STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE CITY OF DEARBORN, Plaintiff-Appellee,	UNPUBLISHED December 4, 2012
v	No. 304374 Wayne Circuit Court
KAZEM HAMMOUD, Defendant-Appellant.	LC No. 11-000980-AR

Before: JANSEN, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

Defendant Kazem Hammoud appeals by leave granted the circuit court's order affirming his bench-trial conviction of operating a motor vehicle with a suspended license (DWLS) pursuant to a Dearborn City Ordinance that is substantively identical to MCL 257.904(1). The district court sentenced defendant to 24 months of probation with the first 30 days to be served in jail. We reverse and remand for entry of an acquittal.

A police officer pulled over defendant for failing to signal a right-hand turn. The police officer testified that, when he asked for defendant's identification, defendant said that his license was currently suspended. Defendant's driving record was admitted into evidence to show that his license was in fact suspended at the time the officer stopped defendant.

Defendant argues that the trial judge erred in finding him guilty of DWLS because there was insufficient evidence provided at trial that he had been notified of his suspension in the required manner, i.e., as provided in MCL 257.212. We agree.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, this Court '"reviews the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt."' *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012), quoting *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). In reviewing a verdict in a bench trial, this Court reviews questions of law de novo. *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). "Statutory interpretation presents a question of law, which this Court reviews de novo." *People v Droog*, 282 Mich App 68, 70; 761 NW2d 822 (2009).

"The elements of DWLS require the prosecution to prove (1) that the defendant's license was revoked or suspended, (2) that the defendant was notified of the revocation or suspension as

provided in MCL 257.212, and (3) that the defendant operated a motor vehicle on a public highway while his or her license was revoked or suspended." *People v Nunley*, ___ Mich ___; ___ NW2d ___ (Docket No. 144036, decided July 12, 2012), slip op at 3-4. Similarly, MCL 257.904(1) sets forth the required elements for a conviction of DWLS:

> A person whose operator's or chauffeur's license or registration certificate has been suspended or revoked *and who has been notified as provided in section 212* [MCL 257.212] *of that suspension* or revocation . . . shall not operate a motor vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this state. [emphasis added.]

MCL 257.212 states the following regarding notice:

> If the secretary of state is authorized or required to give notice under this act or other law regulating the operation of a vehicle, unless a different method of giving notice is otherwise expressly prescribed, *notice shall be given either by personal delivery to the person to be notified or by first-class United States mail addressed to the person at the address shown by the record of the secretary of state.* The giving of notice by mail is complete upon the expiration of 5 days after mailing the notice. Proof of the giving of notice in either manner may be made by the certificate of a person 18 years of age or older, naming the person to whom notice was given and specifying the time, place, and manner of the giving of notice. [emphasis added.]

Thus, MCL 257.904(1) requires that the secretary of state have notified defendant of the relevant license suspension in one of two ways: (1) personal delivery or (2) first-class United States mail. See MCL 257.904(1); MCL 257.212.

We conclude that the evidence at trial, viewed in a light most favorable to the prosecution, was insufficient for the trier of fact to find that the elements of DWLS were proven beyond a reasonable doubt. Specifically, the prosecution failed to submit sufficient evidence "that defendant was notified of the revocation or suspension as provided in MCL 257.212." *Nunley*, slip op at 3-4. In this case, the police officer testified that defendant admitted to him that his license was suspended. Although this evidence showed that defendant had actual knowledge of the suspension, evidence of defendant's actual knowledge alone does not satisfy the element of notice required by MCL 257.904(1). The prosecution was required to prove beyond a reasonable doubt that defendant received notice of the suspension as provided in MCL 257.212, i.e., notice by either personal delivery or first-class United States mail. To be sure, the prosecution was not required to prove notice by direct evidence; circumstantial evidence and reasonable inferences derived from such evidence could have served to prove that defendant received notice as provided by MCL 257.212. See *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). However, the prosecution introduced neither direct nor sufficient circumstantial evidence that defendant was notified in conformity with MCL 257.904(1) and MCL 257.212. A rational trier of fact could not reasonably infer, solely from evidence that defendant knew of the suspension, that defendant received notice as provided by MCL 257.212. To conclude that defendant received the required notice from the secretary of state, as compared

to another source (e.g., the police from an earlier stop or a court at a prior hearing), would be speculative given the evidence at trial. See *People v Petrella*, 424 Mich 221, 275; 380 NW2d 11 (1985) ("While the trier of fact may draw reasonable inferences from facts of record, it may not indulge in inferences wholly unsupported by any evidence, based only upon assumption.").

The prosecution argues, and both the district and circuit courts agreed, that defendant's actual knowledge of the suspension was sufficient evidence to satisfy the required notice element under MCL 257.904(1). The prosecution contends that the purpose and intent of MCL 257.212, as it relates to DWLS, is a catchall provision allowing constructive notice when sufficient evidence of actual notice is lacking. We disagree.

The prosecution's argument is inconsistent with the rules of statutory interpretation and the language in both of the relevant statutes. If a statute is unambiguous on its face, the Legislature is presumed to have intended the meaning plainly expressed and further judicial interpretation is prohibited. *People v Tombs*, 260 Mich App 201, 209; 679 NW2d 77 (2003). "Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent." *Id.* (quotation omitted). Furthermore, "[a]n ambiguity of statutory language does not exist merely because a reviewing court questions whether the Legislature intended the consequences of the language under review." *Id.* There is no ambiguity in MCL 257.904(1) and MCL 257.212. The plain meaning of MCL 257.904(1) requires that defendant must be notified of the suspension "as provided in" MCL 257.212. And MCL 257.212 expressly provides two ways in which notice must be given: "either by personal delivery to the person to be notified or by first-class United States mail." Therefore, defendant's actual knowledge of the suspensions will not satisfy the notice element absent direct or circumstantial evidence showing that defendant received notification of the suspension from the secretary of state in the form of personal delivery or first-class United States mail.[1]

Our conclusion is supported by the Michigan Supreme Court's recent ruling in *People v Nunley*. Although the issue in *Nunley* was whether a Michigan Department of State (DOS) certificate of mailing is testimonial in nature, the Court stated that "[t]he elements of DWLS require the prosecution to prove . . . that the defendant was notified of the revocation or suspension *as provided in MCL 257.212* . . . ." *Nunley*, slip op at 3-4 (emphasis added).

[1] This Court came to the same conclusion in *People v Harms*, unpublished opinion per curiam of the Court of Appeals, issued August 8, 2006 (Docket No. 260358). While *Harms* is unpublished and therefore not binding, MCR 7.215(C)(1), we find its reasoning sound and persuasive. See *People v Jamison*, 292 Mich App 440, 445; 807 NW2d 427 (2011). Contrary to the prosecutor's argument that *Harms* is distinguishable because there was no evidence to suggest that the defendant in that case had actual knowledge of his suspension, this Court in *Harms* acknowledged that as a practical matter, the evidence indicated that the defendant may well have been put on notice that his license was suspended. *Harms*, slip op at 3. Nevertheless, we concluded that the plain language of MCL 257.904(1) requires compliance with MCL 257.212 as written. *Id.*; see also *People v Sullivan*, unpublished per curiam of the Court of Appeals, issued June 18, 2009 (Docket No. 283593).

Furthermore, the Court based its determination that the certificate of mailing is not testimonial on the grounds that no crime for DWLS can be committed until the driver receives the required notice, wherein the Court proceeded to describe the notice mandates of MCL 257.212. *Id*. at 21. The Court's rationale was essentially that the crime of DWLS cannot be committed until a driver receives the notice set forth in MCL 257.212:

> Perhaps most significant to this analysis is the fact that the DOS certificates of mailing are necessarily created *before* the commission of any crime that they may later be helped to prove. This is because receipt of notice is an element of the crime of DWLS, and the certificate of mailing is created contemporaneously with the notice itself. Accordingly, a person, even one whose license is suspended, cannot legally commit the crime of DWLS before he or she receives notice. Given this significant distinguishing fact and the relevant statutes, we conclude that the certificates of mailing are a result of legislatively authorized administrative function of the DOS, which is independent of any investigatory or prosecutorial purpose.
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> Once the DOS sent defendant the required notice regarding the revocation of his license, MCL 257.212 mandated that the notice be given in the manner previously described, i.e., through personal delivery or by first-class United States mail.
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> Accordingly, because the certificate of mailing was necessarily generated before the charged crime could be committed, it was not *made under circumstances* that would lead an objective witness to reasonably believe that it would be available for use at a later trial. At the time the certificate was created, there was no expectation that defendant would violate the law by driving with a revoked driver's license and therefore no indication that a later trial would even occur.
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> [T]he DOS generates certificates of mailing contemporaneously with the notices that are mailed to drivers whose licenses have been suspended or revoked. Again, under no circumstances could the drivers whose licenses have been suspended or revoked be charged with DWLS before having received the notice of the suspension or revocation. In our view, the distinction makes "all the difference in the world" because the certificate was not and could not have been created in anticipation of a prosecution because no crime had yet occurred. [*Id*. at 21-23 (emphasis in original).]

Accordingly, because the prosecutor in the present case failed to present evidence that defendant was notified of the revocation or suspension as provided in MCL 257.212, defendant's conviction must be reversed. When a conviction is not supported by sufficient evidence, the Double Jeopardy Clause prohibits retrial on the identical charge. *People v Watson*, 245 Mich

App 572, 596; 629 NW2d 411 (2001). Thus, defendant's DWLS conviction is reversed, and this case is remanded for entry of an acquittal.

Reversed and remanded for entry of an acquittal. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Stephen L. Borrello
/s/ Jane M. Beckering