



IN THE SUPREME COURT OF THE STATE OF DELAWARE

LENELL T. ABBOTT,

Defendant Below,
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below,
Appellee.

No. 373, 2025

On appeal from the Superior
Court of the State of Delaware

STATE'S ANSWERING BRIEF

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NATURE OF PROCEEDINGS

A Superior Court grand jury indicted Lennel T. Abbott on two counts of possession of a firearm by a person prohibited (“PFBPP”) and one count each of possession of ammunition for a firearm by a person prohibited (“PABPP”), drug possession, drug dealing, first-degree reckless endangering, and criminal mischief.¹ The State later entered a *nolle prosequi* on the reckless-endangering and criminal-mischief charges, citing a lack of victim cooperation.²

Abbott moved for relief from prejudicial joinder.³ The Superior Court granted the motion, severing the charges between an “*A* case” (the person-prohibited charges) and a “*B* case” (the drug charges).⁴

Abbott waived his right to a jury in the *A* case, and it proceeded to a bench trial on December 16, 2025.⁵ The trial judge reserved his decision pending briefing from the parties.⁶ He ultimately found

¹ A2–3, at Docket Items (“D.I.”) 5, 24; A25–29.

² A5, at D.I. 36.

³ A5, at D.I. 40.

⁴ See A1; A5–6, at D.I. 40–41.

⁵ A6, at D.I. 42, 46.

⁶ A6, at D.I. 46.

Abbott guilty of all three charges.⁷ Following the verdict, the State entered a *nolle prosequi* on both charges in the *B* case.⁸

On August 12, 2025, the Superior Court sentenced Abbott:

(i) on the first count of PFBPP, to 15 years at Level V incarceration, suspended after five years for two years at Level III probation; (ii) on the second count of PFBPP, to 15 years at Level V, suspended after three years for two years at Level III; and (iii) for PABPP, to eight years at Level V, suspended for one year at Level III.⁹

Abbott filed a timely notice of appeal and, on March 12, 2026, an opening brief. This is the State's answering brief.

⁷ A8, at D.I. 54.

⁸ A14, at D.I. 13.

⁹ Notice of Appeal Ex., at 1–2; A9, at D.I. 60.

SUMMARY OF ARGUMENT

I. The Appellant's argument is denied. Abbott's multiple convictions for PFBPP and PABBP, for the simultaneous possession of two firearms and ammunition, do not violate double jeopardy. Under established Delaware law, the unit of prosecution under 11 *Del. C.* § 1448 is each act of possession. The terms "a deadly weapon" and "a firearm" in the statute unambiguously refer to a single deadly weapon or firearm, evidencing the General Assembly's intent to allow a count for each firearm possessed. Even if the language is deemed ambiguous, the other context clues support the same conclusion. The General Assembly likewise intended separate counts for PFBPP and PABBP, both of which require proof of a fact the other does not. Accordingly, none of Abbott's convictions should be vacated.

STATEMENT OF FACTS

At 10:00 a.m. on May 5, 2023, Delaware State Police Detective Patrick Campbell and Sergeant William Miller visited 43 Cathy Avenue in Dover, Delaware, to follow up on an investigation.¹⁰ Abbott answered the door and invited the troopers inside.¹¹

During their conversation, Abbott informed the troopers that he had a firearm and led them to it.¹² Detective Campbell lifted the air-conditioning vent in the living-room floor and found a black Titan 25-caliber semi-automatic handgun.¹³ He also found a magazine loaded with six rounds of ammunition.¹⁴

The troopers transported Abbott to Troop 3 for an interview.¹⁵ After the interview, Detective Campbell took Abbott back to the residence to retrieve a key.¹⁶ At that time, Abbott told the detective that he would find a second firearm in the bathroom's air-conditioning vent.¹⁷

¹⁰ A90–93.

¹¹ A93.

¹² A94.

¹³ A94.

¹⁴ A94; A99.

¹⁵ A102.

¹⁶ A104–05.

¹⁷ A104–05.

Detectives Wright and Ritchey conducted a second search of the residence at 12:50 p.m.¹⁸ They found a loaded CZ 7.62-caliber semi-automatic handgun in bathroom vent and more 7.62-caliber ammunition in two boxes in the master bedroom's vent.¹⁹ The troopers found no evidence that anyone other than Abbott lived at the residence.²⁰

Detective Wright processed the handguns for DNA and fingerprints.²¹ Corporal Brandon Yencer collected samples of Abbott's DNA.²² Bethany Netta, a senior forensic DNA analyst at the Delaware Division of Forensic Science, analyzed the DNA evidence.²³ The samples recovered from the grips of both handguns produced a single-source DNA profile matching Abbott's.²⁴ The likelihood of finding someone else with the same profile, with respect to the CZ sample, was one in more than eight trillion and, with respect to the Titan sample, one in more than 902.5 million.²⁵

¹⁸ A105; A149–50.

¹⁹ A105; A150–51.

²⁰ A110; A156.

²¹ A158–59.

²² A144–45.

²³ A176.

²⁴ A188–89.

²⁵ A188–89.

A search of the Delaware Criminal Justice Information System (“DELJIS”) revealed that Abbott had prior felony convictions, including possession with intent to deliver a non-narcotic schedule I controlled substance in Delaware in 2008 and possession with intent to distribute cocaine in Virginia in 2001.²⁶

²⁶ A121–23; *see also* A198–99.

ARGUMENT

I. Abbott's three convictions under 11 *Del. C.* § 1448 for the simultaneous possession of two firearms and ammunition do not violate the Double Jeopardy Clause.

Question Presented

Whether two of Abbott's three PFBPP or PABPP convictions, arising from the simultaneous possession of two firearms and ammunition, violate double jeopardy and should be vacated.

Scope of Review

This Court reviews a multiplicity argument not raised below for plain error.²⁷ Plain error review of a multiplicity challenge that does not contest the facts is effectively *de novo*.²⁸

Merits of Argument

Abbott, a person prohibited from possessing deadly weapons and ammunition for a firearm, hid two loaded handguns and boxes of ammunition in the air-conditioning vents of his residence.²⁹ The

²⁷ *White v. State*, 243 A.3d 381, 397 (Del. 2020).

²⁸ *Id.*

²⁹ A94; A99; A105; A121–23; A150–51; A198–99.

Superior Court convicted him of two counts of PFBPP, one for each firearm, and one count of PABPP, for the ammunition.³⁰

Abbott asks this Court to vacate two of his convictions and remand his case for re-sentencing on a single violation of 11 *Del. C.* § 1448.³¹ He claims that his multiple convictions under the statute violate the multiplicity doctrine of the Double Jeopardy Clause.³² According to Abbot, the question of whether § 1448 permits more than one count of PFBPP for the simultaneous possession of multiple firearms remains open.³³ He argues that the term “a firearm” as in used in the statute is ambiguous as to the unit of prosecution.³⁴ He therefore urges this Court to follow some other jurisdictions that have applied the rule of lenity to strictly construe counterpart statutes in favor of the accused.³⁵ Finally, he asks this Court, in light of those arguments, to also reverse a prior decision that allowed separate

³⁰ A8, at D.I. 54.

³¹ Opening Br. 18–19.

³² Opening Br. 7–18.

³³ Opening Br. 9–10.

³⁴ Opening Br. 11–17.

³⁵ Opening Br. 10–17.

counts of PFBPP and PABPP for the simultaneous possession of a firearm and ammunition.³⁶

This Court should reject Abbott’s arguments on appeal. The language of § 1448 unambiguously refers to a single firearm, evidencing the General Assembly’s intent to allow multiple counts for the possession of multiple firearms. Although this Court need not reach additional considerations, given the lack of ambiguity in the statute, they nonetheless support the same conclusion. The rule of lenity, abolished in Delaware, is of no help to Abbott. Moreover, this Court has already held that § 1448 allows for separate convictions for the simultaneous possession of a firearm and ammunition, and Abbott provides no urgent reason or clear manifestation of error to revisit that holding. The judgment below should be affirmed.

A. Double jeopardy protects against multiple charges under the same statute for each “unit” of the crime.

The Double Jeopardy Clauses of the United States and Delaware Constitutions provide that no person shall be “twice put in

³⁶ Opening Br. 17–18.

jeopardy of life or limb” for the same offense.³⁷ The clauses protect against: (i) successive prosecutions for the same crime; (ii) multiple charges under separate statutes requiring proof of the same factual elements; and (iii) multiple charges under the same statute for the same act.³⁸

The third protection, known as the multiplicity doctrine, bars the State from “manufactur[ing] additional counts of a particular crime by the simple expedient of dividing a single crime into a series of temporal or spatial units.”³⁹ It reflects the principle that a defendant should not be prosecuted for more than one crime if he “commit[ed] only one unit of the crime.”⁴⁰

Delaware courts look to legislative intent to determine the unit of prosecution and whether double jeopardy permits multiple counts under the statute.⁴¹ The courts then consider whether the multiple

³⁷ U.S. Const. amend. V; Del. Const. art. I, § 8.

³⁸ *Jackson v. State*, 2025 WL 227682, at *2 (Del. Jan. 16, 2025); *McGuinness v. State*, 312 A.3d 1156, 1196 (Del. 2024); *Washington v. State*, 836 A.2d 485, 487 (Del. 2003).

³⁹ *Handy v. State*, 803 A.2d 937, 940–41 (Del. 2002) (internal quotation marks omitted).

⁴⁰ *Id.* at 941 (internal quotation marks omitted).

⁴¹ *See id.*

counts “are sufficiently differentiated by time, location or intended purpose” to constitute separate violations of the statute.⁴²

B. The unit of prosecution under § 1448 is each act of possession.

Section 1448(b) provides that a person shall not “knowingly possess[], purchase[], own[] or control[] a deadly weapon or ammunition for a firearm while . . . prohibited” from doing so. Paragraph (a) defines the various classes of prohibited persons.

Abbott’s convictions under the statute, for PFBPP and PABPP, refer to a deadly weapon and ammunition, respectively. PFBPP involves possession of a particular type of deadly weapon—a firearm—which carries greater penalties compared to other types of deadly weapons.⁴³

This Court has had multiple occasions to consider the intended units of prosecution under § 1448. In *Buchanan v. State*,⁴⁴ a jury had convicted David Buchanan of three offenses under § 1448, for

⁴² *Williams v. State*, 796 A.2d 1281, 1286 (Del. 2002) (emphasis omitted).

⁴³ 11 *Del. C.* § 1448(c).

⁴⁴ 2011 WL 3452148, at *2 (Del. Aug. 8, 2011).

possessing two different handguns and ammunition for one of them. In postconviction, Buchanan claimed that his trial counsel rendered ineffective assistance by not challenging the legality of the indictment.⁴⁵ He argued the indictment was defective “because the three counts . . . should have been merged into a single offense.”⁴⁶ This Court flatly rejected the argument: “[T]here is simply no merit to this contention. . . . Each handgun and the ammunition constituted a different offense.”⁴⁷

Ten years later, in *Brown v. State*,⁴⁸ this Court considered whether Gregory Brown’s PFBPP and PABPP convictions should merge for purposes of sentencing. It held that they should not.⁴⁹ Neither the United States nor Delaware Constitutions required merger because each charge required proof of a fact that the other did not (knowing possession of a *firearm* versus *ammunition*).⁵⁰ The Court stated, however, that it was not reaching the related “question ostensibly answered, but without analysis or the citation of authority,

⁴⁵ *Id.* at *4.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ 2021 WL 2588923, at *1 (Del. June 24, 2021).

⁴⁹ *Id.*

⁵⁰ *Id.*

in *Buchanan* . . . : whether 11 *Del. C.* § 1448 contemplates separate PFBPP counts—and separate sentencing upon conviction—for the simultaneous possession of multiple firearms.”⁵¹

Then, in *Patrick v. State*,⁵² this Court held—with analysis and citation of authority—that the intended unit of prosecution under § 1448 was “each act of possession.” A jury had convicted Corey Patrick of two counts of PFBPP.⁵³ Patrick had possessed only a single firearm but was prohibited for two different reasons: having a prior felony conviction and possessing a firearm and drugs together.⁵⁴ Patrick argued on appeal that the convictions should merge because the General Assembly intended to punish the act of possession and not each way a person qualifies as a person prohibited.⁵⁵ The State took an opposite position, contending that the General Assembly intended multiple punishments for each prohibited classification.⁵⁶

To answer this question, this Court examined the legislative intent behind § 1448, which was “clear”: “the unit of prosecution is

⁵¹ *Id.*

⁵² 261 A.3d 1282, 1289–91 (Del. 2021).

⁵³ *Id.* at 1285–86.

⁵⁴ *Id.*

⁵⁵ *Id.* at 1288.

⁵⁶ *Id.*

the act of possession of a deadly weapon by a person prohibited and not the way in which a defendant qualifies as a person prohibited.”⁵⁷

To determine the General Assembly’s intent, this Court relied principally on two considerations: the language of § 1448 itself and its placement in the Code.⁵⁸ This Court further noted that the State’s position could yield “absurd results,” such as three convictions for a juvenile who was previously adjudicated delinquent and possessed only a single handgun and marijuana together.⁵⁹

Although this Court in *Brown* seemed to leave open the possibility of revisiting *Buchanan*, in *Patrick* it cited *Buchanan* favorably: “Our reasoning is supported by our decision in *Buchanan* [C]ounsel was constitutionally effective because a charge for each act of possession under the statute was proper, meaning the relevant unit of prosecution is each act of possession and not his status as a person prohibited.”⁶⁰

⁵⁷ *Id.* at 1289.

⁵⁸ *Id.* at 1289–90.

⁵⁹ *Id.*

⁶⁰ *Id.*

C. The possession of each one of multiple firearms, even if simultaneous, comprises separate acts of possession.

Patrick settled the question of the intended unit of prosecution under § 1448: each act of possession. Under *Buchanan*, the possession of multiple firearms, even if simultaneous, are separate acts of possession and may be prosecuted as separate crimes. Although *Buchanan* did not provide analysis or authority to support its holding, as *Brown* points out, *Patrick* cited it favorably, suggesting that *Buchanan* nevertheless correctly applied the law. Indeed, Delaware courts have followed *Buchanan* to permit the prosecution of multiple PFBPP counts for the simultaneous possession of multiple firearms.⁶¹

Still, Abbott contends that the issue is not settled under Delaware law.⁶² To the extent more analysis or authority must still be considered, it supports the holding in *Buchanan*.

⁶¹ See, e.g., *State v. Jackson*, 2023 WL 4614534, at *3 & n.22 (Del. Super. Ct. July 18, 2023) (citing *Buchanan*, *Brown*, and *Patrick* and stating: “[T]he issue [Jackson] now raises has been considered and squarely rejected under Delaware law. . . . Jackson was found in possession of two firearms and two sets of ammunition. Those offenses do not merge.”).

⁶² Opening Br. 9–10.

1. The use of the article “a” before “firearm” in § 1448 unambiguously refers to a single firearm, reflecting the General Assembly’s intent to allow separate charges for each firearm possessed.

Courts interpret statutes to give effect to the legislature’s intent.⁶³ The language of a statute is ordinarily the best reflection of that intent; therefore, when the language is unambiguous, it controls.⁶⁴ A court may look beyond the plain language of the statute to determine the legislature’s intent only if it is ambiguous.⁶⁵ A statute is ambiguous if: (i) it is susceptible to different conclusions or interpretations; or (ii) a literal interpretation would lead to absurd or unreasonable results that the legislature could not have intended.⁶⁶ A statute is not ambiguous simply because the parties disagree about its meaning.⁶⁷

Section 1448(b) prohibits the possession of “a” deadly weapon. If the deadly weapon is “a” firearm, the felony classification rises.⁶⁸

⁶³ *Ross v. State*, 990 A.2d 424, 428 (Del. 2010).

⁶⁴ *See id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 428–29.

⁶⁷ *Id.* at 429.

⁶⁸ 11 *Del. C.* § 1448(c).

If it is “a” firearm, the minimum-mandatory penalty could also rise under certain circumstances.⁶⁹

The use of the article “a” was a choice. In 1992, the General Assembly amended the language of § 1448 from “*any* deadly weapon” to “*a* deadly weapon.”⁷⁰ And as Abbott concedes in his opening brief, courts that have examined the term “a firearm” have found that it unambiguously refers to only a single firearm, therefore allowing the prosecution of multiple counts under the statute.⁷¹

In *Iowa v. Kidd*,⁷² the state’s unauthorized-possession statute referred to “an offensive weapon.” The Iowa Supreme Court considered the dictionary definitions of “a” and “an”: articles used before most *singular* nouns when the individual in question is undetermined, unidentified, or unspecified.⁷³ Given this ordinary meaning, the court held that “the statute [wa]s not ambiguous.”⁷⁴ The statute “refer[red] to possession of a single offensive weapon” and

⁶⁹ § 1448(e).

⁷⁰ Del. H.B. 558, 136th Gen. Assem. § 1 (1992) (emphasis added).

⁷¹ See Opening Br. 11.

⁷² 562 N.W.2d 764, 765 (Iowa 1997).

⁷³ *Id.*

⁷⁴ *Id.* at 766.

therefore permitted separate charges for each sawed-off shotgun the defendant possessed.⁷⁵

In *New Hampshire v. Stratton*,⁷⁶ the New Hampshire Supreme Court construed the state’s felon-in-possession statute, which provided that no convicted felon “shall own or have in his possession or under his control a pistol, revolver, or any other firearm.” The court found the statute to be “unambiguous and consistently singular.”⁷⁷ It added: “If the legislature had intended possession, regardless of the number of weapons, to be the unit of prosecution, it could have phrased the statute accordingly, *e.g.*, ‘it is unlawful for felons to possess one or more pistols, revolvers or any other firearms.’”⁷⁸

In *Louisiana v. Lindsey*,⁷⁹ the Louisiana Court of Appeals considered an unlawful-possession statute that used the phrase “a firearm.” The court contrasted the statute with those in other jurisdictions that used the term “any firearm.”⁸⁰ It found that its own

⁷⁵ *Id.* at 765–66.

⁷⁶ 567 A.2d 986, 988–89 (N.H. 1990) (quoting N.H. Rev. Stat. § 159:3).

⁷⁷ *Id.* at 989.

⁷⁸ *Id.*

⁷⁹ 583 So.2d 1200, 1203 (La. Ct. App. 1991).

⁸⁰ *Id.* at 1203–04.

statute was “unambiguous as to the unit of prosecution”: the use of the article “a” referred to a single firearm.⁸¹ Accordingly, “a convicted felon who possesses multiple firearms c[ould] be convicted and sentenced for each firearm in his possession.”⁸²

In *Taylor v. Indiana*,⁸³ the Indiana Court of Appeals noted that the legislature used the phrase “possesses a firearm” instead of “possesses firearms” in its unlawful-possession statute. The court held that this choice “necessaril[ly] indicat[ed] that the offense refers to the possession of a single firearm,” reflecting an “intent . . . to make each unlawful possession of one firearm by a serious violent felon a separate and independent crime.”⁸⁴

The amendment of § 1448’s language from “any” to “a” represented a step over a dividing line in statutory construction. Courts that consider the term “any firearm” find it to be ambiguous because “any” could mean “one, some, or all.”⁸⁵ Conversely, courts considering the term “a firearm” find that “a” unambiguously refers to

⁸¹ *Id.* at 1204.

⁸² *Id.*

⁸³ 929 N.E.2d 912, 921 (Ind. Ct. App. 2019).

⁸⁴ *Id.*

⁸⁵ *McGlasten v. State*, 328 So.3d 101, 104–06 (Miss. 2021) (citing cases).

a single firearm, allowing multiple convictions for each firearm possessed.⁸⁶

The consistent use of the singular article “a” before “deadly weapon” or “firearm” in § 1448 is likewise unambiguous. The language reflects the General Assembly’s intent to allow prosecution under § 1448 for each firearm possessed—just as this Court held in *Buchanan* 15 years ago.

2. Considerations beyond the language itself likewise support the conclusion that the General Assembly intended to allow separate charges for each firearm possessed.

Because the terms “a deadly weapon” and “a firearm” are unambiguous, this Court need not—and should not—make any considerations beyond that plain language when interpreting § 1448.⁸⁷ Even if the language is deemed ambiguous, however, the additional available considerations support the same conclusion: that the General Assembly intended to allow the prosecution of multiple counts under § 1448 for each firearm possessed.

⁸⁶ *Id.* at 104–05 (citing cases).

⁸⁷ *See Ross*, 990 A.2d at 428–29.

As mentioned previously, the choice of the article “a” was not made in a vacuum: it replaced the word “any” in a 1992 amendment of the statute.⁸⁸ Abbott attempts to wave away the significance of the General Assembly’s choice.⁸⁹ He argues that, because the primary purpose of the 1992 amendment was to create a new class of prohibited persons, the “unrelated” change from “any” to “a” might have been “entirely inadvertent.”⁹⁰ He further points to the synopsis of the bill—which stated that its provisions “track favorably with Federal law,” which allows only one charge for multiple firearms—to argue the change was not intended to be meaningful.⁹¹

Abbott’s position is inconsistent with Delaware law. When the General Assembly “amends its prior enactment by a material change of language, the rule of statutory construction presumes that a change in meaning was intended.”⁹² The switch from the ambiguous “any” to the unambiguous “a” was a material change.

⁸⁸ Del. H.B. 558, 136th Gen. Assem. § 1 (1992).

⁸⁹ Opening Br. 13–15.

⁹⁰ Opening Br. 13.

⁹¹ Opening Br. 14–15.

⁹² *Daniel D. Rappa, Inc. v. Engelhardt*, 256 A.2d 744, 746 (Del. 1969).

Moreover, if the General Assembly intended to copy the federal approach in this regard, it simply could have done nothing. Like the pre-1992 version of § 1448, the federal person-prohibited statute, 18 U.S.C. § 922(g), uses the term “any firearm.” The affirmative decision to move away from that language, when it did not have to, reflects the General Assembly’s intent for its statute to have a different meaning than its federal counterpart. Of course, the “track favorably” statement in the synopsis does not mean “copy exactly.” It does not express an intention for Delaware law to operate the same as federal law in all manners at all times.

If the change to the term “a deadly weapon” was inadvertent, as Abbott argues, the General Assembly likely would have corrected the error when it addressed the same issue with respect to “ammunition.” In 1998, the General Assembly further amended § 1448 to define “ammunition” to mean “one or more rounds of fixed ammunition designed for use in and capable of being fired from a pistol, revolver, shotgun or rifle.”⁹³ As a consequence of this amendment, all rounds of ammunition possessed coalesce under the same unit of prosecution,

⁹³ Del. S.B. 69, 139th Gen. Assem. § 3 (1998).

permitting only one count of PABPP to be charged. By not making the same change to the definition of “a deadly weapon” or “a firearm,” the General Assembly tacitly affirmed that its choice of language in 1992 was intentional.

Abbott’s reliance on 11 *Del. C.* § 223, a statute addressing how to construe words of gender or number in the Criminal Code, is no more helpful to his position.⁹⁴ Section 223 provides, in relevant part: “Unless the context otherwise requires, words denoting the singular number may, and where necessary shall, be construed as denoting the plural number, and words denoting the plural number may, and where necessary shall, be construed as denoting the singular number” According to Abbot, “this provision should serve to discourage Delaware courts from investing great meaning in incidental constructions of single or plural phrasing such as ‘a’ versus ‘any.’”⁹⁵

Abbott presents § 223 as “specific, longstanding statutory authority” and suggests that it should govern the issue. Yet, the “singular as plural” construction contemplated by § 223 is mandatory only at either end of the spectrum: it shall be done “where necessary,”

⁹⁴ Opening Br. 15–16.

⁹⁵ Opening Br. 15–16.

and it shall not be done when “context requires otherwise.” Abbott points to no fact or circumstance that suggests cross-construction in this case is “necessary.” If anything, the statutory history outlined above suggests the opposite: that this context requires otherwise because the General Assembly intended to differentiate between the singular and the plural.

3. Decisions from other jurisdictions applying the rule of lenity—abolished in Delaware—are not persuasive authority.

Abbott’s remaining argument in support of his construction of § 1448 centers on the rule of lenity.⁹⁶ The rule provides that, when a criminal statute is ambiguous, the ambiguity must be strictly construed in favor of the accused.⁹⁷ Abbott points to other jurisdictions that have applied the rule to their person-prohibited statutes, including the federal courts, which “have achieved a rare unanimity” on this approach.⁹⁸ He contends that these decisions are

⁹⁶ Opening Br. 16–17.

⁹⁷ *United States v. George*, 946 F.3d 643, 645 (4th Cir. 2020); *United States v. Warren*, 149 F.3d 825, 828 (8th Cir. 1998).

⁹⁸ Opening Br. 10–11 (quoting *State v. Fourth Jud. Dist. Ct.*, 481 P.3d 848, 853 (Nev. 2021)).

persuasive authority, given that the General Assembly intended for § 1448 to track federal law.⁹⁹ He therefore implores this Court to follow those other jurisdictions and strictly construe § 1448 in his favor.¹⁰⁰

Although decisional law from other jurisdictions may sometimes be persuasive authority for interpreting Delaware law, the cases upon which Abbott relies here are not. Delaware has abolished the rule of lenity that was central to those decisions.

When Delaware revised its Criminal Code in 1972, it passed 11 *Del. C.* § 203. Section 203 provides: “The general rule that a penal statute is to be strictly construed does not apply to this Criminal Code, but the provisions herein must be construed according to the fair import of their terms to promote justice and effect the purposes of the law” Because of § 203, “the rule of lenity is not applicable to Title 11” of the Delaware Code.¹⁰¹

⁹⁹ Opening Br. 10–17.

¹⁰⁰ Opening Br. 16–18.

¹⁰¹ *State v. O’Dell*, 2017 WL 923461, at *6 & n.54 (Del. Super. Ct. Mar. 6, 2017) (citing § 203); *see also Dixon v. State*, 673 A.2d 1220, 1225 & n.3 (Del. 1996).

Thus, even if this Court finds the language of § 1448 to be ambiguous, § 203 bars it from applying the rule of lenity, as Abbott requests. Accordingly, decisions from other jurisdictions that rely upon it are not persuasive authority: it is not helpful for Delaware courts to consider how other jurisdictions apply a rule of statutory construction that does not exist in this State.

In any event, § 1448 is not ambiguous. This Court should therefore retain the guidance provided by *Buchanan*, that the simultaneous possession of multiple firearms can support multiple counts under the statute.

4. Abbott’s possession of each firearm constituted separate violations of § 1448.

To determine whether the multiple counts under a statute were constitutionally appropriate in the particular case, courts consider whether they “are sufficiently differentiated by time, location or intended purpose” to constitute separate violations.¹⁰² In Abbott’s case, there was sufficient differentiation in location and intent to support his separate convictions. As explained above, the General

¹⁰² *Williams*, 796 A.2d at 1286 (emphasis omitted).

Assembly intended for the possession of each firearm to constitute a separate violation of § 1448. With the acquisition or possession of each firearm, Abbott formed a separate intent to violate the prohibition. Moreover, the handguns were found hidden in different vents in different rooms of the residence. Necessarily, there must have been some separation in Abbott’s possession or control of the handguns for him to conceal them in those different locations.

D. Abbott identifies no urgent reason and clear manifestation of error to justify overturning *Brown*; his separate conviction for PABPP should also stand.

Finally, Abbott asks this Court to vacate not only one of his two PFBPP convictions, but also his PABPP conviction.¹⁰³ Recognizing that this Court’s prior decision in *Brown* squarely addresses the issue of merger between PFBPP and PABBP—and holds that they do not merge—Abbott argues that the decision should be “revisit[ed].” He contends that the review of § 1448 in *Brown*, either in the lower court or this Court, did not include all the pertinent considerations, such as the legislative history or comparisons to the federal counterpart.¹⁰⁴

¹⁰³ Opening Br. 17–18.

¹⁰⁴ Opening Br. 17–18.

By asking this Court to reconsider *Brown*, Abbott’s claim implicates the doctrine of *stare decisis*. This Court recently had occasion to address that doctrine in *Berry v. State*:¹⁰⁵

Stare decisis is an essential feature of common law systems. Adherence to precedent is fundamental to our legal system, allows for the predictable and consistent application of the law, and contributes to the actual and perceived integrity of the judicial process. Under the doctrine of *stare decisis*, courts overturn settled law only for urgent reasons and upon clear manifestation of error. Even in cases involving constitutional claims, a departure from precedent ‘demands special justification.

. . . .

Stare decisis protects the interests of parties in the judicial system, who act in reliance on precedent. Those reliance interests are especially strong in criminal cases. Merely disagreeing with the reasoning or holding of a previous case is not grounds to revisit it. This Court is particularly chary to overturn precedent where, as here, the only change is the court’s composition. . . .

Abbott offers no urgent reason or clear manifestation of error to justify his request. To the extent Abbott faults the lower court in *Brown* for relying on *Buchanan*, despite its supposed lack of substance, this Court clearly did not make the same alleged error: it reached its decision while noting the gaps in *Buchanan*’s analysis.¹⁰⁶

¹⁰⁵ 2025 WL 2639971, at *7 (Del. Sept. 15, 2025).

¹⁰⁶ *Brown*, 2021 WL 2588923, at *1.

Furthermore, Abbott’s other legal arguments—such as “a” versus “any” and the rule of lenity—are beside the main point that drove the decision in *Brown*: that PFBPP and PABBP require proof of a fact that the other does not (firearm versus ammunition).¹⁰⁷ Altogether, this Court should “meet [Abbott’s] invitation to revisit [*Brown*] with a substantial degree of caution” and reject it.¹⁰⁸

¹⁰⁷ *See id.*

¹⁰⁸ *See Berry*, 2025 WL 2639971, at *7.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the Superior Court.

Respectfully submitted,

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Dated: April 14, 2026

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LENELL T. ABBOTT,

Defendant Below,
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below,
Appellee.

No. 373, 2025

On appeal from the Superior
Court of the State of Delaware

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Dated: April 14, 2026

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