



IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE RICHARDS,	)	
	)	
Defendant-Below,	)	
Appellant	)	
	)	
v.	)	No. 152, 2026
	)	
STATE OF DELAWARE	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

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NATURE OF THE PROCEEDINGS

Andre Richards was the subject of a drug investigation, as a result of which police obtained a search warrant and searched Richards' home. Police discovered cocaine, buprenorphine and fentanyl, and also found a loaded firearm in the dresser next to Richards' bed, and additional ammunition in two closets. After an initial indictment, proceedings, and a denial of a motion to suppress, Richards was charged on May 12, 2025 by re-indictment with felony charges of Drug Dealing (cocaine), Possession of a Firearm During the Commission of a Felony ("PFDCF"), Possession of a Firearm by a Person Prohibited ("PFBPP"), Possession of Ammunition by a Person Prohibited ("PABPP"), and Receiving a Stolen Firearm ("RSF").¹ Richards was also charged with misdemeanor counts of Illegal Possession of a Controlled (buprenorphine and fentanyl).²

Richards filed a Motion to Sever the PFBPP and PABPP charges from the rest of the case.³ The State did not oppose the motion, and it was granted.⁴

Following trial, the jury acquitted Richards of the Drug Dealing, PFDCF and possession of fentanyl charges, but as to the Drug Dealing charge, convicted

¹ A10-13.

² *Id.*

³ A14-19.

⁴ A5, D.I. 27

Richards of the lesser included offense of misdemeanor drug possession.⁵ The jury found Richards guilty of RSF and of the one of the two misdemeanor drug possession charges (possession of buprenorphine).⁶

Immediately thereafter, the jury was presented evidence relevant to the “person prohibited” charges.⁷ At the conclusion of that evidence, Richards orally moved for a mistrial based on purported “cumulative errors” in the “B” trial, “starting with the reference to or the reading of the enhanced penalties jury instruction prior to presentation of any evidence with respect to the B trial, and then with respect to the reading and exposure of the jury to a special voir dire or special interrogatories in advance of having rendered a verdict as to the counts in the B trial for person prohibited on the firearm and ammunition respectively.”⁸ The trial judge denied the motion.⁹ The jury then found Richards guilty of PFBPP and PABPP.¹⁰

On July 16, 2025, Richards filed a Motion for Judgment of Acquittal on the RSF charge, arguing that the evidence at trial was insufficient to prove beyond a reasonable doubt that Richards knew that the firearm found in his dresser drawer

⁵ A268-69.

⁶ *Id.*

⁷ A281-88.

⁸ A296-97.

⁹ A297.

¹⁰ A297-98.

was stolen.¹¹ Richards’ motion did not address jury selection (Argument I of this appeal), nor did he assert the “prosecutorial misconduct” claim he advances as Argument III of this appeal. Following the State’s response¹², the court denied the motion.¹³

¹¹ A302-310.

¹² A311-18.

¹³ OB Ex. A.

SUMMARY OF ARGUMENT

1. Denied. Because this claim was not raised below, Richards must demonstrate “plain error.” He cannot meet this burden. The trial judge’s statements to jurors regarding *voir dire* responses were proper and appropriate. The trial judge read the *voir dire* questions (which are not at issue on this appeal) to the jury and the bailiff collected responses. The court disqualified all jurors who answered “yes” to any question – even if individual examination of the potential juror might have established that there was no actual bias (for example, a casual acquaintance with a witness). There is no claim that the procedure had potential to allow biased jurors to serve, or that any juror who served was biased. Accordingly, Richards has not demonstrated “plain error” and his *voir dire* claims must fail.

2. Admitted in part. Richards asserts that there was insufficient evidence for a jury to find Richards guilty of RSF. The State agrees with Richards – in the specific circumstances of this case, the mere facts that (i) Richards did not identify the firearm to police prior to the search and (ii) he later speculated to police as to how the firearm came to be in his dresser drawer did not provide sufficient evidence from which a rational juror could find that Richards knew or believed that the firearm was stolen. The State **does not** agree that Richards’ PFBPP and PABPP convictions should be reversed, as the jury properly found that Richards was in possession of the

firearm and ammunition and that he was a person prohibited. The fact that there was not sufficient evidence for the jury to conclude that Richards knew or believed that the firearm was stolen did not affect the PFBPP and PABPP convictions.

3. Moot, or in the alternative, denied. Richards contends the prosecutor engaged in misconduct by arguing to the jury that Richards' misstatement to police that he was not aware of any firearm in his home, while admitting to possession of drugs, could be explained by Richards' knowledge that the firearm was stolen. The State believes that this claim is moot in view of the State's concession that there was insufficient evidence for the jury to conclude that Richards knew or believed that the firearm was stolen, and that the RSF conviction should therefore be vacated. If the Court disagrees and finds it necessary to reach Richards' prosecutorial misconduct argument, it should find that there was no misconduct. The State argued that the jury could infer from Richards' admission of possession of drugs but denial of knowledge of the firearm that Richards knew or believed that the firearm was stolen. This was not prosecutorial misconduct, as that was one permissible inference that the jury could draw. However, Richards had numerous other reasons to deny knowledge of the firearm, as his possession of it could subject them to adverse consequences several ways, including a charge of PFDCE, a charge of possession of a firearm while in possession of drugs, and confiscation of the firearm. Because

Richards had numerous reasons to deny knowledge of the firearm and the prosecutor's argument was limited (*i.e.*, no reference to Richards' prohibited status), it was not improper. And, it did not put Richards in a position where he could argue against the prosecutor's proposed inference only by admitting that he was a "person prohibited" due to his prior felony convictions, which would result in the very prejudice that the severance of the "person prohibited" charges was designed to prevent. The defense could have argued, for example, that Richards did not want to face charges of possession of a firearm during commission of a felony or while in possession of drugs, and did not want his firearm confiscated. Accordingly, if the Court finds it proper to decide Richards' prosecutorial misconduct claim it should deny that claim.

STATEMENT OF FACTS

Pursuant to a drug investigation of Andre Richards, police obtained a warrant to search his residence at 419 E. Second Street, Wilmington Delaware.¹⁴ The warrant was executed on July 29, 2024 at approximately 6 a.m.¹⁵ The validity of the warrant and the subsequent search are not at issue on this appeal.

Before conducting a search, Detective Michael Macauley spoke with Richards and asked him if the police would find any drugs in the house.¹⁶ Richards stated that there was a pair of jeans in the hamper located in the upstairs master bedroom that contained a small amount of cocaine.¹⁷ Detective Macauley asked Richards if there were any firearms in the house, and Richards said there were not before elaborating that there were no firearms “that he’s aware of.”¹⁸

Police then conducted the search. In the jeans that were in the hamper police located what appeared to be crack cocaine.¹⁹ Police also found a wallet in the master bedroom which contained Richards’ driver’s license and a credit card in

¹⁴ A53; A61-2; A95;

¹⁵ A64-65.

¹⁶ A64.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ A68.

Richards' name.²⁰ Also in the wallet were 32 strips of Suboxone (buprenorphine).²¹

Police also found fentanyl on a couch in the family room.²²

Police searched the master bedroom. On the nightstand on the left side of the bed police found mail addressed to Richards.²³ There was also a dresser on the left side of the master bedroom.²⁴ On the dresser police found a man's watch and a white men's shirt that appeared to be of a size that would fit Richards.²⁵ In the top drawer of that dresser police found male clothing and a Glock 9-mm Generation 5 handgun.²⁶ The firearm was loaded with 15 rounds of ammunition and an additional round in the chamber.²⁷ A subsequent check of the firearm revealed that it was reported as stolen in March 2024.²⁸ Police also found Suboxone pills in the dresser drawer.²⁹

²⁰ A73-74; A95-96.

²¹ A70.

²² A79; A89.

²³ A71.

²⁴ A75.

²⁵ A71-72.

²⁶ A74-76; A97; A104.

²⁷ A81-2; A107.

²⁸ A86.

²⁹ A76-77.

Police also located a .32 caliber round of ammunition in the master bedroom closet³⁰, and forty .45-caliber rounds in another bedroom on the same floor of the home.³¹

Richards was arrested and was taken, along with the evidence discovered, to police Troop 2.³² During an interview at the police station, Richards said he slept in the master bedroom on the left side where the nightstand and dresser were located.³³ Richards also admitted that he uses crack cocaine, heroin and Suboxone.³⁴ He also said that he provides drugs for others and is a “middleman.”³⁵ Richards said that to the best of his knowledge no one else in the house used drugs.³⁶

Richards told police both on the scene and later at the police station that he did not know anything about a gun in the house, and he denied possessing it.³⁷ When confronted about how the firearm got into his dresser drawer, Richards first stated that his son, Andre Richards, Jr., who was incarcerated at the time of the

³⁰ A81-82.

³¹ *Id.*

³² A83.

³³ *Id.*

³⁴ A84.

³⁵ *Id.*

³⁶ A86.

³⁷ A85; A92.

search warrant, must have left the firearm there.³⁸ A short time later Richards told the police that when the police were hitting the front door at the beginning of the search, one of the juvenile males may have run down from the third floor and potentially put the firearm into the dresser drawer.³⁹ But Richards did not have any definitive explanation of how the firearm came to be in his dresser drawer.⁴⁰

Please sought without success to obtain fingerprints from the gun.⁴¹ Police also swabbed the firearm for DNA.⁴² Analysis revealed DNA from two separate unknown females on the handle and trigger, as well as DNA from a male on the trigger.⁴³ However, there was not enough of the male DNA to produce a profile that could be interpreted.⁴⁴ Thus, the analysis was not able to match the DNA recovered from the firearm to Richards' DNA profile, or to establish that the DNA did not match Richards' DNA profile.

³⁸ A85.

³⁹ A85.

⁴⁰ A86.

⁴¹ A96.

⁴² A116-17.

⁴³ A158.

⁴⁴ A159-60.

ARGUMENT

I. THE *VOIR DIRE* DID NOT RESULT IN A BIASED JURY.

Question Presented

Whether the statements to the venire during *voir dire* or the conduct of *voir dire* violated Richards’ right to an impartial jury under both the Sixth Amendment of the United States Constitution and Article I, § 7 of the Delaware Constitution.

Standard and Scope of Review

Where (as here) the defendant asserts violation of his right to a fair trial by an impartial jury but did not raise that claim below, the claim is reviewed for plain error.⁴⁵

Merits of Argument

Richards asserts that the trial judge’s instructions to the jury “impeded the truth-finding function of *voir dire*”⁴⁶ and that the trial judge then “abandoned his duty to make credibility decisions on juror bias”, violating Richards’ rights to a fair trial with an impartial jury (and also violating Superior Court Rule of Criminal Procedure 24).⁴⁷ Richards’ claims lack merit. And in all events, Richards has not

⁴⁵ *Ushery v. State*, 346 A.3d 621, 625 (Del. 2025).

⁴⁶ Appellant’s Corrected Opening Brief, filed August 19, 2026 (“OB”) at 11

⁴⁷ *Id.* at 7.

demonstrated, and cannot demonstrate, plain error that would warrant reversal of his convictions.

A. The Trial Judge's *Voir Dire* Statements Were Not Improper.

When the potential jury panel was brought into the courtroom, the trial judge explained the importance of jury service, noting that “it’s a tremendously noble thing that jurors do.”⁴⁸ The judge continued:

So if you can serve, I ask that you do so. It’s important not just to this case, but it’s important to all cases and to our system of justice.

However, were not hooking you up to lie detector tests on these questions. We’re not going to send police out to see if you’re telling me the truth. We just want to know if you can serve. And if you can, great. And if you can’t, were not going to flyspeck your answers. What we’re looking for, first of all, is do we have about 30 jurors, give or take, that say yes, I can serve.^[49]

The judge then asked standard *voir dire* questions, the substance of which are not at issue on this appeal.⁵⁰ The questions asked whether potential jurors knew any of the witnesses or lawyers, had been involved in or had strong feelings about law

⁴⁸ A27.

⁴⁹ A27-28.

⁵⁰ A28-31.

enforcement, or had physical limitations or time constraints or responsibilities that would permit prevent them from serving as jurors.⁵¹

Richards essentially argues that the trial judge invited jurors to give untruthful answers by telling them that their responses would not be scrutinized and that they would not be required to provide their answers to the judge.⁵² Richards asserts, without explanation, that the judge's actions "necessarily compromised Richards' right to an impartial jury as it created an exponentially high likelihood that a biased juror ended up on his jury."⁵³

Read fairly, the judge's comments advised potential jurors that they were being asked to perform a civic duty, but were not under inquisition. Thus, the trial judge's comments were designed to put potential jurors at ease, not to invite them to make false statements. In fact, jurors are presumed to answer truthfully when responding to *voir dire* questions.⁵⁴ And, there is no evidence here that any juror was untruthful in his or her responses to the *voir dire* questions – there is no suggestion, for example, that any juror bore any type of prejudice or bias against the

⁵¹ *Id.*

⁵² OB 13.

⁵³ *Id.*

⁵⁴ *United States v. Copple*, 24 F.3d 535, 543-4, n. 14 (3d Cir. 1994), *cert denied*, 513 U.S. 989 (1994); *Bolt v. Hickok*, 887 F. Supp. 709, 717 (D. Del. 1995).

defendant. In the absence of such prejudice or bias, Richards cannot demonstrate the type of “plain error” necessary to reverse his conviction.

B. Disqualification of All Jurors Who Answered Yes to a *Voir Dire*
Question Did Not Result in a Biased Jury or Otherwise Prejudice
Richards.

Richards also complains that the trial judge did not individually examine each potential juror who responded affirmatively to one of the agreed-upon *voir dire* questions; instead, he directed the bailiff to separate the potential panel into those who answered one or more questions affirmatively, and those who did not, and at some point excused all of the jurors who had answered a question affirmatively.⁵⁵ Richards asserts that this procedure was improper, because it contravened Superior Court Rule of Criminal Procedure 24 and the principle that the judge should be involved in evaluating potential jurors’ *voir dire* responses.⁵⁶

Rule 24(a) provides that “the court shall conduct or permit such examination as is reasonably calculated to ascertain prejudice of a juror” and that “[t]he court itself shall conduct the examination of prospective jurors” but may allow the parties’ attorneys to “supplement” that examination. The rule contemplates individual

⁵⁵ A31.

⁵⁶ OB 16-17.

examination of potential jurors, but requires individual examination only in capital cases.⁵⁷

Here, the trial judge read to the array of prospective jurors a list of questions designed to uncover potential juror bias. The scope of those questions is not challenged on this appeal. The judge then instructed the bailiffs to separate the potential jurors into those who answered yes to one or more of the questions, indicating a potential bias, and those who did not answer yes to any of the questions and were therefore free of any potential bias. As instructed by the trial judge, the role of the bailiff was ministerial — to “get the bodies moved around in the right places.” The expectation was that out of the original jury panel, there would be a subgroup of at least 30 or so potential jurors who had not answered yes to any question, and therefore did not have even a potential bias, and that a jury of 12 jurors could be selected out of that subgroup.⁵⁸ This procedure was consistent with the requirements of Rule 24(a) and resulted in a sufficiently large pool of potential, unbiased jurors.

⁵⁷ “Except for the statutory questions in capital cases, questions may, in the court's discretion, be directed to the array or to prospective jurors individually were some questions may be directed to the array and some to prospective jurors individually.” Super. Ct. R. Crim P. 24(a); see also 11 *Del. C.* § 3301.

⁵⁸ A28.

Richards fails to explain how the procedure that was employed prejudiced him in any way. “The primary purpose of *voir dire* is to elicit a juror’s lack of bias or prejudice. . . .”⁵⁹ “The goal is to secure for the defendant and the State an impartial jury that will be able to decide the case on the basis of the evidence presented at trial and follow the court’s instructions on the law.”⁶⁰ In other words, the purpose of *voir dire* is to avoid the danger that the jury pool will be too inclusive and will permit persons who are biased or prejudiced for or against the defendant to serve as jurors.

Here, Richards’ claim is that the opposite occurred – that jurors were permitted to be excluded from the pool if they answered yes to any of the *voir dire* questions, even if individual examination of the “yes” answers would reveal that the potential juror did not suffer bias or prejudice that would render the juror unable to serve – for example, a potential juror who had a passing acquaintance with a witness. Richards thus asserts not that the jury pool was too inclusive, but rather that it was too exclusive.

The procedure followed by the trial court may have been inefficient, as it excluded (or could have excluded) potential jurors who, upon further questioning,

⁵⁹ *DeShields v. State*, 534 A.2d 630, 634 (Del. 1987).

⁶⁰ *Manley v. State*, 709 A.2d 643, 654 (Del. 1998), citing *DeShields*, 534 A.2d at 634; *Hughes v. State*, 490 A.2d 1034, 1041 (Del. 1985).

may not have suffered from actual prejudice or bias. But Richards does not (and cannot) claim that the procedure allowed the service of jurors who suffered from actual bias or prejudice. Nor does (or can) Richards claim that the procedure skewed the jury in any way — for example, that it systematically excluded people of a particular race, ethnic background, age, or other prohibited category.

In the absence of a plausible claim of prejudice, Richards does not satisfy his burden of showing that the procedure employed constituted plain error which plausibly might have changed the outcome of the case. As this Court has held, “In order to obtain a new trial on the grounds that an impartial jury was never empanelled, generally speaking, ‘we require a showing of identifiable prejudice to the accused.’”⁶¹ No such showing has been made here. Rather, Richards alleges only that some jurors who may have been found upon individual *voir dire* to have been non-biased were excused, **not** that biased jurors were permitted to serve.

Hughes holds that “under egregious circumstances” the law “raises a presumption of prejudice.”⁶² *Hughes* provides a good example of circumstances where such a presumption is appropriate – it involved a notorious Kent County

⁶¹ *Hughes v. State*, 490 A2d. 1034, 1046 (Del. 1985), quoting *Estes v. Texas*, 381 U.S. 532, 542 (1965).

⁶² *Id.*

murder that resulted in a conviction of the defendant, a reversal on appeal and a retrial, all of which received extensive publicity⁶³ – so much so that trial judge stated that if a potential juror had not heard about the case, “[y]ou would have had an idiot almost.”⁶⁴

Faced with this background, Hughes asked for individual *voir dire* of potential jurors, but that request was denied.⁶⁵ Instead, potential jurors were asked, as a group, a general question about whether they had heard about the case. Those who did not answer affirmatively were permitted to serve.⁶⁶ A postconviction hearing revealed that the perfunctory *voir dire* was not sufficient for the circumstances of the case, as four jurors and two alternative jurors knew before the trial the defendant had been convicted in the prior trial, and at least one juror knew before trial that Hughes had taken a polygraph examination.⁶⁷ Given the “unusual circumstances”, the Court found that the *voir dire* was insufficient to ensure an impartial jury.⁶⁸

⁶³ *Id.* at 1037, 1041.

⁶⁴ *Id.* at 1041.

⁶⁵ *Id.* at 1037.

⁶⁶ *Id.* at 1038-9.

⁶⁷ *Id.* at 1039. Other jurors learned of some of these facts during the trial. *Id.*

⁶⁸ *Id.* at 1041-2.

Hughes emphasized that “[e]ach case must turn on its special facts.”⁶⁹ Here, Richards does not assert that the *voir dire* questions were in any way insufficient, and the facts do not indicate that Richards was prejudiced by the automatic excusal of jurors who indicated that they knew some of the witnesses or lawyers, or had prior involvement with law enforcement that could undermine their impartiality, or had logistical constraints that would prevent them from serving.

In fact, Richards concedes that a procedure similar to the one employed here was utilized in *State v. Mitchell*⁷⁰, but he seeks to distinguish that decision on the grounds that the jurors who gave “yes” answers to *voir dire* questions in *Mitchell* were not immediately excused, but instead were excused only after a jury comprising persons who gave only “no” answers was impaneled.⁷¹ Richards does not (and cannot) explain how the immediate excusal of the “yes” respondents prejudiced him, or how the later excusal of such respondents (using the *Mitchell* procedure) would have obviated that prejudice.⁷² Nor is there any basis from which such prejudice can be presumed.

⁶⁹ *Id.* at 1048, quoting *Marshall v. United States*, 360 U.S. 310, 312 (1959).

⁷⁰ *State v. Mitchell*, 2026 WL 314309 (Del. Super Ct. Feb. 5, 2026).

⁷¹ OB 15.

⁷² Richards’ other cases are distinguishable. *Banther v. State*, 783 A.2d. 1287 (Del. 2001) involved a juror who gave false answers in *voir dire*; the Court remanded to determine why the juror gave false answers. *Knox v. State*, 29 A.3d 217 (Del. 2011)

In the absence of prejudice, Richards cannot make the necessary showing of plain error, and his appeal on the basis of the conduct of *voir dire* must fail.

and *Schwan v. State*, 65 A.3d 582 (Del. 2013) both involved jurors who knew deputy attorneys general. *Peri v. State*, 426 So.2d 1021 (Fla. App. 1983) involved a judge who left the courtroom during the attorneys' *voir dire* questioning of jurors, creating the possibility that a lawyer might ask improper questions or make improper remarks. *Id.* at 1025. *Parson v. State*, 275 A.2d 777 (Del. 1971) found that the *voir dire* was proper. *State v. Wilson*, 298 P.3d 148 (Wash. App. 2013) is perhaps the case cited by Richards that is closest to the current case, as it involved ministerial action that was not shown to have prejudiced the defendant – the bailiff's excusal of two jurors who said that they could not serve due to illness.

II. THE STATE AGREES THAT IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, THERE WAS NOT SUFFICIENT EVIDENCE TO SUPPORT RICHARDS' RSF CONVICTION.

Question Presented

Whether a rational trier of fact could find Richards guilty beyond a reasonable doubt of RSF based upon the evidence presented — specifically, whether Richards' denial to police of knowledge of a firearm and his inconsistent statements about the provenance of the firearm found in his dresser drawer could cause a rational jury to conclude that Richards knew or believed that the firearm was stolen. This question was preserved at A301-18.

Standard and Scope of Review

This Court reviews a claim of insufficiency of the evidence of *de novo* to determine whether, after viewing the evidence in the light most favorable to the State, “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”⁷³

⁷³ *Stevenson v. State*, 181 A.3d 631 (Del. 2018).

Merits of Argument

Richards asserts that there was insufficient evidence from which a rational jury could conclude that Richards knew or believed that the firearm found in the dresser drawer next to his bed was stolen.⁷⁴ The State agrees.

It is undisputed that the elements of the RSF charge are that (i) Richards received, retained or disposed of a firearm belonging to another person, (ii) Richards knew or believed that the firearm was stolen and (iii) Richards acted intentionally.⁷⁵ Richards contends that “the State failed to present sufficient evidence from which any reasonable trier of fact could conclude beyond a reasonable doubt that Richards ‘knew or believed the firearm was required under circumstances amounting to theft’”⁷⁶

The State agrees. There was sufficient evidence for the jury to conclude that Richards “retained” the firearm — it was found in his dresser drawer which he presumably used every day, and contained what appeared to be his clothing.⁷⁷ And, the uncontroverted evidence established that the firearm had been reported stolen in

⁷⁴ OB 19-25.

⁷⁵ A235-6; 11 *Del. C.* § 1450.

⁷⁶ OB 24-5.

⁷⁷ A74-76.

March, 2024, four months before the search of Richards' home.⁷⁸ The relevant question on this appeal, however, is whether there was sufficient evidence for the jury to conclude that Richards knew or believed that the firearm was stolen.

The only evidence from which juror could conclude that Richards knew or believed that the firearm stolen was that (i) in talking to the police before the search, Richards admitted to possession of drugs but denied any knowledge of a firearm in the house and (i) after police located the firearm and asked how it got into his dresser drawer, Richards speculated that it may have been put there by his son (who was in prison when the search warrant was executed) or that other residents of the house may have put it there when they heard police initiating the search.

Neither of these arguments is sufficient to support an inference that Richards knew or believed that the firearm was stolen. The prosecutor suggested that Richards denied knowledge of the firearm because he knew that it was stolen. In general, it is legal to possess a firearm, but it is not legal to possess a stolen firearm, so the inference that the prosecutor was suggesting was that Richards denied knowledge of the gun because he knew it was stolen. However, there are many exceptions to this general rule that mere possession of a firearm is legal, several of

⁷⁸ A86; A90-91.

which apply to Richards. Specifically, it is illegal to possess a firearm during the commission of a felony⁷⁹, and Richards' drug possession could have resulted in felony charges. It is also illegal to possess a firearm while in possession of a controlled substance⁸⁰, and Richards by his own admission was in possession of drugs. And, it is illegal to possess a firearm if you are a "person prohibited,"⁸¹ which Richards was because of prior felonies. In the circumstances, Richards' mere denial that there was a firearm in his home is not sufficient to prove that he knew or believed that the firearm was stolen.

The prosecutor also argued that Richards must have known that the firearm was stolen because, after it was located and police asked Richards how it came to be in his dresser drawer, he was unable to provide a definitive answer, and instead speculated first that his son (who was incarcerated at the time of the execution of the search warrant) had left it there, and second, that at the outset of the search, another resident of the house had put it there. These facts strongly suggest that Richards wanted the police to believe that he did not know anything about the gun, but they are not sufficient in the circumstances to support an inference that Richards knew or

⁷⁹ 11 *Del. C.* § 1447A.

⁸⁰ 11 *Del. C.* § 1448(a)(9).

⁸¹ 11 *Del. C.* § 1448(a).

believed that the firearm was stolen. Accordingly, Richards' RSF conviction should be vacated.

Richards argues that if the RSF conviction is vacated, the PABPP and PFBPP convictions must also be reversed.⁸² This State does not agree with this aspect of Richards' claim. Richards' sole basis for this argument is that the State did not contest defense counsel's statement to the trial court that there would be no need for a "B" trial if Richards were acquitted of the RSF and PFDCF counts.⁸³ Richards apparently contends that the State's failure to object to his counsel's statement constituted a waiver by the State or otherwise estops the State from now contending that the "B" trial was appropriate.

This argument fails for two separate reasons. First, the State cannot be bound by a statement that defense counsel made. Waiver is "the voluntary and intentional relinquishment of a known right."⁸⁴ The intent to waive must be "unequivocal in character"⁸⁵ and thus generally cannot be inferred from mere silence.⁸⁶ That is

⁸² OB 34.

⁸³ OB 34.

⁸⁴ *Purnell v. State*, 254 A.3d 1053, 1101 (Del. 2021), quoting *Daskin v. Knowles*, 193 A.3d 713, 725 (Del. 2018), quoting *Realty Growth Investors. v. Council of Unit Owners*, 453 A.2d 450, 456 (Del. 1982).

⁸⁵ *Realty Growth Investors. v. Council of Unit Owners*, 453 A.2d 450, 456 (Del.1982).

⁸⁶ See *State v. Ward*, 2018 WL 3752753, at *5 (Del. Super. Ct. Aug. 7, 2018).

particularly true here, as the trial court cut off discussion of the question of whether a “B” trial would be necessary in certain circumstances by stating “Maybe we’re getting ahead of ourselves.”⁸⁷ Thus, there was no further discussion of the necessity of a “B” trial, and the State’s failure to contest defense counsel’s assertion therefore cannot constitute an estoppel or waiver.

Second, the position advanced by defense counsel in his colloquy with the trial court was fundamentally illogical. As a threshold matter, whether or not Richards was convicted on the firearm charges has nothing to do with the PABPP charge, which dealt with *ammunition*, not a firearm.

As to the PFBPP charge, it is true that if Richards were acquitted of the PFDCF and RSF charges because he did not **possess** the firearm, there would be a fair argument that trial of the PFBPP charge would be unnecessary, as possession of a firearm is an essential element of PFBPP. But that is not what happened here. Rather, Richards was acquitted of the PFDCF charge because he was not convicted of any felony drug charge that could constitute the underlying felony for the PFDCF charge. And Richards was convicted of the RSF charge, a necessary element of which was that Richards “received, retained or disposed of a firearm belonging to

⁸⁷ A266.

another person.”⁸⁸ Since there was no claim that Richards ever “disposed of” the firearm found in his dresser drawer, the jury necessarily found that Richards “received” or “retained” the firearm — in other words, he possessed it, and Richards does not contest that there is sufficient evidence to support that element of the RSF charge.

Richards’ claim on this appeal is *not* that there was insufficient evidence that he possessed a firearm; rather, it is that there was insufficient evidence to support a claim that Richards knew or believed that the firearm was stolen. If Richards prevails on this claim (as the State agrees he should), his conviction on the PABPP and PFBPP counts should stand, as whether or not he knew or believed that the firearm was stolen is irrelevant to the PABPP and PFBPP charges. In fact, the jury properly found that Richards possessed ammunition found in the closets and the firearm found in his dresser drawer, and that he had prior convictions that rendered him a person prohibited. That is all that was required to convict Richards of the PABPP and PFBPP charges. Accordingly, even if Richards’ RSF conviction is vacated, his PABPP and PFBPP convictions should be affirmed.

⁸⁸ See p. 22, *supra*.

III. BECAUSE THERE WAS INSUFFICIENT EVIDENCE TO CONVICT RICHARDS OF RSF, HIS PROSECUTORIAL MISCONDUCT CLAIM IS MOOT. IF THE COURT REACHES THAT CLAIM, IT SHOULD HOLD THAT THERE WAS NO PROSECUTORIAL MISCONDUCT.

Question Presented

Whether the prosecutor engaged in misconduct by arguing in closing that Richards' denial of possession of a firearm supported an inference that Richards' knew or believed that the firearm was stolen.

Standard and Scope of Review

Claims of unfair argument that are not raised below are reviewed for plain error.⁸⁹

Merits of Argument

The State believes that this claim is moot, as the parties agree that there was not sufficient evidence for the jury to convict Richards of RSF. If Richards' RSF conviction is vacated, the Court need not reach the question of whether the prosecutor asked the jury to make an improper inference about Richard's knowledge or belief that the firearm was stolen.

If the Court nevertheless reaches the merits of Richards' claim of prosecutorial misconduct, it should reject that claim.

⁸⁹ *Morales-Garcia v. State*, __ A.3d __, 2026 WL 278899, at *7 (Del. Feb. 3, 2026).

They lynchpin of Richards prosecutorial misconduct claim is that the prosecutor “misrepresented evidence” in his closing argument.⁹⁰ In that argument, the prosecutor told the jury, in relevant part:

Isn't it a bit that he would admit to the drugs and not the gun? Watch his admission at the house on the body cam. The first thing he admits to is the cocaine, which is the illegal item farthest away from the gun. He's trying to lead police away so that they don't find the gun. Because he knows it was stolen and he knows what's going to happen if they find it. The circumstances showed that he knew the gun was stolen.[⁹¹]

Richards claims that the prosecutor “misrepresented evidence” when said that the cocaine to which Richards steered the police was “the illegal item farthest away from the gun.”⁹² Richards admits that this statement was “technically true”⁹³ but nonetheless contends that it was improper because the police found fentanyl that was further from the firearm than the cocaine (the jury acquitted Richards of possession of the fentanyl, evidently finding that because it was found in a common area of the home, the State did not prove that Richards possessed it). At worst, the prosecutor's statement was an exaggeration, as Richards pointed police to an illegal item that was

⁹⁰ OB 27.

⁹¹ A211.

⁹² OB 29.

⁹³ *Id.*

the second farthest, rather than the farthest, from the firearm. Given the facts, there was no **material** misrepresentation of the record.

Richards goes on to argue that the prosecutor used his alleged “misrepresent[ation]” to invite the unfair inference that Richards led police away from the firearm because he knew that it was stolen.⁹⁴

As noted previously, it is generally not illegal to possess a firearm, but there are many exceptions to this general rule – for example, it is not legal to possess a firearm during commission of a felony, by a person simultaneously in possession of drugs, or by a “person prohibited” because of prior felony convictions.⁹⁵

Here, the prosecutor argued that Richards readily admitted to possession of drugs, but denied possession of the firearm, and that this denial supported an inference that Richards knew or believed that the firearm was stolen. This was not improper argument, as knowledge or belief that the firearm was stolen was **one reason** that Richards could have told police that he was unaware of any firearm in the home. But Richards had other reasons to deny knowledge of the firearm. Specifically, he admitted that he was in possession of illegal drugs, and possession

⁹⁴ OB 30.

⁹⁵ See pp. 23-24, *supra*.

of a firearm while in possession of a controlled substance is illegal.⁹⁶ Moreover, Richards' drug possession could have been a felony, and possession of a firearm during commission of a felony is also illegal.⁹⁷ (In fact, Richards was charged with a felony drug count, but the jury acquitted him of that charge and instead convicted him of a lesser included misdemeanor charge).

Accordingly, the prosecutor's argument that Richards could have been lying to police about the presence of a firearm in the home because he knew that the firearm was stolen was not improper — that is certainly a possible and permissible inference. But there were other possible inferences — namely, that Richards denied knowledge of the firearm because he did not want to be subject to a charge of possession of a firearm during commission of a felony or while in possession of drugs.

Richards argues that another possible reason for him to have denied knowledge of the firearm was that he is a person prohibited, due to prior felony convictions, but he could not make that argument without admitting those convictions, which would have been prejudicial to his defense — indeed, avoidance of the prejudice from disclosure to the jury of those prior felonies was the reason

⁹⁶ 11 *Del C.* § 1148(a)(9).

⁹⁷ 11 *Del C.* § 1147A.

why his person prohibited charges were severed.⁹⁸ This argument fails for two reasons. First, Richards had numerous other explanations to explain his denial of knowledge of the firearm, but he did not make them. Thus, it is incorrect to assert, as Richards does, that the prosecutor placed him in a position where he could rebut the inference that the prosecutor was suggesting only by admitting to his prior felonies.⁹⁹ Second, Richards' argument seeks to hamstring prosecutors' arguments — Richards argues for a rule that if there are several possible explanations for the defendants' conduct and one of them involves matter that should not be presented to the jury, the prosecutor engages in misconduct by discussing any of the possible explanations. The rule proposed by Richards is not supported by any authority and goes beyond existing law in limiting the prosecutions' possible arguments.

If the Court agrees with the parties that there was not enough evidence for the jury to convict Richards of the RSF charge, it need not reach the question of whether the prosecutor's claiming argument was improper. But if the Court reaches the misconduct argument, it should reject it.

⁹⁸ OB 30-31.

⁹⁹ OB 32.

CONCLUSION

For the reasons stated above, Richards' conviction on the RSF charge should be vacated, and his convictions on drug possession, PABPP and PFBPP charges should be affirmed.

Respectfully submitted,

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Date: September 4, 2026

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE RICHARDS,	)	
	)	
Defendant-Below,	)	
Appellant	)	
	)	
v.	)	No. 152, 2026
	)	
STATE OF DELAWARE	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENT
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