

STATE OF MAINE

v.

JOSHUA C. STACEY

Submitted on Briefs January 11, 2018
Decided August 16, 2018

Panel: ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Joshua C. Stacey appeals from a judgment of conviction of operating after habitual offender revocation (Class D), 29-A M.R.S. § 2557-A(2)(A) (2017), entered by the Unified Criminal Docket (Cumberland County, *Horton, J.*) following a jury trial.

Stacey argues that the court erred when it instructed the jury that the statutory requirement of notice is satisfied if the Secretary of State sent notice to Stacey in accordance with 29-A M.R.S. § 2482(1) (2017), despite the fact that the notification was returned by the postal authorities as undeliverable. Although this instruction was erroneous in light of our recent decision in *State v. Cannady*, 2018 ME 106, --- A.3d ---, we conclude that the error was harmless because, at Stacey's request, the court instructed the jury that it could also consider whether Stacey had notice by one of the alternative means that 29-A M.R.S. § 2557-A(1)(A) (2017) permits.¹ See *State v. Knight*, 2009 ME 32, ¶ 9,

¹ Stacey requested a jury instruction that included the alternative means of providing notice in accordance with 29-A M.R.S. § 2557-A(1)(A) (2017) and the court instructed the jury that it may

967 A.2d 723. Stacey failed to argue on appeal that he lacked notice by any of the alternative means listed in section 2557-A(1)(A) and has therefore waived that argument. *See Estate of Hoch v. Stifel*, 2011 ME 24, ¶ 38, 16 A.3d 137.²

The entry is:

Judgment affirmed.

Robert C. Andrews, Esq., Portland, for appellant Joshua C. Stacey

Stephanie Anderson, District Attorney, and Amanda Doherty, Asst. Dist. Atty., Cumberland County District Attorney's Office, Portland, for appellee State of Maine

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consider whether Stacey “had actual notice of the revocation or that he was provided with written notice of the revocation by the Secretary of State in the manner that the law requires.”

² Stacey urges us to overturn our well-established precedent that a Secretary of State's certification of Bureau of Motor Vehicle records is nontestimonial and therefore not violative of the Confrontation Clause, but he has failed to present arguments that convince us that *State v. Murphy*, 2010 ME 28, 991 A.2d 35 lacks vitality and fails to serve the interests of justice. *See Bourgeois v. Great N. Nekoosa Corp.*, 1999 ME 10, ¶ 5, 722 A.2d 369.