charges, and found guilty of fourth-degree burglary, theft of goods under $1,000, trespassing, driving with a suspended license, and

[2] Although the State maintained at trial and in its briefs that Mr. Johnson applied for a new license in 2010, his driving record indicates that the Motor Vehicle Administration issued an application for driver privilege reinstatement on January 24, 2011. We will use the date indicated in his driving records as the date on which Mr. Johnson applied for a new license.

driving with a revoked license. He was sentenced to five years' imprisonment on the burglary charge,[3] and he filed a timely appeal.

II. DISCUSSION

The sole issue before us is whether the evidence presented by the State at trial was sufficient to sustain Mr. Johnson's convictions for fourth-degree burglary and driving with a revoked license. Mr. Johnson argues *first* that his burglary conviction is unsupported because the State failed to show beyond a reasonable doubt that he was the person that removed the toolbox from Mr. Wenzel's property. *Second*, he argues that his conviction for driving on a suspended and revoked license is unsupported because the State failed to prove that he was aware that his license had been revoked. We disagree with both contentions.

When deciding the sufficiency of the evidence, we recognize that the jury, as factfinder, is responsible for "[w]eighing the credibility of witnesses and resolving any conflicts in the evidence." *State v. Smith*, 374 Md. 527, 533-34 (2003) (quoting *State v. Stanley*, 351 Md. 733. 750 (1998)). We will not re-weigh the evidence, but rather give due regard to the jury's findings of fact and its opportunity to observe and assess the witnesses' credibility. *Smith*, 374 Md. at 534; *Moye v State*, 369 Md. 2, 12 (2002). We will not disturb the jury's conclusions on appeal if "after viewing the evidence in the light most favorable

[3] For purposes of sentencing, the burglary, theft, and trespassing charges merged, as did the charges for driving with a suspended license and driving with a revoked license.

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) (emphasis in original).

To convict Mr. Johnson for burglary, the State was required to prove beyond a reasonable doubt that he entered Mr. Wenzel's property with the intent to commit theft. Md. Code (2002, 2012 Repl. Vol.), § 6-205(c) of the Criminal Law Article. The State's evidence at trial demonstrated that Mr. Wenzel's toolbox was stolen from his back yard and recovered less than an hour later in Mr. Johnson's white pickup truck—the same truck that Catherine testified she saw outside the house when the toolbox was taken—while Mr. Johnson was driving it. Although it's true that Ms. Nock could not identify the person dragging the toolbox out of the yard that night, she didn't need to identify him for the State to make its case. "[E]xclusive possession of recently stolen goods, absent a satisfactory explanation, permits drawing an inference of fact strong enough to sustain a conviction that the possessor was the thief." *Molter v. State*, 201 Md. App. 155, 163 (2011) (quoting *Brewer v. Mele*, 267 Md. 437, 449 (1972)); *see also Hall v. State*, 225 Md. App. 72, 82 (2015). And a reasonable juror could readily have concluded from these events that Mr. Johnson was the one who stole the toolbox.

With regard to the charge of driving while his license was revoked, the State was required to prove beyond a reasonable doubt that Mr. Johnson drove a vehicle on a public road while his license was revoked and that Mr. Johnson *knew* his license was revoked at the time he was driving. Md. Code (1977, 2009 Repl. Vol.), § 16-303(d) of the

Transportation Article; *State v. McCallum*, 321 Md. 451, 457 (1991) ("*[M]ens rea* is required for the charge of driving while suspended."). "Knowledge" for these purposes can be actual knowledge—"an actual awareness or an actual belief that a fact exists"—or deliberate ignorance or willful blindness. *Rice v. State*, 136 Md. App. 593, 601 (2001) (quoting *McCallum*, 321 Md. at 458). The driving part is easy: Officer Roy pulled over Mr. Johnson while he was driving on public roads in Salisbury. There also is no dispute that his driving privileges had been revoked and suspended at that time. To establish his knowledge of his status, the State introduced Mr. Johnson's driving record, which revealed that his license was suspended and revoked, and that he had applied for but never received a new license. A reasonable juror could have concluded from this evidence that Mr. Johnson knew that he did not have a valid license and had attempted, without success, to remedy the problem, and this evidence amply supported Mr. Johnson's conviction for driving on a suspended and revoked license.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.