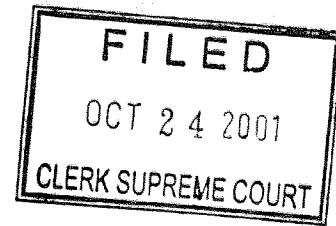


IN THE COURT OF APPEALS OF IOWA

No. 1-368 / 00-1469  
Filed October 24, 2001



**STATE OF IOWA,**  
Plaintiff-Appellee,

vs.

**TIMOTHY LEE DANIELSON,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Douglas C.  
McDonald, District Associate Judge.

Defendant appeals the district court's judgment and sentence, following a bench trial, for driving under suspension in violation of Iowa Code section 321J.21 (Supp. 1999) and driving under suspension without having filed SR-22 insurance in violation of section 321A.32 (1999). **AFFIRMED.**

James L. Tappa of Spector, Tappa & Nathan, Rock Island, Illinois, for  
appellant.

Thomas J. Miller, Attorney General, Donald D. Stanley, Jr., Assistant  
Attorney General, William E. Davis, County Attorney, and Marc Gellerman,  
Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Miller and Hecht, JJ.

**HECHT, J.**

Timothy Danielson appeals the district court's judgment and sentence, following a bench trial, for driving under suspension in violation of Iowa Code section 321J.21 (Supp. 1999) and driving under suspension without having filed SR-22 insurance in violation of section 321A.32 (1999). He contends the trial court (1) erred in denying his motion for judgment of acquittal; (2) erred in convicting him of driving under suspension when he had never received notice of effective dates of suspension; (3) erred in convicting him for failure to file proof of financial responsibility when he had never received notice of such requirement; and (4) abused its discretion in failing to defer judgment. We affirm.

**I. Background Facts and Proceedings.** On October 3, 1999, Danielson refused to submit to a preliminary breath-screening test (PBT) during a routine traffic stop. At that time, the officer provided Danielson with a request and notice from the Iowa Department of Transportation (IDOT) informing him his privilege to operate a motor vehicle in Iowa would be revoked for one year beginning ten days from the date of the notice. In addition, the document informed Danielson he was required under Iowa Code Chapter 321A to post proof of financial responsibility to suspend the revocation.

Danielson requested an administrative hearing regarding his license revocation for refusing to take the PBT. On October 12, 1999, the IDOT mailed Danielson a stay notice<sup>1</sup> indicating his loss of driving privileges would be delayed

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<sup>1</sup> The stay notice provided:

The above action [re: revocation for test refusal] is stayed (delayed) and this notice is your permit to drive pending results of the hearing. If this action is upheld, after the hearing you will be notified of the new starting date.

pending the administrative hearing's outcome. Danielson subsequently withdrew his request for a hearing and received a withdrawal order from the Iowa Department of Inspection and Appeals dated December 8, 1999. The withdrawal order included a notice that stated:

The Iowa Department of Transportation will send you an official notice which will indicate the dates on which your sanction will start and end if the sanction was sustained by the Administrative Law Judge. This notice will be mailed to you to the same address as this decision. The sanction will start even if you do not receive the Iowa Department of Transportation's official notice. If you have any questions concerning this you should contact the Iowa Department of Transportation.

On December 10, 1999, the IDOT mailed Danielson an official notice informing him his license would be revoked from one year beginning December 23, 1999, and would remain suspended or revoked until he provided proof of financial responsibility. Although the official notice was mailed to Danielson at the same address as all previous mailings, Danielson testified he did not receive it.

On March 7, 2000, a law enforcement officer stopped Danielson for exceeding the posted speed limit. Danielson provided the officer with a stay notice from the IDOT dated October 12, 1999, regarding his previous refusal to submit to the PBT. A dispatcher informed the officer Danielson's license had been revoked effective December 23, 1999, until the following year. In addition, the officer was further advised Danielson had failed to file a SR-22. The officer cited Danielson for speeding, not having a SR-22 on file, and driving under revocation.

Danielson waived his right to a jury trial on the serious misdemeanor charge of driving while license suspended. On July 14, 2000, a bench trial was

held on all three charges, and the district court found Danielson guilty on all three counts. Danielson appeals.

## **II. Discussion.**

**A. Sufficiency of the Evidence.** Claims of insufficient evidence, preserved by motion for judgment of acquittal, are reviewed on appeal for errors at law. *State v. Walker*, 574 N.W.2d 280, 283-84 (Iowa 1998). We review a trial court's findings in a bench trial as we would a jury verdict. *State v. Weaver*, 608 N.W.2d 797, 803 (Iowa 2000). We will uphold a finding of guilt if substantial evidence supports the verdict. *Id.*; Iowa R. App. P. 14(f)(1). Substantial evidence is evidence upon which a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *State v. Thomas*, 561 N.W.2d 37, 39 (Iowa 1997); *State v. Robinson*, 288 N.W.2d 337, 341 (Iowa 1980).

In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, "including all legitimate inferences and presumptions which may be fairly and reasonably deduced from the record." *State v. Lambert*, 612 N.W.2d 810, 813 (Iowa 2000); *Thomas*, 561 at 39. All evidence is considered, "not just that of an inculpatory nature." *Lambert*, 612 N.W.2d at 813. Evidence that merely raises suspicion, speculation, or conjecture will not be considered substantial evidence. *Id.*

Danielson contends the district court erred in denying his motion for a judgment of acquittal and convicting him of driving under suspension and failure to file proof of insurance. Danielson argues the State presented insufficient evidence to support his convictions because the State failed to prove beyond a reasonable doubt he received official notice informing him of the beginning and

ending dates of his license suspension or the need to file proof of financial responsibility. Moreover, Danielson asks this court to overturn our holding in *State v. Carmer*, 465 N.W.2d 303 (Iowa Ct. App. 1990), by adding a knowledge element to the driving while license suspended offense.

We find the State produced substantial evidence to convict Danielson of driving while under suspension and failure to file proof of financial responsibility in violation of Iowa Code sections 321J.21 and 321A.32 respectively.<sup>2</sup> The record is clear Danielson's license was suspended, he drove under suspension, and failed to file proof of financial responsibility.<sup>3</sup> Since knowledge is not an element of either offense, the State was not required to prove beyond a reasonable doubt that Danielson received the official notice informing him of the dates of his suspension and the need to file proof of financial responsibility. See *Carmer*, 465 N.W.2d at 304 (affirming jury instruction which did not require State to prove defendant knew his license was barred); see also *State v. Thompson*, 357 N.W.2d 591, 594 (Iowa 1984) (affirming jury instructions on driving while

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<sup>2</sup> Section 321J.21 provides in pertinent part:

A person whose driver's license . . . has been suspended, denied, revoked, or barred due to a violation of this chapter and who drives a motor vehicle while the license . . . is suspended, denied, revoked, or barred commits a serious misdemeanor.

Iowa Code § 321J.21(1) (1999). Section 321A.32 provides in pertinent part:

Any person whose license . . . has been suspended, denied, or revoked under this chapter or continues to remain suspended or revoked under this chapter, and who, during such suspension, denial, or revocation, or during such continuing suspension or continuing revocation, drives any motor vehicle upon any highway . . . shall be guilty of a simple misdemeanor.

Iowa Code § 321A.32 (1999).

<sup>3</sup> The State correctly contends our review of his section 321A.32 conviction is discretionary, as it is a simple misdemeanor which does not ensure the defendant a right of direct appeal from conviction. Iowa Code § 814.6(2)(d) (1999); Iowa R. App. P. 304. Nonetheless, we will exercise our discretion and address whether or not knowledge is an element of the offense.

license revoked which did not include knowledge as an element of the offense); *State v. Sonderleiter*, 251 Iowa 106, 109-10, 99 N.W.2d 393, 395 (1959) (holding knowledge not an element of driving while license revoked). We reject Danielson's contention *State v. Carmer* should be overturned.

Furthermore, we are not persuaded Danielson was unaware his license was suspended and he needed to file proof of financial responsibility. When Danielson refused to take the PBT, he received and signed an IDOT request and notice which informed him of both facts. Additionally, the withdrawal order, which Danielson admits receiving, stated his license would be suspended even if he did not receive the official notice. Moreover, Danielson drove for over three months after receipt of the withdrawal order, never contacting the IDOT with questions or concerns. It strains credulity to suggest Danielson believed in March his license was not suspended and he was free to continue driving under the authority of a defunct stay order.

**B. Deferred Judgment.** Our review of sentencing decisions is for the corrections of errors at law. Iowa R. App. P. 4; *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). The determination of whether to grant a deferred judgment lies within the trial court's discretion. Iowa Code § 901.5. "We will not interfere unless the defendant demonstrates an abuse of discretion or a defect in the sentencing procedure such as trial court consideration of impermissible factors." *State v. Kelley*, 357 N.W.2d 638, 639 (Iowa Ct. App. 1984) (citing *State v. Wright*, 340 N.W.2d 590, 592 (Iowa 1983)).

Danielson contends the district court should have sentenced him to a deferred judgment rather than a prison term due to his eligibility under Iowa Code

section 907.3. We find the district court acted within its discretion. Accordingly, we affirm Danielson's convictions and sentence.

**AFFIRMED.**