SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION -- FELONY BRANCH

UNITED STATES OF AMERICA	:	**Court Case Nos. F-57513-04**
	:	
v.	:	**Judge Rhonda Reid Winston**
	:	
	:	**Closed Case**
DWIGHT GRANDSON	:	**Post-ConvictionHearing: 3-2/3-10**

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION PURSUANT TO D.C. CODE §23-110 TO VACATE CONVICTION AND SENTENCE AND FOR A NEW TRIAL

The United States, by and through its attorney, the United States Attorney for the District of Columbia, respectfully opposes, in part, Defendant's Motion Pursuant to D.C. Code § 23-110 to Vacate Conviction and Sentence and for New Trial. The defendant claims that the government violated the rule of Brady v. Maryland, 373 U.S. 83 (1963) when it failed to disclose "exculpatory information bearing on his guilt or innocence and on the credibility of its witnesses Miracle and Myra Cowser and the prosecutor's suppression of that evidence was highly prejudicial." (Motion at 1). Specifically, the defendant contends that the government failed to disclose "[Miracle] Cowser's expectation of a substantial reward and belief that she was entitled to it," and that this suppressed evidence was so prejudicial that the outcome of the defendant's trial would have been different (Motion at 31-34).[1]

[1] The defendant has also provided a detailed history of the case, featuring an alleged "lengthy pattern" of other alleged Brady violations (Motion at 4-12, 8-20). However, the record indicates that each of the issues the defendant now includes has already been raised by the defendant's trial counsel and resolved by the trial judges involved, including this Court.

As discussed below, the record indicates that Miracle Cowser did have an expectation of receiving reward money from the M.P.D. at the time she testified at defendant's trial and that the government failed to disclose this fact. However, we submit that the scheduled hearing on the defendant's motion will demonstrate that the two key witnesses in the case, Myra Cowser and Tecoyia Wood, who both identified the defendant as the person they witnessed murder the decedent, were not in any way influenced by an expectation of receiving reward money from the police. Thus, as to Myra Cowser and Tecoyia Wood, there was no failure to disclose exculpatory information. We agree with the defendant that this Court will need to make findings after a hearing about whether the testimony of these two young witnesses were somehow influenced by the expectations or biases of Miracle Cowser or anyone else. (See Motion at 33). We submit that, after the evidentiary hearing, the Court should find that there were no such prejudicial influences.

Moreover, we submit that, even if the Court were to find that Miracle Cowser's undisclosed expectations somehow influenced the testimony of Myra Cowser and/or Tecoyia Wood, the Court should still have confidence in the jury's guilty verdicts on the First Degree Murder while Armed and related firearms counts. The eyewitness testimony of the two girls was supported by compelling corroborative evidence. Thus, even if the Court finds that the government failed to disclose information affecting the testimony of Myra Cowser and Ms. Wood, the defendant cannot show materiality under Brady.

Consequently, to the extent that the defendant raises these Brady claims on their own terms, the defendant cannot show prejudice as the issues have already been resolved.

Consequently, we submit that the Court should deny the defendant's motion as to the homicide and firearm counts after conducting the evidentiary hearing.

However, the defendant also was convicted on one count of Obstruction of Justice involving his alleged threats to Miracle Cowser several days after the murder, and Miracle Cowser's testimony was virtually the entire case against the defendant on that count. There is no substantial corroboration for Ms. Cowser's testimony that the defendant participated in the threatening behavior on his behalf by Holliway (his cousin) and Adams (his girlfriend), both of whom either gave statements or testimony admitting their conduct. Moreover, as discussed below, we do not believe that Miracle Cowser's testimony at the post-conviction hearing before Judge Gardner was entirely credible. Consequently, the United States no longer has sufficient confidence in the guilty verdict against the defendant for Obstruction of Justice, and therefore does not oppose the Court's vacating the defendant's conviction and sentence on the Obstruction count.

As further grounds for this response, the United States now says:

I. RELEVANT PROCEDURAL HISTORY

1. At about 9:25 p.m. on September 7, 2004, the defendant shot and killed Derrick Hinson (a.k.a. "D") in an alley alongside 2318 Ainger Place, S.E., in Washington, D.C. In the early morning hours of September 11, 2004, Jerome Holliway (the defendant's cousin) and Danielle Adams (defendant's girlfriend) threatened to kill Miracle Cowser if she provided information to the police implicating the defendant in the Hinson murder.

In response to Ms. Cowser's calls regarding these threats, the police arrested the defendant, Holliway and Adams later that day. Later that same night, 12 year old Myra Cowser identified the defendant as the man she saw shoot and kill Hinson.

2. On September 13, 2004, the defendant was presented in D.C. Superior Court on a charge of Second Degree Murder while Armed.[2]

3. In an indictment returned on June 8, 2005, the defendant was charged with First Degree Murder while Armed, PFCV, and CPWL in connection with the Hinson killing and Obstruction of Justice in connection with the threats to Miracle Cowser.[3]

4. Thereafter, on April 4, 2006, the defendant's case was severed by Judge Gardner from that of Holliway and Adams. The defendant was tried before this Court from May 18, 2006 through May 30, 2006, when the jury returned guilty verdicts against the defendant on all charges. On September 8, 2006, this Court sentenced the defendant to

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[2] Holliway and Adams were charged with Obstruction of Justice. They had initially been indicted on 3 counts (ADW, Threats, and Obstruction) on November 10, 2004. On May 10, 2005, that case was dismissed by Judge Erik Christian upon motion by the government.

[3] In the superseding indictment of June 8, 2005, Holliway and Adams were charged with Obstruction of Justice, Accessory After the Fact to Murder, Threats, (Felony), and Assault with a Dangerous Weapon. Holliway was also charged with Obstruction of Justice, in violation of 22 D.C. Code § 722(a)(2)(A), in connection with the allegation that on March 1, 2005, he tried to persuade 13 year old Tecoyia Woods not to testify against his cousin Grandson in the grand jury.

an aggregate term of 34 years imprisonment.[4]

5. On December 11, 2006, the defendant filed a Rule 33 motion alleging that the government violated Brady by failing to disclose a promise to pay $25,000 to witness Miracle Cowser.[5] This Court denied the motion in a written order issued on March 9, 2007.[6]

6. On October 5, 2006, the defendant filed a notice of appeal, which is still pending.

7. On June 8, 2007, Holliway filed a Motion for New Trial Pursuant to Rule 33 and D.C. Code § 23-110, in which he claimed that the government violated the rule of Brady v. Maryland, 373 U.S. 83 (1963), when it "failed to disclose a pre-trial promise by

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[4] The trial of Holliway and Adams commenced before Judge Gardner on August 1, 2006. On August 11, 2006, the jury convicted Holliway and Adams of Obstruction (re: Ms. Cowser), Threats, and Accessory After the Fact. The jury also convicted Holliway of Simple Assault (the lesser included of ADW), and acquitted him of the other Obstruction count (re: Ms. Woods).

[5] As discussed below, the record indicates that reward money in this case had been paid to Miracle Cowser, Myra Cowser, and Tecoyia Wood around the end of December, 2006. We acknowledge that the government should have made the Court aware of this fact as it evaluated the defendant's Rule 33 motion, which the Court summarily denied in March, 2007.

[6] On December 6, 2006, Holliway filed a Rule 33 Motion on identical grounds before Judge Gardner. On January 17, 2007, Judge Gardner denied Holliway's Rule 33 Motion. On that same date, the Court sentenced Holliway to an aggregate of 204 months incarceration, to be followed by 3 years of supervised release. On March 1, 2007, Judge Gardner sentenced Adams to an aggregate of 120 months' imprisonment, followed by an aggregate of five years of supervised release.

a law enforcement official to pay the principal witness [Miracle Cowser] against the defendant, the sum of $25,000 for her assistance and testimony in connection with this case" and that he was "constitutionally prejudiced" by the non-disclosure of this impeachment information (Holliway Motion at 1- 9).[7] On March 20, 2008, the government filed its Opposition to Holliway's Motion.[8]

9. On January 29, 2009, March 3, 2009, and March 12, 2009, Judge Gardner held an evidentiary hearing on the Holliway/Adams Motion.[9] On April 2, 2009, Judge Gardner accepted the parties proposed disposition in the Holliway/Adams cases.[10]

10. On June 12, 2009, the defendant filed the instant motion.

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[7] Adams later joined this motion.

[8] On March 20, 2008, the government sent a copy of its Opposition in the Holliway case to this Court. The government also subsequently sent copies of its Opposition to the defendant. Upon request, the government will provide this Court the relevant pleadings in the Holliway/Adams matter.

[9] The transcripts of the witnesses at the above referenced Holliway/Adams post-conviction hearing before Judge Gardner are attached to this pleading as follows: Miracle Cowser (Exhibit A), Myra Cowser (Exhibit B), Det. Michael Fulton (Exhibit C), Det. Brett Smith (Exhibit D), Victim Witness Advocate Yvonne Bryant (Exhibit E), and AUSA Steve Snyder (Exhibit F).

[10] At the conclusion of the submission of the evidence before Judge Gardner, the government negotiated stipulated dispositions of the defendants' cases. Mr. Holliway, who had given the police a videotaped statement largely admitting the threats attributed to him by Miracle Cowser, had his sentence reduced from 17 to 7 years. Ms. Adams, who corroborated Miracle Cowser's testimony that she had joined the ongoing "argument" between Holliway and Miracle Cowser, and who had already served approximately four years in the case, had her sentence reduced to time served.

II. RELEVANT FACTUAL HISTORY

The Defendant's Trial

Government Evidence

1. Myra Cowser

Myra Cowser (hereafter referred to as "Myra") was 12 years old at the time of the shooting and 13 years old at the time she testified at the defendant's trial (5-18-06 at 72). By September, 2004, Myra and her mother (Miracle Cowser) had been living on Ainger Place, S.E. (the "Woodlands" area) for four years (Id. at 73-74). Myra knew well Danielle Adams, who was close friends with her mother, Ms. Adams' two daughters, who were her playmates, and the defendant, who "used to go with Danielle." (Id. at 77-78).

On September 7, 2004, Myra was playing at Ms. Adams' house after school (Id. at 82-83). The defendant and the decedent, who she knew as "D", were also present (Id.). At two points, Danielle and the decedent made trips in the decedent's red truck to a liquor store and McDonald's (Id. at 83). As the two left on the second trip, Myra heard the defendant tell Danielle in a voice that sounded "like he was mad" that he was going to "get" the decedent when they returned (Id. at 86-87).

When the decedent returned after the second trip, Myra heard the defendant tell Danielle that she wanted the decedent "for his money" (Id. at 88). As the fight between the defendant and Ms. Adams began to escalate, Myra went outside Ms. Adams' house and told the decedent (Id. at 88-89). The decedent then "went inside and broke it up and

[dragged the defendant] out of the house." (Id.). A few moments later, Myra went outside, where she observed the defendant and the decedent fighting (Id. at 90). The defendant was on the ground and had a black eye (Id. at 94, 173-74). Vowing to "get" the decedent when he returned, the defendant left the area (Id.).

Myra proceeded to play jump rope outside with Ms. Adams' daughters (Id. at 94-97). Among other people, Myra saw her friend Tecoyia Wood sitting on her porch (Id. at 131-33). During the "Double-Dutch" jump rope game, Myra saw the defendant come back into the area (Id. at 96). Although it was now dark outside and the defendant had "a little shining mask thing" over the lower part of his face, Myra was able to recognize the defendant's face, including the tattoo of a teardrop near his eye, and his distinctive tall and thin physical appearance (Id. at 99-100, 145, 175).

The defendant held a black gun in his hand, stood just ten feet from them, and told Myra and the other girls "to watch out." (Id. at 101, 146-47). The decedent was standing in the middle of the street, making a phone call with a cell phone (Id. at 101). The defendant called out the decedent's name (Id. at 103. Then Myra saw the defendant shoot about six shots into the area of the decedent's stomach and chest. (Id. at 103-07).[11]

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[11] **Clifford Cooper** was the brother-in-law of decedent Derrick Hinson (5-18-06 at 65). At the time of his death, Mr. Hinson, age 37, was living with his sister and Mr. Cooper at their home in Maryland (Id. at 65-66). After the funeral, Mr. Hinson's sister and Mr. Cooper discovered a grim voice message that the decedent had left on their phone, in which one could hear "gunshots and the [decedent's] moaning and groaning" as he lay dying (Id. at 68). The decedent's voice message was entered into evidence and played for the jury (Id. at 69-70).

After witnessing the shooting, Myra was very scared and ran into the closest building (Id. at 106-07, 183). She did not see anyone trying to help the decedent after he had been shot, and did not see a man in a wheelchair go towards the decedent (Id. at 164). A few moments later, Myra ran home and woke up her mother, telling her that the defendant had shot the decedent (Id. at 109, 167).[12]

Myra next saw the defendant in the morning a few days later when the defendant's cousin (later identified as Jerome Holliway) was banging on the door where Myra and her mother lived (Id. at 109). Myra indicated that she did not report what she had seen to the police immediately because she was "not no snitch," but only did so after "they threatened [her] mother." (Id. at 115).

2. **Tecoyia Wood**

Tecoyia Wood (hereafter "Tecoyia") was 12 years old at the time of the shooting and 14 years old when she testified at the defendant's trial (5-18-06 at 188-89). At the time of the shooting, she lived with her mother and siblings on Ainger Place, S.E. (Id. at 190). From the neighborhood, Tecoyia knew the defendant and Danielle Adams, but she did not know the decedent (Id. at 191-95). Tecoyia described the defendant as "tall," "slinky" or "skinny" in build, brown-skinned, with a teardrop tattoo on his face (Id. at

[12] Myra was impeached with her videotaped statement to M.P.D. Det. Smith of September 11, 2004, in which she said that she had observed the shooting when she went outside to take out the trash, and that she had at first reported to her mother that it was the defendant who had been shot (5-18-06 at 168-69). On redirect, Myra testified that it was other people who were saying at first that the defendant had been killed, but that she "knew" that it was the defendant who had been doing the shooting (Id. at 177, 181-82).

192, 199).

On September 7, 2004, Tecoyia was playing outside with other kids (Id. at 200-01). The defendant was sitting on Danielle's porch, dressed all in black (Id. at 199, 204). The decedent approached the defendant, said something about a robbery, and then punched the defendant in the face two times, knocking the defendant to the ground (Id. at 202-03; 5-19-06 at 255, 273). When the defendant got back to his feet, he told the decedent, "Watch,"and quickly left the area (5-18-06 at 204). Tecoyia then went in her house (Id.).[13]

When Tecoyia came back out a little while later, it was now dark outside but she could see the area because there were lights on (Id. at 204-05, 210). Tecoyia saw the defendant come back to the area (Id. at 205). Although the defendant was wearing a mask up to his eye, Tecoyia could see his entire body and recognized the defendant because of his all-black clothing and because of his "tall and slinky" body (Id. at 207; 5-19-06 at 233, 275, 279). Tecoyia then witnessed the defendant walk toward the decedent and fire about five shots at the decedent. (5-18-06 at 207; 5-19-06 at 269). The decedent, who had no gun, was talking on his cell phone when the defendant shot him (5-18-06 at 208).[14]

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[13] Tecoyia testified that she did not see the decedent drag the defendant out of Ms. Adams' house, did not see the defendant hit the decedent at all, and that she did not see Myra when the decedent punched the defendant or outside at any other time that night (5-19-06 at 256-66).

[14] **P.O. Kemper Agee** was the lead mobile crime officer with the responsibility of processing the shooting scene (5-19-06 at 378-85). The police recovered a number of .45 cal cartridge casings, spent bullets, and bullet fragments (Id. at 385-90).

After witnessing the shooting, Tecoyia did not see where the defendant went, but, very scared and only thinking about "getting into the house safe," she ran into her home and told her mother (Barbara Wood) that "Bin Ladin has shot that boy." (Id. at 209; 5-19-06 at 273-76). Tecoyia did not report what she had seen to the police right away because she was "too scared." (5-18-06 at 210; 5-19-06 at 278).

3. Margo Frye

Margo Frye, age 38, also was a resident of the Woodlands area (5-19-06 at 281). Ms. Frye had known the decedent for 15 years and they had a close, family-like relationship (Id. at 285). The decedent occasionally gave Ms. Frye some money (Id. at 307). Ms. Frye also knew the defendant from the neighborhood, and her children were playmates of Ms. Adams' daughters. (Id. at 282-86).

The police found no fingerprints on the ballistics evidence, and did not process any vehicles at the scene for fingerprints (5-22-06 at 117, 129). The police never recovered a mask or gun (Id. at 129, 133).

M.P.D. Firearms Examiner **Jonathan Pope** testified that the 8 cartridge cases recovered had all been fired from the same .45 cal. handgun (5-25-06 at 448-72). The 2 spent .45 cal bullets he examined had also been fired from the same firearm (Id. at 472-78).

D.C. Deputy Medical Examiner **Lois Goslinoski** observed from the autopsy of the decedent that he had received four gunshot wounds and one graze wound (5-22-06 at 26-47). The decedent had been shot to the left and right sides of his upper chest, in his left upper arm, and in the right side of his back (with an exit wound on the right side of his abdomen) (Id. at 49-57). The decedent also had facial abrasions and scrapes on his face and both upper and lower lips, and cuts on the knuckles and fingers of his right hand, all of which were consistent with the decedent having been in a "physical altercation." (Id. at 68-78). Toxicology tests also showed that the decedent had PCP in his system at the time of his death (5-22-06 at 75).

About a week or two before the shooting, Ms. Frye attended a cookout at Ms. Adams' house, at which the defendant and the decedent also were present (Id. at 288). Ms. Frye overheard the defendant tell Ms. Adams not to let the decedent bring food to the cookout, because 'it was going to start problems." (Id.).

On the night of September 7, 2004, Ms. Frye was walking back to her neighborhood with her children when she heard 4 or 5 shots ring out (Id. at 291-92). Ms. Frye and her children immediately dove to the ground (Id. at 292). As she lay on the ground, Ms. Frye could see the decedent also laying on the ground, and she saw people run past her, including the defendant and a couple of other young men. (Id. at 292-94). The defendant was looking behind him and had a look on his face "like something happened." (Id. at 295-96). Ms. Frye did not observe the defendant with a gun or anything else in his hands, and had a black scarf on his forehead but no mask on his face, on which she could see some blood (Id. at 2315-16, 325-26).

After the people ran past her, Ms. Frye got up from the ground and ran to the decedent (Id. at 298). "Tom" (later identified as Thomas McBride) and a number of other people also were trying to attend to the decedent as he lay mortally wounded on the ground. (Id. at 299, 302). Ms. Frye did not tell the police what she had seen because she feared for the security of her children. (Id. at 299).[15]

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[15] Ms. Frye also admitted that she was using crack cocaine at that time but was not high at the time of the shooting. (5-19-06 at 299, 305).

4. Jamise Liberty

Ms. Liberty, age 24, was the girlfriend of the defendant's brother (Dewitt Hole) (5-19-06 at 348-50). At the time, Ms. Liberty was living with the defendant's mother on Langston Place, S.E., which was just around the corner from Ainger Place, where the defendant stayed with Ms. Adams, his girlfriend (Id. at 351-53).

At about 9:00 p.m. one night in September, 2004, Ms. Liberty was in her bedroom talking on the telephone to the defendant's brother, when she heard the defendant talking to his mother outside her door (Id. at 360-61). The tone of the defendant's voice told Ms. Liberty that "something was wrong" (Id. at 361). As a result, Ms. Liberty put the defendant on the telephone with his brother (Id.). As he talked to his brother, the defendant pressed a t-shirt against some "blood spots"on his face and "seemed upset" (Id. at 362-63). Ms. Liberty did not see the defendant carrying a gun or wearing a mask (Id. at 375).

After the phone call, the defendant asked Ms. Liberty to take him to his father's home in Landover, Maryland. (Id. at 364). As Ms. Liberty drove the defendant out of the area, he had calmed down but changed his mind and asked her to drive to another brother's house in Forestville, Maryland, which was closer than his father's house (Id. at 365-66, 376). Ms. Liberty dropped the defendant in Forestville and returned to Southeast D.C. (Id. at 366).

5. Deanna Scott

Ms. Scott was very close to the defendant and his family, considering him "like a nephew" since he was a little boy (5-25-06 at 492). One night in September, 2004, the defendant appeared at her house "very upset," looking like he had just been in a fight, with a "scar" across his eye and specks of blood on his t-shirt. (Id. at 496). The defendant walked by her into Jamie Liberty's bedroom, where Ms. Scott heard the defendant ask Ms. Liberty to drive him to his father's home in Maryland. (Id. at 497). Ten or fifteen minutes later, Jamie and the defendant left Ms. Scott's home. (Id.). As he left, the defendant told Ms. Scott that he had been fighting. (Id. at 520-21).

Two or three days before this incident, the defendant showed Ms. Scott a flat, black "handle" or "item" tucked into his waistband (Id. at 498-500, 509-10).[16] The defendant had talked about guns a lot, and had "always" said that he was going to get a pistol. (Id. at 503-06). When he showed Ms. Scott the "object" in his waistband, the defendant smiled at her (Id. at 506).

6. Miracle Cowser

Miracle Cowser lived on Ainger Place, S.E., with her daughter, Myra (5-22-06 at 136-37). Ms. Cowser had a sisterly relationship with Danielle Adams, and knew the defendant because he was Danielle's boyfriend. (Id. at 139-45).

Ms. Cowser also was a friend of the decedent.(Id. at 139-45). In fact, the decedent

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[16] Ms. Scott was imopeached with her grand jury testimony, in which she indicated that the defendant had shown her a pistol tucked into his waistband. (5-25-06 at 502).

had provided her with PCP on at least one occasion to try out his "product." (5-23-06 at 243-44). At that time, Ms. Cowser was "very familiar" with PCP, smoking the drug about twice a week. (Id. at 245-47).

On the night of September 7, 2004, Ms. Cowser was in bed when she heard gunshots from outside (Id. at 148). She jumped out of bed, and ran to the door where she encountered Myra coming in the house (Id.). Myra was crying and Ms. Cowser believed Myra said, "Oh my god, Bin Ladin was shot!" (Id. at 149). At the same time, Ms. Cowser heard other people outside yelling, "I can't believe Bin Ladin killed the boy!" (Id.). When Myra told her that she thought Ms. Adams' house had been "shot up," Ms. Cowser ran out to check on Ms. Adams and her children (Id. at 150). Ms. Cowser then saw the decedent laying on the ground "in a puddle of blood." (Id.). The police were already at the scene by that point (5-23-06 at 241). Ms. Cowser did not talk to the police that night, because she "didn't want to be involved in nothing." (5-22-06 at 158). When she arrived home that night, Myra told Ms. Cowser that "Bin Ladin shot the boy." (5-23-06 at 283).

Over the next couple of days, an M.P.D. detective (later identified as Det. Brett Smith) called her several times, apparently having gotten her telephone number from Danielle Adams (Id. at 162). When Ms. Cowser complained to Ms. Adams about her having given the police her number, the defendant was present and told Ms. Cowser, "Bitch, don't say my name." (Id.).

A couple of nights later, Ms. Cowser went out to a "family cabaret." (Id. at 163).

When she drove into her parking lot in the early morning hours of September 11, 2004, Ms. Cowser encountered Ms. Adams, the defendant, and a man she did not know (later identified as defendant's cousin, Jerome Holliway (Id. at 164).[17] When Ms. Adams asked her to come over to Ms. Adams' home with liquor left over from her "family cabaret," Ms. Cowser agreed.(Id. at 164-65).

However, when Ms. Cowser entered Ms. Adams' home, the defendant said "Bitch, why you here?" (Id. at 165). The defendant proceeded to tell Ms. Cowser, "You better not say nothing." (Id. at 167). Holliway then joined in, saying:

> This bitch know too much information. We should do her in right now. . . I'll chop your head off, bitch, and walk it to the dumpster around the corner.

(Id. at 178). Ms. Cowser testified that the defendant first said "Yeah" to Holliway's threats, but then told Ms. Cowser, "Don't take it. He's drunk." (Id. at 179).[18] At that point, Ms. Cowser testified she heard the following exchange between the defendant and Holliway:

> Holliway: "Shut the fuck up. I'm here because you killed somebody. I'm taking up for you."
>
> Defendant: "Shut the fuck up. That's not for everybody to know."

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[17] Although at first denying that she had anything to drink at the cabaret, Ms. Cowser was impeached with her later statement to Det. Smith that she was "tipsy" when she drove into the parking lot and encountered Ms. Adams et al. (5-23-06 at 269).

[18] Ms. Cowser was impeached with her grand jury testimony that she had been threatened by Holliway and Ms. Adams but not by the defendant. (5-23-06 at 284).

(Id. at 179).

Ms. Cowser testified that she stayed at Ms. Adams' home after having been threatened, drinking and smoking some marijuana with them, because she did not want them to think that she was "snitching." (Id. at 179, 190). However, when Ms. Cowser did go home later, she immediately called the police to report the threats (Id. at 180-81). At some point later in the day of September 11th, Det. Smith arrived with a number of other officers (Id. at 184). Ms. Cowser and her daughter Myra went with Det. Smith to the homicide offices, where they gave video statements (Id. at 187-88).

7. Det. Brett Smith

M.P.D. Homicide Detective Brett Smith was the lead investigator in the case (5-22-06 at 300-03). No witnesses came forward at the scene on the night of the murder (Id. at 308). However, in the days immediately after the murder, Det. Smith had several telephone occasions with Miracle Cowser. (Id. at 316). Based on Ms. Cowser's reports of their threats, on September 11, 2004, Det. Smith arrested the defendant, Jerome Holliway, and Danielle Adams (Id. at 346). Smith took Ms. Cowser and her daughter Myra to his office, where he took their videotaped statements (Id. at 348-50). Myra Cowser identified the defendant as the man she had seen shoot and kill the decedent on September 7, 2004 (Id. at 353-53). Miracle Cowser identified the defendant as one of the people who had threatened her on September 11, 2004. (Id. at 354). Det. Smith testified that he had not made any offers or promises of benefits to either of the Cowsers in exchange for their

statements.(Id. at 353-54).

Det. Smith first interviewed Tecoyia Wood several months after the shooting. (Id. at 356).[19] Smith had learned that Tecoyia had been an eyewitness to the murder from her mother, Barbara Wood (Id. at 359).[20] Tecoyia indicated that she had seen the shooting and identified the defendant as the man she had seen shoot and kill the decedent on September 7, 2004 (Id. at 356-57). Det. Smith testified that he had not made any offers or promises of benefits to Tecoyia Wood in exchange for her statements. (Id. at 357).

Defense Evidence

1. Thomas McBride

Mr. McBride, age 39, testified that he had been paralyzed by a shooting incident in January, 2004, and that he had been confined to a wheelchair ever since (5-25-06 at 536-37). In September, 2004, McBride was living in a nursing home near the Woodlands area (Id. at 537). McBride, testifying under a grant of immunity, admitted that he sold drugs in the area (Id. at 541-42; 5-26-06 at 53).[21] The decedent, for whom he sold drugs at the time of the shooting, had been his friend for 15 years (5-25-06 at 547). McBride had known the defendant for 7 or 8 months

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[19] Smith estimated that the interview with Tecoyia occurred on the day of her appearance at the grand jury (i.e., March 2, 2005) or perhaps a few days earlier (5-23-06 at 358-59)

[20] Barbara Wood did not testify at defendant's trial, but did testify at the subsequent trial of Jerome Holliway regarding threats Holliway made to her and her daughter on the eve of their grand jury appearance of March 2, 2005. As indicated above, Holliway was acquitted of the resulting Obstruction charge regarding Tecoyia Wood.

[21] McBride was impeached with convictions for larceny ('96), aggravated assault ('95), assault with a dangerous weapon ('87), and possession of cocaine ('87) (5-25-06 at 586).

and considered him an "associate" (Id. at 539). McBride conceded that the defendant seemed "kind of" jealous of the decedent (5-26-06 at 51-52). McBride had seen the defendant carrying a .25 cal pistol once or twice in the months before September, 2004 (5-26-06 at 69, 74). McBride also knew Danielle Adams, Barbara and Tecoyia Wood, Miracle Cowser (but not Myra), and Margo Frye (to whom he regularly sold crack cocaine) (5-25-06 at 541-42).

On September 7, 2004, McBride left the nursing home after lunch and went to the Woodlands area to sell drugs (Id. at 546). The decedent met him there at about 1 p.m. and gave him a supply of heroin to sell (Id. at 547). Over the next several hours, McBride sold some heroin and snorted some himself (Id.). McBride also admitted that he had been doing crack and drinking alcohol and was "high" all day, although he insisted that the drugs and alcohol did not affect his ability to perceive the events of the day (5-26-06 at 20, 23, 28, 60).

At about 5 p.m., the decedent returned to the area, McBride gave him money, and the decedent gave McBride more drugs to sell (5-25-06 at 548-51). The decedent drove off to McDonald's, returned and left again, not returning until it was dark (8 or 9 p.m.) (Id. at 552-55).

McBride was hanging out with a man named Juan Newby and several other "associates" (Id. at 555). The decedent parked his car and came over to McBride (Id. at 557). While the decedent and McBride were again exchanging money and drugs, two men approached them (Id. at 558-59). McBride recognized the men from the neighborhood, but only knew the name of one of them: "Moe" or "Blacky" (Id. at 559-62). McBride described "Blacky" as being about 5'6" tall and of medium build, while the second man was of similar height and build and dressed all in black (Id. at 565).

The second man pulled out a gun (Id. at 562). The second man and "Blacky" proceeded to

rob the decedent of his cash, his drugs, and the keys to his car (Id. at 563-66).(Id. at 565). They then walked the decedent to his car and "Blacky" started "rambling through his truck" (Id. at 567-68). At that point, McBride rolled up to them in his wheelchair, told the two robbers to "leave it alone," and the two men ran off (Id. at 569-70).

The decedent chased after the two robbers for a bit but then returned and picked up his cell phone (Id. at 571). The decedent then went over to the defendant, who was sitting on a chair on Ms. Adams' patio (Id.). The decedent punched the defendant several times in the face, knocking him to the ground (Id.). The defendant got up and immediately ran into a clothes line pole, making him appear "discombobulated," "punch drunk," and "knocked out on his feet" (Id. at 572). However, the defendant was finally able to run away from the area (Id. at 573).

The decedent then went into Ms. Adams' house and got another phone (Id. at 573-74). The decedent told McBride he wouldn't leave the area because the two men had taken his car keys and he did not want to leave his car unattended (Id. at 576). As McBride started to roll off, he saw "someone" run past him and the person was displaying a gun (Id. at 577-78). McBride watched this person then fire his gun about 8 times at the decedent (Id. at 579). The shooter was 5'6" or 5'7", of medium build, dressed all in black, and had something covering his face, so that McBride never saw his face, but McBride was "100% confident" that the shooter was shorter and stockier than the defendant, and "according to body structure," could not have been the defendant (Id. at 577-81; 5-26-06 at 31-32). McBride also discounted the defendant as a possible shooter because the shooting happened just 3 or 4 minutes after he had seen the defendant in his "discombobulated" state and he didn't believe the defendant would have had time to recover so quickly (5-26-06 at 33). If the shooting had happened a longer time after the fight, McBride

believed the defendant could have been the shooter because the defendant would have had enough time "to gather his bearings and have his mind right by then." (Id. at 58-59).

After the shooting, McBride went up to the decent as he lay on the ground and tried to encourage him to "keep breathing" (Id. at 582). McBride did not tell the police about the robbery, nor did he tell them he had seen the shooting up close or give them a description of the shooter (Id. at 33-34).

2. Juan Newby

Mr. Newby, age 38, was familiar with the Woodlands area because his aunt lived there (5-26-06 at 76-79). Newby's son was a friend of the defendant, whom he had known since the defendant was quite young (Id. at 77). Newby also knew Thomas McBride well, and was familiar with the decedent but did not know him well (Id. at 77-81).

On September 7, 2004, Newby was in the neighborhood when he became aware of a "commotion already in progress" across the street (Id. at 80). Newby heard the decedent tell the defendant, "You let them bitch ass niggers rob me," and then saw the decedent punch the defendant several times (Id. at 81-82). The defendant was knocked down, but then got up, ran into a pole (hitting his face), and eventually fled the area (Id. at 82).

Just about 2 or 3 minutes later, Newby saw "a little short dude" arrive carrying a gun (Id. at 82-84). The "short dude" was dressed all in black, and was 5'4" or 5'5" and thus shorter than the defendant, who Newby estimated to be 6'2" or 6'3" (Id. at 84-87). Upon seeing the gunman, Newby immediately began to run away from the area and heard gunshots as he ran (Id. at 83).

Because he believed a "snitch" was "the lowest thing that a person can be," Newby did not talk to the police on the night of the shooting or tell them that they arrested the wrong man

for the shooting (Id. at 104-06). Newby, who was not using drugs or alcohol that night, did not see any young girls in the area, but conceded that it was possible that they were out there (Id. at 91-92, 95-96).[22]

3. Curtis Noland

Mr. Noland, age 22, had been the defendant's friend since their days in school together (5-30-06 at 11-12, 22). On the night of September 7, 2004, Noland was in the area when he saw the defendant running toward him (Id. at 13). With his face "kind of messed up" with visible bleeding from cuts and bruises, the defendant asked Noland for help (Id.). The defendant was "out of breath" and "panicking, like he was scared" (Id. at 16-17).

About 5 or 10 minutes later, while Noland was still standing with the defendant, they heard gunshots coming from Ainger Place (Id. at 14). The two ducked into a nearby building for safety (Id. at 14, 18). After another 5 or 10 minutes, Noland walked the defendant halfway to his mother's house, where he left him (Id.).

III. ARGUMENT

1.The Legal Standard

In Brady v. Maryland, 373 U.S. 83, 87 (1963), the Supreme Court held that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." In addition, "evidence is material only if there is a reasonable probability

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22 Mr. Newby was impeached with prior convictions for Attempted Possession of PCP ('87, '89), Carrying a Dangerous Weapon (gun) ('93), Possession of Unregistered Firearm '95), Possession of Marijuana ('95), Attempted Possession with Intent to Distribute Cocaine ('95), and Possession of Cocaine ('99) (5-26-06 at 77, 93-94).

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." United States v. Bagley, 473 U.S. 667, 682 (1985). "[S]howing that the prosecution knew of an item of favorable evidence unknown to the defense does not amount to a Brady violation, without more." Kyles v. Whitley, 514 U.S. 419, 437 (1995). Rather, the government's constitutional obligation to disclose such evidence matures only when the Brady materiality standard is met. United States v. Agurs, 427 U.S. 97, 108 (1976).

Thus, "there are three components of a true Brady violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." Strickler v. Greene, 527 U.S. 263, 281-82 (1999); accord Black v. United States, 755 A.2d 1005, 1010 (D.C. 2000). However, "there is never a real 'Brady violation' unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict." Strickler, 527 U.S. at 281.

Giglio v. United States, 405 U.S. 150 (1972), requires prosecutors to disclose any agreements reached with witnesses in exchange for their testimony. See e.g., Hawthorne, supra, 504 A.2d at 587; United States v. Sanfilippo, 564 F.2d 176, 178 (5th Cir. 1977); Boone v. Patrick, 541 F.2d 447 (4th Cir.), cert. denied, 430 U.S. 959 (1976). If a prosecution witness falsely denies such an agreement exists, the prosecution has an affirmative duty to step forward and correct that testimony. See e.g., Brown v. Wainwright, 785 F.2d 1457, 1464 (11th Cir. 1986); Williams v. Griswald, 743 F.2d 1533, 1541 (11th Cir. 1984); see also Sanfilippo, supra, 564 F.2d at 178; cf. also United States v. Phillips, 575 F.2d 1265 (9th Cir. 1978), cert. denied,

445 U.S. 863 (1979) (new trial ordered because of undue prosecutorial delay in correcting false testimony).[23]

However, a witness' post-trial receipt of a benefit from the government does not, of itself, establish that a witness had been promised a benefit by the government. Townsend v. United States, 512 A.2d 994, 999 (D.C. 1986) cert. denied, 481 U.S. 1052 (1987) (no Giglio violation where the government had not promised a witness preferential treatment before he testified but later requested a lesser sentence from the witness' sentencing court). Moreover, "the government is free to reward witnesses for their cooperation with favorable treatment in pending criminal cases without disclosing to the defendant its intention to do so, ***provided*** that it does not promise anything to the witnesses prior to their testimony .... [T]he fact that a prosecutor afforded favorable treatment to a government witness, standing alone, does not establish the existence of an underlying promise of leniency in exchange for testimony." Shabazz v. Artuz, 336 F.3d 154, 165 (2d. Cir. 2003) (emphasis in original) (no undisclosed agreements amounting to Giglio violation where prosecutor denied existence of such agreements but acknowledged requesting continuance of witnesses' sentencing hearings and recommending lenient sentences for witnesses based on their truthful trial testimony, and witnesses actually received favorable treatment at sentencing because of cooperation); see also Wisehart v. Davis, 408 F.3d 321, 324-25 (7th Cir. 2005) (no Napue or Brady violations where defendant did not establish that witness testified falsely that he

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[23] To the extent that the defendant is claiming that the government knowingly presented false testimony to obtain his convictions, the defendant bears the burden on establishing that: (1) the prosecution's case included false testimony; (2) the prosecution knew, or should have known, of the falsehood; and (3) that the false testimony could have affected the judgment of the jury. (Perry) Woodall v. United States, 842 A.2d 690, 695 (D.C. 2004); Hawthorne v. United States, 504 A.2d 580, 589-90 (D.C. 1986) (citing Napue v. Illinois, 360 U.S. 264, 269-71 (1959)).

had no agreement with the government); Burton v. Phillips, 2006 WL 2927832 at *7 (E.D.N.Y. Oct. 12, 2006) (no Napue violation where petitioner's evidence that there was an undisclosed agreement between prosecution and witness that witness would receive leniency "entirely speculative"); Bell v. Bell, 512 F.3d 223, 234-37 (6th Cir. 2008), cert. denied, 129 S.Ct. 114 (2008) (no Brady violation where, despite fact that government failed to disclose that critical witness had approached government in search of benefit before trial, defendant had not shown that witness' "expectations" were material).

In this case, the record after the hearing will show that the defendant has not met his burden of showing that the nondisclosure of Ms. Cowser's expectation of receiving reward money "was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict" as to his homicide and firearms convictions. Strickler, 527 U.S. at 281.

2. Relevant Post- Conviction Hearing Testimony Before Judge Gardner in Holliway/Adams Cases[24]

a. Miracle Cowser

Testifying as witness for the defendants, Miracle Cowser indicated that she did not learn about the M.P.D. reward program until after defendant Grandson's conviction, when her daughter Myra informed her about it. (31-29-09 at 29-33, 40-42). Ms. Cowser denied that M.P.D. Detective

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[24] In its Opposition to the Holliway 23-110 motion, which it filed in March, 2008, the United States provided Judge Gardner with the following relevant background information:

a) In July, 2003, the M.P.D. publicly announced that it was raising the amount of its long-standing cash reward from $10,000 to $25,000 for "information that leads to the arrest and conviction of the person(s) responsible for a homicide" committed in the District of Columbia;

b) Det. Brett Smith took videotaped statements from Miracle and Myra Cowser after the arrests of the defendant, Holliway and Adams on September 11, 2004;

c) Sometime after Miracle Cowser provided her initial videotaped statement on September 11, 2004, in which she described the threats made on her by Holliway and Adams, an M.P.D. detective (later identified as Michael Fulton) informed Ms. Cowser of the M.P.D. reward policy in homicides;

d) During the pendency of the Holliway/Adams trial, Ms. Cowser indicated to M.P.D. personnel her expectation that she would receive reward money in this case, but at no time did the police promise Ms. Cowser that she would receive such an award in this case. Although the prosecutor was not personally aware of Ms. Cowser's "expectations," the government acknowledges that members of the prosecution team (M.P.D.) were aware that Ms. Cowser expected such a reward and that this type of information should have been disclosed.

e) On December 4, 2006, the lead investigating detective, through the supervisor of the Violent Crimes branch of the M.P.D., recommended that Miracle Cowser receive $7500 in reward money, that her daughter Myra Cowser receive $8750 in reward money, and that Tecoyia Woods receive $8750 in connection with their assistance in the investigation of the Hinson homicide and related events. On December 26, 2006, the Chief of Police approved the recommendation and Ms. Cowser and the two minor witnesses received the funds in the amounts recommended soon thereafter.

Fulton, or any other police official, had discussed reward money with her until after the Holliway/Adams trial, but conceded that she did talk to the police about reimbursement for the losses associated with the burglary of her home after she gave her statement to the police on September 11, 2004 (Id. at 37-42, 56). Miracle Cowser denied that she had an expectation of reward money during either the trial of defendant Grandson or Holliway/Adams (Id. at 57-59).

We submit that Miracle Cowser's testimony at the post-conviction hearing was credible in some respects but not others. As demonstrated below, Miracle Cowser's testimony that she learned of the M.P.D. reward program from her 12 year old daughter, had not discussed reward money with the police, and had no "expectation" of reward money when she testified at the trials is directly contradicted by the testimony of Myra Cowser and Detectives Fulton and Smith. Consequently, we submit that Miracle Cowser's testimony on these issues at the post-conviction hearing before Judge Gardner was not credible and we do not ask this Court to rely on it.

However, Ms. Cowser's testimony that she first began talking to the police about "reimbursement" after she had given her videotaped statement to the police after the arrests of defendant Grandson and Holliway/Adams on September 11, 2004 is corroborated by the testimony of Detectives Fulton and Smith. Therefore, we ask the Court to credit that portion of her testimony.

b. Myra Cowser

Myra Cowser testified that she had no discussions with the police about reward money and no expectations of receiving reward money when she testified at either the defendant's or the Holliway/Adams trials (3-3-09 at 9-11). She never told her mother about the M.P.D. reward program but only became aware of it when she was actually given the reward check at school by

Detective Smith (Id. at 11).

In his pleading, the defendant indicates that "Myra was a key witness against Mr. Grandson. From testimony at the post-trial hearing in Adams' and Holliway's cases it is evident that she did not expect to receive a reward." (Motion at 32). We agree. We likewise submit that the Court should credit Myra Cowser's anticipated testimony at the defendant's hearing that she did not expect to receive a reward when she identified him as the person she saw shoot and kill Mr. Hinson on September 7, 2004.

We also anticipate that Tecoyia Wood, the other "key witness" who identified the defendant as the shooter, will testify at the defendant's post-conviction hearing that she had no expectation of reward money when she testified at defendant's trial. We agree with the defendant that this Court will need to make findings after a hearing about whether the testimony of these two young witnesses was somehow influenced by the expectations or biases of Miracle Cowser or anyone else. (See Motion at 33). We submit that the Court should find that there were no such prejudicial influences.

c. **Police Witnesses**

M.P.D. Homicide **Detective Michael Fulton** testified that, after giving her videotaped statement to Det. Smith on September 11, 2004, Miracle Cowser learned that her home in Woodlands had been burglarized (3-3-09 at 38-41). After exploring other options regarding reimbursement for her losses, Fulton had a conversation with Miracle Cowser about the M.P.D. reward program in homicide cases (Id. at 41). Subsequently, based on her statements to Det. Smith on several occasions before defendant Grandson's trial, Fulton understood that Miracle Cowser had developed an "expectation" that she would receive reward money (Id. at 46-49).

M.P.D. Homicide Detective **Brett Smith** was the lead investigator in the Hinson murder (3-3-09 at 61).[25] After placing the defendant and Holliway/Adams under arrest on September 11, 2004, Det. Smith took videotaped statements from Miracle and Myra Cowser later that night (Id. at 66-67). Within 48 hours, Miracle Cowser learned that her home had been burglarized (Id. at 49). Miracle Cowser began asking the police about compensation for her losses, and these requests "morphed" over time to an expectation on her part that she would receive reward money from the police (Id. at 70-72, 90-92). Miracle Cowser had that expectation before defendant Grandson's trial, and, after the defendant's trial, her requests intensified, to the point that Miracle Cowser "sicced the mayor's office" on the police in an effort to receive reward money (Id. at 95). Det. Smith did not discuss the reward money with Myra Cowser until after he had submitted the paperwork nominating her in December, 2006 (Id. at 82, 89-90). Unlike Miracle Cowser, Det. Smith had no understanding that Myra Cowser ever expected reward money, and noted that Myra was surprised when he delivered the reward check to her at her school (Id. at 83).[26]

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[25] On or about April 30, 2009, the M.P.D. informed the United States that its Internal Affairs Division (IAD) was investigating Det. Smith regarding allegations of the submission of false time and attendance records for court appearances. The Unites States Attorney's Office placed Det. Smith on its "Lewis list" on May 4, 2009. On information and belief, the court appearances in question do not involve the trials of the defendant or Holliway/Adams, or the post-conviction proceedings before Judge Gardner. We have no information suggesting that the IAD investigation had begun or that Det. Smith was aware of the IAD investigation at the time he testified before Judge Gardner on March 3, 2009. Even if it were assumed that Detective Smith was aware of an ongoing IAD investigation at the time he testified on March 3, 2009, however, this Court should credit Det. Smith's post-conviction hearing testimony, given the nature of Det. Smith's testimony and the totality of the circumstances.

[26] Personnel for the United States' Attorney's Office - AUSA Snyder, the trial prosecutor, and Yvonne Bryant, the victim-witness advocate in this homicide -also testified at the post-conviction hearing, largely concerning when and how they learned of Miracle Cowser's expectations of reward money (See, e.g., testimony of Ms. Bryant regarding Miracle Cowser's

3. The Defendant Has Not Demonstrated A Reasonable Probability of a Different Verdict as to the Homicide and Firearms Convictions

The defendant claims that the government violated the rule of Brady v. Maryland, 373 U.S. 83 (1963), when it failed to disclose "exculpatory information bearing on his guilt or innocence and on the credibility of its witnesses Miracle and Myra Cowser and the prosecutor's suppression of that evidence was highly prejudicial." (Motion at 1). Specifically, the defendant contends that the government failed to disclose "[Miracle] Cowser's expectation of a substantial reward and belief that she was entitled to it," and that this suppressed evidence was so prejudicial that the outcome of the defendant's trial would have been different (Motion at 31-34).

As we have indicated above, the record indicates that Miracle Cowser did have an expectation of receiving reward money from the M.P.D. at the time she testified at defendant's trial, that the government failed to disclose this fact, and that the failure was substantial enough to justify the Court's vacating the defendant's conviction for Obstruction of Justice. However, we submit that the scheduled hearing on the defendant's motion will demonstrate that the two key witnesses in the case, Myra Cowser and Tecoyia Wood, who both identified the defendant as the person they witnessed murder the decedent,

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Victim Impact Statement, 3-12-09 at 14; testimony of AUSA Snyder regarding calls from Mayor's Office, 3-12-09 at 48). Notwithstanding when the prosecution team became aware of Miracle Cowser's expectations, as we indicated in our pleading in the Holliway/Adams litigation, we do not dispute the defendant's contention that "the prosecutor had a duty to disclose what detectives knew" about Miracle Cowser's expections of receiving reward money (Motion at 26-27).

were not in any way influenced by an expectation of receiving reward money from the police. Thus, as to Myra Cowser and Tecoyia Wood, we submit that there was no failure to disclose exculpatory information.

We agree with the defendant that this Court will need to make findings after a hearing about whether the testimony of these two young witnesses was somehow influenced by the expectations or biases of Miracle Cowser or anyone else. (See Motion at 33). We submit that the Court should find that there were no such prejudicial influences.

Moreover, we submit that, even if the Court were to find that Miracle Cowser's undisclosed expectations somehow influenced the testimony of Myra Cowser and/or Tecoyia Wood, the Court should still have confidence in the jury's guilty verdicts on the First Degree Murder while Armed and related firearms counts. The eyewitness testimony of the two girls was supported by compelling corroborative evidence, including:

- the identifications based on the defendant's unique and unmistakable physical appearance (very tall and thin, with a teardrop tattoo below his eye), which both witnesses highlighted (see Myra Cowser: 5-18-06 at 99-100, 145, 175; Tecoyia Wood; 5-18-06 at 192, 199, 207, 5-19-06 at 233, 275, 279)

- the voice message the decedent left as he was being shot, corroborating the testimony that the decedent was making a cell phone call when the defendant shot him (see Myra Cowser: 5-18-06 at 101; Tecoyia Wood at 5-18-06 at 208; Thomas McBride: 5-25-06 at 573-74; Clifford Cooper: 5-18-06 at 68-70);

- the observation by a neighborhood resident, Margo Frye, of the defendant running from the shooting scene immediately after the shots were fired (5-19-06 at 291-96);

- the testimony by his "aunt," Deanna Scott, that the defendant was proudly showing off an object appearing to be a gun in the days before the shooting at his home (5-25-06 at 498-500, 509-110); and

- the testimony by Jamise Liberty, the defendant's brother's girlfriend, that the defendant suddenly appeared at his mother's home just after the shooting, was upset, and sought a ride to flee D.C. (5-19-06 at 364-66, 376).

Thus, even if there was evidence that Myra Cowser and Tecoyia Wood were somehow exposed to Miracle Cowser's expectations of a reward, the defendant cannot show materiality under Brady because of the compelling corroboration for their testimony. Consequently, we submit that the Court should deny the defendant's motion as to the homicide and firearm count after conducting the evidentiary hearing.

Conclusion

We submit that the Court should deny the defendant's motion as to the counts of First Degree Murder while Armed and the firearms counts after conducting an evidentiary hearing. The government has no objection to the Court's vacating the convictions and sentence for Obstruction of Justice.

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing has been mailed to defendant's counsel, Robert Becker, Esq., 5505 Connecticut Ave, NW, PMB #155, Washington, D.C. 20015, this 29th day of January, 2010.

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