

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

UNITED STATES

v.

SANTOS BONILLA,
Defendant.

Crim. Nos. F-2332-98

Judge Abrecht

**MEMORANDUM & ORDER DENYING 2005 MOTION FOR NEW TRIAL
PURSUANT TO § 23-110**

This 1998 matter is before the Court on remand from the Court of Appeals so that this Court can consider information disclosed by the government in February 2005. In June 2005 Defendant Bonilla filed this Motion to Vacate Convictions and Set Aside Sentence Pursuant to D.C. Code §23-110. The Government filed its Opposition in mid-August. Bonilla filed a detailed Reply to Government's Opposition on September 29, 2005 and filed a Supplemental Brief in December before the court held an evidentiary hearing on December 19, 2005. The government in April 2006 filed further written arguments and proposed findings of fact. Defendant filed Defendants' Joint [with Oscar Villatoro] Proposed Findings of Fact and his Points and Authorities on May 11, 2006. Based on the Court's findings of fact and conclusions of law that follow, the Court will deny Defendant Bonilla's request for a new trial.

The defendants allege that in connection with the 1998 trial, the government violated *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972), by withholding information that witness Rosa Garcia had falsely claimed that

she had a green card indicating legal residency in the United States. Defendants also claim that before the 1998 trial the government should have investigated other identification documents, discovered problems with her passport number and social security number and reported to defendants that her documents were fake. Defendants allege that by not prosecuting Garcia, the government provided her a benefit for testimony beyond the disclosed benefit of providing witness protection. Motion at 18.

The Court invited the parties to present evidence on this Motion at an evidentiary hearing on December 19, 2005, to enable this Court to make relevant findings of fact. Because the new issues must be evaluated in the context of the trial evidence against Bonillo, a summary of that evidence is repeated here. Although the defendants also wish to reopen all of the claims made in previous motions for new trial, this Court has declined to do so because the conclusions it reaches on the new issues do not undermine the conclusions it reached on the earlier motions.

SUMMARY OF TRIAL EVIDENCE OF BONILLA'S INVOLVEMENT

Santos Bonilla ("Manotas") was convicted of conspiracy and first-degree murder while armed. He aided and abetted the murder of an innocent theology student Warren Helm. Mr. Helm had come to the aid of a street person being beaten by men who had just left a nightclub.

The facts at trial revealed that Santos Bonilla ("Manotas") was in Diversite nightclub with acquaintances who, like him, were associated with the MaraR gang--Oscar Villatoro ("Gato"), Carlos Robles Benevides, Luis Perez ("Cholo"), Jose Salamanca ("Muella"), Jorge Navarette ("Mexico"), Abuelo, Douglas Ventura, Walter Velasquez

("Catinga"), Jose Benitez ("Chofer") and Hugo Aleman ("Loco Hugo")--on the morning of March 15 1998 (Tr. 341, 347, 547, 557, 565, 569-570, 635, 636) when a fight broke out. Villatoro flashed a gang sign for the MaraR gang at members of the rival MS gang (Tr. 570-572, 637-638). The manager told everyone to leave (Tr. 570).

Salamanca asked Bonilla for a ride home and waited after the club closed while Bonilla talked to a girl outside the club (Tr.I 76-77). Robles Benevides, Walter Velasquez, and Douglas Ventura also asked for rides home but did not immediately get into the car (Tr. I 78, Tr.I 128). **They had hidden the knives outside the Diversite Club (because knives were not allowed in the club) and then ran to retrieve them before entering his car (G.J. Tr. 20-21). Bonilla told the police he saw Catinga and Douglas with knives when they entered his car (Tr. 695-697, 734-737, 741, 756-757).**

While still in the vicinity of the club, **Bonilla saw Villatoro hit a homeless man** (Tr. I 139-140). Rosa Garcia saw Villatoro and others arguing with the homeless man across the street (Tr. 347). Codefendant Perez went toward them, making the gang sign and yelling "R, R" loudly (Tr. 571, 573, 640). The homeless person, in trying to run away, ran toward Defendant Salamanca ("Muella"), who became actively involved by hitting him and knocking him to the ground. Eyewitness Jose Benitez saw Salamanca knock the homeless man to the ground and joined in the attack himself (Tr.574, 618). Thereafter, Salamanca got into Bonilla's car and fell asleep (Tr. I 79).

A red Oldsmobile stopped and four black men (Greg Alexander, his two cousins, and Warren Helm) got out to see if the homeless man was all right (Tr. 574, 618). Benitez heard the black men yell for the Latino men to stop hurting the homeless man (Tr. 575). As the black men walked towards the homeless man, Villatoro and other Latino men

walked towards the black men. After Helm threw a punch, Navarette and Abuelo moved toward him (Tr. 575). At this point the four men from the red car turned to run back to their red car (Tr. 575). Three of them made it to the car, but Warren Helm did not (Tr. 575). As the crowd attacked the red car, Alexander drove away, around the block, leaving Helm and the crowd (Tr. 427-428). They threw rocks and bottles at the red car and chased Mr. Helm. (Tr. 575-576.)

Meanwhile, **Bonilla got into his car and picked up his passengers as Helm was running ran up 14th Street pursued on foot by Villatoro and others of the crowd (Tr.452-453, 478, 552). Bonilla joined the pursuit of Helm in his Honda car with Velasquez, Robles Benevides, Salamanca, and Ventura as passengers. Bonilla caught up with Mr. Helm and stopped the car.** (Bonilla denied that he saw Helm running and testified that he stopped because Velasquez told him to. Tr.I 129.) Mr. Helm, unfortunately, ran towards Bonilla's car as if asking for help.

Instead of helping Mr. Helm, Velasquez, Ventura, and Robles Benevides jumped out of the passenger seats of the car and began to hit him. Benitez saw Benevides and Ventura get out of Bonilla's car and hit Mr. Helm (Tr. 577-578). Jose Perez saw Velasquez, Ventura and Abuelo stabbing him and saw Benitez, Luis Perez and Robles Benevides hitting and kicking him (Tr. 502). Benitez saw Velasquez make a stabbing motion (Tr. 577- 578).

Bonilla also got out of his car and joined the assault for a brief time. Benitez said he did not know if Bonilla hit Mr. Helm but he did see him outside the car during the stabbing (Tr. 624-625). Aleman initially testified at trial on October 28, 1998 that Bonilla was not involved in the final attack (Tr. 562-564) but

acknowledged his April 1, 1998 grand jury testimony in which he said that he saw Bonilla get out of his car and hit Helm, the decedent (Tr. 10/28/98, 544-546).

Aleman's grand jury testimony was thus received as substantive evidence. [Three years after trial in 2001, Mr. Aleman recanted his grand jury testimony, saying generally that it was full of lies. After a hearing in 2002 at which Mr. Aleman testified, the Court found his recantation of the detailed grand jury testimony to be incredible for reasons explained in detail at pages 6-10 of its October 2002 Memorandum and Order in this case.]

Rosa Garcia's attention was directed to the scene by the sound of a black man's voice saying, "No, no" (Tr. 348, 385). She saw Walter Velasquez ("Catinga") stabbing him and others including Villatoro ("Gatos") and her boyfriend Benitez ("Chofer") hitting, punching and kicking him (Tr.348, 350)¹. Rosa Garcia testified at trial that although she could not really remember, she thought Bonilla ("Manatos") was out of his car kicking and punching the decedent with others. However, when admonished to tell only what she remembered, she said she was sure only that **she saw Bonilla in his car with four doors open, waiting for the men who stabbed decedent.** (Tr. 356-357.)²

Bonilla testified in his defense that he got out of his car briefly only to close the doors of his car (Tr.I 129-130). He denied hitting the decedent but admitted he was in a position to see Velasquez stabbing Helm (Tr.I 132). After Bonilla got back in his car he did not leave the area until the stabbers Velasquez and Ventura returned to the car with

¹ In her initial statement to the police, Garcia said "Muella", "Colo", "Gato", "Chupa Cabra", "Chofer", "Abuela", "Mexico", "Manota", and "Douglas" were all hitting the man, but I only saw "Catinga" stabbing the black man. She also said that after the assault, Douglas admitted to her that he had stabbed the man. A copy of her statement is attached as Ex. 2 to the Government's August 2005 Opposition.

²The prosecutor did not attempt to refresh her recollection with her clearer March 17, 1998 grand jury testimony, in which she said, "I saw him [Bonilla] hitting the black man and kicking the black man. And before everything finished he ran into his car..." (G.J.Tr. 23). Counsel for Bonilla did not ask Rosa Garcia any questions on cross-examination (Tr. 373).

their bloody knives to make their escape. Bonilla stated that he was not waiting for them. He claimed he was merely waiting for the light to turn green (Tr.I 131), but once they entered the car, he sped away with them. Bonilla testified that Velasquez got into the car with his knife and in a threatening manner told Bonilla to take him to the Triviada (Tr.I 132-133). Bonilla took Velasquez to the Triviada and then took Salamanca home.

Salamanca, who explained that he fell asleep upon getting into Bonilla's car and did not wake up until Velasquez got back into the car later (Tr.I 79), testified that when Velasquez got into the car, **Velasquez told Bonilla to take him to the Triviada (Tr. 11/2/98, 91-92). Benitez saw Bonilla drive Velasquez away (Tr. 642).**

Bonilla testified at trial that he did not know that Valesquez and Ventura were armed until they got out of the car to attack Helm (Tr.I 142). However, in a recorded police interview early in the investigation, he said he saw the knives when they first entered the car. The jury saw the (redacted) videotape (and transcript) in which **Bonilla told the police he saw Catinga and Douglas with knives when they entered his car (Tr. 695-697, 734-737, 741, 756-757).** While cross-examining Bonilla, the prosecutor used his grand jury testimony in which **he explained that earlier that night, they had hidden the knives outside the Diversite Club (because knives were not allowed in the club) and then ran to retrieve them before entering his car (G.J. Tr. 20-21).**

Mayra Riviera testified for the defense that she and Rosa Garcia waited outside the club and got into a taxi without seeing or being in a position to see a fight or anything (Tr. 778-779, 782-783). From Mayra Riviera's testimony, the defense argued that Rosa Garcia's detailed testimony was incredible.

FACTS FOUND AFTER THE DECEMBER 2005 HEARING

In December 2005, the court heard testimony from the prosecutor, Rosa Garcia, and the victim assistance person who assisted Ms. Garcia.

Rosa Garcia was brought into the United States as a nine-year-old child by her mother and relied on her mother for determining her status. In due course, her mother provided her with a social security number and she obtained a passport from the El Salvadorian embassy (12/19/05 Tr. 70-74). She thought her mother had applied for a green card for her, but her mother never gave her a green card and she never saw it (12/19/05 Tr. 104-105, 174). She knew that without a green card she was in this country illegally, but the matter was rarely on her mind. She worked as a waitress, receiving all her pay and tips in cash and did not pay taxes (12/19/05 Tr. 105-106, 138). She did not fear deportation and at the time of trial none of her friends or relatives were the subject of deportation proceedings.

Rosa Garcia contacted the police on March 15, 1998 with information about the fatal assault after learning that her boyfriend Benitez was arrested and after she was assaulted and threatened by Salamanca. In addition to wanting to make sure that her boyfriend did not take the blame alone (12/19/05 Tr. 189), she thought of her children as a reason for coming forward as a witness in the murder case because she would want witnesses to come forward if any harm ever came to her children (12/19/05 Tr. 75). She had seen her boyfriend Benitez (nicknamed "Chofer") and others hitting and kicking the decedent but knew that Velasquez "Catinga" and Douglas Ventura were armed and had stabbed the decedent. She provided a detailed statement to the police (copy attached to

Government's August 2005 Opposition) on March 15 and testified before the grand jury on March 17, 1998.

Although Rosa Garcia declined witness protection offered to her when she first reported the assault and threats made to her by Salamanca in March 1998, she sought protection in May after others threatened her to kill her. (12/19/05 Tr. 31). (No charges have ever been brought against any one for those threats.)

When interviewed for the witness protection program, Rosa Garcia provided a copy of her passport, provided her social security number and falsely stated that she had a "green card" (12/19/05 Tr. 14, 17, 44, 70-74, 130). Prior May 1998, police and prosecutors had not asked her about her immigration status. She had given a statement to the police and testified before the grand jury in March 1998 without any discussion of or thought about her immigration status. The trial prosecutor Anthony Ascuncion testified that in 1998 he would not have inquired about any witness' immigration status. In this case, until admission into a witness protection program was requested, the prosecutors had every reason to consider the immigration status of the witness just as irrelevant to this criminal case as the immigration status of any of the defendants. (12/19/05 Tr. 182-183, 193).

Ms. Garcia's immigration status came to light when a detective assisting with the witness protection application contacted INS and learned that INS had no record for Ms. Garcia. When the detective confronted Ms. Garcia, she admitted that she did not in fact have a green card (Ex. 7 to Gov't. Opp). The prosecutor then contacted INS to find out if she was on a deportation detainer list (12/19/05 Tr. 179-181, 186-187) and learned that she was not. Because she was not, she was in due course accepted into a witness

protection program. The prosecutor in contacting INS sought neither deportation nor special treatment (12/19/05 Tr. 177-178, 188, 193). The prosecutor did not question the validity of the social security number and passport provided by Garcia and was under no duty to investigate (12/19/05 Tr. 19, 70, 73-74, 95, 97, 111).

The prosecutor did not reveal to Defendants prior to trial the information the government had learned about Rosa Garcia's immigration status, her false statement about having a green card or the prosecutor's contact with INS (12/19/05 Tr. 200). The prosecutor did disclose to Defendants her participation in the witness protection program and its financial benefits.

In December 2005, Ms. Garcia testified persuasively (if naively) that she had had no fear of deportation (12/19/05 Tr. 135-136, 140-141). She did not ask for and had no hope or expectation of special treatment either at the time of her initial statements to the police and the grand jury or at trial (12/19/05 Tr. 16, 75-77, 81-83). During trial, however, when she looked at Defendant Salamanca she wondered for the first time whether her immigration status would be a problem. Since she was related to Salamanca by marriage, she knew that he knew that she did not have a green card and was in the United States illegally (12/19/05 Tr. 84-85). Although she became worried, her worry did not influence the content of her testimony (12/19/05 Tr. 85). While being driven away from the courthouse, she asked Detective Gainey for help. He said they would discuss her status later but they did not (12/19/05 Tr. 85-87). She later heard that her mother may have sold her green card (12/19/05 Tr. 207-211).

When she tried to renew her passport before it expired in October 2001, she was unable to do so. Her children had written all over it and a clerk told her it was invalid.

(12/19/05 Tr. 71-72). In 2003, when the government sought her assistance in prosecuting Co-defendant Navarette (nicknamed "Mexico"), the prosecutor offered to help her obtain an S Visa pursuant to 8 U.S.C. §1101 (a) (15) (S) and 8 C.F.R. §214.2(t) (12/19/05 Tr. 151-152). The prosecutor learned that the social security number Garcia was using did not belong to her and that the number on the passport she had provided in 1998 was three digits short (Gripkey affidavit). Prior to jury selection, Navarette pled guilty to Manslaughter and Conspiracy (F-4371-98).

Rosa Garcia admitted at the December 2005 hearing that at the time of trial in 1998, she (age 24) did not have custody of her children (born when she was a teenager) and that they were respondents in a family court matter (12/19/05 Tr. 156-157). In 1998 she was not actively seeking custody of her children and she never asked the police or the prosecutor for help in obtaining custody. She testified that the pendency of the family case had no influence on her trial testimony in 1998 (12/19/05 Tr. 158). A couple of months after the trial in 1998 upon the death of her grandmother she became involved in drug (crack cocaine) use and sale (12/19/05 Tr. 88-89). Ms. Garcia (at age 31) testified at the December 2005 hearing that she now hoped to obtain custody of her children. However, she did not think that the help she provided the prosecutors in this criminal case would have any impact on how any of the decisions in the family case would be made (12/19/05 Tr. 158).

ANALYSIS AND CONCLUSIONS

Defendant argues that the government's withholding of information that Rosa Garcia lied about her immigration status entitles him to a new trial because there is a

reasonable probability that pretrial disclosure would have led to a different trial result. He argues that armed with the information, he could have discredited Rosa Garcia who was critical to the government's case against him. (Bonilla Motion at 25). The Court disagrees.

Assuming that the government was wrong under *Brady* to withhold its information and assuming that this Court would have permitted Defendants to explore possible bias, motives, and special treatment [*see Scull v. United States*, 564 A.2d 1161, 1165 (D.C. 1989) (new trial ordered where bias cross-examination concerning witness' subjective belief in possibility of prosecution was precluded)], the Court concludes that the result of the trial would not have been different. The proposed impeachment about immigration issues and related false statements would not have undermined Garcia's testimony about the murder and Rosa Garcia was just one of several witnesses who implicated the Defendant Bonilla. The evidence in the case proved overwhelmingly that the Bonilla was one of many who aided and abetted the murder of Warren Helm, who was stabbed to death by Walter Velasquez ("Catinga") and Douglas Ventura. Garcia had no expectation of help on immigration matters and she testified in Grand Jury long before immigration status became an issue. Her trial testimony had indicia of reliability and was tested by substantial cross-examination, impeachment and contradiction. Immigration issues were collateral to main issues at trial. Moreover, the evidence against Bonilla would have been sufficient even without Garcia's testimony.

Garcia had no expectation of help on immigration matters.

Given Ms. Garcia's testimony on December 19, 2005, when confronted with all of the new information, including her earlier misrepresentation about her green card and the prosecutor's response, the Court concludes that Ms. Garcia's trial testimony about what she saw of the assault would have remained credible. Garcia would have admitted her false statement about having a green card and would have told her story of being brought to the United States by her mother who gave her a social security number and about obtaining a passport. Contrary to the assumptions made by Defendants, the government in 1998 did not know and was thus not obligated to disclose that Rosa Garcia may have been using a fake passport and social security number. The government had not suspected a problem and had neither investigated such matters nor given Ms. Garcia any immunity or special treatment. *Guest v. United States*, 867 A.2d 208 (D.C. 2005) (no *Brady* violation to fail to disclose information the government does not possess and government does not have duty to investigate).

Garcia testified in Grand Jury before immigration status became an issue.

No evidence remotely suggests that at the time Ms. Garcia made her first statements to the police and to the prosecutor and grand jury about the defendants' roles in the assaults, she had any motive or desire to curry favor with the government to obtain help for herself with immigration problems or to avoid prosecution. Ms. Garcia made statements incriminating the defendant, and numerous others well before the issue of her immigration status and documents ever arose. The chronology of events here is critical. Less than 24 hours after witnessing a group of her friends and acquaintances attack the

decedent Warren Helm, Ms. Garcia gave a statement to the police identifying the men she saw stabbing the decedent and those she saw merely hitting the decedent. Two days after the murder (March 17, 1998), Ms. Garcia testified about what she saw of the murder before the grand jury. The record indicates that she did not discuss her immigration status then. The government first learned of Ms. Garcia's immigration status in May six weeks after she came forward as a witness in the case and testified in the grand jury, and then only in conjunction with the administrative processing for her admission into the witness protection program. Even if Defendants had had the foresight to question her at trial about her social security number or passport [or did so at a new trial], such questioning would not have undermined her eyewitness testimony about the assault. Ms. Garcia's testimony in the grand jury was not influenced by any discussions of her immigration status, or by any promises of or subjective expectation of favorable treatment for herself with the immigration authorities or prosecutors. The government did not learn of problems with Ms. Garcia's passport and social security number until 2003, several years after her trial testimony (Gripky affidavit, Ex. 10 to Government's Opposition).

Ms. Garcia testified persuasively (if naively) that she had no fear of deportation (12/19/05 Tr. 140-141) and no hope or expectation of special treatment either at the time of her initial statements to the police and the grand jury or at trial. She also testified that she did not think that her testimony and the help she provided the prosecutors would have any impact on how decisions in the family cases were made (12/19/05 Tr. 158).

Testimony of Garcia had indicia of reliability.

Indeed, the Court is persuaded that, if Ms. Garcia had a predisposition or motive to lie in order to curry favor with the government for any reason, she would have claimed to see more than she did. Instead, Ms. Garcia's credibility was reinforced by the care she took to include in her testimony only those she saw (including her own boyfriend) hitting the homeless man or the decedent and to exclude those that she did not see.

Ms. Garcia's credibility was also enhanced by the fact that she was testifying against people with whom she was very close. All of the significant players (defendants and witnesses) were either family or associates. Ms. Garcia testified that she used to "hang out" with the defendants, and at the time of the homicide, she was still the girlfriend of codefendant Jose Benitez ("Chofer") (Tr. 355, 379).³ Defendants do not allege and there is no evidence that Ms. Garcia had any personal bias against any of the defendants she identified as participating in the assault or bias in favor of any gang members she failed to identify as participants.

Garcia's testimony was tested by substantial cross-examination, impeachment and contradiction.

Moreover, impeachment with the information that Ms. Garcia had misrepresented her immigration status would be cumulative of and less relevant than other impeachment material available for defendants to use at trial in 1998. Defendants knew from the circumstances and her grand jury testimony that Ms. Garcia was biased in favor of Benitez. She came forward to name the stabbers and all other participants in part because

³ Ms. Garcia acknowledged that Benitez, who had been arrested in this case, and later pled guilty and testified as a government witness, had, at one point, tried to get her to lie about what she had seen but she had refused his request (Tr. 393). In his own trial testimony, Benitez confirmed that he had tried to influence Ms. Garcia's testimony but that she had resisted (Tr. 612).

her boyfriend Benitez had already been arrested. She did not want him to face charges alone or be accused of the actual stabbing. Her cooperation helped her boyfriend because she explained that he was not brandishing a knife and she named other participants. (Tr. 189).

Ms. Garcia was cross-examined at trial about the fact that she did not report the crime to the police immediately (Tr. 363), that she had vision problems that necessitated her to “wink” in order to see (Tr. 385), and that she had discussed her testimony with her ex-boyfriend Benitez (Tr. 393). Defense witness Myra Rivera (who was with Rosa Garcia and several other friends) testified that Rosa Garcia was drunk on the night of the attack (Tr. 783-84). Rivera also claimed that Rosa Garcia was with her after they left the club and that she (Rivera) never saw any fights or a body on the ground (Tr. 778-79, 782-83). Rivera testified further that the group (including Rosa Garcia) had caught a cab at 14th and Q Streets, whereas Rosa Garcia had claimed that she had seen the attack from her vantage point near 14th and Swann Streets (Tr. 777-78, 785-89). Rivera thus essentially told the jury that Rosa Garcia was a liar because Rivera had seen no criminal activity and Garcia had been with Rivera the entire time.⁴ In closing arguments, each defense counsel argued that Ms. Garcia’s testimony was incredible based on the various ways in which Ms. Garcia’s testimony was impeached (Tr. 236-42, 264).

Thus, even without the information that Ms. Garcia had misrepresented her immigration status, questions about her were clearly put before the jury.

⁴ Defense witness Stanislao Fuentes and Salamanca both offered testimony that Salamanca did not choke Ms. Garcia nor touch her in any way, contrary to her testimony (Tr. I 48-49, 82-83, 120-22).

Immigration issues were collateral to main issues at trial.

An additional attack on Ms. Garcia's credibility, based on misrepresentations collateral to the events at issue, would not have created a reasonable probability of a different verdict. See *Brooks v. United States*, 396 A.2d 200, 205 (D.C. 1978) (government's failure to disclose witness' false statement on her marriage certificate not material under *Brady* where defendant otherwise impeached witness, her testimony was corroborated by other witnesses, and witness' prior false statements would not have affected the jury verdict "given the plethora of factors that could have motivated her other than an irreverence for truth and veracity"); *United States v. Wong*, 78 F.3d 73, 79-80 (2nd Cir. 1996) (undisclosed information that witness may have received favorable treatment from INS in exchange for cooperation not material because cumulative of other impeachment evidence and there was independent corroborative evidence of defendant's guilt); *United States v. Rivera*, 1999 WL 216646 (S.D.N.Y. 1999) (non-disclosure of alleged special consideration to witness concerning immigration status immaterial and cumulative).

Ms. Garcia's immigration status and her lie about her status were so remote from her eyewitness testimony about the murder that the absence of that information from the trial does not warrant a new trial. Such information would not have caused the jury to discount her testimony as to the harm she witnessed the defendant's associates do to Warren Helms. Absent an expectation of special treatment, Ms. Garcia's status as an undocumented immigrant and her false statements about it were collateral to any of the issues at trial and had no relevance to the crime she had witnessed. Indeed, the Court of Appeals has noted that it is improper to argue that "anyone who – for whatever reason –

has crossed our borders in violation of the government's immigration procedures should not be believed.” *Portillo v. United States*, 609 A.2d 687, 690-91 (D.C. 1992)

(defendant's “unlawful presence in this country did not bear directly upon his veracity in respect to the issue of his guilt on the charge of distributing drugs”); *People v. Walls*, 752 N.E. 2d 456, 465 (Ill. 2001) (in armed robbery and armed kidnapping trial, undisclosed evidence regarding victim's immigration status, “even if it were shown that he was indeed an illegal alien, does not satisfy the threshold requirement of materiality under a *Brady* analysis”); *See also, Lemons v. State*, 608 S.E. 2d 15, 21 (Ga. App. 2004) (court's refusal to allow the defense to cross-examine a robbery victim's lie under oath about his immigration status upheld “since the witness's immigration status was not relevant to whether he was robbed by [defendant]”; trial court's preclusion of defense from cross-examining 2 of 4 kidnapping/robbery victims about their illegal immigration status and any possible hope of benefit they might have thought they could gain by testifying on behalf of the state upheld where record showed that the state made no promises or offers to assist the victims with their immigration status, victims had not asked for any assistance in exchange for their testimony, and no immigration proceedings were pending against the witnesses at the time they testified).⁵

⁵ The Georgia Court of Appeals concluded that even if we assume that the trial court should have allowed defense counsel to cross-examine the victims about their immigration status and any subjective belief they might have had that testifying for the state might have somehow have benefited them... We find it highly probable that the outcome of [defendant's] trial would not have been different.... The evidence against [defendant] was overwhelming, there had been no discussion between the state and the victims about assistance with their immigration status, and there were no pending immigration proceedings against the victims. As no harm could have resulted from the trial court's limitation of Lemons' cross-examination, we find no merit in this enumeration.

Lemons v. State, *supra*, 608 S.E. 2d at 21.

Evidence against Bonilla sufficient even without Garcia's testimony.

Furthermore, even if Ms. Garcia were impeached and discredited by information concerning her immigration problems and false statements, the evidence against Bonilla would still have been sufficient to make a different trial result very unlikely. As recounted above, Ms. Garcia merely testified that she saw defendant Bonilla driving and with the group that attacked Mr. Helm. (Tr. 356-57, 380-81) and her testimony about his role was corroborated by other witnesses.

Although on March 17, 1998, she had told the grand jury that she saw Bonilla hitting and kicking the decedent, the prosecutor did **not** introduce that grand jury testimony into evidence at trial or attempt to refresh her memory with the transcript. Bonilla's counsel did not even see a need to cross-examine her and perhaps feared that any challenge to her testimony against Bonilla might have caused her to remember more.

The significant government evidence that Bonilla actually hit the decedent came from Hugo Aleman, not from Ms. Garcia. Hugo Aleman acknowledged at trial his grand jury testimony that he saw Bonilla get out of his car and hit Helm (Tr. 10/28/98, 544-546) and that testimony was received as substantive evidence⁶.

Other witnesses established that Bonilla drove the stabbers Walter Velasquez ("Catinga") and Douglas Ventura to the victim. Hugo Aleman testified that he saw Bonilla in the car that pursued the decedent up 14th St. (Tr. 550-551). When the occupants of the car reached the decedent, Aleman witnessed them "hurt the black person..." (Tr. 551-53). Aleman saw defendant Bonilla "hit him [the decedent] in the face but then he went in the car because he was driving" (Tr. 554-556).

⁶ In denying the defendant's previous New Trial Motion, this Court concluded that Aleman was telling the truth before the grand jury (10-10-02 Order at 6).

In one significant respect, Bonilla seems confused about Garcia's testimony in relation to Aleman's testimony. Both in his Supplemental Final Argument in 2002 (at page 18) and in his 2005 Motion (at page 19), Bonilla claims that Ms. Garcia's testimony was significant because it bolstered Aleman's testimony. He claims that Ms. Garcia placed Mr. Aleman close enough to the scene of the homicide to be able to identify the attackers. However, Rosa Garcia did **not** testify at trial about Aleman's location. She described his location before the grand jury only and that portion of her grand jury testimony was not used at trial. Therefore, at trial, the jury's evaluation of Aleman's ability to observe would not have been influenced by additional impeachment of Rosa Garcia.

Jose Benitez, a participant in the attack, testified that defendant Bonilla drove Catinga and the others in pursuit of Mr. Helm (Tr. 575-76). Benitez and Barry Hallner described how the car (driven by Bonilla) seemed to cut off Helm as he tried to escape his assailants (Tr. 455, 577-78). Jose Perez (who identified his own brother as a participant), and Benitez both described how the occupants of Bonilla's car got out and attacked Helm (Tr. 356-57, 502-7, 624-25). Benitez said that while Catinga was stabbing Mr. Helm, Bonilla was standing beside his car, "waiting" (Tr. 356-57, 624-25). Bonilla himself admitted getting out of his car at the scene of the stabbing (Tr. I 129-130). Benitez further testified that Bonilla subsequently drove Catinga away from the scene after Mr. Helm had been mortally wounded (Tr. 642). Defendant Salamanca also corroborated the fact that Bonilla drove Catinga and others away from the club, stopped the car for them, and then later drove them away from the scene (Tr. 79-116). Moreover, the jury saw on videotape defendant Bonilla himself telling the police that he saw Catinga

and Douglas with their knives when they entered his car, that he stopped the car a couple of blocks away, and that he later drove off with Catinga (Tr. 741).

Bonilla's attempt to cast his role as one of *innocent* presence was improbable and incredible. He claimed he did not see Helm or see his friends chasing Helm when he stopped the car next to the fleeing Helm and that he stopped only on orders from Velasquez (Tr.I 129). He claimed he got out of the car merely to close doors and then remained in the area not to aid his friends in the assault or to aid their escape but merely because traffic happened to be stopped for a red light.

Thus, the jury had overwhelming evidence, other than Ms Garcia's testimony, that Bonilla aided and abetted the stabbing murder of Warren Helm. *See Jefferson v. United States*, 463 A.2d 681, 683 (D.C. 1983) ("proof of presence at the scene of a crime plus conduct which designedly encourages or facilitates a crime will support an inference of guilty participation as an aider and abettor"). Even if the defendants were able to discredit Garcia in front of the jury with newly discovered impeachment material, Bonilla has not established a reasonable probability of a different trial result.

No need to revisit denial of previous new trial motions.

In October 2002, following an evidentiary hearing, in a lengthy memorandum and Order rejecting Bonilla's 2001 motion for a new trial, this Court concluded that Bonilla had a fair trial and that none of his allegations at that time formed a basis for having a new trial. First, this Court made credibility findings rejecting his claim that Hugo Aleman testified falsely before the grand jury (pages 6-10) and rejecting his claim that the prosecutor had reason to know the testimony was false (pages 10). Second, the Court

found no prejudice from mid-trial disclosure of inconsistent statements made by Aleman and of evidence that contradicted testimony of Aleman and Garcia, since it found no reasonable probability that earlier disclosure would have changed the outcome.

This Court examines the new issue in the context of those conclusions; particularly in light of the Court's statement then that Rosa Garcia was not then shown to have any motive to lie against the defendants in her description of what she saw (2002 Order at 17). The Court concludes for the reasons discussed above that her immigration status and her false statements to investigators about her green card—matters not before the Court in 2002—do not require the Court to revisit the issues raised in 2002. Even considering the cumulative effect of all issues raised, the Court remains confident in the fairness of the verdict.

CONCLUSION

In order to obtain a new trial based on *Brady* violations, Defendant must show a reasonable probability that had the withheld information been disclosed before trial, the result of the proceeding would have been different. *United States v. Agurs*, 427 U.S. 97, 111 (1976). Based on the findings of fact and conclusions of law discussed above, the Court concludes that Bonilla has not met his burden of showing that a new trial would have a different outcome, although he has made persuasive arguments that the government violated the principles of *Brady*.

WHEREFORE, it is this *1st* day of SEPTEMBER, 2006, hereby

ORDERED that Defendant Bonilla's June 2005 Motion to Vacate Convictions and Set Aside Sentence Pursuant to D.C. Code §23-110 is **DENIED**.

Mary Ellen Abrecht
MARY ELLEN ABRECHT
JUDGE

signed in chamber

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