UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2761

September Term, 2014

ANTONIO EDWARDS

v.

STATE OF MARYLAND

Krauser, C.J.,
Leahy,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: December 21, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Antonio Edwards, was indicted in the Circuit Court for Baltimore City, Maryland, and charged with various offenses, including *inter alia*, illegal possession of a regulated firearm and transporting a handgun in a vehicle. A jury acquitted him of the transporting a handgun charge but convicted him of the illegal possession charge, as well as driving without a license. After appellant was sentenced to fifteen years, the first five without possibility of parole, for the illegal possession conviction, and time served on the driving offense, he timely appealed, presenting the following question for our review:

Did the trial court err in refusing to clarify its instructions to the jury?

For the following reasons, we shall affirm.

BACKGROUND

On April 10, 2014, a green Chevrolet Cruze being driven and solely occupied by appellant, passed in the shoulder parking lane an unmarked police vehicle driven by three Baltimore City police officers. The officers activated their lights and sirens and attempted to make a traffic stop. Appellant refused to stop and took off at a high rate of speed. After a short pursuit, the appellant eventually lost control of the Chevrolet and crashed on the sidewalk. He then exited his vehicle and started to flee. The officers pursued and apprehended him.

Pertinent to the sole issue raised on appeal, the officers recovered a fully-loaded, operable revolver from the glove compartment. The parties stipulated that appellant had been previously convicted of a disqualifying offense that prohibited him from possessing a regulated firearm such as the one recovered in this case.

Detective Timothy Stach, one of the arresting officers, testified on cross-examination about the glove compartment as follows:

> Q. And the purposes that we're here for, the handgun or firearm purposes, the firearm when you looked in the vehicle, you couldn't see it unless and until you opened the glove box; is that correct?
>
> A. Yes, that's within his arm's reach.
>
> Q. It wasn't here, the glove box (indicating), it was –
>
> A. I think that's within his reach, grasp and everything of a vehicle, so yeah.
>
> Q. Sure. But you couldn't see through it; correct?
>
> A. No, I couldn't see through it.
>
> Q. It wasn't a clear plexiglass glove box?
>
> A. No, sir.
>
> Q. Thank you. You didn't know, from all of your 19 years of experience, you didn't know that there was a firearm in the glove box until you opened it?
>
> A. That's correct.

After the State's case-in-chief, the court gave the parties its proposed instructions and then went over them in court. The court then instructed the jury. With respect to the charge of transporting a handgun in a vehicle, the court instructed as follows:

> All right. Now, here are the elements of the crimes as charged: The defendant is charged with the crime of transporting a handgun in a vehicle while on public roads or highways. In order to convict the defendant, the State must prove that the defendant knowingly transported a handgun in a

vehicle, and that the defendant did so while traveling on the public roads or highways. A handgun is a pistol, revolver or other firearm capable of being concealed on or about the person, and which is designed to fire a bullet by the explosion of gunpowder.[1]

The court then instructed on the illegal possession charge:

The defendant is charged with the offense of possession of a regulated firearm by a disqualified person. In order to convict the defendant, the State must prove beyond a reasonable doubt that the defendant did possess a regulated firearm and that the defendant has been previously convicted of a crime that would prohibit his possession of a regulated firearm under Maryland law. The parties in this case have stipulated that the defendant has been convicted of an offense that renders possession of a regulated firearm unlawful under Maryland law. Regulated firearm includes a handgun, which is any firearm that has a barrel less than 16 inches or less including a signal and starter guns and blank pistols. The State is not required to prove that the firearm introduced into evidence in this case is operable.

Possession means having control over a thing, whether actual or indirect. A person not in actual possession who knowingly has both the power and the intention to exercise control over a thing, either personally or through another person, has indirect possession. In determining whether the defendant had indirect possession of the firearm, consider all of the surrounding circumstances. These circumstances include the distance between the defendant and the firearm, whether the defendant has an ownership or possessory interest in the automobile where the substance [sic] was found and any indication that the defendant was participating with others in the mutual use and enjoyment of the firearm.[2]

[1] This instruction substantially mirrors the pattern instruction on the crime. *See* Maryland State Bar Ass'n, Maryland Criminal Pattern Jury Instructions 4:35.3, at 870-71 (2012) ("MPJI-Cr").

[2] There is no pattern instruction for illegal possession of a regulated firearm and it is unclear how the court arrived at the instruction in this case. The court gave the parties proposed instructions, but those are not included with the record on appeal. And, although there is a proposed instruction from the defendant in the record, that instruction is unlike the (continued...)

There was no objection after the court gave these instructions to the jury. In its closing arguments, the State summarized the central issues as "whether the defendant was the individual driving the car and whether he knew the items were in the car." After hearing closing arguments, the jury began its deliberations.

After lunch, the court received a note from the jury, asking "Does charge of 'transporting' have to be knowingly?" The following then ensued:

> THE COURT: . . . Gentlemen, as I told you before, I wrote up the elements for each crime charged. I can either send it all back or send the two back. What would your prefer?
>
> I'll start with the Defense.
>
> [DEFENSE COUNSEL]: I think it's right in there.
>
> THE COURT: Oh, it is. It's all in there. So any objection to sending what I gave them before, which has the definitions, the elements for all four? Just because, it is what was given to them. Any objection from the Defense?
>
> [DEFENSE COUNSEL]: None, Your Honor.
>
> THE COURT: Any objection from the State?
>
> [PROSECUTOR]: My memory is that the possession explanation is under the regulated firearm, correct?

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[2](...continued)
one actually given during trial. It appears that the court's instruction is an amalgamation of relevant case law and statutes, as well as a portion of the pattern instruction for simple possession of narcotics. *See* Md. Code (2003, 2011 Repl. Vol., 2015 Supp.), §§ 5-101 (n), (r), 5-133 of the Public Safety Article (setting forth the offense and defining terms); *Neal v. State*, 191 Md. App. 297, 308 (observing that operability is not required), *cert. denied*, 415 Md. 42 (2010); MPJI-Cr 4:24 at 676-77 (defining narcotics possession generally).

THE COURT: Yes. It's – basically, I'm going to give them the elements of all four crimes that were charged. So there's no discrepancy – me pulling something out.

So the Defense has no objection? The State has no objection?

[PROSECUTOR]: No objection, Your Honor.

[DEFENSE COUNSEL]: The Court wants to say the definition of possession is the same for both counts?

THE COURT: I don't want to say anything at all besides what I already told them.

[DEFENSE COUNSEL]: Okay.

THE COURT: Based on the question.

Madam Clerk or Mr. Sheriff, whoever, hand them that as the response.

And what they're getting is exactly what I gave you earlier today.

Approximately 14 minutes later, the court received another note from the jury, asking "Could he be charged of possession of a firearm without knowing the firearm is in there?" After parsing the difference between "charged" and "convicted," the defense suggested the court answer the note by instructing the jury that "a person can be charged with anything, but a person can only be convicted of transporting a handgun or possession of a regulated firearm knowingly." The State replied that the court should give a narrow response and simply tell the jury to rely on the instructions previously given. The following then ensued:

[DEFENSE COUNSEL]: But also without misleading them – I mean, these are not people who are versatile with the – "charged" versus "convicted" and the distinctions and what we answer, with our jargon, back. I think they're

clearly not back there deciding whether it's – possible theoretical world to charge somebody with this or that. They're sitting back there trying to figure out whether to convict this gentleman or not. And the question is whether it has to be "knowing." I think they're clearly trying to say "convicted of." If they had said "convicted," we wouldn't be having this debate. The answer would simply be, "No. Follow the elements, must be no."

So, to say "Yes," I think leads them down the wrong road because we're playing games with "charged" versus "convicted."

I'll vigorously urge the Court –

THE COURT: All right. The response the Court will send back is, "Yes, but it is for the jury to decide if the defendant is guilty or not guilty based on the law provided to you."

What say you, [Defense Counsel]?

[DEFENSE COUNSEL]: I'm honestly – I'm not happy with the – without putting some focus on "knowing," of the knowing instruction, to help answer that question.

THE COURT: Well, again, it's based on the law provided to them. I gave them – I read them the law, I – the record will show that I've already given them a copy of the law. I can't go beyond that. I can't go in there and say to them, "Focus on this, focus on that." They have the law, it's for the jury to make a decision.

All right. Whatever instructions you have – I'll give you the note before – and again, "Yes, but it is for the jury to decide if the defendant is guilty or not guilty based on the law provided to you."

[DEFENSE COUNSEL]: I would say, "Yes, a person can be charged, but a person can only be convicted" –

THE COURT: All right. Over your objection, I'll do it the way I have it. "Yes, but it is for the jury to decide if the defendant is guilty or not guilty based on the law provided to you."

> Well, I'll say, "based on the evidence and the law provided to you." Any objection to that?
>
> [DEFENSE COUNSEL]: I don't have any problem with the last part, Your Honor. My only problem still, at this point, is to just to say, "Yes, a person can be charged, but a person can only be convicted," as you then said in accordance with the law and definitions. Because I think that's where the – that's clear where the hang up is. We're over here knowing that you can be charged with anything, they're back there trying to figure out whether to convict him or not. They used the wrong word, I would – I think it's clear to me and their – we're now trying to answer as if they used the word that they used "charged" as if they – we're having some great academic debate about whether it's possible to charge somebody. Well, going academically, of course it is. But we're going to mislead them with that.
>
> THE COURT: *All right. What I'll add is "Yes, a person may be charged with possession of a firearm, but it is for the jury to decide whether the defendant is guilty or not guilty based on the evidence and the law" – "based on the evidence and law provided to you."*
>
> [PROSECUTOR]: That's fine with the State, Your Honor.
>
> [DEFENSE COUNSEL]: *Yes, thank you, that's – I appreciate that, that's much better.*

(emphasis added).

After so informing the jury, the court received a final note, approximately 17 minutes later. That note read as follows:

> No, question was <u>could</u> you define "possession" with regards to knowledge of the existence of what is in possession? For example, am I considered to be in possession of all of the contents of a purse that I borrow from my friend? Or, do I have to <u>know</u> what's in there to be considered to be in possession.

(emphasis in original).

After the court informed the parties that it was going to read the illegal possession instruction again, the following transpired:

> [DEFENSE COUNSEL]: I've been reading over this definition of possession. And I'm wondering if [it's] really as complete as it should be. It says, "Possession means having control over a thing whether actual or indirect." It doesn't, then, say actual possession means knowing possession of something –
>
> THE COURT: Of course it does. [Defense Counsel], the next line is, "A person not in actual possession, who knowingly has both the power and the intention to exercise control over a thing, either in person or through another, has indirect possession." I mean, I can't be any clearer about actual possession. I can't break it down to a first-grade level. If you don't understand that actual possession means you're holding it, which is actual –
>
> [DEFENSE COUNSEL]: Right. But what I'm saying is, it may be confusing them in the sense that maybe they don't – maybe it suggests to them that you're only – knowledge is only required for indirect possession, and knowledge is not required for actual possession. And they may –
>
> THE COURT: [Defense counsel], if it's an actual possession, what knowledge is there except for it is in your hand? That's actual possession.
>
> [DEFENSE COUNSEL]: Well, maybe their definition of actual possession in their view is that he's in actual possession of the car.
>
> THE COURT: And if the State can't meet its elements, the State can't meet its elements. That's neither here nor there. The definition is here. This is a very clear definition. And I don't know – sometimes this happens, I can't say what one individual or two or three or ten or twelve are hung up on. But it's here. This is a very clear definition.
>
> Actual, in your possession. If it's not in possession, does one who knowingly has both the power and the intention to exercise control over a thing. I don't know any other way to describe it. I'm not going to find any other way.

[DEFENSE COUNSEL]: Well, the Defense has absolutely no objection –

THE COURT: I can't – speak up.

[DEFENSE COUNSEL]: The Defense has absolutely no objection to the Court emphasizing to the jury that whether it's actual possession or indirect possession, it requires knowledge that you are in possession, actual or indirect, of the item, whatever it might be.

The court maintained that it would just reread the instruction that it previously gave to the jury, noting that defense counsel offered no objection earlier when that instruction was read and then provided during deliberations. After further argument from counsel, the following ensued:

THE COURT: I don't need theoretical, I need you to tell me what you want me to do.

[DEFENSE COUNSEL]: I'll ask the Court to clarify to the jury that –

THE COURT: How, [Defense Counsel]?

[DEFENSE COUNSEL]: Actual possession of an item or indirect possession of an item both require knowing possession of the item.

THE COURT: And where is that not already in the definition that we gave them?

[DEFENSE COUNSEL]: It's in there, but it's phrased in a way that I think might –

THE COURT: As long as you acknowledge that it's in there, there's nothing else that I can do.

The court then inquired of the State and the State added:

[PROSECUTOR]: Yes, Your Honor. The opportunity to argue and change the jury charge, it has passed. It has been given to the jury. The State would strongly object to any changes in the words of the jury instructions.

THE COURT: Okay. I'll bring them out and I'm going to –

[DEFENSE COUNSEL]: Respectfully, just disagree with that briefly – there's always an opportunity to – to – highlight –

THE COURT: It's an opportunity to change it if it's wrong. But it's not wrong. So, get the jury.

And again, like I said, I'm only going to read that part of possession of a regulated firearm that goes to the definition of possession.

Any objection from the Defense on that?

[DEFENSE COUNSEL]: *No.*

THE COURT: Okay. And objection from the State?

[PROSECUTOR]: No, Your Honor.

THE COURT: Okay.

[DEFENSE COUNSEL]: I have a pretty good idea where they're tripping up.

THE COURT: I do too, but, you know.

(emphasis added).

The court then reinstructed the jury as follows:

All right, ladies and gentlemen, I do have your last note. As I said to you in the note that I sent to you, you need to make your decision based on the evidence and the law. And, ladies and gentlemen, possession means having control over a thing whether actual or indirect. A person not in actual possession who knowingly has both the power and the intention to exercise

> control over a thing, either personally or through another person, has indirect possession. In determining whether the defendant had indirect possession of the firearm, consider all of the surrounding circumstances. The circumstances include the distance between the defendant and the firearm, whether the defendant has some ownership or possessory interest in the automobile where the substance was found and any indications that the defendant was participating with others in the mutual use and enjoyment of the firearm.

Without further objection, the jury then was excused from the courtroom to resume deliberations.

An hour later, the jury returned with its verdict. The jury acquitted appellant of transporting a handgun in a vehicle and unsafe lane passing, and convicted him of illegal possession of a regulated firearm and driving without a license. After the jury was hearkened and polled to its verdict and then excused, defense counsel made a "motion for judgment, non obstante veredicto, notwithstanding the verdict," on the grounds that the acquittal on transporting a handgun in a vehicle was inconsistent with the conviction for illegal possession of a regulated firearm. The court directed counsel to file a written motion and then set the matter for disposition.

At the disposition hearing, defense counsel acknowledged that he should have made his motion concerning the inconsistency of the verdict before the jury was discharged. *See McNeal v. State*, 426 Md. 455, 466 (2012) (observing that, when a jury returns such an inconsistent verdict, an "objection must be made prior to verdict finality and discharge of the jury . . . thus preventing the defendant from accepting the inconsistent verdict and seeking thereafter a windfall reversal on appeal"). But, counsel contended that the verdict

was inconsistent and that the jury was likely confused by the court's answers to the jury notes. Counsel noted that their confusion was manifested in their specific question, "If I'm in possession of my girlfriend's handbag, am I responsible for all the contents?" Acknowledging his participation in formulating the court's response, counsel stated:

> And in poring over the written excerpt of instructions which the Court sent in, it's clear that, perhaps unwittingly, we may have contributed to that confusion. Because in that excerpt, possession of a regulated firearm does not include the word "knowingly" before "possess." Although as lawyers, we all know "knowing" possession is part of it. The section above that excerpt describing weapons, transporting a handgun in a vehicle, did expressly say "knowingly," that the defendant "knowingly" transported the handgun in the vehicle, and they did acquit on that count.
>
> But they didn't acquit when further down their definition of possession of a regulated firearm was simply that the defendant did possess a regulated firearm. And their example that they sent out about possessing a handbag and, therefore, being responsible for all the contents – good analogy, I'm surprised, I knew we didn't pick dummies, but I didn't think we'd picked geniuses . . .

The court disagreed with counsel about the instruction and whether it informed the jury that knowledge was an element of possession, noting that the instruction stated that "[p]ossession means having control over a thing whether actual or indirect. A person not in actual possession who knowingly has both the power and the intention to exercise control over it, being the person who gives it to another person has indirect possession." After counsel and the court continued to disagree over whether this language applied to actual, as opposed to indirect, possession, defense counsel concluded argument by asking the court, at minimum, to consider the apparent inconsistency during sentencing.

The court then heard an unrelated violation of probation ("VOP") case involving this same appellant, notably on a prior conviction of illegal possession of a regulated firearm, and found appellant guilty of the violation. After allocution, appellant was sentenced to fifteen years, the first five without possibility of parole, for this case, and a concurrent fifteen years, first five without parole, on the VOP case, to be followed by five years probation.

DISCUSSION

Appellant's argument on appeal is that the court erred in refusing to clarify its instruction on illegal possession of a regulated firearm in response to the jury's notes. Maintaining that the verdict was inconsistent, appellant asserts that the "jury's conflicting verdicts clearly turned on its misunderstanding of the 'knowledge' requirement applicable to these offenses, resulting in prejudice to Appellant." The State responds that this issue was not properly preserved for our review because defense counsel acquiesced to the court's proposed response to the jury note. The State also asserts that the trial court properly exercised its discretion in its response by giving the pattern instruction on possession.

We decline to reach the merits because we are persuaded that this issue was not properly preserved for appellate review. We do so because defense counsel ultimately acquiesced to the trial court's proposed response to the jury note, thereby waiving any further complaint.[3]

[3] Although we do not address the merits, we note that the Court of Appeals held in (continued...)

Maryland Rule 4-345 provides:

> (e) Objection. No 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.

Compliance with this rule requires that:

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[3](...continued)
Dawkins v. State, 313 Md. 638 (1988), that at least insofar as narcotics cases are concerned, "possession" includes the element of knowledge because "[t]he accused, in order to be found guilty, must know of both the presence and the general character or illicit nature of the substance." *Id.* at 651; *see also State v. Smith*, 374 Md. 527, 549 (2003) (recognizing that possession of narcotics law is relevant in handgun cases). Moreover, "[k]nowledge of the presence of an object is normally a prerequisite to exercising dominion and control." *Dawkins*, 313 Md. at 649; *see also Smith v. State*, 415 Md. 174, 187 (2010) ("Inherent in the element of exercising dominion and control is the requirement that the defendant knew that the substance was a CDS").

The merits of this case concerns whether the court's answer to the jury note accurately instructed as to actual possession. In its appellate brief, the State asserts that "[t]he trial court in the instant case gave the pattern instruction on possession," citing MPJI-Cr 4:24. [Brief of Appellee at 14, 18-20] This is not entirely accurate. The trial court only gave part of that pattern instruction on Narcotics and Controlled Dangerous Substance – Possession, omitting the following preliminary language:

> In order to convict the defendant of possession of (controlled dangerous substance), the State must prove:
>
> (1) that the defendant knowingly possessed the substance;
>
> (2) that the defendant knew the general character or illicit nature of the substance; and
>
> (3) that the substance was (controlled dangerous substance).

MPJI-Cr 4:24.

> There must be an objection to the instruction; the objection must appear on the record; the objection must be accompanied by a definite statement of the ground for objection unless the ground for objection is apparent from the record[,] and the circumstances must be such that a renewal of the objection after the court instructs the jury would be futile or useless.

Robinson v. State, 209 Md. App. 174, 199-200 (2012) (quoting *Bowman v. State*, 337 Md. 65, 69 (1994)) (further citation omitted), *cert. denied*, 431 Md. 221 (2013), and *overruled on other grounds in Dzikowski v. State*, 436 Md. 430 (2013); *see also Alston v. State*, 414 Md. 92, 112 (2010) ("A principal purpose of Rule 4-325(e) 'is to give the trial court an opportunity to correct an inadequate instruction' before the jury begins deliberations") (quoting *Bowman*, 337 Md. at 69). Further:

> We have said that under certain well-defined circumstances, when the objection is clearly made before instructions are given, and restating the objection after the instructions would obviously be a futile or useless act, we will excuse the absence of literal compliance with the requirements of the Rule. *Gore v. State*, 309 Md. 203, 208-09, 522 A.2d 1338 (1987); *Bennett v. State*, 230 Md. 562, 188 A.2d 142 (1963). We make clear, however, that these occasions represent the rare exceptions, and that the requirements of the Rule should be followed closely. Many issues and possible instructions are discussed in the usual conference that takes place between counsel and the trial judge before instructions are given. Often, after discussion, defense counsel will be persuaded that the instruction under consideration is not warranted, and will abandon the request. Unless the attorney preserves the point by proper objection after the charge, or has somehow made it crystal clear that there is an ongoing objection to the failure of the court to give the requested instruction, the objection may be lost. *See Johnson v. State*, 310 Md. 681, 685-89, 531 A.2d 675 (1987).

Sims v. State, 319 Md. 540, 549 (1990); *see also Randolph v. State*, 193 Md. App. 122, 156 ("Maryland Rule 4-325 provides that unless a party objects after the court has completed its

instructions, the issue is not preserved for appellate review") (emphasis added), *cert. denied*, 415 Md. 610 (2010).

For instance, in *Braboy v. State*, 130 Md. App. 220, *cert. denied*, 358 Md. 609 (2000), Braboy contended that the court erred in giving a self-defense instruction and not giving a requested instruction on the defense of habitation. *Braboy*, 130 Md. App. at 225. The trial court denied the request because it found that the defense was adequately covered by the self-defense instruction. *Id.* at 226. After the instructions were read to the jury, Braboy's counsel stated that "the defense has no exceptions, Your Honor[.]" *Id.*

On the question of preservation, and after citing Maryland Rule 4-325 (e), the *Braboy* Court considered the case of *Johnson v. State*, 310 Md. 681 (1987). Johnson's defense counsel requested a specific jury instruction at the close of the evidence. The trial court denied the request, and "nothing more was said on the subject, and the trial court thereafter instructed the jury." *Johnson*, 310 Md. at 685. At the conclusion of the instructions, the court asked for exceptions and defense counsel stated that there were none. *Id.*

Citing the rule, the *Johnson* Court stated that "[a]lthough the trial court's failure to give a requested instruction may constitute error, the rules go on to indicate that such error is ordinarily not preserved for appellate review unless the requesting party objects *after* the trial court instructs the jury." *Johnson*, 310 Md. at 686 (emphasis added). The Court explained:

> There are good reasons for requiring an objection at the conclusion of the instructions even though the party had previously made a request. If the omission is brought to the trial court's attention by an objection, the court is given an opportunity to amend or correct its charge. Moreover, a party initially requesting a particular instruction may be entirely satisfied with the instructions as actually given.

Johnson, 310 Md. at 686.

The *Johnson* Court then held that the issue was not properly preserved, noting that the request for the instruction "was somewhat ambiguous." *Johnson*, 310 Md. at 689. Furthermore, there had been no objection when the trial court told counsel what it planned to do, and there was no objection after the instruction was actually given to the jury. *Id.* Likewise, in *Braboy*, there was nothing indicating that Braboy's counsel did anything other than merely request the instruction. *Braboy*, 130 Md. App. at 227. Under those circumstances, this Court concluded the issue was not preserved. *Id.*[4]

This reasoning necessarily extends to supplemental instructions after the jury has begun deliberations. *See Collins v. State*, 318 Md. 269, 284 ("Counsel's failure to except to the reinstruction is indicative of an acceptance and approval of the amended form used"), *cert. denied*, 497 U.S. 1032 (1990); *accord Williams v. State*, 131 Md. App. 1, 12-13, *cert. denied*, 359 Md. 335 (2000); *see also Paige v. State*, 222 Md. App. 190, 200 (2015) ("Because defense counsel did not object to the supplemental jury instruction that was

[4] This Court also rejected Braboy's attempt to invoke plain error because there was no indication that the circumstances were "compelling, extraordinary, exceptional, or fundamental to assure the defendant a fair trial." *Braboy*, 130 Md. App. at 228.

provided by the trial court at the time it was given, any question regarding the content of the supplemental instruction was not properly preserved for appellate review"); *Wilson v. State*, 44 Md. App. 318, 333 (1979) ("In light of the absence of any objection by the appellant with regard to the court's supplemental instruction, this issue was not preserved for appeal"). *Cf. Dawkins*, 313 Md. at 642-43 ("If the instruction claimed to be error occurs during supplemental instructions, *and the party promptly objects after the supplemental instructions*, Rule 4-325(e) appears to entitle that party to challenge the supplemental instructions on appeal") (emphasis added).

There is no dispute that appellant offered no objection to the court's response to the first note in this case. As for the second note, defense counsel and the court primarily discussed the meaning of the jury's question, asking whether appellant could "be charged," with illegal possession. Defense counsel's concern was that a simple affirmative response to that specific question would be insufficient because it appeared, to him, that the jury was really asking if appellant could be convicted.

The court agreed that simply responding "Yes," would be inadequate. At the conclusion of the discussion, the court proposed responding "Yes, a person may be charged with possession of a firearm, but it is for the jury to decide whether the defendant is guilty or not guilty based on the evidence and the law . . . provided to you. Defense counsel responded "thank you, that's – I appreciate that, that's much better."

The Court of Appeals has made plain that "[a] litigant who acquiesces in a ruling is completely deprived of the right to complain about that ruling[.]" *Parker v. State*, 402 Md. 372, 405 (2007) (citation and internal quotation marks omitted); *see also Grandison v. State*, 305 Md. 685, 765 ("By dropping the subject and never again raising it, [appellant] waived his right to appellate review"), *cert. denied*, 479 U.S. 873 (1986); *Green v. State*, 127 Md. App. 758, 769 (1999) ("[W]hen a party acquiesces in the court's ruling, there is no basis to appeal from that ruling"). We are persuaded that defense counsel agreed to the court's proposed answer to the second jury note and that this issue is not before us.

We also are persuaded that counsel agreed with the court's response to the third jury note. Notably, although counsel argued that the jury was confused, counsel agreed that the answer to their question was already contained in the jury instruction that had been given by the court previously. *See Satchell v. State*, 54 Md. App. 333, 342 (concluding issue as to a reinstruction was not preserved and noting that the instruction "was directly responsive to the specific question asked by the jury" and that "the instruction was essentially the same as the original instruction, to which there was no objection") (1983) *aff'd*, 299 Md. 42 (1984).

And, when the court concluded the discussion by indicating it was going to read "that part of possession of a regulated firearm that goes to the definition of possession," counsel expressly indicated that he had no objection. Our reading of the record as a whole leads us to conclude that further objection would not have been futile or useless in this case, and that

counsel's response amounted to a waiver. *See, e.g., Joyner v. State*, 208 Md. App. 500, 512 (2012) ("[W]aiver is the 'intentional relinquishment or abandonment of a known right'") (citation omitted). This conclusion of an affirmative waiver is supported by defense counsel's recognition at disposition that "the written excerpt of instructions which the Court sent in, it's clear that, perhaps unwittingly, *we* may have contributed to that confusion" of an arguably factually inconsistent jury verdict. *See generally, McNeal, supra*, 426 Md. at 458 (observing that factually inconsistent jury verdicts, *i.e.*, "where the charges have common facts but distinct legal elements and a jury acquits a defendant of one charge, but convicts him or her on another charge," are "illogical, but not illegal").

Accordingly, because appellant's counsel specifically stated that he had no objection when the court stated it would re-read part of the applicable pattern instruction, and offered no other objection after the court did so, we hold that this issue is not preserved for appellate review.[5]

JUDGMENTS AFFIRMED.
COSTS TO BE PAID BY APPELLANT.

[5] At the conclusion of oral argument, appellant invited this panel to consider the issue, *sua sponte*, under the plain error doctrine. We decline appellant's invitation. *See Albertson v. State*, 212 Md. App. 531, 547 n. 3 (declining to consider argument raised for first time at oral argument), *cert. denied*, 435 Md. 267 (2013); *see also Joyner, supra*, 208 Md. App. at 512 ("In the usual case, a forfeited objection could still be the subject of plain error review, while an issue that had been waived results in procedural default in every instance"); *Bates v. State*, 127 Md. App. 678, 701 ("[A]s a general guide, . . . we will take cognizance of and correct, if at all, an irremediable error of commission, but not an error of omission"), *cert. denied*, 356 Md. 635 (1999).