A Maybe some months, I guess months after he did it.
Q What's that?
A Maybe a couple months after he did it.
Q A couple of months?
A Yes.
Q And did you have any meetings with the Government at that time?
A During that time, yes.
Q All right.
Did you ask them whether -- are you tape recording me?
A No.
Q Did they tell you they were tape recording you?
A No, they just told me about a week ago. They never told me.
Q So you just found out a week ago that you were being tape recorded?
A Yes.
Q And you just heard these tapes, what, within the last week?
A I told you, I couldn't hear it. This my first time hearing it.
Q You never heard these tapes?
A No.
Q But this is what you were saying back in August of 2005?
A Yes.

Q These tapes are accurate, right?
A Yes.
Q That's your voice and that's Haasan Miller's voice?
A Yes.
Q And you didn't know or have any suspicion at that point that anybody was taping you?
A No.
Q All right.
Now, did there come a time when the Government came to you and said they want to tape you?
A No.
Q They wanted you to wear a wire?
A Yes, that's to talk to Paul, they try to get to talk to Paul.
Q Tell us about that.
A They just asked me did I think I could talk to Paul on the -- to wear a wire.
Q And why did they want you to wear a wire to talk to Paul?
A For part of my cooperation.
THE COURT: May I ask when was this, Mr. Young?
THE WITNESS: I don't know exactly the date, Judge.
THE COURT: Was it after these conversations with Mr. Miller?
THE WITNESS: Yes.
THE COURT: And about how long after?

THE WITNESS: Maybe half a year.
THE COURT: Okay.
Q Okay.
Is approximately March, middle of March, 2006?
A Yes.
Q They talked to you about you're wearing a wire, right?
A Yes.
Q You're still in the Hudson County Jail, right?
A Yes.
Q And they want you to speak to Paul Bergrin?
A Yes.
Q About what?
A About could he mention on tape that he gave us Kemo name.
Q But they already had him on tape, didn't they?
A They didn't have him on the phone.
Q They had him on a phone call?
A Giving Hakim the name.
Q Giving Hakim the name?
A Yes.
Q Kemo?
A Yes.
Q That was Paul Bergrin talking to Hakim?
A Yes.
Q And what were you supposed to do now? You were supposed to get him to say it again?

A Yes.
Q And who did you discuss this with?
A Shawn Manson.
Q And John Gay?
A No, John Gay wasn't there. Just her.
Q Shawn Manson?
A Yes.
Q And she said we want you, Anthony Young, to wire -- get wired up and have a conversation with Paul Bergrin, right?
A Yes.
Q And did you agree to do that?
A Yes.
Q Did you -- were you represented by Paul Bergrin at the time?
A No.
Q Did you -- did he come to see you?
A He represented my cellmate.
Q And who was that?
A A guy by the name of Keith.
Q And is that the same as Aziz?
A No.
Q Who's Aziz?
A Aziz is another guy that Paul Bergrin also represented.
Q Okay.
And how did you hope that you were going to get Paul

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Bergrin on tape?
A Through Keith and Aziz.
Q How was it going to work inside the jail?
A It was more so Aziz wanted -- they wanted him to admit that Paul, because Aziz came to me and said Paul Bergrin offered me money to keep my mouth shut so nobody go to jail.
Q Paul Bergrin through Aziz --
A Yes.
Q -- sent you a message that Paul Bergrin was going to pay you money?
A Yes.
Q How much money?
A They didn't say. He said it was a large amount.
Q Well, how about $250,000?
A Yes, something to that.
Q Is that what you told the Government?
A Yes.
Q That -- how was that going to get to you, that money?
A I guess through -- from Paul through Hakim and Will. Whoever, all the people that had to put the money for me to keep my mouth shut.
Q Well, Will's been in jail since November, 2003, right?
A Yes.
Q Who's -- is Paul Bergrin on the street?
A Yes.

Q And he's a lawyer, right?
A Yes.
Q And he's got some of Hakim's money?
A That's what they say, yes.
Q So did you get the impression that Paul Bergrin was going to somehow get you $250,000?
A Yes, to shut my mouth. Yes.
Q To shut your mouth?
A Yes.
Q And you told that to Shawn Manson, right?
A Yes.
Q And she said, okay, we're going to wire you up?
A Yes.
Q And you were going to talk to who, Aziz?
A Aziz.
Q And what did you hope that Aziz was going to tell you on the tape?
A That they was offering me money to keep my mouth shut.
Q Now, was this your idea for the money or was that -- was this Aziz or Paul Bergrin's idea?
A That was Paul Bergrin and whoever else was giving me the money to keep my mouth shut.
Q Were you willing to take the money?
A Yes.
Q Now, was Aziz supposed to get part of this money?

A Yes, he was.
Q How much?
A I think he said $50,000 they was offering.
Q He told you that?
A Yes.
Q And that you were going -- what about Haasan Miller, was he going to get some money?
A He says he was going to get Haasan Miller money.
Q Aziz?
A Yes.
Q Were they related somehow?
A It's his uncle.
Q Okay.
Now, did you take this seriously?
A Yes, I did.
Q I mean, did you believe that someone was going to pay you $250,000?
A Yes.
Q To keep your mouth shut?
A Yes.
Q And if they had paid that money, what would you have done?
A I still would have had to tell the story because I told the Government that already.
Q Told the Government what?

A That they was offering me money.
Q So you get wired up, right?
A Yes.
Q And what happens?
A Aziz wasn't in the jail no more. He had left.
Q All right.
So that never went anywhere, correct?
A No.
Q So you weren't able to get Aziz on tape telling you what he had told you before, right?
A Yes, he had left that day they wired me.
Q Okay.
And it was your impression that you were going -- how were they going to get you the money, put it in an account?
A No, through my father.
Q They were going to give it to your father?
A Yes.
Q $250,000?
A Yes.
Q And was this something that was real to you or is this something people were just talking about?
A I knew it was real.
Q It was real?
A Yes.
Q Now, there came a time -- let me take you back.

That meeting on Avon Avenue --
A Yes.
Q -- that happened on the same day that Will Baskerville got arrested?
A Yes.
Q And who was at that meeting?
A Me, Rakeem Baskerville, Jamal McNeil, Hakim Curry, Hamid Baskerville and Will's wife.
Q All right.
You're sure that she was there, right?
A Yes.
Q Deidra was there, right?
A Yes.
Q And do you know how she got there?
A I guess car.
Q Do you know -- I mean, had they taken both of her cars that day?
A I don't know about her car.
Q You don't know how she got there?
A Yes.
Q And but she was definitely there?
A Yes.
Q And then you also told us that when Mr. Bergrin was paid money to represent Will, who paid that money?
A Rakeem Baskerville.

Q And did you see that payment being made?
A I was there.
Q Okay.
And did he get a receipt at that time?
A No, he gave him $10,000 in cash.
Q Okay.
Was there a receipt that was prepared?
A No.
Q Now, there came a time finally -- when did you finally tell the Government that you were the person that did the shooting?
A I don't know the exact date.
Q How long a period had taken place before you had told them that you had done the shooting?
A A year, maybe.
Q At least a year, right?
A A year or more.
Q Right.
Was it -- it was in March of 2006 -- first you came in and you said you weren't even there, right?
A Yes.
Q And that's cause you were annoyed or you were upset or something?
A Yes.
Q And you thought that they weren't being straight with you

or weren't --
A I thought Shawn Manson wasn't being straight with me.
Q How was she not being straight?
A Because she had says that I will go home.
Q Shawn Manson told you that you were going to go home?
A Yes.
Q When did she tell you that?
A Early on.
Q And what did that mean to you, that you were going to go home?
A That meant I was going home.
Q When?
A I didn't know when.
Q And then did she tell you, you weren't going home?
A Well, I figured it out myself.
Q So there's nothing that she said, right?
A Yes.
Q So you were upset, right?
A Yes.
Q And you said that you actually weren't there, right?
A Yes.
Q So that was also a second lie that you told the F.B.I., right?
A Yes.
Q And had your lawyer told you to lie that day?

A No.
Q You just decided you were going to lie again, right?
A Yeah, I was mad that day.
Q You were mad?
A Yes.
Q So you told a lie?
A Yes.
Q And then what happened, couple weeks later you came back?
A My lawyer came to me at the jail.
Q Right.
A Said you need to tell them the truth.
Q Right.
So this is another situation where, when your lawyer tells you to tell the truth, you tell the truth, right?
A Yes. He give you your best advice.
Q Sure.
Then you went back and told them the truth?
A Yes.
Q In fact, it wasn't Jamal McNeil, it was you, right?
A Yes.
Q That you had falsely accused Jamal McNeil, right?
A Yes.
Q And then at some point, this year you came to court and you pled guilty --
A Yes.

Q -- to these charges, right?
A Yes.
Q To the conspiracy, both conspiracy charges?
A Yes.
Q And to the gun charge, right?
A Yes.
Q And you haven't been sentenced yet, right?
A No.
Q And part of what you're asked to do is to cooperate, that is testify?
A Yes.
Q In any case where you're needed, right?
A Yes.
Q And once that happens, then you're eligible to be sentenced, right?
A Yes.
Q And you don't know what your sentence is going to be, right?
A No.
Q But you're hoping that you're going to get less than a life sentence and get witness protection and get money, right?
A Yes, to get out.
MR. HERMAN: Judge, is it possible to take a lunch break now?
THE COURT: Yes. Let's take our lunch break. We'll

try to have you back here 1:00, five after one at the latest.
THE CLERK: All rise.

(Jury is excused and the following takes place out of the presence of the jury.)

(Anthony Young leaves the courtroom.)

THE COURT: Are you going to have redirect?

MR. MINISH: Yes.

Before we break, I have something.

We had discussed, and the Government had filed a motion with respect to selective prosecution. It was my understanding that defense counsel was put on notice by the Court that that would be an area that was improper to go into at any point during the trial.

Very clearly during Mr. Young's cross-examination, defense counsel went into the area of why -- where was Hakim Curry for this case.

At this point, obviously the statements have been made, the Court sustained the objection, but the Government is looking for, I guess an order from the Court, that no more questions along that area, at least during the guilt phase, be made nor arguments during summation. I thought this was an issue that was resolved, but apparently not.

MR. HERMAN: Judge, the witness testified that soon after the killing of Kemo, Hakim Curry was arrested, thereby I believe giving the jury the impression that he was probably arrested for the killing. I wanted to clarify that he wasn't, that he was arrested for something else.

THE COURT: Actually, I sustained the objection because I thought it was asking the witness to testify to something beyond his knowledge, it had to have come to him from some other direction. I didn't think of it as a selective prosecution point.

MR. MINISH: Well, Judge, I guess there's matters of interpretation, but I think the question, at least to me, was very clear, was he prosecuted for this case.

MR. HERMAN: No, no. I said, was he arrested for this case?

MR. FRAZER: No, he said was he charged?

THE COURT: I don't remember. I can find it in the transcript, but in any event, I sustained the objection and directed the jury to disregard the question and the answer.

MR. FRAZER: It's completely improper based on your Honor's ruling before. Completely, utterly improper in this case.

MR. MINISH: Judge, I agree that it is what it is and I think we all recognize that. We're just asking that regardless of means or reasons why, that this subject matter not be broached again during the guilt phase.

THE COURT: Any problem with that?

MR. HERMAN: No.

THE COURT: Okay.

(Luncheon recess.)

AFTERNOON SESSION

THE CLERK: All rise.

(The following takes place out of the presence of the jury.)

THE COURT: Get the witness, please.

A N T H O N Y Y O U N G , previously sworn, resumes the stand.

THE COURT: Get the jury.

THE CLERK: All rise.

(The following takes place in the presence of the jury.)

THE COURT: Have a seat when you get situated, folks.

Mr. Herman you may continue.

CROSS-EXAMINATION CONTINUES BY MR. HERMAN.

MR. HERMAN: I'd like to move in D-10 and D-11. D-10 was the short tape that we heard this morning. D-11 is the longer tape.

THE COURT: All right.

Any objection?

MR. MINISH: No, Judge.

THE COURT: They're received.

(D-10 and 11, tapes, are marked in evidence.)

Q Mr. Young, you were telling us this morning that when you were in the Hudson County Jail, if you were to make -- first of all, you had obtained two cell phones?

A Yes.

Q By bribing people?

A By paying.

Q What's that?

A By paying.

Q Paying them, bribing them, paying them money?

A Yes.

Q Guards?

A Yes, and maintenance men.
Q They would give you a cell phone to use?
A No. Your family would give them a cell phone to give you.
Q And then who would pay them so you could get the cell phone?
A Your family.
Q Was it your family?
A Yes, for mine.
Q Who was it?
A My girlfriend.
Q Is that Miss Tarver?
A No.
Q Different girlfriend?
A Yes.
Q And so she was able to pay a maintenance man to sneak a phone into you?
A Yes.
Q And then you could use the cell phone and make calls, right?
A Yes.
Q And the reason that you did that was so that you didn't go through the jail system?
A It cost less to have a cell phone than collect calls.
Q You were going to save some money by doing this?

A Yes.
Q Did the jail people in the jail didn't know that you had a cell phone, right?
A Not at that time.
Q Did you ever get written up for that?
A No, I got caught with it.
Q Did you get written up?
A No.
Q What did they do, just took it away?
A No, a cellmate took the weight for it and they gave him 25 days.
Q Your cellmate, who was that?
A I don't remember his full name.
Q Why did he take the weight for your cell phone?
A Because he used to use it all the time.
Q But it wasn't his, it was yours, right?
A Yes.
Q And so he got what 25 days in the hole?
A Yes.
Q For using your cell phone?
A Yes.
Q All right.
And accept when you have these illicit cell phones, you have to use the jail phone system to make calls. Is that right?

A Yes.
Q And when you were an inmate at Hudson County Jail, how would you make a phone call if you were using the regular legitimate jail phones?
A Collect.
Q And when you make the collect call, is there -- does the operator come on and say this call may be recorded?
A Yes.
Q All right.
So you're aware, isn't that true, that any call that you make using the proper phone system could be recorded, right?
A Yes.
Q So you were careful what you would say over the phone?
A Sometime.
Q Well, you knew it could be recorded, right?
A Yes.
Q And when you were at the Hudson County Jail, if you were going to get a visitor, a visitor would have to sign in at the front desk. Is that right?
A Yes.
Q Have to show identification?
A Yes.
Q Did you ever visit people in the Hudson County Jail when you were outside?

A Not Hudson.
Q Passaic?
A Not Passaic.
Q Where?
A Essex County.
Q All right.
Did you use your real name?
A No.
Q You have a phony I.D.?
A Fake driver's license.
Q And whose name was on that?
A I had about five sets. I don't remember the names.
Q Five different names?
A Yes.
Q Now, what about Jamal McNeil, did he have a phony driver's license?
A Yes.
Q What names did he use?
A I don't remember.
Q How many did he have?
A I think he had two sets that he bought.
Q Okay.
And when he -- you say that he was coming to visit William Baskerville at Hudson County Jail after William got locked up on the drug charge. Is that right?

A Yes.
Q That's what he told you, right?
A Yes.
Q And do you know whether he was using his real name or someone else's name?
A Pretty sure he was using the fake driver's license.
Q What name would that be?
A I don't know.
Q Now, do you know that he actually came to visit William Baskerville at the Hudson County Jail?
A I know that for sure.
Q And how many times did he visit him?
A From the conversations that I had with him, maybe ten times or better.
Q Ten times.
This was between -- let's get the dates. November 25th, William Baskerville is arrested for the drug charge, right?
A Yes.
Q He goes to Hudson County Jail?
A Yes.
Q March 2nd, 2004, is when you kill Kemo, right?
A Yes.
Q So between that time, you're saying that Mr. McNeil visited Mr. Baskerville ten times?

A Yes, eight to ten times, somewhere in there.
Q Eight to ten times, okay.
Every time he would come back and tell you what Will had said, right?
A Yes.
Q Because you, from November 25th through March 2nd, never had a conversation with William Baskerville, right?
A No, sir.
Q Never talked to him on a visit, right?
A No.
Q Never had a phone conversation, right?
A No.
Q Never had a cell phone conversation, right?
A No.
Q Never had a letter?
A No.
Q So you had no, you had no contact with William Baskerville from November 25th until March 2nd, the day that you killed Kemo, right?
A No.
Q So all the information you're getting is from Jamal McNeil, right?
A Yes.
Q And the person who gave you the name of Kemo that you wound up killing, that was Paul Bergrin, right?

A Yes.

MR. HERMAN: That's all I have, Judge.

THE COURT: All right.

Any redirect?

MR. MINISH: Yes.

REDIRECT EXAMINATION BY MR. MINISH:

MR. MINISH: Judge, I'm showing counsel 314B.

MR. HERMAN: Thank you.

MR. MINISH: If there is no objection, I'd like to move it into evidence.

MR. HERMAN: No objection.

THE COURT: All right.

(G-314B, photo, is marked in evidence.)

Q Mr. Young, I show you what's been marked 314 B.

You were asked questions about whether or not you could recognize Kemo.

Do you recognize anybody in that photo?

A Can't recognize it because his head is back.

Q Does that look like Kemo to you?

A Yes, looks like him.

Q Now, you were asked questions about the actual shooting.

How long do you think it took?

A Three seconds, four seconds.

Q Do you know, as you sit here now, exactly the spots where you shot Kemo?

A No, because I know it was the back because I was nervous at the time. My adrenalin was running and he was tugging so all I know it was the back of him.

Q Okay.

Now, you're pointing with your right hand?

A I'm grabbing with my right hand.

Q I'm meant just now with the jury, your right-hand.

Again, so that the jury is clear, the right-hand only stretches so far, I'm raising my left hand.

Which side of the head, was it this side of the head that you hit him or this side, my right side or left side where the bullets were fired?

A It was fired from the back, but.

Q I understand from the back, but from left side or right side?

A I would say the left side.

Q You were shown pictures by defense counsel.

Mr. Young, I'm going to show you what's been marked Government exhibit 222 in evidence.

Do you recognize who that is?

A Yes.

Q Who is that?

A Jamal McNeil.

Q Okay.

I'm going to show you what's been marked Government

exhibit 222A.

Do you recognize the person in that photograph?

A Yes.

Q Who is that?

A Jamal McNeil.

Q Do you have any idea when either of those photos was taken?

A No.

Q When did you meet Jamal McNeil?

A May of 2003.

Q At that time did he have dreadlocks?

A He still don't have dreadlocks.

Q Okay.

I understand that, but I'm talking about back then, did he have dreadlocks at the time you knew him, in May of 2003?

A No, sir, but this picture don't show dreadlocks.

Q I understand, two different questions.

MR. MINISH: Judge, 222 is already moved into evidence, it was cut out of here. We would like to move the balance of the page into evidence.

THE COURT: Any problem with that?

MR. HERMAN: I don't know what it is. It's an official record.

THE COURT: Show it to counsel.

MR. HERMAN: Judge, I have no objection to the

picture which is identified. The balance is an official sherif's data sheet which he knows nothing about.

THE COURT: We'll talk about it at a later time. We don't need to know about it now.

Go ahead.

Q You were asked by Mr. Herman about contact you had with Jamal McNeil after you had told the F.B.I. that he was, in fact, the shooter, the man who killed Kemo.

A Yes.

Q Go through for the jury how the sequence of events went.

A Can you ask me that question again?

Q I apologize. That was an awkward question.

You at some point tell the F.B.I. that Jamal McNeil is the shooter, correct?

A Yes.

Q Had you had any contact or argument with Jamal McNeil immediately prior to that?

A With him and Jamal Baskerville.

Q Okay.

Explain the sequence to the jury, what happened.

A Jamal Baskerville called my phone and he told me that I run my mouth -- first, we had a conversation in the car where he told me to get out.

After that, I found out through that conversation that ex-girlfriend had told her, Jamal's wife and Jamal about that

I told her about a murder that he committed. So from that argument, he called my phone.

Q Who is "he"?

A Jamal Baskerville. And he said, I will see you in the streets.

Q How about Jamal McNeil, what was his involvement?

A We'll see him in the streets, we get at him.

Q We're going to get at him; who is the "we," who is the "him"?

A Jamal Baskerville and Jamal McNeil.

Q Get at who?

A Me.

Q Did it cross your mind to tell Jamal McNeil you just told the F.B.I. that he had shot Kemo?

A No.

Q You were asked a lot of questions about who was the boss in the organization and who can give orders to who.

So the jury is clear, explain to them how it works, the system amongst those group of people and by that I mean this: You were asked questions could he give you an order, could he give you an order, be it Hakim Curry, be it Pooh, people that Mr. Herman asked?

A Yes.

Q Okay.

Explain for the jury how that organization worked?

A It's one, it's two top guys, but I could ask somebody to kill somebody and they will do it.

Q Okay.

A If we that close.

Q What do you mean by that?

A You know, like more like a brotherly relationship. So if I ask, I need you to kill somebody and I got money or just a favor, they do it.

Q Now, specifically talking about the time of Kemo --

A Yes.

Q -- how was it that you got involved with being the person who shot?

A Through Rakeem Baskerville and Hakim Curry.

Q How is it they were able to tell you to shoot him?

A Because they gave me some money already to go to the All-Star game.

Q And what was the relationship like between you and Hakim Curry?

A Like cousins. We was very close friends.

Q How about you and Rakeem Baskerville?

A Baskerville's was like my brothers at the time.

Q Okay.

You're speaking of all the Baskerville's?

A Yes.

Q Does that include William?

A Yes.
Q Now, you said the defendant, the defendant was an important person in the organization.
What did that mean?
A He can give orders. He can ask you to do, not an order, but he ask you to do something, you that close with him, you're going to do it.
Q And then you said something on cross-examination, Mr. Herman asked you a question, you said you knew what your place was?
A Yes.
Q What did that mean exactly?
A Meaning you knew who the higher guys was with all the money and you knew who the lower guys was with not that much money.
Q You were asked by defense counsel whether or not you had direct contact with the defendant after he was arrested and before Kemo was killed?
A Yes.
Q If you didn't have any direct contact with the defendant, how is it that you knew or believed that the defendant wanted him dead?
A Cause he wanted out of jail.
Q How do you know that?
A Because Malsy, we would be standing on the block. Malsy

would say, I'm on my way to see Will. He would go to the jail to see Will and come back and give us the information.
Q And anything else?
A Well, he's a powerful guy inside the organization. He got a lot of money.
Q And what did that mean exactly?
A He could give out money to have something done to people.
Q Okay.
But he was in jail at the time?
A Yeah, but that don't mean nothing.
Q Why does that not mean anything?
A A visit, a phone call can make anything happen.
Q Okay.
Even if the defendant was in jail?
A Yes.
Q I guess along those lines, you were asked questions about the payoff that was being made or attempted to be made?
A Yes.
Q Paul Bergrin got a message to you?
A Yes.
Q Through various people in the jail?
A Yes.
Q I believe when you were asked a question about who was being paid, you said something like they were paying.
Who is "they"?

A The Baskerville's and Hakim Curry.
Q Okay.
How did you know that?
A That's the information I got from the guy that came to me that said that they wanted to pay me.
Q Okay.
Why did you take this offer, which ultimately didn't happen, but why did you take it for real?
A Because I knew it was for real.
Q But why?
A Because.
Q Explain to the jury why you knew it.
A Didn't nobody wanted to go to prison.
Q By "nobody" you mean who?
A Will Baskerville, at the time Rakeem Baskerville, Hakim Curry.
Q And again, as you told the jury, you're testifying here under a cooperation agreement, correct?
A Yes.
Q Who determines your sentence?
A The judge.
Q This judge?
A Yes.
MR. MINISH: Nothing further.
THE COURT: Mr. Herman.

RECROSS-EXAMINATION BY MR. HERMAN:
Q You killed Kemo because you got $15,000, right?
A Yes.
Q That's why you killed Kemo, right?
A To get Will out of jail.
Q What about the $15,000?
A Yes, I kept the money.
Q Who ordered you to kill Kemo?
A No one ordered me. They asked me.
Q Who asked you?
A Rakeem Baskerville, Hakim Curry.
MR. HERMAN: Thank you.
That's all I have.
MR. MINISH: Nothing further.
THE COURT: That's it.
Folks, you're going to take a short break and we'll have another witness out here.
THE CLERK: All rise.
THE COURT: Go into the jury room.

(Jury is excused and the following takes place out of the presence of the jury.)

THE COURT: The jury is out of the courtroom.

Do you mind if I ask a question or two of the witness?

MR. MINISH: I don't, Judge.

THE COURT: Mr. Young, you've testified that this offer of $250,000 if you kept quiet was conveyed to you?

THE WITNESS: Yes.

THE COURT: Who actually made the offer to you?

THE WITNESS: A guy that was locked up.

THE COURT: What's his name?

THE WITNESS: Aziz.

THE COURT: So somebody named Aziz approached you?

THE WITNESS: Yes.

THE COURT: What exactly did he tell you?

THE WITNESS: He said Paul Bergrin, which was his lawyer at the time, said that they got 200 -- he said that they got $250,000 for me to keep my mouth shut.

THE COURT: Was it ever raised to you that you would be cooperating in any case other than the one against Mr. Baskerville here?

THE WITNESS: I thought I would be.

THE COURT: You thought you would be what?

THE WITNESS: Cooperating in more than one case.

THE COURT: But so far this is the only case you have been asked to cooperate in?

THE WITNESS: Yes.

THE COURT: Now, you said that your recollection is that Jamal McNeil visited Mr. Baskerville eight to ten times after he was arrested. Is that correct?

THE WITNESS: Yes.

THE COURT: Did you ever go with him?

THE WITNESS: No.

THE COURT: Did you ever take the ride to Hudson County with him?

THE WITNESS: No.

THE COURT: So your knowledge of that came from conversations you had with him after you understood he had gone to visit him?

THE WITNESS: Yes.

THE COURT: Okay.

You said the other day that Hakim Curry gave you $7500 because you needed money before you went to the All-Star game?

THE WITNESS: Yes.

THE COURT: Did he give you that money before you left?

THE WITNESS: Yes.

THE COURT: And you said 60 people went to the

All-Star game?

THE WITNESS: Sixty people or more.

THE COURT: All from around your neighborhood?

THE WITNESS: From Essex County.

THE COURT: Did you know some of them, all of them?

THE WITNESS: Maybe about 40 of them.

THE COURT: Did you all get there together?

THE WITNESS: No, we get there different time but all the same day.

THE COURT: How long did you spend at the All-Star game?

THE WITNESS: The whole weekend till Monday.

THE COURT: Then everybody came back to Newark?

THE WITNESS: Yes.

THE COURT: How long after that was the killing of Kemo?

THE WITNESS: Two weeks later, three weeks. Between two and three weeks.

THE COURT: When did you get the other $7500?

THE WITNESS: After the murder.

THE COURT: All right.

Thank you.

Anything else?

MR. MINISH: No.

THE COURT: All right.

Thank you, very much.

Who is the next witness?

MR. FRAZER: We have the one evidentiary matter.

THE COURT: What is this? What is the document because I never did get a look at it.

MR. MINISH: The first document, we now have a colored version of what defense counsel provided earlier as a photo.

What we have is a -- the rest of the photograph or the page of photographs, I should say, from Essex County. It doesn't seem like there's any difference between one or the other. They're both official records, they're both photographs, they both have dates on them and for completeness, there doesn't see to be a ruling they don't go in evidence.

MR. FRAZER: That's the ruling you made earlier about when that photo was taken earlier than the other one.

THE COURT: Is there an objection to this?

MR. HERMAN: Judge, I don't know how that larger page that has been cut out demonstrates when the photo was taken.

MR. FRAZER: It says the date on it. It says April.

THE COURT: April 8, 2002.

MR. FRAZER: Right.

THE COURT: Which does not appear on the photograph, but it appears on the data sheet.

MR. FRAZER: Right. Counsel had us take the rest out.

THE COURT: I'll permit it, it's in.

Can we get the jury and we'll get the next witness?

MR. FRAZER: For scheduling so we know, I only anticipate he'll be 15, 20 minutes. I don't know if there's any cross at all, so figure around two.

Are we going to continue it, there's an incarcerated witness. We'll continue on?

THE COURT: Sure.

MR. FRAZER: They'll need time to bring him up.

THE COURT: That's okay.

THE CLERK: All rise.

(The following takes place in the presence of the jury.)

THE COURT: Have a seat, folks.

MR. FRAZER: May we proceed?

THE COURT: Please.

MR. FRAZER: The Government calls Investigator Pete Gozsa.

P E T E G O Z O S A, sworn.

THE CLERK: State your full name and spell it for the record.

THE WITNESS: Pete Gozsa, G-o-z-s-a.

THE COURT: Have a seat, keep your voice up.

Mr. Frazer.

DIRECT EXAMINATION BY MR. FRAZER:

Q Good afternoon.

A Good afternoon.

Q Who are you employed by?

A I'm currently employed by the Middlesex County Prosecutor's Office in the capacity of crime scene investigator. Also employed by Saint Barnabas Medical Center in a capacity of a registered pharmacist.

Q How long have you been with the Middlesex County Prosecutor's office as a crime scene investigator?

A About a year and a half.

Q Prior to that did you perform a similar function with

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CRIMINAL NO. 03-836

UNITED STATES OF AMERICA :
-vs- :
WILLIAM BASKERVILLE, : TRANSCRIPT OF PROCEEDING
Defendant. :

Trenton, New Jersey
April 25, 2007

B E F O R E:

THE HONORABLE JOEL A. PISANO
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

CHRISTOPHER CHRISTIE, U.S. Attorney
BY: JOSEPH N. MINISH, Assistant U.S. Attorney
ROBERT L. FRAZER, Assistant U.S. Attorney
For the Government.

CARL J. HERMAN, ESQ.,
KENNETH W. KAYSER, ESQ.,
For the Defendant.

Pursuant to Section 753 Title 28 United States Code, the following transcript is certified to be an accurate record as taken stenographically in the above-entitled proceedings.

Joanne M. Caruso, CSR, CRR
Official Court Reporter

April 25, 2007

(The following takes place out of the presence of the jury.)

THE CLERK: All rise.

THE COURT: Are we ready to go?

Yes, Mr. Minish, what's up?

MR. MINISH: Judge, I wanted to put a couple things on the record so it's clear. This morning I provided defense counsel and the Court with I guess a somewhat amended version of the jury charge that the Court provided to counsel last night.

The term or the phrase "with premeditation" was added in number of places to make sure the jury understands we're speaking about murder one. Those additions came on page 50, 51 and two spots on page 52 and 53, 56, two spots on page 57 and I believe the last one is 58.

I provided that to defense counsel before the Court started this morning. It's my understanding there is no objection and towards that end, there was some discussion yesterday that defense counsel did not have the version of the charge that the Government had submitted to the Court for just lack of a copy machine working.

We're asking if the Court could inquire of defense counsel, I guess a couple of things. Whether they've had opportunities now to review whatever they wanted, including

the Government's submissions, and whether or not there's any objection to the Court's version and these amendments?

THE COURT: Thank you for the suggestion.

First of all, I did some work on the jury charge that has been submitted and the one that we discussed in the charge conference and had that electronically forwarded to all counsel.

Mr. Herman, Mr. Kayser, did you receive that?

MR. KAYSER: Yes, Judge, I received it. Quite honestly, I haven't read it all, but.

THE COURT: Mr. Herman?

MR. HERMAN: Yes, we have it.

THE COURT: With the additions, together with the additions that Mr. Minish just mentioned, that is to say those that he sent in one last proposed version this morning, is there any opposition or exception to the jury charge that I intend to read?

MR. HERMAN: No, Judge.

THE COURT: All right.

Then I'm going to go through page 73 and leave 74 through the end out until just prior to sending the jury out for deliberations.

MR. MINISH: Judge, then I guess in a second area, I know I missed the very beginning of the jury charge yesterday, but the Court, I assume either now or in that second phase, is

going to instruct the jury again about no consideration of penalty?

THE COURT: Yes.

MR. MINISH: Okay.

THE COURT: Okay.

Get the jury, please.

THE CLERK: All rise.

1 concluded.
2 I gave you warning, notice and warning in advance,
3 that tomorrow we will identify the alternates, but they will
4 not be excused.
5 Thank you for your attention. I apologize for going
6 on as long as I did, but it's necessary under our system of
7 law. I know it's not easy listening to all of that, but
8 again, you'll have a hard copy of this when you go into the
9 jury room.
10 You can take a break, we'll have you back here
11 shortly.
12 THE CLERK: All rise.
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1 (Jury is excused and the following takes place out
2 of the presence of the jury.)
3 THE COURT: I made a couple of very minor editings
4 to the charge while I was going through it.
5 Does anybody have any objection or exception to
6 anything that I've said that might have been at variance with
7 the printed text?
8 MR. MINISH: No, Judge.
9 MR. HERMAN: No, Judge.
10 THE COURT: Great. Let's take a short break.
11 Do you have any idea how long you'll be?
12 MR. FRAZER: It's going to be fairly lengthy. We'll
13 definitely be going well into the afternoon.
14 THE COURT: I leave to you -- assuming the jurors
15 lunch will be delivered, I leave to you as you get through
16 this when you think it's appropriate to break. Just declare
17 it.
18 MR. FRAZER: Sometime between 12:15 and 12:30.
19 THE COURT: Okay.
20 (Recess.)
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(The following takes place out of the presence of the jury.)

THE CLERK: All rise.

THE COURT: There was a verdict sheet sent over. Do you have any objection, any problem with the form of the verdict sheet that was sent over on the guilt phase?

MR. KAYSER: Judge, everything I received on Friday is okay with me. I did not have a chance to reread last night all that stuff.

Apparently, there was a fatality on the train system last night or yesterday afternoon. I didn't get home until eight o'clock. I didn't have time to read what I got last night.

I don't think the verdict sheet changed.

THE COURT: I haven't seen another one. I'm assuming it didn't.

Ready to go?

MR. FRAZER: Yes.

THE COURT: All right.

Get the jury.

THE CLERK: All rise.

(The following takes place in the presence of the jury.)

THE COURT: Have a seat, folks.

A couple of brief things before Mr. Frazer gets started.

First of all, I see you have your note pads. Please put them down. As I told you, the arguments of counsel are not evidence, so there won't be any note taking and it's distracting from your ability to listen and his ability to speak, to have you taking notes.

Secondly, the purpose of closing statements is to give counsel the opportunity to comment on the evidence and argue to a jury as to how that evidence should direct the jury to returning a verdict.

Mr. Frazer has told me he expects his closing statements to be certainly longer than the morning session, so I've given him the discretion to declare the lunch break when he's at a logical point and that's why he's going to be doing that.

One last thing and then I'll be quiet finally. It's up to the Judge in any case whether to give those legal instructions before closing statements or after closing statements. It's been my practice to give the jury instructions before closing arguments for a couple of reasons. The first is to give you the benefit of the legal standards so

1 when counsel argues the facts and the evidence to you, you
2 have some idea as to the standards against which to put those
3 arguments and, secondly, because counsel do discuss the
4 evidence, it's more fresh in your minds if you begin
5 deliberations without having that hour and 20 minutes that I
6 just put you through.
7 That's why I think it's better this way. I could be
8 wrong, I could be right, I don't know, but that's the way we
9 do it.
10 That being said, I'll now mercifully be quiet.
11 Mr. Frazer, you may proceed.
12 MR. FRAZER: Thank you, your Honor.
13 May it please the Court, counsel, Mr. Baskerville,
14 Mr. Davis, Mr. Minish, ladies and gentlemen, good morning.
15 Let's start with why did William Baskerville decide
16 to have Kemo DeShawn McCray killed. What motivated him to put
17 in motion such a heinous, despicable act as you heard Anthony
18 Young testify to? What made him, in effect, point Anthony
19 Young at Kemo DeShawn McCray on March 2, 2004?
20 Now, the evidence is in. You heard the legal
21 instructions and I submit to you that taken together in these
22 last three or three and a half weeks that you heard the
23 testimony, it is overwhelming as to the defendant's
24 participation in a conspiracy.
25 You've just heard from the Judge what a conspiracy

1 is. It's no magic legal language. It's simply an agreement.
2 There's overwhelming evidence of an agreement with
3 others to murder Kemo DeShawn McCray. We'll analyze as we go
4 on into the afternoon the evidence of the conspiracy to murder
5 Kemo DeShawn McCray.
6 I'm going to spend a brief time this morning talking
7 about some of the drug transactions that we heard through the
8 testimony of Agent Shawn Manson. I submit to you that they're
9 equally overwhelming evidence of counts four through nine, the
10 drug transactions, and of the defendant's participation in a
11 drug conspiracy in count three.
12 I'm going to spend a little more time on the drug
13 conspiracy than the transactions because while factually the
14 evidence, I submit, is again equally strong, the conspiracy,
15 as you just heard the charge legally, has a couple of
16 different things that you have to keep in mind. That could be
17 confusing, even to lawyers it's confusing. We'll spend a
18 little more time showing you how the facts of the drug
19 conspiracy apply to the law that Judge Pisano just gave.
20 There should be no doubt by now, based on the
21 evidence, that the defendant distributed crack cocaine between
22 the period in the indictment, January of 2003 to November of
23 2003, and that he had agreed with others to help him in that
24 unlawful objective.
25 I want to start, as I said, with the motive for the

1 murder to answer some of those questions, why, why did this
2 happen? For that, you have to look into the mind of William
3 Baskerville starting on November 25th, 2003.
4 If you recall Agent Manson's testimony, that day
5 started at about six o'clock in the morning, when her F.B.I.
6 team executed a court-authorized arrest warrant at the
7 defendant's home in a location at 424 Robins Street in
8 Roselle, New Jersey.
9 This was the culmination of an exhaustive ten-month
10 drug investigation. When the F.B.I. entered his home that
11 day, one thing was clear to the defendant, these were not
12 local law enforcement. This was not the Irvington police, the
13 Roselle police or the Newark Police Department, these were
14 federal agents entering his home that day.
15 To get a glimpse of the defendant's thinking that
16 morning, start with something that you heard from the witness
17 stand, Rick Hosten. You remember him? He gave the testimony,
18 he was arrested at about the same time the defendant was, the
19 day before. He ended up coming to court with the defendant on
20 the day of the defendant's arrest, November 25th.
21 Remember what he told you? He, too, was arrested
22 based upon Kemo McCray's purchases of crack cocaine from him.
23 We'll get to that shortly.
24 He told us something interesting that goes to what
25 was in the defendant's mind in the lockup. Remember in the

1 marshal cell that he talked about where he first met the
2 defendant? He told us, Rick Hosten told us that he, himself,
3 had never been through the federal system. It was interesting
4 that the very first thing that Rick Hosten interacts, the
5 first time he interacts with the defendant in the marshal
6 lockup before they go see the judge that day, he asks the
7 defendant, have you ever been through the federal system? And
8 the defendant says, no.
9 So what you get from that is it's unfamiliar
10 territory for Rick Hosten, but it's also unfamiliar territory
11 to the defendant. He was now in the federal system and he
12 hadn't been through that before. You heard evidence that he
13 has, the defendant has two prior drug convictions. That, as
14 the Judge told you, can be used to show his motive. Keep in
15 mind those are state convictions, not federal convictions.
16 What happens next? At that point the defendant gets
17 a serious dose of reality. The events that ended in Kemo
18 DeShawn McCray's murder were about to begin because remember
19 what Mr. Herman said right from the beginning in the open
20 statement? The defendant was a three-time loser, based on
21 those two felony convictions.
22 You heard me read yesterday Government exhibit 36.
23 It was the initial appearance when the defendant was first
24 brought before a United States Magistrate. Assistant U.S.
25 Attorney that you heard a lot about, John Gay, who was the

1 prosecutor at the time, read into the record, he basically
2 told the defendant what he was being charged with and the
3 maximum penalty he faced.
4 You'll recall, when I read that yesterday to you, Mr.
5 Gay announced that based upon the distribution charge for
6 distributing crack cocaine, the maximum penalty for that
7 charge was 40 years. So right away the defendant knew this
8 was serious business. The prosecutor had just said he was
9 facing a potential sentence of 40 years in prison,
10 substantially the rest of his life.
11 In fact, as he would learn later at the detention
12 hearing, and that's the second transcript I read to you
13 yesterday, exhibit 37, a few days later he had been indicted
14 by a Grand Jury now for an additional charge, which is the
15 conspiracy to distribute the crack cocaine, which is part of
16 the indictment. That 40-year-maximum sentence now became life
17 in prison without parole.
18 If that wasn't enough, the defendant found out right
19 there that he would not be going home on bail. He would be
20 what's called detained pending trial. He did -- know matter
21 how much money he would put up, the judge determined that he
22 should remain in jail pending trial.
23 As we'll see in a moment, that made the defendant
24 angry. Just so you know, bail was not denied because he was
25 poor, as Mr. Herman implied in the opening statement, far from

1 it. That is a typical thing that happens, detention in the
2 federal system when you're a career offender such as the
3 defendant, you're facing life in prison as the defendant was
4 based upon the maximum sentence possible under that charge and
5 for what could turn out to be, if convicted, his third felony
6 drug distribution.
7 The defendant was probably not only shocked, he was
8 angry. As you saw in Government exhibit 41, another thing
9 that happened at that initial appearance was he was given his
10 complaint for the first time in the courtroom. He was shown
11 the charges against him. As he saw the complaint, several
12 thoughts, I submit to you, were going through this mind.
13 Who did I sell these to? Who's this informant? Who
14 ratted me out? Now, Government exhibit 41, the complaint,
15 doesn't say Kamo DeShawn McCray is the informant, obviously.
16 The Government tries to protect as best they can the
17 informants, the F.B.I. informant that was used, but the law
18 does require that some facts be put in the complaint to inform
19 the defendant of the charges.
20 Included in that complaint, which by the way, all the
21 exhibits you're free to look at, they'll all be sent back into
22 the jury room.
23 Look at it. Included in the facts in the complaint
24 are simply the words "cooperating witness" and the amount of
25 four of the six drug transactions. By the time the defendant

1 gets back to the cell and the marshal's lockup after the court
2 appearance where he goes back with Rick Hosten, he sees that
3 complaint and he has a pretty good idea who the informant is.
4 The reason for that is you've heard throughout the
5 testimony, is that what it turns out, what the Government
6 could not have known at the time, was that he usually sold
7 higher quantities of drugs. You'll recall several of the
8 cooperating witnesses, Rick Hosten, Eddie Williams, Troy Bell,
9 Eric Dock, they all told you that the defendant told them that
10 he figured out who the informant was based upon the smaller
11 amounts of drugs that he sold and he only sold those smaller
12 amounts to Kemo DeShawn McCray.
13 Rick Hosten confirms that. The defendant says, if
14 you recall the conversation, I know you're from Wainwright. I
15 know you, right, from the block. That's Kemo's block.
16 Then he asks him a key question. Did you deal with
17 Kemo? This is the defendant asking Rick Hosten. What did
18 Rick Hosten tell you that meant? Did you sell drugs to Kemo?
19 Rick Hosten at that point confirms what's already in the
20 defendant's mind based on the complaint, that the informant is
21 Kemo DeShawn McCray. Rick Hosten said yes, I did deal with
22 Kemo, that's why I'm here, need.
23 What happens next tells you really everything you
24 need to know about the defendant's state of mind on November
25 25th, 2003, after his initial appearance in court. I'm going

1 to read to you the first of several portions of the transcript
2 because what the Judge just told you is true. What I say is
3 not evidence and what Mr. Kayser or counsel say tomorrow in
4 their closing statement, not evidence. That's why you're not
5 taking notes, right?
6 What's in this transcript is the evidence and what
7 you heard from the witness stand is the evidence and the
8 exhibits we introduce, that's the evidence. I'm going to
9 refer to portions in the summation to certain portions of the
10 transcript.
11 At page 4278, a question is put to Rick Hosten on
12 direct examination.
13 "QUESTION: Okay.
14 "He mentioned small amounts?
15 "ANSWER: Yeah.
16 "QUESTION: All right.
17 Was he upset, was he happy, what was his mood?
18 "ANSWER: He was upset.
19 "QUESTION: What did he say about Kemo?
20 "ANSWER: He said he was away from his family
21 because of a fucking bum.
22 "QUESTION: He said he was away from his family
23 because of a fucking bum?
24 "ANSWER: Yes.
25 "QUESTION: And he was talking about Kemo?

"ANSWER: Yes.

"QUESTION: Did he say that -- was that the end of the conversation?

"ANSWER: No. He kept going on about it. He was basically, he kept saying the same thing over."

"I'm away from my family because of a fucking bum." He doesn't say that once or twice, he says it over and over again. He's upset.

We know this is true because it's at this time that Will Baskerville makes the decision to tell his lawyer, Paul Bergrin, the informant is a guy named Kemo. He doesn't just rely on Paul Bergrin, who, if you recall, lots of testimony about him being the house counsel, by the way, the lawyer that the drug organization, Hakim Curry always calls when a member of the organization gets in trouble.

He doesn't just limit his message about Kemo to Paul Bergrin. What does he do? The moment he gets back to Hudson County, the moment that they get transferred from the marshal's lockup back to Hudson County, Rick Hosten told you, he gets on the phone. You saw photos of the cell and there was a phone there and Rick Hosten's looking at the window and over his shoulder he sees the defendant on the phone.

The first moment he has an opportunity to get to the phone, he does. What does he say? Rick Hosten told you. Page 4325 of the transcript. Rick Hosten says, "I was

standing. The phone was at the wall. I was standing near the door and he seemed to be on the phone and he was saying, you know, when he said the name Kemo, I glanced over. He was over by the phone. He was like, that fucking Kemo, you know."

Who's he calling, ladies and gentlemen? Well, I submit to you the evidence that you heard later on supports exactly what the cooperator said, he was calling his brother, he was calling his brother Rakeem Baskerville, I'm sorry, and he was trying to get in touch with him, as the cooperator said, so that he would tell Hakim Curry to handle it.

Ramaine York tells us exactly that. And that, ladies and gentlemen, that phone call, that communication with Paul Bergrin, it's Kemo, that was the beginning of the agreement, of the plot, of the conspiracy to kill Kemo DeShawn McCray.

So what was it that the defendant decided at that time, November 25th 2003, that he absolutely had to prevent? Something he absolutely could not live with? Well, he was afraid and we know he was angry. He was afraid of spending the rest of his life in prison and he was angry that he was in that situation because of Kemo DeShawn McCray.

He knew right from that moment on November 25th, in Hudson County, when he got back to the bullpen and he was waiting to be assigned to the tier, he knew that he had two choices. It was real simple. Spend the rest of his life in jail because the evidence clearly was going to convict him, or

1 get rid of the problem, get rid of the informant.
2 So again, look to his mind. His anger led him to
3 make a calculated decision that day, kill Kemo for what he had
4 done. That fucking bum. I won't be going home to my family.
5 I'm in here because of a fucking bum, a rat, a snitch, right,
6 in his world.
7 That, ladies and gentlemen, is the basis of count
8 two, the retaliation, to retaliate against a witness for what
9 Kemo had already done, had put him in the position that he was
10 now facing life in prison for these drug charges, all based on
11 Kemo and the purchases of crack cocaine.
12 His fear of spending the rest of his life in prison,
13 that fear that he would never see the light of day drove him
14 to kill Kemo McCray, to prevent him from becoming a witness in
15 the case against him. That is the basis of count one, the
16 conspiracy to murder a witness.
17 Because if Kemo had lived, if he did not, if the
18 defendant did not take the actions to insure the defendant --
19 to insure that Kemo did not become a witness, if he did not do
20 that, Kemo would be alive and where would he be and what role
21 would he play in all this? I submit to you, ladies and
22 gentlemen, he would have been called as a witness in the case
23 of the United States of America v. William Baskerville, in
24 courtroom number one, in Trenton, New Jersey, the Honorable
25 Joel Pisano presiding. Basically, the drug portion of the

CI

1 case that you heard and the first witness in that case would
2 have been Kemo DeShawn McCray.
3 If he had lived and the defendant had not made the
4 decisions he did on November 25th, 2003, I submit to you that
5 in that door, after either Mr. Minish or I called him as a
6 witness, he would have walked into that door, he would have
7 come up here just like the other witnesses and he would have
8 gotten up on this witness stand and he would have sworn on
9 this Bible to tell the truth.
10 And after a few background questions, he would have
11 been sitting in this chair and he would have been asked the
12 following questions: Mr. McCray, tell us why you're here.
13 He would have told you that he had worked with Agent Manson
14 during a drug investigation. And he would have been asked at
15 some point, did you come into contact with a man named William
16 Baskerville? He would have said yes.
17 Then we would have asked him and tell us how you know
18 Mr. Baskerville. He would have said between March of 2003 and
19 October of 2003, during that conspiracy period, he would have
20 said that he bought crack cocaine from the defendant six
21 times.
22 We would have asked him to look around the courtroom
23 and identify the person he referred to as William Baskerville
24 and he would have pointed over there and said, he's wearing
25 the brown shirt.

We would have asked the Court and said identifying the defendant, your Honor.

So I don't mean to be overly dramatic by doing that, ladies and gentlemen, but what I think is important, as we go through this, is that is the motive. That is the motive, to keep Kemo DeShawn McCray from doing exactly what I just did, to keep him from coming here and insuring a conviction against the defendant.

Now, you know a little bit, obviously you knew before based on the evidence, I didn't have to tell you, what the motive was. The reason that Will Baskerville decided that Kemo McCray must die, he must be pushed, that's what Eddie Williams told you, he must be handled, that's what Ramaine York and Dock, Mr. Dock and Mr. Bell told you. He must be killed.

Because the defendant knew that if Kemo did take the stand, his fate would be sealed. He would be found guilty and spend the rest of his days in the jail cell, so he wasted no time. He put the word out and entered into what became a very deadly agreement.

As we move through the testimony, keep all that in mind. The defendant made that cold and calculated decision early on, on November 25th, 2003. His motive, again, was a lifetime behind bars and it was in his mind only one way out, no Kemo, no case.

Let's turn to that case, let's turn to the drug case, which is the basis for the plot. Who is Kemo DeShawn McCray? You didn't have the opportunity to actually meet him. You saw a picture of him. That's Kemo DeShawn McCray.

He was a young man from the streets of Newark, grew up on Wainwright Street in Newark, and at the time of his death on March 2, 2004, he was about 33 years old.

You heard he had a family, some kids, he had a mother, a step-father. His mother's name was Delphine Smith and you heard the step-father's name was Johnnie Davis. He also had a close relationship with a stepdad type person by the name of Christopher Spruill. You may recall Agent Manson told you that.

Christopher Spruill, Agent Manson told you, was a F.B.I. long-time informant that helped her on numerous cases over the years prior to William Baskerville and ultimately Kemo McCray, if you recall, meets Agent Manson during this incident about this shotgun that was found in, I believe it was Delphine Smith's home, but it was in Kemo's room. Eventually he took responsibility for that and that's how he came into contact with Agent Manson and, in fact, became much like his step-father, Christopher Spruill, a paid informant for the F.B.I.

Now, Shawn Manson told us that Kemo McCray had a criminal history. We weren't hiding that, that came out on

1 the direct examination. It wasn't for drugs. He had no drug
2 convictions, but clearly, he was a person who was on the
3 street, who had a relationship through a girlfriend or
4 something with the Crips gang members. He was a guy that
5 could help the F.B.I. based on his contacts, Agent Manson told
6 you.
7 Despite the best efforts of the defense to paint Kemo
8 as a lying criminal, Kemo, was, in fact, was maybe a little
9 later in his life, but finally came to the realization that he
10 should do the right thing, he should help law enforcement. He
11 risked his life, obviously for basically a few thousand
12 dollars.
13 He did that, I would submit to you, ladies and
14 gentlemen, to basically help the F.B.I., to help Shawn Manson,
15 to basically, Shawn Manson told you, to win a neighborhood
16 back from the Grape Street Crips, to clear the streets of a
17 violent drug gang.
18 Now, did Kemo -- you heard evidence through Agent
19 Manson on the direct examination that Mr. McCray made some
20 extra money behind her back. During the investigation, he got
21 some drugs from Rick Hosten and he made about three or four
22 hundred dollars without telling Agent Manson. He violated the
23 rules of the cooperating agreement he had with the F.B.I., the
24 informant agreement.
25 You heard that he made up some relationship between

1 Rick Hosten and a guy named Tyrone Cox, who was another drug
2 dealer, so he did do that.
3 How should you consider that? Did Mr. Hosten come
4 here and tell you he, in fact, sold drugs to Kemo McCray?
5 Yes. Kemo McCray was accurate as to that. Did Tyrone Cox,
6 Agent Manson told you, eventually plead guilty, on the list of
7 the Grape Street Crips? Yes. So Kemo McCray was accurate
8 about that. By the way, he was accurate about 14 or 15 other
9 Grape Street Crips who were arrested based upon his evidence,
10 the buys that he made and so he was accurate about all those.
11 Kemo DeShawn McCray, he's really not on trial. He's
12 not here to defend himself and it's not about Kemo McCray,
13 because the F.B.I., while they heard certain things from him
14 and they relied on him to some extent, obviously, did not just
15 base their case against William Baskerville on what Kemo
16 McCray said. Everything he said, I submit to you, regarding
17 this defendant was corroborated by other evidence,
18 corroborated by Agent Manson and this corroboration theme,
19 you're going to hear me say "corroboration" about 62 times
20 between now and this afternoon, so bear with me. It's
21 important, it's an important concept to know.
22 You're not relying on any one person in this case,
23 the testimony of one person, the evidence from one person.
24 Everything those witnesses said from start to finish was
25 corroborated by other evidence.

I asked Agent Manson whether Kemo's actions had any affect on the Will Baskerville investigation, any at all. She said, no. I asked her, was he still going to testify against Will Baskerville, even though he had gone behind her back and he had been cut off under the F.B.I. rules as an informant? Yes, he was obligated to testify, he was ready to testify against anybody, Will Baskerville or any of the others. The others all pled guilty, but he was ready, willing and able and obligated to testify in this case.

So remember, as I said already, not one time in the trial has the Government brought a witness, whether it was the evidence you heard through Agent Manson about Kemo or any of the other cooperators, that was not corroborated by other evidence.

Keep in mind right away that it takes a street person, someone who can talk the talk, Agent Manson said, to catch odd drug dealers. We'll see how that applies to the murder conspiracy from the jail later on.

Will Baskerville first comes to light in the F.B.I. investigation, you'll recall Agent Manson telling you, in the summer of 2002, when he's observed during a surveillance, which is a usual technique the F.B.I. uses, she told you. There was a surveillance on the street in Newark and they see the defendant with his Cadillac Escalade and he's talking to a man named Shelton Leverett, one of the Crips gang members.

This was in the summer of 2002, and later on Agent Manson told you she found out that that was a drug-related conversation.

Now, we get into the transactions and you'll learn -- you learn right away, the first thing you heard about the transactions was something from January 13, 2003. In fact, that's the beginning in the indictment of the first date in the conspiracy, the drug conspiracy. Again, keep in mind what the Judge said about those dates are approximate. You only have to find the conspiracy somewhere in between those approximate dates, January 13, 2003 to November 25th, 2003.

You'll recall that on January 13, 2003, there was a transaction between Kemo and someone by the name of Taquan Singleton or Quanny. The reason that's important, it's during that transaction that we first see the defendant's drugs, we first see Terrell Thomas and we first see Terrell Thomas in this transaction with Quanny and Kemo.

And Kemo purchases an amount of drugs, vials of crack from Quanny and you'll recall that Quanny then says, hold on. He goes over to Terrell and Terrell supplies him with the crack and then Quanny gives Kemo the crack. Later on, we find out that Terrell Thomas is a member of the conspiracy. At that time he is distributing the defendant's crack cocaine.

That's why that was important. We moved ahead to February and that is the introduction, if you recall, sometime in early February, mid-February between Terrell Thomas

1 introducing Kemo McCray to his man Cheeb, who we now know was
2 the defendant, William Baskerville. Terrell gives Kemo his
3 cell phone number and the defendant gives him his cell phone
4 number and the defendant tells Kemo, if you want to buy crack,
5 call me on this number.
6 That number, which I think is familiar to you by now
7 is the 862452-1815.
8 Right away Kemo is showing us and the evidence shows
9 us that the conspiracy is right from the beginning. Terrell
10 Thomas is introducing the defendant as the guy to go to for
11 crack cocaine. And the defendant's giving out his cell phone
12 number. There's an agreement there obviously. In a moment
13 we'll show you more about Terrell Thomas.
14 I just want to talk briefly that phone number's
15 important and I don't know if you all got the connection with
16 the phones. Just so it's clear, there's a record in evidence,
17 I believe it's 450, and that shows you who that phone was
18 registered to, the 1815 phone. It comes back to a person
19 named Wali Green, W-a-l-i, I believe is that. We made up a
20 little chart and I'm not sure how clearly you're going to see
21 it.
22 We have copies for the jury. If the Court doesn't
23 mind, we'll hand out copies. While that's being handed out,
24 Wali Green, you'll see from the phone records, I think there
25 are Sprint registers, is the registered owner of that phone.

1 Later on, you heard from Agent Manson, by the way,
2 that the F.B.I. couldn't find anybody by that name at the
3 address that's given, which is 751 South 16th Street.
4 Right away they knew there was something suspicious
5 about this phone. Later on you'll see in the second item
6 there is a pager. The connection between the first cell phone
7 and the pager is the pager is recovered upon the defendant's
8 arrest on November 25th, 2003, inside his home. That pager's
9 also registered to Wali Green. That's Government exhibit 38
10 from the beeper company.
11 That's how you know that the first phone is connected
12 to the defendant, because the pager registered to the same
13 person, by the way, slightly different address with
14 unbelievably a slightly different spelling, which would give
15 you a hint that no Wali Green exists or he spelled his name
16 wrong on the two items. That connects the first phone.
17 The second phone, if you move to the right, (908)413
18 phone which is used in the September 9 transaction and the
19 October 23rd transaction, you see that's registered and the
20 records are in evidence to Annie Williams. You can go to
21 Government exhibit 259, which is on the chart which is the
22 mortgage records, deed records to the home at 424 Robins
23 Street and you heard testimony that Annie Williams is the
24 defendant's wife's grandmother. She actually is a part owner
25 in the defendant's house, according to the records. Okay.

So you know that that phone is also connected to the defendant. There's really no dispute that the defendant is heard on those tapes. There's a stipulation as to that. I just wanted you to be aware of how the phones connect.

Let's go to move forward in the transactions. By the way, you'll be happy to know I'm not going through all the transactions. We're going to look at Terrell Thomas. While I joke, this is important, obviously, that each one of you understand the conspiracy.

Terrell Thomas is out there with Will Baskerville during this February introduction. He's also heard on the very first phone call, and again, we're not going to play the calls. You're invited, of course, to listen to them again. We've cleared up a lot of the interference, we hope. You can do as you please whether you want to listen to the calls.

On the very first phone call, you actually get a glimpse of the knowledge that Terrell Thomas has and his role in the drug conspiracy with the defendant. That's on page two, where Kemo is saying that he sees the defendant in a Yukon. It was some kind of truck, a black Yukon or Caddy. Terrell Thomas says it was a Caddy, he corrects him. Then Kemo says, yeah, with some chrome rims on it?

And Terrell says, yeah.

Later on Kemo says, I don't know if I dialed the right number or not.

Kemo asks, is it (862)452-1815?

Terrell, 862, wait a minute, hold on.

Terrell, 862, yeah, 452, yeah, 1815.

Terrell Thomas is now in a conversation about hooking Kemo up with drugs, is now telling him the defendant's phone number. Because again, he is a distributor of the defendant's crack cocaine. That helps you to understand the relationship.

Right from that first phone call, you're getting a glimpse into how Terrell Thomas fits into the conspiracy, but March 17th, is the first transaction. We told you that first transaction is not part of the substantive indictment charges, the substantive drug transactions four through nine, but it's important again, because it tells you something about count three, the conspiracy.

Again, on March 17th, if you recall, there is a sale set up on the phone that William Baskerville is going to come over and sell crack to Kemo. He actually shows up at the location, but he has a couple of people in the back of his car, Agent Manson told you, and you heard on the call, and so he has to bring these people somewhere. And he tells Kemo, I'll be back in about 45 minutes, hold on. But if you can't wait, basically, he's saying, deal with my man, Rell, my man Terrell.

Why? Because ultimately the money ends up in his hands either way. Because Terrell is fronted the drugs and

when Terrell sells drugs, the defendant's selling drugs. When Terrell profits, the defendant profits.

That's from exhibit 102. Kemo's saying, hello.

Terrell says, hello.

Kemo says, what's up?

What's up? Chilling.

Kemo, yeah, I talked to your man earlier. He told me to tell you.

Terrell, yeah, he told me.

Kemo, huh?

Terrell, huh? It goes on.

He says, Kemo says, he told you?

Terrell says, yeah.

Kemo, well, Rell, yo, you didn't tell me he didn't call you.

Terrell, I'm trying to get that info now. Terrell says, I got to get in touch with him now because somebody else, somebody else want to see him.

Terrell is telling Kemo, you're not the only customer that I have to get to my guy William Baskerville, there are other guys calling me because I'm part of the agreement to sell drugs with Baskerville, there are other guys calling me. Somebody else want to see him.

Terrell on the next page, page three says, so, um, as soon as I get in touch with him, I'm going to see what's up.

I'm going to see if I can get something from him and I'll call you.

Kemo, all right.

Terrell, I already got one thing, but I don't think he got enough to, you know.

Kemo, yeah. Well, man, listen. I need something now.

Terrell, he better, he got to try to best stretch it because the shit fucked up right now.

Kemo, listen, I need something, man.

Again, there's this conversation between Kemo and Terrell to get to the defendant for Terrell to facilitate this sale. There is no question there's a conspiracy at that time, early in March between Terrell Thomas and William Baskerville.

Under the law, as the Judge read it to you, that's it, the defendant's guilty. He had agreed with one other person, he's a member of the conspiracy and he agreed to do something and do something in furtherance of an unlawful act.

That day when he came out and told him deal with my man, Reli, that's an act in furtherance of the conspiracy. It doesn't matter, by the way, that later on the defense may argue that Terrell had other suppliers, okay. He had other suppliers, doesn't mean the defendant left the conspiracy. It doesn't matter that Terrell owed Baskerville money, because remember, he gets fronted money and he's expected to pay it

when he sells it.

You heard the conversations. I'm not talking to Will today because I owe him money. I'm not going near him. Doesn't mean he withdrew from the conspiracy and it's not Terrell's portion we're interested in, the defendant, the defendant's still selling crack.

It doesn't matter that other members of the conspiracy join later on and we'll get to Horatio Joines or Ray-Ray. As the Judge just told you, even if you join later on, you're responsible for all other acts that came before you, okay.

As the Judge also told you, drug conspirators don't sit around the table on the street and announce an agreement to sell drugs. You have to figure out the conspiracies by circumstantial evidence, as the Judge told you. You got to look at all the facts. You're not going to hear anybody, at least for the drug portion, I agree with you to sell crack cocaine.

You do have, though, the defendant's own words on tape on the phone calls. You have evidence that the defendant, from various witnesses, Koby Cuyler and others, that the defendant controlled a whole block. He controlled the area of Avon and 16th. It wasn't just Kemo he was selling to. Kemo was a relatively small customer of his, if you recall. He had runners, he had pitchers, he had managers, he

had packagers.

You heard from Car Wash. He had people cooking up for him, cooking up the raw, because he talks about raw versus crack and he has suppliers. He talks about connects.

So this is not a one-man operation. That would be impossible. It doesn't work that way on the street and you've heard that from several witnesses. Koby told you that, Shawn Manson told you that, Car Wash told you that.

On March 17, if we go back to that, he does this deal with not the defendant, but Terrell Thomas for those black top vials which are exhibit seven and we showed that to you and you're free to look at them during deliberations. We can't give you the drugs, but you can come out to the courtroom and look at them. You heard Car Wash tell you about packaging these types of drugs in the defendant's detailing shop. We'll get to that in a minute.

March 17 sale is not a count that you can consider in counts four through nine but it is part of the conspiracy. It shows a common purpose and scheme between Terrell Thomas and the defendant, shows an agreement, a relationship and a conspiracy.

I want to read to you briefly from page 3515 of the transcript which is Shawn Manson's direct testimony.

"QUESTION:" Line 14, "Did he report to you that he spoke to anybody else related to that?"

She's talking about Kemo.

"ANSWER: He also spoke to Terrell Thomas and in his conversation with Terrell Thomas, Terrell Thomas indicated that he is also waiting on Cheeb for his drug supply.

"QUESTION: And again, that was -- he was telling you he spoke to Terrell Thomas on March 4th?

"ANSWER: Yes.

"He told you this on the sixth?

"ANSWER: Yes, he did.

"QUESTION: Now, at that point what was your understanding of Terrell Thomas' role in the investigation as a target?

"ANSWER: Terrell Thomas was an individual who knew William Baskerville supplied drugs to and Terrell Thomas in turn then sold them to other individuals in his immediate area. So we knew that Terrell and William Baskerville were working together and already had a pre-existing relationship.

"When ever Kemo could not find or could not get ahold of William Baskerville, he would contact Terrell Thomas and try and ascertain where William Baskerville was or to try and pass a message to William Baskerville.

"QUESTION: Agent, was that based on the events of January 13 and then February where Terrell introduced him to William Baskerville?

"ANSWER: Yes, that's based on that. That's how we

determined what the relationship was between Terrell Thomas and William Baskerville. They had already had a pre-existing drug supplier, the drug relationship with one another. When Kemo entered into his dealings with Terrell Thomas, and Rakeem -- I mean, I'm sorry, William Baskerville."

It was apparent to the F.B.I. based on that evidence right away that they were looking at a conspiracy of at least two members. March 18th is the first transaction.

MR. FRAZER: Judge, I don't know if you want to break?

THE COURT: It's up to you.

MR. FRAZER: If the jury doesn't mind taking a few more minutes, we'll get to a logical ending point for the lunch break.

Again, there's a stipulation of those tapes that the defendant's voice is on those tapes. There is no dispute about that.

March 18th, and I know we had some technical difficulties and I think it's been cleared up a lot if you listened to them, so if you want to listen to them again, but the March 18th call was probably the clearest of all the calls that you heard.

That's perhaps the most damming evidence of both counts four through nine and the drug conspiracy. That's at page three of exhibit 104, where Baskerville says, I had 50

grams for you the other day.

You'll recall Agent Manson, he's talking about the day before, March 17th incident. I had 50 grams for you the other day and I put it to the side, but then I had, I had this kid that had wanted it and when Rell told me you didn't want it, I was like fuck it, I gave the shit to the kid, you know what I'm saying? It's crystal clear on the tape.

Right there the defendant's own words. That's rare that you get the defendant telling you about a conspiracy to distribute crack cocaine, but you have it here. He had 50 grams, he was ready to give it to Kemo, but my man Rell told me you didn't really want it, you didn't want to wait the 45 minutes. Remember? So he gave it to somebody else.

Right there he's admitting to selling someone else 50 grams of crack cocaine. The conspiracy is, as I'll talk about, requires that we prove that it's over 50 grams, 50 grams or more of crack cocaine. That's it in one transaction. You have transactions here that total 190 grams just with Kemo McCray, but obviously Kemo McCray is one of the smaller customers.

He goes on to say, and this is the defendant, but I could get the shit from him hopefully like in another week or so. I'm have my own shit, you know what I'm saying, the connect, which Agent Manson told you is the supplier, that I was fucking with at first. Now these niggers, man, they

ain't, I guess with that big ass shit, that big bust, shit, they fucked off. You know what I had no coke, I had no coke, motherfucker since All-Star weekend, which you heard lots of testimony from the cooperators about All-Star weekend, and that corroborates that portion of the testimony.

He goes on to say, but I could get it from him. I'm just trying to get the shit right, whereas though I can get enough of that shit, where you all can have that shit so I can come to connect with mad money and I can get what I want. You know what I'm talking about?

He's telling Kemo he's got this great supplier, that if he gets with, he can make mad money, tremendous amounts of money.

He goes on to say, so, I don't got to worry about this shit, but if you get, like say for instance, say for instance, like if I got it and I just get the shit, before I hit that shit up, make that cook-up, I just put you something aside. You know what I'm saying? But if you want 50, I can get that shit from him all day or more, because I know he, he got it. Know what I'm saying?

Kemo says, true.

He goes on to ask the defendant, the only that you know you have now is cookies, right, meaning crack. For the time being.

Baskerville says, hopefully within the next week, no

later than next week, I should have some raw, though.

Kemo says, all right.

And the defendant says, but I'm going to have cookies, I'm going to have cookies all week.

You have the defendant, from March 18th, talking about sales in excess of 50 grams to various individuals, about a supplier that he calls his connect, right, and talking about his relationship with Terrell Thomas in the conspiracy.

Again, ladies and gentlemen, that's it. If you believe that testimony, which you hear from the tapes, from the defendant's own words, that's sufficient evidence under what the Judge just read you to find the defendant guilty of drug conspiracy, that alone. We're only on March 18th.

Okay. As I said, I'm not going to go through each sale, you'll be happy to know that.

By this time, you heard Agent Manson and you heard the testimony about counts four through nine, the March 18th and March 21st sales, the sales from May 22nd, June 19th, September 9th and October 23rd. We have a board, which I will put up on the easel, but I'm just going to show you. It just summarizes for you counts four, five, six, seven, eight and nine. It gives the dates, March 18, March 21st, May 22nd, June 19th, September 9th and October 23rd and the corresponding counts.

Most took place in the area of Wainwright Street, one

took place when Kemo moved to a different location near south 14th Street and I think it was Madison, the street was.

It gives the weights. Again, you can look at these, just on these, any three of these transactions total more than 50 grams, but you don't have to limit yourself to these transactions. It's during that period he sold to many other people. Even if you put that aside, he conspired with others to sell Kemo DeShawn McCray a total of 190 grams, which is four times what, almost, what the Government has to prove.

We listed the cars, and I'll talk about the Monte Carlo in the moment and the phone numbers which you saw from the chart in front of you connecting the defendant to each and every of the transactions.

You heard Shawn Manson -- I don't mean to minimize the investigation that the F.B.I. did by not discussing the evidence on each count. You heard it, you saw videotapes. This was a sophisticated operation. This was not something that they did willy-nilly. They went out there and they had procedures and they followed those procedures. They had procedures to insure the safety of the evidence, the safety of the informant and the safety of the agents involved. This is dangerous business, right? Surveilling drug transactions in the streets of Newark is dangerous business.

They followed those procedures each and every time. They tried to video where they could. Most of the times they

1 did, sometimes they couldn't, sometimes the video got blocked,
2 a van came in the way in one video, the defendant pulled into
3 a driveway in the other video, but keep in mind the most
4 important thing. Agent Manson testified that on at least four
5 out of six of them, she directly observed the defendant from
6 her vehicle through his vehicle. And don't buy any arguments
7 about tinted windows, go back and look at the evidence.
8 Manson wasn't that far away from the defendant.
9 She saw him stop and count money like a bank teller,
10 remember that? He's counting the money like a bank teller
11 and, I submit to you, like a drug dealer would.
12 So Agent Manson, the foundation is Agent Manson saw
13 him on four of those transactions, with her own eyes, in drug
14 sales with Kemo DeShawn McCray.
15 You also have video and you actually hear the
16 transactions on the audio. Remember again, there are codes
17 Kemo used. This is the end of the deal. There were codes in
18 case his safety became an issue.
19 Before the break, I just want to conclude on the drug
20 portion by talking about the Monte Carlo, the car that's in
21 the chart that he used on every occasion but one. On that one
22 occasion, which is September 9th, he used a rented Grand Am,
23 Agent Manson told you. While it doesn't make much of a
24 difference, other than you heard testimony that Grand Ams are
25 used because they're fast vehicles, right, the car of choice

1 for some drug dealers, it is more than a coincidence, ladies
2 and gentlemen, that the murder vehicle, that his brother
3 Rakeem Baskerville is driving away after Kemo DeShawn McCray
4 is gunned down, happens to be a Grand Am. Think about that.
5 But going back to the Monte Carlo, you heard from two
6 witnesses, Gabe Rispoli, Rocky, the scent dog and that
7 testimony. He's an expert. There is no doubt that that K-9
8 showed that there were drugs in the defendant's Monte Carlo.
9 There are records in there, by the way, of showing
10 when he leased it, the Monte Carlo, and there's DMV records
11 showing he's the registered owner of the Monte Carlo. He
12 drives up in his own vehicle each and every time. It's
13 important to realize that there were drugs in that vehicle.
14 Detective Rispoli says perhaps as between two weeks
15 and a couple of days before. There was some kind of narcotics
16 present because the dog gave him a positive signal.
17 You heard from Special Agent Scimeca, the F.B.I.
18 agent that came in with the video of the traps. While there
19 was a lot of electronic stuff that kind of flew over my head
20 with the wiring and how that worked, you'll remember that was
21 a sophisticated system in the defendant's car used, right, to
22 stash drugs.
23 We know that because inside the trap when it was
24 opened are several things. There are air fresheners,
25 obviously to throw the dog off, there are crack vials.

Remember those two little vials I tried somewhat unsuccessfully to show you on the Elmo and they kept rolling off? Those are crack vials and there are razor blades which are used to cut cocaine, right, drug paraphernalia. Think about that.

There is no doubt, and I know you're probably all saying okay, already, we got it, but there is no doubt that the drug transactions were proven, each and every element of counts four through nine were proven beyond a reasonable doubt that he distributed crack cocaine on those dates, as the F.B.I. watched.

Break.

THE COURT: All right. Let's take a lunch break, folks.

You can go into the jury room and we'll have you back here by 1:00 or so, five after one.

THE CLERK: All rise.

(Jury is excused and the following takes place out of the presence of the jury.)

THE COURT: Let's take a launch break.

MR. FRAZER: What time?

THE COURT: Let's call it 1:00, but the way we have been doing business, it will be more like 1:05 or 1:10.

(Luncheon recess.)

AFTERNOON SESSION

(The following takes place out of the presence of the jury.)

MR. MINISH: Judge, I want to put something on the record.

THE CLERK: All rise.

THE COURT: Mr. Minish handed up some verdict sheets, redacted indictments.

MR. MINISH: And provided defense counsel a copy.

THE COURT: Let's get the jury, please.

THE CLERK: All rise.

(The following takes place in the presence of the jury.)

THE COURT: Take your seats.

Mr. Frazer, you may continue.

MR. FRAZER: Thank you, Judge.

Good afternoon.

When we broke, we finished the drug transactions. I want to go back to the conspiracy, the drug conspiracy and talk about who else participated.

What we have so far is the defendant, William Baskerville, obviously. We have Terrell Thomas, who we heard in the transactions from February and even before that and the transactions in March.

What we also have is a lower member of the conspiracy, someone named James Murphy, who as you remember, was referred to as Car Wash. Remember something the Judge instructed you about the roles of the various conspirators? Car Wash, you'll recall, James Murphy, came to testify and he told you about his experience inside the defendant's car detailing place in Westfield, New Jersey and how he was employed there and he detailed cars.

In a minute, I'm going to read to you from the transcript where he's actually on tape during the June 19th transaction. You'll recall during the June 19th transaction, which is one of the counts, that the agents observed an

1 individual in the car, and we later find out that is James
2 Murphy or Car Wash. That corroborates obviously his
3 involvement in the drug conspiracy, because obviously he is in
4 the defendant's Monte Carlo during a drug transaction.
5 Of course, mere presence is not enough, but we have
6 much more than that. Remember what the Judge said about
7 roles. It doesn't matter how minor your role is or how great
8 your role is because you're responsible for all the acts of
9 the co-conspirators, right?
10 So, what was Car Wash's role? Well, he told you what
11 his role was. First, you can look at the exhibit 115, which
12 is the transcript. If you recall during the June 19th body
13 wire where Baskerville, the defendant, gets on the phone and
14 in the meantime there's a side conversation where Kemo tells
15 him, Car Wash, otherwise it's dirty. I could watch you wash
16 the whole damn block of cars. They're both laughing. We know
17 that's Car Wash because he's talking about Car Wash's ability
18 to wash cars, that's where he got his nickname from.
19 You know, even though he's identified as unknown
20 male, Shawn Manson told you that was Car Wash. I recognize
21 his voice and obviously she had heard Car Wash after the
22 investigation as well. He was a witness for the Government.
23 The F.B.I. sees him in there and he tells you his
24 role. That's at page 4,089 of the transcript in his direct
25 testimony with Mr. Minish. The only reason, by the way, he's

1 a witness in this case, the F.B.I. didn't know who he was at
2 first. They saw him in the car but they couldn't identify who
3 he was, they didn't know James Murphy. They found that out
4 through Koby Cuyler, another person who came here and talked
5 to you, and they found out from Koby that Car Wash is a guy
6 named Jimmy and they got an address from Koby. The F.B.I.
7 went out and found this witness.
8 He says -- "QUESTION: You said you went into the
9 room, then what happened? Why did you go into the room?"
10 What they're discussing is what he saw at the
11 defendant's car detailing place, the car wash in Westfield.
12 "ANSWER: I wanted to see what was going on. Was it
13 over, you know, so I went in the room to see.
14 "QUESTION: Because you had to wait for the
15 defendant?
16 "ANSWER: Right. Because that was my way home.
17 Getting there and getting home.
18 "QUESTION: So you went into the room?
19 "ANSWER: Yes.
20 "QUESTION: Once you were in the room, what did you
21 do?
22 "ANSWER: What did I do? What did I see?
23 "QUESTION: Well, what did you see, start with that.
24 "ANSWER: I saw two razor blades, like chopping the
25 drugs in bottles."

You've seen those from the Monte Carlo, razor blades, the crack vials.

"QUESTION: The jury, if you can explain to the jury, so they understand, chopping it up, what did the drug look like while it was being chopped up? Could you describe what the rock form that you saw looked like?

"ANSWER: Rock form, you use razor blades to chop it down, to get it fine enough to put it into the bottles.

"QUESTION: So you're trying to break off little pieces?

"ANSWER: Right.

"QUESTION: And the rock form is a circle, a square?

"ANSWER: A chunk.

"QUESTION: Chunks?

"ANSWER: Okay.

"QUESTION: Now, you saw that, you went in, what was going on in the room, were there tables, chairs?

"ANSWER: Table." He goes onto describe the card table.

"QUESTION: How many people were sitting around it?

"ANSWER: Two at the time.

"QUESTION: And who were those two people?

"The ones I described when I went and looked through the blinds.

"QUESTION: Was the defendant in the room?

"ANSWER: Yes.

"QUESTION: And where was he?

"ANSWER: In the room also."

So the defendant's in the room while they're chopping up crack into smaller rocks to put in those little glass vials and there's two other men in there doing that.

"Did there come a time when you get involved in this drug process?"

This is the top of page 4,091.

"ANSWER: Yes.

"QUESTION: Okay. Explain to the jury how that happened.

"ANSWER: It was after working hours. I wanted to go home. I went in on my own to speed up the process so we could finish it so I can go home. That's how I got involved.

"QUESTION: Okay.

"What did you do, actually do once you got involved?

"ANSWER: I counted the bottles in tens, put rubber bands.

"QUESTION: When you say "bottles," you mean small little bottles that crack is put in?

"ANSWER: Yes.

"QUESTION: Why was it significant to put them in groups of ten?

"ANSWER: Ten bottles, what you call in street term

is a clip.

"QUESTION: A clip?

"ANSWER: Yes."

Remember, back on January 13, they talked about clips from Taquan Singleton. You saw those 40 vials from March 17, Terrell Thomas sold him clips, ten, four clips, 40 vials.

"QUESTION: So you were counting. What were the other guys doing?

"ANSWER: Still packing."

So there's other men inside the defendant's garage packing the drugs.

"QUESTION: So chopping with the razor blades and putting them in the bottles?

"ANSWER: Yes.

"QUESTION:" Further down on the page, "How often was it done at the car wash?

"ANSWER: Maybe three times a week.

"QUESTION: On a regular basis, were their weeks off?

"ANSWER: Yeah. It wasn't regular everyday, you know, like three times a week.

"QUESTION: And you understand the process from making the powder cocaine into the rock form of cocaine?

"ANSWER: Yes."

He goes on to explain that. Boiling water, pouring

the cocaine in, the baking soda, stirring it with a knife or spoon until it turns into rock form. Then it cools off, take it out.

"QUESTION: Did you ever see anybody do that at the garage?

"ANSWER: Yes.

"QUESTION: Okay.

"ANSWER: One time.

"QUESTION: Who did you see do that?

"ANSWER: The defendant.

"QUESTION: How long did this bottling process take?

"ANSWER: Hours.

"QUESTION: Did you ever get paid for the counting and rubber banding?

"ANSWER: He gave me a couple of dollars for doing it. "

Okay. So you have Car Wash and his role was a [illegible] rights. He testified here under a no prosecution agreement. Because technically for his packaging of those drugs, he could have been charged. It might have been a minor offense, but he had a right to an attorney, he had a right to get from the Government a guarantee he would not be prosecuted. That is what he got.

Now, did he lie because of that? Did he make up these very detailed statements about seeing the defendant in

his garage in Westfield, having others around the card table in a room packaging clips? Well, no. Why? You don't have to take James Murphy's word for it. We would never expect you to take James Murphy's word for it or any other individual person in this case.

But what you do have is corroboration. As I told you, from March 17, and back in February and the types of drugs and the way they were packaged and Terrell Thomas and all the rest.

The bottom line with all the witnesses is, did it make sense to you? Was it telling the truth?

You have somebody else that was mentioned. I'll call them packagers. There are two other people in that room, maybe employees, he said of the car wash and we don't know their names, but you know what? The Judge just told you a little while ago you don't need to know their names. It's not a requirement we prove who they are.

Are they members of the conspiracy? Absolutely. They're being paid, we know Car Wash is being paid, we can infer from circumstantial evidence that he probably pays the other packagers, they're not doing it for free. This is a drug operation going on in the defendant's legitimate business. You can consider that.

You have minor players in the conspiracy, but they're co-conspirators, nevertheless, whether you know their name or

not. That's why James Murphy was here.

And again, this goes to the weight requirement. There's a lot of stuff being packaged in that establishment for distribution. You can consider those amounts in addition to the drug transactions you know about.

Again, I told you about the weight requirement. I think that's clear, but just the last point on that, the defendant is on tape talking about delivering 50 baggers. Remember that term from the tapes? In one transaction where he's looking to distribute 50 baggers, you could find that we've met the burden on the over 50 grams. This was a fairly large-scale drug operation.

Let's talk about another person that you heard a lot about, Ray-Ray, right? Ray-Ray is Horatio Joines. You saw a picture of him.

How do we know Ray-Ray is the defendant's right-hand guy? Koby says it. Koby Cuyler told you that. We'll get to that in a moment.

Anthony Young told you that. He's also observed by the F.B.I. on that surveillance tape that we finally cleared up the difficulties and got to play it for you, where you see the defendant and Ray-Ray, during the conspiracy period, talking with some of the defendant's brothers by their house and walking across the street. We know that Ray-Ray is present during the some of the transactions. We heard that

from Agent Manson. She actually saw someone who they later learned to be Ray-Ray inside the car during the drug transactions.

You also heard that Ray-Ray was known to drive the defendant's Monte Carlo and you heard Koby say on the street, there's only two people who drive your drug car, right. A family member like your brother or your business partner, your drug associate. Because remember, that car had drugs in it, it had traps in it, right? So not everyone is allowed to drive that car. It's not like a family car.

Let's turn to Koby Cuyler. Koby Cuyler came here and, ladies and gentlemen, he was a drug dealer himself. He told you that right off the bat. Again, who better to know about drug conspiracies and inner city and the streets of Newark than a fellow drug dealer? So what does he tell you? He comes here and he tells you that twice during the summer of '03, the spring and into the summer of '03, perhaps into the fall, but in the time period of the conspiracy, he tells you that the defendant came up to him, that Koby Cuyler himself is driving a Monte Carlo like the defendant's, because he bought it with drug money. He comes there to recruit Koby Cuyler to join his drug organization.

I'll read to you from 4202, "QUESTION:" This is Koby Cuyler's direct by Mr. Minish.

"Now, from what you've said, the defendant never came

out and asked you, do you want come work for my drug business? Is that right?

"ANSWER: Yes.

"QUESTION: How did you know that that's what he was asking you about?

"ANSWER: Because on the street, that's how they talk. Like you know, like if a person asks, if you want to come eat with me, that mean come and get money with me.

"If they ask to get down with them, that means come on their team."

Koby Cuyler is aware that Will Baskerville has a team, he has an organization, he runs a block. That's a conspiracy that the defendant happens to be here.

"And did people know you to be a drug dealer?

"ANSWER: Yes.

"QUESTION: So if someone was recruiting you for work, would they think they were trying to get someone to cut their lawn?" Remember we all laughed at that.

"ANSWER: No.

"QUESTION: Now, did you know the defendant to sell drugs?

"ANSWER: Yes.

"QUESTION: Again, I'm limiting it to this time period.

"ANSWER: Yes.

"QUESTION: And crack cocaine specifically?

"ANSWER: Yes.

"QUESTION: What areas did you know the defendant to sell drugs in?

"ANSWER: 17th and Avon, and --

"QUESTION: Is that Newark or Irvington?

"ANSWER: That's Newark.

"QUESTION: Okay.

"ANSWER: And 18th Avenue and 22nd Street.

"QUESTION: Where is that?

"ANSWER: East Orange -- Irvington."

So there's two locations that the defendant controls.

Now, obviously goes without saying, you can't be in two places at once, right, so you need some help to distribute your crack cocaine when you run these two blocks.

"QUESTION: And when you say you knew him to be dealing drugs, what exactly did you see?

"ANSWER: Well, I seen him a couple of times give something to his little guy.

"QUESTION: To his what?

"ANSWER: To his little guy.

"QUESTION: What's a, when you say "little guy," what do you mean?

"ANSWER: Like on the streets we say runner, but when he gave it to the guy, do something for him. Whatever."

Question later on 4204, he says, "He give it to the guy. He give it to the guy. Runners for him. What I mean by runners, for guys that pitching for him on the streets.

"QUESTION: And did you know any of these individuals?

"ANSWER: Yes.

"QUESTION: Okay.

"And do you know any of them by name?

"ANSWER: It was one guy Ray-Ray.

"QUESTION: Now, I'm going to show Government" -- well, skip down.

"QUESTION: And exactly what did you see between the defendant and Ray-Ray?

"ANSWER: I seen him give Ray-Ray something. He jumped out of the truck and he looked like this. He was nervous, he was looking for somebody to see, to make sure the police were or nobody was watching. Then he took off.

"QUESTION: Now, how is it that you determined that you moved your head back and forth, that he was looking around, that meant somehow drugs?

"ANSWER: Because I be selling drugs for a long time so I already know what situations like if you be in. If you be a motion, you got to look out and see and always make sure that you're safe. Okay.

"By "safe," what do you mean?

"ANSWER: Meaning like you don't want to jump out of the car and you got something on you and and police right there. They watching you, you don't want to get caught like that.

"QUESTION: Okay.

"You didn't actually see drugs, just saw his actions?

"ANSWER: Yes.

"Did there come a time when you spoke with Ray-Ray about the defendant?

"ANSWER: Yes.

"QUESTION: Did he say that the defendant and Ray-Ray were working together in a conspiracy?

"ANSWER: Yes.

"QUESTION: When did you speak with Ray-Ray?

"ANSWER: On the streets around my way.

"QUESTION: And did he -- do you recall the day, the time?

"I can't recall it right offhand.

"QUESTION: Were you discussing drugs with him?

"ANSWER: Yes.

"QUESTION: What did he tell you about the defendant?

"ANSWER: He was telling me that he could get it for me at a better price, get it cheaper than what I was getting it for.

"QUESTION: From whom?

"ANSWER: From the defendant.

"QUESTION: Did you ever see Ray-Ray in the defendant's Monte Carlo?

"ANSWER: Yes, I seen him.

"QUESTION: Tell the jury what you saw.

"ANSWER: I seen him in the Monte Carlo and, you know, like he was by himself so you know that's not going to be unless you're his best friend or brother or something like that. And in that case, I already know his whole family so that wasn't his brother or nothing like that, so it had to be a business partner or such.

"QUESTION: Because he was driving the car?

"ANSWER: Yes.

"QUESTION: What was the price, do you remember the price you were quoted?

"ANSWER: Right off hand, I can't remember.

"QUESTION: But the idea was it was better than Kevin Horton's?

"ANSWER: Yes."

Kevin Horton being another drug dealer.

So you hear from Koby Cuyler, again, the conspiracy involving Ray-Ray. Ray is another front man. Ray-Ray is another runner, another guy who distributes drugs on those blocks for the defendant, okay.

So you now have several individuals involved in the conspiracy. I'm just going to say one thing.

You heard the name Hakim Curry a whole bunch in this case. We'll get to him in the murder conspiracy, which we'll turn to next.

We're not here, ladies and gentlemen, so you're not confused, to prove any other conspiracy, but the one you see here. Okay. What happens above William Baskerville, that's not for you, okay. Hakim Curry was charged with a drug conspiracy, you heard a lot about his organization, but that's up here. Hakim Curry may be like the corporate head, the CEO, right. We're only talking about one franchise here, we're talking about two blocks right in Irvington and, by the way, my handwriting is worse than Eric Dock's or Troy Bell's, so excuse me. And another block in Newark. Two blocks in these two cities.

Now, perhaps Hakim Curry is on top of a bigger drug organization and you heard some organization of Will's involvement and Rakeem Baskerville's involvement and there was a chart Mr. Minish did. I don't think it's in evidence, and Anthony Young told you all about who and where William Baskerville fit into this thing. That's not what we're here for.

We're here to show you between two dates, January of '03 and November of '05, or somewhere in between those dates,

that there was a conspiracy among these individuals to sell crack cocaine in an amount over 50 grams, in these areas. That's it.

Don't be confused if the defense starts talking about all these guys and inconsistent about who was in this level versus that level. Makes no difference. We're talking about the blocks controlled by William Baskerville, where he is the head of the conspiracy.

Let's move on now to the murder conspiracy. That does involve -- I'm just going to push this back. That does involve some members of the Hakim Curry drug organization. It involves Rakeem Baskerville, who you've heard about, also known as Rock, Hakim Curry, also known as B. T. Or Hak, Jamal Baskerville, Malsy, Jamal McNeil you've heard about and Hamid Baskerville.

Because those were the individuals that were at that meeting with the lawyer, Paul Bergrin, the day or so following November 25th, 2003. What you have in the murder conspiracy is three brothers, a cousin and a drug associate of the defendants. Okay.

Now, this Paul Bergrin, you heard some testimony about him and he does play an integral part in this conspiracy. He's the person who first passes along to Rakeem and Hakim Curry, Rakeem Baskerville and Hakim Curry, the information from Will that Kemo is the informant.

He then shows up and has a meeting with these individuals on the street and that's the one where he tells us -- that we hear from Anthony Young that he says no Kemo, no case.

I want to start, ladies and gentlemen, with a couple of things about conspiracy law so that you can kind of put a framework on the murder conspiracy. First of all, we don't have to prove, as I said before, an agreement and a meeting, the Judge read that to you this morning. We don't have to prove that each member of the conspiracy knew each other, not a requirement.

We don't have to prove that the agreement was expressed. It could be implied, which is very important.

Finally, that a conspirator need not know the particulars of the whole conspiracy as long as they understand the [illegible] enterprise, and they knowingly agree to further the goal of the conspiracy.

So why is that important? Because on November 25th, when the defendant communicates both to Mr. Bergrin and his brother, Kemo's the informant, he has to be pushed, he has to be handled, we have to knock him off, I'm facing life, he doesn't have to know the details that follow. He doesn't have to know every minute that they're out there looking for Kemo. He doesn't have to know their progress. It ends up he does and we'll talk about. He doesn't have to be in the planning

after that or the details, who's going to shoot him, although we'll find out he knew that as well.

So I just wanted you to keep that in mind and keep in mind tomorrow when you hear the defense summation and question, is that something that the Government has to prove? Constantly ask yourself, is that part of the elements of the offense in the legal charge.

The defendant did not outright tell anybody, you must kill Kemo McCray for me. We don't have it on tape. We don't have it recorded, but that doesn't mean it didn't happen.

He certainly committed an act in furtherance of the conspiracy. He told his brother, and his lawyer, Kemo's the snitch, [illegible]. He set the plan in motion. He initiated the conspiracy right from the beginning. Without that information, Kemo McCray does not die.

So let's look at the evidence. The defendant tells Bergrin, Paul Bergrin, the lawyer, to tell Curry and Rakeem Baskerville it's K[illegible]. You heard the defendant's admission to numerous people that he did this, that he told his brother to handle his business, to push Kemo.

Now, I want to talk about it not being recorded because there's been a lot of talk about this ability to record calls and the implication is, well, why isn't this on tape? First of all, we shattered that myth that the defense has been portraying in cross-examination with Bill Cannon

yesterday.

Hudson County, before November, 2006, had no ability to tape calls, period. Okay. That's a non-issue.

Even if they were able to record calls, it was not true, inmates such as the defendant, knew how to beat the system. They knew how to make three-way calls, they knew how to make these relay calls Bill Cannon told you about. They knew the sensitivity and generally how to beat the system. They knew they could get information about.

How about cell phones being smuggled in? Bill Cannon told you yeah, that happens. There's plenty of ways that messages got out, pro visits with lawyers, those are not recorded. Visits with family members, those are not recorded.

So this recording issue, and then this issue about why didn't anybody wire up and go get the information from the defendant? That's fantasy, ladies and gentlemen, that's not real life.

There was a brief attempt by Eric Dock to get wired up, but by July, by the time that happened, the defendant had been told, shut your mouth and we'll get to that. Hakim Curry ordered him, be quiet, people in Passaic County are talking about you committing the murder, stop it.

That's a non-issue. It's a complete non-issue in this case to divert your attention away from the facts.

Now, Anthony Young testifies about the events after

[redacted]

by the way, in Rakeem Baskerville's van when they're told that. That's the testimony.

[redacted]

Agent Hilton told you that's what he drove in that time period. That part is corroborated.

The conversation ensues where, after the initial appearance, right, that we talked about, Rick Hosten, Kemo's a fucking bum, we know that the message got out. The message got out to Paul Bergrin and he was on the phone with Hakim Curry and we know that's corroborated because we have the phone record in evidence. You can look at it. I tried to put it up. You can look at it.

Agent Hilton told you Hakim Curry's cell phone number which is an 862 number and we have a record that Paul Bergrin's cell phone called him on the afternoon of November 29th, which gels with the timing of the initial appearance and Paul Bergrin meeting with his then client, the defendant.

So Bergrin tells Hakim Curry, because Hakim Curry is relaying to Anthony Young as the phone call is happening, he tells them the specifics about the complaint that was received in court that day and he tells them about the various sales.

Then he said that Will told him the informant is a guy named K-Mo. Now, the lawyer screwed up the pronunciation. He said K-Mo. Then what happens? Anthony Young and Rakeem Baskerville, Young tells you, said K-Mo, no, you mean Kemo. Okay. Can you imagine Anthony Young making that up, that detail?

We know that the call happened. How did Anthony Young know the call was going to be on the phone record? How did he know that Hakim Curry was driving a blue Range Rover? Again, we don't rely on the witness himself, we rely on the other evidence.

Let me read to you from 4350. This is a fairly long passage, ladies and gentlemen, but this is the crux of Anthony Young's testimony as to these very crucial conversations in the murder conspiracy.

4350, "QUESTION: Where did this conversation take place?

"ANSWER: Inside Hakim's truck.

"QUESTION: What kind of truck does he drive?

"ANSWER: A Range Rover.

"QUESTION: Set the scene for the jury. Where was

everybody sitting?

"ANSWER: I was sitting in the back seat, Rakeem Baskerville was in the passenger seat, Hakim Curry was in the driver's seat.

"QUESTION: And how did this conversation take place?

"ANSWER: On cell phones.

"QUESTION: Explain to the jury what happened during the conversation.

"ANSWER: During the conversation, Hakim Curry asked Paul Bergrin, check on Will. Find out what was going on, cause the F.B.I. got him.

"Paul Bergrin was talking to Hakim. I couldn't hear Paul Bergrin, I could here Hakim Curry. Hakim Curry said he wanted to know everything was going on and see if he can get him bail.

"QUESTION: Did Curry pass along any information to you guys? By that I mean you and Rakeem sitting in the vehicle?

"ANSWER: In a later conversation.

"QUESTION: And he goes on to say, to tell us about the later conversation.

"ANSWER: He was talking to Paul Bergrin again on another, different phone call.

"QUESTION: Where was that?

"ANSWER: Inside the truck, the same truck, sitting in the truck."

Now, Curry has numerous cell phones so we don't know if it was on, when he says, "the different conversation", whether it was the same phone, but there's a conversation.

"QUESTION: Where was that?" I read that.

"QUESTION: Now, you're sitting in the truck. Is it riding around."

"ANSWER: No, parked.

"QUESTION: Is it the same Range Rover?

"ANSWER: Yes.

"Where is everybody sitting in this conversation?

"ANSWER: Same spot."

"QUESTION: Okay.

"And Curry's on the cell phone with Paul Bergrin?

"ANSWER: Yes.

"QUESTION: Tell the jury what happened during the course of that conversation.

"ANSWER: He asked him did he find anything out.

"QUESTION: That's Curry speaking?

"ANSWER: Yes. I know he told Hakim Curry that a person that told on Will is guy nemed Kemo. Actually he said K-Mo, he didn't say the name correct.

"QUESTION: Who didn't say the name correct?

"ANSWER: Paul Bergrin.

"QUESTION: How do you know that?

"ANSWER: Because Hakim said K-Mo and he didn't -- because Hakim said K-Mo and he don't know him.

"QUESTION: Just so the jury is clear, Curry is repeating things --

"ANSWER: Yes.

"QUESTION: -- to you guys?

"ANSWER: What Paul Bergrin was saying on the phone?

"QUESTION: He turned and said K-Mo.

"ANSWER: He said somebody named K-Mo is the informant.

"QUESTION: What, if anything, did you say after that?

"ANSWER: Me and Rakeem came to the conclusion that the informant was Kemo, not K-Mo.

"QUESTION: And that was based on what?

"ANSWER: Based on that we know who he is.

"QUESTION: So it was just a name pronunciation?

"ANSWER: Yeah. He made a mistake and said K-Mo instead of Kemo.

"QUESTION: Did -- was any information about the actual charge passed along?

"ANSWER: Yes.

"QUESTION: Tell the jury what was passed along.

"ANSWER: Hakim ran down some of the sales that were

1 made, said something about he sold 20 something grams this
2 day, sold 14 grams to this person this day, which was still
3 the guy Kemo. And we came to the conclusion it was Kemo who
4 was the informant.
5 "QUESTION: So this information is going from Paul
6 Bergrin to Curry and he's in turning repeating?
7 "ANSWER: Yes.
8 "QUESTION: Now, Mr. Young, you told the jury that
9 the name was passed along as K-Mo?
10 "ANSWER: Yes.
11 "Tell the jury what that meant to you.
12 "ANSWER: As soon as the name is passed along from
13 whoever Paul got the name from, which would be Will
14 Baskerville, that means if you cross the Baskerville's and
15 somebody gives you the name who did it, get rid of him.
16 "QUESTION: What does "get rid of him" mean?
17 "ANSWER: Kill him.
18 "QUESTION: And why do you think it was a demand?
19 "ANSWER: Because if this guy still around and one
20 of the Baskerville's go to prison.
21 "QUESTION: And what was defendant -- again, this
22 period of time I'm talking about, would have been when he's
23 locked up.
24 "What was his position, meaning the defendant's,
25 within the organization, was he an important guy, unimportant

1 guy?
2 "ANSWER: Very important."
3 Of course, ladies and gentlemen, he was very
4 important, because he's Hakim Curry's cousin's, right. He was
5 Rakeem Baskerville's brother.
6 He was an important member of that drug organization.
7 "QUESTION: Did you find out," we're on 4358. "Did
8 you find out about how much time? Again we're talking about
9 the same day, the day the defendant was arrested, that the
10 defendant was facing during those conversations?
11 "ANSWER: Yes, sir.
12 "QUESTION: Okay.
13 "Do you recall what kind of time he was facing?
14 "QUESTION: How did you find out about how much
15 time, who told you?
16 "ANSWER: Hakim Curry.
17 "QUESTION: And what did he tell you?
18 "ANSWER: He said that the defendant was facing life
19 in prison.
20 "QUESTION: Okay.
21 "Did you have another discussion or meeting about
22 this a few days later?
23 "ANSWER: Yes.
24 "QUESTION: Tell the jury when and where that took
25 place.

"ANSWER: 17th Street and Avon Avenue.

"QUESTION: Again, that's Jamal Baskerville's house?

"ANSWER: Yes.

"QUESTION: And using the date the defendant was arrested as a starting point, how many days later did that meeting take place?

"ANSWER: About four or five days.

"QUESTION: Who was at that meeting?

"ANSWER: Rakeem Baskerville, Jamal Baskerville, Jamal McNeil, myself and Paul Bergrin.

"QUESTION: Was Hakim Curry there?

"ANSWER: Yes.

"QUESTION: Before Paul Bergrin showed up, what were you discussing with those guys?

"ANSWER: Just general talking about how much time Will Baskerville was facing.

"QUESTION: And at some point Paul Bergrin showed up?

"ANSWER: Yes.

"QUESTION: Tell the jury what the conversation was when Paul Bergrin, what did he say?

"ANSWER: He was telling us that Will was never going to get bail because his criminal history and that the crack that he sold would give him life in prison."

Ladies and gentlemen, each point you have to be

asking yourself, how did he know that? If he did not live that, how did he know that? If he was not told that, that day, how did he know that?

"QUESTION: Tell the jury what the conversation was from Paul Bergrin, what did he say?

"ANSWER: He was telling us that Will was never going to get bail because of his criminal history. It goes on. If somebody was to testify against him, being the person that bought the drugs off of him and if we didn't get rid of that person, that Will Baskerville would never see the streets again in his life."

Again, the lawyer, a co-conspirator is telling them, it's Kemo. If you don't do something, did you don't get rid of him, then Will is never getting out of jail.

"QUESTION: And you said if someone testified, did you have anybody in particular in mind?

"ANSWER: Kemo.

"QUESTION: There was nobody else?

"ANSWER: No.

"QUESTION: And did he speak, Mr. Bergrin that is, speak about any other additional evidence, recordings perhaps?

"ANSWER: Yeah. He said they have video recordings of Will's call and one or two audios."

How did he know that? Did the F.B.I. share that with him? I don't think so.

"QUESTION: Did Paul Bergrin say anything about or make any promises if Kemo was taken care of?

"ANSWER: He said if there was no Kemo to testify against Will, there would be no case.

"QUESTION: Did he say whether or not he would be able to get William Baskerville out of jail?

"ANSWER: He said he was for sure.

"QUESTION: Did Mr. Bergrin ask about any payment?" It continues on, a few lines down.

"QUESTION: Tell the jury what he did, I guess.

"ANSWER: He just said if Kemo was dead, that Will Baskerville would definitely come home from jail.

"QUESTION: What I'm talking about specifically is payment for legal services.

"ANSWER: Oh, yes, he did."

And they discuss payment for legal services.

"QUESTION: Now, at some point did Mr. Bergrin leave the group?

"ANSWER: Yes.

"Describe for the jury what, if anything, was said?

"ANSWER: When he left, he said remember what I said, no Kemo, no case.

"QUESTION: How long did that meeting take place?

"ANSWER: About 20 minutes."

Twenty minutes there is a discussion out on the

street between the co-conspirators discussing who the informant is, that they have to get rid of him if they ever hope to see their brother, cousin, drug associate come home. And it was made clear without this information, Will comes home, Paul Bergrin assures that. You get rid of him, I'll get him home and they'll be no case.

"QUESTION: Tell the jury who else was involved.

"Me, Jamal Baskerville, Rakeem Baskerville, Jamal McNeil and Hakim Curry.

"And what was discussed?

"ANSWER: It was discussed that we got to start looking for this guy, to get him off the street so he couldn't testify against Will."

The motive is there, the reason is there. You got to keep him off that stand so he wouldn't testify against Will.

"QUESTION: Were you concerned whether you would be able to find him?

"ANSWER: Yes.

"QUESTION: Why was that?

"Because he was F.B.I. We thought they probably would be hiding him.

"QUESTION: Did anybody speak about any payment to take care of Kemo?

"ANSWER: Yes."

Again, an agreement, there's an agreement among the

1 co-conspirators about how it's going to be done, about the
2 details. But Will Baskerville doesn't have to be part of
3 that. Because Will Baskerville is not out on the street
4 talking about payment, talking about how we're going to find
5 him, talking about no Kemo, no case, he is still responsible
6 for the conspiracy under the law. Okay.
7 He agreed with them to put this plan in motion.
8 "QUESTION: Tell the jury what happened with respect
9 to that conversation.
10 "ANSWER: Well, they asked me and Jamal McNeil.
11 "QUESTION: Who is they?
12 "ANSWER: Rakeem Baskerville, Hakim Curry.
13 "QUESTION: Okay.
14 "ANSWER: Who wanted to get paid $15,000 to kill
15 Kemo -- I'm sorry.
16 "QUESTION: Okay.
17 "ANSWER: Who wanted to get paid 15,000 to kill
18 Kemo.
19 "QUESTION: And how were the payments going to be
20 made?
21 "ANSWER: Through Hakim Curry and Rakeem
22 Baskerville.
23 "QUESTION: Who was going to put up money?
24 "ANSWER: Hakim, 7500 and Rakeem, 7500."
25 Now, a few days after November 25th, right, or right

1 around November 25th and already there's an agreement in place
2 to kill Kemo DeShawn McCray based upon Will's demand.
3 "QUESTION: At that point on that day, had it been
4 determined if Kemo was found who would actually shoot him?
5 "ANSWER: No.
6 "QUESTION: Why not?
7 "ANSWER: Because either Jamal McNeil was going to
8 do it or I was going to do it.
9 "QUESTION: Why wasn't it decided? Like why wasn't
10 it decided absolutely you or him?
11 "ANSWER: Because if he was seen and one of us
12 wasn't around, the other one had to do it."
13 Finally, it's asked, "During these discussions, after
14 the defendant was arrested, were there ever any discussion
15 about whether or not the defendant would cooperate with the
16 Government against you or other members of the group?
17 "ANSWER: No, we knew that would never happen."
18 If you remember, Anthony Young seemed surprised that
19 the question was even asked. He cooperate against his
20 brother, against his cousin? No way, never going to happen,
21 wasn't even a concern.
22 Why is that important? It's important to combat any
23 argument that may be made that somehow Hakim Curry and Rakeem
24 Baskerville did this all on their own. They had no motive to
25 do this, but don't believe for a second that they were

1 motivated in anything other than to keep Kemo off the witness
2 stand. Okay.
3 They weren't concerned that they were going to be in
4 trouble because they knew that Will would never rat them out,
5 not in a million years. You just don't do that.
6 "QUESTION: And why not?
7 "ANSWER: We always looked at him as a real stand-up
8 guy.
9 "QUESTION: I'm sorry, a real what?
10 "ANSWER: Stand-up person.
11 "QUESTION: What do you mean by stand-up?
12 "ANSWER: Like he would never tell on nobody."
13 Okay. Keep that in mind.
14 The only motive for Rakeem Baskerville and Hakim
15 Curry was to help Will in his request and his demand to get
16 Will out of trouble. They weren't concerned that we better
17 knock this guy off because Will was going to cooperate and get
18 them in trouble.
19 So again, how do we know Anthony Young didn't make
20 this up, he didn't exaggerate this, didn't lie about this?
21 Think about this, he told these details, he told this to Shawn
22 Hanson as early as January of 2005. We'll talk about how he
23 came in in a minute. The very beginning of the plot.
24 Again, how is this corroborated, what I just read to
25 you? The phone record, right. It's exhibit 453, Paul

1 Bergrin's records from his cell phone to Hakim Curry's cell
2 phone. It was a call that afternoon, after he would have
3 gotten the information from Will.
4 Second, Rick Hosten tells us about the conversations
5 which I already have been through with the defendant on that
6 date, that fucking bum Kemo.
7 You have the record of the November 25th initial
8 appearance where he was denied bail and that he was facing a
9 lifetime in jail.
10 You have the fact that Greg Hilton tells you Paul
11 Bergrin is not just any lawyer. He's the organization's
12 lawyer, he's Hakim Curry's lawyer, okay. He furthers the
13 interests of the conspiracy, of the drug organization. Don't
14 think how could a lawyer do this? I hope you're not thinking
15 that. He was in on it, ladies and gentlemen, there is no
16 doubt about it.
17 When you say no Kemo, no case and you tell that to
18 Rakeem Baskerville and Hakim Curry, you know what's happens.
19 He's a member of the conspiracy like the others.
20 Next, you have the statements made by Eric Dock and
21 Troy Bell that Will repeats over and over in a legal context
22 what happens if I don't have an informant, what happens to my
23 case? Well, why wouldn't he have an informant? Is he going
24 to disappear? Perhaps.
25 Eddie Williams tells you very eerily similar things

1 that Anthony Young tells you that the defendant tells Eddie
2 Williams, well, without a witness, there is no case, which is
3 very similar to what Paul Bergrin told them on the street, no
4 Kemo, no case.
5 Ramaine York tells you just days before the murder,
6 if you remember this incident, he's watching TV and
7 Baskerville, the defendant, gets off the prison phone and he
8 comes over and tells Ra-Ra, I just got in touch with Rakeem
9 and Rakeem is getting fat Ant to go after the witness, to
10 handle it. Critical testimony.
11 Do you see how everything Anthony Young says is
12 corroborated by information from other people, some of which
13 he doesn't even know?
14 Perhaps a tremendous piece of corroboration is Devon
15 Jones. Devon Jones, the guy from the garage, the hard-working
16 man who has nothing what so ever to do with this case, except
17 that he works in the garage and one night he tells us, Anthony
18 Young and Rakeem Baskerville come to him, talks to his boss
19 and he agrees for 20 bucks or $30 to melt down a gun.
20 Now, does Devon Jones have any reason to lie? He,
21 need, was given a no prosecution agreement because technically
22 he melted down the gun, technically that could be charged with
23 it. He could be charged with it, he's never going to be
24 charged with it and he was entitled to that. So we could put
25 words in his mouth? So we could ask him to lie and

1 corroborate Anthony Young? I don't think so.
2 What does he tell you? He tells you through a photo
3 array that the agent showed him, oh, yeah, the guy in that
4 photo array, Anthony Young, he came in the shop all the time,
5 I worked on his cars. He came in that night with the gun.
6 This other guy, who happened to be Rakeem
7 Baskerville, in the second photo array, I'm pretty sure, not
8 100 percent positive, but that looks like the guy that came
9 with him. Ladies and gentlemen, right there, Anthony Young is
10 corroborated. He came in that night with a gun to melt down
11 after the murder. You have independent evidence that what
12 he's telling you is true on that account.
13 Next, you've got something else, which is critical
14 evidence, need. Government exhibit 32 is the visitation
15 records, okay, to the Hudson County Jail. The visitation
16 records and I showed you this yesterday, show that on March
17 3rd, 2004, March 3rd, the day after the murder, right, the
18 murder takes place about 2 p.m. on March 2nd. Less than 24
19 hours later, right, at 9:11 a.m., I think it is and you can
20 look at the records, exhibit 32, take it back in the jury room
21 and look at it. Who visits the defendant? His wife, Deidra
22 Baskerville. So the defense is going to say, so what, his
23 wife came to visit him? All right. That's fine.
24 Go down an hour later, about 10:20 a.m. Who visits
25 him at 10:20 a.m. the morning after the murder? His brother

1 Rakeem Baskerville, uses his own name, writes it in, it's on
2 there. I tried to show it to you yesterday.
3 Who else? His partner in the drug business, Horatio
4 Joines, Ray-Ray.
5 Can you imagine that conversation? Kemo McCray is
6 assasinated on the streets of Newark on March 2nd, two p.m.
7 and who's there the next morning? Rakeem Baskerville.
8 You'll notice in the records, he doesn't visit often.
9 He doesn't use his name most often, but he's there and imagine
10 that conversation? We got him, right? We took care of your
11 business, we got him for you, he's dead.
12 He was probably also saying, by the way, I got to go
13 on the run now, I'm out of here. Good luck, brother. I took
14 care of the business and now I'm going, because you heard from
15 Bill Cannon, Greg Hilton, he was a fugitive, no one could find
16 him. He took off after the murder and so he was probably
17 going to say good bye to his brother.
18 And again, you know what Anthony Young is saying is
19 true about Rakeem Baskerville being part of the conspiracy
20 because Government exhibit 31 tells you that, and that is the
21 discovery material found in Rakeem Baskerville's house on
22 March 8th, by the Drug Enforcement Administration during their
23 investigation of Hakim Curry's drug gang, right?
24 Look at that material. It's a letter from the United
25 States Attorney's Office and it actually has early transcripts

1 in this case, some of the same transcripts that are in that
2 book, that's exhibit 31, says Paul Bergrin and it's from AUSA
3 John Gay. It's material relating to this case given over to
4 the defense under the law, right, discovery material. But
5 where is it? In Rakeem Baskerville's on his dining room table
6 I think the testimony was.
7 Why? Of course, it's there so he can look through
8 and try to get some hints as to where this guy Kemo is. Where
9 does the F.B.I. have him stashed? We're looking for him, we
10 need information on him, right.
11 So it all corroborates what Anthony Young is telling
12 us. He didn't make up Rakeem Baskerville and Hakim Curry were
13 in the conspiracy and paid him to kill the witness. The
14 conspiracy is put in motion and again right there, in the
15 early days after November 25th, under the law as far as the
16 defendant, it's complete. Didn't even matter if it was
17 successful. If they just agreed to kill him, if the defendant
18 agreed with others, one other to kill him and they never
19 actually found him, he's still guilty of the conspiracy under
20 the law.
21 Remember the testimony gives you, Rakeem -- the
22 conspiracy does go on, it doesn't end there. They're looking
23 for him everywhere. They're looking and sending out feelers.
24 In Bradley Court I think they had a site, in Irvington, but
25 they're looking for him. They're looking for him from until

1 November until March.
2 Ironically, even Kemo McCray tells us something about
3 a part of the conspiracy, though he wasn't here to testify.
4 Shawn Manson, you may recall, tells us that on February 26,
5 Kemo McCray sees Rakeem Baskerville's van, right. That is a
6 moment where he changed from, well, I don't think I need to
7 relocate to, oh, my God, I better get out of here, they're
8 going to kill me.
9 You heard evidence of that from Shawn Manson.
10 Ironically also, or not coincidentally, that's the day before
11 Ramaine York tells you that telephone incident where he says I
12 got in touch with my brother and he's getting Fat Ant to do
13 it. That was at the end of February. It's all at the same
14 time and it all corroborates each other.
15 Ladies and gentlemen, the members of the conspiracy I
16 think are obvious. Again, this was not Curry and Rakeem
17 Baskerville acting on their own, they had no motive.
18 This was a concerted effort by those individuals to
19 find Kemo and kill him. Ladies and gentlemen, if you believe
20 Anthony Young, again, the defendant is guilty. Because what
21 does he say about Jamal McNeil and while this was not a
22 necessary part of the conspiracy, it's an important part.
23 Jamal McNeil is the conduit, he's the guy, one of the
24 guys anyway, there's probably plenty of communications through
25 the three ways and cell phones and visits and family members,

1 but one way we know that Will Baskerville was not only
2 involved with the conspiracy but pushing hard to get Kemo
3 killed was through the testimony about Jamal McNeil and going
4 back and forth to the jail. I just want to read that to you.
5 It's from 4375 in the transcript.
6 "QUESTION: During the course of time from whenever
7 it was you started looking through up until March," this is
8 the direct examination of Anthony Young. "During the course
9 of time from whenever it was you started looking through up
10 until March, when you actually found Kemo, were there any
11 communications with the defendant?
12 "ANSWER: Not verbally through me, no.
13 "QUESTION: Okay.
14 "You personally didn't have any?
15 "ANSWER: No."
16 Again, the defense played that, you never personally
17 spoke to Will? You never spoke to him in all this time?
18 Again, ladies and gentlemen, read the definition of
19 conspiracy. He doesn't have to personally communicate the
20 agreement with the person who eventually kills Kemo McCray.
21 Don't get side tracked by that. That's why I'm spending a lot
22 of time on conspiracy because it is confusing. Okay.
23 The defendant didn't even have to know the roles of
24 the people, so the fact there was no direct communication
25 between Anthony Young, right, and the defendant means nothing.

They were communications sent both on November 25th and thereafter.

"QUESTION: Did any member of the group have any contact with the defendant?

"ANSWER: Yes.

"QUESTION: Okay.

"Who was that.

"ANSWER: Jamal McNeil.

"QUESTION: How did he have contact with the defendant?

"ANSWER: He used to go visit him.

"QUESTION: Visit him where?

"ANSWER: Hudson County Jail.

"QUESTION: How often did he go to visit him?

"ANSWER: About every two or three weeks.

"QUESTION: So over the period of time from November until March, pretty consistent every couple of weeks?

"ANSWER: Yes.

"QUESTION: And what information did the defendant give to Jamal McNeil?

"ANSWER: Told Jamal McNeil to tell us that we got to hurry up and get rid of the CI, which is Kemo, and he needed to be dead quick or he was going to spend the rest of his life in prison.

"QUESTION: Did he mention anything about a speedy

trial?

"ANSWER: Yes.

"Tell the jury what he said.

"ANSWER: He said if the CI, Kemo, is dead, he would put in for a speedy trial and come home quick.

"QUESTION: Did he ask for updates on the search for Kemo?

"ANSWER: That's what Jamal McNeil told me, yes.

"QUESTION: What did he tell you?

"ANSWER: Just ask me, did we see the guy yet, has anybody heard anything?"

Now, again, go back to that visitation log. I assume the defense is going to stand up there and say, where is Jamal McNeil on the visitation log? I'll tell you what, he's not there. I mean, he may be there once, but he's not there the eight or ten times Anthony Young says. That was explained to you, that was explained by Bill Cannon, by Anthony Young.

First of all, all these guys, Jamal McNeil, the others, have multiple photo I.D.'s they use. It's not unusual. Anybody can get into the Hudson County Jail to visit anybody if they show a photo I.D. Bill Cannon told you that, the marshal himself told you that.

Just the fact that he's not in the log, obviously he's not going to go use his name, his real name during a murder conspiracy, where he's there to communicate about

taking a CI's life, cooperating witness' life, right. He's obviously going to use one of his fake I.D.s. I think there was testimony about the group telling him, you shouldn't even visit him at all. It's too dangerous. They didn't even want him to do because it was too dangerous. He's not going to write in big bold letters, Jamal McNeil.

The difference on the third is the murder is done. He's going on the run. Don't get caught up in the defense argument that where is he on the visitation logs? I'm telling you, he's not going to be there for that reason.

Again, the conspiracy, there's really no issue that a conspiracy existed, okay. The defendant was a part of it and they all had the common goal to kill Kemo.

Clearly, again, much like the drug conspiracy, it wasn't a one-man operation. All the witnesses said at the very minimum there was a get-away driver in the car. Remember that? Which corroborates that there is a conspiracy. There's a second guy. This is not someone coming up, killing him, Anthony Young doing it by himself, right.

There's a concerted plan, there's a plan in place, a well thought-out premeditated plan.

We also know that Rakeem was with him at the gun melting. There is no question about Devon Jones' testimony. Those are acts in furtherance of the conspiracy. The get-away driver, melting the murder weapon are key acts that go to the

conspiracy.

When you go back to deliberate, it's not that a matter of was there a conspiracy. There clearly was.

There's been some talk about Anthony Young was not the shooter. There seemed to be early on in the cross-examination some implication that this guy William Lattimore was the shooter because of the mystery dreadlock man, remember that? There was some implication that Jamal McNeil was the shooter. I'll talk a little bit about that.

Again, another side issue. We'll talk about why it's clear that Anthony Young was not only present but was the shooter on March 2nd. Just to go back to the legal issue, it doesn't even matter legally whether the shooter was Anthony Young or was Jamal McNeil or another member of the Curry organization, William Lattimore, perhaps. Legally it makes no difference. Once that agreement is made, it doesn't matter who the shooter was. We're not here to prove the murder of Kemo DeShawn McCray. We're here to prove the agreement to murder Kemo DeShawn McCray. Clearly someone in the group shot him and clearly there was a conspiracy. Again, side issue, don't get bogged down on that.

Let's clear that up right now. First of all, this William Lattimore thing. Johnnie Davis saw, he told us three seconds. He's the step-father who was beside his stepson when he was shot down. Johnnie Davis says the whole thing took

1 three seconds. I heard shots, I turned, I saw the shooter put
2 the gun in his pocket and I saw Kemo lying on the ground and
3 then I saw the shooter jump into the car that sped off.
4 Three seconds. So he hears the shots, he turns and
5 sees the body on the ground, he sees the shooter. I don't
6 know which order, put the gun in the pocket, sees the body on
7 the gun and sees the guy speed off in three seconds. Did he
8 get a chance to see him? I submit to you, no.
9 Doesn't really matter legally, but factually it's
10 just silly. He tells you that he picks out this guy William
11 Lattimore because he has dreadlocks, he's about 30 percent
12 sure and no one takes that seriously. Newark P.D., Detective
13 Sabur told you no, that wasn't an I.D., you couldn't rely on
14 that. Manson said no, that wasn't an I.D., we didn't
15 interview the guy, that was nothing.
16 William Lattimore is not the shooter.
17 The defense shifts to how about Jamal McNeil because
18 he has dreadlocks so he must be the guy. Remember, Anthony
19 Young, we'll talk in a minute, reversed his role for a period
20 and said Jamal was the shooter. Again, it doesn't matter.
21 You should be convinced by now Anthony Young was the shooter
22 for many years we'll talk about, but Jamal McNeil -- Anthony
23 Young was shown a picture of Jamal McNeil by the defense.
24 It's in evidence, from 1997.
25 Why is that silly? Because Anthony Young told you he

1 hadn't met the guy until 2003. Yet the defense says, Mr.
2 Young, here's a picture. Does that look like the guy, the way
3 Jamal McNeil looked around March of '04? Anthony Young says
4 yeah, I guess.
5 He doesn't know it's from 1997, but there's another
6 picture that we put in from 2002, okay. Much closer to the
7 time of the murder. He doesn't have any dreadlocks in 2002.
8 Anthony Young even tells you, I've never known him to have
9 dreadlocks.
10 Don't go down that road because a picture was put in
11 front of Anthony Young and he said, yeah. It doesn't matter,
12 ladies and gentlemen who's the shooter.
13 We know Anthony Young is being truthful when he tells
14 you that he, himself, shot Kemo DeShawn McCray. First of all,
15 think about the chilling detail that he gave you of every
16 aspect of that day. There was this map. Frankly; ladies and
17 gentlemen, I was going to go through it again, but he gives
18 detail after detail, if you remember about the murder. I hope
19 you can all see it. I'm not going to mark it up, but he told
20 you the exact positions of every member.
21 Hakim Curry was up on 20th Street, right. That they
22 waited on 18th by the house that Kemo was doing construction
23 work on for hours. He told you about the car, about the plan
24 with the license plates, how the three cars would drive so the
25 middle car wouldn't be seen by the police. He told you he was

there and waiting for a couple of hours. Hakim Curry chirped him and said let's go somewhere so anybody passing by wouldn't be suspicious. They're on communication devices that he told you about, the direct connects.

He tells you detail after detail of the plan. He tells you about the nine millimeter gun, he tells you about the trap in Rakeem Baskerville's car. He tells you how he pulled up, how they were at the house -- I'm sorry, on 18th Street and how when finally around 1:30, Johnnie Davis and Kemo leave, which turns out to go get some cigarettes up in the store on 20th Street.

How Hakim Curry's up by the store. How him and Rakeem move out, Rakeem pulls the Grand Am with the no license plates to the corner and how he gets out and walks north on South Orange Avenue, right up to the place he's hiding in the doorway, I think it's a restaurant or store.

I mean, think about that detail that he gives you. He doesn't come in here and say, yeah, I saw Kemo and they told me to shoot him, so I shot him. Every single detail, right, which, by the way, we know is corroborated by the witnesses. We'll get to that in a minute.

He tells you how Curry chirps him, says he's coming. He waits in the doorway and as he crosses paths with him on that sidewalk by 19th Street, he comes around and shoots him with his left hand.

So he knew where the cars were parked, he knew what type of communication devices, he knew what type of gun. That's corroborated, because you heard from the crime scene, you heard from Detective Sabur, he knew it was a nine-millimeter. That information wasn't shared with him, ladies and gentlemen.

He told you, I never saw the autopsy pictures, I couldn't even recognize them when shown by the defense. He's never seen them before. Obviously, law enforcement is not going to share their crime scene reports, autopsy reports or any other reports with Anthony Young.

He knew there was a doorway at 19th Street. He knew how they prearranged the whole thing and agreed afterwards, even afterwards how they arranged to meet at a garage to stash the gun. He knew about the traps in Rakeem Baskerville's van. We even showed you that van that was taken by Agent Hilton during a search warrant, right, on March 8. Sure enough, there were traps in the van, exactly where Anthony Young said they were. To hide the nine millimeter gun on the day of the murder. How did he know that?

He knew that because he knew Rakeem Baskerville's van and he knew that's where the gun was kept on the day. That's independent corroboration for what he was saying, that the gun was hidden in a trip. He even told you where it was in the front dashboard. You can look at that. It's an exhibit in

1 evidence.
2 By the way, they're very similar traps to the Monte
3 Carlo that the defendant had. They have the same mechanism,
4 you can see it in the picture.
5 Now, he also told you that a Grand Am was used, which
6 is really quite extraordinary because you know from another
7 witness, Mr. Williams, just a witness, just a guy working on a
8 car across the street, no motive to lie, he tells you I heard
9 the shots, I looked across and he knew his cars, ladies and
10 gentlemen. Remember that? We all laughed because he
11 described the way the bumper is shaped on a 2002 Grand Am or
12 something like that. He knew his Grand Am, no doubt about it,
13 no one questioned him about that. He didn't see any plates.
14 So we know the car didn't have plates. Exactly what
15 Anthony Young said. Independent corroboration of what Anthony
16 Young said. There is no other way he could have known that.
17 He also knew details that were among the Grand Am,
18 but other details that Shawn Manson told you were never made
19 public and law enforcement does that on purpose so we know
20 when someone is telling the truth when they come forward. The
21 key detail there is the cigarette that he had, which the ME
22 told you about. There's a bloody cigarette recovered and the
23 mask, that dust mask that he had.
24 How did Anthony Young know that? He hasn't seen the
25 crime scene, hasn't see the autopsy photos, but he tells you,

1 yeah, when I shot him, he had this dust mask and he had a
2 cigarette.
3 He also knew the body was face down. How did he know
4 that? That's true, you could see the crime scene photos, the
5 body is face down.
6 He also knew the number of shots. He said in his
7 testimony there were three or four shots fired. Four shell
8 casings, four shots. He only hit him three times.
9 He also knew he hit him in the head. I mean, how did
10 he know that? He could have said, I hit him in the chest,
11 right. He could have said, I hit him in the leg. He knew he
12 hit him in the head and he knew not only that but he knew it
13 was a left-handed shooter. Left side, right.
14 The ME tells you that -- Anthony Young said it was --
15 consistent with the evidence. Dr. Shaikh told you that. I
16 did that demonstration. I couldn't reach up over my partner's
17 head to get the angle right, but he told you left side, front
18 to back, totally consistent with what Anthony Young described
19 to you.
20 He knew the Grand Am. He also knew the direction it
21 took off. I know I'm going on and on, but again, you believe
22 Anthony Young, case is over, the defendant's guilty. He is
23 corroborated every which way 'til Tuesday, on every fact that
24 he told you.
25 We don't bring in a cooperator and expect you to

1 believe a cold-blooded killer. We expect you to look and not
2 say he's a cold-blooded killer, I can't believe anything he
3 said. That's what the defense wants you to do. You can't
4 believe a word what this guy says, he's a cold-blooded killer,
5 right, or he's got a long record or he's a drug dealer?
6 The bottom line, ladies and gentlemen, you determine
7 the credibility of the witness and you have to do that by not
8 looking just at what the witness says or just what his
9 background is or his criminal record is, but does it make
10 sense? How did he testify? Let's talk about that.
11 Anthony Young got on the stand and he looked you in
12 the eye, he answered the questions directly, he thought about
13 the questions. No sympathy, he is a cold-blooded killer,
14 there is no excuses for that. Okay.
15 The Government doesn't take lightly coming in here
16 and putting a cold-blooded killer on the stand, okay. But you
17 have to look at what he said and you have to listen and you
18 have to look at all the independent corroboration and there's
19 just a tremendous amount of it where it concerns Anthony
20 Young.
21 How did he come in, in the first place? Why is
22 Anthony Young a witness in this case? Remember, he's not like
23 all the other witnesses, the Koby Cuyler's and Eric Dock's and
24 guys who had been arrested for other charges and now
25 cooperating. He came in voluntarily, in January 14th of 2005,

1 he dialed 4-1-1. Can I have the number of the F.B.I. please?
2 Before January, 2005, the F.B.I. had no idea who the
3 shooter was in the case with Kemo DeShawn McCray, no clue.
4 They had their ideas, they thought maybe it was someone in the
5 Curry gang. They certainly had an indication who was
6 involved, they certainly knew the defendant had ordered it,
7 but they didn't know who the shooter was. Anthony Young comes
8 in.
9 Now, he comes in, by the way, he tells you,
10 ironically because of a dispute with the defendant's brother
11 Jamal Baskerville and Jamal McNeil. They get into a dispute
12 because I think he tells his girlfriend something about a
13 murder and now they think he's cooperating. You can read that
14 testimony. The important thing is he came in here and he told
15 you, I feared for my life, I thought they were going to get
16 me, too.
17 So I called the F.B.I. and I told them I wanted to
18 come in. Self preservation, he thought he was going to die.
19 That's in the transcript at 4569.
20 "QUESTION: What happened after you told your
21 girlfriend whatever it was that Jamal McNeil or Jamal
22 Baskerville told you?
23 "ANSWER: Me and her got into a big fight one day.
24 "You and the girl?.
25 "ANSWER: Yes, me and the girl.

"QUESTION: Okay.

"ANSWER: And we broke up and her being Mr. Baskerville's wife's best friend, she went back and told what I told.

"QUESTION: Which Mr. Baskerville are you talking about?

"ANSWER: Jamal.

"QUESTION: Now, was there a reaction from Jamal Baskerville?"

There was another question. "Did Jamal Baskerville say anything to you?

"ANSWER: Yes.

"QUESTION: Okay.

"What did he say to you?

"ANSWER: He told me one night in the car that I talk too much and what else have I told?

"QUESTION: Okay.

"Anything else?

"ANSWER: Told me to get out of the car.

"QUESTION: Was there a later conversation on the telephone?

"ANSWER: Yes.

"QUESTION: Okay.

"Can you tell the jury about that?

"ANSWER: We was arguing on the phone one day and he

said, when I see you in the streets, you'll be taken care of.

"QUESTION: What did you do as a reaction to those comments by Mr. Baskerville, again, Jamal Baskerville?

"ANSWER: I got in touch with the F.B.I.

"QUESTION: Do you recall when you contacted the F.B.I.?

"ANSWER: Sometime in January.

"QUESTION: How exactly did you get in touch with the F.B.I.?

"ANSWER: By phone.

"QUESTION: How did you get the number?

"ANSWER: By calling 4-1-1."

Corroborated by Shawn Manson. That is exactly how he came in to the F.B.I., the switchboard gets the call, he says I got some information about the killing of a federal informant, a computer check is run and Agent Manson gets in touch with him.

Anthony Young wouldn't be here, we wouldn't know Anthony Young if he hadn't dialed 4-1-1 that day, so consider that when you consider whether he's telling you the truth.

Before January 14th, 2005, by the way, even without Anthony Young's testimony, Agent Manson told you something interesting. Remember, the Government already had spoken to Eric Dock, right, had already gotten his log in May of 2004, had spoken to Rick Hosten, had Williams as a cooperator so

1 Agent Manson told you even before they knew who the shooter
2 was, they had enough for the agreement, for the conspiracy, to
3 charge him in an indictment and they were actually going
4 forward with the indictment at the time.
5 Anthony Young, in effect, was icing on the cake,
6 right. Because again, you have to separate the murder, who
7 killed him, from the conspiracy which the defendant is charged
8 with.
9 So the defense, and I forget if it was Mr. Kayser or
10 Mr. Herman, for awhile on cross-examination, there were
11 numerous questions kept asking, isn't it true, Mr. Young, for
12 a year and a half, you lied to the F.B.I.? You lied to the
13 F.B.I. for a year and a half?
14 What that concerned was, of course, ladies and
15 gentlemen, that Anthony Young came in and told in detail the
16 facts I've just gone over in great detail, all right, the type
17 of gun, the car, the whole thing, but he did reverse his role.
18 He did that because his lawyer told him whatever you
19 do, don't implicate yourself, go in and talk to them,
20 cooperate, but don't implicate yourself. He made a decision
21 to tell everything, but he put himself in the car up on 20th
22 Street, right, where Jamal McNeil and Hakim Curry were. He
23 said I'm that guy and Jamal McNeil is the shooter.
24 Okay. That's true. He lied, there is no question
25 about it. He lied about that one detail. He minimized his

1 role. Does that mean that you should disregard all the other
2 corroboration and everything else he said? Is it a lie with
3 any meaning in this case? I submit to you, as I said, no, it
4 is not. Legally, it doesn't matter who the shooter is in this
5 case.
6 Again, if the witness is lying about all the other
7 details, which is what the defense wants you to think, does it
8 make -- use your common sense. Does it make sense that a
9 person of Anthony Young's background could come in here, make
10 up all those details, some of which are corroborated
11 independently? I kept thinking he would have to be the great
12 American crime novelist. He should go write a book about
13 crime because these details about scooping up the hot metal
14 after the gun was melted, but this is not fiction, ladies and
15 gentlemen, he lived it. That's why he knows the details.
16 Now, the final reason why you know Anthony Young is
17 the shooter and is part of this conspiracy with the defendant
18 is because he actually came into a court, this very court and
19 he admitted his guilt to being the shooter to the very charges
20 to the conspiracy to murder Kemo McCray, the very charges
21 you're considering. He said in court under oath, I'm the
22 shooter, I plead guilty.
23 For that, he is facing a mandatory life sentence,
24 mandatory life sentence under the law. Now, did the
25 Government say we would not seek the death penalty against

him? Certainly. You can consider that.

He came in and in March of '06, he had a new lawyer and he tells the F.B.I., and the new lawyer tells him, you better tell them everything, tell them everything.

He then tells them, okay, I'm the shooter. I lied about reversing the roles, but that's it. Everything else from January of '05 has been consistent. There's simply no logical reason that you can come up with why he would admit his guilt as the shooter in this heinous crime unless he really was. Why would he admit to something that potentially could get him the rest of his life in jail?

Now, ultimately, like the others, if he cooperated and if he testified truthfully, he would get this thing that you've heard about so many times in this case, the 5K letter, the mysterious 5K letter that the Government writes. Some of them refer to it as the big 5K.

What is this? You actually have one you can look at, but it's in evidence. I forget the number, as to one of the cooperators. There was one already written for him regarding another case that he cooperated on.

It's not a mystery, ladies and gentlemen. Take a look at it. All it is, is a letter from the Government to the sentencing judge, saying this is what the guy did. He gave us information, he told about this guy, he came in and testified against this guy, he testified truthfully and he provided

substantial assistance to the Government, right, against a defendant in another case.

That goes to the Judge. It's not up to the Government what the sentence is, if the sentence gets reduced for those who were sentenced already or if the sentence gets lowered for those who haven't been sentenced yet. But in this case, in Anthony Young's case, Judge Pisano at some point will see a 5K letter from the Government saying the defendant got up on the stand and cooperated and did and gave information in a very important case.

That's it. Okay. So will he get life in prison? We don't know. He might. No obligation by the Judge to consider the 5K letter. Will he get somewhat less than life in prison? He might, we don't know. But there is no guarantees and yet, he still came in here and told you, even though he's facing that sentence, exactly all the details that he told you.

That, ladies and gentlemen, is indisputable proof that Anthony Young is the shooter and involved in this murder conspiracy with the defendant.

So keep going?

THE COURT: If you think this is a logical point, it doesn't appear you'll finish.

MR. FRAZER: If the Court wishes, I'm now going into another area.

THE COURT: Let's break for the day. This has been

a long time of people talking to you.

We're going to break for the day. We'll come back tomorrow and finish up closing statements and see how far we get.

Please, again, at the end of the case it's very critical for you to remember my daily instructions. Don't begin forming an opinion as to what your verdict will be until you've heard everything. Keep an open mind, don't discuss the case with each other, don't permit anyone to discuss it with you.

Travel safely, we'll see you tomorrow morning.

THE CLERK: All rise.

(Jury is excused and the following takes place out of the presence of the jury.)

THE COURT: Have a seat.

I have been looking at the verdict sheet and I think one change I would suggest is to put -- define the charge after it says count one, define what the charge is.

MR. MINISH: I'll certainly do whatever guided by the Court, but so you're aware, that's originally how the verdict sheet was written.

I spoke to our appeals people and their concern was that if it doesn't mimic exactly the indictment, which is going to be provided to the jury, then it could be some confusion. If the indictment is going in there, the indictment is used as a guide. That's why I stripped it down to that. If your Honor's inclined to do it the other way --

THE COURT: Do you have a position on it?

MR. HERMAN: I prefer the first one. I don't know if your Honor got it, but it was -- I'll hand it up.

THE COURT: If you prefer the first one, would you suggest that we don't send the indictment in?

MR. HERMAN: Yes, frankly, Judge.

MR. MINISH: I think it's appropriate to send the indictment in as redacted with those last two pages. That's actually what he's charged with.

The Court made it abundantly clear that it's nothing

1 more than a tool and a guide for the jury with respect to the
2 verdict sheet.
3 THE COURT: I'll think about it.
4 Is this your only copy?
5 MR. HERMAN: You can have it.
6 THE COURT: I'm sure I have one inside.
7 MR. HERMAN: I'll take it back. We don't need it,
8 thank you.
9 THE COURT: Let me think it over.
10 I mentioned the verdict form and I suppose we'll see
11 how far we get tomorrow and then we'll address whether we have
12 enough time to even get the jury out tomorrow. It may be a
13 better course of conduct, and I haven't decided yet, it may be
14 a better course of conduct to let them go after closings
15 tomorrow and then Monday morning do the final instruction and
16 let them start deliberating. I don't know, but think about
17 that and we'll take it as it comes.
18 Anything further?
19 MR. HERMAN: No.
20 MR. MINISH: Nothing.
21 THE COURT: See you tomorrow.
22 THE CLERK: All rise.
23 (Trial adjourned until Thursday morning, April 26,
24 2007, at 9 a.m.)
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CRIMINAL NO. 03-836

UNITED STATES OF AMERICA :
-vs- :
WILLIAM BASKERVILLE, : TRANSCRIPT OF PROCEEDING
Defendant. :

Trenton, New Jersey
April 26, 2007

B E F O R E:

THE HONORABLE JOEL A. PISANO
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

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For the Defendant.

Pursuant to Section 753 Title 28 United States Code, the following transcript is certified to be an accurate record as taken stenographically in the above-entitled proceedings.

Joanne M Caruso, CSR, CRR
Joanne M. Caruso, CSR, CRR
Official Court Reporter

April 26, 2007.

THE CLERK: All rise.

(The following takes place out of the presence of the jury.)

THE COURT: Good morning.

Ready to go?

MR. FRAZER: Yes, sir.

THE COURT: About how long do you think you have?

MR. FRAZER: I have promised your deputy less than 90 minutes.

THE COURT: Okay.

Then we'll take a break and have defense counsel and then we'll see where we are.

MR. FRAZER: Yes.

MR. KAYSER: I should be less than an hour. I'm hoping to finish before lunch. I don't want to take more than that.

THE COURT: It's up to you.

MR. KAYSER: That's my goal.

THE COURT: Whatever it takes, Mr. Kayser. I'm not constraining you in any way.

MR. KAYSER: I'm constraining myself.

THE COURT: I'm thinking how we want to handle the ultimate schedule, but we'll talk about it as we get through this.

Get the jury.

THE CLERK: All rise.

(The following takes place in the presence of the jury.)

THE COURT: Good morning, everybody.

Take your seats, we're ready to proceed.

Mr. Frazer.

MR. FRAZER: Thank you, your Honor.

Good morning, ladies and gentlemen.

I just want to say a word. I know I spoke to you a lot yesterday and I'll be finishing this morning before the midmorning break.

Why is it important that I get all of these concepts out to you? It's important because the burden of proof is squarely on the Government. It always remains with the Government until you go back into that deliberation room.

To return a verdict, it has to be a unanimous verdict. Each of you has to agree that the Government has proven beyond a reasonable doubt each and every element of each and every charge. So if just one of you is confused about the law or confused about an argument, then I haven't done my job.

So bear with me this morning. We're going to get through this and I just have a couple other concepts to talk about. Just keep that in mind. It is a very important case, obviously, for all the parties.

We discussed yesterday the drug transactions, counts

four through nine. We went through the drug conspiracy. We went through the murder conspiracy, from the very beginning, from the marshal's lockup through the plot to kill Kemo McCray and we talked about Anthony Young's testimony.

I submitted to you yesterday that with all of that, you could go back in the jury room and convict him of the two, obviously, the drug charges, but the murder conspiracy charges as well. There's really only two elements to the murder conspiracy charges. You'll have that in the back.

The bottom line is that you have to find beyond a reasonable doubt that the defendant entered into an agreement, right. That's the conspiracy and he agreed to prevent -- he agreed with others to murder Kemo McCray in count one, to prevent his attendance at an official proceeding; that he actually joined that conspiracy willfully. That's it. I mean, there's two elements. We talked about that and you should consider the elements and how the facts fit the law.

What I want to go into, even though that what I've already discussed by itself, I submit, would meet the Government's burden beyond a reasonable doubt as to all the elements of counts one and two, you have even more in this case and those are those cooperators, Eric Dock, Eddie Williams, Troy Bell and Ramaine York, because, in effect, they were put up there so that we would provide even further corroboration.

This corroboration is no different than what I discussed yesterday, but it's in different forms. It comes from the defendant's own admissions, admissions is really a legal term. It's simply the defendant talking about the conspiracy, and you're allowed to hear that type of evidence. So we'll talk about the cooperators.

First, the same as with Anthony Young or any of the witnesses as I mentioned yesterday, no one individual determines the case. It's what they all have to say. Granted, they all had criminal records. You heard, you know, time and time again, both through the direct examination right out front they told you, we went through the convictions. That was the first thing that each witness testified to.

They told you they were convicted of a drug case or a violent crime in several situations. They didn't hide that.

They also -- each witness at the very end was asked this question: Why are you testifying? Why are you here today? They all told you a similar thing, which is I hope to get less time on my sentence. That wasn't hidden from you. That's a fact. Should you consider that? Of course, you should consider that.

I'm going to spend the next hopefully 45 minutes talking about why that's not the end of the story. It's not they have a criminal record, they're looking for benefit, so, therefore, they must be lying. They have to go beyond that,

as I said over and over again yesterday, and look at the corroboration for each one.

Why are they the witnesses in this case? Why is Eddie Williams and Eric Dock and Troy Bell and Ramaine York
5 the witnesses the Government presents? Well, obviously this is a conspiracy formed in jail. This is a conspiracy that the defendant is in Hudson County and he is talking and it's from the people he deals with on a day-to-day basis that these admissions come.

10 We don't choose our witnesses, we don't choose them based upon do they have criminal records or not. We choose them because what they come forward and say is consistent and corroborated by other evidence.

We start with the foundation which is this very, very
15 large chart and we can actually pass out to you -- remember Bill Cannon, the marshal, put records into evidence regarding where every one was, those prisoner movement records. There's a record when they go in the Hudson County or get transferred to Passaic or another facility.

20 The foundation, first and foremost, are they in a position to hear the defendant in Hudson County? I'll rely on those since this chart is tremendous, but what this chart does for you, on top, it's a bar graph I suppose. It shows you the dates that William Baskerville is in Hudson County. If you
25 simply go down the chart, you can see the overlapping times

that each witness is with him. It's fairly self-explanatory.

At the bottom in green, you see Joey Merlino and then you see Ibn Curry in that small box at the bottom because he's only there for exactly a week. We'll talk about that in a
5 minute.

You'll see Ramaine York on top, has two different dates because he told you he went in, in January, he got transferred to Passaic in March and he came back in August. So you can tell that the first thing that corroborates each
10 person is they were actually in a position to hear the defendant, because they were in the jail between the critical period of January, some of them December, but overlapping the defendant's November 25th, 2003 entry into the prison and then the critical time to March 2nd, when all of these admissions
15 take place.

Then, of course, Eric Dock talked about admissions made after the murder in April. Of course, he and Troy Bell were in a position to hear those. You start with that. They actually were in a position to hear the admissions.

20 Before I move into Eddie Williams, the last thing you should consider is the relationships between these people. Troy Bell and Eric Dock knew each other, but they met in prison. They didn't have a pre-existing relationship. Most of these guys, while they spent time in Hudson County
25 together, they haven't seen each other since they transferred

out. Ramaine York was in California in a federal prison, Troy Bell was in some prison in Pennsylvania for his sentence. Eric Dock tells you, Mr. Dock, you're still friends with Mr. Bell, right? He said, well, I guess, still a friend. Meaning to imply that they may have gotten together and talked about this.

Then on redirect Mr. Minish said, when was the last time you saw Troy Bell? Eric Dock was like, oh, 2004, the last time I was in Hudson County. He hasn't seen him in three years. It's not like any of them have seen each other and got together and concocted this story. Just keep that in mind. These guys haven't seen, talked to each other for years.

Let's move on to Eddie Williams because he was pretty much the first of the admission witnesses. Eddie Williams did a terrible thing. He committed armed robberies in cash checking places. Did you use a gun? He said yes. Did you hurt somebody during the course of the robbery? He admitted to that. He caused somebody in the robbery injury, he tied people up, money was taken. All that came out, he didn't hide that. He pled guilty and has taken responsibility.

The defense, by the way, on each of the witnesses, spent the cross-examination, again, just going over the record, going over the facts of those cases, but I think I counted, I could be wrong, I think there was about one substantive question about the actual admissions to all of

these witnesses during the cross-examination. Some there were none and I think the only I think Mr. -- I don't know if it was Mr. Kayser or Mr. Herman asked Mr. York a couple of substantive questions about the admission or maybe Mr. Bell.

Some of these witnesses were never asked about the actual substance of the statements the defendant made to them. They were simply asked about their criminal records and their past under the theory that to do exactly what you told us in jury selection you wouldn't, which is automatically reject their testimony because they have a criminal record. You have to go beyond that.

Eddie Williams tells us certain things. I'm just going to give you one example of something you should keep in mind, again, with all the cooperators before we start with him, which is: Why did they answer questions in a certain way? If they're lying or the Government is feeding them information, why does Mr. Williams answer this question from Mr. Kayser in the way he does? This is on 4765.

"QUESTION: So, Mr. Williams, you indicate that Mr. Baskerville just opened his mouth and told all these people, you, Dock, Ra-Ra, about what he did, about what happened, his involvement in this? Is that your testimony?

"ANSWER: I can't speak on what he told the whole bunch of other individuals. I know what I speak on, he said to me and Mark Joseph in front of me."

So there's a question about you're telling us he told all these terrible things to all these people and what's the answer? Well, if it's what the Government wanted him to say or if he were lying, wouldn't the answer be, yeah, he told me
5 that, he told everyone that? No, he didn't say that. He says, I don't know what he told everyone else, I know what he told me.

Does that have the ring of truth to it? Does that sound like someone who is just saying anything he can to get
10 the best deal he can? I don't think so. He told you what he knew, no more, no less.

That's consistent throughout. When the witnesses didn't know something, they said I don't know.

Now, he does say that he becomes -- he says several
15 things. He says that at some point a few weeks into his stay at Hudson County, he becomes the defendant's cellmate because the defendant requested it. That's consistent with what Ramaine York told you, Rich Hosten told you, that he was also his cellmate.

20 He knew William Baskerville since 1996, from the streets in Irvington. In December of '03, he was put in Hudson County on this federal offense. That's true, you can see it in the chart in front of you. He knew that the defendant's nickname was Cheeb. He told you that. He
25 actually called him Will, but he knew his nickname was Cheeb.

He says that the defendant told him he knew who the confidential witness was and he knew that because it was the only person that the defendant sold small quantities of cocaine to. We know that's true because we hear that from
5 Rick Hosten consistently.

By the way, Rick Hosten and Eddie Williams haven't gotten together to tell a story. As you can see, they probably haven't seen each other in several years.

He also said that the confidential informant is Kemo.
10 We know that's true.

He said he knew Kemo from the street. He said that the defendant told him that he usually did not sell small quantities. We know that's true from the tape, right, where he's talking about 50 baggers and openly wants to sell 50
15 grams.

So we have Eddie Williams telling us that the defendant is saying, I usually don't sell those small quantities. That's how I knew who the informant was. That's confirmed by what you heard on the tape.

20 The defendant, he says, has paperwork showing the transcripts, the audio transcripts and we know that's true because in Rakeem Baskerville's house on March 8th of 2004, that discovery material with the transcripts attached, which was given over January 20 of '04, we know that was given over
25 so he did have material with him that was given over in

discovery, which included the audio transcript. So we know that's true.

Very interesting thing he said. He said that the defendant knew -- another reason the defendant knew the informant was Kemo, because the defendant told him that the defendant remembered one time Kemo saying he was at his sister's house and he was ordering a pizza. I don't know if you caught that, but that's in the transcript.

We know that's true because if you look at exhibit 126, which is one of the last transcripts, one of the last audio tapes, sure enough Kemo is in his sister's house and he says something about the pizza delivery man. Again, corroboration of something that we know happened, because we heard it and the defendant -- Mr. Williams is telling us the defendant told him about that in prison, in jail.

Very short passage and the crux of what he told us about the conspiracy which, again, corroborates Anthony Young and the other witnesses. This is page 4,747. Direct examination by me of Mr. Williams.

"QUESTION: We're up to the part where he told you about the CI.

"Did he say anything about what he expected to happen with his case?

"ANSWER: Yes.

"QUESTION: Tell the jury.

"ANSWER: Well, he used to always say no witness, no case. He said he had to be pushed.

"QUESTION: When you say "he had to be pushed," who is he talking about?

"ANSWER: Kemo, meaning he had to be killed.

"QUESTION: Okay.

"Is that a term you've heard before, pushed?

"ANSWER: Yes.

"QUESTION: Where have you heard it?

"ANSWER: In the streets.

"QUESTION: Okay.

"So the defendant told you that?

"ANSWER: Yes.

"QUESTION: In January of 2004?

"ANSWER: Yes."

So he's telling you something that other witnesses told you, Troy Bell told you, Eric Dock told you, slightly different terms. He had to be pushed. I think Troy Bell used that term, too, pushed. That's a street term for kill.

Again, no one in jail talks like oh, I'm going to go kill my informant. They use terms like handle, he's got to be pushed. Everyone knows what that means. There is no innocent interpretation of that.

Each of the witnesses were asked, you know, who else did he talk to? Who else did the defendant talk to while he

was in Hudson County? All their answers were consistent. He went to Dock and Bell, because they did a lot of legal research together. He spoke to his roommate Rock or Eddie Williams, Ramaine York, Ra-Ra was mentioned. So they all -- Joey Merlino was another guy that all the witnesses said that kind of were his group, who he confided in. That was consistent.

Eddie Williams is the first witness that tells you about these F.B.I. visits from Shawn Manson. Shawn Manson told you she went to visit Baskerville on two occasions and that's true, and corroborated by her testimony.

He actually mixed up the date of the visit. I think you know from the other witnesses and Shawn Manson that she went to visit him right after the murder in March. He thought it might have been June. That's another example, was that a lie? He thought the visit back and said, I think maybe it was in June. I mean, it's four years ago. It's a long time or three years ago. Don't take a mistake in a date to be a lie. It was simply he thought back to an event three years ago and he was pretty close. He said it was June, but again, that's the ring of truth.

If everything is perfectly consistent, then there might be a problem. There are mistakes going to be made about dates and times and this came first or that came first. What he said substantively is corroborated by the witnesses.

After the F.B.I. visit, Eddie Williams tells you the defendant comes back and repeats, no witness, no case. Anthony Young says the same thing.

He also says the defendant tells him, I hope they don't have any videotape, because he knew they had audio tape, meaning the F.B.I. He said he could beat the audio, but he was hoping there was no video. That's consistent.

He says something that Troy Bell -- Eric Dock talks about and Troy Bell, which is Hakim Curry comes to Hudson County for a very brief time. You can see that's at the bottom of the chart in green. That's true. He tells you that and that's backed up by the records.

A very important conversation related to -- Eddie Williams actually is present for, which I referred to already, between Hakim Curry and in that June week, June of '04, when Hakim Curry is briefly transferred to Hudson. You'll recall I think Dock says that's the time when they put a sheet over Will's cell and they're trying to protect Hakim Curry's identity. And he looks up on the warden sheet where all the names are and he realizes, that is Hakim Curry in there that Will's hiding. Think about that testimony.

We'll get to that conversation in a minute. Think about Will protecting the leader of the organization. In June of '04, the guy who went out on his behalf and killed Kemo McCray. Now, he's protecting him in Hudson County Jail.

Eddie Williams tells us something very important. He says that the -- he overhears the conversation. He is present, he doesn't even overhear, he's in the conversation when Hakim Curry tells Will Baskerville, stop talking, you're talking too much. People in Passaic County, where he came from, people in Passaic County Jail are talking that you had Kemo killed.

What's he saying? He's like be quiet, right. Shut up, you're talking too much. People in the other jail know that you had something to do with Will's -- with the shooting of Kemo DeShawn McCray.

Hakim Curry's warning unfortunately for him and for the defendant came too late because by June of 2004, many of these admissions had already been made, pre-murder and post-murder. Just the thought that Hakim Curry was aware that the defendant had shot his mouth off too much and was saying too much to too many people gives you an indication that these admissions are true.

Let's go on to Ramaine York. He was, perhaps, the most interesting of the cooperators based on his background. He, too, had a long criminal history, but he also actually maintained some legitimate jobs throughout his life in a hospital, he worked at the Ford Motor Company, he had his own hair styling salons and again, no excuses for him.

What he ultimately ended doing, unfortunately, was

going back into crime and drug dealing and he's the one that ultimately pled guilty to that shooting of a witness in Maryland. We had that whole thing on cross about all these names, but the bottom line was he took responsibility for being hired in a case very similar factually to this one, as to being hired by someone to go kill a witness down in Maryland, having nothing to do with this case, of course.

He told you that. Okay. He told you that right up front. He was very honest about his background and what happened.

The defense tried to claim that he lied, that he got paid $5,000 for that shooting instead of $25,000, but then he actually had a reasonable, logical explanation which is the two people involved got paid 25,000 and his portion was 5,000. Defense thought that was some kind of lie. It, of course, wasn't.

Then there was something about him intending to kill that victim when he shot him six times versus only intending to hurt him, but he told you, when he went down there, he wasn't planning on killing him. When he thought his life was in danger, because the guy reached for what he thought was a gun, yes, I did intend to kill him at that point, I panicked. I tried to protect myself.

No excuses. He didn't try to make excuses. He did intend to kill him. The defense thought that was some kind of

lie to the judge, that wasn't.

So consider all that when you consider Ramaine York, consider all of his background, but again, go beyond that and look at actually what he said and why we know it's true.

He was introduced to Hakim Curry, he tells us, at the All-Star game in February of 2003, in Atlanta. We know from records from the next year, February of '04, that Hakim Curry attended All-Star games.

We know that from Troy Bell, who kind of is a student of the lifestyle of big drug dealers including Hakim Curry, that that, those types of people, drug dealers go to the NBA All-Star game. It's a status thing amongst the drug community. That's not unusual.

Just as an aside, he tells us that he stayed at the Lenox Hotel for the weekend, at 2500 bucks, but more importantly, he meets the defendant down there. Hakim Curry introduces him in the lobby of the Lenox Hotel and he notices that the defendant has his car with him, which is a Cadillac Escalade, which we know from the DMV records and the testimony of Shawn Manson is true.

He had it brought down on a flatbed truck. Another status symbol, I suggest to you, of drug dealers, to have their cars, their fancy Cadillacs transported by truck. We know that's corroborated. That is, in fact, the car he was driving at that time. DMV records are there.

He's transferred to Hudson County, January 14th of '04. Eventually he gets transferred out, ironically by coincidence on the day of the murder, March 2 of '04, but between that time, he speaks to Will. The first thing, he doesn't realize when he sees Will at first that that's the same guy he met at the All-Star game back in '03, but he tells us you how they finally figured it out?

That's where this jewelry store guy that they have in common comes up. They're talking about watches and they're fancy watches and Ramaine York told you about a $70,000 watch he bought with his drug money with diamonds and very fancy type stuff, custom-made. He tells you he got it from this guy Burt or Burhan from Prestige Jewelers in Paramus.

How do we know that's true, that conversation really took place? Because Government exhibit 80, I showed you is the Prestige diamond card. This came out of the defendant's car. Agent Scimeca found in the contents of the Monte Carlo, exhibit 80. You can see that Burt, Prestige Jewelers and there's even a picture of a fancy watch.

How did he know? He didn't know that this would be found in the defendant's car. It's independent corroboration of what Ramaine York told you in that conversation. It had to be true.

He also told you something that is also independently verified, which is the defendant tells Ramaine York that in

his last contact with the informant, the feds were sitting in an SUV. If you go to page 485? of the transcript, it says, "QUESTION: When you talk about his case, what are you talking about?

"ANSWER: Like the nature of his case, like when one day he was just talking and he was telling me he think he know who the person was that set him up.

"QUESTION: Okay.

"Did he mention the name?

"ANSWER: At the time he did.

"QUESTION: All right.

"What was he looking at when he mentioned the name of the person who set him up?

"ANSWER: His indictment had come in the mail.

"Okay.

"Do you remember the name?

"ANSWER: No, I don't.

"Okay.

"But he said he knew who it was?

"ANSWER: He said he had a good idea who it was.

"QUESTION: Did he tell you why he knew who it was?

"ANSWER: He said because the last time he dealt with the person, the last time he dealt with the person, when the person left, he seen the feds sitting in an SUV on the corner."

You know how we know that's true? Because when you turn to your transcript book at 127, it is the last contact on November 10th, 2003, with the defendant. At page five, William Baskerville is heard saying, did you all see the police in that van?

Kemo says, is it?

Baskerville says, yeah.

Kemo, that's a police van?

Baskerville, tell me who the fuck is in that van.

Kemo, I don't know.

I'm out. True.

Kemo says, I'm out. And then says hey, you call that number, yo, I'm going home.

Baskerville says, all right.

So he's telling him, there is no way he could have known that. In fact, he's correct. On the last contact between Kemo and defendant, the defendant raises, hey, I think the feds are in that van. Again, independent corroboration of what Ramaine York is telling you.

It goes on and on, ladies and gentlemen, but the important -- a couple other important things he tells us. He's talking about his Baltimore case. It's in relation to that, when Ramaine York tells the defendant about his Baltimore shooting case that the defendant keeps telling him, he's trying to, he also is trying to take care of his

business, right. Just like the man who hired Ramaine York. He says, the defendant says he's trying to get in touch with his brother Rock, trying to find out where the informant was.

Ramaine York also tells us that he, himself, confides in someone in the jail. Who is that? That's Eric Dock. And the reason he confides in Eric Dock about his Baltimore shooting case is because Eric Dock is doing legal research. They're talking about his case.

In order for Eric Dock to do the legal research, obviously you got to tell him what the facts of your case are. So it shouldn't be so shocking to anybody that William Baskerville did the same thing that Ramaine York did. Ramaine York told Eric Dock intimate details of the facts that he hadn't told law enforcement, he hadn't told anybody. He's telling Eric Dock, I went down to Baltimore, I got paid, I shot this guy, you know, what can you do about it? Is there any case law that can help me?

That's exactly what the defendant did. The defendant went to Eric Dock, told him things about his case and Eric Dock helped him with some legal research.

Finally, right before he gets transferred on March 2, 2004, sometime in late February, the 27th, 28th, late February, that time it's the incident where Ramaine York is watching TV. The defendant gets off the phone and the defendant taps him on the shoulder and says, and tells him

that his brother Rock is going to holler at Fat Ant for me. That's page 4997 of the transcript.

"QUESTION: Mr. York, counsel asked you about the conversation with Will when he got off the phone. You said Will told you that Rock was getting Fat Ant to take care of something. You said it was street language, you knew what that meant?

"ANSWER: Yes.

"QUESTION: Take care of something.

"ANSWER: Handle something.

"QUESTION: To handle something.

"What did the street language tell you that meant?

"ANSWER: That he was going to go after the witness.

"QUESTION: Okay.

"Now, Fat Ant, you told us you had met, right?

"ANSWER: Yes, sir.

"QUESTION: And Fat Ant was that guy that Faheem said was --

"ANSWER: He was a gun.

"QUESTION: He was a gun, a shooter?

"ANSWER: Yes, sir.

"QUESTION: For who?

"ANSWER: E.T. Hak.

"QUESTION: Who's E.T. Hak?

"ANSWER: Will Baskerville's cousin."

So there is no doubt what that meant because you have to look at it, it wasn't a conversation where he just gets off the phone and says, I called my brother Rock to handle something. It's in the context of Ramaine York and the Baltimore shooting that they're talking about.

Clearly, again, I ask the silly question, you don't need the language of the street to tell you what that meant. He goes, no. When you get Fat Ant, the shooter, to handle your business, it's common sense what that means.

Now, that's significant for a timing purpose also. This, again, look at the timing of all these statements. It's very significant that before the murder, in late February, 04, he is told this information. When he comes forward to that AUSA, John Gay that you heard about, when he comes forward in early '05 with that information, Anthony Young has come forward, but at that point he says the shooter is Jamal McNeil. Remember, he tells the consistent details but switches his role until March of '06.

Ramaine York is telling the Government in early '05 that the defendant said he's getting Rakeem Baskerville, his brother is getting Fat Ant to handle it, to kill the informant. That's before the Government knew Anthony Young was the shooter. So he's telling the Government that months and months and months before Anthony Young finally admits he's the shooter.

So unless he had a crystal ball, that wasn't made up. It's exactly what turned out to be true. He could not possibly have known that unless the defendant told him. Even the Government didn't know that at the time.

Finally, he says what the other witnesses say, that the first time he heard about the informant dying was after he got transferred to Passaic County. About a week later, that article comes out and he realizes, oh, my, the informant's dead. What he told me a week ago, Fat Ant accomplished the goal.

Now, he was -- I just want to address a couple of things about all the cooperators. When you look at them, you not only look at how they answer the questions and the corroboration and the consistency with other testimony, but you actually look, I hope you looked at them on the stand as they were testifying and I know you were all attentive. Many of them had this body language where they were turning toward you, turning away from the defendant. I submit to you they were fearful.

Anthony Young was the best example of that. He was facing that way. He did not want to see him, except to say he's the guy, right. Anthony Young is the one who, on that tape recording from jail, is talking about witness protection. Imagine, Anthony Young is talking about witness protection because he's fearful of this guy. He didn't know he was being

recorded so that has to be true.

That's Ramaine York and he is sentenced simply because he feared for his life. Now, he was a cooperator and he came forward, you recall, because there were rumors that he was cooperating. He was fearful and he was sentenced and sent off to a prison because, I think it came out on cross, he was actually attacked in prison. Consider that.

I mean, as Eric Dock, we'll get to later, said, there's some risk in getting up on that stand in a case like this obviously and that's something you should consider, too, when you consider their motive for testifying.

Troy Bell. Troy Bell also had a long record. He's in federal custody for sending some women through the airport with drugs from Jamaica. That all came out, all of his convictions came out right away.

He also told you when the Government questioned him, that he lied to some doctor in a medical facility. He had his jaw broken and he made up the story that he's hearing voices so he can stay in a cushy medical facility rather than going back to Passaic County Jail, which probably is not the best place to be. He admitted that to you.

Does that mean he's unworthy of belief? Does that mean that his story is not corroborated by all the other evidence and he wasn't consistent? That's for you to decide.

Troy Bell tells us several things, but the most

important thing is the conversations where the defendant, prior to the murder, is talking about putting a hole in the melon of the informant. He remembers that. He remembers it because it's unusual.

He remembers it, he tells you, because remember he says almost everyone is cooperating in Hudson County, so it's strange in a federal system to hear someone talking like that, that they're just going to get rid of their federal informant.

Page 5060, "QUESTION: During the conversation that you were telling us about, did the defendant say anything about his informant?

"ANSWER: Yes. He started laughing and getting all excited, talking about, he said, all I know, my informant could be dead. He said, my dudes is looking for him to put a bullet in his melon, but they can't find him. He said, I think the feds got him in hiding. I said, knowing the feds, they probably do got him hiding.

"QUESTION: So that was mid-January of '04?

"ANSWER: Yes."

Perfectly consistent with what Anthony Young told you was happening in mid-January of '04, they were looking for him.

"QUESTION: We're now three years or three plus years later?

"ANSWER: Yes.

"QUESTION: How is it you remember those words from the defendant?

"ANSWER: Because something like that, being that I be in Passaic County, everybody, the majority of the people is cooperating. Everybody was scared of the feds. That's something that I never heard cause the feds give out so much time. People just either cooperate or if they know they're facing that much time, they just go ahead and plead guilty. So to hear something like that, I couldn't forget nothing like that."

So this stood out in his mind. This is not a lot of questions from the defense, about well, people brag in jail, they talk the talk, you don't really believe them. No, people brag in jail, they talk the talk, but they don't everyday in federal custody say, I'm going to -- my boys are out there to put a hole in my informant's melon. That is something that stood out in Troy Bell's mind right away and that he remembered.

He tells us that in February -- I'm sorry. He remembers put a bullet in him and he also uses the term Rakeem says he wants to push him.

He also tells us -- I'll move on.

He also corroborates something that Rick Hosten says. That is the defendant says the day he was arrested, he was taken to federal court and he actually received the complaint.

And after seeing the complaint, he had an idea, remember, of who the informant was. He also confirms that after speaking to Rick, they had the same agents and the whole conversation where he finally realizes through Rick Hosten that it's Kemo. That is consistent with Rick Hosten, consistent with Eddie Williams and consistent with Eric Dock.

The defendant then tells Bell that after figuring out the informant, he called his brother Rock and told him who the informant was. You recall the call from the Hudson County bullpen which I submit to you is likely that call.

He says, he told his brother Hak -- he told his brother to tell Hak and he said he told him, you all handle it. He was asked what that meant. Just as Anthony Young said, handle it means kill.

Page 5070, again, "QUESTION: How is it that you remember?

"ANSWER: Cause that's something that people don't say. You keep stuff like that to yourself. For him to say something like that, I thought that's unbelievable because I never heard anybody say nothing like that, that always stuck in my mind.

"QUESTION: You've spent a considerable amount of time in jail, right?

"ANSWER: Yes.

"And do people brag in jail?

"Yes, sometimes they do, sometimes they don't. That's in the state, though, state and county. In the feds, no. Some people keep their mouth shut.

"QUESTION: What did you think, what were you thinking when the defendant told you that?

"ANSWER: I thought he was crazy.

"QUESTION: All right.

"Why is that?

"ANSWER: For saying something like that. I thought he was bold for even trying to go after a federal informant.

"QUESTION: You said bold?

"ANSWER: Yes.

"QUESTION: And why is that bold?

"ANSWER: Cause all I knew was, like I told you, everybody was cooperating with the feds. I never heard nobody, everybody was scared of the feds because they give out so much time. That's why for him to say something like that, I thought he was crazy."

Again, a comment that stuck in his mind when someone says they're out there trying to handle it, trying to kill an informant, that stuck in Troy Bell's mind.

He told you that in March of '04, which is consistent with what Greg Hilton told you about the arrest of Hakim Curry, the defendant called him up to the cell and he told him about Curry getting locked up. He told, the defendant told

Bell that it was this guy Pooh who had Curry set up.

Remember, Bell isn't even from Newark. Bell doesn't know what these names are, but he remembered that Pooh, he was told that this guy Pooh was who set Curry up. We know from Greg Hilton, the DEA agent, that's true. That's the guy that got arrested the day before Curry, made phone calls and set up the arrest with Hakim Curry with some drugs and a gun.

Now, clearly there is no way he could have known that information. Remember, this information that he knows and that Dock knows comes to the Government in May of '04 through the form of a written log, right? There's just no way that a guy in Hudson County Jail could know that the secret DEA informant against the biggest drug dealer in Newark, Hakim Curry, is Pooh.

It's not advertised. Greg Hilton told you, they don't tell the newspapers that. They protect the source and they protect them all the way until the trial when he actually testified last summer.

This is not public information. There is no way he could have known that in March or May of '04, when the Government finally found it out. Only someone connected to Hakim Curry, who gets information passed to him, he tells you this is early March, right after the murder, right after Hakim Curry's arrested, which is March 5th.

So what happens? Hakim Curry or someone is

communicating with the defendant and the defendant is actually telling this information to Troy Bell. He also said the defendant told him that Rakeem's house was searched. We know that's true. That Rakeem Baskerville was on the run. We know
5 that's true. Because Bill Cannon told us, as did Greg Hilton.

He also told you something as innocuous as Hakim Curry got married in a fancy hotel in Vegas. Now, why was that important to the case? It's not. It has nothing to do with the facts or the elements of the crime, but it's
10 important to show you that he is imparting information that only he would know. It's easily -- it's dependable information because, in fact, as you can see from the Bellagio records in evidence, that he did get married in August of '03, I think it was at the Bellagio. Whether the defendant
15 attended or not, who cares. He was talking about it. That's an important fact that's corroborated.

Finally, this newspaper article from March 9th. Again, several witnesses comment that's when they learned that what Will was saying was, in fact, true; that the plot was
20 actually carried out. That's when for Mr. Bell and Mr. Dock, it's a triggering mechanism. They realize, oh, my God, we have this important information. He's been talking about this for two months, putting a hole in his melon, pushing this informant and here we are, the article is getting passed
25 around the jail and there it is, in black and white.

So what do they do? They write a letter on March 14th, they write a letter. That letter says the subject and it's in evidence, you can read it and it was read to you, but on paper, you know on March 14th, on paper they're saying we
5 have information about William Baskerville. It involves murder. Please don't come to the jail, that would be put us at risk. Let's figure out a way to meet and we'll give you this information. That's the gist of it.

So you have independent evidence as of March 14th,
10 what he's telling you is down on paper, right. He's willing to tell the Government. Now, it works out that the F.B.I., through various methods, sees Dock first and they don't get to Bell. Bell gets mad, you're told, and eventually rips up his log and doesn't meet with the Government until after he is
15 sentenced about a year later.

Again, that March 14th letter, read it, it's an important confirmation that they had the information up front and the timing of it is consistent with all the evidence.

Finally with Mr. Bell, and then we're on to Mr. Dock,
20 the last witness. He tells you something that's important for all the witnesses, but Mr. Herman asked him a series of questions about how many times did you meet with the Government, did they tell you what to say and he went over questions with them and things like that.

25 You might or might not remember what he answered. On

5213 of the transcript, "QUESTION: And in your mind, is there a difference" -- actually, he also talks about this, if you recall this big 5K and the defense thought was great and only here because of a big 5K, a big opportunity to cash in was their theory, but what did he really mean by that?

I mean, he meant that cooperating in a case where a federal informant was murdered is certainly a more important case than the usual cooperation, which is about drug deals and drug dealers and maybe guns on the street. That's important, but it pales in comparison to information about a murder and information not only about a murder, but a murder of a federal informant.

So, yes, Eric Dock and Troy Bell knew that this would be information the Government should have. They didn't make up the whole story about it because everything they say is corroborated.

"QUESTION: And in your mind is there a difference between cooperating in a drug case or a case about a murder of a federal witness?

"ANSWER: Is there a difference?

"QUESTION: Say an importance.

"ANSWER: Yeah. A murder case is bigger than a drug case.

"QUESTION: Mr. Herman asked you some questions about meetings you had with myself or with the agents.

"ANSWER: Yes.

"QUESTION: At any point did myself or any members of my office or of law enforcement ever tell you what to say?

"ANSWER: No.

"QUESTION: What's the first thing you were told at the beginning of every meeting?

"ANSWER: If I lie, I get nothing.

"QUESTION: Were you told to tell the truth?

"ANSWER: Yes.

"QUESTION: At any point did I tell you or anybody else tell you how to answer questions?

"ANSWER: No. You all just sit and look. Whatever you all ain't saying nothing. You all just sit there and see whatever I got to say. That's it. You asked me a question and I answered it. I mean, I don't say nothing. You all just sit there and look at me, see what information I got."

I'll leave that at that.

Now, Eric Dock. He, too, has a long criminal record. One of the things he has on his record is fraud so should you consider that? Sure. Is everything he said corroborated by the evidence and the other witnesses, physical evidence? Yes.

He tells you again about how Kemo was discovered by the defendant, through Rick Hosten, and it's very consistent with Rick Hosten and with Troy Bell on that topic.

He's also consistent with the F.B.I. visits. He's

consistent with the article that made them realize this thing had actually happened.

He's consistent with that triggered the letter on March 14th, that if you recall, he dictated because his penmanship is not as good as Troy Bell's. I don't know why that was such a controversy on cross-examination. The letter, if you look at it, it's pretty good handwriting. I don't know, but the point was there is no mystery about Dock's name not being in the letter because he told Bell, you know, and Bell told you also when the feds come, tell them they can come talk to me, too. I don't know why that was such a subject of cross-examination.

He also knows Curry's wedding and the details of that. Dock tells you also, Pooh Walker set up Curry and he told you that was told to him around March 6th, which is actually the day after it happened.

Dock said he knew Will was telling him a lot about the members that were locked up along with Curry, including the twins and that name didn't mean anything to him, but that's why Greg Hilton was here. You may have wondered, why are we hearing some of this evidence about these other guys, who are the twins? Dock told you that the defendant said that Pooh not only set up Curry, but he mentioned that also arrested were the twins.

Part of Curry's crew and sure enough, the twins are

guys named Jason and Justin Hannibal, Greg Hilton told you, part of Curry's crew, so that's true. To Dock, a guy that grew up in Paterson, nothing to do with Newark, didn't know anything, these were just names that he was writing down that the defendant told him about.

He knew about the search warrant at Rock's house. That's consistent. He knew that Rakeem Baskerville was on the run. That's consistent. It goes on and on again.

He's fully corroborated by what Agent Hilton told you. He could not possibly have known that information in March when he's writing it down or in May when the log was turned over to the Government.

Greg Hilton tells you something interesting, too. No other Curry gang member is put into Hudson County, they're all in Passaic. He wasn't getting this information from jailmates in the Curry crew.

Again, the most important thing to remember about Dock, too, is he actually wrote down conversations. You heard testimony about that. He wrote down these conversations in March of '04, after the article, when he realized, boy, I better start writing these down because now I realize how important they really are.

Now, he backdated them. There was some testimony, yes. In March, he went back to January and wrote in a couple of things, and he went to February and wrote in a couple of

things. Then he started keeping it day-by-day as they happened. Most of them were day-by-day as they happened.

He told you that this log got turned over to his lawyer in April and eventually to the U.S. Attorney's Office in May.

Why is that important? Because it is a consistent version starting two months after the murder of what the defendant said. It's on record. It is not, it doesn't change, it doesn't fit what the Government wants to hear, it's he committed it to paper before he ever met the Government. I don't know how it could be what the Government wants to hear.

Anthony Young doesn't come forward until January of 2005. So keep that in mind. When he talks about that very important passage about hoopdies and stash, how they stash the gun in the traps and then you can come up on somebody and shoot them and get away in these cars that they had all over town and these fast cars.

Well, he's telling you that in May of '04, he's got that down, right? But Anthony Young doesn't come over until January of '05. No one knows who Anthony Young is. No one knows the details of how they hide guns in the stash box and hide cars and go to a location and do all these things that the defendant is describing to him back in March of '04, about how the organization has the ability to shoot people on the streets of Newark.

Think about the timing of that. It's unbelievable that he lays out the method before Anthony Young actually is even known to the Government. I submit to you that's incontrovertible proof that Anthony Young, Eric Dock and Troy Bell have been completely truthful with you and nothing the defense will argue can change that timing.

Just a little more about this log. On page 5378, "QUESTION:" I mean, this is cross-examination by Mr. Kayser. "QUESTION: I mean, that log that you wrote, if you want to call it that, was 14 pages long, right?

"ANSWER: Yes, it was.

"QUESTION: And chicken scratch or not, it had a lot of detail, correct?

"ANSWER: Sir, my writing may be chicken scratch, but I pen a letter out." He talks about his handwriting.

"QUESTION: You didn't need to look at that except one time to refresh your recollection, did you?

"ANSWER: Well, let me answer that like this for you. I have been living with this story for three years now. A lot of it has been ingrained in my mind for that long. It's been on repeat mode for that long. So a lot of it I can actually remember, some of it I can't remember.

"QUESTION: You basically memorized that log, haven't you?

"ANSWER: No, sir, I didn't actually. No, I didn't

memorize it, sir. I can't memorize it, anything to this day.

"QUESTION: Close to it?

"ANSWER: Excuses me?

"QUESTION: Close to it?

5 "ANSWER: I wouldn't even say close to it.

"QUESTION: You couldn't talk fast enough to get out what was in that log.

"ANSWER: Say that again.

"QUESTION: You couldn't talk fast enough to say

10 what was in that log.

"ANSWER: I actually --

"QUESTION: On your direct testimony.

"ANSWER: Actually, sir, I'm quite nervous. Sir, I don't know if you understand it, but I took a great risk

15 here."

Now, I'm not sure if he memorized the log or not makes a difference because the log was turned over in May of '04. It's perfectly consistent with what he testified to. It was detailed, we know that and it was 14 pages.

20 Again, it's not what the Government wanted to hear, it's not to help the case. It was this is the information I have, here it is, in May of '04.

One last thing on this topic. Well, which is I just want to go back to something Troy Bell said. He was being

25 asked by Mr. Herman, who asked a question, in general, you

don't believe everything you hear in jail, right? Troy Bell said something that I think you should all actually listen to, take into the jury room. He said, if one person says something, that's true, but if five people say the same or

5 similar thing, it must be true. So I think that's the theme here. Troy Bell said it best.

You don't believe what one person may tell you, but if five different people, different times are telling you similar or the same thing, well, it must be true.

10 So you have corroboration from the cooperators. They corroborate each other. They corroborate what we know from the Agents Hilton and Manson and Bill Cannon. We have corroboration from the evidence, which I'm going to talk about very briefly before I conclude and sit down.

15 My last thought on this is just think about, consider everything. We're not telling you to ignore their evidence, but what you got to do is look at what they did in this courtroom and what they said and how they said it and just think about were they telling me the truth?

20 The judge told you, you do this in your everyday lives all the time. He told you this right from the voir dire, the jury selection. Use your common sense. Think about the timing of certain things and think about what they said and how they said it.

25 Okay. The very last brief topic is some of the

evidence. Throughout the trial, we put in a lot of exhibits and we didn't always get to show them to you. You certainly will have all of them at your disposal. If you want to see some of them, all of them, I think they'll all be sent back. Ask to see them. If you want audio tapes, ask.

The only things we can't send back, obviously, are the drugs. I don't know if you want to see those or not, it's totally up to you.

A few things I want to highlight which you should look at. The discovery materials from Rakeem Baskerville's house. That, obviously, shows a direct connection between Rakeem Baskerville and in this case, in January of '04, he's got those transcripts in the house, in the same period that he's looking for Kemo. Those are the very transcripts Kemo's talking about.

The initial appearance transcript, when he gets into court in front of the magistrate, that's an exhibit. Read that. He's told he's facing a huge amount of jail time and that really is the motive and what happens next with Rick Hosten, that's important.

42 and 43 in evidence, we haven't shown you, but those are judgments of convictions for the defendant for two prior drug cases which you heard about. It's just an official document showing he has those two prior convictions. As the Judge said, you're limited in the use of those, of that

evidence to the motive for the murder, but consider that as the motive because that's the basis for the career offender and the reasons he's facing a lot of time.

The Bellagio records we talked about. Those are in evidence to corroborate something that the defendant told Mr. Bell and Mr. Dock is true.

The travel records, which is 257A through T, those are just Liberty Travel records which corroborate, first, that Anthony Young does have a relationship with Mr. Curry. He travelled with him mid-February of '04, I think it is, like three weeks from the murder. He's traveling in the Curry group down to the All-Star game.

DMV records obviously show that Deidra Baskerville was registered to the Escalade and the defendant is registered to that Monte Carlo we heard so much about. The mortgage records, 259 are in evidence, simply to show the connection with the cell phones which we went over, which has Annie Williams, the name on the second cell phone, as co-owner with him on his house. That's his wife's grandmother.

There are four nine-millimeter shell casings which show you that Anthony Young knew the caliber of the weapon. I don't know if you actually have to look at the shell casings, but they're in there and also corroborates the number of shots fired.

The autopsy report corroborates what Anthony Young

says about where Kemo was shot on his body and how many times. The aerial photos, which are 320, which Anthony Young used to describe the position of the cars. Look at them. Unless you're familiar with the scene, it's kind of hard to figure out which street is what and he was intimately familiar with that scene apparently.

The Hudson County records, which are 415 that show -- that's the chart that's in front of you, that show each person was in Hudson County. You've seen that. Especially that Curry was there for a week, which corroborate Eddie Williams and Eric Dock.

Phone records. We put in some phone records of Terrell Thomas, first of all, and that goes to the drug conspiracy and there's this chart which is not in evidence, which I thought I showed you here, but all this shows is outgoing calls from Terrell Thomas to William Baskerville. There's dozens of calls in January of '03, there are calls in, tons of calls in February of '03. It goes on to the next page, February of '03, all calls from Terrell Thomas to William Baskerville, goes into March and April and goes through June, I think the records. These are outgoing calls, again, from Terrell Thomas to William Baskerville. Again, just showing the connection between Terrell Thomas and William Baskerville and the drug conspiracy.

There's also the phone record which is very important

to corroborate Anthony Young, which is Paul Bergrin calling Hakim Curry's cell phone on the very afternoon of November 25th, 2003, for the reasons I've mentioned why that's important.

There's also phone records in there showing calls and there are these similar charts showing calls between Kemo McCray and Will Baskerville. Don't be confused as to the time periods because, in fact, the calls start in late December, early January, but Shawn Manson told you why that was. She was telling him go out there and see if you can establish contact.

That's the evidence, ladies and gentlemen. I've talked for a long time and you'll be happy to know I'm going to sit down in a moment.

As I said at the beginning, right from the start, when you understand the motive and you understand who the defendant was at the time that we're talking about, a drug dealer, and a powerful man on the street, you can see that he had the means, he had the power and he had the will to make a very calculated decision. That decision was to snuff out the life of Kemo DeShawn McCray to gain his freedom.

He put in motion the plan to execute him, to execute Kemo. Anthony Young may have been the person who actually pulled the trigger on March 2nd, 2004, but without the defendant, without Will Baskerville, I submit to you that Kemo

would be here today among his family. Anthony Young was simply the vehicle Will Baskerville used to accomplish his goal.

The evidence shows that from his jail cell, the defendant pointed Anthony Young right at Kemo McCray. His decision and his willingness to get his crew, his cousin, his brother, his drug associates to handle it, to push Kemo, was the driving force behind the murder. In effect, Will Baskerville pulled that trigger from his jail cell back as early as November 25th, 2003.

Remember, that fucking bum Kemo. He snuffed out Kemo's life without a second thought. His first and only thought was I am not spending the rest of my life in jail for a fucking bum, a snitch, an informant.

So the evidence is in. You know what happened. I submit to you the evidence is overwhelming. When you go back there later today and start your deliberations, by all means work through the evidence, ask for read back of any testimony, really think about it because I know, as the Judge said, we also noticed you all have been paying attention, we thank you for that.

Ask questions. If you don't understand something, you're free to write a note, whether it's to read back the transcript like I said or if you're confused about the law that I said, feel free to write a note.

When you're done working through the evidence, come back here and tell the defendant that he is guilty of what really was a brutal crime. Tell him that he is guilty of drug conspiracy, tell him he is guilty of those six drug transactions where he was out on the streets of Newark distributing crack cocaine and tell him he's guilty of counts one and two, which is the conspiracy to murder the federal witness, Kemo DeShawn McCray.

On behalf of the federal Government and the United States Attorney for the District of New Jersey, I ask you to return those verdicts which the Government submits is consistent with the evidence and with justice.

Thank you.

THE COURT: All right.

Thank you, Mr. Frazer.

Let's take a short morning break, folks. You can go into the jury room.

THE CLERK: All rise.

(Jury is excused and the following takes place out of the presence of the jury.)

THE COURT: Okay.

Fifteen minutes, please.

MR. KAYSER: May I --

THE COURT: Yes.

MR. KAYSER: -- be heard briefly?

I was a little bit taken back. Mr. Frazer, towards the end showed some records which he told the jury were not in evidence. I was puzzled by that. He showed them a chart or some phone calls.

THE COURT: Have a seat.

MR. FRAZER: Simply as an aid to the jury, no different than any other chart that's not in evidence as summation. It's our interpretation of the evidence.

It's not -- we're not putting it back in the jury room. You're allowed to. The other charts aren't in evidence either.

THE COURT: I didn't see anything improper about it.

MR. KAYSER: Okay.

THE COURT: All right.

THE CLERK: All rise.

(Recess.)

THE CLERK: All rise.

(The following takes place out of the presence of the

jury.)

THE COURT: Before we get the jury, to give you some guidance, I've taken the text of the jury charge that I read from yesterday and I'm having my law clerk edit the text to be consistent with what I said. There were a couple of little words that you'll remember that I changed as I went, because I thought it was more consistent with the case that was actually presented. She's doing that and I'll have some copies of that prepared to distribute to counsel and to the jury.

I've also reconsidered my statement that I'm going to send the indictment into the jury room, because we got into some discussion yesterday as to what the verdict form was going to look like. It seems to be an easier way and a more clear way to present the fact issues to the jury to use the original form of the jury verdict form that the Government submitted.

That actually contains the appropriate language from the indictment, which presents fact issues for the jury's consideration. To do it the other way would simply be to ask a very general question and expect the jury to go into the indictment and refer to the indictment, which may or may not actually and accurately represent the nature of the evidence in the case. This, to me, invites confusion in the jury room.

Secondly, I've told the jury time and again, consistent with legal principles, that the indictment is not

evidence. I would think that it's more consistent with that instruction not to have the jury consider the language of the indictment or look at the document itself.

I realize that Courts differ on whether the indictment does or does not go into the jury room. I have been pretty consistent in not putting it in for the reason that the jury is instructed always that it's not to be considered as evidence. Certainly it's not an exhibit. That's the way I'm going to do it.

I'll tell the jury that I decided to change my mind, that we're going to put the operative language from the indictment right on the verdict form to make it more clear to them.

MR. MINISH: The only thing I ask then is that we revisit the verdict sheet because it was impressed upon me by appeals people in my office that it must literally mimic it.

THE COURT: It does. I read it. You can look at it again.

MR. MINISH: No, no.

THE COURT: I'll give you an opportunity to look at it. I wanted to give you that before you started, Mr. Kayser.

Let's get the jury.

THE CLERK: All rise.

(The following takes place in the presence of the jury.)

THE COURT: Take your seats, folks.

Mr. Kayser, you may proceed.

MR. KAYSER: Thank you, your Honor.

Mr. Baskerville, Mr. Herman, Mr. Frazer, Mr. Davis, Mr. Minish, may it please the Court, members of the jury, this is the first time I've had an opportunity to speak with you since Mr. Herman gave the opening statement. I promise you that I am not going to be as long as Mr. Frazer was and probably not even close to it.

We do have some important things to talk about, it is going to take a little bit of time. I'm going to try to be deliberate. I sometimes have a tendency to talk too fast and if I get into that mode, I apologize, but I'll try to be disciplined and not do that.

I would like to start off by going through the inmate visiting log that was mentioned in the Government's closing statement and is before you as evidence. It's exhibit 32. It's going to take a little bit of time to go through this, not too much, it's going to be on the screen before you.

This is the first page of this exhibit is March, '03 -- 2004, says, "Inmates Visiting Log" at the top. There's an officer who I gather is the officer who was on duty at the time that visitors came to sign in.

It indicates eight to four and I assume that's an eight to four shift. We really haven't had any testimony about this document that I can recall, it was brought in as a business record. So there may be some questions about it, but I think it's pretty obvious, the form is pretty obvious and we'll probably have to understand it.

You'll see on the left-hand side, there's a left-hand column, "inmate name", to the left of that I assume that's an inmate number. The "location" column indicating the area of the jail in which the inmate resides and then it has "visitor name, time in, time out."

Looking at page one, William Baskerville's name appears in approximately the middle of the page. I think you can all see that. I'm trying to point to it with my pen.

To the right, the name of the visitor, Deidra Baskerville, who as you know from testimony in the case, is his wife. It's a 9:11 a.m. visit. For whatever reason, the time out is not checked. I do not see anywhere else on that page the name of William Baskerville.

On the following page, which is not dated, Mr. Baskerville's name appears at the top and to the right the visitor's name is Rakeem Baskerville, using his real name apparently. Since it follows, I can only assume it's the same date, but there is no date indicated on the top of the page.

I don't see his name anywhere else on that page.

Going to the next page, which is March 10th, 2004, on that page Mr. Baskerville's name appears nearer to the bottom. I think you can see it right there. Again, the visitor's name, Deidra Baskerville. Time in and time out, somebody just put a line here indicating, I guess, it's the same time other people had visitors. I don't see his name anywhere else on that page of this exhibit.

Next page indicates March 17th. Again, his name appears towards the bottom of that page. Of course, you're going to have this in the jury room, but I did want to do this now so that you have some idea of what these reflect. Again, Mr. Baskerville's name towards the bottom. Again, the visitor's name, Deidra Baskerville, 6:30 was the time.

Looking at the next page in this exhibit, which is March 24th, again there's an appearance of Mr. Baskerville's name towards the bottom of the page. I think you can see it there. To the right, the name of the visitor, Hakim Baskerville, who there's been testimony about, one of his brothers, at 6:30.

Going to the next page, which is March 24th. On this page his name appears towards the top. You see William Baskerville, Deidra Baskerville and there's some name here that's crossed out, which is hard to make out, but it does not appear to be Jamal McNeil or anything like that. It's a 9:11 a.m. visit. I believe that's the only place on that page

where his name appears.

March 31st, the next day in that exhibit, and again you see the name William Baskerville in the middle of the page and the visitor is William Baskerville, his father I believe, 9:15 a.m. on that day. I don't see his name anywhere else on that page.

Next page is March 3rd and on this page, you see Mr. Baskerville's name right here where I'm pointing and again, next to that, Deidra Baskerville, his wife, 9:11 a.m.

The next page in this exhibit is February 4th and on this page, his name appears towards the top. Now, this page it appears, I can't explain it, I hesitate to speculate or guess about what happened here, but you can see at the top, it says "booth" and there are ditto marks going all the way down the page. It appears that inmates received visits from somebody, perhaps in connection with the jail, we don't know, but at the same time, 10:10, 10:10, 10:10 going down the page, then 10:20.

It appears that somebody came in to visit with all of these inmates for ten minutes. We don't know who it is, presume it's not somebody who, a personal visit, but a visit from some official person.

The following page, which also has a February 4th date, Mr. Baskerville's name appears towards the middle and you can see it right here and next to it on the right, Deidra

Baskerville, again his wife, at 9:32 a.m.

On February 11th, 2004, towards the bottom and here you can see William Baskerville's name and ditto marks below, indicate split which means apparently there was a split visit. One of the visitors at 9:55 a.m., Horatio Joines, who you have heard testimony about. The name below that, Kianna McNeil. We don't know who that is. It's conceivable, I suppose, based on the testimony, that Jamal McNeil was using some fictitious identification. We don't know.

2/18, in the middle. William Baskerville's name appears and Rakeem Baskerville's name appears crossed out on the right-hand side and over on the time out column, it indicates "cancelled visit." So presumably he did not stay.

Right below, there are ditto marks indicating again Mr. Baskerville had a visit from his wife, Deidra Baskerville, at 9:20.

The next page in this exhibit is January 7, 2004. You can see Mr. Baskerville's name on the left-hand side here. In the visitor's name column there is no one appears. If you look at the form, there is no visitor name in any of these, for any of these inmates.

Again, there is a time in that's identical for a bunch of people. There's a time at 9:35 that's identical for a bunch of people, 9:40. Again, it appears that there may have been some official reason here where somebody was coming

in to visit. We don't really know, but there is no indication of individual personal visits being made on that date.

January 7, again, towards the middle of the page, Mr. Baskerville's name and the visitor, Ashakima Stocklin, not sure who that is. There hasn't been any testimony about that name and I'm not going to speculate, but it would seem that it would not be Jamal McNeil unless he was dressed as a transvestite.

Immediately below, he has another visitor that day who again is his wife, Deidra Baskerville.

January 14th, Mr. Baskerville's name appears towards the bottom and again the visitor is his wife, Deidra Baskerville, at 9:41 a.m.

Also on January 14th, there's a second page here. Again, it's not clear what this reflects, but Baskerville's name appears towards the bottom of that page and in the visitor's name, there is no name, it indicates two. You'll see that for all of the people who had visitors that day, there's a number instead of a name.

There's also indication that the times -- appears that inmates came in at the same times for some sort of visit, we don't know what it is. It may have been some sort of institution-related matter. We really don't know.

December 3rd is the next page in this exhibit. Here you can see his name has been highlighted and the visitor,

again, Deidra Baskerville.

December 3rd, again, this is a second page for December 3rd and again, you can see that the visitor's column, there's all numbers. Again, two visits at 9:15, several visits at 9:20, 9:25, 9:30, 9:40, no idea what this is all about, but Mr. Baskerville's name appears towards the bottom. It has the number three in that column.

He and another inmate had a visitor at 9:50, I'm assuming is not an individual, a personal visit, but perhaps some official reason that is connected with the jail administration.

December 10th, 2003, you see Mr. Baskerville's name here and again, the visitor, Deidra Baskerville, his wife, at 10:22 a.m.

December 17th, again you can see William Baskerville's name here and to the right, Jamal Baskerville, who there's been testimony about is his brother, at 9:45 a.m.

December 24th, again, Mr. Baskerville's name appears towards the bottom of this form and again, there is no one is listed in visitor's name on the whole form.

You'll see based on the times that are indicated, several at 9:20 and several at 9:25 and it appears that there's some sort of general visit going on that perhaps has something to do with jail administration.

December 24th, 2003, towards the bottom, you'll see

his name here. There's two visitors, Kaleha, can't read, looks like Moklok; Tunisa Baskerville, it looks like. Again, unless Mr. McNeil is cross dressing, I don't know how he gets in with a female identification.

5 December 31st, again towards the bottom, and again the visitor is his brother, Rakeem Baskerville, using his real name at 9:45.

The last page of this chart, Mr. Baskerville's name appears towards the top and, again, there are no visitors' 10 names listed. Again, the times indicate 9:45, 9:50, a bunch of times are repeated, 10:00 several times and so forth. So it appears that for some reason, this was not a situation where there were family or personal visits, but visits from somebody in connection with the institution.

15 Now, I think that the testimony from Mr. Young, you may recall was that there were eight to ten visits from Jamal Baskerville to William -- Jamal McNeil, I'm sorry, to William Baskerville during the period from November 25th, when he was arrested, to March 2nd, the date of Kemo's murder. They're 20 not there. I leave that for you to make a determination about later.

As Ramaine York said on April 18, 2007, you can say a whole lot without saying a lot. Just showing you those records would suggest that maybe there's something wrong with 25 Anthony Young's testimony.

That phrase, you can say a whole lot without saying a whole lot, certainly a true phrase. Perhaps it should be in Bartlet's familiar quotations at some point, but to correlate that to this, where you're on jury duty, considering whether 5 to convict someone of very serious crimes, you have to hear enough and have sufficient trust in the source of what you hear to find the defendant guilty of a crime beyond a reasonable doubt.

Now, how much you hear, how much trust you have to 10 have is up to you. Each of you as jurors determines the weight to give each piece of evidence, whether to accept it or not. Have you heard enough? Do you trust the sources of what you've heard to find Mr. Baskerville guilty beyond a reasonable doubt? Would you rely on those sources making an 15 important decision in your life? You heard the judge's charge with respect to reasonable doubt, that phrase is in there.

You have to make that decision. We live in a great country. It's a privilege for me to stand here before you and participate in this process. We have democratic institutions 20 that extend not just to our political institutions, but to our judicial system, to our justice system.

We don't trust the Government to make those most important decisions. We don't leave it to a bureaucrat, to an appointed official, to an elected official. We leave it to 25 jurors, to our peers, to folks like you who come in here,

voluntarily and serve. And certainly we thank you for that. You should feel privileged to participate in this process as well, even though it admittedly is a burden, a big burden, we recognize that.

5 It's critical to our system, it's critical to our lives in a free country and it's important. I hope you will listen to me.

Much of this case is about words. The defendant was in jail, as you know, when Kemo McCray was murdered. He

10 didn't pull the trigger of that gun. Anthony Young did, maybe. Sent those bullets into Kemo McCray. Obviously he did not benefit from Kemo's death because we're here, we're on trial.

The testimony of Kemo McCray effectively came in

15 through Shawn Manson, special agent of the F.B.I. If he thought he would benefit by that death, that would certainly be a motive. And while it certainly can be considered by you, it's not sufficient by itself to make William Baskerville guilty of anything. Certainly not guilty of a conspiracy to

20 murder charge.

At least when they have been taped or recorded, you know that the words have been spoken. You know whose mouth they came from. If you can hear it well enough to decipher what was said, you can feel pretty comfortable with that

25 evidence. There may be some question about what the words

mean, but at least you know they were said and you know who said them.

The meaning of words is also a problem, when we're dealing with the cooperating witnesses in particular. They

5 came in here and they say pretty much what they want. I mean, they can, there is no limits. They say what they want to say. Not only that, but they can make up their own definitions. Pushed becomes kill, handle becomes kill, reach you and touch you or reach out and touch you becomes a metaphor that means

10 shoot with hot cookies, hoot cookies is bullets. How does one defend against that?

These guys come in here from jail and they have free reign, unfortunately. I'm not going to dwell on the drug evidence. The physical evidence speaks for itself.

15 We've not contested it. The words are spoken for the most part, the words that are spoken are recorded. You heard the tapes. In some instances, the individual transactions were videotaped.

I'm not going to argue that Agent Manson was lying to

20 you, but that doesn't mean she's always right. You need to remember and she admitted, she has a stake in this case. She has a stake in all of her cases.

We all care about what we do. It's perfectly normal. We all want to win, we all want to be successful. As Judge

25 Pisano as instructed, you don't throw out your life experience

and your common sense when you come into this courtroom. You use them.

As human beings, don't we have a tendency to filter out things that are inconsistent with our beliefs and
5 inconsistent with our interests and theories and filter in things that are consistent with them? You think about your own situation, your own lives. It just seems to be the way we work. It's part of our human experience.

You need to consider that tendency, I think, when you
10 consider the evidence in this case, because while what is on the recordings is there, it's often hard to hear, often very hard to hear. I suppose in that respect, I can speak for myself only because we all have different abilities to hear. I don't know how well you heard things on the tapes when they
15 were played in this court.

The Government has indicated that there were some technical problems and, obviously, we all welcome your listening to those tapes again. Quite frankly, I don't think they'll be a whole lot of improvement, but maybe there is.
20 That remains to be seen.

The point is that they are often hard to hear and they're subject to interpretation. There's words that you can hear somewhat, not clearly and it's not clear necessarily exactly what was said. You have to make those determinations.
25 We've stipulated that where indicated on the

transcripts that Mr. Baskerville is speaking, it's his voice. I think you recognize that voice. We have not stipulated to anything more than that. Only the fact that it's his voice.

When you listen to the recordings, you may not hear
5 everything that's set forth on the transcript. Remember the Judge's charge, the transcripts are not evidence. The tapes or the recordings, because they're on disk, they're not really on tapes, but they're what's in evidence. The voices are often very soft, muffled, there's background noise,
10 distortion. It's hard to understand in many instances.

If you don't hear it, if it's not audible to you, then it's not in evidence. There's nothing for you to consider. If you can't understand what is being said, if it's unintelligible, than it's also not -- well, it's in evidence,
15 but it's not something that, a situation where you can accept the words on the transcript. It's only a listening aid.

Remember that those words -- Agent Manson talked about how she made the transcript. She listened to the tapes and she gave it her best shot and she put in the words that
20 she thought she heard. But remember, she does have a stake in this case. She's got that filter. She has got background information that she's considering and she's got her own bias and prejudice when she makes those transcripts. You have to be -- consider those issues, those facts, factors.
25 It's what you hear on the tapes that's important.

Now, what about the drug conspiracy? You have been instructed that reasonable doubt can arise from the lack of evidence. I submit to you that there is a lack of evidence with respect to the drug conspiracy.

We know that Kemo is working as a Government agent, so he cannot be a conspirator. The Judge has instructed you that that's the law.

There are calls between Terrell Thomas and Kemo, which appear to be drug-related. I'm not going to back away from that. There are calls between William Baskerville and Kemo which appear to be drug-related, not going to back away from that. William Baskerville and Kemo appear -- I'm sorry. It appears from some of those conversations that William and Terrell Thomas know each other. Even that each knows the other is involved in the sale of drugs, but I submit it's not clear beyond a reasonable doubt that they have any agreement between them relating to the dealing of drugs.

Wouldn't you like to hear recorded conversations between William Baskerville and Terrell Thomas? Wouldn't that help to make the determination that you have to make? We don't have that.

Now, the Government, they didn't get a warrant to obtain such conversations. We know they have the right to do that. They chose not to. They don't have to, there is no requirement they do that, but wouldn't it have been helpful to

you and isn't it something for you to consider that there are no direct conversations between those two individuals?

Now, the Government indicated that there are phone records. Towards the end of the Government's summation, they indicated that there were phone records showing that there were calls between the two. But again, we know they know each other and we know that even that they know each other in connection with drug activity, but we don't know that they're co-conspirators with any agreement between the two of them to work together.

Likewise, they didn't get a search warrant for the Baskerville house. They conducted somewhat of a search, they refer to what I think as a safety search or I don't recall the exact word that was used. They found no drugs, they found no scales, they found no weapons, none of the kinds of things that you might expect to find in a major drug dealer's home.

Those things, by the way, were found when Koby Cuyler's house was searched, if you remember. I don't recall the exact amount of money found in his house, but there was a weapon found and drugs found, which resulted in his conviction.

None of the $5,000 plus, I think it was $5,200 or 5,300 something that they found in Mr. Baskerville's closet had any of the buy money given to Kemo, even though it wasn't that long after some of those transactions had taken place.

You remember Agent Manson testified that they photocopy that buy money and they went through the money found in that closet and compared it and there wasn't any of that there. We really don't know where that 5,000 came from, what it was for and I don't think you can guess about that.

They made a lot of the granite countertops, appliances, the television. I submit that there was nothing there in that house that made Mr. Baskerville appear to be anything like a major drug dealer. It's not like they gave him any time to hide anything. They came, six o'clock or 6:30 in the morning, it was early. Apparently they were awakened by this, there was no apparent effort or ability to hide anything.

We're told that Kemo saw someone later identified as Car Wash or James Murphy in Mr. Baskerville's car during one of the drug transactions. We're told that Kemo saw someone later identified as Ray-Ray, Horatio Joines, in Mr. Baskerville's car in, I think it was in one, it might have been two of the drug transactions.

Is that enough to prove beyond a reasonable doubt that they're involved with Mr. Baskerville in some kind of conspiracy? I submit that it's not.

Car Wash testified that he worked for Will Baskerville's car detailing business, cleaning cars, washing, waxing cars and so forth, at his garage in Westfield. He

didn't have a car, Car Wash didn't have a car himself so he was getting rides to and from work from Mr. Baskerville.

He sees through the blinds into a room in that garage where Baskerville and a couple other -- Baskerville's there, a couple others are packaging crack cocaine. He wants to go home, so he goes in and helps. He did it once or twice, I think. That was his testimony. He wasn't a regular at it.

Basically, he wanted to speed up the process so he can go home because Mr. Baskerville was giving him a ride. How is that evidence of any agreement between Car Wash and Mr. Baskerville that they would be involved in a drug conspiracy?

I think he testified once he saw Baskerville processing cocaine to rock form. Sometimes he saw him make drug transactions on the way home, selling vials for small bags for cash and I think he said he carried around as much as 1000 or $1500 in cash. Again, is that enough to prove that there's a conspiracy between them to deal drugs?

He testified that Baskerville had a partner or did work with a guy named Ray. Again, Ray-Ray or Horatio Joines. It's not very specific about what Ray did, he just said he was his partner. Don't know what his role was.

Again, what's the agreement, what's the illegal agreement between Ray-Ray and Baskerville? We have no real evidence of it, at least not directly from James Murphy or from Ray-Ray, who we didn't hear from.

There is some evidence from cooperating witnesses, and I'm going to address those later and that gets to the crux of this case and particularly the murder conspiracy case. The Judge instructed you that it's up to you how much weight you give to any evidence. You may draw inferences, you may not. It's up to you. You have to think about those things.

I don't recall any conversations between William Baskerville and Horatio Joines. His name may have been mentioned once or twice by Kemo, but I think that's all. He's identified as being one of those present on a videotape of one of the drug transactions.

We know he visited. I just showed you the jail records. He visited him I think twice and that's really all the evidence that we have, other than through cooperating witnesses, who again, just simply claim that he's a partner of or associate of Mr. Baskerville's.

Is that enough for you to decide beyond a reasonable doubt that Mr. Baskerville is guilty of a drug conspiracy? You have to make that decision.

Kemo, what about his credibility? Again, some of this testimony basically came in through Agent Manson. Agent Manson, obviously, believes in Kemo, but we learn even while he was helping her, he was at the same time cheating and deceiving to the point that he was disqualified as an informant.

He put Tyrone Cox and Rick Hosten, who we saw on the witness stand, in a drug conspiracy with each other, which didn't, in fact, exist.

He did that in order to use the Government's money that he was getting to buy drugs to instead payoff his own debt and eventually he admitted that, and he also admitted to occasionally dealing drugs himself, to make money. That's why he was an informant, to make money. There was testimony he was making about $12,000 a year. I think the total was a little bit just over $24,000 that he got from the Government over a two-year period.

We know that he had at the time of his death cocaine and the metabolite of cocaine, which I can't pronounce and wouldn't try to pronounce, but the medical examiner talked about that. Indicated that based on what was found in his urine, that he had recently ingested cocaine, perhaps an hour or so prior to his death.

There was that shotgun charge that just disappeared, went away. You know, Kemo had a significant criminal record. I think the indication was that he had a seven-year sentence to state prison for robbery, possession of a weapon. That came out, I don't remember if it came out on direct or cross-examination, but despite that, that shotgun charge just disappeared.

Now, Kemo McCray is dead and gone and all of us are

sad about that. For him, for his family, we certainly sympathize we them, we wish that none of this had happened, but his informing for the Government for pay does not make him some kind of hero. It doesn't make everything he said necessarily credible.

Putting someone into a conspiracy like Mr. Cox and Mr. Hosten could have cost somebody dearly years of their lives. Dealing drugs left -- dealing drugs for money on the very streets where he's working as an informant to try to cleanup that street is, obviously, not a good thing. He was part of that criminal world that Mr. Herman talked about in his opening statement to you. He may have been a likeable guy, he certainly didn't deserve to have his life snuffed out, but he's not a hero.

Almost all of the evidence presented regarding the conspiracy to murder charges, some of the evidence regarding the drug conspiracy as well, came from witnesses in that criminal world. I submit to you that it was a cess pool of witnesses. That evidence came from their mouths, consisted of words they claim William Baskerville spoke to them while they were all in jail.

Except for that Haasan Miller, Anthony Young recording which we played during the cross-examination of Anthony Young by Mr. Herman, none of the cooperator evidence is on tape for you to hear, none of it. Can you trust it?

Would you make an important decision in your life based on that kind of evidence, based on something that any of those cooperating witnesses told you?

Let's tske a look at the testimony of Anthony Young. Do you think he told you the truth, the whole truth and nothing but the truth? How would you ever know?

Remember that recording played during his cross-examination? Haasan Miller was wired up by Agent Manson, it was I think August of 2005. I don't remember, August 3rd or eighth, if I remember correctly.

Both Haasan Miller and Anthony Young are in the jail and they engage in conversation. Young is telling Miller how to get over, how to achieve his end in Miller's made-up situation. Miller is just making this stuff up. He doesn't really have a problem, he's creating this to try to engage Anthony Young in a conversation.

Anthony Young really wants to get into the Witness Protection Program and he really wants to avoid both the death penalty and the true life sentence, a life sentence without the possibility of release. Young keeps saying on that recording in August, 2005, that he told the truth to John Gay, the Assistant U.S. Attorney handling this case at that time, but at the time he is saying that repeatedly, remember, he kept saying it, I'm telling the whole truth, nothing but the truth, kept talking about telling the truth and the importance

of telling truth, but at that particular time in August of 2005, remember he had gone to the Government in January of 2005, and his version of events then was he was not the shooter.

Jamal McNeil was the shooter. We know that in March, 2006, he comes in again and he says he's angry. He basically says that he wasn't even there at all. The Government just threw him out, dismissed him and said, we're not going to work with you, obviously you're not telling the truth.

Two weeks later he comes back and he says, not only was he there at the scene of the murder, but he was the shooter. When Young is speaking with Miller on that recording in jail in August of 2005, there is no agents, there is no prosecutors, there is no lawyers, these are two guys in jail. He's telling Miller he was completely truthful with the Government, when we know he had not been completely truthful or was he? How do we know when Anthony Young or any of these cooperators is telling the truth?

He sounded like he was telling the truth on that tape, didn't he? He sounded convincing. There wasn't anything in the way he said anything that made it sound like he was being untruthful.

I don't want to argue that the person Anthony Young who came into this courtroom and put his hand on the Bible and said under oath before Judge Pisano that he was the shooter, I

don't want to argue that he wasn't the shooter. I don't have to make that argument. The prosecutor's right, that it doesn't matter legally whether he was the shooter or not. He's just as responsible if he was there, clearly he was there.

I suppose he could have learned about the mask, the cigarette and so forth from somebody else who was there, doesn't necessarily mean he was there, but there's every indication that certainly he was there.

I'm not making that argument. That's not the reason that we asked those questions on cross-examination. But isn't there evidence that at least raises legitimate questions about that?

If a witness tells you, as Johnnie Davis did, and remember, he is the fellow who basically, maybe not saw the actual shooting, but he was as close as you can be. He indicated that the fellow he saw when he turned around was a black male with dark shoulder length dreadlocks, get into the getaway car. How do you ignore that? I mean, would that part of the description, dark shoulder length dreadlocks be something you would just dismiss, leave out, does that make any sense?

He was described also as being medium complexion, five foot nine to six inches, stocky build or heavy set.

Does that fit a lot of people? Isn't that something

height, complexion, is not that easy to look for. When we see somebody from any distance, we try to estimate their height, we're often far off base.

If you were putting out an all points bulletin for
5 somebody and you had that information, the thing that people would notice first, one would think, would be shoulder length dark dreadlocks, right? Doesn't that make sense? You wouldn't ignore that. You would give them the whole description, but that would be something that would be
10 significant. A lot more people that would narrow the field of people you would be looking for.

Now, Johnnie Davis was there at the scene. He said he was close enough to feel the powder burn on his neck. When he sees Kemo laying on the ground and the young man tucking
15 his gun back in his side, there was no one closer, there was no one with a better or more complete description of the person who killed Kemo McCray. He later picks out that photograph.

They go through an identification process, I forget
20 whether it was at Newark police. I think it was Newark Police Department, in which he picks out the photograph of William Lattimore, who has dark shoulder length dreadlocks.

He says that he looked like the shooter. On the witness stand, Mr. Davis said the guy with the gun and
25 dreadlocks was dark skinned and dreadlocks neck high and he

had a stocky build. He never noticed the driver of the getaway car.

On the stand, he testified that he -- when he looked at the initial photo array, he pointed to photo number five,
5 which was Mr. Lattimore's photograph. That individual was stocky build and matched the weight and the dreads that was on the shooter, that's what he said. He thought that was the man who shot Kemo.

Now, on the witness stand he said something about
10 being 30 percent sure and I'm not sure what that meant, but clearly at the time he made that identification, he thought this may well be the person. Certainly he looked like him.

Stacy Williams, who is a little further away, across the street, testifies that the shooter was approximately six
15 feet, fair-skinned black male wearing khaki pants. He could see some of his face and neck and he referred to his complexion as light-skinned or fair-skinned.

Look, we know Anthony Young doesn't have dreadlocks. He said, he testified he was bald at the time, like he is now.
20 Jamal McNeil was described as having dreadlocks or I think Agent Manson insisted that it was more like braids.

The photograph that was shown, it may have been braids, it may have been dreadlocks. It's hard to tell because they were tied back somewhat behind his head, but
25 certainly the description of Mr. Jamal McNeil was more

consistent, far more consistent with the description of the shooter than Mr. Young.

Young testified I think he was wearing a fleece jacket, Yankee baseball hat pulled down to his eyes and jeans, which none of the witnesses that I can recall testified to.

Should we have ignored all that and just not asked those questions? Again, I'm not -- the purpose of asking those questions was not to suggest or to argue that Mr. Young is not the shooter. That would be kind of crazy. The point is we really don't know, we don't know if we can trust Anthony Young. We don't know if he told the truth, the whole truth and nothing but the truth. I'm going to get to that in a second as to why I make that argument.

How do we know when he's telling the truth? That's really the issue here, not just for him, but all the cooperating witnesses. He's just an example.

What did Anthony Young want to accomplish when he came to the Government in January of 2005? He wanted to get into the Witness Protection Program because he was afraid. It was that dispute he had with Jamal Baskerville and he had a fear that he was going to get killed on the street.

He wanted consideration for the gun charge he was facing. That was the second thing that he wanted. He wanted the opportunity to avoid the death penalty, he wanted to avoid even a true life sentence, one without the possibility of

release. He wants to get home and back to his family and the sooner the better.

Isn't the truth for Anthony Young whatever gets him there, whatever gets him to those things that he wants, that he wants to accomplish? Isn't that the truth for all of the cooperating witnesses in this case? Aren't they so used to lying, cheating, deceiving, stealing, doing whatever they have to do to get what they want or what they think they need, to the point that it's not even lying to them any more? Expediency becomes the norm, not the truth.

They have plea agreements, cooperation agreements that require them to tell the truth, but what is the truth in that context? It's up to the Government to determine the truth in the first instance, according to those cooperation agreements. Solely up to the Government whether or not the cooperator has been truthful.

We'll get one of those 5K1 letters, authorizing the sentencing court to depart downward from the applicable sentencing guidelines, whatever they are.

The Government has no corner on the truth. They weren't there when any of these things happened any more than you and I were there. So they're relying on the cooperators. There were no Government agents or prosecutors present when these instances occurred and so they don't know exactly what the truth is.

That's why we have this system of justice. It's not the Government making these decisions. It's you folks that we count on to be fair, the best and fairest way to figure out what happened.

5 All cooperating witnesses want something. The Government suggests in its summation that these 5K letters are no big deal. Then why do they offer them? What's the purpose of offering them if they're no big deal? Don't you suppose a criminal defendant going before a judge to be sentenced in a

10 federal criminal case would rather have one of those letters than not and wouldn't they rather it be as strong as it possibly could be?

Sure the Judge has the control, he can sentence to whatever he wants to within the statutory maximum, but

15 wouldn't you want that letter if you were being sentenced? Doesn't that make a lot of sense?

Young didn't come to the prosecution because he wanted to be a good citizen. He came because he had needs and wants that only the Government could give him, nobody else has

20 a Witness Protection Program. You want to get into that, you got to go through the Government. You want to get a better sentence, you got to go through the Government. That's common to all of the cooperators, the desire for early or freedom from jail.

25 The bridge to get from one place to the other, from

jail back to the street, to jail to what they want is not the truth, it's opportunity, it's the opportunity to cooperate, to give substantial assistance to the prosecution and to get credit for it.

5 According to Troy Bell, Dock said William Baskerville might be a big 5K1. Now, Dock backed off that. He doesn't indicate that he said that, but Troy Bell said that that's what he said.

Lots of credit was possible. Look at what Dock

10 apparently did to Bell, his very good friend, by his own testimony. He tells him, his handwriting is chicken scratch, can you write a letter to John Gay instead of Dock doing it. He dictates the letter to him. He's controlling the content by doing that. It doesn't mention Dock's name. He's not

15 identified as a rat in a written letter inside the jail or outside the jail. He's not taking any risk. Bell's taking all the risk when he's writing this letter. They write the letter in Bell's cell because he has no cellmate. Dock says that just happens to be where we were.

20 The letter tells Gay that Bell wants to cooperate against Baskerville. Dock tells Bell, if they, the Government, come to see him, just let him know he, Dock, was involved, but he doesn't want his name in that letter. He wants no risk, he wants credit.

25 But he's not a con artist, he says. What do you

think? Was the place where the letter was drafted and the manner in which it was prepared a function of just what he claimed was bad penmanship? Does that make a lot of sense?

You heard Bell's testimony about what Dock told him about the meeting with the Government. When the Government comes to see Bell, which is a week or two, if I recall correctly, after that letter is sent, he does tell him that Dock and him wrote the letter. He tells them about Dock.

He goes back to the tier and he tells Dock, and the transcript is April 19, 5116, Eric Dock was like, no. He said, don't have a meet because they just take your statement. They may not come get me. Dock said, he, Dock, might get fucked. Dock said don't go. He said cancel the meeting.

Bell calls his lawyer the next day and he cancels the meeting. I mean, what are friends for?

Dock then tells Bell not to give over the notes they made because the Government would use them and not give them any credit. Bell testifies that it's he that's preparing notes and sharing them with Dock. Bell testifies that as far as Bell knew, Bell was the only one taking notes. That's what he testified to on the witness stand. He and Dock were going to give those notes to the U.S. Attorney's Office, that was their plan.

Bell says we tore it up because we thought they were going to come send somebody to take it and not give us no

credit for it, so we tore it up and flushed it down the toilet. Those were his words from the transcript. Bell hasn't seen any notes since then.

As you all saw, Dock kept notes or made his own, didn't really need them. He really did virtually memorize whatever he had written, spoke very quickly and just shot out all the information. I think he refreshed his recollection once.

This is all stuff about conversations that took place three years ago. He couldn't even remember the day he was sentenced, but he could remember all this stuff that happened three years ago. You think he's been prepared? You think he's been preparing? Do you think he has a goal here? Does it have anything to do with the truth?

Dock froze Bell out. Dock wanted to get all the credit for that big 5K1. He knew he would come out of helping the Government against Baskerville. That's the way these cooperating witnesses operate. They're result driven.

Anthony Young knows what the Government wants. He said it on that jail recording by Haasan Miller in August 2, August, 2005. That's another recording that's in evidence and you can listen to and play or have played for you.

Anthony Young says the Government wants Hak, Rock, the shooter, those who paid the shooter. Hak paid. He knows William Baskerville's in jail facing those charges. He knows

that. He knows that Baskerville is alleged to be a part of the conspiracy. He knows how to satisfy the Government, to get what he, Anthony Young, wants.

He's advising Miller, he can do the same thing when
5 he says, tell the truth. It's not truly the truth, because at the time he's telling Miller, he, himself, hasn't told the Government the whole truth or has he? We really don't know. You got those descriptions of people at the scene.

It's conceivable, it may be hard to fathom, hard to
10 imagine that somebody would come into a United States District Court and take an oath that he was the shooter, that he killed somebody when, in fact, that didn't happen, but remember some of the testimony of other witnesses, and I'll get to that a little bit later. Some people, in fact, in this case some of
15 the cooperators actually have done that, not to that serious a crime, in other cases.

They're doing what they do to get what they need to get what they want. You can't trust their testimony. Can you use it as a pillar for finding proof beyond a reasonable
20 doubt? Think about it.

Mr. Herman did a lot of cross-examination of Bell and some of the other witnesses and, again, he referred to the criminal underworld in his opening statement. The truth really is what works for them at the moment. In jail, it
25 makes them a bigger, badder person for whatever reason they

need that in jail. On the street, gives them more street credit, makes them more money, makes them able to make another deal and when they're not -- when they're trying to get out of jail as soon as possible, it's what the Government wants to
5 hear to make the deal go through, to get some help at sentencing, as much help as they can get, to get the Witness Protection Program, whatever it is they want, whatever their goal is.

Dock, some of them, Dock had the nerve to write to
10 two prosecutors and ask to be let out on bail to cooperate while he was free. These are people with long records, all of them, facing a lot of time. They're ask for anything. They're not shy.

The truth becomes what is convenient, what works.
15 Remember Troy Bell, pleading guilty to stuff he didn't do? I don't remember the specific crimes, there are a couple. 5159 to 5164 of the transcript. Why? Because at the time it worked for him. It was convenient.

Bell lies to the doctor at the prison hospital about
20 hearing voices so that he can stay longer at that hospital in Massachusetts, a lot nicer place than the jail he was in, and then he uses the very same lie which kept him in the hospital for those months when he should have been in jail, to try to get a lower sentence from the sentencing judge, from Judge
25 Walls in Newark.

Do you think he thinks twice about that? I mean, it's like two sides of the same lie. The coin of the kingdom in jails and in the criminal world, lies.

Let's talk about the murder conspiracy. They're basically the same, the differences being the intent in the one count to do away with the witness, in the other to retaliate against an informant.

Isn't the central issue for those counts whether or not you can trust these cooperating witnesses with the words that come out of their mouths, which the words they attribute to William Baskerville?

The prosecutor comments late in his summation about the witnesses looking at you and he suggests that it's out of fear. Well, is it out of fear or is it out of -- is it because they're lying and they can't face Mr. Baskerville while they're lying? That's another possibility other than fear.

Another possibility, by the way, is because they have been well-trained and prepared by the prosecution. What witness on that witness stand did not look at you? F.B.I. agents, medical examiners, if you look at the professional visits, the people who do this for a living, who testify not day in and day in and out, but have to testify in cases from time-to-time, they look at the jury, they all did that. It's because it's effective. That's why they did it. They

prepared to do that. I submit you can draw that inference and draw that conclusion.

We're in a court of law. Your verdict has to be based on the evidence, not on some imagined conversation or other kind of communication. Other than the bold and bald stories told by some of the cooperating witnesses, well after the fact, we have no evidence in this case of any phone call, conversation, message, letter, note or any form of communication in which William Baskerville initiates or promotes any murder conspiracy.

Look at Rick Hosten's testimony. He was one of the cooperating witnesses for the Government. He was the one person in the bullpen with Baskerville when he was on the phone with someone on the day of his arrest, November 25th.

Hosten had been arrested on the 24th, the day before. They're both waiting to appear before the magistrate in Newark. Look at Hosten's testimony. He said he didn't recognize William Baskerville at first. Baskerville recognized Hosten as living on Wainwright Street on Kemo's block.

Hosten sold drugs to Kemo, had known him maybe five or six months. Hosten overhears William Baskerville on the phone in the bullpen on November 25th, 2003, the day of his arrest, and both are going before the magistrate.

Hosten says Will Baskerville was mostly on the phone

during the 30 minutes they were in that bullpen location. He's upset. You recall, he was upset because of Kemo. He called him a fucking bum. I'm not going to deny that, I'm not backing off that. He was involved in the drug business in some aspect and he was upset that he was locked up because of that.

He kept mentioning Kemo's name on the phone, according to Hosten, repeating the same thing several times. We don't know who that call or who those calls, because there could have been conceivably more than one call, were made to. We don't know what else was said on them. There's simply no evidence of any communication that there was an instruction to handle anything, to kill anyone or anything like that.

It could have been his wife on the phone, could have been his lawyer, could have been family member or friend. You can't just assume that that call contained some direction to take some action like that. By his plea, William Baskerville has denied making such a call.

At the Grand Jury, Assistant U.S. Attorney John Gay who at the time had this case, asked Hosten, "Do you recall him ever saying anything regarding Kemo, such as I'm going to get him or some, a threat, a specific threat of that nature?" Hosten's answer was "No."

Hosten testified that the message on the phones at the Hudson County Jail was "this call may be monitored." He

doesn't know if any of those calls were monitored or recorded, but the message was on the phone.

He had at least a couple of prior drug convictions, he had a sentencing guideline level of 32, which is a high level, possibly a career offender. That's what he said, facing a lot of time. He certainly had good reason to be cooperative and try to reduce that and he did cooperate.

He did provide information about the drug situation. But Hosten didn't hear Baskerville say anything about what he was going to do to Kemo. Baskerville and Hosten were on the same tier at the Hudson County Jail, they hung out with each other, they spoke on a daily basis, that was his testimony, eating together, working out together, watching TV together. He was as close or closer than anyone else to Baskerville in the Hudson County Jail.

There was no discussion about any charges, about any plot to kill anybody which he was aware of. That was his testimony. We didn't call that witness, the Government called that witness.

It certainly appears that there was a conspiracy to murder Kemo DeShawn McCray. There's really not much question about that, but there is no trustworthy that it was initiated or joined or acquiesced in by William Baskerville.

Paul Bergrin, representing William Baskerville at his initial appearance and for some period of time after until he

was relieved of counsel and Mr. Herman and I were appointed to represent William.

Quite frankly, and unfortunately, the evidence suggests pretty clearly that Paul Bergrin is the one who initiated this conspiracy to murder Kemo McCray. Manson, Agent Manson refers to Bergrin as house counsel to the Curry organization on at least one of those occasions. She testified about visiting Will Baskerville at jail. She told him she believed his lawyer, Paul Bergrin, was not serving in his best interest; that the F.B.I. knew Bergrin would not encourage Baskerville to cooperate with them and that Bergrin was looking out for the interest of Hakim Curry and other individuals Bergrin represented.

Manson believed Bergrin's loyalty was to Hakim Curry; that he would be reporting to Curry and looking to be paid by Curry; that he would be protecting Curry and Curry's organization. All of this is in the transcript, the trial transcript, in the area of 4,000 to 4,015.

Anthony Young testifies that Bergrin calls Curry while they're in Curry's car, the Range Rover, that was talked about and tells them the informant's name is K-Mo, mispronounces it. He says, Young says as soon as the name is passed along, from whoever Paul got the name from, which would be Will Baskerville, he says, we don't know that. That means if you cross the Baskerville's and somebody give you the name

who did it, get rid of him. That's an assumption. I mean, there is no communication between the two of them at that time or any time between the date of his arrest and the date of the murder. He's assuming that.

Can you convict somebody on an assumption like that, made by a witness like Anthony Young? The fact that Will Baskerville is a Baskerville is not probative of guilt.

Remember on that Haasan Miller/Anthony Young tape made in the jail, Young states that Bergrin has Curry's money. He got a red Corvette from him and his daughter's college tuition was paid by Curry, even that Curry was having relations with Bergrin's daughter.

From all the evidence in this case, it appears that Mr. Bergrin was not giving Mr. William Baskeville the best legal advice or advice that was in his interest, rather in the interest of the Curry organization, as disorganized as that organization may have been. Bergrin was receiving, according to the testimony, large fees for representing Curry and his organization. He had a relationship with Curry outside of and beyond that of a lawyer/client relationship.

What's all that called? Motive. Motive for Curry and motive for Bergrin, not motive for Will Baskerville. Didn't E.T. Hak Curry have as much here to gain as William Baskerville in this murder of Kemo McCray? A member of this loosely defined click, that Curry click, is fingered by an

informant, by Kemo, and Curry's worried about himself and his organization. He uses Bergrin to make sure William doesn't turn informant, stand-up guy or not, and plots to get rid of Kemo to demonstrate his, Curry's, strength on the street.

5 William Baskerville doesn't have that kind of strength on the street. According to the worse testimony, he's responsible for a couple of blocks in Newark and Irvington. The testimony is that Hak Curry is one of the biggest drug dealers in Newark. I think Manson said 80 to 85

10 percent of the cocaine sold to the housing projects or something like that.

The only thing they need William for is to give him the name of the informant and Bergrin gets that and takes care of it. The Government's theory of eliminating a witness

15 really makes not much sense. They got recordings, they got surveillance, they got videos, they got lots of evidence about the drug transactions. This is a retaliation murder.

Curry's making a point on the street for those who might consider informing on him or his group. Now,

20 Baskerville might, might have been, might be a beneficiary in some respect, but although that's not at all clear because we're here having this trial, but this murder was not done by or for him.

If it's true that Bergrin met with Curry and some of

25 his cohorts and said no Kemo, no case and you remember that

testimony. He said, according to Anthony Young, several times, and whether or not he raised his thumb, giving them sort of a physical signal of what to do, it appears to be Bergrin who initiated and promoted this conspiracy to kill

5 Kemo DeShawn McCray. Did he have his own motives, protect the income stream, the money he was getting from the Curry organization? More business he was getting from it? Protect his friends? To send a message from Curry to his organization that anyone who might inform on them, because it's his money

10 at stake here as well. If any of that's true, it's awful, it's a horrible thing. It's even a more awful thing for a lawyer to leave in his client's foot steps.

Anthony Young claims Jamal McNeil was a messenger for William Baskerville, visiting him eight to ten times in the

15 jail. You don't see that in the visitation records. Frankly, we don't see any evidence of false identifications being used either. Perhaps one, perhaps.

Anthony Young, who says he was the shooter, from November 25th, 2003 through March 2nd, 2004, the date of his

20 arrest to the date of this murder, never had a conversation with Will Baskerville. Remember the cross-examination by Mr. Herman towards the end? He never talked with him on a jail visit, never had a phone conversation with him, never had a cell phone conversation with him, never had a letter from him,

25 had no contact with Will Baskerville during that period of

time.

The person who gave him and Curry the name of Kemo is Paul Bergrin. No one ordered him to kill Kemo McCray. That's what he testified to. Rakeem Baskerville and Hakim asked him to kill Kemo, they paid him to kill Kemo and he said he did it for the money, $15,000 to kill somebody. He did it because they asked and he did it because of the money.

We submit there is no trustworthy evidence in this case that William Baskerville instructed or acquiesced in his lawyer's conduct or anyone else's conduct to have Kemo McCray killed. There's reasonable doubt. A lot of that reasonable doubt comes from the untrustworthiness of these witnesses, cooperating witnesses. We trust that you will do your job, that you will be thorough, careful and thoughtfull and if you do those things, you'll reach a fair verdict.

Thank you.

THE COURT: All right.

Thank you, Mr. Kayser.

We have a brief rebuttal statement to be made by the Government. I would suggest we take lunch before that happens. Is that okay with everybody?

Let's take our lunch break. We'll have you back here by 12:35, 12:40.

THE CLERK: All rise.

(Jury is excused and the following takes place out of the presence of the jury.)

THE COURT: Do you have any idea how long you expect to be, Mr. Frazer?

MR. FRAZER: It's Mr. Minish.

MR. MINISH: Judge, I'm not very good at estimating, but I think not very long or so, 20 minutes or so.

THE COURT: Fine.

(Luncheon recess.)

AFTERNOON SESSION

THE COURT: Dana says 401 through 408 and 415 are missing. I don't remember what they are.

MR. FRAZER: Those are the prisoner movement records. Judge, we can resolve that.

THE COURT: I think I might have copies of those.

MR. FRAZER: We have copies. We're looking for the original yellow sticker and I think we have some of them and we're looking amongst our papers, so it should be resolved when we have a moment, before they go in.

THE COURT: I'll excuse the jury after Mr. Minish is done and tell them we have housekeeping things to do and what's going to happen next.

In fact, what I'll do, I'll make it even easier. I'm going to tell the jury when Mr. Minish is done, that I want them to decide whether they want to proceed further today or get started fresh Monday morning, in which case if that's the case we can do all this housekeeping after they leave and we can deal with the verdict form.

MR. FRAZER: Very good.

MR. HERMAN: Are you going to give the last final charge today?

THE COURT: Depends on what they say. Does that make sense?

MR. HERMAN: Absolutely, Judge.

THE COURT: Get the jury.

THE CLERK: All rise.

(The following takes place in the presence of the jury.)

THE COURT: Take your seat, folks.

Mr. Minish is going to deliver the Government's final statement, which he tells me should be about 20 minutes, so after he's finished with that, I'll tell you what you can expect next and we'll move forward.

Mr. Minish.

MR. MINISH: Thank you, Judge.

Counsel, members of the jury, good afternoon.

First thing I'd like to address with you is the term "Reasonable doubt." You heard it in the Judge's charge, Mr. Kayser referred to it a number of times.

Reasonable doubt, as the Judge told you, is not some magical standard. It's the same standard that's used each and every day in any criminal court, state and federal, across the country. It's not beyond all doubts, it's not a mathematical certainty, it's not conjecture and it's not speculation.

The speculation part is important because it seems to be that's what Mr. Kayser asks you to do in a number of the areas of his summation. I'll deal with just one of them, with the jail records.

There is zero evidence in this case whether or not there were ever any administrative or jail-related meetings among prisoners, absolutely none. Whether or not Jamal McNeil

met with William Baskerville one time, eight times, ten times, is really of no consequence, but so we can deal with this issue, I went back and counted the number of weeks.

Mr. Young's testimony was every two or three weeks, Mr. McNeil saw William Baskerville; that William Baskerville passed information to Jamal McNeil through the rest of the group, basically what's going on, what's the status, have you found him yet, has he been killed yet? I went back and I counted the number of weeks from the date the defendant was arrested until the day Kemo was killed. That was 14 weeks.

During the course of those 14 weeks, from 11/25 through the day Kemo was murdered on March 2nd, there were three different times when the name next to the defendant's visitor was blank. One time there actually was a McNeil mentioned; a couple of times what the defendant, defense counsel has attributed to a women's name. Again, there is no evidence whether or not it was a woman or not, but it doesn't matter. And two different occasions on December 3rd and January 14th where there's simply a number. Was that Jamal McNeil? I don't know.

It is clear from the evidence and the only evidence before you that you could use to interpret this, though, is that Jamal McNeil had a fake I.D. Mr. Kayser also said something to the effect, Rakeem Baskerville didn't use a fake I.D., Anthony Young told you that. He said the Baskerville's

all had regular I.D., plain and simple. It should come of no surprise to you that when you do review the records, and you should, that when Rakeem visited or Hakim or Jamal Baskerville visited, their names are in there.

Let's move on to what's I think really important in this case. There was questions posed by the defense whether or not the defendant was involved in a drug conspiracy and that there was no evidence of that, that you only heard it from cooperating members. Members of the jury, that's simply not true. From the defendant's own mouth, a recorded conversation, if I'm not here, deal with my man Rell. That's it, another person, cooperating with the defendant to sell drugs. There is your conspiracy.

But it doesn't stop there. Ray-Ray, Horatio Joines, Horatio Joines from Anthony Young's testimony was so closely joined with the defendant in his drug operation that the group actually thought that he could have been the cooperator because why wasn't he arrested, if Will was arrested? These guys were so intertwined. Now, does that sound like someone who was just randomly there visiting on a videotape?

Mr. Kayser also made comments about the money that was found in the defendant's house, that it didn't match with any of the sales to Kemo. To me, that sort of smacked of the argument that those sales to Kemo were not made. I hope at this point through the audio tape, through the videotape,

through Agent Manson's testimony, through Agent Manson's testimony with regard to Kemo, that there is no question that on six different occasions, the defendant sold drugs to Kemo McCray, period.

Mr. Kayser said, well, Car Wash, he was there a couple of times. He wasn't really a conspirator, he was there just to move the process along. Fine. Let's just take that argument at face value.

What it failed to address was the two other guys who were there, two or three times every week that Car Wash told you, cutting, chopping, bottling. Two or three times every week while Car Wash was there. So even, again, allowing for defense counsel's argument, taking him out of the mix, two more conspirators, throughout the entire length of the conspiracy.

Finally, with respect to the drug conspiracy, Mr. Kayser even said during his defense of the murder conspiracy that, well, a statement had to be made because a member of Hakim Curry's drug click had information provided against it, that someone went and got a member of his click. One is not in a click by himself.

Now, moving on to the murder counts, again, you have to keep in mind what the Government must prove. There's two counts that you've heard a number of times, two conspiracies. One, to kill Kemo so that he can't testify and two, to

retaliate against Kemo for what he had already done, for the information he had already provided.

The question is: Was there a conspiracy? Then the second question is: During the course of the conspiracy, was
5 the defendant a member? That's it. If he was a member, did he know what he was involved in?

Now, with that as a backdrop of what has to be proved, I won't go through the other evidence, because defense counsel largely focused his argument on the credibility of the
10 Government's cooperators. You know, you have to take into account their record, you have to take into account that they're hoping to get a 5K letter or some sort of reduction of their sentence from the Judge, from this Judge or the other judges, but it's easy to say, therefore, they're not credible.

15 Members of the jury, that's just simply not what the evidence shows. Mr. Frazer went through great lengths to show you the corroboration of how each piece fit together, how someone who didn't know someone over here, said the same thing; that the date it was said before another witness would
20 have even known about it. I'm not going to go back and rehash that. These things are not taken at face value. There's other factors.

While the Government called these men to the stand and it chose -- we chose to put them on the stand, I do have
25 to disagree with one thing that Mr. Frazer said. We didn't

choose them as witnesses, though. Defendant chose those witnesses. He was in jail and this is who he talked to. He talked to guys who he thought he could trust, he talked to guys who he thought were criminals, he talked to guys who were
5 in Hudson County Jail with him. No, there are no nuns in the jail. The defendant did not confide in people who were not also criminals in their own right.

I hope that does not surprise you for a conspiracy that started in jail, but taking all those factors into
10 account, there's one thing and one thing only that really matters. When these men took the stand, did they tell you the truth? That's it.

The truth is not, I wrote it down, a matter of convenience. There's not multiple versions of the truth,
15 there's not the Government's version of the truth. There is one truth and one truth only and the reason why defense counsel spent so much time, I submit to you on this, is that they know that if these men were telling the truth, even if one of them, the defendant's guilty. That's it.

20 They also attacked the idea that, well, you know, it's only their words, it was not recorded, as if somehow or another the F.B.I. did a bad job, because they were unable to record statements made for a crime that they were unaware of, the conspiracy, and a murder that had yet to be committed.

25 These guys basically are Rick Hosten, Ramaine York,

Eddie Williams, Troy Bell, Eric Dock.

Rick Hosten, defense counsel said he's not backing off the comments that the defendant was angry when he spoke about Kemo. But he also wants you to believe that these
5 witnesses somehow or another conformed their testimony to what the Government wants. He read to you a passage that completely contradicts that.

Rick Hosten was asked in the Grand Jury, basically, did you hear the defendant say anything about planning to kill
10 Kemo? He said no. You can't really have it both ways. They can't be lying on one hand to tell the Government to help themselves, to get what they want and then other hand, say, well, that you have to believe.

Ramaine York. Ramaine York was questioned up and
15 down about how much he dislikes Eric Dock and how he thought Eric Dock had screwed him by passing along information, but yet somehow or other, these guys all got together in their own little conspiracy and that was all just play acting.

Troy Bell and Eric Dock. Did Eric Dock and Troy Bell
20 take advantage of what they saw as a great opportunity for them? Absolutely did. There is no question about that. But that doesn't mean they're not telling the truth.

Like again, on one hand defense counsel wants to say Eric Dock somehow hoodwinked Troy Bell, write this letter, rip
25 up your thing so he could get all of the credit, but by the

same token, while Troy Bell is stupid enough to allow that to happen to him, he's smart enough to concoct all that testimony he gave and to be subjected to all of that cross-examination and still say to you, this is what I remember, I don't know
5 what else to tell you. Again, you can't have it both ways.

The truth, members of the jury, from the witness stand as best as they can recollect, a date one way or the other could have been mixed up, is all they're required to do, to get the benefit of their testimony. You'll notice in those
10 agreements, there is no mention of there has to be a conviction. There is no mention of, well, if the jury doesn't convict them, you're out of luck. Very simple, truth, letter.

But you also know from independent acts that the Government, the prosecution does not rely simply on their
15 word; that the corroboration again that Mr. Frazer spoke about in his summation is extensive and further, that when the Government is aware that someone is not telling the truth, there are repercussions.

Defense told you again, when Anthony Young came into
20 the United States Attorney's Office in Newark, New Jersey and said, you know what, I wasn't there, I'm angry, he was thrown out. He wasn't cajoled. No one spoke to him again until he came back with his lawyer and said, okay, I'm ready to tell the truth.

25 How about Kemo? When Agent Manson found out Kemo

McCray had lied to her, that was it. He was terminated as an informant, no matter how successful he had been, period. If you don't tell the truth, there are repercussions.

But the defendant kept talking to these people, providing them with information, so much so that Hakim Curry, his cousin, hears it in Passaic County and the first thing he does when he gets to Hudson County is tell him, shut up. Everybody knows. Keep your mouth shut. All the way to Passaic County.

Members of the jury, in my opening statement to you, I told you that when you have a drug conspiracy, it's an ongoing investigation, the F.B.I. or whatever, DEA, whatever law enforcement organization is involved has different opportunities. They can try to videotape, they can try to audio tape, they can try to do a number of things proactive, but when you have a conspiracy that no one is aware of at the time, the only sources of information are members of the conspiracy, Anthony Young, or people that a member of the conspiracy spoke to, the defendant spoke to Richard Hosten, Eric Dock, Troy Bell, Ramaine York, Eddie Williams and by the way, I did forget, Eddie Williams, who also would have to be part of this conspiracy was such a concern to Troy Bell and Eric Dock, that when they were writing their letter, he walked in, they fumbled under the pillow and two minutes letter the defendant shows up. Again, he would have to be part of this

whole conspiracy.

Mr. Kayser said to you, members of the jury, there is no question that there was a conspiracy to kill Kemo DeShawn McCray. He also said something to the effect of, you'd really have to be crazy to question Anthony Young was the shooter, although we did spend five minutes on dreadlocks or not dreadlocks or whatever.

He also told you that Paul Bergrin passed the information out of the jail to the group, right; that it was Kemo was the cooperator and that the information came from the defendant and then there's a break. Everything that the Government told you, opening statements and the witnesses, that this conspiracy was going on, Mr. Kayser largely conceded up to the point of the reason why.

Mr. Kayser has submitted to you the idea that all of this was going on, it was merely the attorney protecting his source of income; that somehow or another the defendant is in jail, his cousin, his brother, another brother, drug associates, for three months are out looking to kill his informant and the person with the motive is not the defendant, it's the lawyer.

Now, what the lawyer did, what Paul Bergrin did was a terrible thing. To pass along information like that, to give advice like that is unconscionable.

That doesn't take the motive away from the defendant.

Members of the jury, that argument basically says this: Everything the Government told you is true, except, except what makes my client guilty. That's where the link breaks. And again, so it's clear, let's take Anthony Young out of the mix for a second.

You know that's not true because of the words from the defendant's own mouth to the cooperators, that during these months, he is saying my guy's are out looking for him, my cooperator might even be dead, I told them you all handle it, I told them to put a hole in his melon or bullet in his melon. So he just happens to be play acting simultaneously to the actual conspiracy going on.

Members of the jury, let's call this case what it is. The defendant was a drug dealer. He got caught by the F.B.I. He did not want to be prosecuted by the federal Government. He did not want to face that much time in jail. He knew if Kemo DeShawn McCray got on that stand, he would be convicted. So he made a decision, a cold, calculated decision that his freedom was a fair trade for Kemo DeShawn McCray's life. He thought that somehow or another the law would allow him to escape responsibility for his actions if Kemo was not around.

Members of the jury, the defendant was wrong.

THE COURT: That's it.

MR. MINISH: Nothing further.

THE COURT: Thank you very much, Mr. Minish.

Ladies and gentlemen, you've now heard the benefit of all the counsel's arguments. I'm going to tell you what's next and I'm going to excuse you for a few minutes and then ask you to come back and tell me how you want to proceed here.

What we need to do next is to take some time and marshal all of the exhibits and make sure we have them already to go into the jury room. We also have to finalize some language in the verdict forms.

After that happens and that should take about, 15, 20 minutes. After that happens, I have some final instructions that are only maybe five minutes or so and I'll go over with you the language in the verdict form so that you're all together on how the decision-making process will take place.

We then need to separate the alternates and deliberations can start.

By the time you get back out here it's going to be 1:30 to quarter to two. When you go into the jury room, I'd like you to discuss with each other whether you want to go into this now or do you want to do all of this Monday morning. We're going to need some time, whenever a verdict is reached, I have no idea when that will be, but we'll need time between then and receiving the verdict because I actually have a lot of other things that I'm going to be doing. I don't know how far you're going to get today anyway.

I will leave it up to you as to whether you want to

have the final instructions this afternoon or do that first thing Monday morning and again, it will only take about five minutes, ten minutes.

You can go into the jury room, discuss it among yourselves and we'll have you back here as soon as possible.

THE CLERK: All rise.

(Jury is excused and the following takes place out of the presence of the jury.)

THE COURT: Have a seat.

First things first, I need to have the first row in the courtroom empty, because if they come back and they want to proceed, I'm going to put the alternates there. I don't know where else to put them, they have to be separated. I need some room over there.

Secondly, where do we stand on the verdict form?

MR. FRAZER: We gave it to counsel, I don't know.

MR. MINISH: Judge, if I can put on the record because I'm not sure about the verdict sheet what was on the record. We provided to defense counsel, based on your Honor's ruling that you're not going to give the indictment, something that we believe more clearly mimics the exact language of the indictment for the charges. They're in the process of reviewing it.

The only other issue, I believe, with the exhibits are the two judgments of convictions for the defendant. Defense counsel indicated there was something they may wish to redact from the document. We're willing to redact what's appropriate, but as of right now we haven't been told what.

MR. HERMAN: Judge, from the defense viewpoint, the most recent verdict sheet was fine, that's the lengthier verdict sheet.

THE COURT: All right.

If I can ask you to have a dozen copies made, you better make 16 copies of it. I'm going to discard the ones I have so I don't confuse them.

5 We need 18 copies.

MR. MINISH: I'll make copies. Mr. Frazer can deal with this.

THE COURT: Anything else to do?

MR. HERMAN: Do you have the J & C's? I can't find

10 them.

MR. FRAZER: 42 and 43, I believe.

Except for the redactions on that, we have all the exhibits.

THE COURT: Yes.

15 MR. FRAZER: He's going to make copies.

MR. KAYSER: There's an issue I'd like to address when the Court wants to do it.

THE COURT: What's it about?

MR. KAYSER: How to handle the tapes and transcripts

20 with respect to jury deliberations? I suppose my preference would be, it has been in the past, that the jurors have, actually have the tapes, the discs and the capability of playing them in the jury room if they want that.

I don't see why it can't be set up, because we did

25 it. It doesn't require a lot of equipment or anything fancy,

somebody can be taught to use the software very quickly and easily and then they can listen to them without us being present and they can listen if they want.

If they have to be brought back here, I think the

5 transcripts, which are only listening aids, should not be permitted in the jury room because it provides them the opportunity to read them without the listening to the tapes.

THE COURT: Look, from a point of view of neutral convenience, I would suggest that we get some sort of an audio

10 device that we can send in the jury room with the tapes and if they want to play the tapes, it's okay with me.

MR. FRAZER: I'll tell you the problem with that. What they're listening to are discs and that requires, I believe, a laptop computer. We have to then get a laptop

15 computer that has no other information on it, which I'm not sure is possible but we can try.

In my past experience, most times that's not the way it's done simply for that reason, because it requires a laptop computer. It also requires some audio, because a laptop

20 computer listening to on the little speaker that is equipped, and I'm not a technology guy, they're not going to be able to hear it clearly.

There's another reason, Judge, which is only, the whole tapes in, obviously they can listen to all of it, but

25 there are only portions played and I do agree that the

transcript is an aid for the jury and should not go in. We have no quarrel with that.

I think the question is if they're brought back out here, can they follow with the transcript? I'm not clear what the Court wants to do with that. I clearly believe that it should not go back with them, but I think they should be able to use it as an aid to the jury if they request hearing.

THE COURT: If it's not possible to have them navigate through the discs and if we don't have the hardware to make it feasible, then it would seem to me that they would have to come out into court, play it for them and unless somebody tells me otherwise, I would suggest that they have the transcripts as well with the same instructions, that the transcripts are only there for an aid and not evidence, but the tape is the evidence.

MR. KAYSER: That's fine.

THE COURT: I don't know any other way to do it.

MR. FRAZER: They may not ask for it.

THE COURT: All right.

MR. FRAZER: I understand we have the copies of the verdict sheets so I can hand them to the Court.

THE COURT: May I see a couple? Just give me two copies. You can distribute the rest to counsel.

Do you have anybody who can make a few more copies right away?

MR. FRAZER: Sure.

THE COURT: That's three more here. I want to give some to the alternates.

MR. FRAZER: There's four more here.

THE COURT: But there's six alternates.

MR. FRAZER: That's right.

THE COURT: Dana, find out from the jury what they want to do. Tell them we're ready to proceed, but it's up to them. You may give them the option if they want to proceed and just get themselves organized before they go home today, they can do that, too.

MR. FRAZER: One last thing that goes without saying, but the drugs have to stay in our possession, that does not go back.

THE COURT: Yes.

MR. FRAZER: They're free to see them if they want.

THE COURT: They want to proceed. Let's get the jury.

MR. FRAZER: In another category, there's bloody clothing that we're not going to send back for hazard material. If they want any of that, they can ask us. That includes ballistics and things like that.

THE COURT: Fine.

THE CLERK: All rise.

(The following takes place in the presence of the jury.)

THE COURT: Have a seat, folks.

I'm going to stay here for the final instructions, because as I promised you, it is not going to take that long.

The first thing that I want to do is to identify and separate from you in the jury box the alternate jurors. As I've told you, the alternate jurors, although they're going to be separated now and will be kept together in a separate location for the duration of this trial, the alternate jurors will not be deliberating with the 12 jurors on the case.

I have a few things to say to the alternate jurors after the jury goes out. We'll get to that as we need to.

I'm going to ask six of you to go and sit in the first row in this courtroom. Juror 149, 66; juror 60, 275; 63, 142; 58, 121; 65, 145; and lastly 64, 335, first row.

Again, you may take this news with disappointment or with relief or a little bit of both. Suffice it to say, you are necessary participants in this case and you're going to stay with us throughout. We'll make you comfortable and I would appreciate it if you would pay attention to the final instructions just as though you were still sitting with your 12 colleagues.

Now, the first thing we're going to do is distribute the verdict sheet. It is on the rail there. Give everybody a

verdict sheet and give one to the alternates as well.

I told you yesterday in my jury instructions that I was going to give you the indictment to review with you in the jury room. I have the discretion to send that in or not and I've decided to change my mind and not send it in for this reason: First of all, as I told you over and over again, that the indictment is not evidence so I don't want you to be confused while you're in the jury room with it and consider it to be among the other evidence in the case.

Secondly, it makes more sense to me for purposes of clarity to put right on the verdict sheet the language from the indictment as to each count which relates to the fact findings that are required in your deliberations as to each count, and that's why you'll see on the verdict sheet, as to each count there is some narrative language as to the substance of the charge in each count that comes from the indictment. Okay.

Now, the verdict sheet is simply a form that asks you certain questions that you must answer. Your answers to those questions will constitute your findings of fact in this case.

Answering those questions is, indeed, the way you will render the verdict. As I told you, the verdict sheet is broken down in questions as to each count that is set forth in the indictment. On the verdict sheet, you will be asked first to consider whether the defendant is guilty or not guilty of

the crime charged in each individual count of the indictment.

Your verdict with respect to each count must be unanimous as to the defendant. If you unanimously find the defendant not guilty of any particular count, then you may end your deliberations as to the defendant with respect to that count.

As I mentioned before, in order to convict the defendant of count three through nine, you need not determine the type or quantity of the controlled substance, even though there is some statement with respect to that on the verdict form.

If you unanimously find that the defendant is guilty of counts three through nine charged in the indictment, then you must enter that verdict on the verdict sheet and then you must answer additional questions on the verdict sheet that do regard the type and amount of control substance involved in that count. Your answer to each of those questions must also be unanimous.

You will be asked whether the Government has proven beyond a reasonable doubt that the offense charged in count three involved 50 or more grams of a mixture or substance which contains a detectable amount of cocaine base or crack cocaine. If you answer yes to that question, then you should so mark your verdict sheet and end your deliberations as to that with respect to that count.

If, however, you answer no to that question, then you must answer the question that follows, whether the Government has proven beyond reasonable doubt that the offense charged in count three involved a mixture or substance containing five or more grams of a detectable amount of cocaine base, otherwise known as crack cocaine. If you answer yes to that question, then you should so mark your verdict sheet and end your deliberations as to the defendant with respect to that count.

If, however, you answer no to that question, then you should so mark your verdict sheet, end your deliberations as to the defendant with respect to that count.

Your answers to each of these questions must be unanimous and the Government bears the burden of proving the quantity of the controlled substance beyond reasonable doubt. You may recall that the Government need not prove that the defendant knew the exact type or amount of controlled substance involved.

Please note that in determining the amount of the controlled substance, you may consider the entire amount of any mixture or substance containing a detectable amount of a particular controlled substance. Accordingly, you should base your determination on the total amount of such a mixture or substance so long as you find that a mixture or substance contained a detectable amount of crack cocaine or cocaine base, the total net weight, that is the amount of that

particular mixture or substance is what counts.

You need not concern yourselves with the purity of the controlled substance.

You may consider all evidence in the case that may
5 help you make the determination including physical and documentary exhibits, the testimony of any witness or the contents of any tape recording.

With respect to the conspiracy that's charged in count three of the indictment, in making the decisions about
10 the types and amounts of controlled substances as to count three, you may consider all of the drugs distributed or intended to be distributed by any one you find to be a member of the conspiracy so found.

If you take a look at the verdict form, you'll see
15 that there is some narrative as to each count, there is a space on the verdict form for you to check not guilty or guilty. Again, your verdict as to all of those must be unanimous one way or the other.

It starts with count one which is the conspiracy to
20 murder a federal witness; there is count two, which is the conspiracy to murder in retaliation; count three goes to the drug distribution conspiracy and then you'll see counts four through nine each relate to the drug distributions that are alleged to have occurred on the specific dates that are set
25 forth in the indictment and have been transferred in the

verdict sheet.

Now, that concludes all of my instructions explaining legal issues, testimony, other evidence and the offenses charged in this case and my explanation of the verdict sheet.

5 I'm going to now give you some instructions and explanations which apply to the way in which you deliberate to a verdict.

The first thing that you should do when you get into the jury room today is discuss among yourselves who you want
10 to be the foreperson. I'll leave that to you to chose a foreperson.

The foreperson will be the individual who will speak for the jury here in court and will also preside over the discussions in the jury room and will also be the person who
15 will communicate with the Court in the event there's a need for any such communication.

Obviously, the foreperson does not have any more of a vote than anyone else and does not have any more of a say in what the verdict will be than anyone else, but someone who can
20 simply help organize the way the deliberations are going to be undertaken and I leave it to you to choose that person and we'll ask you to tell us who that is after you do it.

I instruct you that your verdict, whether guilty or not guilty, must be unanimous. To find the defendant guilty
25 of any offense charged in the indictment, every one of you

must agree that the Government has overcome the presumption of innocence with evidence that proves each element of that particular offense beyond reasonable doubt.

To find the defendant not guilty, everyone of you must agree that the Government has failed to convince you beyond reasonable doubt as to any particular count and I instruct you further, that you must consider each separate count in this indictment separately.

I further instruct you that in your deliberations toward a verdict, you should never and must never consider possible punishment in reaching your verdict. As I've told you before, your verdict must be based only on the evidence received in this case and only upon the law that I've given to you in my instructions. You should not take anything I may have said or done during this trial as indicating what I think of the evidence or what I think your verdict should be.

What the verdict should be is the exclusive responsibility of you, the jury.

Now that all of the evidence is in and the arguments are completed, and when I finally finish these instructions which is almost upon us, you'll be free to talk about this case in the jury room. As a matter of fact, it's your duty to talk with each other about the evidence and to make every reasonable effort that you can to reach unanimous agreement.

You are to talk with each other, listen carefully and

respectfully to each other's views and keep an open mind as you listen to what your fellow jurors have to say. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong, but do not ever change your mind just because other jurors see things differently or just to get the case over with.

At the end of the day, your vote must be exactly that, your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscious. Listen carefully to what the other jurors have to say and then decide for yourself if the Government has proved the defendant guilty beyond reasonable doubt as to each charge in this case.

No one will be allowed to hear your discussions in the jury room and no record will be made of what you say. What goes on in the jury room is among you and it will stay in the jury room. You should all feel free to speak your minds.

Once you start deliberating, do not talk about the case to court officials or to me or to the clerk or anyone else, except each other. If you have any questions or messages, if you have any problems or needs, the foreperson should write them down on a piece of paper, sign the piece of paper and give it to the court official who will be stationed outside of the jury room who will then convey it to me.

That is the way the jury will communicate to the

Court, always through a written note signed by the foreperson.

I will discuss with the attorneys the contents of whatever the communication maybe and then I'll respond as soon as is practicable. In the meantime, if there's a question being asked or if there's something that's communicated to the Court, in the meantime, before we respond to that inquiry or question, go about your business if you can and continue deliberations and then we'll get back to you as soon as possible.

Now, if you want to see any of the exhibits that were admitted in evidence, most of them are going to already be in the jury room with you. You'll have available to you the lion's share of all of the evidence and exhibits that have been received.

There are a couple of things that are simply impossible for us to send into the jury room. First of all, we're not sending the drugs in. There have been some drugs admitted in evidence. If you really think you want to take a look at that, again, let us know and we'll make arrangements to either have somebody bring them in to you or bring you out here, but we'll make arrangements for you to see the drugs.

We're not going to send in forensic exhibits that are problematic. You might remember, for example, the clothing with blood stains, things of that nature. I'm not going to send that in there because that requires some sort of safe

handling. If you want to take a look at that stuff, let us know and we'll make that available to you as well.

Lastly, you have the ability, if you want to, to listen to any of the tape recorded exhibits that have been received. You've heard them once, you had the transcripts. If you want to listen to any of those recorded conversations again, please let us know and we will make them available to you. It may very well be that we'll bring you back into the courtroom to do that. If there's another way that's more convenient, we'll explore it, but at this point it looks like that's what we'll do.

The transcripts of those tape recordings again are not the evidence, so the transcripts will not be sent into the jury room. If you need anything, if you need to hear any testimony again, if you need to see an exhibit that you don't have, or again if you have any questions or problems or need to communicate with the Court, let us know by written note.

One last thing about messages. If you do send us a note, don't ever indicate on that note how you stand with respect to a verdict on anything. That must stay just in the jury room until you finished your deliberations. Do not disclose the status of the deliberations in any way on any communication that you give to us.

That is it. I have nothing further to say to you. We'll excuse you into the jury room with our thanks. I note

that it is now 20 minutes to two.

From this point on, you folks are going to decide the Court's schedule. Just give us an idea how long you think you want to stay and we'll communicate accordingly with you. From now, you are the deliberating jury and you will dictate the schedule of this case. Okay.

THE CLERK: All rise.

THE COURT: You may go into the jury room.

(Jury is excused to begin deliberations at 1:45 p.m.)

THE COURT: With respect to the alternates, do you have belongings in the jury room? Get them, and come right back out here.

Swear the officer, Dana.

Corut officer, sworn.

THE COURT: Ladies and gentlemen, alternates, I'm going to introduce you to Jessica here. She's going to take you into a conference room where you can relax and make yourselves comfortable.

(Alternates are excused.)

THE COURT: Have a seat, everybody.

We'll just keep in touch with you and let you know what the jury says about how long they want to stay.

MR. MINISH: A couple of issues.

I provided defense counsel with redacted versions of Government exhibit 42 and 43. It's my understanding that they're acceptable redacted and they will be sent back.

THE COURT: Okay.

MR. HERMAN: Correct.

MR. MINISH: And the other thing, too, Judge, are you planning on allowing the 12 jurors to each have a verdict sheet?

THE COURT: Yes.

MR. MINISH: It's my understanding, and I can't quote you law on this, but that they need to be instructed it's for informational purposes. There's only one verdict, they're all not filling them out and it starts to create a problem. Each one of them can have one to follow along, but one and one only.

THE COURT: All right. We'll figure that out. Anything else? Nothing.

THE COURT: All right.

MR. FRAZER: Judge, the evidence is marshalled. We're going to give it to counsel to agree that this is the evidence and then we can give it to the court personnel, if you want to send it back.

THE COURT: All right.

(Recess.)

THE COURT: The jury went out at 1:45. It's now 1:55. We have a note telling us that the foreperson has been selected, juror number 22. Of course, they didn't tell us whether that was the new number or the old number. The only juror number 22 we have is juror number six, so juror number six is the foreperson, whoever is bottom left.

The note tells us that the schedule they decided on is nine to three.

MR. FRAZER: Very good.

THE COURT: Copies of the charge have been sent in

and I guess that's everything.

MR. FRAZER: On Monday, when they come in, do they have to come out first?

THE COURT: No, I'm sending them right into the jury room. When I excuse them today, Monday just get right in the jury room, when all 12 are present, they're to -- I've instructed the alternate jurors not to discuss the case with each other.

MR. KAYSER: Do you want us here at nine o'clock?

THE COURT: No, but somebody should be here in case we get a communication.

MR. HERMAN: You said 22?

THE COURT: Number 22.

MR. HERMAN: I think it's the guy back there.

THE COURT: No, 22, according to my -- the only 22 I have was new number 22, old number seven. Confirm that, that it's new number 22, old number seven, whoever that is.

MR. FRAZER: The evidence has been reviewed, I understand.

THE COURT: Now, what we need to do -- by the way, we're having procedural discussions. Is Mr. Baskerville's appearance necessary?

MR. HERMAN: No, we'll waive.

THE COURT: All right.

What we need to do, I don't want to jinx anybody one

way or the other, believe me, but we need to start talking about this death penalty instruction. When ever you wanted to start doing that is okay with me.

MR. MINISH: As I told you, we submitted yesterday --

5 THE COURT: This is what I have, this is the universe of what I have on the subject right now. I have what you sent me, which appears to be -- this is the request to charge of the Government and it says the source -- it says is something called Sand.

10 MR. MINISH: Yes.

THE COURT: I don't know what that is.

MR. MINISH: Judge Sand, it's a book.

THE COURT: Next, I have the penalty phase instructions given in Iowa in the case called United States v.

15 Angela Johnson.

I also have a form of a charge given in Massachusetts in a case called United States v. Samson.

The foreperson is new number 22, described as a short white male with salt and pepper hair and glasses. He's the

20 guy down there.

I can tell you that the one I think is the most clear, and I'll give this to you so you can read it, the one I think is the most clear is this Samson from Massachusetts, which separates the penalty phase into two proceedings.

25 I have it here, if you want to take a look at it.

We'll photocopy it, however you want to do it.

Mr. Herman, what do you think about the proposed charge from the Government?

MR. HERMAN: Well, I haven't really reviewed it

5 carefully.

THE COURT: Let me not put pressure on you. I will photocopy this Samson, I'll give it to you, Mr. Minish. Have one of your folks make a couple of copies of this and bring one back to me.

10 Let's be in a position to start talking about this. I don't know if it's today necessarily, is anybody going to be here tomorrow?

MR. HERMAN: I'm in front of the another judge.

THE COURT: Here?

15 MR. HERMAN: Yes.

THE COURT: Stop in before you leave tomorrow and tell me how you feel about this.

MR. HERMAN: Okay.

THE COURT: Any problem with that?

20 MR. FRAZER: So long as I'm not required to be here, your Honor, that would be fine with the Government.

MR. KAYSER: We can talk about it Monday.

THE COURT: We're going to have to talk about it Monday, but I'd like to get the thing pretty set and then we

25 can discuss when we're going to go forward. If we get a

verdict Monday, I would -- I don't know how much time you need to prepare for this.

MR. FRAZER: The suggestion, I think we spoke to counsel about, would be to give us until the following Monday.

5 THE COURT: Really? We'll talk about it Monday. I don't guarantee that. We'll talk about it Monday.

MR. MINISH: The other thing we have to put on the record that I believe this is the case, but if you can inquire of the defense counsel, that the evidence was reviewed and

10 they found it to be acceptable to go back to the jurors.

MR. HERMAN: That's true, Judge.

THE COURT: Okay.

(Court exhibit number five, note from the jury is marked in evidence.)

15 THE COURT: I want to thank everybody for the way you handled yourselves here. This has been very nicely done, thank you.

MR. HERMAN: Thank you.

THE COURT: I said to my law clerks the other day I

20 tried cases that are a lot shorter for a lot lower stakes that were a lot more aggravating.

MR. KAYSER: Thank you.

MR. MINISH: Thank you.

(Recess.)

25 THE COURT: The jury wants to go home for the day.

How would you want me to do this? I want to instruct them not to discuss the case, don't deliberate and tell them to come right back to the courtroom Monday morning and don't deliberate until all 12 of them are here.

5 MR. MINISH: Also, Judge, the verdict sheets, there's only one verdict, not to be a stickler.

THE COURT: I'll tell them that.

Now, do you want them in open court in which case we need the defendant? Do you want me to just go in the jury

10 room and tell them that?

MR. HERMAN: I think that's fine.

THE COURT: Or do you want Dana to?

MR. MINISH: They're instructions, they should come from you.

15 MR. HERMAN: On the record.

MR. MINISH: On the record.

MR. HERMAN: We could leave.

THE COURT: Why don't you do that. You guys all get out of here and put them in the box.

20

25

(The following takes place out of the presence of the lawyers and the defendant.)

THE COURT: Okay.

THE CLERK: All rise.

(The following takes place in the presence of the jury.)

THE COURT: Have a seat, relax.

We're on the record. It's 2:25 p.m. There has been a note from the jury, the jury's in the box and the Court is here on the record. None of the participants are in the courtroom.

The jury has requested to cease deliberating for the day, which is not a problem and you'll be free to go.

You've also requested a flip chart, an easel and masking tape. We'll try to get those things for you so you'll have them first thing in the morning.

I take it you want to come back Monday?

THE JUROR: That's correct.

THE COURT: That was the one question I had about this when I told you you could set the schedule.

From now on, cease deliberating, do not discuss the case with each other, do not discuss the case or permit anyone else to discuss it with you.

On Monday morning, you can report directly to the courtroom and go right into the jury room, but don't start

deliberating until all 12 of you are here. As soon as the 12th person walks in, you're free to do whatever it is that you're going to do in terms of deliberations.

One last procedural instruction. I think each of you has a verdict form. When you return a verdict, whenever that is, there will only be one verdict form. So, I take it you're the foreperson, you'll maintain the official verdict form. If you need clean copies of it, just let us know. The ones, the others that you have are for your individual clarification purposes.

Any other questions?

We'll see you Monday morning. Report right to the jury room.

Don't take anything home, don't take your verdict forms home.

(Trial adjourned until Monday morning, April 30, 2007, at 9 a.m.)

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1 informant and accordingly, it is not necessary that the
2 defendant actually succeeded in retaliating against an
3 informant.
4 Put differently, the evidence need not show that the
5 members of the conspiracy were successful in achieving any or
6 all of the objects or goals. All that you need to find is
7 that there was an agreement, understanding or plan to
8 retaliate against an informant.
9 I have previously defined premeditated murder. I've
10 previously defined malice aforethought, premeditation, intent,
11 willfully and you should apply the definitions to those
12 phrases that I've given you.
13 The term "law enforcement officer" means an officer
14 or employee of the federal Government authorized to prevent,
15 investigate or prosecute offenses or serving as a probation
16 officer and I instruct you that a special agent of the Federal
17 Bureau of Investigation is a law enforcement officer.
18 Now, we move to the drug conspiracy in count three of
19 the indictment. The defendant is charged with conspiring to
20 violate certain drug laws of the United States and again, the
21 charge against him is provided in Section 841 of Title 21,
22 which says, similar to the other statute that I read, "that
23 any person who conspires to commit any offense defined is
24 guilty of a crime."
25 Again, the crime charged in count three is a

1 conspiracy to distribute and to possess with the intent to
2 distribute crack cocaine. I instruct you as a matter of law
3 that crack cocaine is cocaine base and is a Schedule II
4 narcotic drug controlled substance.
5 The defendant is also charged with the substantive
6 crimes of possession with intent to distribute and
7 distribution of crack cocaine in counts four through nine of
8 the indictment.
9 With respect to count three conspiracy, you need not
10 find that conspirators committed the object crime of
11 possession with the intent to distribute or distribution of
12 crack cocaine or that all the elements of those acts have been
13 proven. In determining whether the defendant is guilty of the
14 crime charged in count three, keep in mind, again, that the
15 crime to possess with intent to distribute and distribute
16 crack cocaine is separate and distinct from the crime of
17 actually possessing with the intent to distribute crack
18 cocaine.
19 That is to say, the crime of conspiracy to possess is
20 separate and distinct and it is not necessary that the
21 defendant actually succeeded in possessing with intent to
22 distribute or distributing crack cocaine. Put differently,
23 the evidence need not show the members of the conspiracy were
24 successful in achieving any or all of the objects or goals of
25 the conspiracy.

All that you need is that there was an agreement, understanding or plan to possess with the intent to distribute and to distribute crack cocaine.

Now, again, similar to the instructions I've just given on count one and count two, Government must establish two elements as to the count three conspiracy: First, that a conspiracy to distribute and possess with the intent to distribute crack cocaine was formed, reached or entered into by two or more persons; and second, that at sometime during the existence or life of that conspiracy, the defendant knew the purpose of the agreement and he willfully joined it.

If you find from the evidence in this case that the conspiracy charged in count three existed and that during its lifetime the defendant became a member, then proof of that conspiracy is complete and you may find him guilty of the crime charged.

Now, the object crime. I've previously instructed you on general standards for use of determining whether a conspiracy to pursue a common unlawful objective existed. We're going to talk about the object crime in count three.

The Government must prove beyond reasonable doubt that the object of the count three conspiracy was to distribute and possess with the inten to distribute a narcotic drug controlled substance. The object crime of count three is defined in Title 18 Section 841, which provides "that it shall

be unlawful for any person knowingly or intentionally to distribute or to possess with intent to distribute a controlled substance."

I'm going to give you the elements of those object crimes when we get next to counts four through nine. I'm going to define some terms that you will be hearing. The term "distribute" means to transfer possession from one person to another or to attempt to transfer possession. Put differently, the term "distribute" means to deliver, in this case crack cocaine, to the possession of another person.

The term "possession with intent to distribute" means possessing crack cocaine with an intent to distribute it to others.

I've previously defined intent. You may find such intent from all facts and circumstances of the case.

I previously have defined willfully and you may consider all the facts and circumstances of the case to determine whether the defendant acted willfully.

Under the law, there are two types of possession, actual and constructive. A person actually possesses something when that person knowingly has immediate and direct physical control over it. A person constructively possess something when, even though that person does not have immediate and direct control over it, he knowingly has access to it and has the power and intention to exercise control over

it, either directly or through someone else.

Simple example. I have actual possession of this pen. I have constructive possession of the pen that's on the bench. All right.

The law also recognizes that possession may be sole or joint. Sole possession is when only one person has actual or constructive possession of something. Joint possession is when two or more people share actual or constructive possession of something.

In deciding whether the defendant conspired to distribute and possess with intent to distribute crack cocaine, you must be guided by reasonable inferences. It is reasonable to conclude that conspirators who agree to possess a large amount of a drug intend to distribute that drug. People who conspire to possess large amounts of drugs ordinarily do not do so for their own personal use. Rather, a conspiracy to possess a large amount of a drug may, by itself, indicate an intent to distribute.

As I previously told you, crack cocaine is as a matter of law a Schedule II narcotic drug controlled substance.

You may find that the defendant conspired or possessed a controlled substance if you find beyond reasonable doubt that he possessed any mixture or substance containing a detectable amount of a controlled substance. Thus, in

determining whether the defendant possessed a controlled substance, you need not concern yourselves with the purity of that substance.

Now, counts four through nine charge that the defendant distributed and possessed with the intent to distribute a controlled substance. I instruct you that the applicable law provides that "it shall be unlawful for any person, knowingly or intentionally, to distribute or possess with the intent to distribute a controlled substance." This statute can be violated in either of two ways.

One, by distributing a controlled substance or, two, by possessing a controlled substance with the intent to distribute it.

You need only find that the defendant in counts four through nine violated the statute in one of those two ways. Therefore, to convict him, you must unanimously agree either that he distributed a controlled substance or that he possessed a controlled substance with the intent to distribute it or that he did both.

Now, possession with the intent to distribute in counts four through nine has essential elements. The Government must establish beyond reasonable doubt three elements: First, that the defendant possessed a controlled substance; second, that he did so knowingly; and third, that he did so with the specific intent to distribute that

1 controlled substance.
2 If you unanimously find these three elements beyond
3 reasonable doubt, that is that he possessed the controlled
4 substance knowingly and with intent to distribute the
5 controlled substance, you may find the defendant guilty of
6 possession of a controlled substance with the intent to
7 distribute.
8 I've already defined possession and the same
9 definitions of possession apply as to counts four through
10 nine.
11 The second element is knowledge that the defendant's
12 possession of the controlled substance was knowing. To
13 satisfy this element, the Government must prove that the
14 defendant knew that he possessed a controlled substance. An
15 act is also done knowingly if he is aware of the act that he
16 is doing, acts voluntarily and deliberately and is not
17 committing the act through mistake or accident.
18 The Government is not required to prove that the
19 defendant knew that he was breaking the law. In addition, the
20 Government does not have to prove that the defendant knew the
21 type of controlled substance he possessed, nor does the
22 Government have to prove that the defendant knew the exact
23 amount of the controlled substance that he possessed.
24 It is enough that the Government proves that the
25 defendant knew that he possessed a detectable amount of some

1 type of controlled substance.
2 The third element is intent to distribute. To prove
3 the crime possession with intent to distribute a controlled
4 substance, mere knowing possession is not sufficient. The
5 Government must prove beyond reasonable doubt the third
6 element of the crime, that the defendant also had the intent
7 to distribute the controlled substance when he possessed it.
8 Again, the term "distribute" means to deliver a
9 controlled substance from one person to another. "To deliver"
10 means the actual, constructive or attempted transfer of a
11 controlled substance from one person to another or to attempt
12 to deliver possession.
13 Distribution does not require a sale. Distribution
14 encompasses any acts perpetrated in furtherance of a transfer
15 or sale, such as arranging or supervising the delivery or
16 negotiating for or receiving the purchase price.
17 As I've already stated, the Government must prove
18 that the defendant possessed the controlled substance with the
19 intent to distribute. To do something intentionally simply
20 means to plan or desire to do something.
21 For you to find that the defendant intended to
22 distribute a controlled substance, you need not find that the
23 defendant intended personally to deliver the drugs with his or
24 her own hands. Instead, it is sufficient if you find that he
25 intended to cause the distribution of the controlled

1 substance.
2 Intent ordinarily cannot be proved directly, but you
3 may infer the defendant's intent from the surrounding
4 circumstances. You may consider any statements made and any
5 act done or omitted by the defendant, as well as all other
6 facts and circumstances that indicate the defendant's state of
7 mind.
8 In deciding whether the defendant possessed the
9 controlled substance with intent to distribute it, you may
10 draw reasonable inferences. For example, it may be reasonable
11 to conclude that a person who possesses a large amount of a
12 controlled substance intends to distribute it, rather than
13 possessing it solely for his personal use. Therefore,
14 possessing a large amount of controlled substance may, by
15 itself, indicate an intent to distribute. It's up to you to
16 decide whether the amount involved is sufficient to support an
17 inference that the defendant intended to distribute that
18 controlled substance.
19 If you find unanimously all three elements beyond
20 reasonable doubt, that is possession of a controlled
21 substance, knowingly and with the intent to distribute it, you
22 may find the defendant guilty of possession of a controlled
23 substance with intent to distribute.
24 To find the defendant guilty of the crime of
25 possessing a detectable amount of a controlled substance with

1 intent to distribute, you need not be concerned with the type
2 or amount of controlled substance. If you find the defendant
3 guilty of possessing controlled substance with intent to
4 distribute, you will be asked some additional questions
5 concerning the type and quantity of controlled substance
6 involved in the offense.
7 Now, as I've told you, the statute may also be
8 violated if the defendant actually distributed the controlled
9 substance. There are two elements of the charge of actual
10 distribution. First, that the defendant distributed the
11 controlled substance; and secondly, that he did so knowingly
12 and intentionally.
13 I've defined all of those terms for you already. If
14 you unanimously find both elements beyond reasonable doubt,
15 that is he distributed a controlled substance knowingly and
16 intentionally, you may find him guilty of the distribution of
17 the controlled substance.
18 The first element, distribution, I previously defined
19 the term "distribution". The Government must prove beyond
20 reasonable doubt that the defendant distributed a controlled
21 substance.
22 The indictment charges that the defendant distributed
23 cocaine base, namely crack cocaine and I instruct you as a
24 matter of law that cocaine base or crack cocaine is, in fact,
25 a Schedule II controlled substance.

1 You may find the defendant distributed a controlled
2 substance if you find beyond reasonable doubt that he
3 distributed any mixture or substance containing a detectable
4 amount of a controlled substance. Thus, in determining
5 whether the defendant distributed a controlled substance, you
6 need not concern yourselves with the purity of that substance.
7 As well, in this particular charge, four through
8 nine, it must be demonstrated that the distribution was done
9 knowingly and intentionally. I have defined knowingly and
10 intentionally in my previous instructions and those
11 definitions apply.
12 If you find unanimously both elements beyond
13 reasonable doubt, distribution of a controlled substance
14 knowingly and intentionally, you may find the defendant guilty
15 of distribution of the controlled substance.
16 To find the defendant guilty of the crime of
17 distribution of a detectable amount of a controlled substance,
18 you need not be concerned with the type or amount of
19 controlled substance. If you find him guilty of distribution
20 of a controlled substance, you will be asked some additional
21 questions concerning the type and quantity of controlled
22 substance involved in the offense later on.
23 Not bad. That's phase one of the Court's legal
24 instructions.
25 What we're going to do now is take a break. We are

1 then going to begin the Government's closing statements. I
2 don't know how long that will be, but we may break for lunch
3 and then conclude it after lunch. I don't know how long it
4 will take.
5 After Mr. Frazer delivers the Government's statement,
6 we'll break for the day and then you'll come back tomorrow and
7 have the benefit of the closing statement on behalf of the
8 defendant. The Government will then give what is to be a
9 brief rebuttal statement in conclusion and then I have some
10 very brief concluding instructions which I alluded to during
11 the course of what I gave you today.
12 We will then identify the alternate jurors and all of
13 the evidence will be marshalled sometime tomorrow and those 12
14 of you who will decide the fact issues will retire to the jury
15 room to deliberate.
16 I tell you in advance that the alternate jurors will
17 not be excused. It is necessary for me to retain the
18 alternate jurors for the duration of this trial for a number
19 of reasons, which you need not concern yourselves with, but in
20 the event you are chosen as an alternate juror, I tell you in
21 advance, you may receive that news either with disappointment
22 or relief or perhaps a little bit of both, I don't know, but
23 the alternates, whoever you may be, were integral and critical
24 and necessary participants so far and will remain critical and
25 necessary participants until this entire proceeding is

1 concluded.
2 I gave you warning, notice and warning in advance,
3 that tomorrow we will identify the alternates, but they will
4 not be excused.
5 Thank you for your attention. I apologize for going
6 on as long as I did, but it's necessary under our system of
7 law. I know it's not easy listening to all of that, but
8 again, you'll have a hard copy of this when you go into the
9 jury room.
10 You can take a break, we'll have you back here
11 shortly.
12 THE CLERK: All rise.
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1 (Jury is excused and the following takes place out
2 of the presence of the jury.)
3 THE COURT: I made a couple of very minor editings
4 to the charge while I was going through it.
5 Does anybody have any objection or exception to
6 anything that I've said that might have been at variance with
7 the printed text?
8 MR. MINISH: No, Judge.
9 MR. HERMAN: No, Judge.
10 THE COURT: Great. Let's take a short break.
11 Do you have any idea how long you'll be?
12 MR. FRAZER: It's going to be fairly lengthy. We'll
13 definitely be going well into the afternoon.
14 THE COURT: I leave to you -- assuming the jurors
15 lunch will be delivered, I leave to you as you get through
16 this when you think it's appropriate to break. Just declare
17 it.
18 MR. FRAZER: Sometime between 12:15 and 12:30.
19 THE COURT: Okay.
20 (Recess.)
21
22
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25

(The following takes place out of the presence of the jury.)

THE CLERK: All rise.

THE COURT: There was a verdict sheet sent over. Do you have any objection, any problem with the form of the verdict sheet that was sent over on the guilt phase?

MR. KAYSER: Judge, everything I received on Friday is okay with me. I did not have a chance to reread last night all that stuff.

Apparently, there was a fatality on the train system last night or yesterday afternoon. I didn't get home until eight o'clock. I didn't have time to read what I got last night.

I don't think the verdict sheet changed.

THE COURT: I haven't seen another one. I'm assuming it didn't.

Ready to go?

MR. FRAZER: Yes.

THE COURT: All right.

Get the jury.

THE CLERK: All rise.

(The following takes place in the presence of the jury.)

THE COURT: Have a seat, folks.

A couple of brief things before Mr. Frazer gets started.

First of all, I see you have your note pads. Please put them down. As I told you, the arguments of counsel are not evidence, so there won't be any note taking and it's distracting from your ability to listen and his ability to speak, to have you taking notes.

Secondly, the purpose of closing statements is to give counsel the opportunity to comment on the evidence and argue to a jury as to how that evidence should direct the jury to returning a verdict.

Mr. Frazer has told me he expects his closing statements to be certainly longer than the morning session, so I've given him the discretion to declare the lunch break when he's at a logical point and that's why he's going to be doing that.

One last thing and then I'll be quiet finally. It's up to the Judge in any case whether to give those legal instructions before closing statements or after closing statements. It's been my practice to give the jury instructions before closing arguments for a couple of reasons. The first is to give you the benefit of the legal standards so

1 when counsel argues the facts and the evidence to you, you
2 have some idea as to the standards against which to put those
3 arguments and, secondly, because counsel do discuss the
4 evidence, it's more fresh in your minds if you begin
5 deliberations without having that hour and 20 minutes that I
6 just put you through.
7 That's why I think it's better this way. I could be
8 wrong, I could be right, I don't know, but that's the way we
9 do it.
10 That being said, I'll now mercifully be quiet.
11 Mr. Frazer, you may proceed.
12 MR. FRAZER: Thank you, your Honor.
13 May it please the Court, counsel, Mr. Baskerville,
14 Mr. Davis, Mr. Minish, ladies and gentlemen, good morning.
15 Let's start with why did William Baskerville decide
16 to have Kemo DeShawn McCray killed. What motivated him to put
17 in motion such a heinous, despicable act as you heard Anthony
18 Young testify to? What made him, in effect, point Anthony
19 Young at Kemo DeShawn McCray on March 2, 2004?
20 Now, the evidence is in. You heard the legal
21 instructions and I submit to you that taken together in these
22 last three or three and a half weeks that you heard the
23 testimony, it is overwhelming as to the defendant's
24 participation in a conspiracy.
25 You've just heard from the Judge what a conspiracy

1 is. It's no magic legal language. It's simply an agreement.
2 There's overwhelming evidence of an agreement with
3 others to murder Kemo DeShawn McCray. We'll analyze as we go
4 on into the afternoon the evidence of the conspiracy to murder
5 Kemo DeShawn McCray.
6 I'm going to spend a brief time this morning talking
7 about some of the drug transactions that we heard through the
8 testimony of Agent Shawn Manson. I submit to you that they're
9 equally overwhelming evidence of counts four through nine, the
10 drug transactions, and of the defendant's participation in a
11 drug conspiracy in count three.
12 I'm going to spend a little more time on the drug
13 conspiracy than the transactions because while factually the
14 evidence, I submit, is again equally strong, the conspiracy,
15 as you just heard the charge legally, has a couple of
16 different things that you have to keep in mind. That could be
17 confusing, even to lawyers it's confusing. We'll spend a
18 little more time showing you how the facts of the drug
19 conspiracy apply to the law that Judge Pisano just gave.
20 There should be no doubt by now, based on the
21 evidence, that the defendant distributed crack cocaine between
22 the period in the indictment, January of 2003 to November of
23 2003, and that he had agreed with others to help him in that
24 unlawful objective.
25 I want to start, as I said, with the motive for the

1 murder to answer some of those questions, why, why did this
2 happen? For that, you have to look into the mind of William
3 Baskerville starting on November 25th, 2003.
4 If you recall Agent Manson's testimony, that day
5 started at about six o'clock in the morning, when her F.B.I.
6 team executed a court-authorized arrest warrant at the
7 defendant's home in a location at 424 Robins Street in
8 Roselle, New Jersey.
9 This was the culmination of an exhaustive ten-month
10 drug investigation. When the F.B.I. entered his home that
11 day, one thing was clear to the defendant, these were not
12 local law enforcement. This was not the Irvington police, the
13 Roselle police or the Newark Police Department, these were
14 federal agents entering his home that day.
15 To get a glimpse of the defendant's thinking that
16 morning, start with something that you heard from the witness
17 stand, Rick Hosten. You remember him? He gave the testimony,
18 he was arrested at about the same time the defendant was, the
19 day before. He ended up coming to court with the defendant on
20 the day of the defendant's arrest, November 25th.
21 Remember what he told you? He, too, was arrested
22 based upon Kemo McCray's purchases of crack cocaine from him.
23 We'll get to that shortly.
24 He told us something interesting that goes to what
25 was in the defendant's mind in the lockup. Remember in the

1 marshal cell that he talked about where he first met the
2 defendant? He told us, Rick Hosten told us that he, himself,
3 had never been through the federal system. It was interesting
4 that the very first thing that Rick Hosten interacts, the
5 first time he interacts with the defendant in the marshal
6 lockup before they go see the judge that day, he asks the
7 defendant, have you ever been through the federal system? And
8 the defendant says, no.
9 So what you get from that is it's unfamiliar
10 territory for Rick Hosten, but it's also unfamiliar territory
11 to the defendant. He was now in the federal system and he
12 hadn't been through that before. You heard evidence that he
13 has, the defendant has two prior drug convictions. That, as
14 the Judge told you, can be used to show his motive. Keep in
15 mind those are state convictions, not federal convictions.
16 What happens next? At that point the defendant gets
17 a serious dose of reality. The events that ended in Kemo
18 DeShawn McCray's murder were about to begin because remember
19 what Mr. Herman said right from the beginning in the open
20 statement? The defendant was a three-time loser, based on
21 those two felony convictions.
22 You heard me read yesterday Government exhibit 36.
23 It was the initial appearance when the defendant was first
24 brought before a United States Magistrate. Assistant U.S.
25 Attorney that you heard a lot about, John Gay, who was the

1 prosecutor at the time, read into the record, he basically
2 told the defendant what he was being charged with and the
3 maximum penalty he faced.
4 You'll recall, when I read that yesterday to you, Mr.
5 Gay announced that based upon the distribution charge for
6 distributing crack cocaine, the maximum penalty for that
7 charge was 40 years. So right away the defendant knew this
8 was serious business. The prosecutor had just said he was
9 facing a potential sentence of 40 years in prison,
10 substantially the rest of his life.
11 In fact, as he would learn later at the detention
12 hearing, and that's the second transcript I read to you
13 yesterday, exhibit 37, a few days later he had been indicted
14 by a Grand Jury now for an additional charge, which is the
15 conspiracy to distribute the crack cocaine, which is part of
16 the indictment. That 40-year-maximum sentence now became life
17 in prison without parole.
18 If that wasn't enough, the defendant found out right
19 there that he would not be going home on bail. He would be
20 what's called detained pending trial. He did -- know matter
21 how much money he would put up, the judge determined that he
22 should remain in jail pending trial.
23 As we'll see in a moment, that made the defendant
24 angry. Just so you know, bail was not denied because he was
25 poor, as Mr. Herman implied in the opening statement, far from

1 it. That is a typical thing that happens, detention in the
2 federal system when you're a career offender such as the
3 defendant, you're facing life in prison as the defendant was
4 based upon the maximum sentence possible under that charge and
5 for what could turn out to be, if convicted, his third felony
6 drug distribution.
7 The defendant was probably not only shocked, he was
8 angry. As you saw in Government exhibit 41, another thing
9 that happened at that initial appearance was he was given his
10 complaint for the first time in the courtroom. He was shown
11 the charges against him. As he saw the complaint, several
12 thoughts, I submit to you, were going through this mind.
13 Who did I sell these to? Who's this informant? Who
14 ratted me out? Now, Government exhibit 41, the complaint,
15 doesn't say Kemo DeShawn McCray is the informant, obviously.
16 The Government tries to protect as best they can the
17 informants, the F.B.I. informant that was used, but the law
18 does require that some facts be put in the complaint to inform
19 the defendant of the charges.
20 Included in that complaint, which by the way, all the
21 exhibits you're free to look at, they'll all be sent back into
22 the jury room.
23 Look at it. Included in the facts in the complaint
24 are simply the words "cooperating witness" and the amount of
25 four of the six drug transactions. By the time the defendant

gets back to the cell and the marshal's lockup after the court appearance where he goes back with Rick Hosten, he sees that complaint and he has a pretty good idea who the informant is.

The reason for that is you've heard throughout the testimony, is that what it turns out, what the Government could not have known at the time, was that he usually sold higher quantities of drugs. You'll recall several of the cooperating witnesses, Rick Hosten, Eddie Williams, Troy Bell, Eric Dock, they all told you that the defendant told them that he figured out who the informant was based upon the smaller amounts of drugs that he sold and he only sold those smaller amounts to Kemo DeShawn McCray.

Rick Hosten confirms that. The defendant says, if you recall the conversation, I know you're from Wainwright. I know you, right, from the block. That's Kemo's block.

Then he asks him a key question. Did you deal with Kemo? This is the defendant asking Rick Hosten. What did Rick Hosten tell you that meant? Did you sell drugs to Kemo? Rick Hosten at that point confirms what's already in the defendant's mind based on the complaint, that the informant is Kemo DeShawn McCray. Rick Hosten said yes, I did deal with Kemo, that's why I'm here, need.

What happens next tells you really everything you need to know about the defendant's state of mind on November 25th, 2003, after his initial appearance in court. I'm going

to read to you the first of several portions of the transcript because what the Judge just told you is true. What I say is not evidence and what Mr. Kayser or counsel say tomorrow in their closing statement, not evidence. That's why you're not taking notes, right?

What's in this transcript is the evidence and what you heard from the witness stand is the evidence and the exhibits we introduce, that's the evidence. I'm going to refer to portions in the summation to certain portions of the transcript.

At page 4278, a question is put to Rick Hosten on direct examination.

"QUESTION: Okay.

"He mentioned small amounts?

"ANSWER: Yeah.

"QUESTION: All right.

Was he upset, was he happy, what was his mood?

"ANSWER: He was upset.

"QUESTION: What did he say about Kemo?

"ANSWER: He said he was away from his family because of a fucking bum.

"QUESTION: He said he was away from his family because of a fucking bum?

"ANSWER: Yes.

"QUESTION: And he was talking about Kemo?

"ANSWER: Yes.

"QUESTION: Did he say that -- was that the end of the conversation?

"ANSWER: No. He kept going on about it. He was basically, he kept saying the same thing over."

"I'm away from my family because of a fucking bum." He doesn't say that once or twice, he says it over and over again. He's upset.

We know this is true because it's at this time that Will Baskerville makes the decision to tell his lawyer, Paul Bergrin, the informant is a guy named Kemo. He doesn't just rely on Paul Bergrin, who, if you recall, lots of testimony about him being the house counsel, by the way, the lawyer that the drug organization, Hakim Curry always calls when a member of the organization gets in trouble.

He doesn't just limit his message about Kemo to Paul Bergrin. What does he do? The moment he gets back to Hudson County, the moment that they get transferred from the marshal's lockup back to Hudson County, Rick Hosten told you, he gets on the phone. You saw photos of the cell and there was a phone there and Rick Hosten's looking at the window and over his shoulder he sees the defendant on the phone.

The first moment he has an opportunity to get to the phone, he does. What does he say? Rick Hosten told you. Page 4325 of the transcript. Rick Hosten says, "I was

standing. The phone was at the wall. I was standing near the door and he seemed to be on the phone and he was saying, you know, when he said the name Kemo, I glanced over. He was over by the phone. He was like, that fucking Kemo, you know."

Who's he calling, ladies and gentlemen? Well, I submit to you the evidence that you heard later on supports exactly what the cooperator said, he was calling his brother, he was calling his brother Rakeem Baskerville, I'm sorry, and he was trying to get in touch with him, as the cooperator said, so that he would tell Hakim Curry to handle it.

Ramaine York tells us exactly that. And that, ladies and gentlemen, that phone call, that communication with Paul Bergrin, it's Kemo, that was the beginning of the agreement, of the plot, of the conspiracy to kill Kemo DeShawn McCray.

So what was it that the defendant decided at that time, November 25th 2003, that he absolutely had to prevent? Something he absolutely could not live with? Well, he was afraid and we know he was angry. He was afraid of spending the rest of his life in prison and he was angry that he was in that situation because of Kemo DeShawn McCray.

He knew right from that moment on November 25th, in Hudson County, when he got back to the bullpen and he was waiting to be assigned to the tier, he knew that he had two choices. It was real simple. Spend the rest of his life in jail because the evidence clearly was going to convict him, or

1 get rid of the problem, get rid of the informant.
2 So again, look to his mind. His anger led him to
3 make a calculated decision that day, kill Kemo for what he had
4 done. That fucking bum. I won't be going home to my family.
5 I'm in here because of a fucking bum, a rat, a snitch, right,
6 in his world.
7 That, ladies and gentlemen, is the basis of count
8 two, the retaliation, to retaliate against a witness for what
9 Kemo had already done, had put him in the position that he was
10 now facing life in prison for these drug charges, all based on
11 Kemo and the purchases of crack cocaine.
12 His fear of spending the rest of his life in prison,
13 that fear that he would never see the light of day drove him
14 to kill Kemo McCray, to prevent him from becoming a witness in
15 the case against him. That is the basis of count one, the
16 conspiracy to murder a witness.
17 Because if Kemo had lived, if he did not, if the
18 defendant did not take the actions to insure the defendant --
19 to insure that Kemo did not become a witness, if he did not do
20 that, Kemo would be alive and where would he be and what role
21 would he play in all this? I submit to you, ladies and
22 gentlemen, he would have been called as a witness in the case
23 of the United States of America v. William Baskerville, in
24 courtroom number one, in Trenton, New Jersey, the Honorable
25 Joel Pisano presiding. Basically, the drug portion of the

1 case that you heard and the first witness in that case would
2 have been Kemo DeShawn McCray.
3 If he had lived and the defendant had not made the
4 decisions he did on November 25th, 2003, I submit to you that
5 in that door, after either Mr. Minish or I called him as a
6 witness, he would have walked into that door, he would have
7 come up here just like the other witnesses and he would have
8 gotten up on this witness stand and he would have sworn on
9 this Bible to tell the truth.
10 And after a few background questions, he would have
11 been sitting in this chair and he would have been asked the
12 following questions: Mr. McCray, tell us why you're here.
13 He would have told you that he had worked with Agent Manson
14 during a drug investigation. And he would have been asked at
15 some point, did you come into contact with a man named William
16 Baskerville? He would have said yes.
17 Then we would have asked him and tell us how you know
18 Mr. Baskerville. He would have said between March of 2003 and
19 October of 2003, during that conspiracy period, he would have
20 said that he bought crack cocaine from the defendant six
21 times.
22 We would have asked him to look around the courtroom
23 and identify the person he referred to as William Baskerville
24 and he would have pointed over there and said, he's wearing
25 the brown shirt.

1 We would have asked the Court and said identifying
2 the defendant, your Honor.
3 So I don't mean to be overly dramatic by doing that,
4 ladies and gentlemen, but what I think is important, as we go
5 through this, is that is the motive. That is the motive, to
6 keep Kemo DeShawn McCray from doing exactly what I just did,
7 to keep him from coming here and insuring a conviction against
8 the defendant.
9 Now, you know a little bit, obviously you knew before
10 based on the evidence, I didn't have to tell you, what the
11 motive was. The reason that Will Baskerville decided that
12 Kemo McCray must die, he must be pushed, that's what Eddie
13 Williams told you, he must be handled, that's what Ramaine
14 York and Dock, Mr. Dock and Mr. Bell told you. He must be
15 killed.
16 Because the defendant knew that if Kemo did take the
17 stand, his fate would be sealed. He would be found guilty and
18 spend the rest of his days in the jail cell, so he wasted no
19 time. He put the word out and entered into what became a very
20 deadly agreement.
21 As we move through the testimony, keep all that in
22 mind. The defendant made that cold and calculated decision
23 early on, on November 25th, 2003. His motive, again, was a
24 lifetime behind bars and it was in his mind only one way out,
25 no Kemo, no case.

1 Let's turn to that case, let's turn to the drug case,
2 which is the basis for the plot. Who is Kemo DeShawn McCray?
3 You didn't have the opportunity to actually meet him. You saw
4 a picture of him. That's Kemo DeShawn McCray.
5 He was a young man from the streets of Newark, grew
6 up on Wainwright Street in Newark, and at the time of his
7 death on March 2, 2004, he was about 33 years old.
8 You heard he had a family, some kids, he had a
9 mother, a step-father. His mother's name was Delphine Smith
10 and you heard the step-father's name was Johnnie Davis. He
11 also had a close relationship with a stepdad type person by
12 the name of Christopher Spruill. You may recall Agent Manson
13 told you that.
14 Christopher Spruill, Agent Manson told you, was a
15 F.B.I. long-time informant that helped her on numerous cases
16 over the years prior to William Baskerville and ultimately
17 Kemo McCray, if you recall, meets Agent Manson during this
18 incident about this shotgun that was found in, I believe it
19 was Delphine Smith's home, but it was in Kemo's room.
20 Eventually he took responsibility for that and that's how he
21 came into contact with Agent Manson and, in fact, became much
22 like his step-father, Christopher Spruill, a paid informant
23 for the F.B.I.
24 Now, Shawn Manson told us that Kemo McCray had a
25 criminal history. We weren't hiding that, that came out on

1 the direct examination. It wasn't for drugs. He had no drug
2 convictions, but clearly, he was a person who was on the
3 street, who had a relationship through a girlfriend or
4 something with the Crips gang members. He was a guy that
5 could help the F.B.I. based on his contacts, Agent Manson told
6 you.
7 Despite the best efforts of the defense to paint Kemo
8 as a lying criminal, Kemo, was, in fact, was maybe a little
9 later in his life, but finally came to the realization that he
10 should do the right thing, he should help law enforcement. He
11 risked his life, obviously for basically a few thousand
12 dollars.
13 He did that, I would submit to you, ladies and
14 gentlemen, to basically help the F.B.I., to help Shawn Manson,
15 to basically, Shawn Manson told you, to win a neighborhood
16 back from the Grape Street Crips, to clear the streets of a
17 violent drug gang.
18 Now, did Kemo -- you heard evidence through Agent
19 Manson on the direct examination that Mr. McCray made some
20 extra money behind her back. During the investigation, he got
21 some drugs from Rick Hosten and he made about three or four
22 hundred dollars without telling Agent Manson. He violated the
23 rules of the cooperating agreement he had with the F.B.I., the
24 informant agreement.
25 You heard that he made up some relationship between

1 Rick Hosten and a guy named Tyrone Cox, who was another drug
2 dealer, so he did do that.
3 How should you consider that? Did Mr. Hosten come
4 here and tell you he, in fact, sold drugs to Kemo McCray?
5 Yes. Kemo McCray was accurate as to that. Did Tyrone Cox,
6 Agent Manson told you, eventually plead guilty, on the list of
7 the Grape Street Crips? Yes. So Kemo McCray was accurate
8 about that. By the way, he was accurate about 14 or 15 other
9 Grape Street Crips who were arrested based upon his evidence,
10 the buys that he made and so he was accurate about all those.
11 Kemo DeShawn McCray, he's really not on trial. He's
12 not here to defend himself and it's not about Kemo McCray,
13 because the F.B.I., while they heard certain things from him
14 and they relied on him to some extent, obviously, did not just
15 base their case against William Baskerville on what Kemo
16 McCray said. Everything he said, I submit to you, regarding
17 this defendant was corroborated by other evidence,
18 corroborated by Agent Manson and this corroboration theme,
19 you're going to hear me say "corroboration" about 62 times
20 between now and this afternoon, so bear with me. It's
21 important, it's an important concept to know.
22 You're not relying on any one person in this case,
23 the testimony of one person, the evidence from one person.
24 Everything those witnesses said from start to finish was
25 corroborated by other evidence.

I asked Agent Manson whether Kemo's actions had any affect on the Will Baskerville investigation, any at all. She said, no. I asked her, was he still going to testify against Will Baskerville, even though he had gone behind her back and he had been cut off under the F.B.I. rules as an informant? Yes, he was obligated to testify, he was ready to testify against anybody, Will Baskerville or any of the others. The others all pled guilty, but he was ready, willing and able and obligated to testify in this case.

So remember, as I said already, not one time in the trial has the Government brought a witness, whether it was the evidence you heard through Agent Manson about Kemo or any of the other cooperators, that was not corroborated by other evidence.

Keep in mind right away that it takes a street person, someone who can talk the talk, Agent Manson said, to catch odd drug dealers. We'll see how that applies to the murder conspiracy from the jail later on.

Will Baskerville first comes to light in the F.B.I. investigation, you'll recall Agent Manson telling you, in the summer of 2002, when he's observed during a surveillance, which is a usual technique the F.B.I. uses, she told you. There was a surveillance on the street in Newark and they see the defendant with his Cadillac Escalade and he's talking to a man named Shelton Leverett, one of the Crips gang members.

This was in the summer of 2002, and later on Agent Manson told you she found out that that was a drug-related conversation.

Now, we get into the transactions and you'll learn -- you learn right away, the first thing you heard about the transactions was something from January 13, 2003. In fact, that's the beginning in the indictment of the first date in the conspiracy, the drug conspiracy. Again, keep in mind what the Judge said about those dates are approximate. You only have to find the conspiracy somewhere in between those approximate dates, January 13, 2003 to November 25th, 2003.

You'll recall that on January 13, 2003, there was a transaction between Kemo and someone by the name of Taquan Singleton or Quanny. The reason that's important, it's during that transaction that we first see the defendant's drugs, we first see Terrell Thomas and we first see Terrell Thomas in this transaction with Quanny and Kemo.

And Kemo purchases an amount of drugs, vials of crack from Quanny and you'll recall that Quanny then says, hold on. He goes over to Terrell and Terrell supplies him with the crack and then Quanny gives Kemo the crack. Later on, we find out that Terrell Thomas is a member of the conspiracy. At that time he is distributing the defendant's crack cocaine.

That's why that was important. We moved ahead to February and that is the introduction, if you recall, sometime in early February, mid-February between Terrell Thomas

1 introducing Kemo McCray to his man Cheeb, who we now know was
2 the defendant, William Baskerville. Terrell gives Kemo his
3 cell phone number and the defendant gives him his cell phone
4 number and the defendant tells Kemo, if you want to buy crack,
5 call me on this number.
6 That number, which I think is familiar to you by now
7 is the 862452-1815.
8 Right away Kemo is showing us and the evidence shows
9 us that the conspiracy is right from the beginning. Terrell
10 Thomas is introducing the defendant as the guy to go to for
11 crack cocaine. And the defendant's giving out his cell phone
12 number. There's an agreement there obviously. In a moment
13 we'll show you more about Terrell Thomas.
14 I just want to talk briefly that phone number's
15 important and I don't know if you all got the connection with
16 the phones. Just so it's clear, there's a record in evidence,
17 I believe it's 450, and that shows you who that phone was
18 registered to, the 1815 phone. It comes back to a person
19 named Wali Green, W-a-l-i, I believe is that. We made up a
20 little chart and I'm not sure how clearly you're going to see
21 it.
22 We have copies for the jury. If the Court doesn't
23 mind, we'll hand out copies. While that's being handed out,
24 Wali Green, you'll see from the phone records, I think there
25 are Sprint registers, is the registered owner of that phone.

1 Later on, you heard from Agent Manson, by the way,
2 that the F.B.I. couldn't find anybody by that name at the
3 address that's given, which is 751 South 16th Street.
4 Right away they knew there was something suspicious
5 about this phone. Later on you'll see in the second item
6 there is a pager. The connection between the first cell phone
7 and the pager is the pager is recovered upon the defendant's
8 arrest on November 25th, 2003, inside his home. That pager's
9 also registered to Wali Green. That's Government exhibit 38
10 from the beeper company.
11 That's how you know that the first phone is connected
12 to the defendant, because the pager registered to the same
13 person, by the way, slightly different address with
14 unbelievably a slightly different spelling, which would give
15 you a hint that no Wali Green exists or he spelled his namo
16 wrong on the two items. That connects the first phone.
17 The second phone, if you move to the right, (908)413
18 phone which is used in the September 9 transaction and the
19 October 23rd transaction, you see that's registered and the
20 records are in evidence to Annie Williams. You can go to
21 Government exhibit 259, which is on the chart which is the
22 mortgage records, deed records to the home at 424 Robins
23 Street and you heard testimony that Annie Williams is the
24 defendant's wife's grandmother. She actually is a part owner
25 in the defendant's house, according to the records. Okay.

So you know that that phone is also connected to the defendant. There's really no dispute that the defendant is heard on those tapes. There's a stipulation as to that. I just wanted you to be aware of how the phones connect.

Let's go to move forward in the transactions. By the way, you'll be happy to know I'm not going through all the transactions. We're going to look at Terrell Thomas. While I joke, this is important, obviously, that each one of you understand the conspiracy.

Terrell Thomas is out there with Will Baskerville during this February introduction. He's also heard on the very first phone call, and again, we're not going to play the calls. You're invited, of course, to listen to them again. We've cleared up a lot of the interference, we hope. You can do as you please whether you want to listen to the calls.

On the very first phone call, you actually get a glimpse of the knowledge that Terrell Thomas has and his role in the drug conspiracy with the defendant. That's on page two, where Kemo is saying that he sees the defendant in a Yukon. It was some kind of truck, a black Yukon or Caddy. Terrell Thomas says it was a Caddy, he corrects him. Then Kemo says, yeah, with some chrome rims on it?

And Terrell says, yeah.

Later on Kemo says, I don't know if I dialed the right number or not.

Kemo asks, is it (862)452-1815?

Terrell, 862, wait a minute, hold on.

Terrell, 862, yeah, 452, yeah, 1815.

Terrell Thomas is now in a conversation about hooking Kemo up with drugs, is now telling him the defendant's phone number. Because again, he is a distributor of the defendant's crack cocaine. That helps you to understand the relationship.

Right from that first phone call, you're getting a glimpse into how Terrell Thomas fits into the conspiracy, but March 17th, is the first transaction. We told you that first transaction is not part of the substantive indictment charges, the substantive drug transactions four through nine, but it's important again, because it tells you something about count three, the conspiracy.

Again, on March 17th, if you recall, there is a sale set up on the phone that William Baskerville is going to come over and sell crack to Kemo. He actually shows up at the location, but he has a couple of people in the back of his car, Agent Manson told you, and you heard on the call, and so he has to bring these people somewhere. And he tells Kemo, I'll be back in about 45 minutes, hold on. But if you can't wait, basically, he's saying, deal with my man, Rell, my man Terrell.

Why? Because ultimately the money ends up in his hands either way. Because Terrell is fronted the drugs and

1 when Terrell sells drugs, the defendant's selling drugs. When
2 Terrell profits, the defendant profits.
3 That's from exhibit 102. Kemo's saying, hello.
4 Terrell says, hello.
5 Kemo says, what's up?
6 What's up? Chilling.
7 Kemo, yeah, I talked to your man earlier. He told me
8 to tell you.
9 Terrell, yeah, he told me.
10 Kemo, huh?
11 Terrell, huh? It goes on.
12 He says, Kemo says, he told you?
13 Terrell says, yeah.
14 Kemo, well, Rell, yo, you didn't tell me he didn't
15 call you.
16 Terrell, I'm trying to get that info now. Terrell
17 says, I got to get in touch with him now because somebody
18 else, somebody else want to see him.
19 Terrell is telling Kemo, you're not the only customer
20 that I have to get to my guy William Baskerville, there are
21 other guys calling me because I'm part of the agreement to
22 sell drugs with Baskerville, there are other guys calling me.
23 Somebody else want to see him.
24 Terrell on the next page, page three says, so, um, as
25 soon as I get in touch with him, I'm going to see what's up.

1 I'm going to see if I can get something from him and I'll call
2 you.
3 Kemo, all right.
4 Terrell, I already got one thing, but I don't think
5 he got enough to, you know.
6 Kemo, yeah. Well, man, listen. I need something
7 now.
8 Terrell, he better, he got to try to best stretch it
9 because the shit fucked up right now.
10 Kemo, listen, I need something, man.
11 Again, there's this conversation between Kemo and
12 Terrell to get to the defendant for Terrell to facilitate this
13 sale. There is no question there's a conspiracy at that time,
14 early in March between Terrell Thomas and William Baskerville.
15 Under the law, as the Judge read it to you, that's
16 it, the defendant's guilty. He had agreed with one other
17 person, he's a member of the conspiracy and he agreed to do
18 something and do something in furtherance of an unlawful act.
19 That day when he came out and told him deal with my
20 man, Rell, that's an act in furtherance of the conspiracy. It
21 doesn't matter, by the way, that later on the defense may
22 argue that Terrell had other suppliers, okay. He had other
23 suppliers, doesn't mean the defendant left the conspiracy. It
24 doesn't matter that Terrell owed Baskerville money, because
25 remember, he gets fronted money and he's expected to pay it

when he sells it.

You heard the conversations. I'm not talking to Will today because I owe him money. I'm not going near him. Doesn't mean he withdrew from the conspiracy and it's not Terrell's portion we're interested in, the defendant, the defendant's still selling crack.

It doesn't matter that other members of the conspiracy join later on and we'll get to Horatio Joines or Ray-Ray. As the Judge just told you, even if you join later on, you're responsible for all other acts that came before you, okay.

As the Judge also told you, drug conspirators don't sit around the table on the street and announce an agreement to sell drugs. You have to figure out the conspiracies by circumstantial evidence, as the Judge told you. You got to look at all the facts. You're not going to hear anybody, at least for the drug portion, I agree with you to sell crack cocaine.

You do have, though, the defendant's own words on tape on the phone calls. You have evidence that the defendant, from various witnesses, Koby Cuyler and others, that the defendant controlled a whole block. He controlled the area of Avon and 16th. It wasn't just Kemo he was selling to. Kemo was a relatively small customer of his, if you recall. He had runners, he had pitchers, he had managers, he

had packagers.

You heard from Car Wash. He had people cooking up for him, cooking up the raw, because he talks about raw versus crack and he has suppliers. He talks about connects.

So this is not a one-man operation. That would be impossible. It doesn't work that way on the street and you've heard that from several witnesses. Koby told you that, Shawn Manson told you that, Car Wash told you that.

On March 17, if we go back to that, he does this deal with not the defendant, but Terrell Thomas for those black top vials which are exhibit seven and we showed that to you and you're free to look at them during deliberations. We can't give you the drugs, but you can come out to the courtroom and look at them. You heard Car Wash tell you about packaging these types of drugs in the defendant's detailing shop. We'll get to that in a minute.

March 17 sale is not a count that you can consider in counts four through nine but it is part of the conspiracy. It shows a common purpose and scheme between Terrell Thomas and the defendant, shows an agreement, a relationship and a conspiracy.

I want to read to you briefly from page 3515 of the transcript which is Shawn Manson's direct testimony.

"QUESTION:" Line 14, "Did he report to you that he spoke to anybody else related to that?"

She's talking about Kemo.

"ANSWER: He also spoke to Terrell Thomas and in his conversation with Terrell Thomas, Terrell Thomas indicated that he is also waiting on Cheeb for his drug supply.

"QUESTION: And again, that was -- he was telling you he spoke to Terrell Thomas on March 4th?

"ANSWER: Yes.

"He told you this on the sixth?

"ANSWER: Yes, he did.

"QUESTION: Now, at that point what was your understanding of Terrell Thomas' role in the investigation as a target?

"ANSWER: Terrell Thomas was an individual who knew William Baskerville supplied drugs to and Terrell Thomas in turn then sold them to other individuals in his immediate area. So we knew that Terrell and William Baskerville were working together and already had a pre-existing relationship.

"When ever Kemo could not find or could not get ahold of William Baskerville, he would contact Terrell Thomas and try and ascertain where William Baskerville was or to try and pass a message to William Baskerville.

"QUESTION: Agent, was that based on the events of January 13 and then February where Terrell introduced him to William Baskerville?

"ANSWER: Yes, that's based on that. That's how we

determined what the relationship was between Terrell Thomas and William Baskerville. They had already had a pre-existing drug supplier, the drug relationship with one another. When Kemo entered into his dealings with Terrell Thomas, and Rakeem -- I mean, I'm sorry, William Baskerville."

It was apparent to the F.B.I. based on that evidence right away that they were looking at a conspiracy of at least two members. March 18th is the first transaction.

MR. FRAZER: Judge, I don't know if you want to break?

THE COURT: It's up to you.

MR. FRAZER: If the jury doesn't mind taking a few more minutes, we'll get to a logical ending point for the lunch break.

Again, there's a stipulation of those tapes that the defendant's voice is on those tapes. There is no dispute about that.

March 18th, and I know we had some technical difficulties and I think it's been cleared up a lot if you listened to them, so if you want to listen to them again, but the March 18th call was probably the clearest of all the calls that you heard.

That's perhaps the most damming evidence of both counts four through nine and the drug conspiracy. That's at page three of exhibit 104, where Baskerville says, I had 50

1 grams for you the other day.
2 You'll recall Agent Manson, he's talking about the
3 day before, March 17th incident. I had 50 grams for you the
4 other day and I put it to the side, but then I had, I had this
5 kid that had wanted it and when Rell told me you didn't want
6 it, I was like fuck it, I gave the shit to the kid, you know
7 what I'm saying? It's crystal clear on the tape.
8 Right there the defendant's own words. That's rare
9 that you get the defendant telling you about a conspiracy to
10 distribute crack cocaine, but you have it here. He had 50
11 grams, he was ready to give it to Kemo, but my man Rell told
12 me you didn't really want it, you didn't want to wait the 45
13 minutes. Remember? So he gave it to somebody else.
14 Right there he's admitting to selling someone else 50
15 grams of crack cocaine. The conspiracy is, as I'll talk
16 about, requires that we prove that it's over 50 grams, 50
17 grams or more of crack cocaine. That's it in one transaction.
18 You have transactions here that total 190 grams just with Kemo
19 McCray, but obviously Kemo McCray is one of the smaller
20 customers.
21 He goes on to say, and this is the defendant, but I
22 could get the shit from him hopefully like in another week or
23 so. I'm have my own shit, you know what I'm saying, the
24 connect, which Agent Manson told you is the supplier, that I
25 was fucking with at first. Now these niggers, man, they

1 ain't, I guess with that big ass shit, that big bust, shit,
2 they fucked off. You know what I had no coke, I had no coke,
3 motherfucker since All-Star weekend, which you heard lots of
4 testimony from the cooperators about All-Star weekend, and
5 that corroborates that portion of the testimony.
6 He goes on to say, but I could get it from him. I'm
7 just trying to get the shit right, whereas though I can get
8 enough of that shit, where you all can have that shit so I can
9 come to connect with mad money and I can get what I want. You
10 know what I'm talking about?
11 He's telling Kemo he's got this great supplier, that
12 if he gets with, he can make mad money, tremendous amounts of
13 money.
14 He goes on to say, so, I don't got to worry about
15 this shit, but if you get, like say for instance, say for
16 instance, like if I got it and I just get the shit, before I
17 hit that shit up, make that cook-up, I just put you something
18 aside. You know what I'm saying? But if you want 50, I can
19 get that shit from him all day or more, because I know he, he
20 got it. Know what I'm saying?
21 Kemo says, true.
22 He goes on to ask the defendant, the only that you
23 know you have now is cookies, right, meaning crack. For the
24 time being.
25 Baskerville says, hopefully within the next week, no

later than next week, I should have some raw, though.

Kemo says, all right.

And the defendant says, but I'm going to have cookies, I'm going to have cookies all week.

You have the defendant, from March 18th, talking about sales in excess of 50 grams to various individuals, about a supplier that he calls his connect, right, and talking about his relationship with Terrell Thomas in the conspiracy.

Again, ladies and gentlemen, that's it. If you believe that testimony, which you hear from the tapes, from the defendant's own words, that's sufficient evidence under what the Judge just read you to find the defendant guilty of drug conspiracy, that alone. We're only on March 18th.

Okay. As I said, I'm not going to go through each sale, you'll be happy to know that.

By this time, you heard Agent Manson and you heard the testimony about counts four through nine, the March 18th and March 21st sales, the sales from May 22nd, June 19th, September 9th and October 23rd. We have a board, which I will put up on the easel, but I'm just going to show you. It just summarizes for you counts four, five, six, seven, eight and nine. It gives the dates, March 18, March 21st, May 22nd, June 19th, September 9th and October 23rd and the corresponding counts.

Most took place in the area of Wainwright Street, one

took place when Kemo moved to a different location near south 14th Street and I think it was Madison, the street was.

It gives the weights. Again, you can look at these, just on these, any three of these transactions total more than 50 grams, but you don't have to limit yourself to these transactions. It's during that period he sold to many other people. Even if you put that aside, he conspired with others to sell Kemo DeShawn McCray a total of 190 grams, which is four times what, almost, what the Government has to prove.

We listed the cars, and I'll talk about the Monte Carlo in the moment and the phone numbers which you saw from the chart in front of you connecting the defendant to each and every of the transactions.

You heard Shawn Manson -- I don't mean to minimize the investigation that the F.B.I. did by not discussing the evidence on each count. You heard it, you saw videotapes. This was a sophisticated operation. This was not something that they did willy-nilly. They went out there and they had procedures and they followed those procedures. They had procedures to insure the safety of the evidence, the safety of the informant and the safety of the agents involved. This is dangerous business, right? Surveilling drug transactions in the streets of Newark is dangerous business.

They followed those procedures each and every time. They tried to video where they could. Most of the times they

1 did, sometimes they couldn't, sometimes the video got blocked,
2 a van came in the way in one video, the defendant pulled into
3 a driveway in the other video, but keep in mind the most
4 important thing. Agent Manson testified that on at least four
5 out of six of them, she directly observed the defendant from
6 her vehicle through his vehicle. And don't buy any arguments
7 about tinted windows, go back and look at the evidence.
8 Manson wasn't that far away from the defendant.
9 She saw him stop and count money like a bank teller,
10 remember that? He's counting the money like a bank teller
11 and, I submit to you, like a drug dealer would.
12 So Agent Manson, the foundation is Agent Manson saw
13 him on four of those transactions, with her own eyes, in drug
14 sales with Kemo DeShawn McCray.
15 You also have video and you actually hear the
16 transactions on the audio. Remember again, there are codes
17 Kemo used. This is the end of the deal. There were codes in
18 case his safety became an issue.
19 Before the break, I just want to conclude on the drug
20 portion by talking about the Monte Carlo, the car that's in
21 the chart that he used on every occasion but one. On that one
22 occasion, which is September 9th, he used a rented Grand Am,
23 Agent Manson told you. While it doesn't make much of a
24 difference, other than you heard testimony that Grand Ams are
25 used because they're fast vehicles, right, the car of choice

1 for some drug dealers, it is more than a coincidence, ladies
2 and gentlemen, that the murder vehicle, that his brother
3 Rakeem Baskerville is driving away after Kemo DeShawn McCray
4 is gunned down, happens to be a Grand Am. Think about that.
5 But going back to the Monte Carlo, you heard from two
6 witnesses, Gabe Rispoli, Rocky, the scent dog and that
7 testimony. He's an expert. There is no doubt that that K-9
8 showed that there were drugs in the defendant's Monte Carlo.
9 There are records in there, by the way, of showing
10 when he leased it, the Monte Carlo, and there's DMV records
11 showing he's the registered owner of the Monte Carlo. He
12 drives up in his own vehicle each and every time. It's
13 important to realize that there were drugs in that vehicle.
14 Detective Rispoli says perhaps as between two weeks
15 and a couple of days before. There was some kind of narcotics
16 present because the dog gave him a positive signal.
17 You heard from Special Agent Scimeca, the F.B.I.
18 agent that came in with the video of the traps. While there
19 was a lot of electronic stuff that kind of flew over my head
20 with the wiring and how that worked, you'll remember that was
21 a sophisticated system in the defendant's car used, right, to
22 stash drugs.
23 We know that because inside the trap when it was
24 opened are several things. There are air fresheners,
25 obviously to throw the dog off, there are crack vials.

Remember those two little vials I tried somewhat unsuccessfully to show you on the Elmo and they kept rolling off? Those are crack vials and there are razor blades which are used to cut cocaine, right, drug paraphernalia. Think about that.

There is no doubt, and I know you're probably all saying okay, already, we got it, but there is no doubt that the drug transactions were proven, each and every element of counts four through nine were proven beyond a reasonable doubt that he distributed crack cocaine on those dates, as the F.B.I. watched.

Break.

THE COURT: All right. Let's take a lunch break, folks.

You can go into the jury room and we'll have you back here by 1:00 or so, five after one.

THE CLERK: All rise.

(Jury is excused and the following takes place out of the presence of the jury.)

THE COURT: Let's take a launch break.

MR. FRAZER: What time?

THE COURT: Let's call it 1:00, but the way we have been doing business, it will be more like 1:05 or 1:10.

(Luncheon recess.)

AFTERNOON SESSION

(The following takes place out of the presence of the jury.)

MR. MINISH: Judge, I want to put something on the record.

THE CLERK: All rise.

THE COURT: Mr. Minish handed up some verdict sheets, redacted indictments.

MR. MINISH: And provided defense counsel a copy.

THE COURT: Let's get the jury, please.

THE CLERK: All rise.

(The following takes place in the presence of the jury.)

THE COURT: Take your seats.

Mr. Frazer, you may continue.

MR. FRAZER: Thank you, Judge.

Good afternoon.

When we broke, we finished the drug transactions. I want to go back to the conspiracy, the drug conspiracy and talk about who else participated.

What we have so far is the defendant, William Baskerville, obviously. We have Terrell Thomas, who we heard in the transactions from February and even before that and the transactions in March.

What we also have is a lower member of the conspiracy, someone named James Murphy, who as you remember, was referred to as Car Wash. Remember something the Judge instructed you about the roles of the various conspirators? Car Wash, you'll recall, James Murphy, came to testify and he told you about his experience inside the defendant's car detailing place in Westfield, New Jersey and how he was employed there and he detailed cars.

In a minute, I'm going to read to you from the transcript where he's actually on tape during the June 19th transaction. You'll recall during the June 19th transaction, which is one of the counts, that the agents observed an

1 individual in the car, and we later find out that is James
2 Murphy or Car Wash. That corroborates obviously his
3 involvement in the drug conspiracy, because obviously he is in
4 the defendant's Monte Carlo during a drug transaction.
5 Of course, mere presence is not enough, but we have
6 much more than that. Remember what the Judge said about
7 roles. It doesn't matter how minor your role is or how great
8 your role is because you're responsible for all the acts of
9 the co-conspirators, right?
10 So, what was Car Wash's role? Well, he told you what
11 his role was. First, you can look at the exhibit 115, which
12 is the transcript. If you recall during the June 19th body
13 wire where Baskerville, the defendant, gets on the phone and
14 in the meantime there's a side conversation where Kemo tells
15 him, Car Wash, otherwise it's dirty. I could watch you wash
16 the whole damn block of cars. They're both laughing. We know
17 that's Car Wash because he's talking about Car Wash's ability
18 to wash cars, that's where he got his nickname from.
19 You know, even though he's identified as unknown
20 male, Shawn Manson told you that was Car Wash. I recognize
21 his voice and obviously she had heard Car Wash after the
22 investigation as well. He was a witness for the Government.
23 The F.B.I. sees him in there and he tells you his
24 role. That's at page 4,089 of the transcript in his direct
25 testimony with Mr. Minish. The only reason, by the way, he's

1 a witness in this case, the F.B.I. didn't know who he was at
2 first. They saw him in the car but they couldn't identify who
3 he was, they didn't know James Murphy. They found that out
4 through Koby Cuyler, another person who came here and talked
5 to you, and they found out from Koby that Car Wash is a guy
6 named Jimmy and they got an address from Koby. The F.B.I.
7 went out and found this witness.
8 He says -- "QUESTION: You said you went into the
9 room, then what happened? Why did you go into the room?"
10 What they're discussing is what he saw at the
11 defendant's car detailing place, the car wash in Westfield.
12 "ANSWER: I wanted to see what was going on. Was it
13 over, you know, so I went in the room to see.
14 "QUESTION: Because you had to wait for the
15 defendant?
16 "ANSWER: Right. Because that was my way home.
17 Getting there and getting home.
18 "QUESTION: So you went into the room?
19 "ANSWER: Yes.
20 "QUESTION: Once you were in the room, what did you
21 do?
22 "ANSWER: What did I do? What did I see?
23 "QUESTION: Well, what did you see, start with that.
24 "ANSWER: I saw two razor blades, like chopping the
25 drugs in bottles."

You've seen those from the Monte Carlo, razor blades, the crack vials.

"QUESTION: The jury, if you can explain to the jury, so they understand, chopping it up, what did the drug look like while it was being chopped up? Could you describe what the rock form that you saw looked like?

"ANSWER: Rock form, you use razor blades to chop it down, to get it fine enough to put it into the bottles.

"QUESTION: So you're trying to break off little pieces?

"ANSWER: Right.

"QUESTION: And the rock form is a circle, a square?

"ANSWER: A chunk.

"QUESTION: Chunks?

"ANSWER: Okay.

"QUESTION: Now, you saw that, you went in, what was going on in the room, were there tables, chairs?

"ANSWER: Table." He goes onto describe the card table.

"QUESTION: How many people were sitting around it?

"ANSWER: Two at the time.

"QUESTION: And who were those two people?

"The ones I described when I went and looked through the blinds.

"QUESTION: Was the defendant in the room?

"ANSWER: Yes.

"QUESTION: And where was he?

"ANSWER: In the room also."

So the defendant's in the room while they're chopping up crack into smaller rocks to put in those little glass vials and there's two other men in there doing that.

"Did there come a time when you get involved in this drug process?"

This is the top of page 4,091.

"ANSWER: Yes.

"QUESTION: Okay. Explain to the jury how that happened.

"ANSWER: It was after working hours. I wanted to go home. I went in on my own to speed up the process so we could finish it so I can go home. That's how I got involved.

"QUESTION: Okay.

"What did you do, actually do once you got involved?

"ANSWER: I counted the bottles in tens, put rubber bands.

"QUESTION: When you say "bottles," you mean small little bottles that crack is put in?

"ANSWER: Yes.

"QUESTION: Why was it significant to put them in groups of ten?

"ANSWER: Ten bottles, what you call in street term

is a clip.

"QUESTION: A clip?

"ANSWER: Yes."

Remember, back on January 13, they talked about clips from Taquan Singleton. You saw those 40 vials from March 17, Terrell Thomas sold him clips, ten, four clips, 40 vials.

"QUESTION: So you were counting. What were the other guys doing?

"ANSWER: Still packing."

So there's other men inside the defendant's garage packing the drugs.

"QUESTION: So chopping with the razor blades and putting them in the bottles?

"ANSWER: Yes.

"QUESTION:" Further down on the page, "How often was it done at the car wash?

"ANSWER: Maybe three times a week.

"QUESTION: On a regular basis, were their weeks off?

"ANSWER: Yeah. It wasn't regular everyday, you know, like three times a week.

"QUESTION: And you understand the process from making the powder cocaine into the rock form of cocaine?

"ANSWER: Yes."

He goes on to explain that. Boiling water, pouring

the cocaine in, the baking soda, stirring it with a knife or spoon until it turns into rock form. Then it cools off, take it out.

"QUESTION: Did you ever see anybody do that at the garage?

"ANSWER: Yes.

"QUESTION: Okay.

"ANSWER: One time.

"QUESTION: Who did you see do that?

"ANSWER: The defendant.

"QUESTION: How long did this bottling process take?

"ANSWER: Hours.

"QUESTION: Did you ever get paid for the counting and rubber banding?

"ANSWER: He gave me a couple of dollars for doing it. "

Okay. So you have Car Wash and his role was a smaller one, right. He testified here under a no prosecution agreement. Because technically for his packaging of those drugs, he could have been charged. It might have been a minor offense, but he had a right to an attorney, he had a right to get from the Government a guarantee he would not be prosecuted. That is what he got.

Now, did he lie because of that? Did he make up these very detailed statements about seeing the defendant in

his garage in Westfield, having others around the card table in a room packaging clips? Well, no. Why? You don't have to take James Murphy's word for it. We would never expect you to take James Murphy's word for it or any other individual person in this case.

But what you do have is corroboration. As I told you, from March 17, and back in February and the types of drugs and the way they were packaged and Terrell Thomas and all the rest.

The bottom line with all the witnesses is, did it make sense to you? Was it telling the truth?

You have somebody else that was mentioned. I'll call them packagers. There are two other people in that room, maybe employees, he said of the car wash and we don't know their names, but you know what? The Judge just told you a little while ago you don't need to know their names. It's not a requirement we prove who they are.

Are they members of the conspiracy? Absolutely. They're being paid, we know Car Wash is being paid, we can infer from circumstantial evidence that he probably pays the other packagers, they're not doing it for free. This is a drug operation going on in the defendant's legitimate business. You can consider that.

You have minor players in the conspiracy, but they're co-conspirators, nevertheless, whether you know their name or

not. That's why James Murphy was here.

And again, this goes to the weight requirement. There's a lot of stuff being packaged in that establishment for distribution. You can consider those amounts in addition to the drug transactions you know about.

Again, I told you about the weight requirement. I think that's clear, but just the last point on that, the defendant is on tape talking about delivering 50 baggers. Remember that term from the tapes? In one transaction where he's looking to distribute 50 baggers, you could find that we've met the burden on the over 50 grams. This was a fairly large-scale drug operation.

Let's talk about another person that you heard a lot about, Ray-Ray, right? Ray-Ray is Horatio Joines. You saw a picture of him.

How do we know Ray-Ray is the defendant's right-hand guy? Koby says it. Koby Cuyler told you that. We'll get to that in a moment.

Anthony Young told you that. He's also observed by the F.B.I. on that surveillance tape that we finally cleared up the difficulties and got to play it for you, where you see the defendant and Ray-Ray, during the conspiracy period, talking with some of the defendant's brothers by their house and walking across the street. We know that Ray-Ray is present during the some of the transactions. We heard that

from Agent Manson. She actually saw someone who they later learned to be Ray-Ray inside the car during the drug transactions.

You also heard that Ray-Ray was known to drive the defendant's Monte Carlo and you heard Koby say on the street, there's only two people who drive your drug car, right. A family member like your brother or your business partner, your drug associate. Because remember, that car had drugs in it, it had traps in it, right? So not everyone is allowed to drive that car. It's not like a family car.

Let's turn to Koby Cuyler. Koby Cuyler came here and, ladies and gentlemen, he was a drug dealer himself. He told you that right off the bat. Again, who better to know about drug conspiracies and inner city and the streets of Newark than a fellow drug dealer? So what does he tell you? He comes here and he tells you that twice during the summer of '03, the spring and into the summer of '03, perhaps into the fall, but in the time period of the conspiracy, he tells you that the defendant came up to him, that Koby Cuyler himself is driving a Monte Carlo like the defendant's, because he bought it with drug money. He comes there to recruit Koby Cuyler to join his drug organization.

I'll read to you from 4202, "QUESTION:" This is Koby Cuyler's direct by Mr. Minish.

"Now, from what you've said, the defendant never came

out and asked you, do you want come work for my drug business? Is that right?

"ANSWER: Yes.

"QUESTION: How did you know that that's what he was asking you about?

"ANSWER: Because on the street, that's how they talk. Like you know, like if a person asks, if you want to come eat with me, that mean come and get money with me.

"If they ask to get down with them, that means come on their team."

Koby Cuyler is aware that Will Baskerville has a team, he has an organization, he runs a block. That's a conspiracy that the defendant happens to be here.

"And did people know you to be a drug dealer?

"ANSWER: Yes.

"QUESTION: So if someone was recruiting you for work, would they think they were trying to get someone to cut their lawn?" Remember we all laughed at that.

"ANSWER: No.

"QUESTION: Now, did you know the defendant to sell drugs?

"ANSWER: Yes.

"QUESTION: Again, I'm limiting it to this time period.

"ANSWER: Yes.

"QUESTION: And crack cocaine specifically?

"ANSWER: Yes.

"QUESTION: What areas did you know the defendant to sell drugs in?

"ANSWER: 17th and Avon, and --

"QUESTION: Is that Newark or Irvington?

"ANSWER: That's Newark.

"QUESTION: Okay.

"ANSWER: And 18th Avenue and 22nd Street.

"QUESTION: Where is that?

"ANSWER: East Orange -- Irvington."

So there's two locations that the defendant controls.

Now, obviously goes without saying, you can't be in two places at once, right, so you need some help to distribute your crack cocaine when you run these two blocks.

"QUESTION: And when you say you knew him to be dealing drugs, what exactly did you see?

"ANSWER: Well, I seen him a couple of times give something to his little guy.

"QUESTION: To his what?

"ANSWER: To his little guy.

"QUESTION: What's a, when you say "little guy," what do you mean?

"ANSWER: Like on the streets we say runner, but when he gave it to the guy, do something for him. Whatever."

Question later on 4204, he says, "He give it to the guy. He give it to the guy. Runners for him. What I mean by runners, for guys that pitching for him on the streets.

"QUESTION: And did you know any of these individuals?

"ANSWER: Yes.

"QUESTION: Okay.

"And do you know any of them by name?

"ANSWER: It was one guy Ray-Ray.

"QUESTION: Now, I'm going to show Government" -- well, skip down.

"QUESTION: And exactly what did you see between the defendant and Ray-Ray?

"ANSWER: I seen him give Ray-Ray something. He jumped out of the truck and he looked like this. He was nervous, he was looking for somebody to see, to make sure the police were or nobody was watching. Then he took off.

"QUESTION: Now, how is it that you determined that you moved your head back and forth, that he was looking around, that meant somehow drugs?

"ANSWER: Because I be selling drugs for a long time so I already know what situations like if you be in. If you be a motion, you got to look out and see and always make sure that you're safe. Okay.

"By "safe," what do you mean?

"ANSWER: Meaning like you don't want to jump out of the car and you got something on you and and police right there. They watching you, you don't want to get caught like that.

"QUESTION: Okay.

"You didn't actually see drugs, just saw his actions?

"ANSWER: Yes.

"Did there come a time when you spoke with Ray-Ray about the defendant?

"ANSWER: Yes.

"QUESTION: Did he say that the defendant and Ray-Ray were working together in a conspiracy?

"ANSWER: Yes.

"QUESTION: When did you speak with Ray-Ray?

"ANSWER: On the streets around my way.

"QUESTION: And did he -- do you recall the day, the time?

"I can't recall it right offhand.

"QUESTION: Were you discussing drugs with him?

"ANSWER: Yes.

"QUESTION: What did he tell you about the defendant?

"ANSWER: He was telling me that he could get it for me at a better price, get it cheaper than what I was getting it for.

"QUESTION: From whom?

"ANSWER: From the defendant.

"QUESTION: Did you ever see Ray-Ray in the defendant's Monte Carlo?

"ANSWER: Yes, I seen him.

"QUESTION: Tell the jury what you saw.

"ANSWER: I seen him in the Monte Carlo and, you know, like he was by himself so you know that's not going to be unless you're his best friend or brother or something like that. And in that case, I already know his whole family so that wasn't his brother or nothing like that, so it had to be a business partner or such.

"QUESTION: Because he was driving the car?

"ANSWER: Yes.

"QUESTION: What was the price, do you remember the price you were quoted?

"ANSWER: Right off hand, I can't remember.

"QUESTION: But the idea was it was better than Kevin Horton's?

"ANSWER: Yes."

Kevin Horton being another drug dealer.

So you hear from Koby Cuyler, again, the conspiracy involving Ray-Ray. Ray is another front man. Ray-Ray is another runner, another guy who distributes drugs on those blocks for the defendant, okay.

1 So you now have several individuals involved in the
2 conspiracy. I'm just going to say one thing.
3 You heard the name Hakim Curry a whole bunch in this
4 case. We'll get to him in the murder conspiracy, which we'll
5 turn to next.
6 We're not here, ladies and gentlemen, so you're not
7 confused, to prove any other conspiracy, but the one you see
8 here. Okay. What happens above William Baskerville, that's
9 not for you, okay. Hakim Curry was charged with a drug
10 conspiracy, you heard a lot about his organization, but that's
11 up here. Hakim Curry may be like the corporate head, the CEO,
12 right. We're only talking about one franchise here, we're
13 talking about two blocks right in Irvington and, by the way,
14 my handwriting is worse than Eric Dock's or Troy Bell's, so
15 excuse me. And another block in Newark. Two blocks in these
16 two cities.
17 Now, perhaps Hakim Curry is on top of a bigger drug
18 organization and you heard some organization of Will's
19 involvement and Rakeem Baskerville's involvement and there was
20 a chart Mr. Minish did. I don't think it's in evidence, and
21 Anthony Young told you all about who and where William
22 Baskerville fit into this thing. That's not what we're here
23 for.
24 We're here to show you between two dates, January of
25 '03 and November of '05, or somewhere in between those dates,

1 that there was a conspiracy among these individuals to sell
2 crack cocaine in an amount over 50 grams, in these areas.
3 That's it.
4 Don't be confused if the defense starts talking about
5 all these guys and inconsistent about who was in this level
6 versus that level. Makes no difference. We're talking about
7 the blocks controlled by William Baskerville, where he is the
8 head of the conspiracy.
9 Let's move on now to the murder conspiracy. That
10 does involve -- I'm just going to push this back. That does
11 involve some members of the Hakim Curry drug organization. It
12 involves Rakeem Baskerville, who you've heard about, also
13 known as Rock. Hakim Curry, also known as E. T. Or Hak, Jamal
14 Baskerville, Malsy, Jamal McNeil you've heard about and Hamid
15 Baskerville.
16 Because those were the individuals that were at that
17 meeting with the lawyer, Paul Bergrin, the day or so following
18 November 25th, 2003. What you have in the murder conspiracy
19 is three brothers, a cousin and a drug associate of the
20 defendants. Okay.
21 Now, this Paul Bergrin, you heard some testimony
22 about him and he does play an integral part in this
23 conspiracy. He's the person who first passes along to Rakeem
24 and Hakim Curry, Rakeem Baskerville and Hakim Curry, the
25 information from Will that Kemo is the informant.

He then shows up and has a meeting with these individuals on the street and that's the one where he tells us -- that we hear from Anthony Young that he says no Kemo, no case.

I want to start, ladies and gentlemen, with a couple of things about conspiracy law so that you can kind of put a framework on the murder conspiracy. First of all, we don't have to prove, as I said before, an agreement and a meeting, the Judge read that to you this morning. We don't have to prove that each member of the conspiracy knew each other, not a requirement.

We don't have to prove that the agreement was expressed. It could be implied, which is very important.

Finally, that a conspirator need not know the particulars of the whole conspiracy as long as they understand the nature of the illegal enterprise, and they knowingly agree to further the goal of the conspiracy.

So why is that important? Because on November 25th, when the defendant communicates both to Mr. Bergrin and his brother, Kemo's the informant, he has to be pushed, he has to be handled, we have to knock him off, I'm facing life, he doesn't have to know the details that follow. He doesn't have to know every minute that they're out there looking for Kemo. He doesn't have to know their progress. It ends up he does and we'll talk about. He doesn't have to be in the planning

after that or the details, who's going to shoot him, although we'll find out he knew that as well.

So I just wanted you to keep that in mind and keep in mind tomorrow when you hear the defense summation and question, is that something that the Government has to prove? Constantly ask yourself, is that part of the elements of the offense in the legal charge.

The defendant did not outright tell anybody, you must kill Kemo McCray for me. We don't have it on tape. We don't have it recorded, but that doesn't mean it didn't happen.

He certainly committed an act in furtherance of the conspiracy. He told his brother, and his lawyer, Kemo's the snitch, handle it. He set the plan in motion. He initiated the conspiracy right from the beginning. Without that information, Kemo McCray does not die.

So let's look at the evidence. The defendant tells Bergrin, Paul Bergrin, the lawyer, to tell Curry and Rakeem Baskerville it's Kemo. You heard the defendant's admission to numerous people that he did this, that he told his brother to handle his business, to push Kemo.

Now, I want to talk about it not being recorded because there's been a lot of talk about this ability to record calls and the implication is, well, why isn't this on tape? First of all, we shattered that myth that the defense has been portraying in cross-examination with Bill Cannon

1 yesterday.
2 Hudson County, before November, 2006, had no abiiity
3 to tape calls, period. Okay. That's a non-issue.
4 Even if they were able to record calls, it was not
5 true, inmates such as the defendant, knew how to beat the
6 system. They knew how to make three-way calls, they knew how
7 to make these relay calls Bill Cannon told you about. They
8 knew the sensitivity and generally how to beat the system.
9 They knew they could get information about.
10 How about cell phones being smuggled in? Bill Cannon
11 told you yeah, that happens. There's plenty of ways that
12 messages got out, pro visits with lawyers, those are not
13 recorded. Visits with family members, those are not recorded.
14 So this recording issue, and then this issue about
15 why didn't anybody wire up and go get the information from the
16 defendant? That's fantasy, ladies and gentlemen, that's not
17 real life.
18 There was a brief attempt by Eric Dock to get wired
19 up, but by July, by the time that happened, the defendant had
20 been told, shut your mouth and we'll get to that. Hakim Curry
21 ordered him, be quiet, people in Passaic County are talking
22 about you committing the murder, stop it.
23 That's a non-issue. It's a complete non-issue in
24 this case to divert your attention away from the facts.
25 Now, Anthony Young testifies about the events after

1 the defendant's arrest on November 25th. He tells you that
2 he's informed by Deidra Baskerville, his wife, that he and
3 Rakeem Baskerville are told by Deidra about the arrest that
4 morning, the warrant executed by the F.B.I. This takes place,
5 by the way, in Rakeem Baskerville's van when they're told
6 that. That's the testimony.
7 This is the first time that Anthony Young and Rakeem
8 Baskerville find out about the arrest. They then meet up with
9 Hakim Curry. The first thing they do when they hear this from
10 Deidra Baskerville, they meet up with Hakim Curry and he's
11 driving the blue Range Rover. And we know that's true because
12 Agent Hilton told you that's what he drove in that time
13 period. That part is corroborated.
14 The conversation ensues where, after the initial
15 appearance, right, that we talked about, Rick Hosten, Kemo's a
16 fucking bum, we know that the message got out. The message
17 got out to Paul Bergrin and he was on the phone with Hakim
18 Curry and we know that's corroborated because we have the
19 phone record in evidence. You can look at it. I tried to put
20 it up. You can look at it.
21 Agent Hilton told you Hakim Curry's cell phone number
22 which is an 862 number and we have a record that Paul
23 Bergrin's cell phone called him on the afternoon of November
24 25th, which gels with the timing of the initial appearance and
25 Paul Bergrin meeting with his then client, the defendant.

So Bergrin tells Hakim Curry, because Hakim Curry is relaying to Anthony Young as the phone call is happening, he tells them the specifics about the complaint that was received in court that day and he tells them about the various sales.

Then he said that Will told him the informant is a guy named K-Mo. Now, the lawyer screwed up the pronunciation. He said K-Mo. Then what happens? Anthony Young and Rakeem Baskerville, Young tells you, said K-Mo, no, you mean Kemo. Okay. Can you imagine Anthony Young making that up, that detail?

We know that the call happened. How did Anthony Young know the call was going to be on the phone record? How did he know that Hakim Curry was driving a blue Range Rover? Again, we don't rely on the witness himself, we rely on the other evidence.

Let me read to you from 4350. This is a fairly long passage, ladies and gentlemen, but this is the crux of Anthony Young's testimony as to these very crucial conversations in the murder conspiracy.

4350, "QUESTION: Where did this conversation take place?

"ANSWER: Inside Hakim's truck.

"QUESTION: What kind of truck does he drive?

"ANSWER: A Range Rover.

"QUESTION: Set the scene for the jury. Where was

everybody sitting?

"ANSWER: I was sitting in the back seat, Rakeem Baskerville was in the passenger seat, Hakim Curry was in the driver's seat.

"QUESTION: And how did this conversation take place?

"ANSWER: On cell phones.

"QUESTION: Explain to the jury what happened during the conversation.

"ANSWER: During the conversation, Hakim Curry asked Paul Bergrin, check on Will. Find out what was going on, cause the F.B.I. got him.

"Paul Bergrin was talking to Hakim. I couldn't hear Paul Bergrin, I could here Hakim Curry. Hakim Curry said he wanted to know everything was going on and see if he can get him bail.

"QUESTION: Did Curry pass along any information to you guys? By that I mean you and Rakeem sitting in the vehicle?

"ANSWER: In a later conversation.

"QUESTION: And he goes on to say, to tell us about the later conversation.

"ANSWER: He was talking to Paul Bergrin again on another, different phone call.

"QUESTION: Where was that?

"ANSWER: Inside the truck, the same truck, sitting in the truck."

Now, Curry has numerous cell phones so we don't know if it was on, when he says, "the different conversation", whether it was the same phone, but there's a conversation.

"QUESTION: Where was that?" I read that.

"QUESTION: Now, you're sitting in the truck. Is it riding around. "

"ANSWER: No, parked.

"QUESTION: Is it the same Range Rover?

"ANSWER: Yes.

"Where is everybody sitting in this conversation?

"ANSWER: Same spot.

"QUESTION: Okay.

"And Curry's on the cell phone with Paul Bergrin?

"ANSWER: Yes.

"QUESTION: Tell the jury what happened during the course of that conversation.

"ANSWER: He asked him did he find anything out.

"QUESTION: That's Curry speaking?

"ANSWER: Yes. I know he told Hakim Curry that a person that told on Will is guy named Kemo. Actually he said K-Mo, he didn't say the name correct.

"QUESTION: Who didn't say the name correct?

"ANSWER: Paul Bergrin.

"QUESTION: How do you know that?

"ANSWER: Because Hakim said K-Mo and he didn't -- because Hakim said K-Mo and he don't know him.

"QUESTION: Just so the jury is clear, Curry is repeating things --

"ANSWER: Yes.

"QUESTION: -- to you guys?

"ANSWER: What Paul Bergrin was saying on the phone?

"QUESTION: He turned and said K-Mo.

"ANSWER: He said somebody named K-Mo is the informant.

"QUESTION: What, if anything, did you say after that?

"ANSWER: Me and Rakeem came to the conclusion that the informant was Kemo, not K-Mo.

"QUESTION: And that was based on what?

"ANSWER: Based on that we know who he is.

"QUESTION: So it was just a name pronunciation?

"ANSWER: Yeah. He made a mistake and said K-Mo instead of Kemo.

"QUESTION: Did -- was any information about the actual charge passed along?

"ANSWER: Yes.

"QUESTION: Tell the jury what was passed along.

"ANSWER: Hakim ran down some of the sales that were

1 made, said something about he sold 20 something grams this
2 day, sold 14 grams to this person this day, which was still
3 the guy Kemo. And we came to the conclusion it was Kemo who
4 was the informant.
5 "QUESTION: So this information is going from Paul
6 Bergrin to Curry and he's in turning repeating?
7 "ANSWER: Yes.
8 "QUESTION: Now, Mr. Young, you told the jury that
9 the name was passed along as K-Mo?
10 "ANSWER: Yes.
11 "Tell the jury what that meant to you.
12 "ANSWER: As soon as the name is passed along from
13 whoever Paul got the name from, which would be Will
14 Baskerville, that means if you cross the Baskerville's and
15 somebody gives you the name who did it, get rid of him.
16 "QUESTION: What does "get rid of him" mean?
17 "ANSWER: Kill him.
18 "QUESTION: And why do you think it was a demand?
19 "ANSWER: Because if this guy still around and one
20 of the Baskerville's go to prison.
21 "QUESTION: And what was defendant -- again, this
22 period of time I'm talking about, would have been when he's
23 locked up.
24 "What was his position, meaning the defendant's,
25 within the organization, was he an important guy, unimportant

1 guy?
2 "ANSWER: Very important."
3 Of course, ladies and gentlemen, he was very
4 important, because he's Hakim Curry's cousin's, right. He was
5 Rakeem Baskerville's brother.
6 He was an important member of that drug organization.
7 "QUESTION: Did you find out," we're on 4358. "Did
8 you find out about how much time? Again we're talking about
9 the same day, the day the defendant was arrested, that the
10 defendant was facing during those conversations?
11 "ANSWER: Yes, sir.
12 "QUESTION: Okay.
13 "Do you recall what kind of time he was facing?
14 "QUESTION: How did you find out about how much
15 time, who told you?
16 "ANSWER: Hakim Curry.
17 "QUESTION: And what did he tell you?
18 "ANSWER: He said that the defendant was facing life
19 in prison.
20 "QUESTION: Okay.
21 "Did you have another discussion or meeting about
22 this a few days later?
23 "ANSWER: Yes.
24 "QUESTION: Tell the jury when and where that took
25 place.

"ANSWER: 17th Street and Avon Avenue.

"QUESTION: Again, that's Jamal Baskerville's house?

"ANSWER: Yes.

"QUESTION: And using the date the defendant was arrested as a starting point, how many days later did that meeting take place?

"ANSWER: About four or five days.

"QUESTION: Who was at that meeting?

"ANSWER: Rakeem Baskerville, Jamal Baskerville, Jamal McNeil, myself and Paul Bergrin.

"QUESTION: Was Hakim Curry there?

"ANSWER: Yes.

"QUESTION: Before Paul Bergrin showed up, what were you discussing with those guys?

"ANSWER: Just general talking about how much time Will Baskerville was facing.

"QUESTION: And at some point Paul Bergrin showed up?

"ANSWER: Yes.

"QUESTION: Tell the jury what the conversation was when Paul Bergrin, what did he say?

"ANSWER: He was telling us that Will was never going to get bail because his criminal history and that the crack that he sold would give him life in prison."

Ladies and gentlemen, each point you have to be

asking yourself, how did he know that? If he did not live that, how did he know that? If he was not told that, that day, how did he know that?

"QUESTION: Tell the jury what the conversation was from Paul Bergrin, what did he say?

"ANSWER: He was telling us that Will was never going to get bail because of his criminal history. It goes on. If somebody was to testify against him, being the person that bought the drugs off of him and if we didn't get rid of that person, that Will Baskerville would never see the streets again in his life."

Again, the lawyer, a co-conspirator is telling them, it's Kemo. If you don't do something, did you don't get rid of him, then Will is never getting out of jail.

"QUESTION: And you said if someone testified, did you have anybody in particular in mind?

"ANSWER: Kemo.

"QUESTION: There was nobody else?

"ANSWER: No.

"QUESTION: And did he speak, Mr. Bergrin that is, speak about any other additional evidence, recordings perhaps?

"ANSWER: Yeah. He said they have video recordings of Will's call and one or two audios."

How did he know that? Did the F.B.I. share that with him? I don't think so.

"QUESTION: Did Paul Bergrin say anything about or make any promises if Kemo was taken care of?

"ANSWER: He said if there was no Kemo to testify against Will, there would be no case.

"QUESTION: Did he say whether or not he would be able to get William Baskerville out of jail?

"ANSWER: He said he was for sure.

"QUESTION: Did Mr. Bergrin ask about any payment?" It continues on, a few lines down.

"QUESTION: Tell the jury what he did, I guess.

"ANSWER: He just said if Kemo was dead, that Will Baskerville would definitely come home from jail.

"QUESTION: What I'm talking about specifically is payment for legal services.

"ANSWER: Oh, yes, he did."

And they discuss payment for legal services.

"QUESTION: Now, at some point did Mr. Bergrin leave the group?

"ANSWER: Yes.

"Describe for the jury what, if anything, was said?

"ANSWER: When he left, he said remember what I said, no Kemo, no case.

"QUESTION: How long did that meeting take place?

"ANSWER: About 20 minutes."

Twenty minutes there is a discussion out on the

street between the co-conspirators discussing who the informant is, that they have to get rid of him if they ever hope to see their brother, cousin, drug associate come home. And it was made clear without this information, Will comes home, Paul Bergrin assures that. You get rid of him, I'll get him home and they'll be no case.

"QUESTION: Tell the jury who else was involved.

"Me, Jamal Baskerville, Rakeem Baskerville, Jamal McNeil and Hakim Curry.

"And what was discussed?

"ANSWER: It was discussed that we got to start looking for this guy, to get him off the street so he couldn't testify against Will."

The motive is there, the reason is there. You got to keep him off that stand so he wouldn't testify against Will.

"QUESTION: Were you concerned whether you would be able to find him?

"ANSWER: Yes.

"QUESTION: Why was that?

"Because he was F.B.I. We thought they probably would be hiding him.

"QUESTION: Did anybody speak about any payment to take care of Kemo?

"ANSWER: Yes."

Again, an agreement, there's an agreement among the

1 co-conspirators about how it's going to be done, about the
2 details. But Will Baskerville doesn't have to be part of
3 that. Because Will Baskerville is not out on the street
4 talking about payment, talking about how we're going to find
5 him, talking about no Kemo, no case, he is still responsible
6 for the conspiracy under the law. Okay.
7 He agreed with them to put this plan in motion.
8 "QUESTION: Tell the jury what happened with respect
9 to that conversation.
10 "ANSWER: Well, they asked me and Jamal McNeil.
11 "QUESTION: Who is they?
12 "ANSWER: Rakeem Baskerville, Hakim Curry.
13 "QUESTION: Okay.
14 "ANSWER: Who wanted to get paid $15,000 to kill
15 Kemo -- I'm sorry.
16 "QUESTION: Okay.
17 "ANSWER: Who wanted to get paid 15,000 to kill
18 Kemo.
19 "QUESTION: And how were the payments going to be
20 made?
21 "ANSWER: Through Hakim Curry and Rakeem
22 Baskerville.
23 "QUESTION: Who was going to put up money?
24 "ANSWER: Hakim, 7500 and Rakeem, 7500."
25 Now, a few days after November 25th, right, or right

1 around November 25th and already there's an agreement in place
2 to kill Kemo DeShawn McCray based upon Will's demand.
3 "QUESTION: At that point on that day, had it been
4 determined if Kemo was found who would actually shoot him?
5 "ANSWER: No.
6 "QUESTION: Why not?
7 "ANSWER: Because either Jamal McNeil was going to
8 do it or I was going to do it.
9 "QUESTION: Why wasn't it decided? Like why wasn't
10 it decided absolutely you or him?
11 "ANSWER: Because if he was seen and one of us
12 wasn't around, the other one had to do it."
13 Finally, it's asked, "During these discussions, after
14 the defendant was arrested, were there ever any discussion
15 about whether or not the defendant would cooperate with the
16 Government against you or other members of the group?
17 "ANSWER: No, we knew that would never happen."
18 If you remember, Anthony Young seemed surprised that
19 the question was even asked. He cooperate against his
20 brother, against his cousin? No way, never going to happen,
21 wasn't even a concern.
22 Why is that important? It's important to combat any
23 argument that may be made that somehow Hakim Curry and Rakeem
24 Baskerville did this all on their own. They had no motive to
25 do this, but don't believe for a second that they were

1 motivated in anything other than to keep Kemo off the witness
2 stand. Okay.
3 They weren't concerned that they were going to be in
4 trouble because they knew that Will would never rat them out,
5 not in a million years. You just don't do that.
6 "QUESTION: And why not?
7 "ANSWER: We always looked at him as a real stand-up
8 guy.
9 "QUESTION: I'm sorry, a real what?
10 "ANSWER: Stand-up person.
11 "QUESTION: What do you mean by stand-up?
12 "ANSWER: Like he would never tell on nobody."
13 Okay. Keep that in mind.
14 The only motive for Rakeem Baskerville and Hakim
15 Curry was to help Will in his request and his demand to get
16 Will out of trouble. They weren't concerned that we better
17 knock this guy off because Will was going to cooperate and get
18 them in trouble.
19 So again, how do we know Anthony Young didn't make
20 this up, he didn't exaggerate this, didn't lie about this?
21 Think about this, he told these details, he told this to Shawn
22 Manson as early as January of 2005. We'll talk about how he
23 came in in a minute. The very beginning of the plot.
24 Again, how is this corroborated, what I just read to
25 you? The phone record, right. It's exhibit 453, Paul

1 Bergrin's records from his cell phone to Hakim Curry's cell
2 phone. It was a call that afternoon, after he would have
3 gotten the information from Will.
4 Second, Rick Hosten tells us about the conversations
5 which I already have been through with the defendant on that
6 date, that fucking bum Kemo.
7 You have the record of the November 25th initial
8 appearance where he was denied bail and that he was facing a
9 lifetime in jail.
10 You have the fact that Greg Hilton tells you Paul
11 Bergrin is not just any lawyer. He's the organization's
12 lawyer, he's Hakim Curry's lawyer, okay. He furthers the
13 interests of the conspiracy, of the drug organization. Don't
14 think how could a lawyer do this? I hope you're not thinking
15 that. He was in on it, ladies and gentlemen, there is no
16 doubt about it.
17 When you say no Kemo, no case and you tell that to
18 Rakeem Baskerville and Hakim Curry, you know what's happens.
19 He's a member of the conspiracy like the others.
20 Next, you have the statements made by Eric Dock and
21 Troy Bell that Will repeats over and over in a legal context
22 what happens if I don't have an informant, what happens to my
23 case? Well, why wouldn't he have an informant? Is he going
24 to disappear? Perhaps.
25 Eddie Williams tells you very eerily similar things

1 that Anthony Young tells you that the defendant tells Eddie
2 Williams, well, without a witness, there is no case, which is
3 very similar to what Paul Bergrin told them on the street, no
4 Kemo, no case.
5 Ramaine York tells you just days before the murder,
6 if you remember this incident, he's watching TV and
7 Baskerville, the defendant, gets off the prison phone and he
8 comes over and tells Ra-Ra, I just got in touch with Rakeem
9 and Rakeem is getting Fat Ant to go after the witness, to
10 handle it. Critical testimony.
11 Do you see how everything Anthony Young says is
12 corroborated by information from other people, some of which
13 he doesn't even know?
14 Perhaps a tremendous piece of corroboration is Devon
15 Jones. Devon Jones, the guy from the garage, the hard-working
16 man who has nothing what so ever to do with this case, except
17 that he works in the garage and one night he tells us, Anthony
18 Young and Rakeem Baskerville come to him, talks to his boss
19 and he agrees for 20 bucks or $30 to melt down a gun.
20 Now, does Devon Jones have any reason to lie? He,
21 need, was given a no prosecution agreement because technically
22 he melted down the gun, technically that could be charged with
23 it. He could be charged with it, he's never going to be
24 charged with it and he was entitled to that. So we could put
25 words in his mouth? So we could ask him to lie and

1 corroborate Anthony Young? I don't think so.
2 What does he tell you? He tells you through a photo
3 array that the agent showed him, oh, yeah, the guy in that
4 photo array, Anthony Young, he came in the shop all the time,
5 I worked on his cars. He came in that night with the gun.
6 This other guy, who happened to be Rakeem
7 Baskerville, in the second photo array, I'm pretty sure, not
8 100 percent positive, but that looks like the guy that came
9 with him. Ladies and gentlemen, right there, Anthony Young is
10 corroborated. He came in that night with a gun to melt down
11 after the murder. You have independent evidence that what
12 he's telling you is true on that account.
13 Next, you've got something else, which is critical
14 evidence, need. Government exhibit 32 is the visitation
15 records, okay, to the Hudson County Jail. The visitation
16 records and I showed you this yesterday, show that on March
17 3rd, 2004, March 3rd, the day after the murder, right, the
18 murder takes place about 2 p.m. on March 2nd. Less than 24
19 hours later, right, at 9:11 a.m., I think it is and you can
20 look at the records, exhibit 32, take it back in the jury room
21 and look at it. Who visits the defendant? His wife, Deidra
22 Baskerville. So the defense is going to say, so what, his
23 wife came to visit him? All right. That's fine.
24 Go down an hour later, about 10:20 a.m. Who visits
25 him at 10:20 a.m. the morning after the murder? His brother

1 Rakeem Baskerville, uses his own name, writes it in, it's on
2 there. I tried to show it to you yesterday.
3 Who else? His partner in the drug business, Horatio
4 Joines, Ray-Ray.
5 Can you imagine that conversation? Kemo McCray is
6 assasinated on the streets of Newark on March 2nd, two p.m.
7 and who's there the next morning? Rakeem Baskerville.
8 You'll notice in the records, he doesn't visit often.
9 He doesn't use his name most often, but he's there and imagine
10 that conversation? We got him, right? We took care of your
11 business, we got him for you, he's dead.
12 He was probably also saying, by the way, I got to go
13 on the run now, I'm out of here. Good luck, brother. I took
14 care of the business and now I'm going, because you heard from
15 Bill Cannon, Greg Hilton, he was a fugitive, no one could find
16 him. He took off after the murder and so he was probably
17 going to say good bye to his brother.
18 And again, you know what Anthony Young is saying is
19 true about Rakeem Baskerville being part of the conspiracy
20 because Government exhibit 31 tells you that, and that is the
21 discovery material found in Rakeem Baskerville's house on
22 March 8th, by the Drug Enforcement Administration during their
23 investigation of Hakim Curry's drug gang, right?
24 Look at that material. It's a letter from the United
25 States Attorney's Office and it actually has early transcripts

1 in this case, some of the same transcripts that are in that
2 book, that's exhibit 31, says Paul Bergrin and it's from AUSA
3 John Gay. It's material relating to this case given over to
4 the defense under the law, right, discovery material. But
5 where is it? In Rakeem Baskerville's on his dining room table
6 I think the testimony was.
7 Why? Of course, it's there so he can look through
8 and try to get some hints as to where this guy Kemo is. Where
9 does the F.B.I. have him stashed? We're looking for him, we
10 need information on him, right.
11 So it all corroborates what Anthony Young is telling
12 us. He didn't make up Rakeem Baskerville and Hakim Curry were
13 in the conspiracy and paid him to kill the witness. The
14 conspiracy is put in motion and again right there, in the
15 early days after November 25th, under the law as far as the
16 defendant, it's complete. Didn't even matter if it was
17 successful. If they just agreed to kill him, if the defendant
18 agreed with others, one other to kill him and they never
19 actually found him, he's still guilty of the conspiracy under
20 the law.
21 Remember the testimony gives you, Rakeem -- the
22 conspiracy does go on, it doesn't end there. They're looking
23 for him everywhere. They're looking and sending out feelers.
24 In Bradley Court I think they had a site, in Irvington, but
25 they're looking for him. They're looking for him from until

November until March.

Ironically, even Kemo McCray tells us something about a part of the conspiracy, though he wasn't here to testify. Shawn Manson, you may recall, tells us that on February 26, Kemo McCray sees Rakeem Baskerville's van, right. That is a moment where he changed from, well, I don't think I need to relocate to, oh, my God, I better get out of here, they're going to kill me.

You heard evidence of that from Shawn Manson. Ironically also, or not coincidentally, that's the day before Ramaine York tells you that telephone incident where he says I got in touch with my brother and he's getting Fat Ant to do it. That was at the end of February. It's all at the same time and it all corroborates each other.

Ladies and gentlemen, the members of the conspiracy I think are obvious. Again, this was not Curry and Rakeem Baskerville acting on their own, they had no motive.

This was a concerted effort by those individuals to find Kemo and kill him. Ladies and gentlemen, if you believe Anthony Young, again, the defendant is guilty. Because what does he say about Jamal McNeil and while this was not a necessary part of the conspiracy, it's an important part.

Jamal McNeil is the conduit, he's the guy, one of the guys anyway, there's probably plenty of communications through the three ways and cell phones and visits and family members,

but one way we know that Will Baskerville was not only involved with the conspiracy but pushing hard to get Kemo killed was through the testimony about Jamal McNeil and going back and forth to the jail. I just want to read that to you. It's from 4375 in the transcript.

"QUESTION: During the course of time from whenever it was you started looking through up until March," this is the direct examination of Anthony Young. "During the course of time from whenever it was you started looking through up until March, when you actually found Kemo, were there any communications with the defendant?

"ANSWER: Not verbally through me, no.

"QUESTION: Okay.

"You personally didn't have any?

"ANSWER: No."

Again, the defense played that, you never personally spoke to Will? You never spoke to him in all this time? Again, ladies and gentlemen, read the definition of conspiracy. He doesn't have to personally communicate the agreement with the person who eventually kills Kemo McCray. Don't get side tracked by that. That's why I'm spending a lot of time on conspiracy because it is confusing. Okay.

The defendant didn't even have to know the roles of the people, so the fact there was no direct communication between Anthony Young, right, and the defendant means nothing.

They were communications sent both on November 25th and thereafter.

"QUESTION: Did any member of the group have any contact with the defendant?

"ANSWER: Yes.

"QUESTION: Okay.

"Who was that.

"ANSWER: Jamal McNeil.

"QUESTION: How did he have contact with the defendant?

"ANSWER: He used to go visit him.

"QUESTION: Visit him where?

"ANSWER: Hudson County Jail.

"QUESTION: How often did he go to visit him?

"ANSWER: About every two or three weeks.

"QUESTION: So over the period of time from November until March, pretty consistent every couple of weeks?

"ANSWER: Yes.

"QUESTION: And what information did the defendant give to Jamal McNeil?

"ANSWER: Told Jamal McNeil to tell us that we got to hurry up and get rid of the CI, which is Kemo, and he needed to be dead quick or he was going to spend the rest of his life in prison.

"QUESTION: Did he mention anything about a speedy

trial?

"ANSWER: Yes.

"Tell the jury what he said.

"ANSWER: He said if the CI, Kemo, is dead, he would put in for a speedy trial and come home quick.

"QUESTION: Did he ask for updates on the search for Kemo?

"ANSWER: That's what Jamal McNeil told me, yes.

"QUESTION: What did he tell you?

"ANSWER: Just ask me, did we see the guy yet, has anybody heard anything?"

Now, again, go back to that visitation log. I assume the defense is going to stand up there and say, where is Jamal McNeil on the visitation log? I'll tell you what, he's not there. I mean, he may be there once, but he's not there the eight or ten times Anthony Young says. That was explained to you, that was explained by Bill Cannon, by Anthony Young.

First of all, all these guys, Jamal McNeil, the others, have multiple photo I.D.'s they use. It's not unusual. Anybody can get into the Hudson County Jail to visit anybody if they show a photo I.D. Bill Cannon told you that, the marshal himself told you that.

Just the fact that he's not in the log, obviously he's not going to go use his name, his real name during a murder conspiracy, where he's there to communicate about

1 taking a CI's life, cooperating witness' life, right. He's
2 obviously going to use one of his fake I.D.s. I think there
3 was testimony about the group telling him, you shouldn't even
4 visit him at all. It's too dangerous. They didn't even want
5 him to do because it was too dangerous. He's not going to
6 write in big bold letters, Jamal McNeil.
7 The difference on the third is the murder is done.
8 He's going on the run. Don't get caught up in the defense
9 argument that where is he on the visitation logs? I'm telling
10 you, he's not going to be there for that reason.
11 Again, the conspiracy, there's really no issue that a
12 conspiracy existed, okay. The defendant was a part of it and
13 they all had the common goal to kill Kemo.
14 Clearly, again, much like the drug conspiracy, it
15 wasn't a one-man operation. All the witnesses said at the
16 very minimum there was a get-away driver in the car. Remember
17 that? Which corroborates that there is a conspiracy. There's
18 a second guy. This is not someone coming up, killing him,
19 Anthony Young doing it by himself, right.
20 There's a concerted plan, there's a plan in place, a
21 well thought-out premeditated plan.
22 We also know that Rakeem was with him at the gun
23 melting. There is no question about Devon Jones' testimony.
24 Those are acts in furtherance of the conspiracy. The get-away
25 driver, melting the murder weapon are key acts that go to the

1 conspiracy.
2 When you go back to deliberate, it's not that a
3 matter of was there a conspiracy. There clearly was.
4 There's been some talk about Anthony Young was not
5 the shooter. There seemed to be early on in the
6 cross-examination some implication that this guy William
7 Lattimore was the shooter because of the mystery dreadlock
8 man, remember that? There was some implication that Jamal
9 McNeil was the shooter. I'll talk a little bit about that.
10 Again, another side issue. We'll talk about why it's
11 clear that Anthony Young was not only present but was the
12 shooter on March 2nd. Just to go back to the legal issue, it
13 doesn't even matter legally whether the shooter was Anthony
14 Young or was Jamal McNeil or another member of the Curry
15 organization, William Lattimore, perhaps. Legally it makes no
16 difference. Once that agreement is made, it doesn't matter
17 who the shooter was. We're not here to prove the murder of
18 Kemo DeShawn McCray. We're here to prove the agreement to
19 murder Kemo DeShawn McCray. Clearly someone in the group shot
20 him and clearly there was a conspiracy. Again, side issue,
21 don't get bogged down on that.
22 Let's clear that up right now. First of all, this
23 William Lattimore thing. Johnnie Davis saw, he told us three
24 seconds. He's the step-father who was beside his stepson when
25 he was shot down. Johnnie Davis says the whole thing took

three seconds. I heard shots, I turned, I saw the shooter put the gun in his pocket and I saw Kemo lying on the ground and then I saw the shooter jump into the car that sped off.

Three seconds. So he hears the shots, he turns and sees the body on the ground, he sees the shooter. I don't know which order, put the gun in the pocket, sees the body on the gun and sees the guy speed off in three seconds. Did he get a chance to see him? I submit to you, no.

Doesn't really matter legally, but factually it's just silly. He tells you that he picks out this guy William Lattimore because he has dreadlocks, he's about 30 percent sure and no one takes that seriously. Newark P.D., Detective Sabur told you no, that wasn't an I.D., you couldn't rely on that. Manson said no, that wasn't an I.D., we didn't interview the guy, that was nothing.

William Lattimore is not the shooter.

The defense shifts to how about Jamal McNeil because he has dreadlocks so he must be the guy. Remember, Anthony Young, we'll talk in a minute, reversed his role for a period and said Jamal was the shooter. Again, it doesn't matter. You should be convinced by now Anthony Young was the shooter for many years we'll talk about, but Jamal McNeil -- Anthony Young was shown a picture of Jamal McNeil by the defense. It's in evidence, from 1997.

Why is that silly? Because Anthony Young told you he

hadn't met the guy until 2003. Yet the defense says, Mr. Young, here's a picture. Does that look like the guy, the way Jamal McNeil looked around March of '04? Anthony Young says yeah, I guess.

He doesn't know it's from 1997, but there's another picture that we put in from 2002, okay. Much closer to the time of the murder. He doesn't have any dreadlocks in 2002. Anthony Young even tells you, I've never known him to have dreadlocks.

Don't go down that road because a picture was put in front of Anthony Young and he said, yeah. It doesn't matter, ladies and gentlemen who's the shooter.

We know Anthony Young is being truthful when he tells you that he, himself, shot Kemo DeShawn McCray. First of all, think about the chilling detail that he gave you of every aspect of that day. There was this map. Frankly; ladies and gentlemen, I was going to go through it again, but he gives detail after detail, if you remember about the murder. I hope you can all see it. I'm not going to mark it up, but he told you the exact positions of every member.

Hakim Curry was up on 20th Street, right. That they waited on 18th by the house that Kemo was doing construction work on for hours. He told you about the car, about the plan with the license plates, how the three cars would drive so the middle car wouldn't be seen by the police. He told you he was

there and waiting for a couple of hours. Hakim Curry chirped him and said let's go somewhere so anybody passing by wouldn't be suspicious. They're on communication devices that he told you about, the direct connects.

He tells you detail after detail of the plan. He tells you about the nine millimeter gun, he tells you about the trap in Rakeem Baskerville's car. He tells you how he pulled up, how they were at the house -- I'm sorry, on 18th Street and how when finally around 1:30, Johnnie Davis and Kemo leave, which turns out to go get some cigarettes up in the store on 20th Street.

How Hakim Curry's up by the store. How him and Rakeem move out, Rakeem pulls the Grand Am with the no license plates to the corner and how he gets out and walks north on South Orange Avenue, right up to the place he's hiding in the doorway, I think it's a restaurant or store.

I mean, think about that detail that he gives you. He doesn't come in here and say, yeah, I saw Kemo and they told me to shoot him, so I shot him. Every single detail, right, which, by the way, we know is corroborated by the witnesses. We'll get to that in a minute.

He tells you how Curry chirps him, says he's coming. He waits in the doorway and as he crosses paths with him on that sidewalk by 19th Street, he comes around and shoots him with his left hand.

So he knew where the cars were parked, he knew what type of communication devices, he knew what type of gun. That's corroborated, because you heard from the crime scene, you heard from Detective Sabur, he knew it was a nine-millimeter. That information wasn't shared with him, ladies and gentlemen.

He told you, I never saw the autopsy pictures, I couldn't even recognize them when shown by the defense. He's never seen them before. Obviously, law enforcement is not going to share their crime scene reports, autopsy reports or any other reports with Anthony Young.

He knew there was a doorway at 19th Street. He knew how they prearranged the whole thing and agreed afterwards, even afterwards how they arranged to meet at a garage to stash the gun. He knew about the traps in Rakeem Baskerville's van. We even showed you that van that was taken by Agent Hilton during a search warrant, right, on March 8. Sure enough, there were traps in the van, exactly where Anthony Young said they were. To hide the nine millimeter gun on the day of the murder. How did he know that?

He knew that because he knew Rakeem Baskerville's van and he knew that's where the gun was kept on the day. That's independent corroboration for what he was saying, that the gun was hidden in a trip. He even told you where it was in the front dashboard. You can look at that. It's an exhibit in

1 evidence.
2 By the way, they're very similar traps to the Monte
3 Carlo that the defendant had. They have the same mechanism,
4 you can see it in the picture.
5 Now, he also told you that a Grand Am was used, which
6 is really quite extraordinary because you know from another
7 witness, Mr. Williams, just a witness, just a guy working on a
8 car across the street, no motive to lie, he tells you I heard
9 the shots, I looked across and he knew his cars, ladies and
10 gentlemen. Remember that? We all laughed because he
11 described the way the bumper is shaped on a 2002 Grand Am or
12 something like that. He knew his Grand Am, no doubt about it,
13 no one questioned him about that. He didn't see any plates.
14 So we know the car didn't have plates. Exactly what
15 Anthony Young said. Independent corroboration of what Anthony
16 Young said. There is no other way he could have known that.
17 He also knew details that were among the Grand Am,
18 but other details that Shawn Manson told you were never made
19 public and law enforcement does that on purpose so we know
20 when someone is telling the truth when they come forward. The
21 key detail there is the cigarette that he had, which the ME
22 told you about. There's a bloody cigarette recovered and the
23 mask, that dust mask that he had.
24 How did Anthony Young know that? He hasn't seen the
25 crime scene, hasn't see the autopsy photos, but he tells you,

1 yeah, when I shot him, he had this dust mask and he had a
2 cigarette.
3 He also knew the body was face down. How did he know
4 that? That's true, you could see the crime scene photos, the
5 body is face down.
6 He also knew the number of shots. He said in his
7 testimony there were three or four shots fired. Four shell
8 casings, four shots. He only hit him three times.
9 He also knew he hit him in the head. I mean, how did
10 he know that? He could have said, I hit him in the chest,
11 right. He could have said, I hit him in the leg. He knew he
12 hit him in the head and he knew not only that but he knew it
13 was a left-handed shooter. Left side, right.
14 The ME tells you that -- Anthony Young said it was --
15 consistent with the evidence. Dr. Shaikh told you that. I
16 did that demonstration. I couldn't reach up over my partner's
17 head to get the angle right, but he told you left side, front
18 to back, totally consistent with what Anthony Young described
19 to you.
20 He knew the Grand Am. He also knew the direction it
21 took off. I know I'm going on and on, but again, you believe
22 Anthony Young, case is over, the defendant's guilty. He is
23 corroborated every which way 'til Tuesday, on every fact that
24 he told you.
25 We don't bring in a cooperator and expect you to

1 believe a cold-blooded killer. We expect you to look and not
2 say he's a cold-blooded killer, I can't believe anything he
3 said. That's what the defense wants you to do. You can't
4 believe a word what this guy says, he's a cold-blooded killer,
5 right, or he's got a long record or he's a drug dealer?
6 The bottom line, ladies and gentlemen, you determine
7 the credibility of the witness and you have to do that by not
8 looking just at what the witness says or just what his
9 background is or his criminal record is, but does it make
10 sense? How did he testify? Let's talk about that.
11 Anthony Young got on the stand and he looked you in
12 the eye, he answered the questions directly, he thought about
13 the questions. No sympathy, he is a cold-blooded killer,
14 there is no excuses for that. Okay.
15 The Government doesn't take lightly coming in here
16 and putting a cold-blooded killer on the stand, okay. But you
17 have to look at what he said and you have to listen and you
18 have to look at all the independent corroboration and there's
19 just a tremendous amount of it where it concerns Anthony
20 Young.
21 How did he come in, in the first place? Why is
22 Anthony Young a witness in this case? Remember, he's not like
23 all the other witnesses, the Koby Cuyler's and Eric Dock's and
24 guys who had been arrested for other charges and now
25 cooperating. He came in voluntarily, in January 14th of 2005,

1 he dialed 4-1-1. Can I have the number of the F.B.I. please?
2 Before January, 2005, the F.B.I. had no idea who the
3 shooter was in the case with Kemo DeShawn McCray, no clue.
4 They had their ideas, they thought maybe it was someone in the
5 Curry gang. They certainly had an indication who was
6 involved, they certainly knew the defendant had ordered it,
7 but they didn't know who the shooter was. Anthony Young comes
8 in.
9 Now, he comes in, by the way, he tells you,
10 ironically because of a dispute with the defendant's brother
11 Jamal Baskerville and Jamal McNeil. They get into a dispute
12 because I think he tells his girlfriend something about a
13 murder and now they think he's cooperating. You can read that
14 testimony. The important thing is he came in here and he told
15 you, I feared for my life, I thought they were going to get
16 me, too.
17 So I called the F.B.I. and I told them I wanted to
18 come in. Self preservation, he thought he was going to die.
19 That's in the transcript at 4569.
20 "QUESTION: What happened after you told your
21 girlfriend whatever it was that Jamal McNeil or Jamal
22 Baskerville told you?
23 "ANSWER: Me and her got into a big fight one day.
24 "You and the girl?.
25 "ANSWER: Yes, me and the girl.

"QUESTION: Okay.

"ANSWER: And we broke up and her being Mr. Baskerville's wife's best friend, she went back and told what I told.

"QUESTION: Which Mr. Baskerville are you talking about?

"ANSWER: Jamal.

"QUESTION: Now, was there a reaction from Jamal Baskerville?"

There was another question. "Did Jamal Baskerville say anything to you?

"ANSWER: Yes.

"QUESTION: Okay.

"What did he say to you?

"ANSWER: He told me one night in the car that I talk too much and what else have I told?

"QUESTION: Okay.

"Anything else?

"ANSWER: Told me to get out of the car.

"QUESTION: Was there a later conversation on the telephone?

"ANSWER: Yes.

"QUESTION: Okay.

"Can you tell the jury about that?

"ANSWER: We was arguing on the phone one day and he

said, when I see you in the streets, you'll be taken care of.

"QUESTION: What did you do as a reaction to those comments by Mr. Baskerville, again, Jamal Baskerville?

"ANSWER: I got in touch with the F.B.I.

"QUESTION: Do you recall when you contacted the F.B.I.?

"ANSWER: Sometime in January.

"QUESTION: How exactly did you get in touch with the F.B.I.?

"ANSWER: By phone.

"QUESTION: How did you get the number?

"ANSWER: By calling 4-1-1."

Corroborated by Shawn Manson. That is exactly how he came in to the F.B.I., the switchboard gets the call, he says I got some information about the killing of a federal informant, a computer check is run and Agent Manson gets in touch with him.

Anthony Young wouldn't be here, we wouldn't know Anthony Young if he hadn't dialed 4-1-1 that day, so consider that when you consider whether he's telling you the truth.

Before January 14th, 2005, by the way, even without Anthony Young's testimony, Agent Manson told you something interesting. Remember, the Government already had spoken to Eric Dock, right, had already gotten his log in May of 2004, had spoken to Rick Hosten, had Williams as a cooperator so

1 Agent Manson told you even before they knew who the shooter
2 was, they had enough for the agreement, for the conspiracy, to
3 charge him in an indictment and they were actually going
4 forward with the indictment at the time.
5 Anthony Young, in effect, was icing on the cake,
6 right. Because again, you have to separate the murder, who
7 killed him, from the conspiracy which the defendant is charged
8 with.
9 So the defense, and I forget if it was Mr. Kayser or
10 Mr. Herman, for awhile on cross-examination, there were
11 numerous questions kept asking, isn't it true, Mr. Young, for
12 a year and a half, you lied to the F.B.I.? You lied to the
13 F.B.I. for a year and a half?
14 What that concerned was, of course, ladies and
15 gentlemen, that Anthony Young came in and told in detail the
16 facts I've just gone over in great detail, all right, the type
17 of gun, the car, the whole thing, but he did reverse his role.
18 He did that because his lawyer told him whatever you
19 do, don't implicate yourself, go in and talk to them,
20 cooperate, but don't implicate yourself. He made a decision
21 to tell everything, but he put himself in the car up on 20th
22 Street, right, where Jamal McNeil and Hakim Curry were. He
23 said I'm that guy and Jamal McNeil is the shooter.
24 Okay. That's true. He lied, there is no question
25 about it. He lied about that one detail. He minimized his

1 role. Does that mean that you should disregard all the other
2 corroboration and everything else he said? Is it a lie with
3 any meaning in this case? I submit to you, as I said, no, it
4 is not. Legally, it doesn't matter who the shooter is in this
5 case.
6 Again, if the witness is lying about all the other
7 details, which is what the defense wants you to think, does it
8 make -- use your common sense. Does it make sense that a
9 person of Anthony Young's background could come in here, make
10 up all those details, some of which are corroborated
11 independently? I kept thinking he would have to be the great
12 American crime novelist. He should go write a book about
13 crime because these details about scooping up the hot metal
14 after the gun was melted, but this is not fiction, ladies and
15 gentlemen, he lived it. That's why he knows the details.
16 Now, the final reason why you know Anthony Young is
17 the shooter and is part of this conspiracy with the defendant
18 is because he actually came into a court, this very court and
19 he admitted his guilt to being the shooter to the very charges
20 to the conspiracy to murder Kemo McCray, the very charges
21 you're considering. He said in court under oath, I'm the
22 shooter, I plead guilty.
23 For that, he is facing a mandatory life sentence,
24 mandatory life sentence under the law. Now, did the
25 Government say we would not seek the death penalty against

him? Certainly. You can consider that.

He came in and in March of '06, he had a new lawyer and he tells the F.B.I., and the new lawyer tells him, you better tell them everything, tell them everything.

He then tells them, okay, I'm the shooter. I lied about reversing the roles, but that's it. Everything else from January of '05 has been consistent. There's simply no logical reason that you can come up with why he would admit his guilt as the shooter in this heinous crime unless he really was. Why would he admit to something that potentially could get him the rest of his life in jail?

Now, ultimately, like the others, if he cooperated and if he testified truthfully, he would get this thing that you've heard about so many times in this case, the 5K letter, the mysterious 5K letter that the Government writes. Some of them refer to it as the big 5K.

What is this? You actually have one you can look at, but it's in evidence. I forget the number, as to one of the cooperators. There was one already written for him regarding another case that he cooperated on.

It's not a mystery, ladies and gentlemen. Take a look at it. All it is, is a letter from the Government to the sentencing judge, saying this is what the guy did. He gave us information, he told about this guy, he came in and testified against this guy, he testified truthfully and he provided

substantial assistance to the Government, right, against a defendant in another case.

That goes to the Judge. It's not up to the Government what the sentence is, if the sentence gets reduced for those who were sentenced already or if the sentence gets lowered for those who haven't been sentenced yet. But in this case, in Anthony Young's case, Judge Pisano at some point will see a 5K letter from the Government saying the defendant got up on the stand and cooperated and did and gave information in a very important case.

That's it. Okay. So will he get life in prison? We don't know. He might. No obligation by the Judge to consider the 5K letter. Will he get somewhat less than life in prison? He might, we don't know. But there is no guarantees and yet, he still came in here and told you, even though he's facing that sentence, exactly all the details that he told you.

That, ladies and gentlemen, is indisputable proof that Anthony Young is the shooter and involved in this murder conspiracy with the defendant.

So keep going?

THE COURT: If you think this is a logical point, it doesn't appear you'll finish.

MR. FRAZER: If the Court wishes, I'm now going into another area.

THE COURT: Let's break for the day. This has been

a long time of people talking to you.

We're going to break for the day. We'll come back tomorrow and finish up closing statements and see how far we get.

Please, again, at the end of the case it's very critical for you to remember my daily instructions. Don't begin forming an opinion as to what your verdict will be until you've heard everything. Keep an open mind, don't discuss the case with each other, don't permit anyone to discuss it with you.

Travel safely, we'll see you tomorrow morning.

THE CLERK: All rise.

(Jury is excused and the following takes place out of the presence of the jury.)

THE COURT: Have a seat.

I have been looking at the verdict sheet and I think one change I would suggest is to put -- define the charge after it says count one, define what the charge is.

MR. MINISH: I'll certainly do whatever guided by the Court, but so you're aware, that's originally how the verdict sheet was written.

I spoke to our appeals people and their concern was that if it doesn't mimic exactly the indictment, which is going to be provided to the jury, then it could be some confusion. If the indictment is going in there, the indictment is used as a guide. That's why I stripped it down to that. If your Honor's inclined to do it the other way --

THE COURT: Do you have a position on it?

MR. HERMAN: I prefer the first one. I don't know if your Honor got it, but it was -- I'll hand it up.

THE COURT: If you prefer the first one, would you suggest that we don't send the indictment in?

MR. HERMAN: Yes, frankly, Judge.

MR. MINISH: I think it's appropriate to send the indictment in as redacted with those last two pages. That's actually what he's charged with.

The Court made it abundantly clear that it's nothing

more than a tool and a guide for the jury with respect to the verdict sheet.

THE COURT: I'll think about it.

Is this your only copy?

MR. HERMAN: You can have it.

THE COURT: I'm sure I have one inside.

MR. HERMAN: I'll take it back. We don't need it, thank you.

THE COURT: Let me think it over.

I mentioned the verdict form and I suppose we'll see how far we get tomorrow and then we'll address whether we have enough time to even get the jury out tomorrow. It may be a better course of conduct, and I haven't decided yet, it may be a better course of conduct to let them go after closings tomorrow and then Monday morning do the final instruction and let them start deliberating. I don't know, but think about that and we'll take it as it comes.

Anything further?

MR. HERMAN: No.

MR. MINISH: Nothing.

THE COURT: See you tomorrow.

THE CLERK: All rise.

(Trial adjourned until Thursday morning, April 26, 2007, at 9 a.m.)

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1 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
2 Criminal No. 2:09-cr-00369-WJM

3 UNITED STATES OF AMERICA, :
: TRANSCRIPT OF PROCEEDINGS
4 v. : - Trial -
:
5 PAUL W. BERGRIN, :
:
6 Defendant :
- - - - - - - - - - - - - - -x
7
Newark, New Jersey
8 October 27, 2011

9 B E F O R E:

10 THE HONORABLE WILLIAM J. MARTINI,
UNITED STATES DISTRICT JUDGE,
11 and a Jury

12 A P P E A R A N C E S:

13 UNITED STATES ATTORNEY'S OFFICE
BY: JOHN GAY
14 JOSEPH N. MINISH
STEVEN G. SANDERS
15 Assistant U.S. Attorneys
For the Government
16
PAUL W. BERGRIN, Defendant, Pro Se
17 - and -
GIBBONS PC
18 BY: LAWRENCE S. LUSTBERG, ESQ., Standby Counsel
AMANDA B. PROTESS, ESQ.
19 For Defendant Paul W. Bergrin

20

21 Pursuant to Section 753 Title 28 United States Code, the
following transcript is certified to be an accurate record as
22 taken stenographically in the above entitled proceedings.

23
S/WALTER J. PERELLI
24
WALTER J. PERELLI, CCR, CRR
25 OFFICIAL COURT REPORTER

1 I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
ALBERT CASTRO				
By Mr. Bergrin	4/75 (cont'd)			93
By Mr. Minish	-		82/100	
ANTHONY YOUNG				
By Mr. Minish	103			

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Colloquy Between Court and Counsel
(Jury not Present)

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1 October 27, 2011
2 (Trial resumes - Jury not present.)
3 (The Witness, Albert Castro, is escorted into the
4 courtroom by the Marshals.)
5 THE DEPUTY CLERK: Remain seated.
6 (The Court and the Deputy Clerk confer off the
7 record.)
8 (The Defendant Bergrin is escorted into the courtroom
9 by the Marshals.)
10 THE COURT: Good morning, everyone.
11 MR. GAY: Good morning, your Honor.
12 MR. SANDERS: Good morning, Judge.
13 MR. LUSTBERG: Good morning.
14 THE COURT: Is everybody ready?
15 MR. BERGRIN: Could I have a moment?
16 THE COURT: Yes. You're going to be back on
17 cross-examination, Mr. Bergrin?
18 MR. BERGRIN: Yes, sir.
19 THE COURT: Okay.
20 THE DEPUTY CLERK: Please rise for the Jury.
21 (Jury present.)
22
23 A L B E R T C A S T R O, recalled at a witness, having been
24 previously duly sworn, is examined and testifies further as
25 follows:

1 THE COURT: All right. Good morning, everyone, please
2 be seated.
3 All right. Mr. Bergrin, you can proceed with
4 cross-examination.
5 MR. BERGRIN: Thank you very much.
6 CROSS-EXAMINATION CONTINUES
7 BY MR. BERGRIN:
8 Q Mr. Castro, you testified yesterday that when you pled
9 guilty to the first degree attempted murder on the police
10 officer, the first degree manufacturing and trafficking in
11 drugs before Judge Bernstein back in 2009, that you accepted
12 responsibility for your criminal conduct. Correct?
13 MR. MINISH: Objection, Judge, that's not what he
14 testified to. Those were not the crimes he testified he pled
15 to.
16 THE COURT: All right. Ask had him if those it were
17 crimes he pled guilty to.
18 Q You pled guilty to --
19 A First degree pointing.
20 Q -- pointing the weapon at a police officer. Correct?
21 A Yes.
22 Q When you testified yesterday, you denied that you had even
23 held a gun in your hand or pointed it. Correct?
24 A I never denied holding the gun in my hand. I denied
25 pointing a gun at an officer.

1 Q So you're telling us now that you held the gun in your hand
2 when the officers came to your door. Is that what you're
3 telling us?
4 A I never said I didn't have a gun in my hand.
5 I never put a gun under an officer's vest and tried to
6 shoot him, and I never pointed a gun at an officer.
7 Q So then all the officers, the state trooper that was there
8 and testified to that, the Essex County Prosecutor's Office
9 detective that saw that and the Newark detective to which you
10 put the gun under his vest and said that you pointed it and
11 pulled the trigger, are all lying. That's what you're telling
12 us?
13 A Yes, they are.
14 Q And Albert Castro is telling the truth?
15 A Yes.
16 Q Now, you said you accepted responsibility for the first
17 degree pointing. Is that what you're saying?
18 A Correct.
19 Q But now you're testifying that you never pointed the gun at
20 the police officer?
21 A Because when we went to court -- I'm going to explain the
22 whole situation. When we went to court, is it true that you
23 came to see me in the bullpen outside the courtroom?
24 When you went to speak to the Judge -- I'm going to
25 explain the whole thing now.

1 He came to me. The only way you can get a lesser plea
2 without going to trial is to get the charge downgraded. If I
3 would have went to trial I probably would have been doing life
4 in prison.
5 So he spoke to the Judge, he came to me with a plea
6 bargain with a lesser charge and I took it. I never pointed a
7 gun at an officer, never.
8 THE COURT: When you took the plea before a judge, you
9 were sworn. Correct?
10 THE WITNESS: Correct.
11 THE COURT: Did you swear at that time that you did
12 point a gun at the police officer?
13 THE WITNESS: Yes.
14 THE COURT: Did you swear in court?
15 THE WITNESS: Yes.
16 THE COURT: At that time that you took the plea?
17 THE WITNESS: Yes, I did.
18 THE COURT: That you did?
19 THE WITNESS: Yes.
20 THE COURT: And you're explaining why you did that?
21 THE WITNESS: Exactly.
22 THE COURT: But you swore under oath at that time and
23 said, I did point a gun --
24 THE WITNESS: I did.
25 THE COURT: -- at a police officer?

1 THE WITNESS: I did.
2 THE COURT: All right.
3 BY MR. BERGRIN:
4 Q And it's the same oath that you've taken today in court.
5 Correct?
6 A Correct.
7 Q Now, you testified that you had your daughter serving drugs
8 for you?
9 A Yes.
10 Q And you had your ex-wife or your wife serving drugs for
11 you; Laura Castro?
12 A Yes.
13 Q How many times did your daughter do that for you?
14 A She was doing it with me for four years maybe.
15 Q So you had your daughter doing it with you since she was 15
16 years old?
17 A No. She's 24 now. 19 maybe.
18 Q 19.
19 And how long was your wife doing it with you?
20 A My wife haven't did it with me for years since she got
21 caught.
22 Q Now, and that was only a short time ago that your daughter
23 was serving drugs with you. Correct?
24 A Correct.
25 Q And you pled guilty before the judge, Judge Bernstein,

1 which was a short time ago. Correct? Approximately two years
2 ago?
3 A Yeah.
4 Q Correct?
5 A Yes.
6 Q When you pled before the judge, you were placed under oath
7 like you are today. Right?
8 A Correct.
9 Q And you were instructed by the judge that you had to tell
10 the truth, that you cannot lie. Correct?
11 A Correct.
12 Q And although you were instructed to that, you repeatedly
13 lied to the judge. Right?
14 A It's not that I repeatedly lied. If I didn't take a plea
15 bargain, I would have to go to trial for all my charges, so I
16 took a lesser charge and took the plea.
17 Q Did you ever tell the judge or did the judge ever ask you
18 if you were satisfied with your lawyer?
19 A Yes.
20 Q And you told the judge "yes." Correct?
21 A Yes. Until sentencing date when I fired you to get another
22 attorney, because I wasn't satisfied with you.
23 Q But when you testified before the judge under oath after
24 the judge advised you that had you had to tell the truth, the
25 same oath that you took today, you told the judge that you're

1 completely satisfied with your attorney, didn't you?
2 A Yes.
3 Q You never told the judge that "Paul Bergrin is forcing me
4 to plead guilty." Correct?
5 A Correct.
6 Q You never told the judge that you're doing it to get the
7 benefits of a plea bargain. Correct?
8 A No, because if I would have told him that, he wouldn't
9 accept my plea and I would have had to go to trial for 43
10 counts and probably be found guilty on all of them.
11 THE COURT: Who made that choice, Mr. Castro
12 ultimately? Would made that choice?
13 THE WITNESS: I made that choice.
14 THE COURT: And when you did it, when you swore to the
15 judge though, you didn't tell him any of that. Correct?
16 THE WITNESS: No; correct.
17 Q Now, the first time that you say that you were essentially
18 coerced or forced into a plea is right before you were about to
19 be sentenced. Correct?
20 A Correct.
21 Q And you fired me and you hire another lawyer. Right?
22 A Yes, I did.
23 Q Did that other lawyer subpoena the videos from the bank?
24 A No, he didn't.
25 Q Did the other lawyer subpoena or obtain the videos from

1 your house?
2 A No.
3 Q But you used this other lawyer, and that's one of the
4 complaints that you had about me. Correct?
5 A Correct.
6 Q That I didn't do my job on your behalf. Right?
7 A The surveillance in the bank doesn't last that long. You
8 can't subpoena it two years later.
9 Q Did he try to subpoena the surveillance video?
10 A No, because it couldn't be done.
11 Q Did he try to subpoena the video?
12 A No, he didn't try.
13 Q Did you try to obtain the videos from your house?
14 A No.
15 Q They were in evidence, weren't they?
16 A I'm pretty sure.
17 Did you try to subpoena them?
18 Q The videos from your house --
19 THE COURT: Mr. Castro, it's not your job to ask the
20 questions. It's not your job. You respond to the questions.
21 THE WITNESS: Okay. All right.
22 Q The videos from your house were in evidence. Correct?
23 A Correct.
24 Q Now, you accused the detectives and the police officers and
25 even the federal agents, because it was a joint

1 investigation -- correct?
2 A Correct.
3 Q -- you accused them of stealing -- how much money from you?
4 A If I knew the exact amount they confiscated I could tell
5 you exactly what they stole.
6 Q Well, didn't you agree to confiscate $700,000?
7 A First it said 750, then it said five and change.
8 Q On the date that you pled guilty, again, you were under
9 oath. Correct?
10 A Yes.
11 Q And didn't you agree to confiscate, or give up the rights
12 and relinquish the rights to $700,000?
13 A Yes.
14 Q Now, no report ever said more than 700,000. You agreed to
15 give up everything that was recovered from you. Isn't that a
16 fact?
17 A Correct.
18 Q And you made accusations and allegations that the agents
19 and police officers and task force officers stole money from
20 you. Correct?
21 A That's the truth.
22 Q You made accusations that they stole money from you.
23 Correct?
24 A It's not accusations, it's the truth.
25 Q And you swore to the judge that that was all the money that

1 you had, the $700,000 that you were relinquishing. Correct?
2 A Correct.
3 Q So again, you lied to the judge on the date you pled
4 guilty?
5 A When I went and spoke to the FBI agents I told them the
6 whole story about the money being stolen.
7 Q When you pled guilty in court when you were under the oath,
8 the same oath that you're under today, you told the judge the
9 only money you had was the money that you're giving up.
10 Correct?
11 A Correct.
12 Q Now, that was part -- that wasn't even part of the criminal
13 case, that was what they call a civil forfeiture. Right?
14 A Correct.
15 Q And if you said that the FBI or the state police stole or
16 DEA stole money from you, that wouldn't have affected your
17 plea. Right?
18 A I'm not sure if it would have or it wouldn't.
19 Q That was civil in nature, that wasn't part of the criminal
20 plea. You just agreed to give up all the money that you had.
21 Correct?
22 A Correct.
23 Q So if you had told the judge -- which you never did -- that
24 money was stolen from you, you could have said it back in 2009
25 before you went to the FBI. Right?

1 A Correct.
2 Q And you never told anybody about that, correct, except me?
3 A I told you, exactly.
4 Q And I told you that I don't believe you, and that I'm not
5 going to allow you to make that false allegation. Isn't that a
6 fact?
7 A You didn't tell me that, you just didn't try to fight the
8 case for me. You didn't try to do anything about it.
9 Q And you were also upset about the fact that I didn't fight
10 for the money. Correct?
11 A Correct.
12 Q Knowing all that money was drug proceeds that you made from
13 drugs. Correct?
14 A Yes.
15 Q So you didn't accept responsibility for your drug-dealing,
16 you wanted money back to -- you wanted money that you had made
17 dealing drugs to go back to you. Is that what you're telling
18 us?
19 A It doesn't matter how I got it, it doesn't give them the
20 right to steal from me because they're authority.
21 Q And again, how much did they steal from you?
22 A Close to a million dollars.
23 Q And as you testify here under oath, you're telling us that
24 the cops stole a million dollars from you?
25 A This is the truth.

1 THE COURT: Was it just the police or was it DEA
2 agents?
3 THE WITNESS: Well, it was Richie Webber took my kid's
4 mother to the bank. I could only go by what they told me.
5 THE COURT: My question is: Was it just local police
6 or also DEA agents?
7 THE WITNESS: It was the East District, it was
8 Narcotics Bureau.
9 THE COURT: All right. And you told that information
10 to the FBI?
11 THE WITNESS: Yes, I did.
12 THE COURT: And what did they do with it?
13 THE WITNESS: They showed me pictures of the -- the
14 cops, I pointed them out. Supposedly it was under
15 investigation.
16 THE COURT: Anybody get arrested for that?
17 THE WITNESS: One got arrested for something but --
18 THE COURT: No, no. For what you claim happened.
19 THE WITNESS: Not that I know of.
20 THE COURT: You've never been a witness against those
21 people. Correct?
22 THE WITNESS: No. And another one has been indicted.
23 THE COURT: Not for that?
24 THE WITNESS: I don't know for what.
25 THE COURT: But not for that?

1 THE WITNESS: Okay.
2 THE COURT: You've never been asked to be a witness
3 against these police officers for stealing money from you?
4 THE WITNESS: Not yet.
5 THE COURT: Okay, "not yet."
6 BY MR. BERGRIN:
7 Q None of them were ever arrested for any of these false
8 allegation you made against them. Isn't that a fact, and you
9 know that?
10 A They wasn't a false allegation. They have arrested for
11 what I told them. They have been arrested.
12 Q One was arrested for a sexual abuse. Correct?
13 A Correct.
14 Q So when you told this jury that you didn't know if they had
15 been arrested on your case, you just lied to them again under
16 oath. Correct?
17 A No. No, I did not.
18 MR. MINISH: That's not what he said.
19 THE COURT: No, overruled.
20 MR. BERGRIN: Thank you.
21 Q You knew that they hadn't been arrested for anything that
22 you told them. Correct?
23 A They haven't been arrested for my case, and I said that
24 before I said what I said.
25 Q And you knew that they hadn't been arrested for allegation

1 of stealing the money or the false statements about you putting
2 the gun underneath the vest. Correct?
3 A It was not false statements, it was the truth.
4 Q Just like you're telling the truth today. Right?
5 A Yeah.
6 THE COURT: All right, Mr. Bergrin, go on to another
7 subject.
8 MR. BERGRIN: Thank you, Judge.
9 A All they have to do is get the surveillance --
10 THE COURT: Mr. Castro, listen to what I said.
11 THE WITNESS: Okay.
12 THE COURT: You don't respond if there's no question.
13 THE WITNESS: Okay.
14 BY MR. BERGRIN:
15 Q Now, you're telling us that you pled guilty because I
16 failed to do my job. Correct?
17 A I didn't say I pled guilty because you failed to do your
18 job. You didn't defend me in the right manner. If you would
19 have got all the evidence and subpoenaed the evidence I
20 probably would have got lesser time and I wouldn't be here
21 today.
22 Q Well, the time that you pled guilty in 2009, you had
23 multiple, more than two robbery convictions. Correct?
24 A Correct.
25 Q You had multiple drug-trafficking and distribution

1 convictions. Correct?
2 A Correct.
3 Q You had multiple convictions for dealing drugs within a
4 thousand foot of a school. Correct?
5 A Yes.
6 Q You had convictions for receiving stolen property. Right?
7 A Yes.
8 Q And you're telling us -- and when you pled guilty before
9 Judge Bernstein in this case that we're talking about back in
10 2009, you were offered a 15 year deal with five years before
11 you're eligible for parole. Correct?
12 A Correct.
13 Q And that was for a 41-count indictment. Correct?
14 A Correct.
15 Q And you also had a second indictment that was not even part
16 of this case for distributing drugs within a thousand foot of a
17 school that was incorporated into this plea bargain. Correct?
18 A Yes.
19 Q And you also had a third indictment for planning the
20 robbery with a teenager that recorded you in your car.
21 Correct?
22 A Correct.
23 Q And you would have gotten lesser time, right, is that what
24 you're telling us under oath?
25 A Surveillance --

1 Q You can answer my question.
2 THE COURT: No, there's a question. You would have
3 gotten lesser time, is what the question is.
4 THE WITNESS: Well, this whole thing to that is if the
5 surveillance --
6 THE COURT: No, don't go back to the surveillance.
7 THE WITNESS: Okay.
8 THE COURT: Just answer the question.
9 THE WITNESS: I don't know.
10 THE COURT: You don't know.
11 THE WITNESS: I don't know.
12 Q Now, let's say hypothetically I have gotten the
13 surveillance tapes. You still distributed drugs to an
14 undercover police officer. Correct?
15 A Yes.
16 Q Within a thousand feet avenue school?
17 A Yes.
18 Q You still planned the robbery of a restaurant which was
19 recorded. Correct?
20 A Correct.
21 Q And as a matter of fact, that was your young daughter's
22 friend that you were planning the robbery with?
23 A Yes.
24 Q While you're out on bail for the police officer case where
25 you attempted to murder the police officer and distribute

1 drugs. Correct?
2 A Correct. I didn't attempt to murder no police officer.
3 Q You still had multiple kilograms, kilograms of cocaine on
4 you. Correct?
5 A When?
6 Q When you were arrested and charged with the police officer
7 case.
8 A Yes.
9 Q You were also charged with first degree drugs?
10 A Yes.
11 Q And the videos would have made a difference to you in your
12 mind. Right?
13 A The videos would have proven nothing was in my possession,
14 it was in the next house. It wasn't in 44, it was in 42.
15 Nothing was in my possession. The weapons wasn't in my
16 possession but one handgun.
17 Q One handgun which you had in your hands coincidentally when
18 the police officers come to your door. Correct?
19 A Correct.
20 Q Now, the drugs you're saying weren't in your possession.
21 Those were your drugs in your daughter's house.
22 Right?
23 A They was mine.
24 Q And those were your drugs that your daughter was holding
25 for you. Correct?

1 A Correct.
2 Q So that in case police came you could say that, hey,
3 they're my daughter's drugs, I had no knowledge. Right?
4 A No, I would have never did that.
5 Q Well, didn't you attempt to do that in this case?
6 A She wanted to take the plea so I could be home with the
7 family and support them and take care of her. She offered to
8 do that. And is if she could have gotten less time being a
9 first time offender, I would have did it.
10 Q You would have done that. You would have allowed your
11 daughter, your own flesh and blood to go to State Prison so
12 Albie Castro can be home with his family?
13 A Yes.
14 Q Isn't it a fact that that was your idea, Mr. Castro?
15 A No, it wasn't, it was Stephanie Castro's idea.
16 THE COURT: After she brought it to you, did you bring
17 it to Mr. Bergrin and bring it up to him?
18 THE WITNESS: I don't remember speaking with him about
19 it. I might have or I might have not, but she brought it to my
20 attention --
21 THE COURT: Either way you would have let her take the
22 plea so that you could be home?
23 THE WITNESS: Yeah, if she would got lesser time --
24 THE COURT: Even though it wasn't her drugs?
25 THE WITNESS: Well, she offered -- she was willing to