Circuit Court for Montgomery County
Criminal No. 135936

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2561

September Term, 2019

FUNIBA ABONGNELAH

v.

STATE OF MARYLAND

Gould,
Berger,
Wells,

JJ.

Opinion by Wells, J.

Filed: May 11, 2021

A jury empaneled in the Circuit Court for Montgomery County found Appellant, Funiba Abongnelah, guilty of possessing a regulated firearm in violation of Md. Code Ann., Pub. Safety ("PS") § 5-133, which prohibits a person with a felony conviction from possessing a firearm and prohibits possession of a firearm by persons under the age of twenty-one. The court sentenced 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. For the charge of possession of a regulated firearm while under the age of twenty-one, the court sentenced him to five years of incarceration with all but two years suspended to run concurrently with the felon in possession charge. Abongnelah filed a timely notice of appeal.

Abongnelah presents three questions for our review, which we have slightly rephrased[1]:

> I. Did the motions court err when it declined to suppress evidence obtained during a search incident to Mr. Abongnelah's warrantless arrest?

[1] Abongnelah's verbatim questions are presented below,

> I. Did the motions court err when it declined to suppress evidence obtained during a search incident to Mr. Abongnelah's warrantless arrest?
>
> II. Did the trial court err by denying Mr. Abongnelah's motion for judgment of acquittal on his felon in possession of a firearm charge where the State produced no evidence that he knew of his prohibited status at the time of the offense?
>
> III. Did the trial court err by denying Mr. Abongnelah's requested jury instruction on the knowledge element of the felon in possession of a firearm charge?

II. Did the trial court err by denying Mr. Abongnelah's motion for judgment of acquittal on his felon in possession of a firearm charge on the basis that the State must prove Mr. Abongnelah knew he was a prohibited person?

III. Did the trial court err when it denied Mr. Abongnelah's requested jury instruction that the State must prove that the defendant knew he was a felon?

For the reasons that we discuss, we hold that the motions court properly declined to suppress evidence obtained during Abongnelah's warrantless arrest because the officers had probable cause to suspect that Abongnelah had committed a felony or was committing a felony. The trial court did not err in denying Abongnelah's motion for a judgment of acquittal on the felon in possession charge because the State was only required to produce evidence that Abongnelah knew he was in possession of a firearm—not that he knew that he was a felon, as he argues. Finally, the trial court did not abuse its discretion in using the pattern jury instructions for the offenses charged.

BACKGROUND

Public Safety Article § 5-133 prohibits a convicted felon or a person who is under the age of twenty-one from possessing a firearm. In 2019, Abongnelah satisfied both criteria. He had been convicted of carjacking the year before and he was not yet twenty-one years old. Montgomery County police officers suspected that Abongnelah might have been in illegal possession of a firearm after viewing a video clip on his Instagram account.

Detective Tomasz Machon, who had been monitoring Abongnelah's Instagram account for three months, testified that on June 5, 2019 at around 1:53 am, a video was

posted to Instagram that depicted an arm firing a handgun in the direction of a distant car with flashing red and blue lights. Detective Machon testified that a voice in the video could be heard saying, "I'ma shoot the police." Detective Machon compared the tattoos visible in the video with the other photographs on the Instagram page and a photograph obtained through the Motor Vehicle Administration to conclude that the Instagram page belonged to Abongnelah and that he was the one firing the weapon in the video. The firearm's serial number was visible in the footage; Detective Machon conducted a database search of the firearm and learned that it had been reported stolen in August 2018. Detective Machon acknowledged that he could not tell when or where the footage was recorded and that he did not discover any conclusive evidence that gunshots were reported as being fired in Montgomery County or Prince George's County on the day the video was posted.

On the same day of the Instagram posting, Montgomery County police officers applied for a search warrant for Abongnelah's home. Meanwhile, about five other undercover officers spent the morning surveilling Abongnelah's apartment building and monitoring his movements. Detective Justin Carver, one of the undercover officers surveilling the apartment, testified that he observed Abongnelah leave the apartment building, talk on the phone, and then reenter the building. Another officer, Detective Artemis Goode, testified that he followed Abongnelah into the lobby of the building and saw him take the elevator to the fifth floor—the location of Abongnelah's apartment. Detectives later observed Abongnelah come outside again, sit in a vehicle for several minutes, and return to the building once more.

Later in the day, detectives observed Abongnelah leave the building and join two other passengers and a driver in a vehicle that picked him up from the apartment building. The officers followed the vehicle. Sergeant Charlie Bullock testified that he followed the vehicle to a crowded shopping center where he believed he observed Abongnelah making a drug exchange outside of a SunTrust Bank.

As the vehicle traveled back towards Abongnelah's apartment, officers executed a "soft block" on the vehicle. Sergeant Bullock testified that a soft block involves multiple police vehicles surrounding another vehicle and making contact with the front and back bumpers of the other vehicle to ensure that it cannot move. Sergeant Bullock explained that they did a soft block to prevent Abongnelah from getting back to his neighborhood and creating a more challenging arrest situation.

Detective Craver testified that the police vehicles used in the soft block were unmarked with hidden sirens that were activated during the stop. Sergeant Block testified that the officers had drawn and pointed their guns at the vehicle while they were executing the block. Once the vehicle was stopped, they ordered everyone to exit it.

Abongnelah complied with the officers' instructions and alighted, but immediately ran. He dove over a guardrail and tumbled down an embankment. Detective Craver chased after Abongnelah, caught up to him, and attempted to place him in a modified headlock. Another officer assisted Detective Craver in placing Abongnelah in handcuffs. After the struggle, Abongnelah requested medical attention.

After he was arrested, the officers conducted a search of Abongnelah's person and found a loaded firearm in his left pocket with a full magazine of ammunition. At trial,

Detective Lee Grant, a firearms examiner, testified that he examined the gun and concluded that it was operable, but that he did not test fire the gun with the ammunition found with it.

The Honorable Harry C. Storm of the Montgomery County Circuit Court conducted a suppression hearing on September 19, 2019. The defense argued that the firearm should be suppressed because it was obtained during a search incident to a warrantless arrest in violation of Abongnelah's Fourth Amendment rights. The court denied the motion.

A jury trial was held on October 30 and 31, 2019 with the Honorable Jill R. Cummins presiding. Along with testimony from the officers, the State introduced a jail phone call made between Abongnelah and an unidentified person where Abongnelah attempted to reassure the person that the case against him was not that serious. He said, "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 dogs, man." He further added, "I'm just protecting myself," and "I'm Black, I may be dead[.] . . . I just so happened to get pulled over, and my man got pulled over [] and I had a gun in my pocket." The defense moved for a judgment of acquittal at the close of the State's case and again at the close of all evidence. The court denied both motions. The jury found Abongnelah guilty on both counts.

On January 24, 2020, Judge Cummins sentenced 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. As for the possession of a regulated firearm while under the age of twenty-one, the court sentenced him to five years of incarceration with all but two suspended to run concurrently.

DISCUSSION

I. THE MOTIONS COURT PROPERLY DENIED THE MOTION TO SUPPRESS BECAUSE THE OFFICERS HAD PROBABLE CAUSE TO CONDUCT A WARRANTLESS ARREST

a. Parties' Contentions

Abongnelah contends that the State lacked probable cause to conduct a warrantless arrest because the officers relied upon an undated video posted to Abongnelah's Instagram account that supposedly depicted him firing a gun in the direction of what appears to be a police vehicle. Abongnelah argues that the State presented no evidence that the video was recorded after Abongnelah pled guilty to a felony that prohibited his possession of a firearm. He argues that despite the footage being posted on June 5, 2019, the day he was arrested, the State failed to prove that the video was recorded on that date and so, the State lacked probable cause to believe that it was recorded after Abongnelah was prohibited from possessing a firearm. Abongnelah asserts that the State violated his Fourth Amendment rights when it conducted a warrantless arrest, thus this Court should reverse the circuit court's decision to deny the motion to suppress.

The State contends that the officers had probable cause to believe that Abongnelah was a felon in possession of a firearm. The State argues that the handgun used in the Instagram footage posted on June 5, 2019 was reported stolen in August 2018. The State notes that Abongnelah was convicted of carjacking in November 2018 and was incarcerated for over a year *before* his conviction. Further, the State argues that the same day the Instagram footage was posted, Abongnelah was stopped by the police and the police recovered a weapon on his person. Therefore, the State argues that a reasonable

police officer could conclude that there was a "fair probability" Abongnelah had committed a felony.

b. Standard of Review

On appellate review of a trial court's decision to grant or deny a motion to suppress under the Fourth Amendment,[2] this Court only considers the "facts generated by the record of the suppression hearing." *Sizer v. State*, 456 Md. 350, 362 (2017) (citing *Longshore v. State*, 399 Md. 486, 498 (2007)). "An appellate court further will view the evidence and all reasonable inferences drawn from that evidence in the light most favorable to the party prevailing on the motion, in this case, the State." *Longshore*, 399 Md. at 498; *see also Laney v. State*, 379 Md. 522, 534 (2004); *Conboy v. State*, 155 Md. App. 353, 362 (2004). This Court will not disturb the trial court's factual findings unless clearly erroneous. *Longshore*, 399 Md. at 498.

We review legal conclusions *de novo*. If a party "raises a constitutional challenge to a search or seizure," then we conduct an "independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case." *Pacheo v. State*, 465 Md. 311, 319 (2019); *see Laney*, 379 Md. at 534 (explaining that on appellate review, we make our own independent constitutional determination as to whether evidence was obtained in violation of the law and should be suppressed); *Longshore*, 399 Md. at 499 (noting that appellate courts "make their own independent

[2] The Fourth Amendment protects individuals "against unreasonable searches and seizures" and requires that warrants are only issued "upon probable cause." U.S. Const. Amend. IV.

constitutional appraisal, by reviewing the law and applying it to the peculiar facts of the particular case" (quoting *Jones v. State*, 343 Md. 448, 457 (1996))); *see also Sizer*, 456 Md. at 362; *Conboy*, 155 Md. App at 362.

c. Analysis

The standard for probable cause has routinely been defined as a "practical, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Maryland v. Pringle*, 540 U.S. 366, 370 (2003) (cleaned up) (citing *Illinois v. Gates*, 462 U.S. 213, 231 (1983)). Probable cause cannot be reduced to "precise definition or quantification into percentages" because it is dependent upon probabilities and the totality of the circumstances." *Id.* at 371. The Supreme Court of the United States has explained that "probable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." *Gates*, 462 U.S. at 231; *see also Pringle*, 540 U.S. at 370; *McCraken v. State*, 429 Md. 507, 519-20 (2012). Therefore, probable cause "does not depend on a preponderance of the evidence, but instead depends on a 'fair probability' on which a reasonably prudent person would act." *Pacheo*, 465 Md. at 512. In assessing whether the "State has met this practical and common-sensical standard" for probable cause, this Court focuses on the totality of the circumstances. *Florida v. Harris*, 568 U.S. 237, 244 (2012).

An officer may arrest an individual without a warrant if the officer has probable cause "to believe that a felony has been committed or attempted and the person has committed or attempted to commit the felony whether or not in the presence or within the

view of the police officer." Md. Code Ann., Crim. Proc. ("CP") § 2-202(c). An officer needs "less evidence than is necessary to sustain a conviction, but more evidence than would merely arouse suspicion." *Williams v. State*, 188 Md. App. 78, 90-91 (2009) (citing *Haley v. State*, 398 Md. 106, 133 (2007)). This Court's task is to "examine the events leading up to the arrest, and then decide 'whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to' probable cause." *Donaldson v. State*, 416 Md. 467, 481 (2010) (citing *Pringle*, 540 U.S. at 371). Probable cause exists if "the facts and circumstances taken as a whole would lead a reasonably cautious person to believe that a felony had been or is being committed by the person arrested." *State v. Wallace*, 372 Md. 137, 148 (2002) (citing *Woods v. State*, 315 Md. 591, 611-12 (1989)). On review, this Court "necessarily must relate the information known to the officer to the elements of the offense that the officer believed was being or had been committed." *Id.* at 149 (citing *DiPino v. Davis*, 354 Md. 18, 32 (1999)).

i. Flight

First, we note that the State argues in its Brief that the officers had probable cause to effectuate the arrest, in part because Abongnelah "immediately" fled after the police stopped the vehicle in which he was traveling. Abongnelah correctly points out in his Reply Brief that the State did not present this argument to the trial court. We agree with Abongnelah that the suppression court did not consider his flight in its probable cause calculus and we will not consider it here. *See State v. Bell*, 334 Md. 178, 189 (1994) ("The interests of fairness are furthered by 'requir[ing] counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and

possibly correct any errors in the proceedings.'" (citing *Clayman v. Prince George's Cty.*, 266 Md. 409, 416 (1972))); *see also* Md. R. 8-131 (noting that an appellate court will not "[o]rdinarily" consider an issue "unless it appears by the record to have been raised in or decided by the trial court"). Furthermore, we also decline to exercise our discretion to affirm on this ground because we conclude that the State had probable cause to effectuate the arrest based on Abongnelah's prohibited status and the Instagram footage. *Pacheo*, 465 Md. at 512.

ii. The Instagram Video and Abongnelah's Prior Conviction Supported a Finding of Probable Cause

The trial court correctly denied Abongnelah's motion to suppress because the officers had probable cause to believe that Abongnelah was a felon in possession of a regulated firearm. Detective Machon had been monitoring Abongnelah's Instagram account since April 2019 after a Prince George's County detective had informed him that Abongnelah was posting firearms on his Instagram profile. On June 5, 2019, Detective Machon testified that he observed footage posted to Abongnelah's account that depicted an arm firing a handgun in the direction of a vehicle that appeared to be a police vehicle. In the background of the video, the Detective heard someone "saying something to the effect of ['']I'ma shoot the police[.']" Detective Machon determined that the arm in the video was Abongnelah's because he compared the tattoos visible in the video with other photographs posted to the account and to an image from the Motor Vehicle Administration. Additionally, the officers knew that Abongnelah was prohibited from possessing a firearm because he had been convicted of armed carjacking—a felony offense that prohibits an

individual from possessing a firearm if they have been convicted of a "crime of violence." *See* PS §5-133(c). Based on the elements of the offense—PS §5-133(c)—the officers possessed information that a crime had been committed. *See Wallace*, 372 Md. at 149.

While Abongnelah contends that the Instagram video could have been filmed before he became a felon, there is a "fair probability" that it had been filmed after he became a felon and was prohibited from possessing a firearm. *Pacheo*, 465 Md. at 512. Because the gun's serial number was visible in the footage, Detective Machon conducted a database search of the firearm and found that the weapon had been reported stolen during a burglary in Prince George County, Virginia in 2018. At the time of the burglary, Abongnelah was incarcerated in Prince George's County, Maryland for armed carjacking. Therefore, considering that the video depicted Abongnelah—a convicted felon who was on probation—shooting a stolen firearm, "an objectively reasonable officer would have cause to believe [Abongnelah] had committed or was committing a crime," namely, being in possession of a firearm while being a prohibited person.

Nonetheless, Abongnelah argues that the State failed to introduce any evidence demonstrating that the video occurred after he became a prohibited person. However, the State need not have introduced evidence that would have satisfied the standard of "beyond a reasonable doubt," but rather, the State merely needed "more evidence than would merely arouse suspicion." *Williams*, 188 Md. App. at 90-91. Here, the State introduced evidence that did more than "merely arouse suspicion." *Id.* While Abongnelah is correct that there was no evidence that anyone had reported shots being fired in Prince George's or Montgomery Counties in the early morning hours of June 5, 2019, this does not prevent a

finding of probable cause. "Probable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts." *Gates*, 462 U.S. at 231. In this particular factual context, the officers observed Instagram footage where a prohibited person was firing a firearm at flashing red and blue lights while saying "something to the effect of I'ma shoot at the police." Further, the officers determined that the weapon had been stolen while Abongnelah was incarcerated, and that Abongnelah was a prohibited person. Based on the totality of the circumstances, the "State has met this practical and common-sensical standard" for probable cause. *Harris*, 568 U.S. at 244.

We hold that the trial court properly denied the motion to suppress because the State had probable cause to conduct a warrantless arrest of Abongnelah. The timeframe of the stolen weapon, combined with Abongnelah shooting the weapon while being a prohibited person, all generate facts and circumstances that when viewed as a whole "would lead a reasonably cautious person to believe that a felony had been or [was] being committed by the person arrested." *Wallace*, 372 Md. at 148.

II. THE TRIAL COURT PROPERLY DENIED THE MOTION FOR JUDGMENT OF ACQUITTAL BECAUSE PS § 5-133 DOES NOT REQUIRE KNOWLEDGE OF STATUS

a. Parties' Contention

Abongnelah contends that the court erred in determining that a conviction pursuant to PS § 5-133(c) does not require the State to prove the defendant knew of his prohibited status. Abongnelah urges this Court to apply the holding from *Rehaif v. United States*, 139 S. Ct. 2191 (2019) to his case. He argues that based on the holding in *Rehaif*, the State was required to prove beyond a reasonable doubt that Abongnelah knew he was a prohibited

person at the time of the offense. Since the State did not introduce evidence that Abongnelah was aware of his prohibited status, he contends that a jury could not properly find him guilty beyond a reasonable doubt on the felon in possession charge. Therefore, his conviction must be reversed.

The State responds that the State only needs to prove that the defendant had knowledge of possession of the firearm. The State argues that the Supreme Court's decision in *Rehaif* is inapplicable because the language of the federal statute and the Maryland statute is different and, further, *Rehaif* is a case of statutory interpretation, not constitutional prohibition. So, the State argues the Supreme Court's holding is not controlling or binding on this Court.

b. Standard of Review

In reviewing the denial of a motion for judgment of acquittal based on an alleged insufficiency of evidence, this Court focuses on "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." *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Derr v. State*, 434 Md. 88, 129 (2013) (explaining that the Court follows the rationale in *Jackson* when "determining whether the State has presented sufficient evidence to sustain a conviction"); *Hobby v. State*, 436 Md. 526, 538 (2014). On review, "[w]e give due regard to the fact finder's finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses." *Moye v. State*, 369 Md. 2, 12-13 (2002).

c. Analysis

Abongnelah asks this Court to adopt the Supreme Court's interpretation of 18 U.S.C. § 922(g) in *Rehaif* because it is "the federal counterpart to the [Maryland] statute under which Mr. Abongnelah was convicted," Abongnelah believes, therefore, the Supreme Court's interpretation should control the outcome. In *Rehaif*, the Court held that the government must prove that not only did the defendant knowingly possess a firearm in violation of § 922(g) but also that the defendant knew of his status as a prohibited person under § 922(g).[3] *Id*. at 2194.

We conclude that *Rehaif* is not binding on this Court's interpretation of PS § 5-133 because *Rehaif* "resolved only a question of statutory interpretation and did not announce a rule of constitutional law." *Mata v. United States*, 969 F.3d 91, 93 (2d Cir. 2020) (noting that the Supreme Court "was simply construing a statute"); *see also In re Price*, F.3d 1045, 1049 (11th Cir. 2020); *In re Sampson*, 954 F.3d 159, 161 (3d Cir. 2020) (per curiam) (concluding *Rehaif* did not issue new constitutional law); *United States v. Class*, 930 F.3d 460, 469 (D.C. Cir. 2019) (resolving in a different context that *Rehaif* only addressed statutory interpretation).

[3] 18 U.S.C. § 922(g) states that is unlawful for any individual "who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year. . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." 18 U.S.C. § 922(g) is read in tandem with 18 U.S.C. § 924, which prohibits an individual from "knowingly" violating 18 U.S.C. § 922(g). Unlike the federal scheme, Maryland does not have an allied statute that explicitly reads "knowingly" into violations under PS §5-133.

Further, we are guided by state courts with similar firearms statutes who have also analyzed *Rehaif* and have likewise declined to apply it to their statutory scheme. *See, e.g.*, *State v. Holmes*, 478 P.3d 1256 (Az. Ct. App. 2020) (finding that Arizona was not bound by the Supreme Court's interpretation in *Rehaif* because it was an issue of statutory, not constitutional interpretation and that the Arizona statute only required that a defendant knowingly possess a firearm); *Campbell v. State*, 161 N.E.3d 371, 379 (2020) (holding that the Indiana state statute prohibiting felons from being in possession of firearms did not require "the State to prove *both* that a defendant knew he was a serious violent felon and knew he possessed a firearm"); *State v. Fikes*, 597 S.W.3d 330 (Mo. Ct. App. 2019) (concluding that the Missouri statute did not require knowledge of status—only knowledge of possession).

Relying on Maryland caselaw, we analyze whether PS §5-133(c) requires the State to prove that the defendant knew that he was in possession of a firearm and that the defendant knew he belonged to a class that was prohibited from possessing a regulated firearm. Because *Rehaif* did not announce new constitutional principles and only involved statutory interpretation, we decline to apply its reasoning. *Mata*, 969 F.3d at 93. We conclude that Maryland precedent establishes that the State only needs to prove that a defendant knows they are in possession of a firearm.

d. PS § 5-133 Does Not Require Proof That the Defendant Knows of Their Status

Maryland's appellate authority has consistently held that the required *mens rea* for crimes committed under PS § 5-133 is knowledge of possession of the prohibited item. *See*

McNeal v. State, 200 Md. App. 510, 524 (2011), *aff'd*, 426 Md. 455 (2012); *Parker v. State*, 402 Md. 372, 407 (2011); *Hogan v. State*, 240 Md. App. 470, 518 (2019); *Brice v. State*, 225 Md. App. 666, 693 (2015).

In *Brice v. State*, this Court considered whether PS § 5-133 required knowledge of the person's *disqualification status*. 225 Md. App. 666 (2015). There, Brice argued that there was insufficient evidence to sustain his "conviction for illegal possession of a regulated firearm because the State introduced no evidence that [he] had knowledge that he was disqualified from possessing a firearm." *Id.* at 693. We held that the statutory language did not require knowledge of disqualification. *Id.* at 694-95. We explained that for a conviction under PS § 5-133, the State only needs to prove "that [the] defendant knew he was in possession of a handgun." *Id.* (citing *McNeal*, 200 Md. App. at 524). Additionally, we noted that "even if knowledge of disqualification [was] required, the evidence adduced at trial support[ed] a rational inference that appellant knew that he was not permitted to possess the handgun" because the jury could have inferred that based on the two prior CDS-convictions and the fact he traded CDS for the gun, the appellant could not possess a handgun. *Id.* at 695.

Applying *Brice* to PS § 5-133(c), the State only needed to prove that Abongnelah was in possession of the regulated firearm. The *mens rea* is limited to whether Abongnelah knew he was in possession of a regulated firearm. *Brice*, 225 Md. App. at 694; *McNeal*, 200 Md. App. at 524 (finding that the *mens rea* for the statute is knowing possession of the firearm). Here, the State introduced evidence through the testimony of the detectives that the gun was located on Abongnelah's person. Further, the video from Abongnelah's

Instagram account strongly suggested that he was shooting at a police vehicle. That video was posted earlier the same day that Abongnelah was arrested. Further, in a jail phone call, Abongnelah admitted that he was apprehended with a firearm on him. Therefore, the State supplied ample evidence that Abongnelah knew he was in possession of a regulated firearm.

Abongnelah argues that we should discount *Brice* because that case only addressed whether PS § 5-133 required the defendant to have knowledge that he was disqualified from possessing a firearm. Instead, Abongnelah insists that the focus should be on whether he knew he was a felon at the time of the incident. In the Reply Brief, Abongnelah argues that the convictions should be reversed because "a defendant who does not know he is a felon does not have the guilty state of mind necessary to render criminal his otherwise lawful conduct." However, this argument is unpreserved as he only made this argument in his Reply Brief. At trial and in his opening brief, Abongnelah seemed to advance an argument that *Rehaif* required the State to prove that not only was he in possession of a firearm but that he knew he was a felon *and that* he knew felons were prohibited from possessing a firearm. This argument is based on a misreading of *Rehaif*. Recognizing his error, Abongnelah argues in his Reply Brief that the State only needed to prove that Abongnelah knew of his status as a felon. *Cf. Rehaif*, 139 S. Ct. at 2194 (noting that the State needed to prove that the defendant knew that he was in the country illegally, not that he knew it was illegal to possess a weapon while he was not in the country legally). While the Reply Brief correctly interpreted *Rehaif*, we decline to address the argument as it was not brought up in the trial court or opening briefs. And we note that Abongnelah's trial

attorney also attempted to present an ignorance-of-the-law defense by arguing that although Abongnelah knew of the conviction, "***there 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."*** Therefore, we decline to address Abongnelah's argument that we should apply knowledge of status as a requirement to the statute because that argument has not been properly presented before this Court.

Abongnelah also argues, based on the language found in *Rehaif*, that a stipulation by itself cannot satisfy the knowledge requirement. We think this contention is irrelevant because we are not applying *Rehaif*, and under Maryland law, knowledge as to the prohibited status is not an element of the statute. *See McNeal*, 200 Md. App. at 524 (explaining that "wrongful intent" was not an element of unlawful possession).

Further, even if knowledge of status was required, this Court has held that where a defendant consents to a stipulation, the defendant "relieve[s] the State of its obligation to prove that he had previously been convicted of a disqualifying crime as part of its case-in-chief." *Smith v. State*, 225 Md. App. 516, 528 (2015). Here, Abongnelah stipulated to the fact that he had previously been convicted of a crime that made him a prohibited person. Therefore, the State need not have proven that Abongnelah also knew of his status as a prohibited person because Abongnelah stipulated to the fact he had committed an offense that made him a prohibited person.

We conclude that the trial court did not err in denying the motion for a judgment of acquittal on the grounds that the statute required knowledge of prohibited status. We hold

that the statute only requires knowledge of possession of the firearm and decline to address whether the statute requires knowledge of status as that issue was unpreserved.

III. THE TRIAL COURT PROPERLY INSTRUCTED THE JURY BECAUSE KNOWLEDGE OF STATUS IS NOT A REQUIRED ELEMENT OF PS § 5-133.

a. Parties' Contentions

Abongnelah contends that the trial court erred in denying his requested jury instruction that would have aligned the Maryland pattern jury instructions with the Supreme Court's holding in *Rehaif*. Abongnelah further argues that the trial court's failure to give the requested instruction was a misstatement of the law, which prevented the jury from properly assessing a key element of the law when rendering its decision. The State responds that the court did not err because the court instructed the jury according to current Maryland law. The State argues that knowledge is not a required element under the statute and so, the court properly denied giving an instruction requiring knowledge.

b. Standard of Review

The role of the trial court is to provide the jury with instructions to "aid the jury in clearly understanding the case, to provide guidance for the jury's deliberations, and to help the jury arrive at a correct verdict." *Stabb v. State*, 423 Md. 454, 464 (2011) (citing *Chambers v. State*, 337 Md. 44, 48 (1994)); *see also* Md. R. 4-325. A trial court's refusal to issue a requested jury instruction is reviewed for abuse of discretion. *Gunning v. State*, 347 Md. 332, 351 (1997). This Court looks at three 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 the jury instruction given was a correct statement of the law.

See Carter v. State, 236 Md. App. 456, 475 (2018) (quoting *Keller v. Serio*, 437 Md. 277, 283 (2014)). We review without deference whether the jury instruction was a correct statement of the law. *Seley-Radtke v. Hosmane*, 450 Md. 468, 482 (2016).

c. Analysis

Trial courts are "strongly encouraged to use the pattern jury instructions." *Johnson v. State*, 223 Md. App. 128, 152 (2015); *Yates v. State*, 202 Md. App. 700, 723 (2011) (recommending trial judges use pattern jury instructions); *Minger v. State*, 157 Md. App. 157, 161 n.1 (2004) (noting that Maryland appellate courts "strongly favor the use of pattern jury instructions"). This Court has stated that for trial judges "the wise course of action is to give instructions in the form, where applicable, of our Maryland Pattern Jury Instructions." *Green v. State*, 127 Md. App. 758, 771 (1999).

Abongnelah relies on *Hallowell v. State*, 235 Md. App. 484, 496 (2018), to establish that the trial court erred in not giving his requested jury instruction because he claims that the jury instruction used misstated the law. *Hallowell* does not support this argument. In *Hallowell*, the appellant contended that his conviction for second-degree murder must be reversed because the trial court "erroneously instructed the jury that first-degree assault could serve as the underlying felony for second-degree felony murder." *Id*. at 496. At the time of the appeal, the Court of Appeals had altered the "rule of law" relevant to "the use of willful injury as a predicate felony for felony-murder purposes." *Id.* at 504. The Court reversed for plain error because the "law at the time of trial was settled and clearly contrary to the law at the time of the appeal," thus the appellant's substantial rights were violated. *Id.* at 506.

Unlike in *Hallowell* where the law had changed regarding the predicate offense for felony-murder, here, the interpretation of PS § 5-133 has not changed. The Supreme Court's interpretation is not binding on this Court because the Supreme Court only applied statutory interpretation principles to the federal statute. *See Mata*, 969 F.3d at 93. In Maryland, the only required knowledge for PS § 5-133 is knowledge of possession. Since we have concluded that the trial court did not err in denying the motion for acquittal on the grounds that the statute required knowledge of status, we likewise conclude that the trial court properly denied Abongnelah's requested jury instructions, which would have imposed a knowledge of status requirement. The trial court did not err as it properly instructed the jury regarding the elements of the statute.

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