Circuit Court for Kent County
Case No. 14-K-16-008990

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2393

September Term, 2016

SHURON LATAY DOUGLAS

v.

STATE OF MARYLAND

Woodward, C.J.,
Meredith,
Davis, Arrie W.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Davis, J.

Filed: November 8, 2017

Appellant, Shuran Latay Douglas, was tried and convicted by a jury in the Circuit Court for Kent County (Bowman, J.) of driving while his license was suspended, possessing a suspended license, failing to surrender a suspended license and displaying registration plates issued for another vehicle. Appellant was sentenced to one year imprisonment, with nine months suspended for driving on a suspended license. The court imposed fines for the remaining convictions and ordered that Appellant be placed on supervised probation for three years. Appellant filed the instant appeal, in which he posits the following questions for our review:

QUESTIONS PRESENTED

1. Was the evidence sufficient to support Appellant's conviction for driving while his license was suspended?

2. Did the trial court abuse its discretion when it overruled defense counsel's objections to remarks the prosecutor made in closing argument?

3. Did the trial court commit plain error when it instructed the jury on driving on a suspended license?

FACTS AND LEGAL PROCEEDINGS

Maryland State Police Troopers Kyle Braightmeyer and William Mathewson were on patrol in Chestertown on June 3, 2016 when, at approximately 9:30 p.m., they drove their vehicle behind a white Honda Civic. The troopers submitted the number of the vehicle's license plate, which had the words "School Charter" on it, for information from the Motor Vehicle Administration ("MVA"). Before the troopers received the results from the MVA, the driver of the vehicle made a left-hand turn. As he made the turn, he looked

over his left shoulder, at which time both officers were able to see his face. The troopers also turned, at which time the Honda Civic parked at the curb. The driver alighted and the officers saw his face again. They also saw his clothes and testified that he was wearing a white t-shirt, red shorts with blue stripe and black sneakers. The troopers drove past the vehicle; however, five to ten seconds later, when they received notice that the tag had been reported stolen, the officers returned to the vehicle. Upon discovering that the driver was no longer there, the troopers submitted the identification number of the vehicle and discovered that the vehicle had no registered owner. They also observed that the vehicle did not have a front license tag.

The troopers then decided to "inventory the vehicle," during which they discovered a wallet with a license "listed to Shuron Douglas." They also found credit cards and an athletic club identification card, all of which were in Appellant's name. The troopers then decided to locate Appellant, whereupon they proceeded to the Fish Whistle Bar and Restaurant where they spoke to the manager. The troopers subsequently returned to Calvert Street where they saw Appellant on the sidewalk. Appellant was wearing the same clothes the troopers had previously seen the driver of the vehicle wearing and both troopers identified him as the driver of the Honda Civic automobile. Appellant acknowledged who he was when approached by the troopers, who asked him about the license plate and vehicle. Appellant, however, told the troopers that he did not want to talk. Subsequent to the testimony of the officers, the State introduced into evidence a certified copy of Appellant's MVA driving record.

Appellant was charged with theft of goods with a value less than $100, driving without a license, two counts of driving while his license was suspended, possessing a suspended license, driving an uninsured vehicle, failing to surrender a suspended license, operating an unregistered motor vehicle, displaying registration plates issued for another vehicle and failing to attach plates at the front and rear of the vehicle. The jury acquitted Appellant of theft and convicted him of driving while his license was suspended, possessing a suspended license, failing to surrender a suspended license and displaying registration plates issued for another vehicle.[1] Thereafter, Judge Bowman sentenced Appellant to one year, with nine months suspended, for driving while his license was suspended and imposed fines for the remaining convictions. Judge Bowman also ordered three years of supervised probation.

DISCUSSION

I.

Appellant first contends that the evidence was insufficient to support his conviction for driving while his license was suspended. Specifically, Appellant alleges that the State failed to prove that he knew that his license was suspended when the troopers stopped him on June 3, 2016. According to Appellant, the "only evidence introduced at trial regarding [his] driving status was his certified driving record." Appellant maintains that, although the

[1] The State *nol prossed* the counts that charged driving an uninsured vehicle, operating an unregistered motor vehicle, failing to attach registration plates at the front and rear of the vehicle and driving without a license. The State also *nol prossed* one of the counts of driving while license is suspended.

driving record indicates that "an order of suspension" was issued, "[t]he record, however is silent on *how* the order was issued."

The State responds that Appellant's driving record, admitted into evidence, "provided ample evidence that he knew that his driver's license was suspended." Specifically, the State maintains that it was reasonable to infer that the officer who stopped Appellant in 2015, served the order of suspension immediately upon him based on his refusal to submit to the chemical test. The State also notes that the record evinces that Appellant requested a hearing pertaining to the order of suspension on June 4, 2015. Furthermore, Appellant appealed the denial of his request for a hearing on January 8, 2016. Finally, there is evidence from the record that, on two prior occasions, Appellant refused chemical tests and his driving license was suspended after each instance. Therefore, maintains the State, the element of the knowledge of the offense has been satisfied by the admission of Appellant's driving record.

In reviewing a case for the sufficiency of the evidence,

> the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction . . . is 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.

Smith v. State, 415 Md. 174, 184, 999 A.2d 986, 991 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979)).

Md. Code Ann., Trans. § 16–303(c)[2] provides for the statutory offense of driving a

[2] "A person may not drive a motor vehicle on any highway or on any property specified

motor vehicle while one's driving license or privilege to drive is suspended. Although not expressly provided for in the statute, "[k]nowledge is an essential element of driving with a suspended license" as "*mens rea* is required for the charge of driving while suspended." *Steward v. State*, 218 Md. App. 550, 560 (2014) (quoting *State v. McCallum*, 321 Md. 451, 457 (1991)).

> In order to prove that an individual had the requisite *mens rea* at the time of the offense, the State must present evidence that the defendant either had actual knowledge that his or her drivers' license was suspended, or that the defendant was deliberately ignorant or willfully blind to the suspension.

Id. at 560 (citing *McCallum*, 321 Md. at 457; *Rice v. State*, 136 Md. App. 593, 604 (2001)).

> Actual knowledge exists when a person has "an actual awareness or an actual belief that a fact exists." Deliberate ignorance, on the other hand, exists when a person "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. (citations omitted).

Transp. § 12–114(a) provides that the MVA will provide notice in either of the following two manners: "(1) [b]y personal delivery to the person to be notified; or (2) [b]y mail to the person at the address of the person on record with the Administration."

In the instant case, Appellant's driving record, admitted as State's Exhibit No. 3, contained the following entries:

- March 3, 2010 – ORDER OF SUSPENSION ISSUED REFUSED 1ST CHEMICAL TEST

in § 21-101.1 of this article while the person's license or privilege to drive is suspended in this State."

- March 3, 2010 – DRIVER LICENSE RECEIVED AT MVA AND DESTROYED

- April 18, 2010 – A/R SUSPENDED REFUSED 1ST CHEMICAL TEST

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- October 9, 2013 – ORDER OF SUSPENSION ISSUED REFUSED 2ND CHEMICAL TEST

- October 9, 2013 – DRIVER LICENSE NOT SURRENDERED

- October 9, 2013 – TEMPORARY LICENSE ISSUED

- November 24, 2013 – A/R SUSPENDED REFUSED 2ND CHEMICAL TEST

- December 10, 2013 – LICENSEE SIGNED STATEMENT – NO LICENSE IN POSESSION

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- February 12, 2014 – SUS LETTER MAILED FOR VIOLATION OF LIC RESTR

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- June 4, 2015 – ORDER OF SUSPENSION ISSUED REFUSED 3RD CHEMICAL TEST

- June 4, 2015 – LICENSEE SIGNED STATEMENT – NO LICENSE IN POSSESSION

- June 4, 2015 – TEMPORARY LICENSE ISSUED

- July 20, 2015 – A/R SUSPENDED REFUSED 3RD CHEMICAL TEST

***

- January 8, 2016 – HEARING REQUEST DENIED

- January 14, 2016 – APPEAL DENIAL OF HEARING REQUEST

Appellant acknowledges that an order of suspension was issued on June 4, 2015; however, he contends that the record is "silent on *how* the order was issued." The State argues that a reasonable inference can be made that the officer who stopped Appellant in 2015 immediately issued the order of suspension to Appellant directly. The State also argues that Appellant had two similar situations where his driver's license was suspended after refusing chemical tests and that he also requested a hearing regarding the June 4, 2015 order of suspension.

Appellant's driving record illustrates both methods of delivery utilized by the MVA under Transp. § § 12–114(a), *i.e.*, by mail and personal delivery. As the June 4, 2015 order of suspension is listed as "issued" rather than "mailed," we agree with the State that there is a reasonable inference that the order was immediately issued to Appellant by the officer who stopped him.

Furthermore, Appellant's driving record illustrates that, on two prior occasions, Appellant refused to submit to a chemical test and his driving license was subsequently suspended. Logically, Appellant would be on notice that, after refusing a third chemical test, his driver's license would again be suspended.

Finally, Appellant's driving record also reflects that Appellant requested a hearing concerning the June 4, 2015 suspension of his driver's license. His hearing request was denied on January 8, 2016 and the record includes a notation, under summary for "060415," which corresponds to June 4, 2015, *i.e.*, "06/04/15." Appellant's appeal of the denial of his

request for a hearing was made on January 14, 2015 and has a notation, under summary for "010816," which corresponds to the January 8, 2016 issuance of the denial, *i.e.*, "01/08/16."

Accordingly, for the foregoing reasons, we are persuaded that Appellant's driving record was sufficient to illustrate his knowledge of driving while his license was suspended and, thereafter, his conviction for the offense.

II.

Appellant's second assignment of error is that the trial court abused its discretion when it overruled defense counsel's objections made to the prosecutor's closing argument. Specifically, Appellant contends that the prosecutor's remarks concerned what type of traffic stop occurred on June 3, 2015, *i.e.*, alcohol-related stop, and that, during such a stop, a person who refuses a chemical test is informed that a temporary 45-day license will be issued. Appellant asserts that the driving record "contains absolutely no information on what a person who refuses a chemical test is told" and the driving record "contains no information on what type of stop precipitated the refusal of the chemical test[.]" According to Appellant, the prosecutor's remarks "were plainly improper comments on facts not in evidence" and he requests the reversal of his conviction for driving while his license was suspended.

The State responds that Appellant's argument has only been partially preserved for our review in that Appellant's trial counsel only objected to the part of the prosecutor's argument concerning "the duration of the temporary license." Therefore, the State avers

that Appellant's objection to the prosecutor's argument pertaining to a stop for an "alcohol related driving infraction" has been waived. If considered, however, the State argues that "the fact that Douglas was subject to an *alcohol-related* traffic stop is fairly inferable from the fact that he was asked and refused to submit to a chemical test, a fact contained in his record." Furthermore, the State asserts that, "even if this is not a proper inference," the nature of the stop is "not material to any contested issue in the trial."

"In keeping with the importance of closing argument, we have explained that counsel are afforded 'great leeway' when presenting that portion of their case." *Donaldson v. State*, 416 Md. 467, 488 (2010) (citations omitted). "During closing arguments, '[t]he prosecutor is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom.'" *Jones v. State*, 217 Md. App. 676, 691 (2014) (quoting *Lee v. State*, 405 Md. 148, 163 (2008)).

"Great leeway notwithstanding, not all statements are permissible during closing arguments." *Donaldson,* 416 Md. at 489. For example, "counsel may not 'comment upon facts not in evidence or . . . state what he or she would have proven.'" *Id.* (quoting *Mitchell v. State*, 408 Md. 368, 381 (2009)).

> While arguments of counsel are required to be confined to the issues in the cases on trial, the evidence and fair and reasonable deductions therefrom, and to arguments of opposing counsel, generally speaking, liberal freedom of speech should be allowed. There are no hard-and-fast limitations within which the argument of earnest counsel must be confined[.]

Lee v. State, 405 Md. 148, 163 (2008) (citations omitted).

"What exceeds the limits of permissible comment or argument by counsel depends

on the facts of each case." *Mitchell v. State*, 408 Md. 368, 380 (2009). Therefore, the trial judge is in the best position to contextually assess the properness, *vel non*, of such remarks; therefore, we will "not disturb the trial court's judgment absent a clear abuse of discretion[.]" *Id.* at 381.

However, even when an argument is found to be improper during closing arguments, reversal is not automatic. *Jones*, 217 Md. App. at 691.

> [W]hen an appellant, in a criminal case, establishes error, unless a reviewing court, upon its independent review of the record, is able to a declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed "harmless" and a reversal is mandated. Such reviewing court must thus be satisfied that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict.

Id. at 691–92. (quoting *Lee v. State*, 405 Md. 148, 164 (2008)).

In the instant case, the following is an excerpt from the prosecutor's closing argument:

> PROSECUTOR: On June 4th of 2015, there was an order of suspension for refusing a third chemical test. At the same time, the way . . . a temporary license was issued to the Defendant. When you're stopped for an alcohol related driving infraction and you refuse the test, they issue a temporary 45 day license.
>
> DEFENSE COUNSEL: Objection. I think, if he wants to argue that, then that should have been entered into evidence. There's no proof of what this temporary license is or what is said or how long it lasted.
>
> PROSECUTOR: I think I'm entitled to argue the law, Your Honor.
>
> COURT: I think . . . I think it's argument, and I'll overrule the objection.
>
> The Prosecutor continued his argument as follows:

> At that . . . on that same day, he also signed again a statement that he had no license in his possession, when, again, clearly, he did. So the 45 days suspension begins to run, or the 45 day temporary license began to run on June 4th of 2015. On the 46th day, which was July 20th of 2015, a one-year suspension was put in place on his license.
>
> During the prosecutor's rebuttal closing argument, the following colloquy occurred:
>
> PROSECUTOR: He then got stopped, refused to take a chemical test. When you refuse a chemical test, they tell you you're suspended, and they tell you you're getting a temporary license, and they tell you that, on the 46th day, that temporary license will not be valid and the suspension will be in effect.
>
> DEFENSE COUNSEL: Objection.
>
> PROSECUTOR: He knew all of that.
>
> DEFENSE COUNSEL: Objection.
>
> THE COURT: Well, wait, wait, wait, wait, wait.
>
> DEFENSE COUNSEL: There's no one who told him. There's no proof that anyone told him that. Even in argument, I think you have to have some basis for making that argument.
>
> THE COURT: I think he—
>
> DEFENSE COUNSEL: I think what—
>
> THE COURT: I think he's within the perimeters of argument. It's up to the jury to decide whether to accept it or not. Overrule.

As a preliminary matter, we will first address the State's contention that Appellant only partially preserved the issue for our review. Md. Rule 4–323(a) provides that

> An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived. The grounds for the objection need not be stated unless the court, at the request of a party or on its own initiative, so directs. The court shall rule upon the objection promptly.

"[W]hen particular grounds for an objection are volunteered or requested by the court, 'that party will be limited on appeal to a review of those grounds and will be deemed to have waived any ground not stated.'" *State v. Jones*, 138 Md. App. 178, 218 (2001) (quoting *Leuschner v. State*, 41 Md. App. 423, 436 (1979)).

In the instant case, during the prosecution's closing arguments, Appellant's counsel provided specific grounds for his objections that did not include the alcohol related traffic stop. Specifically, Appellant contends that there is "no proof of what [the] temporary license is or what is said or how long it lasted" and that no one informed his client that, on the 46th day after a 45-day temporary license, the suspension for the driver's license will go into effect. There is no mention about the stop being alcohol related. Therefore, we agree that Appellant's argument concerning the alcohol-related traffic stop has not been preserved for our review.

Assuming, *arguendo*, that the argument had been preserved, the prosecutor's remarks concerning an alcohol-related stop are based on a reasonable inference made from the evidence presented during trial. The driving record clearly illustrates that a chemical test was refused and that the order of suspension issued was "A/R," *i.e.*, alcohol related.

Returning to the matter of preservation in the instant case, the State asserts that, "[t]he only preserved objections to the prosecutor's argument pertained to the statements about the length and duration of Douglas's suspension. We disagree. Appellant also preserved for our review the prosecutor's remarks concerning what he was or was not told

after refusing to take the chemical test, *i.e.,* license suspension after the issuance of a temporary 45-day license. As stated, *supra*, the prosecutor remarked that, "When you refuse a chemical test, they tell you you're suspended, and they tell you you're getting a temporary license, and they tell you that, on the 46th day, that temporary license will not be valid and the suspension will be in effect." After objecting, defense counsel stated: "There's no one who told him. There's no proof that anyone told him that." Therefore, we hold the issue preserved.

However, after reviewing the prosecutor's remarks, we hold that they do not rise to the level of impropriety. The admitted driving record, as discussed, *supra*, lists the issuance of an order of suspension and a temporary license on June 4, 2015, the day of the traffic stop. The remarks comport with the issues of the case, the evidence presented and "fair and reasonable deductions therefrom," *i.e.*, that after refusing to take a chemical test, a police officer would inform an individual about the issuance of a temporary license and suspension of driving privileges. *Lee, supra.* Therefore, we hold that the trial judge did not engage in an abuse of discretion by overruling Appellant's objection.

III.

Appellant's final contention is that, with respect to the element of whether Appellant knew he was driving while his license was suspended, the court incorrectly instructed the jury that they must find "that the defendant knew or should have known that his license was suspended at the time of driving that vehicle." Citing *Steward v. State,* 218 Md. App. 550 (2014), Appellant maintains that "should have known" does not equate to actual

knowledge or willful ignorance and that "the instruction permitted the jury to convict . . . [at] a much lower standard." Appellant concedes that counsel did not object to the instruction as propounded, but asseverates that this Court should "find that the trial court committed plain error and reverse Appellant's conviction for driving on a suspended license" and that the foregoing "portion of the instruction was an incorrect statement of the law.

The State responds that this Court should not consider Appellant's "claim under the plain error doctrine because the error did not affect the outcome of the case and, therefore, was not the kind of compelling, extraordinary or fundamental error that warrants plain error review." The State acknowledges that, under *Steward, supra,* "the trial court inaccurately instructed the jury that it could convict Douglas if the evidence was sufficient to prove that he 'should have known' that his license was suspended." However, the State asserts that Appellant has failed to demonstrate that he was prejudiced by this error.

"When deciding whether a trial court abused its discretion, we consider whether the requested instruction was a correct statement of the law, whether it was applicable under the facts of the case, and whether it was fairly covered in the instructions actually given." *Steward*, 218 Md. App. at 565 (citing *Stabb v. State*, 423 Md. 454, 465 (2011)).

Md. Rule 4–325 governs jury instructions and subpart (e) provides that

> [n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection. Upon request of any party, the court shall receive objections out of the hearing of the jury. An appellate court, on its own initiative or on the suggestion of a party,

> may however take cognizance of any plain error in the instructions, material to the rights of the defendant, despite a failure to object.

When an appellate court uses its discretion to review a matter for plain error, it is in "exceptional case[s]." *Dempsey v. State*, 277 Md. 134, 142 (1976).

When reviewing errors in jury instructions, we must differentiate between errors which could have been clarified or addressed with a timely objection and those that are "likely to unduly influence the jury and thereby deprive the defendant of a fair trial." *State v. Hutchinson*, 287 Md. 198, 202–05 (1980).

In order to review an issue for plain error, three threshold requirements must first be met:

> (1) [T]here must be error (that the defendant did not affirmatively waive); (2) the error must be "clear and obvious," *i.e.*, not subject to reasonable dispute; and (3) the error must be material, meaning that it affected the outcome of the trial.

Steward, 218 Md. App. at 566.

However, "[e]ven if an appellant is able to satisfy the threshold burden of proving a plain and material error, the Court need not recognize the error." *Id.* (citation omitted). "The Court will exercise its discretion to recognize plain error only when it is 'compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial.'" *Id.* (citation omitted). "Because of the difficulty of demonstrating facts that are sufficiently compelling to invoke plain error review, it remains 'a rare, rare, phenomenon,' especially when the alleged error involves a missing or erroneous jury instruction." *Id.* (citation omitted).

In *Steward, supra*, this Court considered, as a matter of first impression, whether

the use of "should have known" in a jury instruction, concerning the knowledge element of the driving while license is suspended offense was the appropriate legal standard. Specifically, the trial court, in that case, instructed the jury that the State had to prove, *inter alia*, that the accused "had actual knowledge or should have known of the suspension." *Id.* at 564. This Court concluded that the objective "should have known" standard was not a legally correct substitute for the subjective "willful blindness" form of knowledge. *Id.* at 567–68.

However, we also stated, in *Steward*, that plain error review was not "automatic." *Id.* at 568. "In order to be 'extraordinary,' and thus cognizable on review, an error must be more than prejudicial, indeed, more than merely reversible[.]" *Id.*

In determining that the error in *Steward* was not "so obvious or so egregious as to require plain error review[,]" we noted several factors. *Id.* There was no standard pattern jury instruction for the offense of driving while license is suspended and the statute at issue did not include the element of knowledge as part of the offense. *Id.* Although there were, at the time, a few reported cases that had examined knowledge as an element comprising part of the offense, they had not previously considered "should have known" language. *Id.* at 568–69. Rather, the prior opinions "established that there must be some evidence that the defendant had actual knowledge or was deliberately ignorant about the suspension of his or her license in order to sustain a conviction[.]" *Id.* at 568.

Taking this into account, we reasoned that the trial judge, in *Steward,* used the more commonly understood "should have known" language, as opposed to the legally correct

language of "deliberate ignorance," in an effort to make it easier for the jury to understand the instruction. *Id.* at 569.

In *Steward*, we based part of our legal reasoning upon the concurring opinion in *State v. McCallum*, 321 Md. 451 (1991). In that opinion, Judge Chasanow opined as follows:

> There is more than one mental state that may constitute "knowledge." The first and highest form of "knowledge" is actual knowledge, that is, an actual awareness or an actual belief that a fact exists. A second form of "knowledge" is what has often been called "deliberate ignorance" or "willful blindness."

(Emphasis supplied). We reiterated this in *Steward* by stating that "'deliberate ignorance' is a form of knowledge, not a substitute for knowledge[.]" 218 Md. App. at 567.

Additionally, we noted that it is presumed that judges know the law, but that it was difficult to determine what language or thought-process was used by the judge in *Steward* in creating the instruction. *Id.* The record did not disclose what the parties submitted to the judge regarding the challenged jury instruction, there were no objections to the language used and there was no on-record comment or colloquy concerning the challenged instruction. *Id.*

Finally, we noted that the instruction in *Steward* did not affect the outcome of the case. The instruction did not lower the State's burden to prove each criminal element beyond a reasonable doubt. *Id.* Furthermore, the prosecutor stated the correct legal standard during closing argument. *Id.* Moreover, the case "turned" upon the accused's credibility and the jurors' unanimous verdict underscored their decision not to consider his testimony

as credible. *Id.* at 569–70.

In the instant case, we conclude that the error does not qualify for plain error review. Although the error may be "clear and obvious," *i.e.*, "beyond dispute," we are persuaded that Appellant affirmatively waived review of the error and that the error is immaterial, *i.e.*, it did not affect the outcome of the trial. We explain.

We agree with Appellant that the error was "clear and obvious." Our pronouncements in *Steward* in 2014 clearly held that the "should have known" language is not a substitute for knowledge, *i.e.*, "actual knowledge" or "deliberate ignorance." The State more or less concedes this in its brief: "[S]ince 2014, when this Court decided *Steward*, it has been clear that it is error to instruct the jury that deliberate ignorance may be established by showing that the defendant 'should have known' that his license was suspended."

However, Appellant affirmatively waived review of the issue by failing to make an objection. In his brief, Appellant provides no good cause for this omission at trial and provides no argument on appeal. An objection would have immediately notified the trial judge that the "should have known" language was legally incorrect, pursuant to *Steward*, and the jury could have then been properly instructed.

Significantly, we are unpersuaded that the error was material. In referencing our "pronouncements" in *Steward*, Appellant focuses upon the "should have known" language in the instruction and not the full instruction concerning the knowledge element. In *Steward*, the court instructed the jury regarding the knowledge element as to "*actual*

knowledge or should have known." (Emphasis supplied). However, in the instant case, the jury was instructed that "*knew* or should have known" was sufficient to satisfy the element of knowledge in a driving while license was suspended offense. (Emphasis supplied). As discussed, *supra*, "actual knowledge" and "deliberate ignorance" are forms of knowledge. *McCallum, supra*; *Steward, supra.* Whereas the instruction in *Steward* effectively substituted "should have known" for "deliberate ignorance," the instruction in the instant case encompassed "knowledge" in all its forms, *via* use of the word "knew," as well as the incorrect "should have known" language.

Furthermore, the record illustrates that the State's burden was never lowered from the beyond a reasonable doubt standard. The jury was instructed regarding the State's burden to prove each element of a criminal offense beyond a reasonable doubt, in compliance with Appellant's constitutional rights.

Moreover, although the prosecutor did not expressly define knowledge as "actual knowledge" or "deliberate ignorance" during closing argument, the prosecutor remarked that Appellant "was well aware,"[3] and "knew" about the suspension of his driver's license. Although defense counsel restated the incorrect "should have known language" during closing argument, the prosecutor did not and instead reiterated that the State must prove

[3] *Knowledge,* BLACK'S LAW DICTIONARY (10th ed. 2014). "An *awareness* or understanding of a fact or circumstance; a state of mind in which a person has no substantial doubt about the existence of a fact." (Emphasis supplied).

that Appellant "knew" his license was suspended.

Finally, in the case *sub judice*, the State's case did not turn on Appellant's "deliberate ignorance" of his suspended license, but rather, his "actual knowledge" of it. Although Appellant does not address the difference in language used in the instruction in *Steward*, *i.e.*, "actual knowledge" from the language used in the instant case, *i.e.*, "knew," we note that the State argued that Appellant received the notice of suspension during the traffic stop and that Appellant knew about the suspension because he appealed it. Although "to know" arguably encompasses all forms of "knowledge," it would be more likely that the form "actual knowledge" would be more readily apparent to a lay jury from the word "knew" as opposed to the "deliberate ignorance" form. Therefore, for the foregoing reasons, we hold that Appellant has not met the threshold requirements for plain error review.

However, even if the threshold requirements had been met, we are unpersuaded that the circumstances in the instant case qualify as "compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." As in *Steward,* there is still no pattern jury instruction for the offense of driving while license is suspended and Transp. § 16–303(c) does not provide for the element of knowledge. There was also no on-record comment or colloquy regarding the challenged jury instruction to guide the trial judge. However, in a departure from *Steward*, Appellant and the State both submitted to the judge the statute as a requested jury instruction for the offense. Accordingly, we conclude that, even if the threshold elements had been met, the error is not egregious or otherwise so "compelling,

extraordinary, exceptional or fundamental" to warrant plain error review.

JUDGMENTS OF THE CIRCUIT COURT FOR KENT COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.