APPENDIX

APPENDIX

TABLE OF CONTENTS

APPENDIX A

IN THE COURT OF APPEALS OF MARYLAND

Nos. 35 & 36

September Term, 2021

[Filed April 28, 2022]

MASHOUR HOWLING	)
v.	)
STATE OF MARYLAND	)
	)
FUNIBA ABONGNELAH	)
v.	)
STATE OF MARYLAND	)
	)

Circuit Court for Montgomery County
Case No. 135898C

Circuit Court for Montgomery County
Case No. 135936C

Argued: February 3, 2022

*Getty, C.J.,
*McDonald,
Watts,
Hotten,
Booth,
Biran,
Battaglia, Lynne A. (Senior Judge,
Specially Assigned),

JJ.

Opinion by Hotten, J.

Filed: April 28, 2022

*Getty, C.J., and McDonald, J., now Senior Judges, participated in the hearing and conference of these cases while active members of this Court; after being recalled pursuant to Maryland Constitution, Article IV, Section 3A, they also participated in the decision and adoption of this opinion.

"There is wide latitude in the lawmakers to declare an offense and to exclude elements of knowledge . . . from its definition." *Lambert v. California*, 355 U.S. 225, 228, 78 S. Ct. 240, 242 (1957). We consider whether the General Assembly intended to exclude the element of knowledge of a person's status as a person prohibited from possessing a regulated firearm and ammunition pursuant to Md. Code Ann., Public Safety (2018 Repl. Vol.) ("Pub. Safety") § 5-133 and § 5-133.1. This opinion consolidates two separate cases that collectively concern the possession of a prohibited firearm and ammunition by disqualified persons.

The defendants in each case, Mr. Mashour E. Howling ("Petitioner Howling") and Mr. Funiba T. Abongnelah ("Petitioner Abongnelah"), possessed a firearm at the time of arrest, while disqualified from doing so. Both cases proceeded separately to jury trials before the Circuit Court for Montgomery County. At varying points in the proceedings, each Petitioner requested that the respective circuit court adopt the reasoning of *Rehaif v. United States*, 588 U.S. ___,139 S. Ct. 2191 (2019), where the United States Supreme Court held that the federal statute 18 U.S.C. § 922(g) required proof of knowledge of possession of a firearm and proof of knowledge of the defendant's status as a person prohibited from possessing a firearm.[1] *Id.* at ___, 139 S. Ct. at 2200. Petitioners requested that the circuit court give a jury instruction incorporating the reasoning of *Rehaif*.[2]

---

[1] Petitioner Abongnelah appeared to argue at trial that pursuant to *Rehaif* the State must prove that he knew his prior felony conviction disqualified him from possession. This argument misinterprets the holding of *Rehaif*. He subsequently amended his argument on appeal, which we address *infra* at slip op. 36.

[2] Only Petitioner Howling's case concerned possession of prohibited ammunition pursuant to Pub. Safety § 5-133.1. The State argues that Petitioner Howling failed to preserve the argument with respect to Pub. Safety § 5-133.1 because Petitioner Howling requested and received a jury instruction that did not include knowledge of status as an element of the crime. Ordinarily, the issue with respect to Pub. Safety § 5-133.1 would be unpreserved pursuant to Md. Rule 8-131(a). Given the close connection between Pub. Safety § 5-133.1 and Pub. Safety § 5-133, and the desire to provide guidance to lower courts that will frequently address the concurrent issue of possession of a firearm and ammunition, we exercise our discretion to reach the merits of whether Pub. Safety

The circuit court declined to give the requested jury instruction in each case. Both Petitioners moved for judgment of acquittal at the close of the State's case and renewed the motion at the close of all evidence. Pertinent to this appeal, Petitioner Abongnelah argued that the State provided insufficient evidence to establish that he knew he was prohibited from possessing a firearm. The circuit court denied both motions in each case.

Two separate juries found Petitioners each guilty of possessing a firearm in violation of Pub. Safety § 5-133. Petitioner Howling was also found guilty of possessing ammunition in violation of Pub. Safety § 5-133.1. Petitioners separately appealed to the Court of Special Appeals, which affirmed in separate unpublished opinions. *Abongnelah v. State*, No. 2561, Sept. Term, 2019, 2021 WL 1943262 (Md. Ct. Spec. App. May 11, 2021); *Howling v. State*, No. 2087, Sept. Term, 2019, 2021 WL 402519 (Md. Ct. Spec. App. Feb. 4, 2021). The Court of Special Appeals declined to adopt the reasoning of *Rehaif* in either case, and concluded that the State must prove, with respect to the *mens rea*

---

§ 5- 133.1 requires proof of knowledge of prohibited status. *Jones v. State*, 379 Md. 704, 713, 843 A.2d 778, 783 (2004) ("Thus, under [Md. Rule 8-131(a)], an appellate court has discretion to excuse a waiver or procedural default and to consider an issue even though it was not properly raised or preserved by a party[]"); *see Crown Oil and Wax Co. of Delaware v. Glen Const. Co. of Virginia, Inc.*, 320 Md. 546, 561, 578 A.2d 1184, 1191 1990) ("Even if the successor argument were a new issue, raised for the first time on appeal, this Court has discretion under [Md.] Rule 8-131(a) to consider it, and we exercise that discretion to consider the 'issue' in this case.").

element, only knowledge of possession of a regulated firearm pursuant to Pub. Safety § 5- 133 (in both cases) and knowledge of possession of ammunition pursuant to Pub. Safety § 5-133.1 (in Petitioner Howling's case). Accordingly, the intermediate appellate court held that the circuit court did not abuse its discretion in declining to give Petitioners' requested jury instructions. The court also held in Petitioner Abongnelah's case that there was sufficient evidence to establish knowledge of possession of a regulated firearm.

Petitioners asked this Court to interpret Pub. Safety § 5-133 and § 5-133.1 to require knowledge of possession of a firearm and *knowledge of status* as a prohibited person. We granted *certiorari* on September 29, 2021 in each case, 476 Md. 258, 259 A.3d 797 (2021), to address the following questions presented:

> 1. In a question of first impression, did the [circuit] court err by giving a jury instruction that omitted a scienter requirement for the offenses charged, contrary to the holding of *Rehaif v. United States*, [588 U.S. ____,] 139 S. Ct. 2191 (2019), on the presumptions in law in the equivalent Federal Statute, the Rule of Lenity, and this Court's decisions in *Dawkins v. State*, 313 Md. 638[, 547 A.2d 1041] (1988) and *Chow v. State*, 393 Md. 431[, 903 A.2d 388] (2006)?
>
> 2. Under the facts of [Petitioner Howling's] case, in which no evidence was adduced that [Petitioner Howling] was previously notified by government authorities that he was prohibited

from possessing a regulated firearm in Maryland, did the [circuit] court err in giving the pre-*Rehaif* pattern jury instructions lacking scienter requirements?

[3.] In a matter of first impression, did [the Court of Special Appeals] err by holding that the evidence was sufficient to convict Petitioner [Abongnelah] of illegally possessing a regulated firearm where the State failed to prove he had knowledge of his prohibited status - *i.e.*, that he was a convicted felon - because that result was inconsistent with the [United States] Supreme Court's interpretation of the analogous Federal statute in *Rehaif v. United States*, [588 U.S. ____,] 39 S. Ct. 2191 (2019), and was at odds with this Court's precedent?

[4.] Did [the Court of Special Appeals] err by upholding the [circuit] court's refusal to instruct the jury that the State was required to prove that Petitioner [Abongnelah] had knowledge of his prohibited status?

[5.] Was the knowledge issue raised [by Petitioner Abongnelah] adequately preserved where both trial and appellate counsel argued that *Rehaif* required knowledge of prohibited status and appellate counsel clarified in [Petitioner Abongnelah]'s Reply Brief [before the Court of Special Appeals] that prohibited status meant Petitioner [Abongnelah]'s status as a felon?

We answer the questions presented in the negative, and shall affirm the judgments of the Court of Special Appeals.

FACTS AND PROCEDURAL BACKGROUND

Underlying Incidents

A. Petitioner Howling

On March 20, 2019, Corporal Brian Rumsey of the Maryland National Capital Park and Planning Police Department was on a lunch break at a shopping center near Layhill Road in Silver Spring, Maryland. Corporal Rumsey observed two men in the shopping center parking lot "checking their surroundings, constantly looking around." Corporal Rumsey entered a nearby liquor store on the suspicion of a potential robbery. He noticed one of the two men at the counter and detected the smell of marijuana.

Corporal Rumsey followed the two men, who crossed Layhill Road and entered the passenger side of a parked truck in a nearby parking lot. Corporal Rumsey "flagged down" Officer Sean McKinney of the Montgomery County Police Department "MCPD" in a marked cruiser and notified Officer McKinney of potential criminal activity. Officer McKinney approached the parked truck and detected a "strong odor of marijuana" emanating from the vehicle and/or its passengers. One of the men told Officer McKinney that they were waiting for their friend, later identified as Petitioner Howling, who was getting a haircut at the nearby barbershop.

Law enforcement searched the truck[3] and found a rental agreement in Petitioner Howling's name, a loaded Glock semiautomatic handgun, two magazines of ammunition for the handgun, and approximately $4,100 in cash. Two officers located Petitioner Howling in the barbershop and arrested him.

During a police interview with Detective Tomasz Machon of the MCPD, Special Investigation Division, Petitioner Howling explained that he lived in Pennsylvania but had traveled to Montgomery County, where his mother resides, for a doctor's appointment. His two friends, who initially drew the attention of Corporal Rumsey, wanted to accompany him on the trip. Petitioner Howling told Detective Machon that the handgun was registered to him in Pennsylvania, and he did not realize the handgun was in the car "until on the way down[.]" Petitioner Howling also informed Detective Machon that he was convicted of simple assault in Pennsylvania.[4] When the interviewing officer advised that Maryland law prohibited possession of a firearm following conviction of simple assault in

---

[3] Officer Rumsey testified during the suppression hearing that he received consent to search the truck. The suppression court did not reach the issue of consent, but found that the odor of marijuana provided probable cause to search the vehicle. Petitioner Howling did not challenge the decision of the suppression court on appeal.

[4] Petitioner Howling was convicted of simple assault in 2002, a misdemeanor in Pennsylvania. Petitioner Howling was sentenced to eighteen months of probation, twenty hours of community service, and ordered to pay a fine and other costs. Pennsylvania law permits the possession of firearms by individuals convicted of simple assault.

Pennsylvania, Petitioner Howling claimed that he did not intentionally bring the handgun into Maryland. The State charged Petitioner Howling with possession of a firearm by a prohibited person pursuant to Pub. Safety § 5-133(c), transportation of a loaded handgun in a vehicle pursuant to Md. Code Ann., Criminal Law ("Crim. Law" §4-203(a)(1)(v), and possession of ammunition by a prohibited person pursuant to Pub. Safety § 5-133.1.

B. Petitioner Abongnelah

In April 2019, Detective Machon began monitoring an Instagram account with the handle "gg_mikey", believed to be used by Petitioner Abongnelah. Prince George's County law enforcement had been monitoring the account since Petitioner Abongnelah's release from prison in 2018, and tipped off Detective Machon that Petitioner Abongnelah may be involved in prohibited firearms activity within Montgomery County.

On June 5, 2019, at 1:53 a.m., a video was posted to the Instagram account that depicted a person shooting a Kel-Tec handgun at a distant car with flashing red and blue lights. A voice in the video stated, "I'm a shoot the police." Based on the video, other photos and videos posted to the Instagram account, and Petitioner Abongnelah's MVA photo, Detective Machon concluded that Petitioner Abongnelah was the person firing the weapon in the video. Detective Machon also identified the serial number of the firearm in the video and discovered that the firearm had been reported stolen in August 2018.

On the same day as the Instagram posting, MCPD officers applied for a search warrant for Petitioner Abongnelah's apartment. In the interim, undercover officers surveilled the outside of his apartment building. The officers witnessed Petitioner Abongnelah leave his apartment and enter a vehicle with a driver and two passengers. Officers followed the vehicle to a shopping center, where Sergeant Charlie Bullock testified that he believed he observed Petitioner Abongnelah make a drug exchange outside of a bank. When MCPD stopped Petitioner Abongnelah's vehicle, Petitioner Abongnelah fled. Officers caught Petitioner Abongnelah and arrested him. Officers searched his person, and found a loaded firearm in his pocket. The parties stipulated that at the time of his arrest, Petitioner Abongnelah was under twenty-one and a convicted felon.

The State charged Petitioner Abongnelah with possession of a firearm by a convicted felon in violation of Pub. Safety § 5-133(c) and possession of a firearm by a person under the age of twenty-one pursuant to Pub. Safety § 5-133(d).

Circuit Court Proceedings

A. Petitioner Howling

Petitioner Howling moved to suppress evidence seized from the pick-up truck. Following a suppression hearing on September 19, 2019, the circuit court denied Petitioner Howling's motion in a memorandum opinion and order. The case proceeded to a jury trial on October 15, 2019. The State presented witness testimony and exhibits that demonstrated Petitioner Howling was in

possession of the firearm at the time of the arrest. In a recorded interview between Petitioner Howling and Detective Machon, Petitioner Howling admitted to possessing the firearm:

> [Detective] Machon: Okay. Well, what's the deal with that gun?
>
> [Petitioner] Howling: I didn't realize it was there until on the way down, I had money on me for stuff I had to pick up and stuff for tomorrow. And I went to put that in the compartment, the gun. It's my gun. It's registered to me.
>
> ***
>
> [Detective] Machon: So in Maryland, . . . as far as the law goes, you can't possess a firearm if you're (unintelligible) and certain charges, you've been charged with in the past. I see you initially had an assault.
>
> ***
>
> [Petitioner] Howling: . . . I didn't know [the firearm] was in there. I wouldn't have brought it.
>
> [Detective] Machon: Okay. It's not anybody else's in that car. It's yours and you had possession of it.
>
> [Petitioner] Howling: That's mine and my gun is in there.

The State then admitted evidence demonstrating that ammunition for the firearm was recovered from the vehicle.

At the close of the State's case, counsel for Petitioner Howling moved for judgment of acquittal, arguing that "[Petitioner] Howling was[not] aware that he could[not] have a firearm and ammunition in the [S]tate of Maryland based on his prohibited conviction." The State opposed the motion by arguing that "[k]nowledge of the law is not an element of the offenses charged." The circuit court agreed with the State and denied the motion: "With respect to the argument of scienter of knowledge about the gun laws in Maryland, the statute that prohibits a certain person[] from having a firearm is a strict liability offense. It does not require that intent be proven."

Counsel for Petitioner Howling renewed the motion for judgment for acquittal by arguing that the circuit court should adopt the reasoning of the United States Supreme Court in *Rehaif* and interpret Pub. Safety § 5-133(c) to require proof of knowledge that the Defendant "belongs to the relevant category of persons barred from possessing a firearm." The circuit court denied the motion.

At the same time, Counsel for Petitioner Howling requested the circuit court provide a jury instruction incorporating the reasoning of *Rehaif*, arguing that the State must prove that Petitioner Howling "knew he was prohibited from having this firearm." The circuit court denied the request:

> [A] [circuit] court that uses a jury instruction other than a pattern jury instruction when there is a pattern jury instruction that directly addresses the elements at issue, does so at the [circuit] court's own peril.
>
> The appellate court in Annapolis has repeatedly in many cases warned trial judges about essentially going off base and giving instructions that are not the approved Maryland pattern jury instructions. There are some occasions upon which there is an issue that is not addressed in a Maryland pattern jury instruction but this isn't that case. I think this case does what is appropriate in this case and that is put the issue before the jury and the jury can decide whether the elements have been proven.

The circuit court delivered a near-identical version of Maryland Pattern Jury Instruction ("MPJI Cr.") § 4:35.6:

> The defendant is charged with possessing a regulated firearm after having been convicted of a crime that disqualified him from possessing a regulated firearm. In order to convict[] the defendant, the State must prove that the defendant knowingly possessed a regulated firearm and that defendant was previously convicted of a crime that disqualified him from possessing a regulated firearm. The State and the defense agree and stipulate that the gun in this case is a regulated firearm.

The circuit court also delivered a jury instruction "[m]odified from MPJI Cr. § [4:35.6][,]" and requested by Petitioner Howling, for possession of ammunition by a disqualified person pursuant to Pub. Safety § 5-133.1:

> The defendant is charged with possession of ammunition having been convicted of a crime that disqualifies him from possessing ammunition. In order to convict the defendant the State must prove that the defendant knowingly possessed ammunition and that the defendant was previously convicted of a crime that disqualified him from possessing ammunition.

The jury convicted Petitioner Howling of possession of a firearm by a prohibited person, possession of ammunition by a prohibited person, and transporting a loaded a handgun in a vehicle. The circuit court sentenced Petitioner Howling to a suspended term of nine years' imprisonment, and three years of unsupervised probation.

B. Petitioner Abongnelah

Petitioner Abongnelah moved to suppress the firearm recovered from his person because it was obtained during a search incident to a warrantless arrest. The circuit court denied the motion and found probable cause to believe that Petitioner Abongnelah was in possession of a firearm as a convicted felon.[5] The

---

[5] The Court of Special Appeals affirmed the denial of the motion to suppress. Petitioner Abongnelah did not raise the issue on appeal before this Court.

case proceeded to a jury trial on October 30 and 31, 2019.

The State introduced a jail call recording between Petitioner Abongnelah and an unidentified speaker. Petitioner Abongnelah admitted to possessing a firearm at the time of arrest:

> Unidentified speaker: I'm nervous[, t]hat's all.
>
> [Petitioner] Abongnelah: I'm good. I'm going to be all right. . . . It's just a gun charge. You know what I'm saying? It's not even a violent charge. I ain't, I ain't rob nobody or nothing, but I just got caught with one of my, one of my dogs, man.
>
> ***
>
> I'm just protecting myself, man. . . . I'm black, I may be dead. . . . I'm staying out of the way. . . . I just so happened to get pulled over, and my man got pulled over . . . and *I had a gun in my pocket*.
>
> ***
>
> [J]ust so you know, . . . these calls is recorded. So you know what I'm saying? Don't say nothing[.]

(Emphasis added).

The parties stipulated that Petitioner Abongnelah had a prior conviction that prohibited him from legally possessing a firearm. The circuit court instructed the jury that "the State and the defendant agree and stipulate that the defendant was previously convicted

of a crime that disqualifies him from possessing a regulated firearm." The parties also stipulated to Petitioner Abongnelah's date of birth, which established that he was under the age of twenty-one at the time of possession of the firearm on June 5, 2019.

Counsel for Petitioner Abongnelah moved for judgment of acquittal at the close of the State's case, and renewed the motion at the close of evidence, arguing that there was insufficient evidence that Petitioner Abongnelah knew his prior conviction prohibited possession of a firearm:

> [Counsel for Petitioner Abongnelah]: [T]he State presented zero evidence that he knew he was part of that prohibited class of people prohibited from possessing a firearm because of a crime of violence. . . . [A]t the end of last term, the [United States] Supreme Court . . . said in relation to the Federal Statute th[at] Congress intended for there to be a knowledge element. That knowledge element goes towards both elements knowing that he possessed the firearm and knowing that you are part of that prohibited class.
>
> ***
>
> [T]here is *no evidence that he knew or that he was ever made aware that because of that prior conviction he was prohibited from possessing a firearm*.
>
> ***

> THE COURT: . . . The law does not require at this time that [Petitioner Abongnelah] was aware that he was a disqualified person in possession of a regulated firearm. So, the State has satisfied its requisite burden with respect to a motion for judgment of acquittal as to the elements of the crime charged.

(Emphasis added).

Counsel for Petitioner Abongnelah requested a jury instruction stating that the State must prove knowledge of prohibited status, which the circuit court denied. The circuit court delivered a substantially similar instruction to the one given in Petitioner Howling's case.[6] Counsel for Petitioner Abongnelah renewed his motion to add an instruction consistent with *Rehaif* which "makes knowledge of his being prohibited from having a gun an element."

The jury found Petitioner Abongnelah guilty of being a person with a felony conviction in possession of a firearm in violation of Pub. Safety § 5-133(c) and possession of a firearm under the age of twenty-one in

---

[6] The circuit court also gave a substantially similar instruction for possession of a firearm under the age of twenty-one:

> The defendant is charged with possessing a regulated firearm when he was under the age of 21. In order to convict the defendant, the State must prove one, that the defendant knowingly possessed a regulated firearm and two, that the defendant was under 21 years of age at the time of that possession. The State and the defendant agree and stipulate that the defendant's age was under the age of 21 on June 5, 2019.

violation of Pub. Safety § 5-133(d). The circuit court sentenced Petitioner Abongnelah to eight years of incarceration, with all but the mandatory five-year minimum suspended for the possession of a regulated firearm with a felony conviction. The circuit court also placed Petitioner Abongnelah on supervised probation for five years. For the possession of a regulated firearm while under twenty-one, the circuit court sentenced Petitioner Abongnelah to five years of incarceration with all but two years suspended and five years of supervised probation to run concurrently with the possession of a firearm with a felony conviction.

The Opinions of the Court of Special Appeals

A. The Howling Opinion

The Court of Special Appeals affirmed the decision of the circuit court. The intermediate appellate court did not find *Rehaif* "dispositive" because it involved the interpretation of a federal statute and did not announce a rule of constitutional law that would be binding on the states. *Howling*, 2021 WL 402519 at *4 (quoting *Mata v. United States*, 969 F.3d 91, 93 (2d Cir. 2020)) ("the [United States] Supreme Court 'was simply construing a [federal] statute.'".

After rejecting the application of *Rehaif*, the court found that its recent decision in *Brice v. State*, 225 Md. App. 666, 126 A.3d 246 (2015), was controlling. In *Brice*, the court noted that "[t]here is no language in the statute requiring a defendant to know that he [or she] is disqualified. . . ." *Id.* at 694, 126 A.3d at 263. Therefore, according to the court, "to satisfy the *mens rea* requirement for [Pub. Safety §] 5-133, the State [is]

required to prove only that the defendant knew that he [or she] [is] in possession of a handgun." *Id.* at 694, 126 A.3d at 263. Applying the analysis from *Brice* to the instant case, the court found that "the State was only required to prove that [Petitioner] Howling knew he was in possession of a firearm and ammunition, not that [Petitioner] Howling knew his Pennsylvania conviction disqualified him from possessing a regulated firearm and ammunition in Maryland." *Howling*, 2021 WL 402519 at *6.

The court concluded that Petitioner Howling's requested jury instructions predicated on the reasoning of the United States Supreme Court in *Rehaif* were not correct statements of Maryland law. The Court of Special Appeals held that the circuit court did not abuse its discretion by declining to give the requested jury instructions and by giving the pattern jury instructions instead. *Id.*

B. The Abongnelah Opinion

The Court of Special Appeals also affirmed the circuit court in Petitioner Abongnelah's case. Similar to Petitioner Howling's case, the intermediate appellate court declined to adopt the reasoning of the United States Supreme Court in *Rehaif*, which "held that the government must prove that not only did the defendant *knowingly possess* a firearm in violation of [18 U.S.C.] § 922(g) but also that the defendant *knew of his status as a prohibited person* under [18 U.S.C.] § 922(g)." *Abongnelah*, 2021 WL 1943262 at *6 (citation and footnote omitted) (emphasis added). By declining to adopt *Rehaif*, the court concluded that "the State only

needs to prove that a defendant [knew] they [were] in possession of a firearm." *Id.* at *7.

The court found that the State provided sufficient evidence to establish Petitioner Abongnelah's knowledge of possession of a regulated firearm. MCPD officers testified that a firearm was recovered on Petitioner Abongnelah's person. *Id.* A video posted to Petitioner Abongnelah's Instagram account indicated that Petitioner Abongnelah shot at what appeared to be a police vehicle using the same firearm. *Id.* Finally, in a jail call recording, Petitioner Abongnelah admitted that he was arrested while possessing a firearm. *Id.*

In a Reply Brief submitted to the court, Petitioner Abongnelah argued that the State must prove that the defendant *knew he was a felon at the time of the incident*. The court declined to address this argument because it was not raised in the circuit court or opening briefs. *Id.* Assuming *arguendo* that knowledge of status was required, the court found that the State met its evidentiary burden because Petitioner Abongnelah stipulated to the fact that he committed a prior felony, which prohibited him from possessing a firearm pursuant to Pub. Safety § 5-133(c). *Id.* at *8.

The court rejected Petitioner Abongnelah's argument that the circuit court erred by not giving a jury instruction aligned to *Rehaif*. *Id.* Since it had already concluded that *Rehaif* did not apply to Maryland law, the Court of Special Appeals held that the circuit court did not err by giving a jury instruction that, with respect to the *mens rea* element, only required knowledge of possession of a prohibited firearm pursuant to Pub. Safety § 5-133(c).

The Contentions of the Parties

A. Petitioner Howling

Petitioner Howling contends that this Court should adopt the reasoning of the United States Supreme Court in *Rehaif* and require that the State prove knowledge of a defendant's prohibited status pursuant to Pub. Safety § 5-133 and § 5-133.1. Petitioner Howling notes that similar to the United States Supreme Court in *Rehaif*, this Court also presumes a *mens rea* element of knowledge when interpreting criminal statutes. Applying this presumption to the instant case would "advance society at large and separate 'wrongful from innocent acts.'" (Citation omitted).

Petitioner Howling argues that recognizing a scienter requirement of knowledge of prohibited status would be consistent with this Court's decisions in *Chow v. State*, 393 Md. 431, 903 A.2d 388 (2006), and *Dawkins v. State*, 313 Md. 638, 547 A.2d 1041 (1988). According to Petitioner Howling, *Chow* held that the defendant "must know that the activity they are engaging in is illegal." (Citation omitted). Petitioner Howling also reads *Dawkins* for the proposition that *mens rea*, including knowledge of illegal status, should be adjudicated by a jury. Petitioner Howling asserts that the need for an element of knowledge is particularly acute "when multiple states have differing statutes[]" criminalizing possession.

Petitioner Howling asks this Court to discount the Court of Special Appeals' reasoning in *Brice*, because the legal analysis was "very abbreviated[]" and "the

facts were so negative against the Appellant Brice[.]" Instead, Petitioner Howling contends that this Court should rely on the reasoning of *Lawrence v. State*, 475 Md. 384, 257 A.3d 588, 602 (2021), which analyzed whether the General Assembly intended for Crim. Law § 4-203 to be a strict liability crime, to find that Pub. Safety § 5-133 requires knowledge of prohibited status. Petitioner Howling argues that unlike Crim. Law § 4-203, Pub. Safety § 5-133 is modified by the word "knowingly" in Pub. Safety § 5-144, and any ambiguity regarding the statute should be resolved in favor of the defendant pursuant to the rule of lenity. Finally, Petitioner Howling asserts *arguendo* that if this Court does not generally recognize a knowledge of status requirement pursuant to Pub. Safety § 5-133, the facts in Petitioner Howling's particular case supported a jury instruction that specifically recognized the knowledge requirement.

B. Petitioner Abongnelah

Similar to Petitioner Howling's argument, Petitioner Abongnelah contends that there was insufficient evidence to establish a conviction of an illegal possession of a firearm because the State failed to prove that Petitioner Abongnelah knew that he belonged to the category of persons prohibited from possessing a firearm. According to Petitioner Abongnelah, the text of Pub. Safety § 5-133 imposes the requirement of knowledge of prohibited status by reference to Pub. Safety § 5-144, which includes the word "knowingly[.]" The legislative history of the Public Safety Article, as explained by this Court in *Jones v.*

State, 420 Md. 437, 23 A.3d 880 (2011), confirms this interpretation of the plain text.

Petitioner Abongnelah argues that even if *Rehaif* is not binding on this Court, it offers "a highly persuasive guide to reading" Pub. Safety § 5-133 because "the federal and Maryland statutes are directly analogous" and both the United States Supreme Court and this Court employ "the same presumption in favor of requiring *mens rea*. . . ." This presumption in favor of *mens rea* should, according to Petitioner Abongnelah, prompt this Court to recognize an element of knowledge of prohibited status even if it also concludes that Pub. Safety § 5-144 does not apply.

Petitioner Abongnelah asserts that the Court of Special Appeals incorrectly found *arguendo* that the parties' stipulation of Petitioner Abongnelah's prior felony conviction would have satisfied the element of knowledge of prohibited status. According to Petitioner Abongnelah, the stipulation did not establish knowledge of prohibited status at the time of offense. Petitioner Abongnelah also contends that the court erred by finding that the knowledge issue was unpreserved because defense counsel for Petitioner Abongnelah used language, both at trial, and in the opening brief to the Court of Special Appeals that argued "knowledge of [prohibited] status" was an element of Pub. Safety § 5-133.

Finally, like Petitioner Howling, Petitioner Abongnelah asserts that the circuit court erred by not giving a jury instruction stating that knowledge of prohibited status was an element of Pub. Safety § 5-133.

C. The State

In both cases, the State contends that the circuit court acted within its discretion in refusing to depart from the Maryland Pattern Jury Instructions, because the requested jury instructions by Petitioners were incorrect statements of law.

As a threshold issue, the State argues that Petitioner Howling's argument with respect to Pub. Safety § 5-133.1 and Petitioner Abongnelah's argument with respect to evidentiary sufficiency were unpreserved. According to the State, Petitioner Howling only requested a modified jury instruction for possession of a firearm by a prohibited person and did *not* request a modified jury instruction for possession of ammunition by a prohibited person pursuant to Pub. Safety § 5-133.1. The State notes that Petitioner Howling requested a jury instruction pursuant to Pub. Safety § 5-133.1 that omitted scienter language, which the circuit court used as the jury instruction. Petitioner Abongnelah's legal sufficiency argument was waived, according to the State, because Petitioner Abongnelah presented an argument on appeal that differed from the argument at trial. The State asserts that Petitioner Abongnelah's trial counsel presented an ignorance of the law argument, whereas appellate counsel argued, for the first time in a Reply Brief before the Court of Special Appeals, that the State must prove knowledge of prohibited status.

Assuming this Court reaches the merits of Petitioner Abongnelah's legal sufficiency argument, the State argues that Pub. Safety § 5-133 does not require proof of knowledge of prohibited status. The State also

agrees with the Court of Special Appeals that even if Pub. Safety § 5-133 requires proof of knowledge, the stipulation of a prior conviction provided sufficient evidence.

The State argues that *Rehaif* does not apply to Pub. Safety § 5-133 because it construes a federal statute and does not announce a new principle of constitutional law. The State also identifies material differences between the state and federal statutes which warrant distinct interpretations by this Court. The federal statute at issue in *Rehaif* expressly stated that the word "knowingly" modifies the defendant's status, whereas Pub. Safety § 5-133 and § 5-133.1 do not. Therefore, according to the State, the circuit court did not abuse its discretion in either of Petitioners' cases by denying a jury instruction that incorporated the reasoning of *Rehaif*.

DISCUSSION

Standard of Review

A. Jury Instruction

A circuit court has broad discretion when determining whether a jury instruction is warranted by the facts of the case. *Carter v. State*, 366 Md. 574, 584, 785 A.2d 348, 353 (2001). We accordingly review the decision not to provide a jury instruction for abuse of discretion. *Cost v. State*, 417 Md. 360, 368, 10 A.3d 184, 189 (2010). We assess whether a circuit court abused its discretion in denying a request for a particular jury instruction by determining "(1) whether the requested instruction was a correct statement of the law; (2) whether it was applicable under the facts of the

case; and (3) whether it was fairly covered [elsewhere or] in the instructions actually given." *Stabb v. State*, 423 Md. 454, 465, 31 A.3d 922, 929 (2011) (citations omitted); *see also* Md. Rule 4-325(c). Whether a jury instruction is a correct statement of law is subject to a *de novo* standard of review. *Seley-Radtke v. Hosmane*, 450 Md. 468, 482, 149 A.3d 573, 581 (2016).

B. Sufficiency of Evidence

We review sufficiency of evidence by asking whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. McGagh*, 472 Md. 168, 194, 244 A.3d 1117, 1131–32 (2021) (citations omitted) (emphasis in original).

Analysis

A. The holding of *Rehaif* is not applicable to Pub. Safety § 5-133 and § 5-133.1, and neither section requires proof of knowledge of status.

As a general principle, interpretations of federal statutes are not binding on this court's interpretations of State statutes. *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 481, 914 A.2d 735, 742 (2007); *Pope v. State*, 284 Md. 309, 320 n.10, 396 A.2d 1054, 1061 n.10 (1979). This principle also applies to the decisions of the United States Supreme Court, unless the decision relies upon or announces a principle of constitutional law. *State v. Matusky*, 343 Md. 467, 490, 682 A.2d 694, 705 (1996).

The United States Supreme Court's interpretation of 18 U.S.C. § 922(g) neither relied upon nor announced

a principle of constitutional law. The scope of the Court's review was limited to ordinary statutory interpretation of "*congressional intent*" *Rehaif*, 588 U.S. at ___, 139 S. Ct. at 2195 (emphasis added); *see Staples v. United States*, 511 U.S. 600, 605, 114 S. Ct. 1793, 1796–97 (1994) (noting the determination of required mental state for commission of a federal crime requires "construction of the statute and . . . inference of the intent of Congress[]") (citation omitted). Therefore, the Court of Special Appeals correctly concluded, in each of Petitioners' cases, that the holding of *Rehaif* does not bind Maryland courts.

Petitioners argue that even if *Rehaif* does not bind this Court, it offers highly persuasive reasoning because the state and federal statutes are analogous, and both this Court and the United States Supreme Court recognize a presumption of *mens rea* when interpreting criminal statutes. We are not persuaded by these arguments and find *Rehaif* distinguishable based on our case law and express textual differences between Pub. Safety § 5-133 and 18 U.S.C. § 922.[7]

Similarity between a Maryland and a federal statute is not sufficient justification for this Court to apply a federal court's interpretation of a federal statute to a Maryland statute. "Maryland appellate courts have interpreted state statutes, rules, and constitutional provisions differently than analogous federal provisions on numerous occasions, *even where*

---

[7] Petitioner Howling did not expressly argue that the reasoning of *Rehaif* applies to Pub. Safety § 5-133.1, so we note that our conclusion as to Pub. Safety § 5-133 applies to § 5-133.1 as well.

the state provision is modeled after its federal counterpart." *Haas*, 396 Md. at 482 n.10, 914 A.2d at 742 n.10 (emphasis added).[8] "Maryland courts sometimes prefer interpretations of state statutes varying from similar federal statutes[.]" *Id.*, 914 A.2d at 742 n.10.

In *Quality Discount Tires, Inc. v. Firestone Tire & Rubber Co.*, 282 Md. 7, 12, 382 A.2d 867, 870 (1978), this Court considered whether the legal standard articulated by the United States Supreme Court with respect to price-fixing under the federal Sherman Antitrust Act should apply to plaintiffs bringing claims under the analogous Maryland Antitrust Act. The General Assembly stated that the purpose of the Maryland Antitrust Act was to "complement the body of federal law," and that, in construing the Act, the courts should "be guided by the interpretation given by the federal courts to the various federal statutes dealing with the same or similar matters." *Id.* at 10, 382 A.2d at 869 (quoting Md. Code Ann., Commercial Law § 11-202(a) (1975, 1977 Cum. Supp.)). This Court accordingly examined how the United States Supreme Court and the federal circuits have applied the legal standard under the Sherman Antitrust Act. *Id.* at 12, 382 A.2d at 870. Despite the similarities in the statutes, and the General Assembly's express statutory directive to turn to federal interpretation for guidance, this Court recognized that it was "not bound" by the

---

[8] "Put in a more homespun idiom, and paraphrasing a frequent [parental] admonition, '[j]ust because [Congress] ran off a cliff doesn't mean [the General Assembly] has to follow suit.'" *Haas*, 396 Md. at 482 n.10, 914 A.2d at 742 n.10.

opinions of federal courts and concluded that the particular federal legal standard did not apply to the Maryland Antitrust Act. *Id.* at 16, 382 A.2d at 872.

Quality Discount Tires demonstrates that this Court need not import federal interpretations of a statute, even when a federal and state statute share a similar purpose and legislative history.[9] Pub. Safety § 5-133 and 18 U.S.C. § 922(g) may share the same purpose to criminalize possession of firearms under certain conditions, but the textual differences in *mens rea* language highlight how Congress and the General Assembly intended to take separate paths in criminalizing possession of regulated firearms.

---

[9] Petitioners suggest that Pub. Safety § 5-133 shares a legislative history with 18 U.S.C. § 922(g). The General Assembly modeled the Maryland Gun Violence Act after the federal Gun Control Act of 1968; therefore, according to Petitioners, Pub. Safety § 5-133 should be given a construction similar to its federal counterpart, 18 U.S.C. § 922(g). While Pub. Safety § 5-133 fits within a broader statute that shares a legal history with a federal act, nowhere within the specific legislative history of Pub. Safety § 5-133 (or § 5-133.1) did the General Assembly indicate that Maryland courts should look to federal law or federal cases for guidance. Even if Pub. Safety § 5-133 was at one point directly inherited from 18 U.S.C. § 922(g), the material differences in the plain language of the statutes necessitate different interpretations. *Cf. Office of the State Prosecutor v. Judicial Watch, Inc.*, 356 Md. 118, 138, 737 A.2d 592, 603 (1999) (noting that the persuasiveness of the interpretation of a federal statute depends on its substantive similarity to a corresponding state statute: "where the purpose and language of a federal statute are *substantially* the same as that of a later state statute, interpretations of the federal statute are ordinarily persuasive." (citation omitted) (emphasis added).

The federal statute plainly requires the text of 18 U.S.C. § 924, which contains the word "knowingly[,]" to be read in conjunction with the text of 18 U.S.C. § 922(g). 18 U.S.C. §924 provides in pertinent part: "Whoever *knowingly violates subsection . . . (g) . . . of section 922* shall be fined as provided in this title, imprisoned not more than 10 years, or both." (Emphasis added). 18 U.S.C. § 922(g) provides in pertinent part: "It shall be unlawful for any person . . . who, being an alien--[] is illegally or unlawfully in the United States[] . . . to ship or transport in interstate or foreign commerce, or *possess* in or affecting commerce, *any firearm or ammunition*.] . . ." (Emphasis added).

Reading these sections together, the United States Supreme Court in *Rehaif* observed that the word "knowingly" in § 924(a)(2) expressly modifies § 922(g). "And everyone agrees that the word 'knowingly' applies to § 922(g)'s possession element, which is situated after the status element." *Rehaif*, 588 U.S. at ___, 139 S. Ct. at 2196. "We see no basis to interpret 'knowingly' as applying to the second § 922(g) element but not the first." *Id.* at ___, 139 S. Ct. at 2196 (citation omitted). "To the contrary, we think that by specifying that a defendant may be convicted only if he 'knowingly violates' § 922(g), Congress intended to require the Government to establish that the defendant knew he violated the material elements of § 922(g)." *Id.* at ___, 139 S. Ct. at 2196.

The United States Supreme Court concluded that Congress intended to criminalize possession of a firearm when the person knows they are "illegally or unlawfully in the United States" and "possess[ing] . . .

any firearm or ammunition." 18 U.S.C. § 922(g).[10] The plain text of 18 U.S.C. § 924(a) indicates that the word "knowingly" applies to *all* of the elements of 18 U.S.C. § 922(g).

While the plain text of 18 U.S.C. § 924(a) requires knowledge of prohibited status, the plain text of Pub. Safety § 5-133(b) only requires knowledge of the defendant's *possession* of a firearm.

Pub. Safety § 5-133 provides in pertinent part:

> (b) Subject to § 5-133.3 of this subtitle, a person may not possess a regulated firearm if the person:
>
> (1) has been convicted of a disqualifying crime;
>
> (2) has been convicted of a violation classified as a common law crime and received a term of imprisonment of more than 2 years;
>
> ***
>
> (c)(1) A person may not possess a regulated firearm if the person was previously convicted of:
>
> (i) a crime of violence;

---

[10] The United States Supreme Court noted the "statutory text supports the presumption [of scienter]." *Rehaif*, 588 U.S. at ___, 139 S. Ct. at 2195. The Court defined the presumption of scienter as "a presumption that criminal statutes require the degree of knowledge sufficient to 'mak[e] a person legally responsible for the consequences of his or her act or omission.'" *Id.* at ___, 139 S. Ct. at 2195 (citation omitted).

***

(iii) an offense under the laws of another state or the United States that would constitute one of the crimes listed in item (i) . . . of this paragraph if committed in this State.

(2)(i) Subject to paragraph (3) of this subsection, a person who violates this subsection is guilty of a felony and on conviction is subject to imprisonment not for less than 5 years and not exceeding 15 years.

(ii) The court may not suspend any part of the mandatory minimum sentence of 5 years.

(iii) Except as otherwise provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole during the mandatory minimum sentence.

(3) At the time of the commission of the offense, if a period of more than 5 years has elapsed since the person completed serving the sentence for the most recent conviction under paragraph (1)(i) or (ii) of this subsection, including all imprisonment, mandatory supervisor, probation, and parole:

(i) the imposition of the mandatory minimum sentence is within the discretion of the court; and

> (ii) the mandatory minimum sentence may not be imposed unless the State's Attorney notifies the person in writing at least 30 days before trial of the State's intention to seek the mandatory minimum sentence.
>
> ***
>
> (d)(1) Except as provided in paragraph (2) of this subsection, a person who is under the age of 21 years may not possess a regulated firearm.

When interpreting the language of a Maryland statute, the "cardinal rule" of statutory construction "is to determine what the [General Assembly] intended, and, as we have so often said, to do that, we turn first to the words used by the [General Assembly], giving them their ordinary meaning." *Dimensions Health Corp. v. Maryland Ins. Admin.*, 374 Md. 1, 17, 821 A.2d 40, 50 (2003). If "no construction or clarification is needed or permitted . . . a plainly worded statute must be construed without forced or subtle interpretations designed to extend or limit the scope of its operation." *Id.*, 821 A.2d at 50 (citations omitted).

The plain text of Pub. Safety § 5-133 omits *mens rea* language of knowledge. The statute uses the word "possess" which this Court has interpreted to require *knowledge* of possession. *Parker v. State*, 402 Md. 372, 407, 936 A.2d 862, 883 (2007) ("A possession conviction normally requires knowledge of the illicit item. . . . Knowledge of the presence of an object is normally a prerequisite to exercising dominion and control.") (citations and quotation marks omitted). The plain text

of Pub. Safety § 5-133.1 similarly omits *mens rea* language and uses the word possess.[11]

In criminalizing the possession of a firearm and ammunition by a disqualified person, the clear intent of the General Assembly was to require only knowledge of that possession. *Lillian C. Blentlinger, LLC v. Cleanwater Linganore, Inc.*, 456 Md. 272, 294, 173 A.3d 549, 562 (2017) ("[W]e neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words that the General Assembly used or engage in forced or subtle interpretation in an attempt to extend or limit the statute's meaning.").

This analysis is also consistent with our case law interpreting the *mens rea* element of criminal statutes. "[T]he General Assembly has 'wide latitude' to dictate the statutory elements of its criminal enactments." *Lawrence*, 475 Md. at 408, 257 A.3d at 602 (citation omitted). In *Lawrence*, this Court assessed whether Crim. Law § 4-203(a)(1)(i) established a strict liability offense of wearing, carrying, or transporting a handgun on or about the person. *Id.* at 389, 257 A.3d at 591.

---

[11] Pub. Safety § 5-133.1 provides:

> (a) In this section, "ammunition" means a cartridge, shell, or any other device containing explosive or incendiary material designed and intended for use in a firearm.
>
> (b) A person may not possess ammunition if the person is prohibited from possessing a regulated firearm under § 5-133 (b) or (c) of this subtitle.
>
> (c) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding $1,000 or both.

After examining the plain text, legislative history, and relevant case law of the statute, this Court concluded:

> [T]he General Assembly exercised its discretion in declining to include language indicating *mens rea* in [Crim. Law] § 4-203(a)(1)(i). While Mr. Lawrence's argument in favor of a presumption of *mens rea* is well-founded, *it fails to overcome the significant indicia of legislative intent to the contrary in this case*. . . . [T]he text and structure of [Crim. Law] § 4-203 make it clear that the General Assembly did not intend to include 'knowledge' as an element of subparagraph (a)(1)(i).

Id. at 412, 257 A.3d at 604–05 (emphasis added).

Unlike Crim. Law § 4-203(a)(1)(i) in *Lawrence*, in which this Court determined that the statute lacked an element of knowledge, Maryland appellate courts have repeatedly recognized that the General Assembly intended to *only require* the *mens rea* element of knowledge of possession pursuant to Pub. Safety § 5-133. *Parker*, 402 Md. at 407, 936 A.2d at 83 ("In order for the evidence supporting the handgun possession conviction to be sufficient, it must demonstrate either directly or inferentially that Parker exercised 'some dominion or control over the prohibited [item]'. . . . Knowledge of the presence of an object is normally a prerequisite to exercising dominion and control.") (alteration in original) (citation and other marks omitted); *Hogan v. State*, 240 Md. App. 470, 516–17, 205 A.3d 101, 127–28 2019) ("the *mens rea* of simple unlawful possession requires only the defendant's awareness that he is in actual possession of the item he

is not permitted to possess. The charge of which appellant was convicted did require proof of *mens rea*, but not the *mens rea* appellant suggests. Although [Pub. Safety §] 5-133(b) is silent concerning the *mens rea* required, *the Court of Appeals has held that a* '*possession conviction normally requires knowledge of the illicit item*.'") (citations omitted) (emphasis added); *Brice*, 225 Md. App. at 694, 126 A.3d at 263 ("to satisfy the *mens rea* requirement for a violation of Section 5-133, the State was required to prove only that [the] defendant knew that he [or she] was in possession of a handgun]"; *McNeal v. State*, 200 Md. App. 510, 524, 28 A.3d 88, 96 (2011) (holding that the circuit court correctly instructed the jury "when it said: 'the State has the obligation to prove . . . knowledge on the part of'[the defendant] that 'he was in possession of a handgun[]'".

None of the Maryland cases interpreting Pub. Safety § 5-133 have extended the knowledge requirement to prohibited status. While Petitioners cite *Dawkins v. State*, 313 Md. 638, 547 A.2d 1041 (1988), and *Chow v. State*, 393 Md. 431, 903 A.2d 388 (2006), for the proposition that Pub. Safety § 5-133 and § 5-133.1 require knowledge of prohibited status, these cases support our conclusion that the plain text of Pub. Safety § 5-133 and § 5-133.1 does not.

In *Dawkins*, this Court acknowledged the presumption of a *mens rea* element for all crimes: "[t]here can be no crime, large or small, without an evil mind. . . . It is, therefore, a principle of our legal system . . . that the essence of the offense is the wrongful intent, without which it cannot exist." *Id.* at

643, 547 A.2d at 1043 (citing 1 Bishop's Crim. Law, § 287 (9th ed. 1923)). The *Dawkins* Court applied this presumption to Md. Code (1957, 1987 Repl. Vol.), Art. 27, § 287(a) and (d)[12] to find that "knowledge" is an element of the offenses of possession of a controlled dangerous substance and possession of controlled paraphernalia. *Id.* at 649, 547 A.2d at 1046.

Similar to the statute at issue in *Dawkins*, Pub. Safety § 5-133 does not use the word "knowingly" or "knowledge" Accordingly, and like the statute only criminalizing knowing *possession* in *Dawkins*, Pub. Safety § 5-133 only criminalizes knowledge of *possession* of a regulated firearm by a prohibited person. *Dawkins* supports our conclusion that the *mens rea* element of knowledge contained in Pub. Safety § 5-133 only applies to possession.

Chow is distinguishable because the defendant in *Chow* and Petitioners in the instant case were charged under different sections of the Public Safety Article,

---

[12] Art. 27, § 287, provided in pertinent part:

> Except as authorized by this subheading, it is unlawful for any person:
>
> (a) To possess or administer to another any controlled dangerous substance, unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his [or her] professional practice.
>
> ***
>
> (d) To possess or distribute controlled paraphernalia.

Dawkins, 313 Md. at 640 n.1, 547 A.2d at 1041 n.1.

which by their plain text, require different *mens rea* elements. In *Chow*, the defendant was charged under Md. Code (1957, 1996 Repl. Vol., 2002 Supp.), Art. 27, § 449.[13] 393 Md. at 434, 903 A.2d at 389. This Court examined the scope of the *mens rea* element of knowledge pursuant to Art. 27, § 449:

> (f) *Knowing participants in sale, rental, etc.*—Except as otherwise provided in this section, any dealer or person who *knowingly participates in the illegal sale, rental, transfer, purchase, possession, or receipt* of a regulated firearm in violation of this subheading shall be guilty of a misdemeanor and upon conviction shall be fined not more than $10,000 or imprisoned for not more than 5 years, or both. Each violation shall be considered a separate offense.

393 Md. at 463, 903 A.2d at 407 (emphasis added).

This Court held that the statute requires that the "actor must know that he or she is committing an 'illegal sale.'" *Id.* at 471, 903 A.2d at 412. Unlike the statute in Pub. Safety § 5-133, which omits any "knowledge" language, Art. 27, §499 plainly subjected a person who "knowingly participates in the *illegal* . . . *possession* . . . of a regulated firearm" to criminal penalty. (Emphasis added). The *Chow* Court found the word "knowingly" unambiguously indicated the intent of the General Assembly to require, pursuant to Art. 27 § 499, proof that the defendant had knowledge of the

---

[13] In 2013, this section was recodified at Pub. Safety § 5-144.

act of possession of a regulated firearm and knowledge that such possession of a regulated firearm is illegal. *Id.* at 473, 903 A.2d at 413.

Unlike the statute in *Chow*, which used he word "knowingly" before prohibited status and possession, Pub. Safety § 5-133 neither includes the word "knowingly" nor one of its variants. While Petitioners are generally correct that this Court, like the United States Supreme Court, presumes a *mens rea* element, this presumption cannot override the clear intent of the General Assembly to attach a *mens rea* element of knowledge *only* to possession pursuant to Pub. Safety § 5-133. *Lawrence*, 475 Md. at 415, 257 A.3d at 606.

We are also not persuaded by Petitioners' argument that the word "knowingly" in Pub. Safety § 5-144 should modify the word "possess" in Pub. Safety § 5-133 in the same way that "knowingly" in 18 U.S.C. § 924(a)(2) modifies "possess" in 18 U.S.C. § 922(g), because the plain language of Pub. Safety § 5-144(a) expressly precludes application of its language to Pub. Safety § 5-133.

Pub. Safety § 5-144 provides:

> (a) *Except as otherwise provided in this subtitle*, a dealer or other person may not:
>
> > (1) knowingly participate in the illegal sale, rental, transfer, purchase, possession, or receipt of a regulated firearm in violation of this subtitle; or
> >
> > (2) knowingly violate § 5-142 of this subtitle.

> (b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding $10,000 or both.
>
> (c) Each violation of this section is a separate crime.

(Emphasis added).

Pub. Safety § 5-144(a) is a "catch-all" provision, which supplies a criminal penalty for, among other prohibited acts, possession of a firearm, but *only when not* "*otherwise provided in this subtitle*." *Jones*, 420 Md. at 450, 23 A.3d at 887 (quoting the substantially similar predecessor[14] to Pub. Safety § 5-144(a))(emphasis added). Pub. Safety § 5-133(c) is part of the "subtitle" referenced in Pub. Safety § 5-144(a). Pub. Safety § 5-133(c) also provides the specific penalty for possession, so by its plain language, the general "catch-all" provision pursuant to Pub. Safety § 5-144(a) does not apply to Pub. Safety § 5-133. *See Massey v. Sec'y, Dept. of Pub. Safety and Corr. Servs.*, 389 Md. 496, 511 n.4, 886 A.2d 585, 594 n.4 (2005) ("The question is one of legislative intent, and we have long followed the rule that, when there is a conflict between a general statute and one dealing specifically with the issue at hand, the specific statute controls.") (citation omitted).[15] Petitioners' application of the word

---

[14] The *Jones* Court was interpreting Pub. Safety § 5-143 (2003), which was renumbered as Pub. Safety § 5-144 in 2013.

[15] Notably, Pub. Safety § 5-133(d) does *not* provide a specific penalty provision for possession of a regulated firearm by a person

"knowingly" contained in Pub. Safety § 5-144 to Pub. Safety § 5-133 would necessarily ignore the clause, "[e]xcept as otherwise provided in this subtitle[,]" thereby impermissibly rendering the clause nugatory. *Whiting-Turner Contracting Co. v. Fitzpatrick*, 366 Md. 295, 303, 783 A.2d 667, 671 (2001) (noting statutes must be read to avoid rendering "any portion, meaningless, surplusage, superfluous or nugatory[ ]" (citation omitted).

This interpretation of the specific penalty provision of Pub. Safety § 5-133(c) precluding application of the "catch-all" penalty provision of Pub. Safety § 5-144 accords with this Court's holding in *Oglesby v. State*, 441 Md. 673, 109 A.3d 1147 (2015). In *Oglesby*, this Court stated "[t]here is no ambiguity . . . as to the penalty that the [General Assembly] has authorized for a conviction [pursuant to Pub. Safety § 5-133]." *Id.* at 698, 109 A.3d at 1162. "[T]he General Assembly intended to provide for a mandatory minimum sentence for a violation of [Pub. Safety] § 5-33(c)(1)(ii)." *Id.*, 109 A.3d at 1162. "[T]he appropriate penalty for a violation of [Pub. Safety] § 5-133(c)(1)(ii) is the penalty the [General Assembly] prescribed in [Pub. Safety] § 5-33(c)(2)." *Id.* at 688, 109 A.3d at 1156.

Our plain language analysis conforms with the legislative history of the statute. *Johnson v. State*, 467

---

under the age of twenty-one. The absence of a specific penalty provision indicates that the "catch-all" language pursuant to Pub. Safety § 5-144(a) would apply. We need not address this particular issue because Petitioner Abongnelah did not challenge the sufficiency of evidence supporting his conviction pursuant to Pub. Safety § 5-133(d).

Md. 362, 375, 225 A.3d 44, 51 (2020) ("[T]he modern tendency of this Court is to continue the analysis of the statute beyond the plain meaning to examine 'extrinsic sources of legislative intent' in order to 'check [ ] our reading of a statute's plain language[.]'. . .") (citations omitted).

Previous versions of Pub. Safety § 5-133 have consistently omitted language indicating a knowledge requirement. By declining to add a requirement of knowledge of prohibited status over the course of several decades, the General Assembly has acquiesced in Maryland appellate courts' interpretation of Pub. Safety § 5-133. *See Lawrence*, 475 Md. at 414, 257 A.3d at 606; *Williams v. State*, 292 Md. 201, 210, 438 A.2d 1301, 1305 (1981) ("The General Assembly is presumed to be aware of this Court's interpretation of its enactments and, if such interpretation is not legislatively overturned, to have acquiesced in that interpretation." (citation omitted).

In 2003, the General Assembly recodified existing public safety laws into the current Public Safety Article. The Bill File for S.B. 1 (Md. 2003) spans over 2,000 pages and provides no contrary evidence that the General Assembly intended, or even contemplated, adding knowledge of prohibited status to Pub. Safety § 5-133. The Public Safety Article Review Committee examined Pub. Safety § 5-133 and found some ambiguity in its language with respect to who may constitute a prohibited person, but there was no mention of whether the *mens rea* requirement of the statute was ambiguous.

We conclude that Pub. Safety § 5-133 and § 5-133.1 do not require the State to prove that the defendant had knowledge of prohibited status.

B. The circuit court did not abuse its discretion by declining to give Petitioners' requested jury instructions.

The circuit court in each case declined to give jury instructions that deviated from Maryland Pattern Jury Instructions. Maryland Rule 4-325[16] governs the procedure that a court must follow when giving instructions to a jury. *Atkins v. State*, 421 Md. 434, 443, 26 A.3d 979, 984 (2011). A circuit court "must give a requested jury instruction where '(1) the instruction is a correct statement of law; (2) the instruction is applicable to the facts of the case; and (3) the content of the instruction was not fairly covered elsewhere in instructions actually given.'" *Cost*, 417 Md. at 368–69, 10 A.3d at 189 (quoting *Dickey v. State*, 404 Md. 187, 197–98, 946 A.2d 444, 450 (2008)).

The circuit court provided the Maryland Pattern Jury Instruction for prohibited possession of a firearm:

---

[16] Maryland Rule 4-325(c) provides:

> The court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding. The court may give its instructions orally or, with the consent of the parties, in writing instead of orally. The court need not grant a requested instruction if the matter is fairly covered by instructions actually given.

> The defendant is charged with possessing a regulated firearm after having been convicted of a crime that disqualified [him] [her] from possessing a regulated firearm. In order to convict the defendant, the State must prove:
>
> > (1) that the defendant knowingly possessed a regulated firearm; and
> >
> > (2) that the defendant was previously convicted of a crime that disqualified [him] [her] from possessing a regulated firearm.
>
> [The State and the defendant agree and stipulate that the gun in this case is a regulated firearm.] . . .

MPJI Cr. § 4:35.6.

As discussed above, this instruction correctly articulates the elements of Pub. Safety § 5-133. It requires the State to prove knowledge of possession of a firearm. By declining to modify the pattern jury instruction with the addition of knowledge of prohibited status, the circuit court provided the jury with instructions that correctly stated Maryland law.

C. There was legally sufficient evidence to convict Petitioner Abongnelah pursuant to Pub. Safety § 5-133.

As a threshold issue, we agree with the Court of Special Appeals that Petitioner Abongnelah's argument with respect to knowledge of legal status should have been rendered unpreserved for review by presenting a different argument for legal sufficiency on appeal than

at trial. *Starr v. State*, 405 Md. 293, 301, 951 A.2d 87, 91 (2008); *see also Graham v. State*, 325 Md. 398, 416–17, 601 A.2d 131, 140 (1992); *State v. Lyles*, 308 Md. 129, 135–36, 571 A.2d 761, 764–65 (1986); *Muir v. State*, 308 Md. 208, 218–19, 517 A.2d 1105, 1110 (1986).

We exercise our discretion pursuant to Md. Rule 8-131(a) to reach the merits of the legal sufficiency issue to "promote the orderly administration of justice[]" and to prevent addressing the consolidated cases within this opinion "in a piecemeal fashion, thereby saving time and expense and accelerating the termination of litigation." *Jones v. State*, 379 Md. 704, 715, 843 A.2d 778, 784 (2004).

In assessing the sufficiency of the evidence to sustain a criminal conviction, it is the responsibility of the appellate court to determine "'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.'" *Manion*, 442 Md. at 430, 112 A.3d at 513 (quoting *Taylor v. State*, 346 Md. 452, 457, 697 A.2d 462, 464 (1997)) (emphasis in original) (citation omitted). This Court adopted this standard from the United States Supreme Court case, *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979).

"[O]ur concern is only whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *Taylor*, 346 Md. at 457,

697 A.2d at 465; *State v. Albrecht*, 336 Md. 475, 487, 649 A.2d 336, 341 (1994) ("[I]t is neither our duty nor our role to assess the credibility of the witnesses who testified nor to weigh the evidence presented. Rather, we shall only review that evidence which supported the State's case in order to determine whether *any* rational trier of fact could have convicted the defendant of the crimes charged.") (emphasis in original).

The State provided sufficient evidence that Petitioner Abongnelah knew that he possessed a firearm. In a recorded jail call, Petitioner Abongnelah admitted that he possessed a firearm at the time of arrest: "I just so happened to get pulled over, and my man got pulled over . . . and *I had a gun in my pocket*." (Emphasis added). Petitioner Abongnelah also stipulated to his prior felony conviction that prohibits possession of a firearm pursuant to Pub. Safety § 5-133(b). Therefore, we hold that there was legally sufficient evidence to convict Petitioner Abongnelah.

CONCLUSION

For the reasons previously expressed, we affirm the judgments of the Court of Special Appeals.

IN NO. 35, JUDGMENT OF THE COURT OF SPECIAL APPEALS IS AFFIRMED. COSTS TO BE PAID BY PETITIONER.

IN NO. 36, JUDGMENT OF THE COURT OF SPECIAL APPEALS IS AFFIRMED. COSTS TO BE PAID BY PETITIONER.

APPENDIX B

UNREPORTED

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 2087
September Term, 2019

[Filed February 4, 2021]

MASHOUR E. HOWLING	)
	)
v.	)
	)
STATE OF MARYLAND	)
	)

Circuit Court for Montgomery County
Case No. 135898C

Fader, C.J.,
Beachley,
Wilner, Alan M.
(Senior Judge, Specially Assigned),
JJ.

*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.

Opinion by Beachley, J.

A jury in the Circuit Court for Montgomery County convicted appellant, Mashour Howling, of possession of a firearm by a prohibited person, possession of ammunition by a prohibited person, and transporting a loaded handgun in a vehicle. After the trial court sentenced him to a suspended term of nine years' imprisonment, Howling filed a timely notice of appeal.

Howling presents the following questions for our review:

1. Did the circuit court err by declining to give defense counsel's proposed instructions on the offenses of illegal possession of a firearm and illegal possession of ammunition?

2. Did the circuit court err by denying defense counsel's request to ask a version of a *voir dire* question that would not be in compound form?

3. Did the circuit court commit plain error by asking several other compound questions during *voir dire*?

For the reasons that follow, we affirm the judgments of the trial court.

FACTS AND LEGAL PROCEEDINGS

On March 20, 2019, Maryland Park Police Corporal Brian Rumsey was on his lunch break at a shopping center on Layhill Road, Montgomery County, when he observed two men who caught his attention because they appeared to be "checking their surroundings, constantly looking around," without any apparent purpose.[1] One of the men walked to a vehicle with what appeared to be a beer in a bag in his hand, stood behind the vehicle, and looked back toward the liquor store in the shopping center.

Worried that "something [was] not right," Corporal Rumsey entered the liquor store, where he observed the second man at the counter buying beer and a cigar. As he approached the man, Corporal Rumsey smelled the odor of marijuana coming from his person. Corporal Rumsey watched the man leave the liquor store and join the first man; the two men then crossed Layhill Road together and entered the passenger side of a parked Dodge Ram pickup truck.

Corporal Rumsey flagged down a marked Montgomery County Police Department cruiser and explained his observations to Officer Sean McKinney, who approached the pickup truck. The passenger door was open, and one of the men was outside the vehicle. As Officer McKinney approached, he smelled a "strong odor of marijuana" emanating from the vehicle and/or its passengers. When the man outside the vehicle looked over his shoulder and saw Officer McKinney, he

---

[1] Neither of the men was Howling. They were later identified as John Gordon and Michael Brandon.

"made a series of movements towards the inside of [the] vehicle." The man told Officer McKinney that his friend, later identified as Howling, was getting a haircut and that he and the second man were waiting for him.[2]

The pickup truck was eventually searched, yielding a rental agreement in Howling's name, a loaded Glock semiautomatic handgun, two magazines, and approximately $4,000 in cash.[3] Two officers then located Howling in the barbershop and arrested him.

During a recorded interview with the police, Howling explained that he lives in Pennsylvania, but that his mother has lived in Montgomery County since he was a child. He explained that he was in the area or a doctor's appointment, and his friends "just wanted to ride down with [him]." Howling said he did not realize the gun, which was legally registered to him in Pennsylvania, was in the truck "until on the way down" and that the money was for "stuff" he had to pick up for work. Howling acknowledged that he had been convicted of assault while attending college in Pennsylvania,[4] which the officer explained prohibited him from possessing a firearm in Maryland, but he claimed he did not intentionally bring the gun into the State.

---

[2] The encounter was captured on Officer McKinney's body-worn camera, and the recording was admitted into evidence.

[3] The parties stipulated that the gun was operable.

[4] The parties stipulated that Howling had been convicted of simple assault in Pennsylvania in 2002.

DISCUSSION

I. Jury Instructions

Howling first contends that the trial court erred as a matter of law when it declined to propound his proposed jury instructions relating to the charges of illegal possession of a firearm and illegal possession of ammunition, and instead gave applicable pattern jury instructions. He maintains that, in light of the United States Supreme Court's recent decision in *Rehaif v. United States*, ___ U.S. ___,139 S. Ct. 2191 (2019), his requested instructions properly identified a scienter element of the charged crimes and should have been given to the jury.

At the close of the State's case-in-chief, defense counsel moved for judgment of acquittal on the charges of illegal possession of the firearm and ammunition on the ground that Howling was unaware that he could not legally possess either in Maryland. The court denied the motion, ruling that "[w]ith respect to the argument of scienter of knowledge about the gun laws in Maryland, the statute that prohibits [ ] certain persons from having a firearm is a strict liability offense. It does not require that intent be proven."

After declining to present evidence, Howling renewed his motion for judgment of acquittal, citing *Rehaif* for the proposition that, as a Pennsylvania resident who was convicted of assault in Pennsylvania, the burden was on the State to show that he should have known of the status that would make him a person prohibited from possessing a firearm in Maryland. Defense counsel analogized Howling's case

with the facts in *Rehaif*, in which the United States Supreme Court held that the government must show that the defendant knowingly possessed a firearm and that he knew he belonged to a group whose status would make him a person prohibited from possessing a firearm in the United States. *See id.* at 2194. Counsel explained that, if the court were to deny the motion for judgment of acquittal, she would request proposed jury instructions "that add essentially the element that says the Government must prove [that] he knew that he was a prohibited person based on his conviction" in Pennsylvania.[5]

The prosecutor countered that *Rehaif* involved federal law. In light of what she considered to be a "very clear" pattern jury instruction on the charged crimes, Maryland Pattern Jury Instruction-Criminal ("MPJI-Cr") 4:35.6,[6] the prosecutor requested that the

---

[5] Howling moved to supplement the appellate record with defense counsel's proposed jury instructions containing the requested language, but this Court denied his motion on the ground that the written instructions he sought to add to the record were "never actually presented to the trial court, except insofar as they were described or referred to verbally, which is reflected in the transcript. As a result, they were not before the trial court and are not properly made part of the appellate record."

[6] MPJI-Cr 4:35.6 provides:

> The defendant is charged with possessing a regulated firearm after having been convicted of a crime that disqualified [him] [her] from possessing a regulated firearm. In order to convict the defendant, the State must prove:
>
> (1) that the defendant knowingly possessed a

court deny the motion for judgment of acquittal and find the pattern jury instructions sufficient, especially because the *Rehaif* case was based on the interpretation of a federal criminal statute and the defense's requested instructions therefore improperly added an element to the pertinent State statute.

The trial court ruled:

> Well, a trial court that uses a jury instruction other than a pattern jury instruction when there

---

> regulated firearm; and
>
> (2) that the defendant was previously convicted of a crime that disqualified [him] [her] from possessing a regulated firearm.
>
> [The State and the defendant agree and stipulate that the gun in this case is a regulated firearm.]
>
> * * *
>
> [[The State and the defendant agree and stipulate that the defendant was previously convicted of a crime that disqualifies [him] [her] from possessing a regulated firearm.]]
>
> Possession means having control over the firearm, whether actual or indirect. More than one person can be in possession of the same firearm at the same time. A person not in actual possession, who knowingly has both the power and the intention to exercise control over a firearm, has indirect possession of that firearm. In determining whether the defendant has indirect possession of a firearm, you should consider all of the surrounding circumstances. These circumstances include the distance between the defendant and the firearm, and whether the defendant has some ownership or possessory interest in the location where the firearm was found.

> is a pattern jury instruction that directly addresses the elements at issue, does so at the trial court's own peril.
>
> The appellate court in Annapolis has repeatedly in many cases warned trial judges about essentially going off base and giving instructions that are not the approved Maryland pattern jury instructions. There are some occasions upon which there is an issue that is not addressed by a Maryland pattern jury instruction but this isn't that case. I think this case does what is appropriate in this case and that is put the issue before the jury and the jury can decide whether the elements have been proven. . . . This jury instruction clearly cites correctly the law and it does not preclude the defense from arguing the issue that you're raising at all.

During jury instructions, the trial court recited almost *verbatim* MPJI-Cr 4:35.6 relating to possessing a regulated firearm and ammunition after having been convicted of a disqualifying crime. Defense counsel declared herself satisfied with the instructions as given, "[s]ubject to our previous objection."

In her closing argument, defense counsel told the jury:

> So in Pennsylvania, he legally transferred this un to himself. So he's somebody who has an address in Johnson Town, Pennsylvania, his phone number is in Pennsylvania and he told detectives, he came down with his mother

because he had the gun for eight to 10 years. He's had other guns. It just didn't even occur to him that he couldn't have that gun in Maryland.

And the issue really is how could he have known. I mean the State just got up here and said the law applies to anyone. But did you know? And it's different when he was actually in Pennsylvania and he did everything he was supposed to do to have that, that he would expect to know that here in Maryland, it's a problem.

There are three different counts today. The first count is the possession of a firearm by a prohibited person. And then the third count as the State said is possession [of ammunition] by a prohibited person. One of the instructions that the Judge read to you is to look at each count. And those re the two counts that we're asking that you find Mr. Howling not guilty because he didn't know that he couldn't have that gun.

* * *

So, ladies and gentlemen, we'd ask the State, because it's their burden to get back up here and talk to you again about this case, and this is one of those somewhat unusual cases because we already conceded that, yes, Mr. Howling shouldn't have had a handgun. But we are asking that you, as he is, presumed innocent until they prove to you beyond a reasonable doubt because it is their burden that he knew and understood that he couldn't have that gun in

> Maryland because he did legally have that gun in Pennsylvania, the place where he's from, the place where he lives, the place where he got the conviction almost 18 years ago, a place where he'd purchased and owned a firearm since then.
>
> He was just trying to come here to run some errands. It doesn't mean he knows every law in the [S]tate of Maryland. And most people don't actually know every law in the [S]tate of Maryland. So for that reason, we're asking that you find him not guilty of possession of a firearm by a prohibited person and not guilty of possession of ammunition by a prohibited person.

Maryland Rule 4-325(c) provides: "The court may, and at the request of any party shall, instruct the jury as to the applicable law." We review "trial court's refusal or giving of a jury instruction under the abuse of discretion standard." *Stabb v. State,* 423 Md. 454, 465 (2011) (citing *Gunning v. State*, 347 Md. 332, 351 (1997)). In evaluating whether an abuse of discretion occurred, we consider the following factors: "(1) whether the requested instruction was a correct statement of the law; (2) whether it was applicable under the facts of the case; and (3) whether it was fairly covered in the instructions actually given." *Id.* (citing *Gunning*, 347 Md. at 348). Howling's assignment of error rests on the first factor.

Howling claims that the trial court abused its discretion in declining to give his requested jury instructions on illegal possession of a firearm and ammunition in light of *Rehaif*, which held that the

government must prove that a defendant knew both that he possessed a firearm and that he belonged to the relevant class of persons barred from possessing a firearm.[7] In Howling's view, the trial court abused its discretion in declining to give instructions advising the jurors that they were required to find that he knew he was barred from possessing a firearm and ammunition in Maryland, particularly where he could legally possess those items in Pennsylvania. We disagree.

Rehaif is not dispositive in this case. As the United States Court of Appeals for the Second Circuit explained in *Mata v. United States*:

> The Supreme Court's *Rehaif* decision resolved only a question of statutory interpretation and did not announce a rule of constitutional law (much less a new one, or one that the Supreme Court has made retroactive on collateral review or that was previously unavailable). *Rehaif* clarified the mens rea

---

[7] In *Rehaif*, the defendant attended a university in the United States on a nonimmigrant student visa but was dismissed and informed that his "'immigration status' would be terminated unless he transferred to a different university or left the country. Rehaif did neither." 139 S. Ct. at 2194. After Rehaif went shooting at a firing range, he was prosecuted and convicted of possessing firearms while unlawfully present in the United States. *Id.*

On review, the Supreme Court concluded, based upon the plain language of the applicable statutes, that in prosecutions under 18 U.S.C. § 922(g), in combination with § 924(a)(2), which provides penalties for those who "knowingly" violate § 922(g), the government is required to prove "both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm." *Id.* at 2200.

> applicable to a violation of 18 U.S.C. § 922(g), holding that the government must prove that a defendant knew both that he possessed a firearm and that he belonged to the relevant class of persons barred from possessing a firearm. In reaching that decision, the Supreme Court applied a standard 'interpretive maxim' to discern 'congressional intent' about the meaning of the word 'knowingly' as it appears in the text of § 922(g). In other words, the Supreme Court was simply construing a statute.

969 F.3d 91, 93 (2d Cir. 2020) (internal citations omitted). Because the *Rehaif* decision was based on statutory interpretation of a federal statute, rather than on constitutional law, we are not bound by *Rehaif*'s precedent.[8] *See State v. Matusky*, 343 Md. 467, 490 (1996) (When the Supreme Court's decision does not rely on federal constitutional principles, it "is not binding on the states."); *see also Dravo v. State*, 46 Md. App. 622, 630 (1980).

We therefore reject Howling's reliance on *Rehaif* and instead apply the analysis set forth in *Brice v. State*, 225 Md. App. 666 (2015). In *Brice*, the appellant argued that "the evidence was insufficient to sustain [his] conviction for illegal possession of a regulated firearm because the State introduced no evidence that appellant had knowledge that he was disqualified from possessing a firearm." *Id.* at 693.

---

[8] Moreover, as the State points out in its brief, the federal statute at issue in *Rehaif* contains language that is materially different from the Maryland statutes under consideration here.

We first set out to determine "whether there is a knowledge of disqualification element" to the crime of illegal possession of a regulated firearm, as codified in Md. Code (2003, 2018 Repl. Vol.), § 5-133(b)(1) of the Public Safety Article ("PS").[9] *Id.* We explained that "'[w]hile ignorance of fact may sometimes be admitted as evidence of lack of criminal intent, ignorance of the law ordinarily does not give immunity from punishment for crime, for every man is presumed to intend the necessary and legitimate consequences of what he knowingly does.'" *Id.* at 694 (quoting *Hopkins v. State,* 193 Md. 489, 498-99 (1949)).

We noted that, under the express language of the statute,

> a defendant may not "knowingly participate in . . . possession . . . of a regulated firearm." PS § 5-144(a)(1).[10] There is no language in the

---

[9] PS § 5-133(b)(1) prohibits a person from possessing a regulated firearm if he or she has been convicted of a disqualifying crime. PS § 5-133(c)(1)(iii), at issue in this matter, is similar and prohibits a person from possessing a regulated firearm if he or she as been convicted of "an offense under the laws of another state or the United States that would constitute one of the crimes listed in item (i) or (ii) of this paragraph if committed in this State." And, pursuant to PS § 5-133.1(b), a person prohibited from possessing a firearm under § 5-133(b) or (c) may not possess ammunition. There appears to be no dispute that Howling's assault conviction in Pennsylvania constitutes a crime of violence in Maryland.

[10] The penalty provision, set forth in PS § 5-144, states, in pertinent part:

> (a) Except as otherwise provided in this subtitle, a dealer or other person may not:

> statute requiring a defendant to know that he is disqualified. In *McNeal v. State,* this Court held that, to satisfy the *mens rea* requirement for a violation of Section 5-133, the State was required to prove only that defendant knew that he was in possession of a handgun. 200 Md. App. 510, 524, 28 A.3d 88 (2011), *aff'd,* 426 Md. 455, 44 A.3d 982 (2012). The facts of the instant case clearly satisfy such requirement, because appellant admitted to Agents Boroshok and Tolomeo that "he acquired the handgun from what he termed a junkie in the White Marsh area. That he made a trade for an eight ball of crack cocaine for it."

Id. (alterations in original).

Although *Brice* involved a challenge to evidentiary sufficiency, the same analysis applies to Howling's proposed jury instructions. As *Brice* makes clear, the State was only required to prove that Howling knew he was in possession of a firearm and ammunition, not that Howling knew his Pennsylvania conviction disqualified him from possessing a regulated firearm and ammunition in Maryland. The State supplied proof of Howling's requisite knowledge of possession through his recorded statement to the police, in which he admitted that he knew the firearm was in his vehicle when he traveled to Maryland on March 20, 2019.

> (1) knowingly participate in the illegal sale, rental, transfer, purchase, possession, or receipt of a regulated firearm in violation of this subtitle[.]

We conclude that the non-pattern jury instructions requested by Howling, which sought to add an element to the charged crimes, were not correct statements of Maryland law. Therefore, the trial court did not abuse its discretion in declining to give them and by giving pattern jury instruction MPJI-Cr 4:35.6 instead.

II. & III. *Voir dire*

Howling also asserts that the trial court erred or abused its discretion in declining to propound his requested version of a *voir dire* question regarding the prospective jurors' prior experiences as witnesses, victims, or participants in a criminal proceeding as redundant after it had propounded a similar question requested by the State. He contends that the compound question propounded by the court impermissibly asked the prospective jurors to decide for themselves whether or not their previous experiences affected their impartiality, and should have been replaced with his requested non-compound question.

Prior to trial, defense counsel filed a written request for *voir dire*. Question number 17 asked:

> 17. Is there any member of the prospective jury panel or any member of your immediate family or a close personal friend who have been:
>
> a. The victim of any crime;
>
> b. A victim of shootings or crimes involving firearms;
>
> c. A witness to any crime; or
>
> d. Charged with or arrested for any crime?

> If the answer to any part of this question is yes, please stand and approach the bench one by one, so that the Court can question you individually at the bench.

During *voir dire* the trial court asked the venire panel: "Is there any member of the prospective jury panel or member of your immediate family who has ever had a prior experience as a party, as a witness, as a victim, or participant in any criminal proceeding? If so, would that experience in any way, impair your ability to sit as an impartial juror in this case?" Two prospective jurors responded. One explained that his or her daughter had witnessed a drug crime and shooting and was treated by defense counsel at the perpetrators' trials in a manner that caused the daughter to have nightmares. That experience, the juror continued, would not permit him or her to be impartial during Howling's trial. The second prospective juror explained that he or she had been "caught with paraphernalia" in 2006. In response to the court's follow-up question whether that experience would affect his or her ability to be fair and impartial in this matter, the prospective juror answered, "No."

After asking several other questions, the trial court summoned the parties to the bench, and the following colloquy occurred:

THE COURT: Question number [17],[11] I think is redundant. We've already asked a question about whether or not they've been a witness or juror or party or involved in any criminal proceedings. But I think the part of the question that says has any member of your family or personal friend been a -- well, we've asked them that question. I don't think we need to -- do you think?

[DEFENSE COUNSEL]: I'm fine with it but can we amend it or ask for clarification on the shooting aspect, Your Honor.

THE COURT: Well, they were asked have you been a party.

[DEFENSE COUNSEL]: Right.

THE COURT: A witness.

[DEFENSE COUNSEL]: Right.

THE COURT: And this question says the same thing.

[DEFENSE COUNSEL]: Right. I think the question that you asked was the State's version and this one is the defendant's version. My concern would be the way that Your Honor asked it. You also asked if they would be fair

---

[11] The court referred to question number 24, but it appears from the context of the discussion that the court meant to reference question number 17. The State does not suggest otherwise in its brief.

and impartial and information about whether or not they've been the victim or witness.

THE COURT: You lost me.

[DEFENSE COUNSEL]: So I think the previous question was a two-part question and one, which it was asked if they've been, and sort of immediately asked if that would affect their ability to be fair and impartial as opposed to clarifying whether or not they had been a victim or witness.

THE COURT: Right. But a number of people came forward and said that they had been a victim of a crime. The question was asked had you the opportunity--

[DEFENSE COUNSEL]: I think there was issue [sic] whether they're going to be fair and impartial.

THE COURT: Right. Been charged or arrested, they had the opportunity to answer that. And one person in fact did come forward.

[DEFENSE COUNSEL]: That's true.

THE COURT: Okay. So you can note your objection for the record if you wish but I don't think I'm going to ask that question. Do you object?

[DEFENSE COUNSEL]: Yes.

THE COURT: Okay.

"*Voir dire*, the process by which prospective jurors are examined to determine whether cause for disqualification exists, is the mechanism whereby the right to a fair and impartial jury, guaranteed by Art. 21 of the Maryland Declaration of Rights, is given substance." *Dingle v. State*, 361 Md. 1, 9 (2000) (footnote omitted) (internal citations omitted). "To that end, '[o]n request, a trial court must ask a *voir dire* question if and only if the *voir dire* question is reasonably likely to reveal specific cause for disqualification.'" *Collins v. State*, 463 Md. 372, 376 (2019) (alteration in original) (quoting *Pearson v. State*, 437 Md. 350, 357 (2014)). "There are two categories of specific cause for disqualification: (1) a statute disqualifies a prospective juror; or (2) a collateral matter is reasonably liable to have undue influence over a prospective juror." *Id.* (quoting *Pearson*, 437 Md. at 357). This Court "review[s] the trial judge's rulings on the record of the *voir dire* process as a whole for an abuse of discretion, that is, questioning that is not reasonably sufficient to test the jury for bias, partiality, or prejudice." *Washington v. State*, 425 Md. 306, 314 (2012) (citing *White v. State*, 374 Md. 232, 243 (2003)).

The Court of Appeals addressed the propriety of compound *voir dire* questions in *Dingle*. There, during jury selection, the defendant requested that the trial court ask a series of questions regarding whether prospective jurors "had certain experiences or associations" (*e.g.,* whether they had been victims of, witnesses to, accused of, or convicted of crimes, were involved with law or law enforcement, or were members of any victims' rights groups). 361 Md. at 3 & n.3. The court agreed to do so, but joined with each of

the defendant's requested inquiries an additional question asking "whether the experience or association . . . would affect the prospective juror's ability to be fair and impartial." *Id.* at 3-4. The court instructed each prospective juror to stand only "if your answer is yes to both parts of the question." *Id.* at 5.

The Court of Appeals reversed Dingle's convictions, holding that the trial court had abused its discretion in posing the questions in compound form. *Id.* at 21. The Court observed that it is the trial court, not the prospective jurors, that "must decide whether, and when, cause for disqualification exists for any particular venire person." *Id.* at 14-15. By asking prospective jurors to divulge certain experiences or associations only if they first concluded that they could not be fair and impartial as a result, the trial court had failed to exercise its "responsibility to decide . . . whether any of the venire persons occupying the questioned status or having the questioned experiences should be discharged for cause," and "denied [the defendant] the opportunity to discover and challenge venire persons who might be biased." *Id.* at 17.

In *Pearson v. State*, the Court addressed the use of compound questions in connection with mandatory "strong feelings" *voir dire* questions, holding that when a requested *voir dire* question is mandatory, the use of "*Dingle*-type" compound questions constitutes reversible error. 437 Md. at 363-64.

The Court of Appeals also held, however, that the trial court is not obligated to ask if a member of the venire has been the victim of a crime. *Id.* at 359. Pearson had argued that the trial court abused its

discretion by declining to ask that question, because it was "reasonably likely to reveal specific cause for disqualification" or to "facilitate the exercise of peremptory challenges." *Id.* at 356.

The Court disagreed, holding that the trial court "need not ask during *voir dire* whether any prospective juror has ever been the victim of a crime" for three reasons. *Id.* at 359-60. First, the experience of a crime victim "lacks '*a demonstrably strong correlation* [with] a mental state that gives rise to [specific] cause for disqualification.'" *Id.* at 359 (alterations in original) (quoting *Curtin v. State*, 393 Md. 593, 607 (2006)). Second, the question may be too time consuming, as many, if not most, prospective jurors have been victims of some type of crime. *Id.* at 359-60. Third, the court is already required to ask, if requested, whether any juror has "'strong feelings about' the crime with which the defendant is charged," and that question is better tailored to reveal bias. *Id.* (citing *State v. Shim*, 418 Md. 37, 54 (2011), *abrogated on other grounds by Pearson*, 437 Md. 350)).

In *Collins*, the Court reaffirmed that when a *voir dire* question is mandatory, "it is improper for a trial court to ask the . . . question in compound form." 463 Md. at 396. In so holding, the Court rejected an argument by the State that other questions asked by the trial court were an adequate "substitute for a properly-phrased 'strong feelings' question." *Id.* at 398.

Against this backdrop, we hold that the trial court in this case did not abuse its discretion in asking prospective jurors if they "ha[d] ever had a prior experience as a party, as a witness, as a victim, or

participant in any criminal proceeding," and, if so, whether that experience would "in any way, impair [their] ability to sit as an impartial juror in this case." Although the Court of Appeals has cautioned trial courts to refrain from using compound questions when conducting *voir dire*, doing so does not automatically constitute reversible error. *See Collins v. State*, 452 Md. 614, 625 n.5 (2017) (citing *White*, 374 Md. at 243).

The trial court was not required to ask the party, witness, or victim of crime question. *See Pearson*, 437 Md. at 359; *Perry v. State* 344 Md. 204, 218 (1996) ("A juror's having had prior experience as a juror, witness, victim or defendant in a criminal proceeding of any kind, or in one involving a crime of violence, is not *per se* disqualifying."). And, any likelihood that the question would have uncovered a potential for bias is mitigated by the fact that Howling was charged only with possessory crimes that did not involve a victim. The *Pearson* Court's observation that the experience of a crime victim "lacks 'a *demonstrably strong correlation* [with] a mental state that gives rise to [specific] cause for disqualification,'" 437 Md. at 359 (alterations in original), has particular relevance in this case where there is no identified crime victim. Pearson's second reason why a court need not ask a "victim of crime" question also applies here in that the party, witness or victim of crime question may have been too time consuming, as many, if not most, prospective jurors likely had been victims or witnesses of some crime. Moreover, the trial court did ask questions designed to ensure that the prospective jurors would: apply the appropriate legal standards of burden of proof, presumption of innocence, and right of the defendant

not to testify; decide the case based solely on the evidence; not rely on preconceived notions of Howling's guilt or innocence; not exhibit bias toward either the prosecution or the defense; and adhere to the jury instructions.

Although the court should have avoided the compound question, we cannot say that its use denied Howling a reasonable, fair, and comprehensive *voir dire* process. Considering all of the above factors, including the fact that the court was not even required to propound appellant's *voir dire* question number 17, we conclude that any error in asking the question in compound form was harmless.

Howling also argues that the trial court committed plain error in asking several other compound questions during *voir dire*. Acknowledging that he offered no objection to those questions during trial, he nonetheless contends that "the pervasiveness and egregiousness of the compound questions asked by the trial court demand plain-error review" because the questions "curbed the ability of the judge and parties to gauge juror bias."

Objections made during jury selection are governed by Maryland Rule 4-323(c), which states, in pertinent part, that "it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court." Because Howling failed to object to the various *voir dire* questions about which he now complains, and accepted the jury as empaneled subject only to his prior objection, he waived his objection to the contested

questions, and it is not properly before us on appeal. *See* Md. Rule 8-131(a); *see also Wimbish v. State*, 201 Md. App. 239, 265-66 (2011). We note that Howling was permitted to participate fully in the *voir dire* process, strike jurors for cause, and exercise peremptory strikes. In our view, the public's confidence in the fairness of judicial proceedings was not undermined by the outcome of this case, and plain error review is not warranted.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANT TO PAY COSTS.

APPENDIX C

IN THE COURT OF APPEALS OF MARYLAND

COA-REG-0035-2021

No. 35

September Term, 2021

[Filed June 15, 2022]

MASHOUR HOWLING	)
	)
v.	)
	)
STATE OF MARYLAND	)
	)

O R D E R

Upon consideration of Petitioner's Motion for Reconsideration filed in the above-captioned case, it is this 15th day of June, 2022,

ORDERED, by the Court of Appeals of Maryland, that the Motion for Reconsideration be, and it is hereby, DENIED.

/s/ Matthew J. Fader
Chief Judge

*Judge Gould did not participate in the consideration of this matter.

IN THE COURT OF APPEALS OF MARYLAND

COA-REG-0035-2021

No. 35

September Term, 2021

[Filed August 11, 2022]

MASHOUR HOWLING)
)
v.)
)
STATE OF MARYLAND)
)

C O R R E C T E D
O R D E R

Upon consideration of Petitioner's Motion for Reconsideration filed in the above-captioned case, it is this 15th day of June, 2022,

ORDERED, by the Court of Appeals of Maryland, that the Motion for Reconsideration be, and it is hereby, DENIED.

/s/ Shirley M. Watts
Senior Judge

*Chief Judge Fader and Judge Gould did not participate in the consideration of this matter.

APPENDIX D

SENTENCE in the Court of Common Please of Butler County, Pennsylvania

See Fold-Out Exhibit

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	CRIMINAL DIVISION
VS.	:	C.A. NO. 02-1180
MASHHOUR EUGENE HOWLING	:	OTN No. H643232-2

SENTENCE

AND NOW, this 18th day of December, 2002, the Sentence of the Court is:

Defendant is directed to pay the costs of prosecution.

(X) SIMPLE ASSAULT - M2 — Pay fine of $ 100.00
Count 1 Offense

( ) Defendant is to receive credit for time served, as available by law.

(X) Defendant is to be placed on probation for a period of 18 MONTHS with the County Probation Board and must attend any counseling as directed by probation officer.

(X) Special condition(s) of sentence (if any):

( ) Costs/Fines/Restitution are due immediately/on or before _____.

( ) The Defendant is to pay the costs, fines and restitution until paid in full.

( ) Costs/Fines/Restitution - $____ is due at sentencing and
$_____ is due each month until paid in full.

(X) Probation supervision fee [redacted]/does not apply.

(X) Defendant shall perform 20 hours of community service under the direction of the Adult Probation Office, within 6 months of sentencing.

(X) This sentence shall run consecutive to any other sentences issued prior to this date.

(X) Fines, costs, restitution and community service shall be consecutive.

12/18/02
mcc
DA
Co Pros
Def
Atty Crosby
Judge
Collection Clerk
OFF Diyanni
Butler Twp PD

BY THE COURT:

Marilyn J. Horan
Judge

COURT OF COMMON PLEAS
BUTLER COUNTY

DEC 18 4 02 PM '02

LISA WEILAND LOTZ
CLERK OF COURTS
ENTERED & FILED

Butler County
State of Pennsylvania
Certified to be a true and correct
copy of the original this ___ day
of _____ 20__

LISA WEILAND LOTZ
CLERK OF COURTS
MY COMMISSION EXPIRES FIRST MONDAY IN JAN 2008

STATE'S EXHIBIT 6

APPENDIX E

MD Code, Public Safety, § 5-133

§ 5-133. Restrictions on possession of regulated firearms

Effective: October 1, 2018

Preemption by State

(a) This section supersedes any restriction that a local jurisdiction in the State imposes on the possession by a private party of a regulated firearm, and the State preempts the right of any local jurisdiction to regulate the possession of a regulated firearm.

Possession of regulated firearm prohibited

(b) Subject to § 5-133.3 of this subtitle, a person may not possess a regulated firearm if the person:

(1) has been convicted of a disqualifying crime;

(2) has been convicted of a violation classified as a common law crime and received a term of imprisonment of more than 2 years;

(3) is a fugitive from justice;

(4) is a habitual drunkard;

(5) is addicted to a controlled dangerous substance or is a habitual user;

(6) suffers from a mental disorder as defined in § 10-101(i)(2) of the Health--General Article and has a history of violent behavior against the person or another;

(7) has been found incompetent to stand trial under § 3-106 of the Criminal Procedure Article;

(8) has been found not criminally responsible under § 3-110 of the Criminal Procedure Article;

(9) has been voluntarily admitted for more than 30 consecutive days to a facility as defined in § 10-101 of the Health--General Article;

(10) has been involuntarily committed to a facility as defined in § 10-101 of the Health--General Article;

(11) is under the protection of a guardian appointed by a court under § 13-201(c) or § 13-705 of the Estates and Trusts Article, except for cases in which the appointment of a guardian is solely a result of a physical disability;

(12) except as provided in subsection (e) of this section, is a respondent against whom:

(i) a current non ex parte civil protective order has been entered under § 4-506 of the Family Law Article; or

(ii) an order for protection, as defined in § 4-508.1 of the Family Law Article, has been issued by a court of another state or a Native American tribe and is in effect; or

(13) if under the age of 30 years at the time of possession, has been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult.

Penalty for possession by convicted felon

(c)(1) A person may not possess a regulated firearm if the person was previously convicted of:

(i) a crime of violence;

(ii) a violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-612, § 5-613, § 5-614, § 5-621, or § 5-622 of the Criminal Law Article; or

(iii) an offense under the laws of another state or the United States that would constitute one of the crimes listed in item (i) or (ii) of this paragraph if committed in this State.

(2)(i) Subject to paragraph (3) of this subsection, a person who violates this subsection is guilty of a felony and on conviction is subject to imprisonment for not less than 5 years and not exceeding 15 years.

(ii) The court may not suspend any part of the mandatory minimum sentence of 5 years.

(iii) Except as otherwise provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole during the mandatory minimum sentence.

(3) At the time of the commission of the offense, if a period of more than 5 years has elapsed since the person completed serving the sentence for the most

recent conviction under paragraph (1)(i) or (ii) of this subsection, including all imprisonment, mandatory supervision, probation, and parole:

(i) the imposition of the mandatory minimum sentence is within the discretion of the court; and

(ii) the mandatory minimum sentence may not be imposed unless the State's Attorney notifies the person in writing at least 30 days before trial of the State's intention to seek the mandatory minimum sentence.

(4) Each violation of this subsection is a separate crime.

(5) A person convicted under this subsection is not prohibited from participating in a drug treatment program under § 8-507 of the Health--General Article because of the length of the sentence.

Possession by person under age of 21 years prohibited; exceptions

(d)(1) Except as provided in paragraph (2) of this subsection, a person who is under the age of 21 years may not possess a regulated firearm.

(2) Unless a person is otherwise prohibited from possessing a regulated firearm, this subsection does not apply to:

(i) the temporary transfer or possession of a regulated firearm if the person is:

1. under the supervision of another who is at least 21 years old and who is not prohibited by State or federal law from possessing a firearm; and

2. acting with the permission of the parent or legal guardian of the transferee or person in possession;

(ii) the transfer by inheritance of title, and not of possession, of a regulated firearm;

(iii) a member of the armed forces of the United States or the National Guard while performing official duties;

(iv) the temporary transfer or possession of a regulated firearm if the person is:

1. participating in marksmanship training of a recognized organization; and

2. under the supervision of a qualified instructor;

(v) a person who is required to possess a regulated firearm for employment and who holds a permit under Subtitle 3 of this title; or

(vi) the possession of a firearm for self-defense or the defense of others against a trespasser into the residence of the person in possession or into a residence in which the person in possession is an invited guest.

Transport of regulated firearms

(e) This section does not apply to a respondent transporting a regulated firearm if the respondent is carrying a civil protective order requiring the surrender of the regulated firearm and:

(1) the regulated firearm is unloaded;

(2) the respondent has notified the law enforcement unit, barracks, or station that the regulated firearm is being transported in accordance with the civil protective order; and

(3) the respondent transports the regulated firearm directly to the law enforcement unit, barracks, or station.

Surrendering of regulated firearms to State or local law enforcement agency or federally licensed firearms dealer

(f) This section does not apply to the carrying or transporting of a regulated firearm by a person who is carrying a court order requiring the surrender of the regulated firearm, if:

(1) the firearm is unloaded;

(2) the person has notified a law enforcement unit, barracks, or station that the firearm is being transported in accordance with the order; and

(3) the person transports the firearm directly to a State or local law enforcement agency or a federally licensed firearms dealer.

APPENDIX F

IN THE COURT OF APPEALS OF MARYLAND

No. 35

September Term, 2021

MASHOUR HOWLING	)
v.	)
STATE OF MARYLAND	)
	)

PETITION FOR WRIT OF CERTIORARI
(Supplement)

QUESTIONS PRESENTED

1. Whether in a Question of First Impression, the lower Courts erred by giving a jury instruction, contrary to the holding of *Rehaif v. United States,* 139 S.Ct. 2191 (2019) on the presumptions in law discussed in the equivalent Federal statute, Rule of Lenity, and this Court's analogous decisions of *Dawkins v. State,* 313 Md. 638 (1988) and *Chow v. State,* 391 Md. 431 (2006), and thus require in a conviction beyond a reasonable doubt, a jury first find a culpable *mens rea* that Petitioner knew he was unqualified to possess a regulated firearm or ammunition.

2. In the facts presented, with state comity concerns of a Pennsylvania resident briefly visiting in Maryland, and no evidence adduced Petitioner was previously notified by the State and Federal government authorities he was prohibited from possessing a regulated firearm in Maryland based on a 17-year-old Pennsylvania simple assault conviction, did the lower Courts err in giving the pre-*Rehaif* pattern jury instructions lacking critical *scienter* requirements?