



IN THE SUPREME COURT OF THE STATE OF DELAWARE

YONY MORALES-GARCIA,)
Defendant Below,)
Appellant,)
V.) No. 311, 2024
STATE OF DELAWARE,)
Plaintiff Below,)
Appellee.)

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S SUPPLEMENTAL MEMORANDUM

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PROCEDURAL POSTURE

After his first trial resulted in a hung jury, on May 16, 2024, a second jury found Yony Morales-Garcia (“Morales-Garcia”) guilty of two counts of Murder First Degree, seven counts of Possession of a Firearm During the Commission of a Felony, Robbery First Degree, three counts of Reckless Endangering First Degree, Aggravated Menacing, Carrying a Concealed Deadly Weapon, Wearing a Disguise During the Commission of a Felony, and Conspiracy First Degree. On July 19, 2024, the Superior Court sentenced Morales-Garcia to life in prison on each Murder First Degree conviction, plus 97 years of unsuspended Level V time for the remaining charges. (A984-90; Ex. A).

On August 5, 2024, Morales-Garcia filed a timely notice of appeal followed by an opening brief on February 28, 2025. The State filed its answering brief on March 31, 2025. Morales-Garcia filed a reply brief on April 15, 2025.

This Court held oral argument before a panel on July 9, 2025. On July 14, 2025, the Court sent notice informing the parties that the matter would be scheduled for oral argument before the Court *en banc* and requesting that the parties file supplemental briefs addressing five questions. This is the State’s supplemental brief.

ARGUMENT

I. 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?

Yes, the jury received a copy of the indictment for Morales-Garcia before it began deliberations. This answer is based on the trial judge's preliminary remarks to the jury prior to instructing them (A802)¹ and a discussion with one of the trial prosecutors who confirmed that it is the practice of the Superior Court in Sussex County to always give the jury a copy of the defendant's indictment before deliberations.² Additionally, the State located a copy of the indictment bound together with the jury instructions in the prosecutor's case file for Morales-Garcia.. (SB1-45).³

¹ Specifically, the Superior Court instructed the jury as follows: "Very good. All right. Ladies and gentlemen, I am about to give you the instructions on the law as well as the jury verdict sheet. ***And you will also be supplied with the indictment***, and I will address that as we go." (A802) (emphasis added).

² See also the State's closing argument: "***Walk your way through the indictment, compare the elements to the evidence***, take the time that you need with all the evidence in front of you." (A863) (emphasis added).

³ The Superior Court also gave an instruction to the jury regarding the indictment as follows: "The indictment is a mere accusation against the defendant. It is the charging document. It is not, in itself, any evidence of the guilt of the defendant, and you should not allow yourself to be influenced in any way, however slightly, by the fact that an indictment has been filed against the defendant." (A804).

II. QUESTION TWO: WAS THE SUPERIOR COURT'S CONSPIRACY-IN-THE-FIRST DEGREE JURY INSTRUCTION A CORRECT STATEMENT OF THE LAW?

Yes, the Superior Court's instruction to the jury on the Conspiracy First-Degree charge was a correct statement of the law.

Under 11 *Del. C.* § 513, a person is guilty of conspiracy in the first degree

when, intending to promote or facilitate the commission of a class A felony, the person: (1) Agrees with another person or persons that they or 1 or more of them will engage in conduct constituting the felony or an attempt or solicitation to commit the felony

The Superior Court instructed the jury as to Conspiracy First-Degree (Count 17), as follows:

Count 17, Conspiracy in the First Degree. In order to find defendant guilty of conspiracy in the first degree, you must find the State has proved each of the following two elements have been established beyond a reasonable doubt: One. 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, two, defendant acted intentionally. "Intentionally" means it was defendant's conscious objective or purpose to engage in the conspiracy.

(A818).

Morales-Garcia did not object to the jury instruction. (A788-96). And, the conspiracy instruction tracked the statue defining the charged crime (11 *Del. C.* § 513). Thus, the Superior Court correctly instructed the jury

regarding the elements required to find Conspiracy First-Degree under 11 *Del.*

C. § 513(1).

**III. 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 CO-
DEFENDANT'S GUILTY PLEA FOR THE LIMITED PURPOSE
OF ALLOWING THE JURY TO ACCURATELY ASSESS THE
CREDIBILITY OF THE CO-DEFENDANT WITNESS, TO
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PROSECUTION[,] OR TO EXPLAIN HOW THE CO-
DEFENDANT WITNESS HAS FIRST-HAND KNOWLEDGE OF
THE EVENTS ABOUT WHICH HE OR SHE IS TESTIFYING--
APPLY WITH EQUAL FORCE IN CASES IN WHICH THE CO-
DEFENDANT IS NOT CALLED AS A WITNESS FOR THE
STATE?**

Yes, the rule announced by this Court in *Allen v. State*⁴ should apply with equal force in cases in which the State does not call the co-defendant as a witness, but the co-defendant testifies for the defense. When the State does not call a co-defendant as one of its witnesses, but the defense calls that witness, evidence of the co-defendant's guilty plea (or plea agreement) should still be admissible during cross-examination of the co-defendant for purposes of impeachment.⁵ A party may explore the bias of a witness at trial and such is "always relevant as discrediting the witness and affecting the weight of the

⁴ 878 A.2d 447, 451 (Del. 2005).

⁵ *Id.* (citing *Dotterer v. State*, 172 Ind. 357, 88 N.E. 689, 694–95 (1909); *New v. Weber*, 600 N.W.2d 568, 576 (S.D. 1999)). See D.R.E. 609(a)(1); D.R.E. 611(b) D.R.E. 602. See also *People v. Davis*, 296 P.3d 219, 233 (Colo. App. 2012), *cert. denied*, 2013 WL 142467 (Colo. 2013); *People v. Brunner*, 797 P.2d 788, 789 (Colo. App. 1990).

testimony.”⁶ “While the trial judge may exercise her discretion to limit the extent of such evidence of bias, she cannot foreclose a legitimate inquiry into a witness’ credibility.”⁷ The State’s goal in using this form of impeachment “is to uncover any incentive a witness might have to testify falsely.”⁸

Additionally, whether the State or the defendant offers the testimony of a co-defendant, the State should be able to use a co-defendant’s guilty plea or plea agreement to demonstrate that a co-defendant has firsthand knowledge of a crime or crimes based on his acknowledged participation.⁹

In addition, as pointed out by the State during oral argument, the Court *sua sponte* raised the issue of giving the jury the “accomplice testimony”

⁶ *Jones v. State*, 940 A.2d 1, 16 (Del. 2007); *Weber v. State*, 457 A.2d 674, 680 (Del. 1983) (citing *Davis v. Alaska*, 415 U.S. 308, 316 (1974)).

⁷ *Jones*, 940 A.2d at 16; *Weber*, 457 A.2d at 680.

⁸ *Jones*, 940 A.2d at 15–16; *Williamson v. State*, 707 A.2d 350, 361 (Del. 1998).

⁹ *People v. Davis*, 296 P.3d 219, 233 (Colo. App. 2012), *cert. denied*, 2013 WL 142467 (Colo. 2013); *People v. Montalvo-Lopez*, 215 P.3d 1139 (Colo. App. 2008) (finding if accomplice testifies, evidence of accomplice’s guilty plea may be admissible for other purposes, such as to show acknowledgment by the accomplice of participation in the offense); *United States v. Jones*, 24 Fed. Appx. 968 (10th Cir. 2001) (finding that government may use a codefendant’s guilty plea to establish the witness’ claim to firsthand knowledge based on his or her admitted participation); *People v. Brunner*, 797 P.2d 788, 789 (Colo. App. 1990) (citing *United States v. Davis*, 838 F.2d 909 (7th Cir. 1988)).

instruction via Jury Instruction 4.11. (A795-96). The pattern instruction states:

ACCOMPLICE TESTIMONY. An accomplice is someone who says that they participated with the defendant in the alleged crime. An alleged accomplice has testified in this trial. For obvious reasons, the testimony of an accomplice should be examined by you with suspicion and with more care and caution than the testimony of a witness who did not participate in the crime. This rule about accomplice testimony becomes particularly important if there is nothing in the evidence - either direct or circumstantial - that corroborates the accomplice's testimony. Without any corroboration, you should not find the defendant guilty unless, after careful examination of the accomplice testimony, you are satisfied beyond a reasonable doubt that the accomplice testimony is true and you may safely rely upon it. The fact that the alleged accomplice has entered a guilty plea to various offenses in this case, or has an agreement with State, is not evidence of guilt of any other person, including the defendant. In determining the weight to be given to the accomplice testimony, you may consider any agreement the accomplice had with the State. You also may consider the accomplice's own interest in the outcome of this case.¹⁰

However, defense counsel specifically rejected this instruction:

THE COURT: All right. . . . The last thing I wanted to talk about is we have a charge -- standard charge, as I said, 4.11 about accomplice testimony. I've looked at that. I don't think that applies in this case. I expect, [DEFENSE COUNSEL], that you would object to it. It's really designed for circumstances where an accomplice flips and testifies, and it talks about taking their testimony with caution, and it also talks about their plea and so forth. This case seems to be the mirror opposite of that, and I

¹⁰ See "Criminal Pattern Jury Instructions" located at https://courts.delaware.gov/superior/pattern/pdfs/pattern_criminal_jury_rev5_2022a.pdf (as of August 1, 2025).

didn't think that was appropriate. But I, at least, wanted to talk to counsel and see whether they had any issues with that.

[DEFENSE COUNSEL]: No. I considered that, and I agree completely.

THE COURT: All right. Very good. Then we are all on the same page.

(A795-96).

This exchange supports the State's waiver argument regarding the claim of prosecutorial misconduct and supports its new argument that Morales-Garcia has also waived his claim that the Superior Court should have given a jury instruction that said to use caution when considering the testimony of a co-defendant.

IV. 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 State used Emner Morales-Garcia's conspiracy guilty plea (i) to impeach his claim during direct testimony that he did not conspire with anyone, and (ii) to show (in conjunction with Ely Ortiz Perez's testimony as well other witnesses' testimony who were in the restaurant) that Emner Morales-Garcia planned the robbery with another person and that the most likely person with whom Emner would have conspired to commit the robbery and murders was his brother, Yony Morales-Garcia.

Emner Morales-Garcia testified on direct examination that Ely Ortiz Perez offered to pay him to rob Frank Garza's necklace:

And when we got to the restaurant, he -- when we got to the restaurant, I got out of the car to go use the bathroom, but Ely came up to me. He seemed kind of mad. I don't remember his exact words, but he basically told me that he -- some guys inside the restaurant disrespected him and got him kicked out. He then offered to pay me to go in there and take some dude's chain that was sitting in there in the corner, and he hands me a mask. I was a little tipsy. So I didn't think twice about what he was asking me. I just seen it as a joke. People get their chains snatched a lot as a joke and disrespect type thing. And I took the mask. I put it on, and I head into the restaurant. As I head into the restaurant, I go straight to the dude with the chain, but from the side view of my eye, I notice that somebody came in behind me. And I didn't pay him too much mind. I just seen that they went towards where you pay and stuff. But I just went straight to the dude with the chain,

and I took the chain from his neck, and I turned around, and I started running. I slipped but got up and kept going. As I was running through the doors, shots start going off. I kept running and got into the passenger side of the car where my brother was waiting in the driver's seat, and seconds after, Ely hops in the back. My brother then drives off

(A709-10). Although Emner Morales-Garcia admitted that he robbed Frank Garza, he continued to deny that he conspired with anyone to commit the robbery of the necklace. (*See, e.g.*, A711 (“I would like to say I never agreed to go into the restaurant with anybody at any point, especially with the intentions that they went in there with. The only other person that I seen out there was Ely. I would have never gone in there if I would have known the intentions of the person who walked in there behind me.”)).

After Emner Morales-Garcia’s direct testimony, the State cross-examined him regarding inconsistencies between his testimony and the earlier statements that he had made to Detective Grassi just after he was arrested on January 27, 2022, and on January 30, 2022. (A724-26, A731-33, A738, A740-41, A745-47). For example, Emner Morales-Garcia claimed that he did not have a plan to commit robbery when he arrived at the restaurant, but cross-examination revealed that he was a willing participant in the plan to rob Frank Garza’s necklace (whether it was his plan or that of someone else):

[PROSECUTOR]: And you had your plan all set at that point?
You were headed right for the guy wearing the chain?

[EMNER MORALES-GARCIA: Well, you saying my plan or Ely's plan? I mean, I never had a plan. It just happened all quick.

[PROSECUTOR]: Are you telling us today it happened really quick? You had no plan. You went into a restaurant wearing a mask with no plan?

[EMNER MORALES-GARCIA]: I had no plan.

(A731).

Because Emner Morales-Garcia denied making certain statements to the detective, the State proffered the recorded video interviews under section 3507¹¹ (A748-50) and played them for the jury. (A755). The State then questioned Emner Morales-Garcia about his guilty plea to Robbery First-Degree (for stealing Frank Garza's necklace) (A756-58) and his guilty plea to Conspiracy Second-Degree. (A758). The State used this evidence to impeach Emner Morales-Garcia's veracity given that he claimed he had acted alone (or that he acted with Ely Ortiz Perez). Specifically, the prosecutor elicited the admission of his guilty plea to Conspiracy Second-Degree as follows:

[PROSECUTOR]: It was that robbery that you pled to that led to a double murder, correct?

[EMNER MORALES-GARCIA]: Yes.

¹¹ The Superior Court ruled that the statements made by Emner Morales-Garcia did not fall under section 3507. (A751). Rather, Emner Morales-Garcia's statements qualified under D.R.E. 801(d). (A751-54).

[PROSECUTOR]: You also pled guilty to conspiracy in the second degree, correct?

[EMNER MORALES-GARCIA]: Yes.

[PROSECUTOR]: Conspiracy is agreeing to commit a crime with someone else, correct?

[EMNER MORALES-GARCIA]: 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.

(A758).

Emner Morales-Garcia's testimony demonstrates that when he acted on Ely Ortiz Perez's suggestion to rob Frank Garza, his actions had legal consequences. His actions demonstrated that he agreed with another person to engage in a robbery, which constitutes conspiracy.¹² Thus, Detective Grassi's testimony that Emner Morales-Garcia pled guilty to conspiracy is of no import except to emphasize that neither party disputed that Emner's actions qualified as conspiracy.

Yony Morales-Garcia alleges error because, in anticipation of Emner Morales-Garcia's testimony, the State presented the testimony of Detective Grassi that Emner pled guilty to conspiracy. Detective Grassi's testimony did not indicate definitively that Emner had pled guilty to Conspiracy Second-

¹² See 11 Del. C. § 513(1).

Degree and did not suggest that Emner's guilty plea to conspiracy was related to Morales-Garcia's criminal conduct. (A698). That testimony specifically is as follows:

[PROSECUTOR]: You indicated Mr. Emner Morales Garcia pled to the lead charge of robbery first degree. Are you aware if he pled to any additional charges?

[DETECTIVE GRASSI]: He did plead to another charge. I just don't have it in front of me. I don't know what the additional charge was.

[PROSECUTOR]: And --

[DETECTIVE GRASSI]: I believe -- I'm sorry. I believe it was conspiracy, but again, I don't have the sheet in front of me.

[PROSECUTOR]: Okay. Thank you.

(A698).

Importantly, the State never presented evidence that Emner Morales-Garcia's guilty plea to Conspiracy First-Degree was based on conspiring with Yony Morales-Garcia.¹³ Nor did the State present as proof that because Emner had pled guilty to conspiracy, Yony Morales-Garcia must have committed conspiracy, too. Rather, the State argued (in closing) that Emner Morales-Garcia had planned a robbery with his brother Yony Morales-

¹³ The State notes that the prosecutor did not question Emner Morales-Garcia about the specifics of his plea agreement, nor did the State enter the agreement into evidence.

Garcia—not with Ely Ortiz Perez—and that based on a plan between the two men, Morales-Garcia was a co-conspirator who possessed a gun and killed two people because of the robbery:

Emner testified that he was the one who robbed Frank of his necklace, and he said he looked him in the eye as he did it. Emner told Detective Grassi he thinks Frank recognized him through the mask, suggesting Emner knew of Frank in addition to Andy. Emner told Detective Grassi his intention in taking the necklace off of Frank's neck was to disrespect Frank. He planned to keep the necklace and show it to Frank later as a reminder that Frank wasn't so tough. They had a plan, ladies and gentlemen. Emner went on describing to Detective Grassi that pulling the chain from Frank's neck would show that Frank, in Emner's words, was a bitch on the streets. And then he told you it was a joke. But he wore a mask, a full head mask, for a joke. And his coconspirator, his brother, had a gun. That is no joke, ladies and gentlemen. A robbery that ended in a double homicide is no joke.

(A851-52).

The State also argued in closing that based on Ely Ortiz Perez's testimony and Emner Morales-Garcia's admission to committing the robbery, the jury could infer that the other person who went into the restaurant with Emner and shot and killed two people was Morales-Garica:

Frank saw the shooter, and it was Ely who told us that he saw only two men, Emner and Yony Morales, walk into the restaurant before they ran out. Emner was the robber. So it was this man, the only other man, who raised the gun and fired that first fatal shot.

(A852).

Thus, the State used Emner Morales-Garcia's conspiracy guilty plea (i) to impeach Emner's credibility and rebut any suggestion by him that what had occurred was not a conspiracy, and (ii) to argue that Emner planned (*i.e.*, conspired) with another person to rob Frank Garza's necklace, and to demonstrate that the person with whom he conspired was, based on the evidence, his brother Yony Morales-Garcia and not Ely Ortiz Perez. The State also proved, beyond a reasonable doubt, that Emner Morales-Garcia did not conspire with Ely Ortiz Perez based on Ely's testimony and the video surveillance that supported Ely's version of the events. Thus, the evidence of Emner Morales-Garcia's conspiracy guilty plea supported a logical inference that because Emner conspired with someone else to commit the robbery, the most likely and logical person was Yony Morales-Garcia who admitted to going to the restaurant with Emner. (A767-68, A776-77, A784-85).

V. 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-LOPEZ [SIC] 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 THIS COURT'S PLAIN ERROR ANALYSIS?

Initially, this Court should find that the prosecutor did not commit prosecutorial misconduct when she elicited the evidence of Emner Morales-Garcia's conspiracy guilty plea before Emner even testified. Reference to Emner's guilty plea to conspiracy was not "plain error" because it did not affect the outcome of Yony Morales-Garcia's trial given that other evidence supported his convictions, including for Conspiracy First-Degree.

The prosecutor's elicitation of Detective Grassi's statement that Emner Morales-Garcia pled guilty to conspiracy does not qualify as misconduct because she had a good faith belief that Emner would testify and that she would be able to cross-examine him on this same statement.¹⁴ Emner

¹⁴ See *Leacock v. State*, 690 A.2d 926, 928 (Del. 1996) (finding that prosecutor's statement in opening that defendant had a job of selling drugs was not prosecutorial misconduct but rather a comment reflective of the prosecutor's good faith belief that the evidence would prove the assertion); *Hughes v. State*, 437 A.2d 559, 567 (Del. 1981) ("In his opening statement the prosecutor should confine his remarks to evidence he intends to offer which he believes in good faith will be available and admissible and a brief statement of the issues in the case. It is unprofessional conduct to allude to any evidence unless there is a good faith and reasonable basis for believing

Morales-Garcia testified at Morales-Garcia's first trial (SB-44-91). And the prosecutor did not question Detective Grassi about Emner Morales-Garcia's conspiracy guilty plea until after defense counsel stated that Emner would be testifying for the defense. (*See* A292 and A698).

Furthermore, the State did not utilize Emner Morales-Garcia's conspiracy guilty plea as substantive evidence to argue or demonstrate that because Emner was guilty of conspiracy, his brother Yony Morales-Garcia must have been guilty of conspiracy, too. Nor did the State utilize Emner Morales-Garcia's conspiracy guilty plea to argue or demonstrate that because Emner pled guilty to conspiring with Yony Morales-Garcia, Morales-Garcia must have been the one who conspired with Emner to commit the robbery and murders. In fact, the State did not mention with whom Emner had conspired regarding his conspiracy guilty plea, nor did the State attempt to enter into evidence Emner's plea agreement with the State.

Moreover, the prosecutor did not engage in prosecutorial misconduct by utilizing Emner Morales-Garcia's conspiracy guilty plea to rebut his claims that he did not conspire with anyone to, *inter alia*, commit the robbery that resulted in two murders. Nor did the prosecutor engage in misconduct by

that such evidence will be tendered and admitted in evidence.") (citing ABA Standards, the Prosecution and Defense Functions (Approved Draft, 1971)).

arguing that based on the evidence, Morales-Garcia was the only other person who could have entered El Nopalito restaurant with Emner Morales-Garcia on the night of January 22, 2022, and committed robbery and two murders. If this Court compares the prosecutor's one-time reference to Morales-Garcia's guilty plea via Detective Grassi's testimony¹⁵ to other alleged instances of prosecutorial misconduct considered by this Court, this Court should find there was no plain error from the negligible reference.¹⁶

In any case, Morales-Garcia has not met (and cannot meet) the high burden of demonstrating plain error because the prosecutor's actions did not jeopardize the fairness and integrity of the trial process under the *Wainwright* standard.¹⁷ An alleged prosecutorial error here was not a material defect apparent on the face of the record, was not basic, serious, and fundamental in character, and did not clearly deprive an accused of a substantial right or

¹⁵ And the prosecutor's one time reference to Emner Morales-Garcia's guilty plea in her opening statement. (A210).

¹⁶ *Dillard v. State*, 2024 WL 5165709, at *3 (Del. Dec. 19, 2024) (holding no prosecutorial misconduct when prosecutor said in her opening statement, "You saw and heard some things about other Defendants. Those other defendants have resolved their cases."); *Wheatley v. State*, 465 A.2d 1110, 1113 (Del. 1983) (affirming denial of motion for mistrial based on prosecutor's statement during opening that the defendant had an altercation with a co-defendant who had been "tried separately.").

¹⁷ *Saavedra v. State*, 225 A.3d 364, 372 (Del. 2020) (citing *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986), cert. denied, 479 U.S. 869 (1986)).

clearly show manifest injustice.¹⁸ Moreover, Morales-Garcia has failed to demonstrate that his waived error was prejudicial¹⁹ or that it affected the outcome of his trial²⁰ Sufficient evidence supported Morales-Garcia's convictions beyond a reasonable doubt.

Specifically, Ely Ortiz Perez testified that he called Morales-Garcia after he, his brother Jose, and their friends were kicked out of El Nopalito. (A371, A385, A397, A492, A539, A568, A586-88, A592, A647-49). Ely Ortiz Perez told Morales-Garcia that Andy Velasquez was at the restaurant and that he needed backup. (A595-96, A662-63). Emner Morales-Garcia had a former dispute with Andy Velasquez when the latter threw a bucket into the windshield of Emner Morales-Garcia's car. (A557). Once Morales-Garcia

¹⁸ *Saavedra*, 225 A.3d at 372; *Wainwright*, 504 A.2d at 1100.

¹⁹ *Brown v. State*, 897 A.2d 748, 753 n.22 (Del. 2006); *United States v. Olano*, 507 U.S. 725, 734 (1993) (federal plain error rule). *See also Stevenson v. State*, 709 A.2d 619, 633 (Del. 1998) (holding that the defendant has the burden of showing that the improper arguments by the prosecutor not only created the possibility of prejudice, but that the errors worked to his actual substantial disadvantage) (citations omitted).

²⁰ *Brown*, 897 A.2d at 753. *See Olano*, 507 U.S. at 734 ("[T]he error must have been prejudicial: It must have affected the outcome of the district court proceedings"); *Wainwright*, 504 A.2d at 1100; *Leacock v. State*, 690 A.2d 926, 928 (Del. 1996) (finding that reversal of defendant's convictions was required only if the remark prejudicially affected his substantial rights) (citing *Diaz v. State*, 508 A.2d 861, 866–67 (Del. 1986)).

arrived at El Nopalito, he called Ely and told him that he and Emner were at the restaurant. (A597, A629-30).

Based on Morales-Garcia's own testimony, he was present at El Nopalito restaurant on the night of the murders. (A767-68). Either Morales-Garcia or his brother Emner cased the restaurant. (A426-28, A603). Then Morales-Garcia and Emner entered the restaurant together while wearing face masks. (A397, 404, 427, 471, 480, 573-74, 604-06, 691, 710, 715, 729, 731, 733, A427-28). Surveillance video also supports Ely Ortiz Perez's testimony that it was the two brothers who entered the restaurant around the time of the murders while he stayed in Morales-Garcia's car. (A603; State's Ex. 41 - Surveillance 1909_1934 - Truck).

Witnesses within the restaurant and Emner Morales-Garcia testified that two masked men entered the restaurant. (A397, A404, A427-28, A471, A480, A573-74, A604-06, A691, A710, A715, A729, A731, A733). Estela Mejia Velasquez testified that one of the masked men pointed a gun at her and told her not to move. (A397). Andy Velasquez testified that one of the masked men had a gun that he pointed at Armando Chile Lopez. (A548). Witnesses testified (and Emner Morales-Garcia admitted) that Emner approached Frank Garza, ripped the gold chain from Frank's neck, and then tripped while trying to run away. (A374, A387, A389, A428, A468-70, A473-

77, A495, A543-44, A546-47, A573, A710, A715-16, A730, A735, A760).

The other masked man fired shots at Armando Chilel Lopez and into the restaurant, killing both Chilel Lopez and Honorio Velasquez. (A376, A391-92, A399, A428, A476-77, A545, A547-49, A376-78, A390, A549-50, A552).

A few minutes later, Emner and the other masked man emerged from the restaurant and ran to the truck where Ely Ortiz Perez was waiting in the driver's seat. (A391, A482, A607-10, A633-34, A682, A710). Ely Ortiz Perez testified that he could see Morales-Garcia was holding in his hands an object that was reflective in the light and was small enough to fit inside his hoodie. (A610). Ely also testified that Emner Morales-Garcia had a gold chain in his hand. (A609, 611). The three men drove away from the scene together. (A612-13, A684). Later, Morales Garcia admitted that he drove Emner to meet with Ely Ortiz Perez. (A772-73). Morales Garcia, Emner, or both told Ely Ortiz Perez not to mention their involvement. (A617-18, A722, A744). This evidence demonstrated beyond a reasonable doubt that Morales-Garcia was guilty as charged.

Finally, Emner Morales-Garcia's conspiracy guilty plea was going to be introduced into evidence one way or another. Emner was a witness at Morales-Garcia's first trial, and the defense's trial strategy at the second trial was unchanged. Morales-Garcia planned to call his brother Emner to testify

on his behalf. (A293)²¹ Thus, either Morales-Garcia was going to introduce Emner's conspiracy guilty plea on direct examination, or the State was going to introduce into evidence Emner's guilty plea on cross-examination. Thus, mentioning only one time that Emner Morales-Garcia pled guilty to conspiracy before he took the stand does not meet the "plan error" standard under these the circumstances.²²

²¹ [DEFENSE COUNSEL]: I have [Emner Morales Garcia] listed as a witness. I plan on calling him as a witness." (A293).

²² See *United States v. Stewart*, 325 F. Supp. 2d 474, 489 (D. Del. 2004) (concluding that prosecutor's subsequently unproven statement made in opening that defendant was a drug dealer was not so prejudicial as to impair the defendant's right to a fair trial).

CONCLUSION

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

Respectfully submitted,

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Date: August 15, 2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

YONY MORALES-GARCIA,)
Defendant Below,)
Appellant,)
V.) No. 311, 2024
STATE OF DELAWARE,)
Plaintiff Below,)
Appellee.)

**CERTIFICATE OF COMPLIANCE WITH
TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION**

1. This Supplemental Memorandum complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word.

2. This Supplemental Memorandum complies with the type-volume limitation of Rule 14(d)(i) because it contains **4,899** words, which were counted by Microsoft Word.

Date: August 15, 2025

/s/ Julie M. Donoghue

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