Circuit Court for Anne Arundel County
Case No. C-02-CR-19-001783

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 0956

September Term, 2020

WILLIAM NATHANIEL JONES

v.

STATE OF MARYLAND

Graeff,
Reed,
Wright,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: July 12, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This case stems from a traffic stop of a vehicle, operated by William Jones ("Appellant"), with Kelcy Mangus ("Passenger") in the front passenger's seat. Appellant was thereafter arrested for driving under the influence, and police proceeded to conduct a search of the vehicle incident to Appellant's arrest. During the search, police found a handbag belonging to Passenger, which contained a handgun and Appellant's wallet. Appellant was indicted in the Circuit Court for Anne Arundel County on fifteen counts, including violations of the Transportation Article and several counts for unlawful possession of a firearm and ammunition. At trial, Appellant argued that he did not know the handgun was in the vehicle. During closing arguments, as the State began to argue a legal standard concerning a driver's knowledge of contraband in a vehicle, Appellant objected on the grounds that "[i]f the State wanted a jury instruction on the law [the State] is about to cite, [the State] should have asked for it and had the Court give it. I would object to the State arguing the law to the jury that the Court has not instructed them on." The circuit court denied Appellant's objection. The court stated that "[e]ither party is certainly able to argue the law that they think is applicable, as long as it is good law." Following the court's ruling, the State continued its closing and incorrectly asserted that under Maryland law a driver is presumed to know of any contraband within the vehicle. Appellant did not raise an objection to this misstatement of law. Subsequently, during deliberations, the jury returned a note asking for "a written description of Maryland law that presumes that a driver has knowledge of contraband in his/her vehicle." After researching the issue, the circuit court responded with the appropriate legal standard at the bench with counsel. However, despite Appellant's request, the circuit court declined to tell

the jury that there is not a "presumption," but rather, a permitted "inference" of knowledge under Maryland law. This response was based on the fact that the Court considered both of their proposed responses to be inaccurate statements of the law. Appellant was ultimately convicted of, inter alia, knowingly transporting a handgun in a vehicle. Appellant timely filed his appeal.

In bringing his appeal, Appellant presents two (2) questions for appellate review:

I. Did the trial court err in allowing the prosecutor to argue to the jury during her closing arguments that the driver of a vehicle is "presumed" to have knowledge of any contraband in the vehicle?

II. Did the trial court abuse its discretion in its response to a note from the jury asking, "Can we get a written description of Maryland law that presumes that a driver has knowledge of contraband in his/her vehicle?"

For the reasons expressed herein, we affirm the decision of the circuit court.

FACTUAL & PROCEDURAL BACKGROUND

This case stems from a traffic stop of a vehicle Appellant was driving on July 8, 2019. At the time of the traffic stop, Appellant was operating the vehicle and Passenger was in the front passenger's seat. The vehicle was pulled over after police witnessed several traffic infractions. Passenger presented a valid driver's license, but Appellant told police that he did not have his driver's license with him. Believing that Appellant may have been driving while intoxicated, police attempted to perform a breathalyzer test, and then conducted a field sobriety test. Appellant was thereafter arrested for driving under the influence, and police proceeded to search the vehicle incident to Appellant's arrest. The vehicle was not registered in Appellant's name.

During the vehicle search, police found a "leopard print handbag" under the passenger seat. Inside the handbag, police found, among other items, a handgun and Appellant's wallet – which contained Appellant's identification and debit cards. The handbag was determined to belong to Passenger. Following the arrest and search, Appellant was indicted in the Circuit Court for Anne Arundel County on fifteen counts, including violations of the Transportation Article and several counts for unlawful possession of a firearm and ammunition.

At trial, which commenced February 4, 2020, Appellant argued that he did not know that Passenger's handbag contained a gun. Accordingly, Appellant contended that he could not be convicted for possession of the firearm (because possession requires *knowledge* of item possessed) or for *knowingly* transporting the firearm in a vehicle. Thus, Appellant's knowledge of the handgun was a central issue in Appellant's trial.

During closing arguments, after jury instructions had already been given, the State argued that under Maryland law a driver is presumed to know of any contraband within the vehicle. Appellant's counsel objected on the grounds that the State was precluded from arguing for a legal standard which was not addressed in the jury instructions. The Circuit Court overruled the objection, stating that either party may argue a relevant legal standard as long as it is good law. Appellant did not argue any additional grounds for objection. Subsequently, Appellant's counsel addressed the supposed presumption in their closing argument by telling jurors that it was a rebuttable presumption which they were not required to find applicable.

During deliberations, the jury returned a note which asked: "[c]an we get a written description of Maryland law that presumes that a driver has knowledge of contraband in his/her vehicle?" Appellant's counsel requested that the court's answer explain that the inference is permitted, not required. Moreover, Appellant's counsel asked the court to begin its answer by stating that there is no presumption. Ultimately, the circuit court responded in writing to the jury note as follows:

> The status of a person in a vehicle who is the driver, whether that person actually owns, is merely driving or is the lessee of the vehicle, permits, but does not require, an inference of knowledge by the driver of contraband found in that vehicle. That inference, if found, must be based upon the direct and circumstantial evidence presented in the case.

The jury did not ask any follow up questions. Thereafter, the jury returned its verdict. Appellant was convicted of driving or attempting to drive while impaired by alcohol; driving with a suspended license; possession of a regulated firearm after having been convicted of a disqualifying crime; transporting a loaded handgun in a vehicle; carrying a loaded handgun on or about one's person; wearing, carrying and knowingly transporting a handgun in a vehicle; carrying a handgun on or about one's person; and possessing ammunition after having been prohibited from possessing a regulated firearm. Appellant timely sought the present appeal.

DISCUSSION

I. Arguing Law in Closing Argument

During the State's closing argument, the following ensued:

> PROSECUTOR: We also know that during that search of the vehicle a handgun, a loaded handgun, was recovered from underneath the passenger

seat inside a leopard print makeup bag, as it was described, with the [Appellant]'s wallet.

. . . .

Importantly for this case, more than one person can have possession of an item. The crimes charged here are crimes of possession, not crimes of ownership. So whether the gun belonged to the [Appellant] or [Passenger], that doesn't really matter. What matters is who possessed that gun. More than one person can possess an item.

. . . .

The Defense is going to be arguing that [Appellant] does not have any knowledge of this gun and that knowledge is a key element in these offenses, and the Defense is correct in that knowledge is an element. You have to know that you are possessing this weapon. **But I want to point out that under Maryland law a driver of a vehicle is presumed** –

[APPELLANT COUNSEL]: Objection.

COURT: Approach.

COURT: Basis?

[APPELLANT COUNSEL]: I think if the State wanted a jury instruction on the law [the State] is about to cite[, the State] should have asked for it and had [t]he Court give it. **I would object to the State arguing the law to the jury that the Court has not instructed them on.**

COURT: Okay. **Either party is certainly able to argue the law that they think is applicable*, as long as it is good law*.** That is --- argument. So I overrule the objection.

COURT: Overruled.

PROSECUTOR: Under Maryland law, a driver of a vehicle is **presumed** to have knowledge of items, specifically contraband, that is in that vehicle. The driver of the vehicle, not the owner of the vehicle. Not the renter of the vehicle. The driver of the vehicle. It doesn't have to be your car. You are presumed to know what is in a vehicle that you are driving.

> So [Appellant], as the driver of that vehicle, is presumed to have knowledge that that gun is in that vehicle.
>
> . . . .
>
> So it is uncontroverted that [Appellant] was driving this vehicle on the road through the State of Maryland, and it is uncontroverted that this handgun was loaded and in that vehicle. That comes back to that knowledge element that Defense is arguing. There was none. But as I told you, the driver of the vehicle is presumed to have knowledge of the items that are in that vehicle.

(emphasis added).

A. Parties' Contentions

Appellant argues that the prosecutor misstated the law during the State's closing remarks when the prosecutor stated that a driver is "presumed" to know about contraband within the vehicle they are operating. However, the State argues that Appellant did not properly preserve his claim – that the prosecutor misstated the law – for appellate review. Rather, the State argues that Appellant only objected to "the State arguing [] law . . . [which] the Court ha[d] not instructed [the jury] on." In support, the State notes that the circuit court specifically overruled Appellant's objection after stating that "[e]ither party is certainly able to argue the law that they think is applicable, as long as it is good law." The State argues that Appellant's subsequent failure to object on the grounds that the prosecutor misstated the law, even after the circuit court's ostensible "invitation" for Appellant to do so, effectively waived Appellant's claim of error on that ground. In response, Appellant argues that, "implicit in the Circuit Court's ruling on the objection is a determination that the prosecutor's statement was good law."

Appellant separately argues that in allowing the prosecutor to recite a legal

statement to the jury the circuit court improperly permitted the prosecutor to "sidestep the instruction request process described in Maryland Rule 4-325(b)" and "usurp the trial court's law-judging role and place it with the jury." The State does not address this argument directly in its brief, but instead focuses on Appellant's failure to specifically object on the basis that the prosecutor's statement of law was incorrect.

B. Analysis

Appellant objected to the State arguing law which the circuit court had not instructed the jury on; Appellant did not object to the prosecutor's misstatement of the law. Ordinarily, an appellate court will not consider any point or question "unless it plainly appears by the record to have been raised in or decided by the trial court." *Robinson v. State*, 404 Md. 208, 216, 946 A.2d 456, 461 (2008) (*quoting* Md. Rule 8-131(a)). The rule serves two primary purposes: "(a) to require 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, and (b) to prevent the trial of cases in a piecemeal fashion, thus accelerating the termination of litigation." *Fitzgerald v. State*, 384 Md. 484, 505 (2004) (*quoting County Council v. Offen*, 334 Md. 499, 509 (1994)).

When asked for the basis of his objection to the prosecutor's closing argument, Appellant stated that he was objecting on the grounds that the prosecutor was arguing law which was not covered by the jury instructions. The circuit court responded that the parties could argue legal standards as long as they were "good law." The State contends that when the prosecutor subsequently presented its legal argument to the jury, Appellant did not object on the grounds that the prosecutor was misstating the law. Whether Appellant

specifically objected to the subsequent misstatement of law is immaterial, however, because Appellant had already posed an objection to the prosecutor arguing law to the jury without an instruction. Appellant's objection was warranted; the circuit court erred in overruling the objection and permitting the State to argue law to the jury.

In *Newman v. State*, 65 Md. App. 85 (1986) the Supreme Court determined that counsel was not permitted to explain the law during closing argument, even where the proposed comments were consistent with the trial court's binding instructions. This would be a usurpation of the courts function. "Instructing a jury on the undisputed law of the crime is improper whether it occurs prior to the introduction of any evidence or subsequent to the trial court's binding instructions." *Miles v. State*, 88 Md. App. 360, 388, citing *Newman* and *White v. State*, 66 Md. App. 100 (1986).

The present case illustrates the importance of the jury instruction procedure and the reason for the prohibition against the introduction of unvetted legal argument in closing argument. Indeed, the record indicates that the circuit court began to research the issue only after closing arguments.[1] The court's research revealed that the statement of law the prosecutor argued to the jury was not correct. If an instruction had been requested and given it would not have been what the State offered to the jury, because it was not a correct statement of the law. Even if it had been correct, it was improper for the State to explain

[1] After receiving a jury note asking for a written description of the Maryland law that presumes that a driver has knowledge of contraband in his/her vehicle, the circuit court stated: "[The court's] *research* has indicated that both sides misstated the law in their argument on this point[,] that the law does not create a presumption." *See infra* at 10 (emphasis added).

law during a closing argument.

Although we conclude that the trial court erred in overruling the appellant's objection, we must consider whether this constitutes reversible error. When determining whether overruling defense objections to improper statements during closing argument constitutes reversible or harmless error, this court considers several factors, including "the severity of the remarks, the measures taken to cure any potential prejudice, and the weight of the evidence against the accused." *Lawson v. State*, 389 Md. 570, 592 (2005) (quoting *Spain v. State*, 386 Md. 145, 158-59 (2005)). The movant must prove that there was bad faith on behalf of the prosecutor or substantial prejudice. *Miles v. State*, 88 Md. App. 360, 388 (1991). Because Appellant has not alleged bad faith on the part of the prosecutor, the analysis is confined to substantial prejudice. *Id.* "Unless it appears that the jury was actually misled or influenced to the prejudice of the accused by the remarks of the State's Attorney, reversal of the conviction on this ground will not be justified." *Id*. at 388. To be sure the Appellant did not argue substantial prejudice or any prejudice in the briefs. As more fully discussed in Section II, in this case any substantial prejudice or abuse of discretion was erased by a subsequent statement of the correct law to the jury before they completed their deliberations. Also by seeking the advice of the judge, the jury indicated its unwillingness to use the law until it was certain it possessed a correct and clear statement of the law.

Furthermore, any error or abuse of discretion that was made by the court would constitute harmless error. An error is harmless when this court can find, beyond a reasonable doubt, that the error did not influence the verdict. *Dorsey v. State*, 276 Md. 638,

659 (1976).

II. The Court Response to Jury Note Removes Error

The fact is that ultimately the jury was not misled as to the law of the case before it rendered its verdict. The new instruction given was neither ambiguous nor confusing. Even though the first statement of law by the Assistant State's Attorney was incorrect, the jury was not content to rely upon the statement of law without clarification During deliberations, the jury returned a note which asked: "[c]an we get a written description of Maryland law that presumes that a driver has knowledge of contraband in his/her vehicle?" Upon receiving the jury note, the following exchange occurred outside of the jury hearing:

> COURT: . . . . My research has indicated that both sides misstated the law in their argument on this point[,] that the law does not create a presumption. It merely creates an inference. The Court of Appeals stated, in *State vs. Smith*, at 374 Md 528, a 2003 case, that point. In sum, the Court of Appeals said the status of a person in a vehicle who is the driver, whether the person actually owns, is merely driving or is the lessee of the vehicle, permits an inference of knowledge by that driver of contraband found in that vehicle. That inference must be based upon the direct and circumstantial evidence presented in the case. So it is an inference that can be rationally drawn by the evidence. It is neither a presumption nor a rebuttal presumption, according to the Court of Appeals. I think, under the circumstances, I am obligated to give that language as a curative instruction. It still basically leaves it up to the jury, based upon the evidence, to make that determination.
>
> PROSECUTOR: Well, Your Honor, the language that I was relying on is that specific statement from *State vs. Smith*, which under 4[-]203 in the footnotes is listed under presumptions and burdens of proof. So –
>
> COURT: But it is probably not a presumption. It probably has more burden of proof because it makes [a] reference that it has to be supported by the direct or circumstantial evidence.
>
> [APPELLANT COUNSEL]: Your Honor, my recollection was that it -- that the word rebuttable was in there, that there was some language that -- what I

don't want the jury to think is that an inference is mandatory or somehow mandates that they find –

COURT: That is why I am going to use the word permits, permits an inference. Must be based upon the direct and circumstantial evidence presented. I think that is a fair and proper summary of the status of the law on that point. I don't know that it particularly changes either of your positions, but I feel constrained to correct what now appears to be a misstatement of the law. Any other suggestions?

[APPELLANT COUNSEL]: I think, at a minimum, that it should be permits but does not require. And if the Court would allow me, I would like to briefly just -- again, when I made my objection at the bench, I really thought that that type of instruction on the law should have come from the Court, and I was, I guess, surprised by the fact that the Counsel was arguing law and that the Court did not give the jury -- so my recollection was that there was certainly language in there. I just -- we have to make it very clear that this does not require the jury to find it, and I don't think saying permits is going to do the trick. I think, at a minimum, it would have to say permits but does not require. But I would like an opportunity to –

COURT: I think that is a fair statement of the law, that it permits but does not require an inference. The inference must be based -- if found, must be based upon the direct and circumstantial evidence presented at trial.

[APPELLANT COUNSEL]: Would you be willing to tell the jury that there is no presumption, that it is an inference instead of a presumption, and –

COURT: I am just going to tell them I need to clarify the law on this point.

PROSECUTOR: And, Your Honor, I believe, if you are going to be sending something back that is the specific statement of the law, it should track the language that is actually listed in *State vs. Smith* and neither add nor delete any particular messages. So –

COURT: Well, I am going to give the following statement, and I will note any exceptions to it: The status of a person in a vehicle who is the driver, whether that person actually owns, is merely driving or is a lessee of the vehicle, permits but does not require an inference of knowledge by that driver of contraband found in the vehicle. That inference, if found, must be based upon the direct and circumstantial evidence presented in the case. It is not my intention to send that back in writing. It is to bring the -- although I could. I could simply write that on the note, if you both prefer.

> [APPELLANT COUNSEL]: I am sorry? Say that again.
>
> COURT: I am thinking the -- excuse me. I am thinking out loud, which is never a good idea for a judge. I think what is best is for me to send this back in written form on the note, rather than recall the jury. That way they will have it to refer to equally with the other written instructions, if need be, as they move forward. So that would be my intention.
>
> [APPELLANT COUNSEL]: Your Honor, please know I do -- I know the Court may not give this, but I would ask the Court, as the first sentence, to say that there is no presumption and then follow what the Court just stated.
>
> COURT: All right. I am going to give the instruction as stated, but I understand and I will note your exception.

Thereafter, the circuit court responded, in writing, to the jury note as follows:

> The status of a person in a vehicle who is the driver, whether that person actually owns, is merely driving or is the lessee of the vehicle, permits, but does not require, an inference of knowledge by the driver of contraband found in that vehicle. That inference, if found, must be based upon the direct and circumstantial evidence presented in the case.

A. Parties' Contentions

Appellant argues that the circuit court abused its discretion by responding to the jury's question without unequivocally stating that there is no "presumption" as argued by the State. Additionally, Appellant notes that the circuit court's response to the jury question did not explain the difference between an inference and a presumption. Accordingly, Appellant argues that the circuit court's "ambiguous response to the jury's question about the prosecutor's misstatement of the law was clearly insufficient to cure the prejudice caused by the prosecutor's misstatement." In response, the State argues that circuit court acted within its discretion by responding to the jury's question with a correct statement of the law. The State contends that the circuit court was not "obliged to address the

prosecutor's reference to a 'presumption.'" Instead, the State asserts that the circuit court's response properly ensured that "the jury knew that the law allowed, but did not require, the jury to infer that [Appellant] knew of the handgun based on [Appellant's] status as the car's driver."

B. Standard of Review

We review a trial court's decision to give a particular jury instruction, including whether to supplement a jury instruction, under an abuse of discretion standard. *Appraicio v. State*, 431 Md. 42, 51 (2013) (citation omitted). "Where the decision or order of the trial court is a matter of discretion it will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Atkins v. State*, 421 Md. 434, 447 (2011) (*quoting Gunning v. State*, 347 Md. 332, 351-52 (1997)). In *Appraicio*, the Supreme Court explained the proper considerations when a trial court provides supplemental jury instructions:

> "The main purpose of a jury instruction is 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." *Chambers v. State*, 337 Md. 44, 48 (1994). Maryland Rule 4–325(a) states that "[t]he court shall give instructions to the jury at the conclusion of all the evidence and before closing arguments and may supplement them at a later time when appropriate." Upon a party's request, the court shall "instruct the jury as to the applicable law and the extent to which the instructions are binding." Md. Rule 4–325(c). Supplemental instructions can include an instruction given in response to a jury question. When the jury asks such a question, "courts must respond with a clarifying instruction when presented with a question involving an issue central to the case." *Cruz v. State*, 407 Md. 202, 211 (2009). Trial courts must avoid giving answers that are "ambiguous, misleading, or confusing." *Battle v. State*, 287 Md. 675, 685 (1980) (*quoting Midgett v. State*, 216 Md. 26, 41 (1958)).

431 Md. at 51.

C. Analysis

Appellant contends that the circuit court's response to the jury's question was ambiguous and confusing. We disagree. Specifically, Appellant argues that the circuit court should have "directly answer[ed] the jury's question and instruct[ed] the jury that there was no such presumption." Appellant further asserts that the circuit court erred by: not informing the jury that the court was providing the definition of an inference, rather than a presumption; not explaining to the jury the difference between a presumption and an inference; and not instructing the jury to disregard the prosecutor's misstatement of the law. We disagree.

In response to the jury's question, the circuit court responded with a written supplemental instruction which closely tracked the language of *State vs. Smith*, 374 Md. 528 (2003). In *Smith*, the Supreme Court held that

> the status of a person in a vehicle who is the driver, whether that person actually owns, is merely driving or is the lessee of the vehicle, permits an inference, by a fact-finder, of knowledge, by that person, of contraband found in that vehicle.

374 Md. at 550. In the present case, the circuit court responded to the jury's question as follows:

> The status of a person in a vehicle who is the driver, whether that person actually owns, is merely driving or is the lessee of the vehicle, permits, *but does not require*, an inference of knowledge by the driver of contraband found in that vehicle. That inference, *if found*, must be based upon the direct and circumstantial evidence presented in the case.

(emphasis added). As emphasized, the circuit court added clarifying language at the request of Appellant's trial counsel.[2] The circuit court agreed to add language to explain that a person's status as a driver permits, "but does not require," an inference of knowledge. The circuit court also added the clause "if found," to further indicate that the inference was not mandatory. The only request the circuit court did not oblige was Appellant's request to tell the jury that there is no presumption.[3] Although Appellant now argues that the circuit court erred in not instructing the jury to disregard the prosecutor's misstatement of the law, there is no record of Appellant requesting that instruction.

We do not view the distinction between "presumption" and "inference" to be of critical importance under the circumstances presented here. Whatever the term, the crucial job of the circuit court in giving jury instructions is "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." *Appraicio*, 431 Md. at 51. The question from the jury did not ask whether a presumption exists, the question sought a written description of the "presumption"

[2] In the first portion of objections to the circuit court's response, Appellant's trial counsel stated:

> I think, at a minimum, that it should be permits but does not require. . . . I just -- we have to make it very clear that this does not require the jury to find it, and I don't think saying permits is going to do the trick. I think, at a minimum, it would have to say permits but does not require.

[3] Appellant's trial counsel made two similar requests asking the circuit court to instruct that there is no presumption. First, Appellant's trial counsel asked "[w]ould [the court] be willing to tell the jury that there is no presumption, that it is an inference instead of a presumption[.]" Shortly thereafter, Appellant's trial counsel asked the court, "as [to] the first sentence, to say that there is no presumption and then follow [with the response] the Court just stated."

claimed by the State. While the circuit court *could* have explained that there is an inference, not a presumption, and attempted to parse the legal distinction between a presumption and an inference, such a response could have risked confusing the jury. The circuit court did not abuse its discretion by declining to explain the legal distinction between a presumption and an inference. Of greater import was the jury's understanding of the proper legal application of the inference/presumption, which the circuit court properly explained in its response.

Appellant primarily cites two cases in support of his contention that the circuit court erred in response to the jury question: *Battle v. State*, 287 Md. 675 (1980); and *Bollenbach v. United States*, 326 U.S. 607 (1946). In *Battle*, the Supreme Court held that the trial court abused its discretion in responding to a jury note which asked: "When a possible consensual sexual relationship becomes non-consensual for some reason, during the course of the action[,] can the act then be considered rape?" 287 Md. at 678. The circuit court responded that it was possible for a situation to begin as consensual but become non-consensual. The circuit court continued to explain that "[w]ith respect to the presence or absence of the element of consent, it is true, of course, that however reluctantly given, *consent to the act at any time prior to penetration* deprives the subsequent intercourse of its criminal character." *Id*. at 679 (emphasis added). The Supreme Court, in holding that the response was an abuse of discretion, noted that the response was ambiguous because rape may occur where consent exists prior to intercourse, but is withdrawn prior to penetration. *Id*. at 684. The Supreme Court reasoned that the circuit court's instruction – that *consent to the act at any time prior to penetration* deprives the subsequent intercourse

of its criminal character – was confusing. The Supreme Court concluded that "the combination of the ambiguous question, ambiguously clarified by the trial judge . . . create[ed] sufficient confusion . . . to warrant reversal and a remand for a new trial." *Id*. at 685.

This case is not *Battle*. In *Battle*, the jury propounded an ambiguous question, which the circuit court confounded by responding with an inaccurate statement of law. Here, the jury propounded a simple, clear question, and the circuit court responded with an accurate statement of the law requested by the jury.

In *Bollenbach*, the defendant was charged and convicted of conspiracy to transport stolen securities in interstate commerce. 326 U.S. 607. Following a "long wrangle in the jury room," the jury returned a note asking: "[i]f the defendant were aware that bonds which he aided in disposing of were stolen does that knowledge make him guilty on the [conspiracy] count?" *Id*. at 609. The trial judge responded as follows:

> Of course if it occurred afterwards it would not make him guilty, but in that connection I say to you that if the possession was shortly after the bonds were stolen, after the theft, it is sufficient to justify the conclusion by you jurors of knowledge by the possessor that the property was stolen. And, just a moment—I further charge you that possession of stolen property in another State than that in which it was stolen shortly after the theft raises a presumption that the possessor was the thief and transported stolen property in interstate commerce, but that such presumption is subject to explanation and must be considered with all the testimony in the case.

Id. The jury returned a guilty verdict on the conspiracy count five minutes later. *Id*. at 610. On appeal, the State asserted that the trial judge's "presumption" instruction was merely a "cursory, last-minute, instruction on the question of the necessity of knowledge as to the

stolen character of the notes—and nothing more." *Id.* at 611. The Supreme Court rejected the State's argument, stating that

> [t]he jury's questions, and particularly the last written inquiry in reply to which the untenable 'presumption' was given, clearly indicated that the jurors were confused concerning the relation of knowingly disposing of stolen securities after their interstate journey had ended to the charge of conspiring to transport such securities. Discharge of the jury's responsibility for drawing appropriate conclusions from the testimony depended on discharge of the judge's responsibility to give the jury the required guidance by a lucid statement of the relevant legal criteria. When a jury makes explicit its difficulties a trial judge should clear them away with concrete accuracy. In any event, therefore, the trial judge had no business to be 'quite cursory' in the circumstances in which the jury here asked for supplemental instruction. But he was not even 'cursorily' accurate. He was simply wrong.

Id. at 612-13. Thus, the Supreme Court held that the trial judge erred in giving the erroneous last-minute jury instruction.

The present case does not involve an erroneous last-minute instruction like the one in *Bollenbach*. Here, the circuit court responded to the jury question with an accurate statement of law. While the erroneous "presumption" instruction in *Bollenbach* bears some similarity to the erroneous presumption argument pursued by the State in this case, here the circuit court provided the proper legal standard in its response to the jury. Moreover, the circuit court's response clearly indicated that the inference of knowledge was not mandatory and must be supported by other evidence (i.e., not a presumption). The court did not want to potentially prejudice the jury or effect the credibility of counsel after they provided an erroneous statement of law to the jury.

The circuit court was not required, as Appellant argues, to respond by expressly stating "there is no presumption," so long as its response clearly explained how the jurors

were to apply the proper standard. Here, the circuit court's response was an appropriate means of conveying the proper "inference standard" to jurors. The fact that the jury may not have known the legal difference between a presumption and an inference is of little consequence because the jury was provided with an appropriate explanation of the applicable standard governing the case. Thus, the jury knew that they were permitted, but not required, to infer Appellant's knowledge of the handgun based on the evidence of the case. We hold that the circuit court did not err or abuse its discretion in its response to the jury note.

CONCLUSION

We hold that the although the circuit court erred in overruling Appellant's objection and in permitting the prosecutor to recite law in closing argument for which no jury instruction was requested or provided, the circuit court's subsequent response to the jury's note remedied this error. We hold that the circuit court did not err in providing its response to the jury's note. Indeed, we further hold that in light of the circuit court's response to the jury's note, the court's error in overruling Appellant's objection and in permitting the prosecutor's misstatement of law to the jury was rendered harmless.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.