

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-15860

D.C. Docket No. 6:16-cr-00003-JA-DAB-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

HAMID MOHAMED AHMED ALI REHAIF,

Defendant - Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(September 5, 2019)

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before ED CARNES, Chief Judge, WILLIAM PRYOR and DUBINA, Circuit
Judges.

PER CURIAM:

This case is before us on remand from the United States Supreme Court. In *United States v. Rehaif*, we held that a violation of 18 U.S.C. § 922(g) and § 924(a)(2) only requires that the defendant knowingly possessed a firearm, not that the defendant had knowledge of his unlawful status; therefore, we affirmed the district court’s denial of Rehaif’s requested jury instruction that the government must also prove that he knew he was in the country unlawfully in order to be convicted of the offense. *Rehaif*, 868 F.3d 907, 914 (11th Cir. 2017). The Supreme Court granted a petition for writ of certiorari and held that in a prosecution under 18 U.S.C. § 922(g) and § 924(a)(2), “the government must 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.” *Rehaif v. United States*, 588 U.S. ___, ___, 139 S. Ct. 2191, 2200 (2019). Accordingly, the Supreme Court reversed our judgment and remanded the case to us for further proceedings consistent with its opinion.

In remanding the case to us, however, the Supreme Court did not consider whether the error in the jury instructions in this case was harmless. More specifically, the Court held that because neither the district court nor our court addressed the question of harmless error, the issue should be decided on remand. Thus, based on the Supreme Court’s judgment, we remand this case to the district

court to consider in the first instance whether the district court's error in failing to instruct the jury that the government must prove that Rehaif knew he was illegally or unlawfully in the United States was harmless such that the conviction can be affirmed. We also direct the district court to conduct any other proceedings consistent with the Supreme Court's decision.

REMANDED with directions.