

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13551
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THOMAS KENNON WINDHAM,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Alabama
D.C. Docket No. 1:25-cr-00106-ECM-JTA-1

Before NEWSOM, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

Thomas Windham appeals his conviction for possessing a firearm as a felon. Under 18 U.S.C. § 922(g)(1), a person may not possess a firearm if he was convicted, in federal or state court, of a

“crime punishable by imprisonment for a term exceeding one year.” Windham argues that the government failed to prove that he knew of his felony status, because he supposedly believed, erroneously, that he “had [his] civil rights restored.” *Id.* § 921(a)(20). The civil rights restoration exception to section 922(g) allows a felon “who wishes to escape the firearms prohibitions of federal law” to “seek to have his rights restored under state law.” *United States v. Nix*, 438 F.3d 1284, 1286 (11th Cir. 2006). Because the government did not have to disprove Windham’s mistaken belief that he had his civil rights restored to convict and because Windham’s proposed evidence of his belief was insufficient to raise the defense that his rights had been restored, we affirm.

I.

On May 24, 2023, two women reported shots fired at their car, leading officers to Thomas Windham’s home. Windham admitted to firing at the women three times and showed officers the 12-gauge shotgun he used. Months later, a grand jury indicted Windham for possession of a firearm by a felon under 18 U.S.C. § 922(g)(1). In pre-trial stipulations, Windham admitted he knowingly possessed the firearm. And Windham agreed that he knew “he had previously been convicted of a felony for which the punishment was greater than one year.” Doc. 39 ¶ 2.

But Windham argued that he did not know he was a felon under section 922(g)(1), because he believed his civil rights had been restored. *See* 18 U.S.C. § 921(a)(20). He said that the Supreme

Court's decision in *Rehaif v. United States*, 588 U.S. 225 (2019), “carefully delineated that a mistake of law” rooted in a person’s belief about his civil rights status “*can* be a defense” to a charge under section 922(g)(1). To that end, Windham wanted to introduce evidence that he (a) served his full state sentence, (b) registered to vote and successfully voted, (c) appeared for jury service, where he was struck, and (d) had limited cognitive abilities such that he had difficulty understanding legal concepts.

The district court denied Windham’s attempt to introduce this evidence. It assigned Windham the burden of producing sufficient evidence that his civil rights were restored under section 921(a)(20). And it concluded that this provision set an objective standard for civil rights restoration, meaning evidence about Windham’s subjective beliefs was irrelevant.

In deciding to exclude the proffered expert testimony, however, the district court assumed that Windham *could* use his beliefs about the restoration of his civil rights to negate knowledge of his felony status under section 922(g)(1). It then concluded that Windham’s mistake was unreasonable. It noted that Windham engaged in no communication with the State of Alabama to restore his civil rights. And even though Windham offered evidence for his belief that his right to vote was restored, the district court decided that he did not meet that burden for his right to serve on a jury or hold public office.

Windham pleaded guilty to one count of possession of a firearm by a felon under section 922(g)(1). He reserved his appellate

rights to challenge the district court's conclusions about section 921(a)(20). Windham then filed a timely notice of appeal.

II.

We review evidentiary rulings for abuse of discretion. *United States v. Wilk*, 572 F.3d 1229, 1234 (11th Cir. 2009). A district court abuses its discretion when it applies the wrong legal standard or makes clearly erroneous findings of fact. *Id.* Even if we find abuse of discretion, we will not reverse “where an error had no substantial influence on the outcome, and sufficient evidence uninfected by error supports the verdict.” *United States v. Drury*, 396 F.3d 1303, 1315 (11th Cir. 2005).

We review questions of law, including issues of statutory interpretation, *de novo*. *United States v. Alabama*, 778 F.3d 926, 931 (11th Cir. 2015). Whether a conviction under state law counts as a predicate offense under section 922(g)(1) is a question of law. *United States v. Thompson*, 702 F.3d 604, 606 (11th Cir. 2012).

III.

Federal law prohibits possession of a firearm by anyone who has been convicted, in state or federal court, of a felony—“a crime punishable by imprisonment for a term exceeding one year.” 18 U.S.C. § 922(g)(1). Anyone who “knowingly violates” this felon-in-possession ban may be imprisoned for up to 15 years. *Id.* § 924(a)(8). The government must prove that the defendant “knew

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he possessed a firearm” and “knew he belonged to the relevant category of persons barred from possessing a firearm,” *i.e.*, that he was a felon under section 922(g)(1). *Rehaif*, 588 U.S. at 237.

Windham does not challenge the baseline conclusions that bring him within the scope of section 922(g)(1). First, he admits that he knowingly possessed a firearm. And second, he admits that he knows he is a felon as defined in the statute. Instead, Windham’s appeal focuses on a statutory exception that prevents felony convictions “for which a person . . . has had civil rights restored” from triggering the felon-in-possession ban. 18 U.S.C. § 921(a)(20).

Like other exceptions under section 921(a), civil rights restoration is “an affirmative defense which must be raised by the defendant.” *United States v. Laroche*, 723 F.2d 1541, 1542 (11th Cir. 1984). For a section 922(g)(1) charge that relies on a conviction from the state of Alabama, our precedent considers evidence that a defendant has in fact had his civil rights restored through the state’s certificate process. *See, e.g., Nix*, 438 F.3d at 1286. Windham seeks to recast the restoration exception as a basis for a mistake of law defense. To analyze the district court’s decision, then, we must consider both theories. We address the mistake of law defense and the affirmative defense in turn.

A.

Windham’s main argument is that his mistaken belief about his civil rights made him think he was not a felon under section

922(g)(1). In other words, he argues that he “did not have the mental state required for the crime charged.” *United States v. Shamsid-Deen*, 61 F.4th 935, 948 (11th Cir. 2023).

Windham’s main obstacle is our consistent holding that one cannot escape prosecution simply by showing a misunderstanding of law. A defendant need only “know the facts that make his conduct fit the definition of the offense, even if he does not know that those facts give rise to a crime.” *United States v. Johnson*, 981 F.3d 1171, 1189 (11th Cir. 2020) (quoting *Elonis v. United States*, 575 U.S. 723, 735 (2015)) (citation modified). So, under section 922(g)(1), a defendant must know that his conviction involved a crime punishable by more than one year of imprisonment; a defendant need not know, however, that said conviction prevents him from possessing a firearm under federal law.

Windham says that principle is inapplicable in his appeal because of *Rehaif*. There, the Supreme Court held that, in a prosecution under section 922(g), the government must prove the defendant “knew he belonged to the relevant category of persons barred from possessing a firearm.” 588 U.S. at 237 (applying 18 U.S.C. § 922(g)(5)). The defendant’s belief about his immigration status constituted a successful defense because his “mistaken impression concerning the legal effect of some collateral matter . . . negat[ed] an element of the offense.” *Id.* at 234 (quoting 1 W. LAFAVE & A. SCOTT, SUBSTANTIVE CRIMINAL LAW § 5.1(a) (1986)).

Windham argues that his belief that his civil rights were restored is a “mistaken impression concerning the legal effect of

some collateral matter,” *id.*, meaning he did not know of his inclusion in the category of unrestored felons under section 922(g)(1). Windham would place the burden on the government to prove that he *knew* that his civil rights were *not* restored under section 921(a)(20).

But Windham overreads *Rehaif* and offers a mistake of law defense where one is not available. Illustrating a valid defense under section 922(g)(1), the Court in *Rehaif* imagined a defendant who “was convicted of a prior crime but sentenced only to probation,” 588 U.S. at 233, and thus may not know of his felony status. But that kind of mistake is not before us—Windham stipulated that he “knew that he had previously been convicted of a felony for which the punishment was greater than one year.” Doc. 39 ¶ 2. We have never held that the knowledge-of-status requirement in *Rehaif* creates a litany of new grounds for mistake under section 921.

Our precedent instead clarifies that, under section 921, *Rehaif* requires proving knowledge for subsections that define elements of a relevant status, but not for those that create exceptions. A defense under an elements-defining subsection serves to “negative guilt by cancelling out the existence of some required element of the crime.” *Shamsid-Deen*, 61 F.4th 935, 948 (11th Cir. 2023) (quoting *LFAVE*, *supra*, § 1.8(c)). This category is a natural ground for a mistake defense, which is also “properly viewed as proof that the defendant did not have the mental state required for the crime.” *LFAVE*, *supra*, § 1.8(c). Our second relevant category, however,

includes the subparts of section 921 that create “substantive law defenses applicable to individual crimes” through “an exception or proviso.” *Id.* Section 921(a)(20)’s civil rights restoration exception is this kind of defense. *Shamsid-Deen*, 61 F.4th at 949. It creates one-off exceptions for individual predicate offenses; it does not, however, relate to a “criminal state of mind.” *Id.* at 948.

We distinguished between elements and exception provisions in *United States v. Johnson*, which dealt with a firearm possession charge against a domestic violence misdemeanor. 981 F.3d 1171, 1185 (11th Cir. 2020) (applying 18 U.S.C. § 922(g)(9)). The statute works as follows. A “misdemeanor crime of domestic violence,” for purposes of section 922(g)(9), is defined under section 921(a)(33). Subsection (A) of that definition contains elements—we held the government must affirmatively prove knowledge of “the facts that made that crime qualify” under those elements. *Id.* at 1182 (applying 18 U.S.C. § 921(a)(33)(A)). Subsection (B), on the other hand, voids an otherwise valid conviction, for purposes of section 922(g)(9), if a person has had their civil rights restored. 18 U.S.C. § 921(a)(33)(B)(ii). The defendant must “first bring[] forward evidence suggesting that his prior conviction is excepted” under that definition. *Johnson*, 981 F.3d at 1187.

After establishing this framework, we rejected a mistake defense identical to the one Windham raises in this appeal. Like Windham, the defendant in *Johnson* argued he did not know his previous conviction qualified as a predicate offense for his federal firearms charge. And he did so, in part, under that parallel civil

rights restoration exception. *See* 18 U.S.C. § 921(a)(33)(B)(ii). But we explained that this belief about restoration “pertain[s] to whether [the defendant] knew he personally was prohibited from possessing a firearm under federal law, not whether he knew he committed a misdemeanor crime of domestic violence.” *Johnson*, 981 F.3d at 1189. That kind of belief is “no defense” under *Rehaif*, which requires only that the defendant “knows he has a particular status and that status happens to be one prohibited by § 922(g) from possessing a firearm.” *Id.* Windham stipulated to knowledge of his relevant status—*i.e.*, that he had been convicted of a felony—and then offered evidence that he believed the law did not personally prohibit his possession. Under *Johnson*, Windham raised “nothing for the government to refute.” *Id.* at 1190.

We again declined to extend *Rehaif* in *Shamsid-Deen*, analyzing a section 921 exception for a misdemeanor domestic violence conviction that included violations of jury or counsel rights. 61 F.4th at 937 (applying 18 U.S.C. § 921(a)(33)(B)(i)). Like the civil rights restoration exception, a successful statutory defense results in an otherwise qualifying offense not counting for purposes of section 922(g). We concluded that the statutory exception, unlike the mistake at issue in *Rehaif*, “does not negate a . . . criminal state of mind.” *Id.* at 948. Instead, “it merely creates exceptions to the default rule that an offense meeting the [statutory] elements qualifies as a [predicate offense].” *Id.* And unless a mistake of law negates a defendant’s mental state, ignorance of the law is no excuse. *Rehaif*, 588 U.S. at 234 (citing *Cheek v. United States*, 498 U.S. 192 (1991)).

Section 921(a)(20) is structurally identical to the exceptions analyzed in *Shamsid-Deen* and *Johnson*. When a defendant meets its requirements, section 921(a)(20) excepts an otherwise valid predicate from activating the firearms prohibitions of federal law. As a result, the restoration exception under section 921(a)(20) is unrelated to *Rehaif*'s knowledge-of-status requirement. Bottom line, nothing in *Rehaif* suggests that a mistake about section 921(a)(20)'s civil rights restoration exception can support a mistake of law defense under section 922(g)(1).

B.

We now turn to our traditional analysis of civil rights restoration under section 921(a)(20). Windham has the burden of producing sufficient evidence to suggest that his civil rights were restored to raise the exception as a defense. But he did not meet that burden.

The burden of producing evidence of civil rights restoration lies with a defendant. A defendant “ordinarily will be much better able to raise the issue of . . . whether civil rights have been restored.” *United States v. Jackson*, 57 F.3d 1012, 1016 (11th Cir. 1995) (applying 18 U.S.C. § 921(a)(20)). Although the burden to prove each section 922(g)(1) element remains with the government, the defendant “has the burden of going forward with sufficient evidence to raise the exception as an issue.” *Id.* (quoting *Laroche*, 723 F.2d at 1543). After *Rehaif*, we reiterated that the burden of production under a parallel statutory exception remains with the defendant. *See Johnson*, 981 F.3d at 1186.

Windham does not have evidence that the State of Alabama has restored his rights. Instead, Windham said he was led to believe Alabama had, without his acting, restored his rights because the State allowed him to vote and called him for jury duty. But Windham has not established that he lost those rights to begin with. Alabama law takes away a felon’s voting and jury service rights only if the crime of conviction involved “moral turpitude.” ALA. CONST. art. VIII, § 177 (voting rights); ALA. CODE § 12-16-60 (jury service). And it is not clear that Windham was ever convicted of such a crime. *See, e.g.*, ALA. CODE § 17-3-30.1 (exclusive list of crimes of “moral turpitude” for purposes of voting disqualification).

In any event, Windham is mistaken that he introduced sufficient evidence to raise a defense under section 921(a)(20). Windham’s argument mainly relies on *Thompson*, where we rejected a civil rights restoration defense because the state parole board restored the defendant’s voting rights, but not his right to serve on a jury or hold public office. 702 F.3d at 607. Unlike the defendant in *Thompson*, who applied for and received a certificate from the state of Alabama restoring his voting rights, *id.* at 605–06, Windham has nothing of the sort.

The absence of any evidence that Windham sought, or that Alabama granted, civil rights restoration is fatal to his argument. The civil rights restoration exception is “governed by the law of the convicting jurisdiction.” *Beecham v. United States*, 511 U.S. 368, 371 (1994). Here, that’s Alabama, which “does not provide for an auto-

matic restoration of rights upon a felon’s release from imprisonment.” *Nix*, 438 F.3d at 1287. Instead, released felons may petition the Alabama Board of Pardons and Paroles, which has the authority to determine which civil or political rights to restore. *Id.* (citing ALA. CODE § 15-22-36). Lest there be any confusion, Alabama law underscores that any “restoration of civil and political rights granted, ordered or made” outside the certificate process is “null and void and shall have no force or effect.” ALA. CODE § 15-22-40.

For a predicate conviction from a state like Alabama, we have never condoned a section 921(a)(20) defense without evidence that the defendant was awarded a certificate restoring the defendant’s civil rights. *See, e.g., United States v. Swanson*, 947 F.2d 914, 915 (11th Cir. 1991) (certificate from Alabama’s parole board); *James v. United States*, 19 F.3d 1, 2 (11th Cir. 1994) (same); *United States v. Fowler*, 198 F.3d 808, 811 (11th Cir. 1999) (same). The district court therefore correctly held that Windham’s evidence was not sufficient to raise the defense of the civil rights restoration exception under section 921(a)(20).

IV.

AFFIRMED.