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IN THE SUPREME COURT OF THE STATE OF DELAWARE

YONY MORALES-GARCIA, Defendant Below- Appellant, v. STATE OF DELAWARE, Plaintiff Below- Appellee.	)))))))))))	No. 311, 2024 ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE ID No. 2201010642

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

SUPPLEMENTAL MEMORANDUM

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Dated: August 15, 2025

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On July 9, 2025, a three-justice panel heard oral argument on Yony Morales-Garcia's appeal. On July 14, 2025, this Court directed the parties to submit supplemental memoranda that addressed five questions raised by this Court. This is Mr. Morales-Garcia's supplemental memorandum.

QUESTION ONE

Did the jury receive a copy of the indictment? If not, was the jury provided with any other statement of the essential facts constituting the offense of conspiracy in the first degree under Count 17 of the indictment?

The jury did not receive a copy of the indictment or any other statement of the essential facts constituting the Conspiracy in the First-Degree offense.

The jury did not receive a copy of the indictment. The jury only received a copy of the jury instructions.[1] Although the trial judge advised the jury that it would be provided with a copy of the indictment,[2] it does not appear that was done.[3] Nor was the jury provided with any other statement of the essential facts constituting the offense of conspiracy in the first degree.

The conspiracy first degree offense instruction does not provide any information regarding what offense Yony was alleged to have conspired to commit. Nor does it provide any reference to the person with whom he was alleged to have conspired.

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[1] A911-947; D.I. 95.
[2] A802.
[3] The jury did receive a copy of the indictment in Mr. Morales-Garcia's first trial, which resulted in a hung jury and mistrial. D.I. 62.

QUESTION TWO

Was the Superior Court's conspiracy-in-the-first-degree jury instruction a correct statement of the law?

The Superior Court's Conspiracy in the First Degree jury instruction was not a correct statement of the law.

The instruction given to the jury for the offense of Conspiracy in the First Degree was not a correct statement of the law. The pattern jury instruction for Conspiracy in the First Degree provides the following comment: "Immediately following this instruction, an instruction should be given stating the elements of the crime."[4]

The Superior Court gave the following instruction to the jury:

> In order to find Defendant guilty of Conspiracy in the First Degree, you must find the State has proved each of the following two (2) elements has been established beyond a reasonable doubt:
>
> (1) Defendant agreed with another person that one or more of them would engage in conduct constituting a felony or an attempt to commit a felony; and
>
> (2) Defendant acted intentionally.
>
> "Intentionally" means it was Defendant's conscious objective or purpose to engage in the conspiracy.[5]

[4] Pattern Crim. Jury Instruction, Conspiracy in the First Degree 11 *Del. C.* § 513(1).
[5] A929.

The instruction as read failed to immediately thereafter include the elements of the felony that is referenced in the instruction. As a result, the jury was not instructed as to the particular offense that Yony was charged with conspiring to commit. Conspiracy in the First Degree applies only to Class "A" felonies,[6] meaning that in Yony's case, the only applicable offense was Felony Murder. The instruction as given to the jury did not include any reference to the requirement that the conspiracy would have to be commit a Class "A" felony.

Without an instruction indicating the elements of the felony offense referenced in the Conspiracy First Degree instruction, there is no way to know what offense the jury found that Yony conspired to commit. The jury may have found that Yony conspired to commit the offense of robbery, not felony murder, which is insufficient to sustain a conviction for Conspiracy in the First Degree. Without an instruction immediately following the instruction that states the elements the crime, the Conspiracy in the First Degree instruction was not a correct statement of the law. The trial court's failure to include this portion of the instruction constituted plain error that requires reversal.

Moreover, the instruction was not a correct statement of law as Yony could not be charged with conspiracy to commit felony murder. In *Rodriguez v. State*,[7]

[6] 11 *Del. C.* § 513.
[7] 1994 WL 679731 (Del. Nov. 29, 1994)

this Court reviewed a conviction of conspiracy to commit felony murder.[8] After a trial, Rodriguez was convicted of felony murder in the first degree with the predicate felony being criminally negligent homicide.[9] He was also convicted of first-degree conspiracy to commit felony murder.[10]

On appeal, Rodriguez challenged his conviction, arguing that he could not be convicted of conspiracy in the first degree since criminally negligent homicide implies an unintended result and it was "impossible to agree in advance to an unintended result."[11] The State conceded this plain error and agreed "that one cannot commit a conspiracy to commit a crime which is defined in terms of reckless or negligent conduct."[12]

Other jurisdictions have similarly held that a defendant may not be convicted of conspiracy to commit felony murder.[13] The logic behind these holdings is that a

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[8] *Id.* at *1.
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Evanchyk v. Stewart*, 47 P.3d 1114, 1119 (Ariz. 2002) ("[A] defendant may not be convicted of conspiracy to commit first-degree murder when that conviction is based only on the commission of felony murder."); *State v. Wilson*, 43 P.3d 851, 853-854 (Kan. Ct. App. 2002) ("Our conspiracy statute requires a specific intent. Felony murder does not require a specific intent. Accordingly, Kansas does not recognize the crime of conspiracy to commit felony murder. One cannot intentionally conspire to commit a crime which only requires a mens rea negligence or no mens rea at all."); *State v. Luzania*, 2020 WL 433123, at *2 (Ariz. Ct. App. Jan. 28, 2020) ("An intent to commit the predicate felony is insufficient to sustain a conspiracy to commit first-degree murder conviction.").

defendant may not be convicted of conspiracy to commit felony murder since one cannot intentionally conspire to commit a reckless crime; or a defendant cannot be convicted when one only had the requisite intent to commit the underlying felony.[14]

This Court recently reiterated that while a defendant is not entitled to a jury instruction of his choosing, "he does have the unqualified right to a *correct* statement of the substance of the law."[15] When reviewing the jury instructions, this Court will only reverse "if such deficiency undermined the ability of the jury to intelligently perform its duty in returning a verdict."[16]

Despite this Court's holding in *Rodriguez*, Yony was charged with first-degree conspiracy to commit felony murder. Felony murder in the first degree states that "a person is guilty of murder in the first degree when while engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any felony, the person *recklessly* causes the death of another person."[17] Like in the *Rodriguez* case, Yony cannot intentionally conspire to commit a crime that only requires a reckless state of mind. At most, he could have been charged

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[14] *Evanchyk*, 47 P.3d at 1119. *See also State v. Beccia*, 505 A.2d 683, 685 (Conn. 1986) ("It follows, therefore, that there is no such thing as conspiracy to commit a crime which is defined in terms of reckless or negligently causing a result.").
[15] *Ray v. State*, 280 A.3d 627, 640 (Del. 2022) (quoting *Flamer v. State*, 490 A.2d 104, 128 (Del. 1983)) (emphasis added).
[16] *Probst v. State*, 547 A.2d 114, 119 (Del. 1988) (internal quotation omitted).
[17] 11 *Del. C.* § 636(2).

with Conspiracy in the Second Degree as it relates to the underlying felony of Robbery in the First Degree. Yet the State did not charge Yony with that offense.

Without a proper instruction on the conspiracy offense, the jury was left uninstructed on how to weigh Emner's guilty plea to conspiracy as it relates to Yony's guilt. This will be further discussed in response to Question 5.

Yony has an unqualified right to a correct statement of the substance of the law, which he was not given here for the first-degree conspiracy instruction. The deficiencies with the instruction undermined the ability of the jury to perform its job as it was never informed of the felony to which Yony conspired to commit. It is not legally cognizable for Yony to be convicted of conspiring to commit felony murder. The conspiracy in the first degree jury instruction was not a correct statement of the law and gives rise to plain error. The judgment and sentence must be vacated for the offense of Conspiracy in the First Degree.

QUESTION THREE

Should the rule announced in Allen v. State, 878 A.2d 447, 451 (Del. 2005)—that a prosecutor may seek to introduce a codefendant's guilty plea for the limited purpose of "allowing the jury to accurately assess the credibility of the co-defendant witness, to address the jury's possible concern of selective prosecution[,] or to explain how the co-defendant witness has firsthand knowledge of the events about which he or she is testifying"—apply with equal force in cases in which the codefendant is not called as a witness for the State?

The rule announced in Allen v. State *should apply with equal force in case in which the co-defendant is not called as a witness for the State*.

In *Allen v. State*,[18] this Court addressed the admissibility of a codefendant's guilty plea agreement when the codefendant did not testify live at trial.[19] At trial, the State called one of Allen's codefendants as a witness and he testified about his plea agreement with the State.[20] At the conclusion of his testimony, the State moved a second non-testifying codefendant's guilty plea into evidence.[21] The trial court admitted the plea agreement over the defense's objection.[22]

On appeal, Allen argued that the trial court abused its discretion in admitting the non-testifying codefendant's guilty plea. This Court adopted the prevailing view of other jurisdictions that evidence of a codefendant's guilty plea is not generally admissible in the trial of his fellow accused and the same goes for a

[18] 878 A.2d 447 (Del. 2005).
[19] *Id.* at 449.
[20] *Id.*
[21] *Id.*
[22] *Id.*

codefendant's guilty plea to an offense arising out of the same set of circumstances.[23]

This Court elaborated that a codefendant's plea agreement cannot "be used as substantive evidence of a defendant's guilt, to bolster the testimony of a co-defendant, or to directly or indirectly vouch for the veracity of another co-defendant who pled guilty and then testified against his or her fellow accused."[24] This Court determined that there were limited circumstances when the *prosecution* could seek to introduce a codefendant's guilty plea either through testimony or the actual agreement itself.[25] The limited purposes outlined by this court included: "allowing the jury to accurately assess the credibility of the co-defendant witness, to address the jury's possible concern of selective prosecution or to explain how the co-defendant witness has first-hand knowledge of the events about which he or she is testifying."[26] This Court also noted that even if the State does not elicit testimony on direct examination about the guilty plea, it may be admissible on cross-examination for impeachment purposes.[27]

Allen focused on the prosecution's ability to introduce a codefendant's guilty plea for a witness called by the State but also addressed when a guilty plea may be

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[23] *Id.* at 450.
[24] *Id.*
[25] *Id.* (emphasis added).
[26] *Id.* at 450-451.
[27] *Id.*

admissible on cross-examination. If the defense calls a codefendant as a witness but does not elicit any testimony on direct examination about the guilty plea, the State may be permitted to cross-examine the codefendant about the plea agreement for impeachment purposes. The latter two limited purposes involving the jury's concern of selective prosecution and explaining how a codefendant witness has first-hand knowledge of the events do not carry the same weight when a witness is not called by the State.

Therefore, the *Allen* rule allowing a prosecutor to seek introduction of a guilty plea for a limited purpose applies in cases when a codefendant is not called as a witness for the State.

QUESTION FOUR

What was the relevance of the admission of the fact that Emner Morales-Garcia pleaded guilty to conspiracy in the second degree, separate and apart from the relevance of his plea of guilty to robbery in the first degree?

The relevance of the plea to conspiracy, separate from the guilty plea to robbery, is that it permitted the jury to infer that Yony was the person with whom Emner conspired.

During trial, the State elicited testimony through Detective Grassi during its case-in-chief that Emner Morales-Garcia pleaded guilty to both first-degree robbery and conspiracy.[28] Grassi did not specify with whom Emner conspired. The defense called Emner as a witness and he testified that he pled guilty to robbery for stealing the necklace.[29] He explained he took the plea to the robbery offense since he confessed to taking the chain.[30] The State further questioned Emner regarding his guilty plea to conspiracy in the second degree.[31] The following exchange occurred:

> Prosecutor: You also pled guilty to conspiracy in the second degree, correct?
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> Emner: Yes.
>
> Prosecutor: Conspiracy is agreeing to commit a crime with someone else, correct?

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[28] A696; A698.
[29] A756-758.
[30] A758.
[31] *Id.*

> Emner: Well if that's what you call the conversation—yes, if that's what you call the conversation that me and Ely had, then, yes.[32]

No further testimony was elicited regarding the offense to which Emner conspired to commit.

The relevance of the admission of the fact that Emner pled guilty to conspiracy in the second degree is that the jury was likely to infer that Yony was the other person with whom Emner conspired. When the testimony was initially elicited through Grassi, there was no clarification made as to whom Emner conspired with to commit the offense. It left the jury with a clear inference that Emner conspired with Yony as he was the person on trial and his charged codefendant.

The admission of Emner's guilty plea to conspiracy in the second degree gave the State an extra, unrebutted piece of evidence tending to establish Yony's guilt. The jury was left to infer that Yony was guilty of the charges for which he was on trial based on Emner's guilty plea to conspiracy.

Beyond establishing Yony's guilt as a co-conspirator, there was no other relevant purpose for the State's introduction of Emner's guilty plea to conspiracy. The State used Emner's plea to conspiracy as substantive evidence. It intended to have the jury draw the inference that Yony was the other person with whom Emner

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[32] *Id.*

conspired, and since Emner pled guilty to the conspiracy, then inferably Yony must also be guilty. This is in direct contravention of the principles articulated in *Allen*, which held that evidence of a codefendant's plea agreement is not generally admissible against a fellow defendant and may not be used as substantive evidence of a defendant's guilt.

Any relevance to the fact that Emner pled guilty to conspiracy in the second degree was outweighed by the prejudice Yony suffered as a result of the jury hearing this evidence, especially without a limiting instruction. Reversal is required.

QUESTION FIVE

Given that Detective Grassi's hearsay testimony, to which defense counsel purposefully did not object, did not include an admission by Emner Morales-Garcia that he conspired with the defendant to commit a crime, how should the prosecution's eliciting of evidence of Emner's conspiracy guilty plea affect the Court's plain-error analysis?

The prosecution's introduction of Emner's guilty plea to conspiracy was so clearly prejudicial to Yony's substantial rights as to constitute plain error.

Detective Grassi testified on direct examination about statements made by Emner regarding his involvement in stealing the chain from Frank Garza.[33] He further testified that Emner confirmed with police the clothing that he was wearing during the robbery.[34] The State asked Grassi if Emner indicated anything specific about the chain; before answering, the trial judge called a sidebar.[35] The Court directed its concerns to trial counsel regarding the hearsay testimony that was being elicited.[36] The trial judge assumed that there was a tactical reason for not objecting.[37] Trial counsel replied "I have him listed as a witness. I plan on calling him as a witness."[38] The sidebar concluded after this exchange.

This hearsay testimony did not include any admission by Emner that he conspired with Yony to commit a crime. These hearsay statements focused solely

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[33] A289-292.
[34] *Id.*
[35] A292.
[36] A293.
[37] *Id.*
[38] *Id.*

on Emner's comments regarding his own involvement in the robbery and the location of items associated with the robbery (the chain and his clothing). The defense did not object to this hearsay testimony since he intended to call Emner as a defense witness. A decision not to object to this testimony does not constitute a waiver of the issue presented in this appeal regarding the prosecutor's misconduct in introducing the guilty plea evidence.

At trial, defense counsel did not object to the guilty plea evidence that was introduced through Grassi or referenced in opening statements. As there was no objection at trial to this testimony about Emner's guilty pleas, this Court reviews for plain error as to the claim of prosecutorial misconduct.[39] When assessing for plain error, this Court looks to whether the error "was so clearly prejudicial to [a defendant's] substantial rights as to jeopardize the very fairness and integrity of the trial process."[40]

In a criminal case, the defense has no obligation to present a case. Defense counsel did not need to call Emner as a witness, even after he made representations during the State's case-in-chief that he intended to do so. It would have been well within trial counsel's discretion to later decide to no longer call Emner as a witness. The State preemptively and gratuitously introduced evidence of Emner's

[39] *Hoskins v. State*, 102 A.3d 724, 728 (Del. 2014).
[40] *Bullock v. State*, 775 A.2d 1043, 1047 (Del. 2001) (quoting *Dutton v. State*, 452 A.2d 127, 146 (Del. 1982)); *Baker v. State*, 906 A.2d 139, 150 (Del. 2006).

guilty plea to both the robbery and the conspiracy for no other purpose than to have the jury infer that Yony must be guilty as a result of his codefendant's guilty pleas.

By specifically eliciting evidence of Emner's conspiracy guilty plea, the State committed prosecutorial misconduct. The defense deliberately did not object to the hearsay testimony from Grassi about Emner's prior statements regarding his involvement in the robbery of the chain as it was anticipated that Emner would testify to this effect. This portion of testimony did not include any reference to a conspiracy or Emner having an agreement with anyone else to commit any crimes. By eliciting testimony about Emner's plea to conspiracy, the jury was provided a crucial fact with which to infer Yony's guilt. Moreover, the jury was left uninstructed as to how to parse this fact in its deliberations.

When the State later introduced Emner's conspiracy guilty plea during Grassi's testimony, it left the jury with no other inference than that Yony must have been the other person that conspired with Emner. The prejudice to Yony comes from this later testimony of Emner having pled guilty to a conspiracy charge. The jury was left to infer that this conspiracy was with Yony. Yony was the only person on trial and charged as a codefendant with Emner. Despite Emner never testifying that he conspired with Yony to commit any of these offenses, the State used his conspiracy guilty plea as substantive evidence to have the jury infer that Yony was likewise guilty based on Emner's plea to the conspiracy.

Even when the guilty plea evidence was introduced during Emner's cross-examination, the jury was not instructed on how to weigh Emner's guilty plea. Not only was it not instructed on how to weigh this evidence, but the jury was also not instructed on a correct statement of the law for the conspiracy charge in the jury instructions. There was also no evidence as to what offense Emner conspired to commit. The only evidence was that he pled guilty to a conspiracy.

On cross-examination, Emner testified that he pled to the conspiracy charge and that if it meant he agreed with another person, then it was with Ely, not Yony. The problem is that the jury knew that Emner was a charged codefendant with Yony and that he had an interest in protecting his brother. Yony and Emner were charged in the same indictment and in the same count for Conspiracy in the First Degree.

This was a weak case for the State, as demonstrated by Yony's first trial resulting in a hung jury. There were no eyewitnesses who identified Yony as the shooter, despite the restaurant where the homicides occurred being filled with multiple people. This was a case built on circumstantial evidence, with only one witness, Ely, providing testimony that Yony was the other person that went into the restaurant with Emner.

The State's introduction of Emner's guilty plea to conspiracy was so clearly prejudicial to Yony's substantial rights as to jeopardize the fairness and integrity of

the trial process. This was a material defect that was basic, serious, and fundamental in character. Yony was deprived of his substantial rights and the misconduct of introducing this evidence was manifestly unjust.

Yony's right to a fair trial was undermined by the State's introduction of Emner's guilty plea through Grassi, especially given that no limiting instruction was given by the Court. The jury was left to consider Emner's guilty plea as substantive evidence of Yony's guilt. The weakness of the State's case further highlights the magnitude of the error here. This is not a case with overwhelming other evidence of guilt. The prosecutor's improper introduction of this guilty plea evidence constituted plain error that requires reversal.

CONCLUSION

For the foregoing reasons, Appellant Yony Morales-Garcia respectfully requests that this Court reverse his convictions and remand for a new trial.

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