U.S. Department of Justice

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BY ECF

Hon. Peter G. Sheridan, U.S.D.J.
U.S. District Court, D.N.J.
Clarkson S. Fisher Federal Building
and United States Courthouse
402 East State Street
Trenton, New Jersey 08608

Re. *William Baskerville v. United States*, Civil No. 13-5881

Dear Judge Sheridan:

One assertion in William Baskerville's untimely reply requires brief comment.

Baskerville now claims the Government violated its *Brady* obligations by suppressing a "call list" prepared by Agent Manson in 2005, which Bergrin used in 2011 to show that Rakim Baskerville was not sitting in Curry's car when Bergrin called at 4:00 p.m. ECF No. 80 at 3–5. That claim is beyond the scope of the evidentiary hearing this Court ordered. It is also untimely, as Baskerville's § 2255 motion asserted only that the Government failed to correct Young's mistaken testimony about who was in the car. *Compare* ECF No. 1–1, at 13–14 ¶ 20(D)(19), *with* 28 U.S.C. § 2255(f)(1).

Beyond these procedural defects, the *Brady* claim is doubly meritless. For starters, this Court has already ruled that who was sitting where on November 25, 2003 was immaterial to Young's credibility:

> The variation of Young's testimony regarding who got into the passenger side of the car is not material. Indeed, as the

> government notes, the importance of this testimony is not who was sitting in the passenger seat, but the substance of the phone call between Bergrin and Curry is what was material. Furthermore, during cross-examination in Bergrin I, Young attempted to explain his testimony by stating that Diedra was only at the meeting for part of the time and that she would have had time to get home prior to Bergrin's phone call to her. The inconsistency of Young's testimony on this point raised by petitioner does not rise to the level to warrant granting federal habeas relief because it was not material.

ECF No. 49 at 101 (citations omitted). Thus, the law of the case doctrine bars this procedurally deficient *Brady* claim. (Never mind that defense counsel adopted a reasonable strategy of preserving Young's credibility that would have made impeaching him on this minor point wholly counterproductive.)

Beyond the law of the case doctrine, Baskerville cannot show suppression—an essential element of a *Brady* claim. After all, he received the Curry calls in discovery, *see* ECF No. 49 at 105, and, thus, had the exact same information Agent Brokos used to compile her "call list," *see United States v. Pelullo*, 399 F.3d 197, 215 (3d Cir. 2005) ("defense knowledge of, or access to, purportedly exculpatory material is potentially fatal to a *Brady* claim, even where there might be some showing of governmental impropriety"). The Government had no "duty to direct" Baskerville "to exculpatory evidence within a larger mass of disclosed evidence." *United States v. Skilling*, 554 F.3d 529, 576 (5th Cir. 2009), *vacated in part on other grounds*, 561 U.S. 358 (2010).

Respectfully submitted,

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