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IN THE SUPREME COURT OF THE STATE OF DELAWARE

REUEL RAY, Defendant Below, Appellant, v. STATE OF DELAWARE, Plaintiff Below, Appellee.	)	No. 197, 2021

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

APPELLANT'S REPLY BRIEF

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CLAIM I. THE SUPERIOR COURT ERRED IN HOLDING THE STATE DID NOT VIOLATE *BRADY* DESPITE THE PROSECUTION'S FAILURE TO DISCLOSE THAT A WITNESS'S UNRELATED FELONY CHARGES WERE DISMISSED ONLY AFTER SHE PROVIDED A STATEMENT TO POLICE IMPLICATING APPELLANT IN THE MURDER OF MELANCON.

Applicable Law.

In its Answering Brief, the State contends that Mr. Ray "landed on the incorrect standard for evaluating prejudice" under *Brady v. Maryland*,[1] then focuses its attention on one citation in which Appellant referred to the Supreme Court of the United States' decision in *Giglio v. United States*,[2] a case dealing with a *Brady* violation.[3] In coming to such conclusion, however, the State misreads Mr. Ray's Opening Brief and *Giglio*, and ignores multiple Supreme Court decisions that refined the rule articulated in *Brady*.

The State ignores the standard put forth by Mr. Ray in his Opening Brief, wherein he stated:

> In determining whether a *Brady* violation has occurred, courts' focus generally turn on "the third component—materiality." A showing of materiality does not demand that suppressed evidence would result in acquittal. Instead, the requirement is that a defendant merely receive a "fair trial, 'understood as a trial resulting in a verdict worthy of confidence.'" Thus, to establish materiality, a defendant need only

[1] Ans. Br. at 12 (discussing *Brady v. Maryland*, 373 U.S. 83 (1963)).

[2] 405 U.S. 150 (1972).

[3] Ans. Br. at 12.

> show "that the suppressed evidence 'undermines [the] confidence in the outcome of the trial."[4]

This *is* the standard for materiality under *Brady*, and Mr. Ray has argued that standard throughout the pendency of the postconviction proceedings.

The language to which the State takes offense comes from *Giglio* and is used by the Supreme Court of the United States specifically in the context of a *Brady* violation, not, as the State claims, a false-evidence claim.[5] In *Giglio*, a coconspirator testified that he had not been promised immunity in exchange for his testimony at Giglio's trial.[6] During the litigation of a motion for new trial filed postconviction by Giglio, multiple prosecutors filed affidavits in response to the defendant's claim that the coconspirator *had* been promised immunity prior to his testimony.[7] One prosecutor swore that he had promised the witness immunity, while others asserted that it was made clear to the coconspirator that he could still be prosecuted for his role in the underlying incident despite his testimony.[8] The prosecutor who stated he offered the witness immunity presented the matter to the

[4] Op. Br. at 16 (citations omitted).

[5] *See* Ans. Br. at 12-14.

[6] *Giglio*, 405 U.S. at 152.

[7] *Id*. at 152-53.

[8] *Id*.

Grand Jury for indictment, but did not go on to try the case.[9] Thus, there was no indication the trial prosecutors knew of the prior promise of immunity.[10]

The Supreme Court looked to two prior cases, both of which predated *Brady*, to begin its analysis.[11] The Court first cited *Mooney v. Holohan*, a 1935 decision in which it held that "deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice.'"[12] Next, the High Court cited the 1959 decision in *Napue v. Illinois* for the proposition that a conviction must fall "when the State, although not soliciting false evidence, allows it to go uncorrected when it appears."[13] The discussion of *Mooney* and *Napue* was mere prelude to the crux of the Court's analysis, however, which was squarely through the lens of *Brady*.[14] The Chief Justice wrote:

> *Brady v. Maryland* held that suppression of material evidence justifies a new trial irrespective of the good faith or bad faith of the prosecution. When the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within this general rule. We do not, however, automatically require a new trial whenever a combing of the prosecutors' files after the trial has disclosed evidence possibly useful to the defense but not likely to have

[9] *Id*. at 152.

[10] *See id.* at 152-53.

[11] *Id*. at 153.

[12] *Id*. (quoting *Mooney v. Holohan*, 294 U.S. 103, 112 (1935)).

[13] *Id*. (quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959)).

[14] *See id*. at 153-54.

> changed the verdict. A finding of materiality of the evidence is required under *Brady*. A new trial is required if the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury.[15]

The "affected the judgment of the jury" language came directly from *Napue*, a case that predated *Brady* by four years.[16] The Court's intent in this passage is clear: clarify that the pre-*Brady* standard of *Napue* was wrapped into the materiality prong of *Brady*. This is evidenced by its usage immediately subsequent to the *Giglio* Court's discussion of the third *Brady* factor.[17]

Moreover, the State's assertion that *Giglio* was meant to address the "problem of knowing misconduct" by the prosecution is belied by the plain language of the decision itself.[18] The Supreme Court clarified that the failure to disclose impeachment evidence was the "responsibility of the prosecutor" regardless of whether "the nondisclosure was a result of negligence or design."[19] The record was clear that the actual trial prosecutors seemed to be operating in good faith that the coconspirator had not been promised immunity.[20] Thus, *Giglio*

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[15] *Id*. (internal citations and quotations omitted).

[16] *See Napue*, 360 U.S. at 271.

[17] *Giglio*, 405 U.S. at 154.

[18] Ans. Br. at 13.

[19] *Giglio*, 405 U.S. at 154.

[20] *See id*. at 152-53.

is hardly an example of "knowing misconduct," and the High Court explicitly held that whether the nondisclosure was knowing was immaterial to its ultimate holding.[21]

If there was any lingering ambiguity as to whether the Supreme Court considered the events of *Giglio* to fall within the ambit of *Brady* or a separate, *Giglio*-specific rule, such uncertainty was resolved by the Court in *United States v. Bagley*.[22] In discussing *Giglio*, the *Bagley* Court repeatedly refers to it as a *Brady* case in which the prosecution failed to turn over impeachment evidence.[23] Moreover, *Bagley* cites the same passage from *Giglio* as Mr. Ray, *supra*, including the language that the materiality prong of *Brady* is satisfied if the impeachment evidence could "in any reasonable likelihood have affected the judgment of the jury."[24]

The State's objection within its Answering Brief appears to be rooted in a fundamental misunderstanding of *Brady* and its progeny. The State discusses

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[21] *Id*. at 154.

[22] 473 U.S. 667 (1985).

[23] *See, e.g., id.* at 676-77 ("In *Giglio v. United States*, the Government failed to disclose impeachment evidence similar to the evidence at issue in the present case, that is, a promise made to the key Government witness that he would not be prosecuted if he testified for the Government.").

[24] *Id*. at 677 (quoting *Giglio*, 405 U.S. at 154).

multiple legal standards that are applied in different factual scenarios and cites this Court's 1979 decision *Stokes v. State*[25] as an example of implementation of the differing standards.[26] In so arguing, however, the State ignores thirty-five years of *Brady* jurisprudence. Prior to the High Court's decision in *Bagley* in 1985, *Brady* violations were evaluated differently based on the factual scenarios underlying the alleged violation.[27] In *United States v. Agurs*, the Supreme Court distinguished three different types of *Brady* violations: (1) the defendant makes a general request under *Brady* and the prosecutor knowingly uses perjured testimony or knowingly failed to disclose that testimony used to convict the defendant was false; (2) the defendant does not make a *Brady* request and the prosecutor fails to disclose particular evidence favorable to the defense; and (3) the defense makes a specific *Brady* request and the prosecutor does not provide responsive materials.[28] Each type of *Brady* violation required analysis under different legal standards.[29]

Bagley simplified the *Brady* analysis established by *Agurs*, however, and removed the distinction between the "general request," "no request," and "specific

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[25] 402 A.2d 376 (Del. 1979).

[26] Ans. Br. at 13-14.

[27] *See generally United States v. Agurs*, 427 U.S. 97 (1976).

[28] *See Bagley*, 473 U.S. at 678-81 (discussing *Agurs*, 427 U.S. at 103-12).

[29] *Id*. at 679-81.

request" scenarios.[30] The Court adopted one standard for all *Brady* violations: evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome."[31] And *Bagley*, as discussed *infra*, reiterated that the "affected the judgment of the jury" language from *Giglio* was applicable in *Brady* cases.[32] Justice Stevens' dissenting opinion makes such conclusion certain:

> But the *Brady* rule itself unquestionably applies to this case, because the Government failed to disclose favorable evidence that was clearly responsive to the defendant's specific request. Bagley's conviction therefore must be set aside if the suppressed evidence was "material"—and it obviously was—and if there is any reasonable likelihood that it could have affected the judgment of the trier of fact.[33]

Bagley demonstrates why the State's invocation of this Court's decision in *Stokes* does little to guide this Court's judgment of the instant controversy.[34] *Agurs*, decided in 1976, established that different factual underpinnings leading to an alleged *Brady* violation required analysis using differing legal standards.[35] This

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[30] *Id*. at 682.

[31] *Id*.

[32] *Id*. at 677.

[33] *Id*. at 712-13 (Stevens, J., dissenting).

[34] Ans. Br. at 14 n.70.

[35] *Agurs*, 427 U.S. 103-12.

Court, when deciding *Stokes* in 1979, properly utilized the *Agurs* rubric to evaluate a *Brady* violation.[36] *Bagley*, however, was decided six years later and changed the analytical landscape of *Brady* violations.

Finally, the State points to this Court's decision in *Romeo v. State* for the proposition that this Court has recognized that the "affected the judgment of the jury" standard applies to scenarios where the State knowingly uses false evidence to secure a conviction.[37] *Romeo* does not include any complaint of a *Brady* violation, however, but rather deals with a straightforward allegation that a witness committed perjury while testifying.[38] While this Court did utilize the aforementioned language in announcing the standard by which it would assess Romeo's claim, such standard derives from the pre-*Brady* case of *Napue*.[39] As discussed, *Giglio* merely incorporated the standard utilized in assessing *Napue* violations into the *Brady* rubric.[40] That claims based upon *Napue* and its progeny continue to utilize the same standard in non-*Brady* cases is ultimately of little use to this Court's analysis.

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[36] *See Stokes*, 402 A.2d 376.

[37] *See* Ans. Br. at 14 n.70 (citing *Romeo v. State*, 2011 WL 1877845 (Del. Supr. May 13, 2011).

[38] *See Romeo*, 2011 WL 1877845 at *1-4.

[39] *See id*. at *3 n.10.

[40] *Giglio*, 405 U.S. at 154.

The trial court mistakenly analyzed materiality by evaluating the sufficiency of the other evidence against Appellant.

The State contends that the Superior Court properly weighed the strength of the State's case when evaluating whether the failure to disclose Tann's felony assault charge and subsequent dismissal thereof created a reasonable possibility of a different result.[41] In so arguing, the State relies upon this Court's analysis in *Dawson v. State*,[42] but fully ignores the United States Supreme Court's in-depth discussion in *Kyles v. Whitley*[43] of what a "reasonable probability" means in the context of *Brady*.[44]

The State asserts that in *Dawson*, this Court conducted "precisely the same type of analysis" as the Superior Court did in the instant case when considering an alleged *Brady* violation.[45] Not so. *Dawson* dealt with a defendant's claim that the State failed to timely disclose a prior inconsistent statement of a prosecution witness.[46] The prior inconsistent statement *was* disclosed to the defense, however,

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[41] Ans. Br. at 17-19.

[42] 673 A.2d 1186 (Del. 1996).

[43] 514 U.S. 419 (1995).

[44] *See generally* Ans. Br. at 7-19.

[45] Ans. Br. at 18.

[46] 673 A.2d at 1192.

immediately prior to the witness's testimony.[47] While the *Dawson* Court did briefly mention the strength of the State's evidence beyond the witness in question, the core of this Court's analysis focused on whether the timing of the disclosure had any effect on the outcome of the trial.[48] This Court responded in the negative, observing that:

> [D]efense counsel were able to conduct a full cross-examination of [the witness] which included: playing the tape of [the witness's] earlier, inconsistent statement; pointing out the inconsistencies to the jury; and questioning the motive of the witness in changing her statement. On these, facts there is no reasonable probability that the outcome would have been different if the changed testimony had been disclosed sooner.[49]

While the Superior Court's instant analysis, on the surface, seems to resemble this Court's analysis in *Dawson*, the difference between the two cases is clear: whereas the defense team in *Dawson* were presented the impeachment material prior to cross-examining the witness, and utilized such information effectively, Mr. Ray's attorneys were wholly unaware of Ms. Tann's felony case and the subsequent dismissal thereof, as well as the timing of those events in connection with her changed story. Dawson was able to present the impeachment evidence to the jury;

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[47] *Id*. at 1193.

[48] *Id*.

[49] *Id*.

Mr. Ray was not. That difference formed the foundation of this Court's decision in *Dawson*, and consequently, the case is not dispositive of Appellant's claim.

Furthermore, the State wholly ignores Mr. Ray's discussion of *Kyles v. Whitley* in his Opening Brief.[50] The Supreme Court in *Kyles* held that a "defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict."[51] Stated differently, the strength of the State's other evidence is not dispositive when evaluating a *Brady* claim. Instead, a reviewing court must consider whether the withheld evidence, if introduced, could reasonably have "undermine[d] confidence in the verdict."[52] Such was the case here, as Tann—unlike Coursey and Lee—was the only witness who appeared to have gained no benefit from testifying that Appellant confessed his purported role in the shooting to her.[53]

Indeed, the Superior Court recognized that Tann's testimony was "significant evidence."[54] It weighed Tann's testimony, however, against the "other

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[50] *Compare* Ans. Br. at 15-19 *with* Op. Br. at 27-30. It is worth noting the Superior Court, when deciding Mr. Ray's postconviction motion, also did not address *Kyles* in its Memorandum Opinion. *See generally State v. Ray*, 2021 WL 2012499 (Del. Super. Ct. May 19, 2021).

[51] *Kyles*, 514 U.S. at 434-35.

[52] *Id*. at 435.

[53] *See* Op. Br. at 23-27.

[54] *Ray*, 2021 WL 2012499 at *6.

evidence presented by the State" which the trial court described as "extensive and overwhelmingly established guilt beyond a reasonable doubt."[55] Those considerations, under *Kyles*, contribute little to an analysis of *Brady* materiality, which should instead primarily focus on the nature of the undisclosed impeachment evidence.[56]

To be material under *Brady*, evidence suppressed by the State "does not have to be so strong that, if admitted, it would have resulted in an acquittal. Instead, the defendant must show only a reasonable probability of a different result."[57] Mr. Ray has satisfied that burden. Tann testified that Mr. Ray confessed to murdering Melancon to her within weeks of the homicide. Unlike Coursey and Lee—the only two other witnesses to directly implicate Mr. Ray in the crime—Trial Counsel was unable to present any credible reason for why Tann would make such a claim. Their attempt to imply that Tann was attempting to deflect suspicion from her son, Brandon Tann, was unavailing—she told the police four months before trial that Mr. Ray told her he shot Melancon, by which point Mr. Ray and Lee had already been arrested for the homicide. The arrests and Indictment of the two codefendants made clear that Brandon Tann was not a suspect in Melancon's

[55] *Id*.

[56] *See generally Kyles*, 514 U.S. at 434-35.

[57] *Wright v. State*, 91 A.3d 972, 993 (Del. 2014).

murder, and Tann would have had no reason to try to protect him. Trial Counsel acknowledged in the Affidavit he filed with the Superior Court in response to Mr. Ray's Amended Motion that if the information about Tann's dismissed felony case had been disclosed, he "would have likely sought to introduce it during cross-examination" of Tann.[58]

Mr. Ray has successfully demonstrated that the State committed a *Brady* violation. The information related to the State's dismissal of Tann's pending criminal case was impeaching—a proposition fully supported by this Court's decision in *Michael v. State*.[59] According to the *Michael* Court, the State was required to disclose such evidence; instead, the Department of Justice suppressed it and Trial Counsel was not aware of the *nolle prosequi* prior to cross-examining Tann. Finally, the impeachment evidence against Tann was material, as she was the only witness who directly implicated Mr. Ray in the murder of Melancon that, as far as the jury could tell, had no incentive to lie. As Mr. Ray has established all three elements of a *Brady* violation, the Superior Court committed reversible error by not granting postconviction relief.

[58] *See* A765.

[59] 529 A.2d 752 (Del. 1987); *see* Op. Br. at 20-21.

<u>CLAIM II</u>. THE SUPERIOR COURT ERRED IN FAILING TO FIND PREJUDICE WHERE TRIAL COUNSEL FAILED TO ENSURE THAT THE JURY INSTRUCTION FOR FELONY MURDER ACCURATELY STATED THE LAW, RESULTING IN APPELLANT BEING CONVICTED WITHOUT A FINDING THAT ALL OF THE STATUTORY ELEMENTS OF THE OFFENSE HAD BEEN MET, INCLUDING THE IDENTITY OF THE PERPETRATOR OF THE HOMICIDE.

The instructed elements of Felony Murder were inadequate for conviction.[60]

The State concedes that the Superior Court's instruction was "based . . . on a prior version of the felony-murder statute,"[61] but contends that such instruction placed a "heavier burden on the State than would have been necessary under the effective version of the statute."[62] The State is incorrect as to its claim regarding the weight of the burden the prosecution needed to meet to convict.

The element within the pre-2004 statute that was more burdensome for the State to prove prior to amendment of the Felony Murder statute was the "in

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[60] In his Opening Brief, as well as in the proceedings below, Mr. Ray asserted that the Superior Court defined "in the course of" improperly and failed to define "in the furtherance of" at all. *See* Op. Br. at 44. This is inaccurate, as the trial court *did* define both phrases in its instruction as to felony murder. *See* A534. The Superior Court instructed the jury that:

> In the course of means Craig Melancon's death occurred during the defendant's commission of a felony. In furtherance of means that Craig Melancon's death was caused by the defendant, or his accomplice who committed a felony.

A534. Counsel's error does not affect the substance of Mr. Ray's argument, however, as the instruction as given misstated the law as it existed at the time and nevertheless warrants reversal.

[61] Ans. Br. at 26

[62] Ans. Br. at 27.

furtherance of" element.[63] Before 2004, "in furtherance of" meant that the murder must have occurred to *facilitate commission* of the felony.[64] Such requirement was precisely what the legislature found to be too onerous a burden upon the prosecution, stating that the facilitation requirement "is inconsistent with the common law rule, and with the definition of felony murder in almost every other state, which does not require evidence of specific intent in a felony murder prosecution."[65]

That heightened standard—that the murder must have occurred to facilitate commission of the underlying felony—was not given by the Superior Court here.[66] Instead, "in furtherance of" was defined to mean that the victim's "death was caused by the defendant, or his accomplice who committed a felony."[67]

Rather than address Appellant's argument that the instruction as given was less onerous than both the pre-2004 version of the Felony Murder statute, as well as the version of the law that was operational at the time Mr. Ray was accused of committing the offense, the State focuses on the words "during"—as used in the

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[63] *See Comer v. State*, 977 A.2d 334, 340 (Del. 2009).

[64] *Williams v. State*, 818 A.2d 906, 913 (Del. 2002).

[65] *Comer*, 977 A.2d at 340 (internal citations omitted).

[66] *See* A534.

[67] A534.

inadequate instruction given by the trial court here—and "while"—as required by the legislature post-amendment.[68] The State contends that because Merriam-Webster defines "while" to mean "during the time that," the two words are synonymous and the trial court committed no error when instructing the jury.[69] Yet, the State ignores that the legislature did not rely upon the dictionary definition of the word, but instead specifically defined "while" to mean "that the killing must be directly associated with the predicate felony as one continuous occurrence."[70] That definition was never provided to the jury, and thus the "one continuous occurrence" language was never contemplated by the panel when rendering its verdict.

The State also contends in its Answering Brief that the Superior Court's earlier reading of the Felony Murder offense as charged in the Indictment—which specified that Melancon's death was caused "while engaged in the commission or attempt to commit" the offense of Robbery in the First Degree—cured any potential ambiguity caused by its later instruction that the victim's death must have "occurred during the defendant's commission of a felony," and must have been

[68] Ans. Br. at 27-28.

[69] Ans. Br. at 28 n.124.

[70] *Comer*, 977 A.2d at 340.

caused "by the defendant, or his accomplice who committed *a felony*."[71] The State ignores, however, that the instruction as to the Felony Murder offense wholly disregarded the language as charged in the Indictment. Whereas the Indictment used the proper "while engaged in the commission" language, the instruction utilized the "in the course of and in furtherance of" verbiage.[72] Where the instruction as given did not track the language of the indicted charge—as it did for all other offenses—it is unreasonable to assume that lay jurors would have deduced that the underlying felony must have been first-degree robbery, especially when the definition specifically stated the death only need occur during *a felony*.[73] Moreover, while the Indictment specifies that Mr. Ray was accused of recklessly causing Melancon's death during the commission of Robbery in the First Degree, the trial court's injection of accomplice liability into the Felony Murder instruction confused the issue even more. The instruction as given stated that the jury could convict if they found that Melancon's death was caused by Mr. Ray's "accomplice who committed *a felony*."[74]

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[71] Ans. Br. at 31.

[72] *Compare* A533 *with* A534.

[73] A534 (emphasis added).

[74] A534 (emphasis added).

The Felony Murder instruction as given failed to adequately state and define the elements of the offense as they existed at the time Mr. Ray was accused of committing the crime. The instruction utilized the pre-2004 version of the language—stripped of the more onerous burden that caused the legislature to amend the statute in the first place—and failed to include essential elements that the legislature wrote into the offense subsequent to *Williams*. The Superior Court's determination that Mr. Ray was not entitled to postconviction relief as to this claim must be reversed.

The introduction of an accomplice liability theory within the instruction prejudiced Appellant.

The State contends that Trial Counsel did not argue, at any point, that Lee may have fired the killing shots, not Mr. Ray.[75] In so arguing, the State ignores this portion of Trial Counsel's closing argument:

> One last point that I ask you to – maybe, I don't know whether you remember this because it was early in the trial, I hope you did. I tried to show the significance of it by the way the question was asked. Do you remember what [Coursey] said happened when he went outside after the shooting? Do you remember who he had running away first and who he had running away second? Do you remember who was first? Reuel Ray was the first one running away according [to] Mr. Coursey. Who was second? Tyare Lee. Water. If you believe Lee, that couldn't happened [*sic*] that way because as we will see when we talk about him, he said I fired one shot, and I took off. I looked back.

[75] Ans. Br. at 33.

> He is running away first. Ray second. Exact opposite of what Booter tells you.[76]

This argument specifically created an inference that, if Coursey was to be believed, Lee was responsible for Melancon's death, not Mr. Ray.

The State also ignores that its own argument at trial leads to a conclusion that Lee killed Melancon. During its rebuttal argument, the prosecutor stated:

> Finally, Tyare Lee[.] Tyare Lee is a criminal. *He is a murderer*, and all of those factors along with everything else said by defense should be taken into account by all of you. It is your duty to do that. There is no denying that. But it does not mean you completely throw out Tyare Lee.[77]

There was no allegation or evidence at trial that Lee was involved in the death of any person other than Melancon. Thus, when the prosecutor referred to Lee as a "murderer," it was clear the State was referring to Melancon's death. If the jurors had any doubts whether Mr. Ray—who was acquitted of intentional murder—was the individual who shot and killed Melancon, the prosecutor's explicit description of Lee as a "murderer," in conjunction with the accomplice language in the Felony Murder instruction, gave them permission to convict Appellant for Lee's actions.

Perhaps aware that Lee would be described as a "murderer" during rebuttal argument, the State acknowledged between the defense's closing argument and

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[76] A525.

[77] A530 (emphasis added).

rebuttal argument that an accomplice liability instruction must be provided to the jury, and that "[i]t would be reversible error not to instruct on this."[78] The State's assessment at the time, in light of the accomplice language within the Felony Murder instruction without an accompanying instruction as to how to determine the existence of a principal-accomplice relationship, was accurate. Inserting an accomplice liability theory into an instruction for an offense that carries a mandatory life sentence without actually instructing the jury as to what accomplice liability means under the law *is* reversible error. Both the State and the defense made arguments to the jury that could lead to a conclusion that Lee was the individual who actually shot and killed Melancon. Mr. Ray is entitled to a fair trial in which the offense for which he is presently serving a life sentence is accurately defined for the jury. The Superior Court erred in holding otherwise, and this Court must reverse the trial court's decision to deny Mr. Ray's postconviction motion.

[78] A529.

CONCLUSION

For the reasons stated in his Opening Brief and herein, Mr. Ray respectfully requests that this Honorable Court reverse the judgment of the Superior Court.

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