IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ALBERT LEE THOMAS, JR. **APPELLANT** TS

V. **NO. 2007-KA-1197-COA**

STATE OF MISSISSIPPI **APPELLEE**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Albert Lee Thomas, Jr., Appellant
3. Honorable Robert Schuler Smith, District Attorney
4. Honorable Tomie T. Green, Circuit Court Judge

This the 20th day of July, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: Brenda Jackson Patterson

Brenda Jackson Patterson
COUNSEL FOR APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS
301 North Lamar Street, Suite 210
Jackson, Mississippi 39205
Telephone: 601-576-4200

TABLE OF CONTENT

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ALBERT LEE THOMAS, JR. APPELLANT

V. NO. 2007-KA-1197-COA

STATE OF MISSISSIPPI APPELLEE

SUPPLEMENTAL BRIEF OF THE APPELLANT

STATEMENT OF THE CASE

This case came on remand from the Court of Appeals to the Circuit Court of Hinds County for the limited purpose of conducting a hearing to make findings of fact and conclusions of law concerning whether the State made promises to Xavier McDonald in exchange for her testimony.

After a hearing, the Circuit Court was of the opinion and conclusion that there were no promises or deal offered by the State to Xavier McDonald in exchange for her testimony against Albert Lee Thomas. The Court also concluded that there were no promises or deal offered Xavier McDonald in exchange for the testimony of her son Tony Taylor. The Court found the testimony during the hearing revealed what appeared to be a legitimate concern by Xavier McDonald and the State prosecutor for Tony Taylor's safety during and subsequent to Thomas's murder trial and conviction. Therefore, the assurance by the U.S. Attorney that he would "see what he could do" to help Tony Taylor secure release on bond for unrelated charges or to do what the prosecution could do to get

Tony Taylor transferred from the detention center where Albert Lee Thomas and other hostile inmates might seek to harm Tony Taylor for giving testimony against Albert Lee Thomas did not amount to a forbidden "deal: of the nature contemplated in Giglio v. United States, 92 S.Ct. 763, (1972). Finally, the court further concluded that there was no reasonable probability that communications and agreements to secure Tony Taylor's safety impacted Albert Lee Thomas's guilt or innocence. Citing, United States v. Bagley, 473 U.S. 667, (1984).

STATEMENT OF THE ISSUE

I. WHETHER THE CIRCUIT COURT ERRED IN FINDING THE STATE MADE NO PROMISES OR DEAL TO XAVIER MCDONALD IN EXCHANGE FOR HER TESTIMONY AGAINST ALBERT LEE THOMAS.

STATEMENT OF THE ARGUMENT

I. The Circuit Court Erred in Finding the State made no promises or deal to Xavier McDonald in exchange for her testimony against Albert Lee Thomas.

"A jury always has great responsibility in resolving factual disputes and its responsibility in cases of this nature is awesome. It needs, and the courts must afford, every proper assistance to the jury in its search for the truth. Essential to this effort is knowledge of the inducements likely to affect the witness's credibility so it may be considered by the jury in its deliberations. Morgan v. State, 703 So.2d 832, 840 (Miss. 1997) citing King v. State, 363 So.2d 269 (Miss. 1978).

In Barnes v. State, 460 So.2d 126, 131 (Miss. 1984), this Court held that "leniency/immunity agreement[s] may be presented to the jury where such would tend to impeach or show bias in the testimony of a State's witness." In *Barnes*, the trial court excluded testimony regarding such an agreement. Again, citing the jury's need to hear such testimony in order to evaluate the credibility

of witnesses, this Court held that the trial court erred in refusing to allow this line of testimony on the grounds that it was hearsay. Morgan v. State, 703 So.2d at 840., citing Barnes v. State, 460 So.2d at 131.

"Even if state witness' attorney had not been part of the making of a leniency/immunity agreement and had been told of it only after the fact by his client, he could be called to give impeachment testimony even though hearsay." Barnes v. State, 460 So.2d at 126.

"Refusal to allow defendant to develop fully the extent of State's leniency/immunity deal with its principal witness was error; the trial court should have allowed the witness; attorney to be questioned regarding an alleged agreement between the witness and the State wherein the witness allegedly agreed to testify against defendant in exchange for favorable treatment on his charge." **Id**.

In Davis v. Alaska, 415 U.S. 308, 316, (1974), a safe was taken by burglary from the Polar Bar in Anchorage and discovered about 26 miles near the home of Jess Straight and his family. The safe had been pried open and the contents removed. Richard Green, Mr. Straight's stepson told investigating troopers that he had seen and spoken with two men standing alongside a late-model metallic blue Chevrolet sedan near where the safe was later discovered. Green identified a photo of petitioner as one of the men he encountered the day the safe was taken from the Polar Bar. Green was a crucial witness for the prosecution. He identified the petitioner as one of two men he saw while running an errand for his mother standing beside a late-model metallic blue Chevrolet, parked on a road near his family's house. He said the petitioner, who was standing at the rear of the car spoke wto him asking if he lived nearby and if his father was home. Green says he offered them help, but they rejected. While returning home from his errand, Green again passed the two men and he saw the petitioner standing at the rear of the car with 'something like a crowbar' in his hands. He identified petitioner at the trial as the man with the 'crowbar.' Green testified that the safe was found

later that afternoon where the Chevrolet had been parked.

Before trial, the prosecutor moved for a protective order to prevent any reference to Green' juvenile record by the defense in the course of cross-examination. Green was on probation by order of a juvenile court after having been adjudicated a delinquent for burglarizing two cabins. He was 16 years old at the time of the burglary but had turned 17 prior to trial.

Petitioner's counsel opposed the protective order, stating that he would not introduce Green's juvenile adjudication as a general impeachment of Green's character as a truthful person but, to show that at the time Green was helping the police in identifying petitioner he was on probation for burglary. Petitioner wanted to seek to show-or at least argue-that Green acted our of fear or concern of possible jeopardy to his probation. Petitioner wanted to show that not only might Green have made a hasty and faulty identification of petitioner to shift suspicion away from himself as one who robbed the Polar Bar, but Green might have been subject to undue pressure from the police and made his identifications under fear of possible probation revocation. Green's record would only be revealed as necessary to probe his bias and prejudice.

The trial court granted the protective order. Certiorari was granted for limited question of whether petitioner was denied his right under the Confrontation Clause to adequately cross-examine Green.

"Confrontation means more than being allowed to confront the witness physically. 'Our cases construing the (confrontation) clause hold that a primary interest secured by it is the right of cross-examination.' **Id.** citing Douglas v. Alabama, 380 U.S. 415, (1965). The United States Supreme Court disagreed with the Alaska court's interpretation of the Confrontation Clause and reversed. The United States Supreme Court provided among other things that,

"Cross-examination is the principal means by which the believability of a witness and the truth

of his testimony are tested. Subject always to the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation, the cross-examiner is not only permitted to delve into the witness' story to test the witness' perceptions and memory, but the cross-examiner has traditionally been allowed to impeach, i.e., discredit, the witness." Davis v. Alaska, 415 U.S. 308, 316, (1974).

"A more particular attack on the witness' credibility is effected by means of cross-examination directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand. The partiality of a witness is subject to exploration at trial, and is 'always relevant as discrediting the witness and affecting the weight of his testimony.' Id. Citing 3A J. Wigmore, Evidence s 940, p. 775 (Chadbourn rev. 1970). We have recognized that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination." Davis v. Alaska, 415 U.S. 308 at 316-317, citing Green v. McElroy, 360 U.S. 474, 496, (1959). *FN4*

FN4. In Green we stated:

> " 'Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual

> so that he has an opportunity to show that it is untrue, While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. . . .' " Id , citing 360 U.S., at 496.

The United States Supreme Court reasoned that defense counsel sought to show the existence of possible bias and prejudice of Green, causing him to make a faulty initial identification of petitioner, which in turn could have affected his later in-court identification of petitioner. **Id.**

The Court went on to state: "We cannot speculate as to whether the jury, as sole judge of the credibility of a witness, would have accepted this line of reasoning had counsel been permitted to fully present it. But we do conclude that the jurors were entitled to have the benefit of the defense theory before them so that they could make an informed judgment as to the weight to place on Green's testimony which provided 'a crucial link in the proof . . . of petitioner's act.'" Id. Citing Douglas v. Alabama, 380 U.S., at 419. "The accuracy and

truthfulness of Green's testimony were key elements in the State's case against petitioner. The claim of bias which the defense sought to develop was admissible to afford a basis for an inference of undue pressure because of Green's vulnerable status as a probationer, cf. United States v. Davis, 415 U.S. at 318, citing Alford v. United States, 282 U.S. 687, 624 (1931).

The United States Supreme Court stated, "We cannot accept the Alaska Supreme Court's conclusion that the cross-examination that was permitted defense counsel was adequate to develop the issue of bias properly to the jury. While counsel was permitted to ask Green whether he was biased, counsel was unable to make a record from which to argue why Green might have been biased or otherwise lacked that degree of impartiality expected of a witness at trial. On the basis of the limited cross-examination that was permitted, the jury might well have thought that defense counsel was engaged in a speculative and baseless line of attack on the credibility of an apparently blameless witness or, as the prosecutor's objection put it, a 'rehash' of prior cross-examination. On these facts it seems clear to us that to make any such inquiry effective, defense counsel should have been permitted to expose to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness. Petitioner was thus denied the right of effective cross-examination which "would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it.'"

"(C)ross-examination of a witness in matters pertinent to his credibility ought to be given the largest possible scope". United States v. Mayer, 556 F.2d 245, (5th Cir. 1977) citing United States v. Partin, 493 F.2d 750, 763, (5th Cir. 1974) quoting McConnell v. United States, 393 F.2d 404, 406, (5th Cir. 1968). "This is especially true where a

prosecution witness has had prior dealings with the prosecution or with other law enforcement officials, so that the possibility exists that his testimony was motivated by a desire to please the prosecution in exchange for the prosecutor's actions in having some or all of the charges against the witness dropped, United States v. Mayer, 556 F.2d at 249., citing United States v. Onori, 535 F.2d 938, (5th Cir. 1976) securing immunity against prosecution for the witness, United States v. Dickens, 417 F.2d 958, (5th Cir. 1969) or attempting to assure that the witness receives lenient treatment in sentencing, Beaudine v. United States, 368 F.2d 417, (5th Cir. 1966).

"A defendant's right to cross-examine a witness about any deals that may have been made or any understandings that may have been reached ... [with the government] does not hinge on whether in fact any such deals or understandings were effected." United States v. Mayer, 556 F.2d at 249.

"The Sixth Amendment confrontation clause guarantees to a criminal defendant the right to cross-examine a witness against him. . . . This right is especially important with respect to accomplices or other witness who may have substantial reason to cooperate with the government. . . . Indeed, it is so important that the defendant is allowed to 'search' for a deal between the government and the witness, even if there is no hard evidence that such a deal exists. . . . What tells, of course, is not the actual existence of a deal but the witness' belief or disbelief that a deal exists." (emphasis added). **Id**.

"(I) t avails the government little to assert that the trial judge enjoys discretion in determining the bounds within which a witness must be cross-examined. "(W) hile the scope of cross-examination is within the discretion of the trial judge, this discretionary authority to limit cross-examination comes into play only after there has been permitted as

a matter of right sufficient cross-examination to satisfy the Sixth Amendment". **Id.** citing United States v. Bass, 490 F.2d 846, 858 n. 12, (5th Cir. 1974). Accord United States v. Garrett, 542 F.2d 23, 25, (6th Cir. 1976); United States v. Morris, 485 F.2d 1385, 1387, (5th Cir. 1973). The Mayer's Court stated: "Because the district court did not allow the defense sufficient inquiry into the motivation of the prosecution's chief witnesses in testifying, and consequently frustrated Mayer's attempts to fully exercise his sixth amendment rights, the trial judge never reached the point at which he had the discretion to limit the extent of cross-examination." United States v. Mayer, 556 F.2d at 249. The Circuit Court abused its discretion in failing to grant Albert Lee Thomas a new trial. The jurors as the sole triers of fact and credibility were entitled to hear the testimony of Attorney Frank Mc Williams and Attorney Michael Knapp. The following testimony is of importance :

DIRECT EXAMINATION - FRANK McWILLIAMS [Supplemental Volume - Hearing 4-6-09, pp. 17-27]

Q. State your name, please.

A. Frank L. McWilliams.

Q. And, Mr. McWilliams, are you employed?

A. I am. I'm an assistant to the Hinds County Public Defender.

Q. And were you so employed during the months of November and December of - - now, Mr. McWilliams, you were an assistant public defender in this county November, December of 04?

A. I was.

Q. Did you represent a Tony Taylor?

A. I did.

Q. And did you have meetings with Mr. Taylor in the course of your representation?

A. A number of times I did, yes.

Q. Did you ever meet with his mother?

A. No

Q. Now during the meetings, was there any discussion about Mr. Taylor's testimony against Albert Thomas?

A. Yes.

Q. What did he tell you about that?

A. He told me that the Assistant District for Hinds County and Mr. Lampton had come to the jail and talked to him about being a witness in this case involving Albert Lee Thomas whom I don't know. And that if he testified in the case that he saw Mr. Thomas shoot Johne E. Hampton that he would be released, and that other charges pending would be remanded. And I tell you that because I was shocked that two attorneys had gone and talked to my client without me knowing about it. So when he told me that, I was astounded to be quite frank with you.

Q. Did you know prior to your meeting with Mr. Taylor, did you know that he was a witness against Mr. Thomas?

A. I did not.

Q. So when he told you that, that's the first you knew of that?

A. That's correct.

Q. And I realize again it's been over four years at this point. Do you remember when he first

told you that?

A. I don't remember exactly. I know that it was in the jail. I went to visit him in the jail I know on at least two occasions when we discussed these circumstances.

SKIP DOWN

Q. was there any discussion between you and Mr. Taylor concerning his mother or any of her knowledge of this?

A. Yes.

SKIP DOWN

Q. Did Tony Taylor tell you anything about what his mother - - any discussions he had with his mother, what his mother may know about his deal?

A. Yes. He told me that his mother - -

SKIP DOWN

A. That they had been to his mother's house and discussed this matter with her. And further I thought that I had a conflict of interest at that point because I was working for the Public Defender's Office as was Ms. Jackson, lead counsel, and Mr. Knapp, associate lead counsel. And I came into this Court to announce that I thought I had a conflict, and the Court wouldn't allow me to make any statement to that effect.

Q. I understand. So we can help the Court understand that, Mr. Taylor was indicted in a case in front of Judge Yerger; is that correct?

A. That's correct. A number of cases in front of Judge Yerger.

Q. I understand. And then as a result - -

THE COURT: Please clarify because I don't remember this counsel being in my Court at all. So when he says the Court, let him be specific has to which Court he was in. And I do understand you mean the circuit court. But I was just trying to think and remember, and I didn't recall seeing you, but you explained it for the record. You may proceed.

Q. So, what was your understanding had been promised to Ms. McDonald concerning her testimony? When I say "promised to her", by the State?

SKIP DOWN

A. That her son Tony Taylor would be released from jail, and that the cases pending against him in Judge Yerger's court would be remanded. And, in fact, they were.

Q. Now, to your knowledge - - so was he released?

A. He was.

Q. All right. Do you recall when he was released?

A. He was released the day of the trial I believe.

CROSS-EXAMINATION

P. 27

Q. When Mr. Taylor testified at Albert Thomas' hearing were you present?

A. I was not.

Q. Did you know that he was going to be testifying in that trial?

A. I did not know the day that he was going to be testifying - - no, I didn't know he was going to be testifying, except that he had told me in jail.

Q. Before or after he had testified?

A. He told me before.

Q. Okay. So at that point, he made indications to you about a deal for his present charges at that time?

A. That's correct. And it was after that I came into Court and tried to make the Court aware that I thought I had a conflict. And when the Court said to me, Mr. McWilliams, we don't need to hear from you, I left and I didn't come back to any part of the trial; didn't hear any part of it.

THE COURT: When you say the Court, clarify.

Q. Which judge was it?

A. Judge Green. And I believe the record will reflect that I was - -

Q. So you were aware that - - if you knew that there was a deal made, so you were aware that Tony Taylor was about to perjure himself, correct?

A. Was about to what?

Q. Perjure himself.

A. I can't say that I knew he was about to perjure himself. I don't know whether he saw, you know, somebody get shot or not.

Q. Right. But as a part of - - you know, you're a seasoned lawyer, correct? You're a seasoned attorney? You've been practicing for several years, right?

A. 31.

Q. Very good. I'm 33, so that's a long time. But you know as a part of testimony, if there has been some deal made, that he would be asked the question as a part of his testimony whether he was made a deal, correct? That's the usual procedure, correct?

A. Certainly I would assume that, yes.

Q. So, if there was a deal made and he got on the stand and testified that there wasn't a deal made, then he perjured himself, correct?

A. If that happened, yes.

Q. But that's what you're saying. You're saying there was a deal made between Mr. Lampton and I guess Ms. McDonald on Mr. Taylor's behalf?

A. That's what Mr. Taylor told me.

Q. Right. But you had nothing in writing or no other direct information to know whether that was true or not?

A. No.

REDIRECT EXAMINATION

Q. Mr. McWilliams, Ms. Jones asked you did you know that he was going to perjure himself, Tony. He didn't tell you, I've got a deal, but I'm going to lie and say that I don't have a deal, do you?

A. Absolutely not.

Q. Okay. And, in fact, once you found out that there was this potential conflict, you attempted to be relieved?

A. I did.

Q. Was there a motion filed prior to his testimony by you or own behalf of the office?

A. There was as I recall.

Q. There was?

A. Yes.

Q. Now, you said that you didn't know what the reason for the case being remanded? I mean you didn't know?

A. I didn't know for sure. I knew what he had told me, and I knew what - - and then I knew what happened.

Q. And is it a reason because you didn't represent him anymore, and there wasn't really much a concern to you?

A. That's correct. I never saw him again. Haven't till this day.

During trial Tony Taylor testified that no promises had been made to him by the U.S. Attorney. **T. 390-391.** However, Xavier McDonald was never questioned about a deal making the cross examination by defense counsel inadequate to develop the issue of bias properly to the jury. Even though counsel was able to ask Tony Taylor about a deal, cross-examination of him was also inadequate because counsel was unable to make a record from which to argue why Xavier McDonald and Tony Taylor might have been biased or otherwise lacked that degree of impartiality expected of a witness at trial. Also, important is the fact that Mr. Taylor was released from incarceration and scheduled plea dates were set on all of his cases on the order releasing him on his own recognizance. **R.E. 53.** Tony later received suspended sentences on two of his cases and the other two felony cases were remanded to the file.

DIRECT EXAMINATION - ATTORNEY MICHAEL KNAPP [Supplemental Volume - Hearing 4-6-09 pp. 6-9]

Q. State your full name, please.

A. Michael Lee Knapp.

Q. Mr. Knapp, are you employed?

A. Yes. I'm a self-employed attorney.

Q. And you're a lawyer?

A. Yes.

Q. Mr. Knapp, were you employed by the Hinds County Public Defender's Office in November and December of 2004?

A. Yes, I was.

Q. And were you an attorney involved with the trial of Albert Lee Thomas on or around those dates of November into December?

A. Yes, I was.

Q. And, if you would, tell the Court -- I know that you've executed an affidavit.

A. Uh-huh (affirmative).

Q. Could you please tell the Court what the basis of that affidavit was; what you saw and why you signed this affidavit?

A. Well I was second chair at the trial, and I remembered the representations made to the Court concerning whether any deals were offered to Tony – not the mother, the son. I forgot his name. And it was basically that nothing had been promised to him, but the government said that it would do what it could do. After the trial was over and we were waiting for the jury, we were all outside the door, through the glass doors toward the metal detector.

Q. Is that here in the courthouse?

A. Yes, on this floor. Not many feet from where we are right now.

Q. When you say "we", who was there?

A. Me memory is Rebecca Wooten, now Mansell, Don Lampton, myself. And I'm not sure whether or not Don's co-counsel was there or not. It was later in the day. I have no idea what time, but it was getting close to the end of the day. I remember that because I was wondering if the jury was going to try to get a verdict before 5:00. And while I was there, Mr. Lampton was there, too, and Ms. McDonald was there. And I'm not sure that she was there the whole time I was out there, but I remember Don Lampton, in accordance with my affidavit, telling her that her son should be out soon and to keep him out of trouble.

Q. And when you said -- I mean were y'all all standing together or kind of describe --

A. You know, we weren't in one big group, but, you know, it's a narrow hall. I would guess I was five feet from Don Lampton, a few feet, and wasn't paying much attention. I mean it may have been a lot more said, but that jarred my mind because I didn't think that was what was represented to the Court. Now, there may have been other things said before then or after then when I wasn't listening.

Q. Okay. So you were out there, Don Lampton was there, Rebecca Wooten Mansell was there, and you said Ms. McDonald. Is that Xaviar McDonald?

A. Yes.

Q. And is that -- to your knowledge, is that the mother of Tony Taylor?

A. Yes. I remember her because she testified. I couldn't pick her out of a lineup now.

Q. Sure. And, again, you said that you heard Mr. Lampton say he should be out?

A. He should be released very shortly, and that he should -- she should do what she could

to keep him out of trouble. I believe my affidavit is more closer to the exact words because my affidavit was made very close to the time that it's happened and now it's been four and a half years.

The jurors were also entitled to hear the undisclosed testimony of Xavier McDonald, who testified for the first time during the hearing on remand that she went to the jail and got letters from her son which contained threats by Albert Lee Thomas to kill her son Tony Taylor and took copies of these letters to the U.S. Attorney.

DIRECT EXAMINATION - XAVIER McDONALD [Supplemental Volume - Hearing 4-7-09, pp. 9 - 12]

THE WITNESS: Okay. At the time this altercation took place, my son had went to jail for two traffic tickets and some burglary tools, and he was in jail. Right after Mr. Albert had committed the murder and the body was found, and my son and my brother went and took the family to the body. My son was with Mr. Albert, his girlfriend, and the man that was killed when the body was dumped. My son was on site when he killed Mr. Hampton.

Q. When he who?

A. When Mr. Albert killed Mr. Hampton. My son was in the car, his girlfriend Ms. Mary, Mr. Hampton, and he was the driver.

Q. So your son was basically an eyewitness --

A. Yes, he was.

Q. -- to that crime?

A. Yes, he was.

Q. At the time of this trial, was your son facing charges of his own?

A. That's when he was facing the burglary tools, but not before. He was sentenced not before he decided to go jail. Before they caught him.

Q. Not before the police caught Albert?

A. No. When Albert went to jail, my son was free. A couple of weeks after Albert went to jail, my son and a couple of guys got into it on Capitol Street, and they was trying to rob him. And he was defending himself, and the police pulled up. He didn't run, they did.

Q. Okay. I'm going to --

SKIP DOWN

Q. I want to just draw your specific attention to what we're here about today. When Tony testified against Albert Taylor, do you recall any conversations that you had with the U.S. Attorney at the time, Don Lampton, about Tony's other pending cases?

A. No, we didn't talk about the pending cases.

Q. You did not?

A. I talked about the letters. I went to see my son, and two letters had surfaced in jail and sent to my son threatening to kill him if he testified in another man's handwriting. Another inmate in jail wrote the letters for Mr. Albert, and he came in the courtroom and testified to that. I went to Mr. Don and begged him to help my son because I felt like his life was being threatened.

Q. What do you recall was Mr. Lampton's response to your plea?

A. He told me he'll do whatever he could do for me if I would testify to what I knew as to the case.

Q. If you would testify?

A. If I would testify to the case.

Q. Did he make any promises to you?

A. No, he didn't.

SKIP DOWN

A. I went to his office twice, and he came to my house after that to verify if the handwriting on the letters were my son's and which was proven. My son couldn't write or read at that time and still can't.

Q. And in any of those times that you came to his office or that he came to your house, did you ever discuss Tony's cases or working out anything for Tony's cases in another Court?

A. All we talked about was my son -- me getting my son moved from the facility he was at to try to get him moved downtown so that he wouldn't end up dead in jail.

Q. Let me also ask you this, and this I think will probably be my final question. When you talked to Mr. Lampton about moving your son or possibly hoping to gets him moved to a more secure place, was that before or after your son had already decided to testify in the trial against Albert? A. No. He had not talked to -- that's what I'm trying to explain. I got the letters from my son, and I took them straight to Mr. Lampton. I came downtown, and I went to his office. And I told him what I was going through, and I was scared that my son was going to be killed.

Albert Lee Thomas was never made aware that he was being accused of sending letters containing threats to kill Tony Taylor if he testified against him. These facts were not disclosed in discovery or during trial. "When the reliability of a given witness may well be

determinative of guilt or innocence,' non-disclosure of evidence affecting credibility fall within [the general rule of Brady]" Giglio v. United States, 405 U.S. at 150, citing Brady v. Maryland, 373 U.S. 83, 87-88 (1983). Impeachment evidence falls within the Brady rule. United States v. Bagley, 473 U.S. 667, 668 (1984), citing Giglio v. United States, 405 U.S. at 154. State's duty under Brady to disclose favorable evidence to defendant, whether intentional or inadvertent, entitles defendant to new trial where the failure to disclose evidence resulted in denial of a fair trial. United States v. Smith, 77 3d 511, 516 (D.C. Cir. 1996). "A Brady violation occurs when the government fails to disclose evidence materially favorable to the accuse. Youngblood v. West Virgina, 547 U.S. 867, (2006). The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. Kyles v. Whitley, 514 U.S. 419, 431-434 (1995) citing United States v. Bagley, 473 U.S. 667, 682 (1984).

Error in precluding cross-examination of government witness concerning pending charges that might provide him with motive to testify was not harmless where his testimony was the most important in implicating defendant in fraudulent investment conspiracy, no other testimony came close to implicating defendant to extent that witness' testimony did, and prosecution's case was not strong. U.S. v. Landerman, 109 F.3d 1053, 1063 (5th Cir. 1997).

The Circuit Court abused it's discretion in finding that the State made no promises or deal to Xavier McDonald in exchange for her testimony. Xavier McDonald's testimony, alone established that Albert Lee Thomas was angry and out of control about his drugs in as little as one (1) hour or less before Mr. Hampton was killed. Her testimony places Albert, Mary, Tony and Mr. Hampton together leaving the apartment complex the same day Albert was

angry about his drugs and the same day Mr. Hampton was killed. The accuracy and truthfulness of McDonald's testimony were key elements in the State's case against Albert Lee Thomas. The claim of bias by Mr. Thomas through the testimony of Attorney Frank McWilliams , Attorney Michael Knapp and the order releasing Tony Taylor on his own recognizance are admissible and should be presented to the jurors so that they may make an informed judgment as to what weight to place on McDonald's testimony. Also admissible is the possible bias testimony of McDonald fearing that her son was going to be killed by Albert Lee Thomas after reading letters given to her by her son. This testimony was never disclosed to the defense such that Xavier McDonald's credibility was not effected by cross-examination directed toward revealing her possible biases, prejudices or ulterior motives during the trial[1].

CONCLUSION

Cross examination of a witness in matters relevant to credibility ought be given wide scope. It is especially important in a case such as the present, where a witness or accomplice may have substantial reason to cooperate with a government that defendant be permitted to search for an agreement between the government and the witness. United States v. Crumley, 565 F.2d 945 (5th Cir. 1978). Xavier McDonald, the most important witness for the State, had substantial reason to cooperate with the government. The jurors as sole judges of credibility should be afforded an opportunity to hear the testimony of Attorney Frank McWilliam, Attorney Michael Knapp and Xavier McDonald's undisclosed allegations of letters written

[1] Review Appellant Brief Summary of the Argument I. pp 4 - 15.

to her son by Albert Thomas threatening to kill him. It would have been very unlikely for the State to have gotten a murder conviction without Xavier McDonald who provided motive and intent to kill shortly before Mr. Hampton was killed. Jurors are responsible for resolving factual disputes. In their search for the truth, the jurors have to be afforded the opportunity to hear of all inducements likely to affect Xavier McDonald's credibility so this evidence could be considered by them in their deliberations. Without this evidence being presented to the jurors, this trial cannot be understood as a trial resulting in a verdict worthy of confidence.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: Brenda Jackson Patterson

Brenda Jackson Patterson

COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I, Brenda Jackson Patterson, Counsel for Albert Lee Thomas, Jr., do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **SUPPLEMENTAL BRIEF OF THE APPELLANT** to the following:

Honorable Tomie T. Green
Circuit Court Judge
429 Tombigbee Street
Jackson, MS 39205

Honorable Robert Schuler Smith
District Attorney, District 7
Post Office Box 22747
Jackson, MS 39225

Honorable Jim Hood
Attorney General
Post Office Box 220
Jackson, MS 39205-0220

This the 20th day of July, 2009.

Brenda Jackson Patterson
COUNSEL FOR APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS
301 North Lamar Street, Suite 210
Jackson, Mississippi 39201
Telephone: 601-576-4200