UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

WILLAIM BASKERVILLE, Petitioner, v. UNITED STATES, Respondent.	)	Hon. Peter G. Sheridan, U.S.D.J. Civil No. 13-5881 (PGS)

BRIEF IN SUPPORT OF PETITIONER'S CLAIM UNDER 28 U.S.C. §2255

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On the Brief:

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Note: Citations to the record are made as follows:

"Opinion xx" where the citation is to this Court's opinion of November 15, 2018;

"HT xx" where the citation is to the transcripts of the hearings before this Court on July 22, and July 23, 2019;

"P-x" when the citation is to exhibits from the above hearings;

"government exhibit xx" when the citation is to documents from the government's hearing notebook;

"Exhibit x" when reference is to attachments hereto from trial counsel's declarations.

Citations to petitioner's trial transcripts are identified as "TT- xxx".

FBI Special Agent Manson is sometimes referred to as Agent Brokos, which is understood to be her married name.

STATEMENT OF FACTS

In the early hours of November 25, 2003, William Baskerville was arrested at his home by agents of the FBI as a result of an investigation into drug trafficking in Newark, New Jersey. Upon his arrest, his wife, Deidra Baskerville called attorney Paul Bergrin (Bergrin), an attorney who had assisted Petitioner with legal matters previously.

On the day of petitioner's arrest, Bergrin entered his appearance in federal court as petitioner's attorney. After reviewing the complaint and speaking with petitioner, Bergrin learned that there was a confidential informant (CI) who had made several controlled drug purchases from petitioner at times specified in the complaint. Based on this information, petitioner was able to identify the CI.

After meeting with petitioner, Bergrin contacted Hakim Curry (Curry) by telephone and informed him about petitioner's case, including the identification of the CI. The CI was identified as Kemo McCay.

Petitioner was subsequently charged with several drug trafficking offenses.

On March 2, 2004, around noon, McCray was walking on South Orange Avenue in Newark, New Jersey, with Johnnie Davis (Davis), McCray's step-father. While walking on South Orange Avenue McCray

was approached and shot in the back of the head several times, killing him.

Petitioner was charged in a superseding indictment which added two counts related to the murder of McCray, in addition to the drug distribution counts in the initial indictment. In April 2005, the government certified the case as a death eligible case. Trial on the homicide and drug trafficking charges began in February 2007.

Among the witnesses that testified for the prosecution at petitioner's trial was Anthony Young (Young). Young testified that he, Curry, Rakeem Baskerville, Deidra Baskerville, Jamal Baskerville, Hamid Baskerville and Jamal McNeil met at Jamal Baskerville's house around 9:30 in the morning on November 25, 2003. This meeting was allegedly held to discuss petitioner's arrest and the implications for the group.

Young also testified that he was with Hakim Curry and Rakeem Baskerville (petitioner's brother), in Curry's Range Rover vehicle when Curry received the calls from Bergrin. As fate would have it, Curry was also being investigated for drug trafficking and his telephone communications were being recorded by law enforcement. These intercepted calls will be referred to as the "Curry calls". Those calls provide important information regarding what Curry was doing around the time when Baskerville was arrested. Such as: when Curry learned about petitioner's arrest, where Curry was during times testified about by Young,

whether the alleged meeting of 11/25/03 actually occurred, what vehicle Curry was in during the day on 11/25/03 and who Curry was with on November 25, 2003.

As a result of the calls from Bergrin, and while riding with Curry, Young claims that he and Rakeem Baskerville were able to determine that the CI was Kemo McCray.

Young further claims that he was at a second meeting at Jamal Baskerville's house 4-5 days after petitioner's arrest. In attendance at this second alleged meeting were Young, Curry, Rakeem Baskerville, Jamal Baskerville, Jamal McNeil and Paul Bergrin. Young testified that at this second meeting Bergrin advised the attendees that if Kemo McCray were gone, petitioner could come home. Young testified that Bergrin said 'No Kemo, no case".

Young later identified Jamal McNeil as the person who shot Kemo McCray. Even later, Young confesses that he, himself was the person who killed Kemo McCray. Young pled guilty to the homicide shortly before Petitioner's trial began.

Baskerville was convicted on all counts. This matter is now before this Court in response to Petitioner's motion under 28 U.S.C.S. § 2255. The Court has ordered hearings and briefing on two remaining issues in petitioner's motion: 1, whether trial counsel was ineffective in their representation of petitioner for not interviewing witnesses and 2, whether the government's

failure to produce the Boyd 302 before trial or during trial constituted a Brady violation warranting a new trial.

POINT 1

PETITIONER BASKERVILLE SHOULD BE GRANTED A NEW TRIAL DUE TO BRADY VIOLATIONS RELATED TO THE FAILURE OF THE UNITED STATES TO DISCLOSE THE FBI "BOYD 302"

Trial counsel's focus in the defense of petitioner was avoiding the death penalty. Their stated policy was to portray Young as a cold-blooded killer.

Given the information possessed by the defense and the fact that Young had pled guilty to McCray's murder, trial counsel believed that to challenge Young's guilt as the shooter would not be credible, would therefore damage the defense position and would not provide any meaningful assistance to petitioner.

There was however substantial evidence to support a theory that Young was not the shooter. The closest witness to McCray when he was killed was Johnnie Davis. Davis describes the shooter as having long, shoulder length dark dreadlocks (Exhibit P-6). At all times relevant to this case Young was bald-headed.

Maleek Lattimore (Lattimore) came to the attention of law enforcement when a jailhouse snitch, named Roderick Boyd, being held in custody with Lattimore, reported that Lattimore had confessed to killing an informant on South Orange Avenue. This

information was recorded in an FBI 302 (Boyd 302), undersigned by Agent Manson and dated June 17, 2004 (Government Exhibit 16). Based on this information, Manson directed Newark police to prepare a photo array containing Latimore's picture and show it to Davis. At the presentation of this photo array, Davis picks out Lattimore (photo #5), who has long dark dreadlocks, as the person who murdered McCray. As noted in the police report, after picking out Lattimore, the police officer specifically reports that Davis did not ask to see any picture again. (Exhibit P-8, page 5)

Remarkably, during the investigation of petitioner's case Davis was never shown a photo array containing Young's picture. Even during trial, on one showed Davis a photograph of Young (TT 4459-4485)

Petitioner's trial counsel did not receive the Boyd 302 before or during his trial in 2007. The Boyd 302 was provided to Bergrin prior to his trial in 2011.

Petitioner testified at his hearing before Your Honor on July 23, 2019 that he first learned about the Boyd 302 when reading the transcript of Bergrin's 2011 trial (HT-205/1-5). Petitioner did not receive a copy of the Boyd 302 until this Court ordered the government to produce it in July 2015.

When agent Manson testified at petitioner's trial, she was asked about why she directed a photo array with Lattimore's picture be shown to Davis. Her response was that Lattimore fit

the description of the shooter given by the eyewitness and he was a known hitman for the Curry organization. She was further asked. “And that’s all you had to go on?” To which she responded “Yes. It was a best guess.” (Opinion, page 85) Surprisingly she declines to tell the jury that Lattimore had a distinctive hair style consistent with the eyewitness’ (Davis’) account or that she had received a report that Lattimore had confessed the murder.

In petitioner’s trial, Manson again lies when she says that Davis was unable to identify Lattimore as the shooter of McCray, from the photo array. (Opinion 86) This is not true. Davis picked out Lattimore’s photograph (Photograph #5) and was sufficiently confident that he did not want to see any photos again. (Exhibit P-8, page 5)

At Bergrin’s first trial, in her direct testimony, Agent Mason similarly fails to identify the murder confession by Lattimore as the reason for a focus on Lattimore or to even acknowledge that the confession report or any report exists. She provides no information about the Boyd 302, nor does she mention it. She does not tell the jury that there was another person identified as a possible shooter. She testifies that she focused on Lattimore based on information from a source. Only on cross-examination by Bergrin does Manson tell the jury that she had the Boyd 302 or tell about the murder confession.

Only when Manson testifies in Bergrin's second trial in 2013, does her testimony finally track the Boyd 302. (Opinion, page 87)

Manson's testimony about suggesting Lattimore as a suspect in petitioner's trial was a lie. Petitioner did not have the Boyd 302, which would have allowed counsel to cross her with the document, calling into question her credibility. Not having the Boyd 302 left trial counsel in the dark as to the reality of the FBI investigation on this issue. Manson lied when she said "That's all I had to go on." Manson absolutely had more to go on. She wrote the Boyd 302 report dated June 17, 2004, memorializing Lattimore's confession to the murder. (Government Exhibit 16)

The government does not contend that they did not themselves have the Boyd 302. The government advises that they cannot prove that they gave the Boyd 302 to the defense as part of discovery. By way of explanation, the government presents a specious argument that the method for tracking disclosure of discovery has gotten better since petitioner's case in early 2007. This is just over 12 years ago. Without argument the government has had a full disclosure obligation at least since Brady v. Maryland, 373 US 83, decided in 1963. The duty to disclose and to track disclosure is not in any way a new obligation for the government. To say the mechanism was different "back then" is most likely true, but far from relevant to the government's duty to disclose and to track disclosure.

The government has argued that the Boyd 302 is inadmissible as it is hearsay. In Lunberry v. Hornbeak, 605 F.3d 754, (9th Cir., 2010), the court reversed the district court which denied petitioner's habeas motion. The Lunberry court held that the state court's exclusion, as hearsay, of a witness's testimony that an individual submitted that his partners murdered petitioner's husband in error, served to deny petitioner her constitutional rights.

It is only on the trial of Bergrin (Bergrin 1) that the government discloses the existence of the 302 report citing a confession by Lattimore of murdering McCray. Manson still does not front this to the jury in her direct testimony. It is only on cross that she acknowledges the report about Lattimore. Perhaps the fact that the defense was now in possession of the Boyd 302 is why Manson cleaned-up her testimony in Bergrin 2.

At the hearing before Your Honor, on July 22, 2019, attorney Kenneth Kayser (Kayser) informs the Court that had he been given the Boyd 302 before trial, he would certainly tried to interview Boyd (HT 148/9) and might have had to change his approach. (HT 150/2) Kayser testified that had he known about the Boyd 302 he would have tried to find out "whatever else he knew might be helpful." (HT 157/16) This could not happen because trial counsel never had the Boyd 302.

The government has argued that none of this matters; that the Boyd 302 lacks materiality. The Boyd 302 is highly material.

Knowledge about and possession of the Boyd 302 would have bolstered Davis' description of the shooter, increased the indicia of reliability of that identification and made his subsequent selection of Lattimore much more compelling. Indeed, AUSA Fraser would been less likely to argue in summation that Davis really didn't see the shooter. (TT 5737)

Trial counsel state in their declarations that having the Boyd 302 would not have caused them to change their strategy. However, when asked specifically about the Boyd 302 report, Kayser stated that he might have changed his approach. (HT 150/2)

Recent caselaw does not support the contention that the Boyd 302 would not be material. In Haskins v. Greene, Lexis 31705 (3rd Cir, 2018), the Court reversed defendant's conviction because a letter, not disclosed by the prosecution, would have corroborated a witness's testimony and helped refute prosecutor's "recent fabrication" challenge. The jury not having this letter caused Court to question whether verdict was worthy of confidence.

This is very much analogous to Baskerville's circumstance. Had the Boyd 302 been available to trial counsel it would have substantially changed the way that Davis' identification of Lattimore was understood by counsel. Having the Boyd 302 could have changed the entire approach to Baskerville's defense. Rather than deciding that they could not argue that Young was not the shooter, they could have taken Young on directly, challenging everything he said.

It is interesting to review the testimony of Attorney Carl Herman at the hearing before Your Honor. Carl Herman told this Court at the hearing, that he never believed that Davis correctly identified the shooter. He asserts that Davis intentionally mis-identified the shooter as someone other than Young for fear of retribution by the Curry group. The logic of this assertion falls apart in this face of testimony from Manson that Lattimore was a known hitman for the Curry group. (Opinion 85) To accept this, one would have to believe that to avoid identifying a Curry group member, Davis randomly selected a "known hitman" for this very same group.

Had counsel been provided with the Boyd 302, this tortured reasoning would likely not have occurred. The impact of this change in Herman's mind-set on petitioner's future is exactly what full disclosure can yield.

In US v. Lang, Lexis 65428 (District of Virgin Islands, 2019), the court dismissed the indictment, with prejudice because the government intentionally failed to disclose evidence suggesting persons other than defendant had committed the offenses. In Juniper v. Zook, 876 F.3d 551(4th Cir., 2017) the court vacated defendant's conviction, holding, inter alia, that the withheld evidence, if found credible, [could put the case] in such a different light as to undermine the confidence in the verdict. In Haskell v. Greene, 866 F.3d 139, (3rd Cir., 2017) the court held that to establish his claim that a witness's false

testimony at his trial violated his Due Process right, petitioner showed that the witness committed perjury and that the commonwealth knew or should have known that the testimony was false, the false testimony was not corrected, and there was a reasonable likelihood that the perjured testimony could have affected the judgment of the jury. Here we have Agent Manson denying on direct examination and on cross examination that she had any other reasons to suspect Lattimore as being the shooter. We know that was not the truth. She not only knew about the Boyd 302, she was party to writing it. The government does not deny that they had the Boyd 302. They did nothing to correct Manson's false testimony.

In Dennis v. Pennsylvania Department of Corrections, 834 F.3d 263 (3rd Cir., 2016) the court granted petitioner's habeas relief under 28 U.S.C.S. § 2255 because, had Brady material in Commonwealth's possession been disclosed, there was a reasonable probability that outcome of trial would have been different.

Due process requires that the Government not suppress evidence favorable to the accused or discrediting to its own case. Brady v. Maryland, 373 U.S. 83 (1963); United States v. Agurs, 427 U.S. 97 (1976). See also, Mooney v. Holohan, 294 U.S. 103 (1935); Pyle v. Kansas, 317 U.S. 213 (1942). This requirement of candor by the sovereign encompasses information which bears upon the credibility of its witnesses as well as matters more directly material to guilt or innocence. Napue v.

Illinois, 360 U.S. 264 (1959); Giglio v. United States, 405 U.S. 150 (1972). See generally, Williams v. Dutton, 400 F.2d 797 (5th Cir., 1968), cert. denied, 393 U.S. 1105 (1969). As stated by the Supreme Court in Napue v. Illinois, supra, 360 U.S. at 269:

> The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend.

Moreover, in federal prosecution the Court's supervisory power to safeguard "the correct administration of justice in the federal courts" reinforces the due process requirement of disclosure. E.g., United States v. Consolidated Laundries Corp., 291 F.2d 563, 571 (2nd Cir., 1961).

Disclosure of information impeaching witnesses' credibility must be timed to enable effective preparation for trial. E.g., United States v. Polisi, 416 F.2d 573, 578 (2nd Cir., 1969). See, United States v. Kaplan, 554 F.2d 577, 580 (3rd Cir., 1977); United States v. Baxter, 492 F.2d 150, 173-174 (9th Cir., 1973), cert. denied, 417 U.S. 940 (1974); cf., United States v. Opager, 589 F.2d 799, 804-05 (5th Cir., 1979) (crucial importance to accused of pretrial interviewing and/or investigation of potential witnesses).

As pointed out in United States v. Pollack, 534 F.2d 964, 973, 175 U.S. App. D.C. 277, cert. denied, 429 U.S. 924 (1976) (Lumbard, J., sitting by designation),

> Disclosure by the government must be made at such a time as to allow the defense to use the favorable material effectively in preparation and presentation of its case, even if satisfaction of this criterion requires pretrial disclosure. See, e.g., United States v. Elmore, 423 F.2d 775, 779 (4th Cir. 1970); United States v. Deutsch, 373 F. Supp. 289, 290-91 (S.D.N.Y. 1974).

The Conference Committee Report to Rule 609 of the Federal Rules of Evidence speaks in terms of "...the need for the trier of the fact to have as much relevant evidence on the issue of credibility as possible." H.R. Rep. 93-1597, 93rd Cong., 2d Sess. 9 (1974). Accord, United States v. Auten, 632 F.2d 478 (5th Cir., 1980); Lewis v. United States, 408 A.2d 303, 307 (D.C. App. 1979).

Pretrial disclosure should be provided so that defense counsel can conduct appropriate investigation and interviews and otherwise prepare for trial. Timely production of discovery would allow counsel to participate intelligently in jury selection, present a knowledgeable opening statement and, of course, undertake effective cross-examination.

Without the Boyd 302, it was much more difficult or impossible to impeach Manson’s credibility. Knowing that, it

becomes clearer that having the Boyd 302 would have made a difference in the perception of the case by the jury and led to a different result. See, Conley v. US, 415 F.3d 183 (1st Cir., 2005), explaining that the jury is entitled to know of impeachment evidence when such evidence would impugn the credibility of a key witness.

Here the failure by the government to produce this critical piece of evidence created a cascade of failures that call into question the reliability of the jury's verdict.

The government's argument that the Boyd 302 was cumulative is far from a fair characterization. The Boyd 302 was the best and perhaps only tool with which to impeach Manson, an extremely important witness.

Having the Boyd 302 prior to trial would have allowed or generated a number of important developments in petitioner's defense. These include: permit effective impeachment of Manson; interview of potential witness(es); it would have supported Davis eyewitness description of the shooter; it would have put teeth into the alternative shooter theory.

POINT 2

THE PROSECUTION OF PETITIONER BASKERVILLE SHOULD BE DISMISSED DUE TO BRADY VILATIONS RELATED TO THE KNOWINGLY FALSE TESTIMONY BY FBI AGENT MANSON

As discussed above, agent Manson testified in three different trials regarding the inclusion of Lattimore in photo arrays (Baskerville, 2007; Bergrin 1, 2011; and Bergrin 2, 2013). At petitioner's trial she testified that Lattimore fit the physical description given by the eyewitness and he was a known hitman for the Curry group (Opinion 85).

When asked if that was all she had (on Lattimore), she replies "Yes. That's all I had." This testimony is given despite her being a signatory to the Boyd 302, which details a reported confession by Maleek Lattimore to the murder of McCray. Under oath to tell the whole truth, Manson fails to tell the jury that she had information of a confession to the murder of McCray and testified that she had no other information. (TT 4009-4011)

It is not until Agent Manson testifies five years later in Bergrin's first trial that she admits that she actually had such information and then she only admits that on cross examination. If Bergrin did not have the Boyd 302, we can be sure that Manson would have presented her testimony just as she did at Baskerville's trial. There was no attempt by the government to

clean-up or correct Mason's testimony, either in petitioner's trial or Bergrin 1.

It is interesting to note that the government allowed Manson to testify falsely in Baskerville's trial and made no attempt to correct it in Bergrin 1. In the government's submission to the Court dated September 18, 2015, (Docket entry 34) the government argues that Mason's testimony was consistent in both trials. In fairness to the government, her testimony was consistent between Baskerville's trial and her direct in Bergrin 1: it was consistently incorrect, in that it did not track the Boyd 302.

It is hard to argue that Manson did not intend to deceive the jury in Baskerville's trial or in Bergrin 1 when she clearly knew about the Boyd 302. Not only had she created it, when crossed in Bergrin 1, she knew immediately what the answer was. The Supreme Court has long counseled that "deliberate deception of court and jury by the presentation of testimony known to be perjured . . . is inconsistent with the rudimentary demands of justice" Mooney v. Holohan, 294 U.S. 103 (1935) It is a well established rule that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair. Bagley 473 U.S. at 678. Presenting false testimony cuts to the core of a defendant's right to due process. It thus makes sense that "the materiality standard for false testimony is lower, more favorable to the defendant, and hostile to the prosecution as compared to the

standard for a general Brady withholding violation." Clay 72 F.3d at 1028.

POINT 3

PETITIONER BASKERVILLE SHOULD BE GRANTED A NEW TRIAL DUE TO INEFFECTIVENESS OF TRIAL COUNSEL

Attorney Carl Herman (Herman) was appointed to represent petitioner in December 2004. Once petitioner's case was declared a death eligible case, a second attorney, Kenneth Kayser (Kayser) was appointed for petitioner to assist in the presentation of his defense. Kayser was appointed in April 2005.

It seems clear that the defense never intended to challenge petitioner's guilt in the drug conspiracy or the homicide. The defense focus was avoiding the death penalty. This may be because counsel believed that the case for petitioner's guilt in the drug conspiracy charges was very strong and would result in a life sentence. The homicide conviction, absent the death penalty would result in just one more life sentence.

This strategy now proves to be an unfortunate mistake. Changes that have occurred in drug sentencing since petitioner's trial may allow petitioner an earlier release from prison than would be indicated by a life sentence.

Trial in this matter began in February 2007. Counsel had about 25 months and 22 months, respectively to prepare for trial.

Counsel also admits that they had resources available, funded by the court to obtain support services, such as investigation. Neither limited available time nor limited resources are cited by trial counsel as reasons for failing to conduct investigations.

Trial counsel admits that they did not interview Rakeem Baskerville nor did they interview Hakim Curry. They inform the Court that they did not pursue those witnesses because they believed that those witnesses would refuse to testify or would be damaging witnesses to petitioner or would be considered biased because of their familial relationship with petitioner.

These considerations are appropriate concerns and may well have proven true. However, counsel can only make such a determination after they have investigated the potential witnesses.

An investigation of witnesses is a broader issue than whether that witness will be called to testify. A particular witness may be able to provide important and valuable background information to the defense, even if that witness never actually testifies. The decision to not conduct those interviews denied petitioner the benefit of information those witnesses could have provided.

Trial counsel asserts in their Declarations that petitioner never identified any witnesses that he wanted called at his trial. In his testimony, petitioner disputes this assertion by counsel.

However, even if petitioner never actually told counsel that he wanted specific witnesses called, counsel had a duty to investigate. This includes asking their client who knows things about the case? Who can tell us things about where people were at relevant times? Who can tell us about people who might know people who might know relevant things? None of this happened.

THE CURRY CALLS

Trial counsel testified at the July 22, 2019, hearing that they had no recollection of how many Curry calls were provided to the defense, or in what form they were provided. They were clear about one or a few calls between Curry and Bergrin. It is clear that trial counsel never reviewed the many other calls with petitioner. If they had reviewed many calls, they would surely recall that. Consequently, they could never discover information in those calls that could have shown that Young was lying.

For example, counsel never sought information about what vehicle Curry was driving on November 25, 2003. The Curry calls provide information that Curry was in riding with someone else in their car, not the Range Rover as Young said (TT 4350). Another person had the Range Rover that day. The person who had the Range Rover could have provided information on that issue, without the concerns cited by trial counsel.

The calls indicate that Curry was not out of his house until after noon on 11/25/03 and could not have been at the meeting that morning at Jamal Baskerville’s house as Young testified. A

review of the calls would show that Curry was on the phone very frequently and had no conversations on 11/25/03, until around noon and equally telling, he had no conversations about a meeting at Jamal's house. The content of these calls and the significance of these calls are reviewed in detail in petitioner's submission of November 30, 2015 and found in Docket 37.

In US v. Kauffman, 100 F.3d 186 (3rd Cir., 1997), the court overturned the District Court denial of petitioner's motion under 28 U.S.C.S. § 2255 to vacate his sentence on the ground of ineffective assistance of counsel, where counsel failed to investigate. Had counsel for Kauffman conducted an investigation he would have discovered information that would have resulted in different advice to the defendant. The Circuit ordered a new trial.

In US v. Jasin, 215 F. Supp. 2d 552, 280 F.3d 355 (E.D. Pa, 2003) the court held that "the first Strickland (466 U.S. 668 (1984)) prong, that failure to conduct any pretrial investigation generally constitutes a clear instance of ineffectiveness", because "in the context of complete failure to investigate . . . counsel can hardly be said to have made a strategic choice against pursuing a certain line of investigation when he has not yet obtained the facts on which a decision could be made." Citing US v. Gray, 878 F.2d at 702. Gray is particularly relevant to Baskerville. In Gray, the court found such a "complete failure to investigate" in the case before it, explaining that "counsel

offered no strategic justification for his failure to make any effort to investigate the case". In Baskerville's case counsel presented justifications for not pursuing witnesses because they thought they would not testify, would not be credible or would damage Baskerville's case. (Government Exhibits 4 & 6) All of these considerations were based on assumptions by trial counsel without the benefit of actual investigation.

POINT 4

THE PROSECUTION OF PETITIONER BASKERVILLE SHOULD BE DISMISSED WITH PREJUDICE DUE TO THE ONGOING MISREPRESENTATIONS BY THE ATTORNEYS FOR THE UNITED STATES

On November 15, 2018, the Court rendered an opinion in the referenced matter dismissing many of petitioner's claims. The Court held two matters for further hearings. These two matters were petitioner's claim of Ineffectiveness of Counsel and his claim of a Brady violation related to the failure of the United States to produce in discovery an FBI 302 (BOYD 302).

That 302 identified a suspect in the shooting of Kemo McCray that was different from the government's assertion of Young being the shooter in the government' presentation to the jury.

In the government's effort to support the conviction of petitioner, they submit a "Declaration" by each trial counsel; by Carl Herman and by Kenneth Kayser. Herman's declaration is dated

September 26, 2014, and Kayser's declaration is dated 9/29/14. These declarations are signed by the respective attorneys under penalty of perjury.

The Court had been provided with these declarations prior to rendering its opinion and relied, at least in part, on the contents of those declarations in reaching that opinion.

Offering trial counsel's recollections of their representation of petitioner including each attorney's theory of the case, the strengths and weaknesses of the prosecution's case, what they did, what they thought, what they chose not to do in preparation and execution of their trial strategy seems eminently reasonable.

Given that the trial preparation had begun more than ten (10 years prior to the execution of the declarations and that trial had commenced more than seven (7) years before the execution of the declarations ought to be cause for concern as to what trial counsel might actually remember. Rather than elicit honest declarations that provide whatever trial counsel actually recall about the trial, the government actually prepared the declarations and forwarded them to counsel. Both counsel testified that they received the declarations as a whole document. Mr. Herman testified that he modified his declaration in "collaboration" with the government (HT 22/20) and that it was "collaborative". (HT-44/11) Herman testified that he talked with Ken Kayser in the preparation of his declaration (HT-45/4)

Kayser testified that he had no recollection of all these facts and details at the time. (HT-100/8) Kayser further testified that he never consulted with Herman about the declarations. (101/22) These declarations were submitted to this Court as the true and honest recorded recollections of counsel. They are far from that. It is hard to see these documents as anything other than an effort by the government to concoct recollections for counsel that support the conviction of petitioner. Not only are these declarations false, they potentially serve to tailor counsel's recollection by suggesting what that recollection ought to be. It's hard to decide which is a worse purpose. Either way, they are presented to this Court knowing that they are not what they purport to be. The submission of these declarations as sworn statements compromise the integrity of the 2255 process.

When Kayser was asked what he would think if he found that much of his declaration was word-for-word the same as Herman's, Kayser said that would be "stunning". (HT-102/7) I submit to the Court that I was stunned when I discovered this and that we all should be stunned. The word-for-word paragraph comparisons are excerpted from the declarations and attached hereto as Exhibit P-11. The corresponding paragraphs from each counsel's declaration are placed sequentially in this Exhibit to simplify review by the Court.

Kenneth Kayser testified on July 22, 2019, that he remembers making modification to paragraph 17 in his declaration (HT 103/17). If he did make such changes, how does Herman's declaration have an identical paragraph 17?

Here is no legitimate reason for the government to create counsel's recollections for their sworn declarations. The only legitimate source for the recollections is the declarants. If the government wanted to focus trial counsel on aspects important to the proceeding, they could have given to counsel moving papers submitted by petitioner. Or, seeking to focus counsel's attention, the government could reasonably identify with "bullet points" topics the government felt ought to be addressed.

That is far from what the government did here. Here the government gave counsel their prepared declarations and allowed modifications to those declarations. This reminds me of a friend who says, joking, "if I want your opinion, I'll give it to you."

Kayser, when asked to review his declaration testified that he did not write portions of it (HT 155/12, 157/4), that he would never put footnotes in a declaration (HT 104/5). He testified that he doesn't write like that and that he doesn't even understand portions of his own declaration. (HT 142/22)

Submitting these sworn but fabricated declarations to the Court as the actual recollections of trial counsel truly is stunning. It is hard to see the government's conduct in this

action as anything but a blatant attempt to manipulate the record. There ought to be no tolerance for such conduct.

In Herring v. US, 424 F.3d 384 (3rd Cir., 2005) the court held that to demonstrate fraud upon the court, "there must be 1, an intentional fraud; 2, by an officer of the court; 3, which is directed at the court itself; and 4, in fact deceives the court. We further conclude that a determination of fraud on the court may be justified only by "'the most egregious misconduct directed to the court itself' and that it 'must be supported by clear, unequivocal and convincing evidence.'"

Here we have the government orchestrating and submitting to this Court, sworn declarations by both trial counsel. The only purpose for these declarations is to convince that Court that what counsel is presenting is each attorney's truthful recollections. It is hard to imagine another purpose for these doctored declarations other than to deceive the Court. Based on the Court decision of November 18, 2018, the Court was to some extent deceived by these declarations.

CONCLUSION

For the foregoing reasons Petitioner Baskerville's should be afforded a new trial or out-right dismissal of all charges against him.

Respectfully submitted,

/S/ Bruce L. Throckmorton

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POLICE DEPARTMENT NEWARK, N.J.

PLAINTIFF'S EXHIBIT P6

DATE:	CENTRAL ARREST NO.:	CENTRAL COMPLAINT
March 2, 2004		

VOLUNTARY STATEMENT OF: Johnny Lee Davis

RESIDENCE: [redacted]

OCCUPATION: Carpenter

AGE: 50

STATEMENT MADE TO: Det. Vincent Vitiello, Newark Police Dept.

Statement began at appx 3:35PM.

Q. My name is Det. Vincent Vitiello of the Newark Police Dept. I am going to ask you some questions regarding a shooting homicide which occurred earlier this afternoon in the area of So. Orange Ave and S. 19th St. Will you be willing to answer these questions truthfully and to the best of your knowledge and belief?
A. Yes.

Q. What is your name?
A. Johnny Lee Davis.

Q. What is your birthdate and where were you born?
A. [redacted]. Newark, N.J.

Q. What is your Social SEcurity Number?
A. [redacted]

Q. Do you read, write, and understand the English language?
A. Yes.

Q. What is the highest level of education that you have received?
A. 11th grade.

Q. Were you in the area of So. Orange Ave and S. 19th St earlier today?
A. Yeah.

Q. Who were you there with?
A. My stepson, Kemo.

Q. What is Kemo's full name?
A. Kemo Deshawn Reed McCray.

Q. What were you doing in that area there?
A. We were walking back from the store.

Q. Where were you walking back to?
A. We were walking back to where we were working at. On S. 18th St just in from So. Orange Ave.

Q. What store were you coming from?
A. The bodega on the corner of So. Orange Ave and So. 20th St.

Q. Tell me in your own words exactly what happened while you were walking in that area?
A. We were walking down So. Orange Ave talking. When we got to the corner of S. 19th St, I heard four gunshots. After I heard the gunshots, I turned and saw a heavyset black male get into a silver two door car that was parked on the corner there. That's when I realized that Kemo was laying in the street. I touched him and called out his name but he didn't respond. He was bleeding from his head.

Continued on Page#2

SWORN TO AND SUBSCRIBED BEFORE ME THIS 2nd DAY OF March 20 04

Lt. [signature]

[signature] SIGNATURE

POLICE DEPARTMENT STATEMENT FORM **NEWARK, N.J.**

DATE: March 2, 2004	CENTRAL ARREST NO.:	CENTRAL COMPLAINT NO.:

VOLUNTARY STATEMENT OF: Johnny Lee Davis

RESIDENCE:

OCCUPATION: AGE:

STATEMENT MADE TO: Det. Vincent Vitiello

Q. You said that after you heard the gunshots, you saw a heavyset, black male enter a silver two door car. Did you see this male with a gun?
A. Yes.

Q. Did you see him shooting the gun?
A. No.

Q. Where was he holding the gun?
A. He had it in his hand and he was putting it back inside his pants.

Q. Can you describe the gun to me?
A. No, I can't.

Q. Can you describe the actor's hairstyle that got into the car holding the gun?
A. He had dark dreadlocks.

Q. How long were his dredlocks?
A. Shoulder length.

Q. Can you describe his clothing?
A. I don't remember.

Q. About how old did he appear to be?
A. He was a young guy. Maybe 20-25 years old.

Q. Have you ever seen him prior to this incident?
A. No.

Q. Where exactly was the car parked at that this person got into?
A. It was on 19th St near the corner of So. Orange Ave.

Q. Was it parked on the eastern side of 19th St or on the western side?
A. It was parked on the same side as the bar.

Note*** The witness is referring to the western side of S. 19th St.

Q. There is a green colored mailbox on the western sidewalk of So. 19th St. When we were at the scene I pointed this mailbox out to you. Tell me where the vehicle was parked in relation to that mailbox?
A. I think it was right beside the mailbox.

Q. Was there anybody else inside of this silver vehicle besides the person that you have already described?
A. There was one black male who was driving the vehicle.

Q. Did you manage to get a description of the driver?
A. No. The only thing I know is that he was black.

SWORN TO AND SUBSCRIBED BEFORE ME THIS

2nd DAY OF March 20 04

Continued on Page#3

Johnny Lee Davis
SIGNATURE

POLICE DEPARTMENT STATEMENT FORM **NEWARK, N.J.**

DATE: March 2, 2004	CENTRAL ARREST NO.:	CENTRAL COMPLAINT NO.:
VOLUNTARY STATEMENT OF: Johnny Lee davis		
RESIDENCE:		
OCCUPATION:		AGE:
STATEMENT MADE TO: Det. Vincent Vitiello		

Q. Did you get the license plate number of the silver vehicle?
A. No.

Q. Do you recall what make or model the vehicle was?
A. No.

Q. Was thereanything peculiar about the vehicle which would help us in identifying it such as body damage or added features?
A. Not that I remember.

Q. Did the driver ever get out of the vehicle?
A. No.

Q. Did you notice the driver or the passenger of the vehicle prior to hearing the gunshots?
A. No.

Q. Did the vehicle pull up and park at that location or did it appear that it was already parked there?
A. I think it was already there.

Q. Was the vehicle parked there when you passed that location walking to the bodega?
A. I think it was.

Q. Was there anybody in it at that time?
A. I'm not sure.

Q. Were any words exchanged before the shooting started?
A. No. Nothing.

Q. Was Kemo having any problems with anyone that you are aware of?
A. I don't know.

Q. For how long have you and Kemo been working on So. 18th St?
A. We just started today. It was our first day.

Q. What type of work were the two of you doing there?
A. Carpentry. We were renovating an apartment.

Q. Was anybody else outside in the immediate area when the shooting occurred?
A. No, it was just me and him walking.

Q. Is there anything you want to add before this statement is closed?
A. No.

Q. Have any threats or promises been ~~made~~ made to you to give this statement? S.O.
A. No.

Continued on page#4

SWORN TO AND SUBSCRIBED BEFORE ME THIS

2nd DAY OF March 20 04

SIGNATURE

POLICE DEPARTMENT STATEMENT FORM **NEWARK, N.J.**

DATE:	CENTRAL ARREST NO.:	CENTRAL COMPLAINT NO.:
March 2, 2004		

VOLUNTARY STATEMENT OF:
Johnny Lee Davis

RESIDENCE:

OCCUPATION:	AGE:

STATEMENT MADE TO:
Det. Vincent Vitiello

Q. Do you swear or affirm that this statement is the truth and nothing but the truth?
A. Yes.

Q. Will you now sign this statement after first reading it and making any corrections or deletions that you feel are necessary to make it accurate?
A. Yes.
Statement closed at appx 4:05PM.....J.D.....

SWORN TO AND SUBSCRIBED BEFORE ME THIS

2ND DAY OF MARCH 20 04

SIGNATURE

POLICE DEPARTMENT STATEMENT FORM NEWARK, N.J.

DATE: MARCH 4, 2004	CENTRAL ARREST NO.:	CENTRAL COMPLAINT 22025-04

VOLUNTARY STATEMENT OF:

STACY WEBB WILLIAMS B/M/DOB# 7/20/47/ [redacted] / POB: FAYETTEVILLE N.C.

RESIDENCE:

[redacted] N.J. 07018/ 1ST FL. TL. [redacted]

OCCUPATION: SELEEMPLOYED	AGE: 56

STATEMENT MADE TO:

DETECTIVE RASHID SABUR HOMICIDE SECTION I.D. 6596

Statement Started at 1130 A.M March 4, 2004

Q: Mr. Williams, I'm Detective Rashid Sabur with the Newark Police Department Homicide Unit. Here with me is Investigator Susan Bzik of the Essex County prosecutor's Office Homicide Unit and we would like to ask you some questions pertaining to a shooting incident that took place at the intersection of South Orange Ave. & So. 19Th St. in Newark on Tuesday march 2, 2004 around the hours of 1:56 P.M. This incident resulted in the death of an individual who was later identified as being DeShawn McCray. Will you answer our questions for us truthfully and to the best of your knowledge?

A: Yes I will.

Q: Before doing so would you tell me for the records if the information that appears at the top of this form as it pertains to correct

A: Yes.

Q: And would you also tell me for the records the extent of your education?

A: High School.

Q: Can you read, write and understand the English language?

A: Yes.

Q: And how long have you resided at your current address?

A: About a year

Q: Where did you live prior to this and for how long?

A: I lived at [redacted] and I lived there for ten years.

Q: How many brothers and sisters do you have?

A: No brothers, five sisters.

Q: And what is your mother's maiden name?

A: [redacted]

Q: Are you familiar with the incident I mentioned to you?

A: Yeah, I was in the area.

Q: Exactly where were and who were you with?

A: I was across the street on So. 19th St in the vacant lot and I was with my first cousin [redacted].

Q: And during this time what did you observe?

A: Well I was walking towards the direction of the shooting from the lot. I was leaving the lot onmy way to the bar on the corner of So. 19Th St. & So. Orange Ave. called the Sand Pit. As I was walking towards the bar I heard a shot. After I heard the shot I turned and looked behind me and that's when I saw my cousin running in the opposite direction away from the shooting. Then I looked in front of me and that's when I saw the guy laying in the street and another guy standing over him from an angle pointing a gun down at

SWORN TO AND SUBSCRIBED BEFORE ME THIS

4th DAY OF MARCH 20 03

S. W. Wil
SIGNATURE

PLAINTIFF'S EXHIBIT P7

POLICE DEPARTMENT — STATEMENT FORM — NEWARK, N.J.

DATE:	CENTRAL ARREST NO.:	CENTRAL COMPLAINT
MARCH 4, 2004		22025-04

VOLUNTARY STATEMENT OF:

STACY WEBB WILLIAMS B/M/DOB# 7/20/47/ SS# [redacted] POB: FAYETTEVILLE N.C.

RESIDENCE:

[redacted] N.J. 07018/ 1ST FL. TL. [redacted]

OCCUPATION:	AGE:
SELFEMPLOYED	56

STATEMENT MADE TO:

DETECTIVE RASHID SABUR HOMICIDE SECTION I.D. 6596

him and he either shot the guy while he was laying on the ground about maybe one more time or twice, I can't remember. At that point I stopped and I'm looking because the guy turned back and got back in the car. I looked at the car to try to get the plate number but I didn't see a plate nor did I see a Temp tag in the back window of the car. The car left and it went north on So 19Th St. At that point, I ran back to my car that was parked in the vacant lot I was in with my cousin to get my cell phone. Once I got my phone I dialed 9-1-1 and as I was doing that I started running back to the area where the guy was shot. As I was running back I saw two people standing across the street from the bar in front of this place that use to be a restaurant or something and if I'm not mistaking, they were standing there during the time of the shooting. As I was on the phone, I ran over to where the body was and I was talking on the phone at the same time and I was looking at the guy who got shot to see if I could tell if he was breathing or not. Then the people from the church came down to see what had happened and at the same time I saw a burgundy unmarked police car driving by and I flagged them down. After that the officers asked my questions about the car that was involved in the shooting and I told them and that's about it.

Q: Mr. Williams, were you able to get a good look at the vehicle that the person who shot the man got into?
A: As far as I could say, I saw the rear of the vehicle.
A: Can you give me a description of this vehicle as you remember it?
A: It looked like a silver or gray Pontiac Grand AM. Late model, I would say about 2002 and 2004. It looked like it could have been a two door car. There was no plate or temp tag on the car.
Q: Were you able to see the number of occupants in this car?
A: No.
Q: Can you tell me which side of this car did the person who did the shooting entered from?
A: The passenger side.
Q: Was the person who did the shooting the only one you saw get into this car?
A: Yes.
Q: Was the person who did the shooting male or female?
A: Male.
Q: About how far away were you standing from the area where the victim was shot?
A: I would say 75 to 100 feet or better.
Q: From where you were standing, were you able to get a good look of the person who did this shooting?
A: I saw him but not that good.
Q: Can you give me a description of the person you saw doing this shooting?
A: He was a black male between 5'9" and 6', he was medium complexion, he was standing at an angle so I can't really say what his built was and I can't remember how his hair was. I think he was wearing like light khaki and I can't remember the type of shirt he was wearing.

SWORN TO AND SUBSCRIBED BEFORE ME THIS

4th DAY OF March 20 03

S. W. Williams
SIGNATURE

POLICE DEPARTMENT STATEMENT FORM **NEWARK, N.J.**

DATE:	CENTRAL ARREST NO.:	CENTRAL COMPLAINT
MARCH 4, 2004		22025-04

VOLUNTARY STATEMENT OF:

STACY WEBB WILLIAMS B/M/DOB# 7/20/47/ SS# [redacted] POB: FAYETTEVILLE N.C.

RESIDENCE:

[redacted] EAST ORANGE N.J. 07018/ 1ST FL. TL. (973) [redacted]

OCCUPATION:	AGE:
SELEEMPLOYED	56

STATEMENT MADE TO:

DETECTIVE RASHID SABUR HOMICIDE SECTION I.D. 6596

Q: Were you able to see this person's face from where you were standing?
A: Slightly, yes.
Q: Would you be able to identify this person if you were to see him again?
A: I'm not sure at this point.
Q: Would you be able to identify the vehicle that this person left the area in if you were to see it again?
A: Only the rear end and from what I saw, it looked like it was a Grand AM
Q: At the beginning of this statement you mentioned that after the person did this shooting he got back into the car that drove him away from the scene. Is this correct?
A: Yes.
Q: Did you see this person exit the vehicle that drove him away from the scene?
A: No I didn't.
Q: When did you first notice this car you believe to be a Pontiac Grand AM?
A: When the shooter ran to the car and got into it.
Q: And during the time that you notice this car, can you tell me exactly where it was?
A: It was sitting about two car length away from the mailbox on the corner of So. 19Th St. on the same side of the street the bar is on.
Q: You also mention that when you first took notice to the victim being shot, you saw at least two individuals standing in front of a place on So 19Th St. that use to be a restaurant. Is this correct?
A: Yes.
Q: Were these individuals males or females?
A: I know one was a male but I can't remember if the other one was a female or not.
Q: Can you tell me how long these individuals were standing there prior to the shooting?
A: At least about ten or fifteen minutes.
Q: Do you personally know these two individuals?
A: No.
Q: How often are you in this area where the shooting took place?
A: I'm familiar with the area because about six or seven years ago I use to work in the Sand Pit.
Q: Did you recognize the individuals who were standing in front of this former restaurant as anyone you may know from the area?
A: No.
Q: Did you recognized the vehicle that drove the suspect away from the scene?
A: No.
Q: Were you able to get a look at the gun the shooter used to shoot the victim?
A: I know it was shiny, the barrow looked long and I couldn't tell what the handle looked like.

SWORN TO AND SUBSCRIBED BEFORE ME THIS

4th DAY OF March 2004

S. C. Webb
SIGNATURE

POLICE DEPARTMENT — STATEMENT FORM — NEWARK, N.J.

E:	CENTRAL ARREST NO.:	CENTRAL COMPLAINT
ARCH 4, 2004		22025-04

UNTARY STATEMENT OF:

TACY WEBB WILLIAMS B/M/DOB# 7/20/47/ SS# [redacted] POB: FAYETTEVILLE N.C.

IDENCE:

[redacted] EAST ORANGE N.J. 07018/ 1ST FL. TL. (973) [redacted]

UPATION:	AGE:
LEEMPLOYED	56

TEMENT MADE TO:

TECTIVE RASHID SABUR — HOMICIDE SECTION I.D. 6596

Did you notice if the victim was having a conversation with the person who shot him prior to the shooting?
I didn't see anything until I saw him laying in the street.
And during the time that you approached the victim, did you recognize him as anyone that you knew from the area?
No, I didn't know him.
Has anyone in the area mentioned anything to you about this shooting since it occurred?
I haven't been back to that area since then.
Is there anything else you wish to add to this statement?
No.
When this statement is completed would you read it in it's entirety and make corrections where necessary?
Yes.
Do you swear or affirm this statement to be the truth?
Yes.

STATEMENT ENDED AT 1300 HOURS

SWORN TO AND SUBSCRIBED BEFORE ME THIS

4th DAY OF March 20 04

S. W. Williams
SIGNATURE

POLICE DEPARTMENT STATEMENT FORM NEWARK, N.J.

DATE: JULY 23,2004	CENTRAL ARREST NO.:	CENTRAL COMPLAINT NO.: 22025-04

VOLUNTARY STATEMENT OF: JOHNNY LEE DAVIS

RESIDENCE: [redacted]

OCCUPATION: CARPENTER	AGE: 50

STATEMENT MADE TO: DETECTIVE KEITH SHEPPARD NEWARK POLICE HOMICIDE SECTION 22 FRANKLIN ST. 4th FL.

STATEMENT BEGAN AT 1245 HOURS

Q: MR. DAVIS MY NAME IS DETECTIVE KEITH SHEPPARD AND I'M ALONG WITH INVESTIGATOR BZIK OF THE ESSEX COUNTY PROSECUTORS OFFICE AND WE WOULD LIKE TO ASK YOU SOME QUESTIONS IN REFERENCE TO AN IDENTIFICATION THAT YOU'VE MADE ON THIS DATE, OR YOU WILLING TO ANSWER OUR QUESTIONS?
A: YES

Q: MR. DAVIS CAN YOU READ WRITE AND UNDERSTAND THE ENGLISH language – Read out loud JD
A: YES I CAN

Q: MR. DAVIS WHAT IS THE HIGHEST LEVEL IN EDUCATION THAT YOU'VE COMPLETED?
A: 10th GRADE

Q: MR. DAVIS, WERE YOU FORCED IN ANY WAY TO GIVE THIS STATEMENT?
A: NO I WAS NOT

Q: MR. DAVIS, ON MARCH 2,2004 DID YOU GIVE A DETAIL STATEMENT TO DETECTIVE VINCENT VITIELLO, IN REFERENCE TO THE SHOOTING DEATH OF KEMO DESHAUN REED?
A: YES I DID

Q: MR. DAVIS WAS THE STATEMENT YOU GAVE TO DETECTIVE VITIELLO THE TRUTH AND NOTHING BUT THE TRUTH?
A: TO THE BEST OF MY KNOWLEDGE, YES

Q: MR DAVIS, IS THERE ANYTHING THAT YOU WISH TO ADD TO THAT STATEMENT YOU GAVE ON MARCH 2,2004?
A: NO

Q: MR. DAVIS, YOU WERE BROUGHT INTO THE NEWARK POLICE HEADQUARTERS TO LOOK AT PHOTOGRAPHS OF POSSIBLE SUSPECTS IS THAT CORRECT?
Q: MR. DAVIS, ON THIS DATE JULY 23,2004 YOU HAD THE OPPORTUNITY TO VIEW SIX BLACK MALES IN COLOR PHOTOGRAPHS IS THAT CORRECT?
A: THATS CORRECT.

Q: PRIOR TO YOU VIEWING THE PHOTOGRAPHS DID DET. JOSEPH HADLEY READ THE PHOTO DISPLAY INSTRUCTIONS TO YOU?
A: YES

Q: MR. DAVIS DID YOU FULLY UNDERSTAND THE INSSTRUCTION?
A: YES

Q: MR. DAVIS DID YOU SIGN YOUR NAME AT THE BOTTOM OF THE INSTRUCTION FORM?
A: YES

SWORN TO AND SUBSCRIBED BEFORE ME THIS

23rd DAY OF July 2004

[signature] SIGNATURE [signature]

DP:225A - 25M - 8 - 03

PLAINTIFF'S EXHIBIT 18

POLICE DEPARTMENT

STATEMENT FORM

NEWARK, N.J.

DATE:	CENTRAL ARREST NO.:	CENTRAL COMPLAINT NO.:
JULY 23,2004		22025-04

VOLUNTARY STATEMENT OF: JOHNNY LEE DAVIS

RESIDENCE:

OCCUPATION: | AGE:

STATEMENT MADE TO: DET. SHEPPARD ALONG WITH INV. BZIK

PAGE# 2

Q: MR. DAVIS, CAN YOU TELL ME IF YOU RECOGNIZED ANYONE IN THE SIX PHOTOGRAPHS THAT DETECTIVE SHOWED YOU?
A: YES, NUMBER 5

Q: MR. DAVIS, YOU MENTIONED NUMBER FIVE, CAN YOU TELL ME IN YOUR OWN WORDS WHY YOU CHOOSE PHOTOGRAPH NUMBER FIVE?
A: HIS HAIR RESEMBLE AND HIS FACE COMPLEXION RESEMBLE THE SAME THAT I SAW SHOOT AND KILL KEMO.

Q: MR. DAVIS, CAN YOU SIGN YOUR NAME ALONG WITH THE DATE AT THE REAR OF THE PHOTOGRAPH YOU JUST IDENTIFIED?
A: YES WITNESS DOES COMPLY BY SIGNING HIS NAME AT THE REAR OF PHOTOGRAPH NUMBER FIVE. THE SUBJECT IN PHOTOGRAPH NUMBER FIVE IS WILLIAM LATIMORE SBI#479133B.

Q: MR. DAVIS ARE YOU SURE THAT THE BLACK MALE YOU CHOOSE IN PHOTOGRAPH NUMBER FIVE DOES RESEMBLE THE SAME BLACK MALE THAT YOU OBSERVED SHOOT AND KILL KEMO DESHAUN REED?
A: YES

Q: MR. DAVIS, DID YOU HAVE THE OPPORTUNITY TO COMPLETE THE ESSEX COUNTY PROSECUTORS OFFICE PHOTOGRAPH IDENTIFICATION FORM?
A: YES

Q: MR.DAVIS IS THE CONTENTS IN WHICH YOU WROTE ON THE PHOTOGRAPH IDENTIFICATION FORM THE TRUTH AND NOTHING BUT THE TRUTH?
A: YES, SO HELP ME GOD.

Q: MR. DAVIS, DID YOU SIGN YOUR NAME AT THE BOTTOM OF THE PHOTOGRAPH IDENTIFICATION FORM?
A: YES I DID

Q: MR. DAVIS IS THERE ANYTHING THAT YOU WISH TO ADD TO THIS STATEMENT?
A: NO

Q: MR. DAVIS IS THIS STATEMENT THAT YOU'VE GIVIN TO ME THE TRUTH AND NOTHING BUT THE TRUTH?
A: YES

Q: MR. DAVIS, WERE YOU TREATED FAIRLY BY THE NEWAR POLICE DEPT AND THE ESSEX COUNTY PROSECUTORS OFFICE?
A: YES I WAS

Q: MR. DAVIS WERE THERE ANY PROMISES OR THREATS MADE TO YOU FOR THE EXCHANGE OF THIS STATEMENT?
A: NO

Q: MR. DAVIS, I WILL ASK YOU TO READ THIS STATEMENT AND MAKE CORRECTIONS WITH YOUR INITIALS AND AFTERWARDS WILL YOU SIGN THIS STATEMENT?
A: YES

STATEMENT ENDED AT 1320 HOURS

SWORN TO AND SUBSCRIBED BEFORE ME THIS 23rd DAY OF July 2004

[signature]

[signature]
SIGNATURE

DP1225A - 25M - 8 - 03

J-04482

11/11/2032 09:26

ESSEX COUNTY PROSECUTOR'S OFFICE

PHOTO DISPLAY INSTRUCTIONS

Date: 7-23-04 Case Number: H 24-04

Witness' Name: Johnny Lee Davis
(PRINT NAME)

In a moment, I will show you a number of photographs one at a time. You may take as much time as you need to look at each of them. You should not conclude that the person who committed the crime is in the group merely because a group of photographs is being shown to you. The person who committed the crime may or may not be in the group, and the mere display of the photographs is not meant to suggest that the police believe that the person who committed the crime is in one of the photographs. **You do not have to select any photograph.**

There is no significance to the order in which the photographs are displayed. Even if you select a photograph, all of the photographs will still be shown to you. Tell me immediately if you recognize anyone in one of the photographs.

Please keep in mind that hairstyles, beards, and moustaches are easily changed. People gain and lose weight. Also, photographs do not always show the true complexion of a person, it may be lighter or darker than shown in the photograph.

If you select a photograph, please do not ask me whether I agree with or support your selection. I do not know whom the suspect is, if they are in the line up, or what photograph he/she may be if present. It is your choice alone that counts.

Please do not discuss whether or not you selected a photograph with any other witness.

I HAVE READ THE ABOVE INSTRUCTIONS, OR THEY HAVE BEEN READ TO ME, AND I UNDERSTAND THEM.

WITNESSED BY:

WITNESS SIGNATURE

ESSEX COUNTY PROSECUTOR'S OFFICE
PHOTOGRAPH IDENTIFICATION FORM

SECTION: HOMICIDE
FILE: 11 24-04
CC#: _____

I, Johnny L Davis, did at Old Homicide Unit on 12:20 PM at _____ (AM/PM), have an opportunity to read and sign the PHOTO DISPLAY INSTRUCTIONS and then view a group of 6 photographs. These photographs were displayed one at a time and were never shown next to one another. Each photo showed the face of a Black Male and nothing else. I examined the photographs carefully until I identified photograph # 5 as being that of the Pros. who I believe Shot Exson. Kemo. Hair & complexion As the Person How Shot Kemo

_____ of the Essex County Prosecutor's Office is the person who asked me to view these photographs. Neither he/she nor anyone else used any threats or promises, urged or prompted me in any way to choose any of the afore-mentioned photographs. I have been given an opportunity to read this form (or had it read to me) and have been asked to sign my name to it if the contents are the truth to the best of my knowledge and belief.

Signed: Johnny L Davis

Address: [redacted]

Witnessed: Det. [signature] Info Officer 6782

_____

CLH2001

ESSEX COUNTY PROSECUTOR'S OFFICE

PHOTO DISPLAY REPORT

Case Number: H 24-04 Date: 7-23-04

Start Time: 12:18pm End Time: 12:39pm

Position of Photo	Name of person and/or Photo Number displayed
(1)	Devin Shamo C200302234
(2)	Thomas Macon C199960864
(3)	Rajon Wright J 200409788
(4)	Donald Armour C200003580
(5)	Latimore, William J2003 10420
(6)	Sykes, George J200402843

Name of Witness: Johnny Davis

Comments and Demeanor of Witness (to be written by officer conducting line-up)

I observed the witness to be calm and relaxed at the time of the viewing.

Did witness ask to see any photos again? Yes (No)

Hadley Joseph Jr. 6782
PRINT NAME I.D. # OFFICER'S SIGNATURE

CLH2001

EXHIBIT P-11

DECLARATION OF CARL HERMAN

8. Because the Government sought the death penalty, the defense was able to staff the defense team with few limitations, including the hiring of a mitigation specialist, an investigator, and a jury consultant. Mr. Baskerville also contributed fully to the mitigation process as well as the fact investigation. All strategic decisions pre-trial were discussed with Mr. Baskerville, and there were no issues that I can recall where there was a dispute about any decision that was made.

DECLARATION OF KENNETH KAYSER

8. Because the Government sought the death penalty, the defense was able to staff the defense team with few limitations, including the hiring of a mitigation specialist, an investigator, and a jury consultant. Mr. Baskerville also contributed fully to the mitigation process as well as the fact investigation. All strategic decisions pre-trial were discussed with Mr. Baskerville, and there were no issues that I can recall where there was a dispute about any decision that was made.

DECLARATION OF CARL HERMAN

9. After the Government notified Mr. Baskerville of its intention to seek the death penalty, I (as in all my death penalty cases) discussed at length with Mr. Baskerville the potential for him to cooperate with the Government in return for the Government removing the death penalty from consideration. Mr. Baskerville rejected categorically any cooperation with the Government, even to avoid the possibility of the death penalty.

DECLARATION OF KENNETH KAYSER

9. After the Government notified Mr. Baskerville of its intention to seek the death penalty, Mr. Herman and I discussed at length with Mr. Baskerville the potential for him to cooperate with the Government in return for the Government removing the death penalty from consideration. Mr. Baskerville rejected any cooperation with the Government, even to avoid the possibility of the death penalty.

DECLARATION OF CARL HERMAN

10. The defense team submitted numerous pre-trial motions challenging various pieces of evidence the Government sought to introduce at trial. The challenges to the Government's evidence were also discussed at length with Mr. Baskerville, who agreed to the strategy Mr. Kayser and I employed. Pre-trial hearings were held on some of these legal challenges while other issues were decided after extensive briefing.

DECLARATION OF KENNETH KAYSER

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DECLARATION OF CARL HERMAN

11. Mr. Baskerville also actively participated during the nearly seven-week-long jury selection process. He consulted with both Mr. Kayser and me, as well as the jury expert. He regularly gave input, and the trial team met with him after court to discuss potential jurors. There was no disagreement expressed with the strategy employed by the trial team during jury selection.

DECLARATION OF KENNETH KAYSER

11. Mr. Baskerville also actively participated during the nearly seven-week-long jury selection process. He consulted with both Mr. Herman and me, as well as the jury consultant. He regularly gave input, and the trial team met with him after court to discuss potential jurors. There was no disagreement expressed with the strategy employed by the trial team during jury selection.

DECLARATION OF CARL HERMAN

12. As an experienced death penalty attorney, I understood that our primary task was to challenge the Government's evidence, but paramount in every decision that was made was to prevent Mr. Baskerville from receiving a death sentence. This concern caused us to evaluate the Government's case on the drug counts differently than the murder counts and the entire case differently from a non-death penalty case. The strategies we employed had to be based on the outcome of the entire trial, including the penalty phase. Since a review of the evidence on the drug counts revealed an overwhelming case for the Government, decisions to challenge or not to challenge certain witnesses on cross-examination or to contest certain Government evidence were made so the defense team (1) would not lose credibility with the jury, and (2) with an eye toward setting up anticipated mitigation themes in the event the trial proceeded to the penalty phase. Thus, certain decisions not to cross-examine on certain issues, not to object to certain evidence and not to dispute some of the Government's evidence were made with these considerations in mind and may not have been the strategy the defense team would have employed in a non-capital case.

DECLARATION OF KENNETH KAYSER

12. Mr. Herman and I understood that our primary task was to challenge the Government's evidence, but paramount in every decision that was made was to save Mr. Baskerville from receiving a death sentence. This concern caused us to evaluate the Government's case on the drug counts differently than the murder counts and the entire case differently from a non-death penalty case. The strategies we employed had to be based on the outcome of the entire trial, including the penalty phase. Since a review of the evidence on the drug counts revealed a very strong case for the Government, decisions to challenge or not to challenge certain witnesses on cross-examination or to contest certain Government evidence were made so the defense team (1) would not lose credibility with the jury, and (2) with an eye toward setting up anticipated mitigation issues in the event the trial proceeded to the penalty phase. Thus, certain decisions not to cross-examine on certain issues, not to object to certain evidence and not to dispute some of the Government's evidence were made with these considerations in mind and may not have been the strategy the defense team would have employed in a non-capital case.

DECLARATION OF CARL HERMAN

13. I have reviewed the § 2255 motion filed by Mr. Baskerville in which he claims that I provided ineffective assistance of counsel. I submit this Declaration to address the specific claims raised in the § 2255 motion.

DECLARATION OF KENNETH KAYSER

13. I have reviewed the § 2255 motion filed by Mr. Baskerville in which he claims that I provided ineffective assistance of counsel. I submit this Declaration to address the specific claims raised in the § 2255 motion.

DECLARATION OF CARL HERMAN

14. Mr. Baskerville first complains about my failure to investigate the audio portion of a video the Government presented at trial. The video contained evidence of one of several drug transactions that were charged in the superseding indictment. Mr. Baskerville claims the audio portion showed that the FBI agent could not identify the vehicle used in the transaction, the license plate number or whether a transaction took place. Further he claims that counsel's "excuse" for not using the audio was because counsel informed him that "a federal agent cannot be impeached."

DECLARATION OF KENNETH KAYSER

14. Mr. Baskerville first complains about the failure to investigate the audio portion of a video the Government presented at trial. The video contained evidence of one of several drug transactions that were charged in the superseding indictment. Mr. Baskerville claims the audio portion showed that the FBI agent could not identify the vehicle used in the transaction, the license plate number or whether a transaction took place. Further he claims that counsel's "excuse" for not using the audio was because counsel informed him that "a federal agent cannot be impeached."

DECLARATION OF CARL HERMAN

15. Mr. Baskerville's claim that I told him that "a federal agent cannot be impeached" is simply untrue. I never told him that, nor do I agree with the statement. First, while it might be difficult to impeach an FBI agent, I was in fact able to impeach Special Agent Shawn Manson on aspects of her testimony. This included her statements regarding efforts to protect the government informant-murder victim, Kemo McCray, which was designed to help the defense at the penalty phase to "shift the blame" for the death to a perceived Government failure to protect its own witness. Second, I would never tell any client that a law enforcement witness "cannot be impeached" as my experience shows that to be almost universally untrue. Third, while I have no memory of this audio portion ever being an issue that Mr. Baskerville raised, or that was discussed at any length, an examination of the evidence shows the audio portion would not be something the defense would want before the jury in any case.

DECLARATION OF KENNETH KAYSER

15. Mr. Baskerville's claim that I told him that "a federal agent cannot be impeached" is simply untrue. I never told him that, nor do I agree with the premise. First, while it is generally difficult to impeach any FBI agent, one such as Special Agent Shawn Manson is particularly difficult. She had a strong command of the facts and testified with confidence. She was an attractive and likeable person who seemed to have a good rapport with the jury. Despite being an impressive Government witness, she was in fact able to be impeached on aspects of her testimony. This included her statements regarding efforts to protect the government informant-murder victim, Kemo McCray, which helped the defense at the penalty phase as it "shifted the blame" for the death to a perceived Government failure to protect its own witness. Second, I would never tell any client that a law enforcement witness "cannot be impeached" as my experience shows that to be almost universally untrue and it is a goal of any defense attorney. Third, while I have no memory of this audio portion ever being an issue that Mr. Baskerville raised, or that was discussed at any length, an examination of the evidence shows the audio portion would not be something the defense would want before the jury in any case.

DECLARATION OF CARL HERMAN

16. There were several video recordings from the six drug transactions which clearly showed Mr. Baskerville engaged in drug transactions, thus making the audio from one of the earlier recordings of significantly less value. The audio would only have served to make the event more real in the jury's mind, and Agent Manson's testimony showed that the audio would not have contradicted her on any material aspect of the drug case, which, again, was overwhelming in my view of the evidence. Finally, there was no real dispute over the vehicle used or its license plate number as the same vehicle was used in other transactions and was tied to Mr. Baskerville through registration records.

DECLARATION OF KENNETH KAYSER

16. There were several video recordings from the six drug transactions which clearly showed Mr. Baskerville engaged in drug transactions, thus making the audio from one of the earlier recordings of significantly less value. The audio would only have served to make the event more real in the jury's mind, and Agent Manson's testimony showed that the audio would not have contradicted her on any material aspect of the drug case, which was probably viewed as overwhelming by the jury. Finally, there was no real dispute over the vehicle used or its license plate number as the same vehicle was used in other transactions and was tied to Mr. Baskerville through registration records.

DECLARATION OF CARL HERMAN

17. Mr. Baskerville next complains about my failure to investigate "the phone system at Hudson County." This claim deals with the testimony of Deputy Marshal William Cannon that the Hudson County Jail did not have the capacity to record inmate phone calls in the time period where Mr. Baskerville was overheard on the phone complaining that Kemo McCray was the one responsible for his arrest and incarceration.[2] He further claims he asked counsel to investigate when such calls were first recorded. Finally, he claims I told him that Deputy Marshal Cannon "was a known liar."

DECLARATION OF KENNETH KAYSER

17. Mr. Baskerville next complains about the failure to investigate "the phone system at Hudson County." This claim deals with the testimony of Deputy Marshal William Cannon that the Hudson County Jail did not have the capacity to record inmate phone calls in the time period where Mr. Baskerville was overheard on the phone complaining that Kemo McCray was the one responsible for his arrest and incarceration.[2] He further claims he asked counsel to investigate when such calls were first recorded. Finally, he claims he was told that Deputy Marshal Cannon "was a known liar."

DECLARATION OF CARL HERMAN

18. Factually, Mr. Baskerville's assertion that I told him that Deputy Marshal Cannon "was a known liar" is false. I had no knowledge whatsoever about Deputy Marshal Cannon before the Government notified me that he would be a witness in the case. Additionally, I have no memory of any request by Mr. Baskerville to investigate the Hudson County Jail's ability to record calls, nor do I have a memory of ever discussing the issue with anyone on the defense team. The Government would have been obligated to turn over any recording of Mr. Baskerville if it existed, so there was no legitimate reason to challenge the lack of a recording, which only enhanced the defense's ability to cross-examine the witness who purportedly heard Mr. Baskerville during the jailhouse call. If the call was recorded, it could have easily confirmed what the witness was saying, but in any case since the Government had several witnesses testify to similar jailhouse "admissions" by Mr. Baskerville, I do not believe that an investigation of Deputy Marshal's statements would have been productive,[3] and could possibly have revealed even more damaging evidence. Whether Cannon's knowledge of the phone system was based on something he learned from a third party, arguably making his testimony hearsay, was not an issue that Mr. Baskerville raised with me at the time, but in any case requiring the Government to call another witness on this issue would not have been productive on such a minor point and may have affected the defense's credibility with the jury.

18. Factually, I never told Mr. Baskerville that Deputy Marshal Cannon "was a known liar." I had no knowledge whatsoever about Deputy Marshal Cannon before the Government notified me that he would be a witness in the case. Additionally, I have no memory of any request by Mr. Baskerville to investigate the Hudson County Jail's ability to record calls, nor do I have a memory of ever discussing the issue with anyone on the defense team. The Government would have been obligated to turn over any recording of Mr. Baskerville if it existed, so there was no legitimate reason to challenge the lack of a recording, which only enhanced the defense's ability to cross-examine the witness who purportedly heard Mr. Baskerville during the jailhouse call. If the call was recorded, it could have easily confirmed what the witness was saying, but in any case since the Government had approximately half a dozen witnesses testify to similar jailhouse "admissions" by Mr. Baskerville, I do not believe that an investigation of Deputy Marshal's statements would have been productive,[3] and could possibly have revealed even more damaging evidence. Whether Cannon's knowledge of the phone system was based on something he learned from a third party, arguably making his testimony hearsay, was not an issue that Mr. Baskerville raised with me at the time, but in any case requiring the Government to call another witness on this issue would not have been productive on such a minor point and may have affected the defense's credibility with the jury.

19. Mr. Baskerville next complains about my failure to investigate Government witness Anthony Young. This claim involves Young's testimony that Rakim Baskerville was present when the co-conspirators received a phone call from Paul Bergrin at approximately 4:00 p.m. on November 25, 2003, disclosing that the informant against Baskerville was Kemo McCray. While the phone call itself played an important part in the murder counts, the fact that Young may have misidentified who was present when the call was received did not appear to be of any value in impeaching Anthony Young, especially when the Government had produced in discovery a recording of the call that, although inadmissible due to a sealing violation, largely corroborated Young's account of what Bergrin said. In any case, I have no memory of the issue being raised by Mr. Baskerville at any time. Even if Mr. Baskerville did raise the issue, it is not clear how any investigation would have contradicted Mr. Young's testimony. Certainly the calls intercepted during the investigation into the Curry Organization did not plainly reveal who else was present during the phone calls (or, conversely, plainly show that Young had misidentified who was sitting with him).

DECLARATION OF KENNETH KAYSER

19. Mr. Baskerville next complains about the failure to investigate Government witness Anthony Young. This claim involves Young's testimony that Rakim Baskerville was present when the co-conspirators received a phone call from Paul Bergrin at approximately 4:00 p.m. on November 25, 2003, disclosing that the informant against Baskerville was Kemo McCray. While the phone call itself played an important part in the murder counts, the fact that Young may have misidentified who was present when the call was received does not appear to be of any great value to impeach Anthony Young, especially when the Government had produced in discovery a recording of the call that, although inadmissible due to a sealing violation, largely corroborated Young's account of what Bergrin said. In any case, I have no memory of the issue being raised by Baskerville at any time. Even if Mr. Baskerville did raise the issue, it is not clear how any investigation would have contradicted Mr. Young's testimony. Certainly the calls intercepted during the investigation into the Curry Organization did not plainly reveal who else was present during the phone calls (or, conversely, plainly show that Young had misidentified who was sitting with him).

DECLARATION OF CARL HERMAN

20. More generally, the defense had a good deal of evidence to impeach Anthony Young and employed an aggressive strategy to discredit him, which was discussed at length with Mr. Baskerville.[4] First, Young was an admitted cold-blooded killer. This fact was helpful at the penalty phase as Young, the triggerman who gunned down McCray, had been insulated from a possible death sentence. Second, Young had no direct connection to Mr. Baskerville, and so his testimony had only an indirect impact on Mr. Baskerville; by contrast, Young was a more important witness against Paul Bergrin at a subsequent trial of this incident. Finally, Young was cross-examined on his original version of events to the FBI where he first denied being the triggerman and then denied being involved at all before finally confessing to the murder. The defense also cross-examined Young about his recorded statements to fellow inmate Hassan Miller, in which Young appeared to be counseling Miller to lie to authorities in order to obtain a cooperation agreement. Thus, the defense did vigorously cross-examine Young while keeping in mind his importance to strategy involved in the death penalty phase.

DECLARATION OF KENNETH KAYSER

20. More generally, the defense had plenty of evidence to impeach Anthony Young and employed an aggressive strategy to discredit him, which was discussed at length with Mr. Baskerville.[4] First, Young was an admitted cold-blooded killer. This fact was helpful at the penalty phase as Young, the triggerman who gunned down McCray, was not receiving the death penalty. Second, Young had no direct connection to Mr. Baskerville, and so his testimony had only an indirect impact on Mr. Baskerville; by contrast, Young was a more important witness against Paul Bergrin at a subsequent trial of this incident. Finally, Young was cross-examined on his original version of events to the FBI where he first denied being the triggerman and then denied being involved at all before finally coming clean. The defense also cross-examined Young about his recorded statements to fellow inmate Hassan Miller, in which Young appeared to be counseling Miller to lie to authorities in order to obtain a cooperation agreement. Thus, the defense did vigorously cross-examine Young while keeping in mind his importance to the death penalty phase.

DECLARATION OF CARL HERMAN

21. Mr. Baskerville next complains about my failure to investigate or challenge the chain of custody as to the drugs that McCray purchased from him, which were introduced as evidence against him.[5] Mr. Baskerville did discuss DEA-7 forms with the trial team, but ultimately, while the forms contained some minor errors, there was nothing that would have shown a defect in the chain of custody so as to preclude admission of the drugs. A challenge may have been made to the weight of the evidence, at best, and some brief cross-examination was done on the errors in the DEA-7 form. However, this was a minor point that the trial team believed would have ultimately not been persuasive and would have potentially undermined the defense's credibility with the jury for the death phase.

21. Mr. Baskerville next complains about the failure to investigate or challenge the chain of custody as to the drugs that McCray purchased from him, which were introduced as evidence against him.[5] Mr. Baskerville did discuss DEA-7 forms with the trial team, but ultimately, while the forms contained some minor errors, there was nothing that would have shown a defect in the chain of custody so as to preclude admission of the drugs. A challenge may have been made to the weight of the evidence, at best, and some brief cross-examination was done on the errors in the DEA-7 form. However, this was a very minor point that the trial team believed would have ultimately not been persuasive and would have undermined the defense's credibility with the jury for the death phase.

22. Mr. Baskerville next complains about my failure to present certain defense witnesses which he claims would have further undermined Anthony Young's testimony. He further claims that "defendant-movant unequivocally expressed to trial counsel that he fully intended to present an actual defense . . . to challenge all material aspects of Young's specific testimony . . ."

DECLARATION OF KENNETH KAYSER

22. Mr. Baskerville next complains about the failure to present certain defense witnesses which he claims would have further undermined Anthony Young's testimony. He further claims that "defendant-movant unequivocally expressed to trial counsel that he fully intended to present an actual defense . . . to challenge all material aspects of Young's specific testimony . . ."

DECLARATION OF CARL HERMAN

23. Mr. Baskerville's assertion that he disagreed with the decision not to present a defense case is false. In addition to the court's extensive on-the-record examination of the defendant's decision not to testify, defense counsel spoke at length with Mr. Baskerville about presenting or not presenting defense witnesses. Again, our paramount concern was to maintain credibility with the jury in order to avoid the imposition of the death penalty. The discussion about whether to present a defense case began during the extensive trial preparation process and continued right through the nearly six-week-long trial. At no time did Mr. Baskerville object to the strategy of not calling witnesses on his behalf, nor did he request specific witnesses to be called, nor did he object to a specific witness not being called.

DECLARATION OF KENNETH KAYSER

23. Mr. Baskerville's assertion that he disagreed with the decision not to present a defense case is false. In addition to the court's extensive on-the-record examination of the defendant's decision not to testify, defense counsel spoke at length with Mr. Baskerville about not presenting defense witnesses. Again, our paramount concern was to maintain credibility with the jury in order to avoid the imposition of the death penalty. The discussion about whether to present a defense case began during the extensive trial preparation process and continued right through the nearly six-week-long trial. At no time did Mr. Baskerville object to the strategy of not calling witnesses on his behalf, nor did he request specific witnesses to be called, nor did he object to a specific witness not being called.

24. At any rate, the witnesses Mr. Baskerville claims should have been called would have added nothing of value or would have been detrimental to his case. For instance, Baskerville claims that attorney Paul Bergrin notified me that he was willing to testify. In fact, no such discussion took place. Even if it had, I would never have called Mr. Bergrin as a defense witness. First, he was Mr. Baskerville's original attorney who was conflicted out of the case. Issues may have arisen as to the attorney-client privilege, and the Government may have been entitled to elicit otherwise privileged communications of Mr. Baskerville on cross-examination. Additionally, Mr. Bergrin was, according to the Government, "house counsel" for the Curry organization. Any such evidence elicited in front of the jury would have damaged Mr. Baskerville, as the Government claimed Mr. Baskerville was a part of this organization. Mr. Bergrin's bias to protect the organization may have been brought out, and, coupled with the allegation that Bergrin was an unindicted co-conspirator in the McCray murder, his testimony may have been seen as self-serving and lacking credibility. Additionally, I emphasized during the summation in the guilt phase that Bergrin, as "house counsel," was principally responsible for McCray's death. This theme was also brought up in the opening of the penalty phase to point out that Bergin was not facing any charges, let alone the death penalty. Finally, Mr. Bergrin could (and likely would) have invoked his Fifth Amendment privilege against self-incrimination.[6]

24. At any rate, the witnesses Mr. Baskerville claims should have been called would have added nothing of value or would have been detrimental to his case. For instance, Baskerville claims that attorney Paul Bergrin notified me that he was willing to testify. In fact, no such discussion took place. Even if it had, I would never have called Mr. Bergrin as a defense witness. First, he was Mr. Baskerville's original attorney who was conflicted out of the case. Issues may have arisen as to the attorney-client privilege, and the Government may have been entitled to elicit otherwise privileged communications of Mr. Baskerville on cross-examination. Additionally, Mr. Bergrin was, according to the Government, "house counsel" for the Curry organization. Any such evidence elicited in front of the jury would have damaged Mr. Baskerville, as the Government claimed Mr. Baskerville was a part of this organization. Mr. Bergrin's bias to protect the organization may have been brought out, and, coupled with the allegation that Bergrin was an unindicted co-conspirator in the McCray murder, his testimony may have been seen as self-serving and lacking credibility. Additionally, I emphasized during the summation in the guilt phase that Bergrin, as "house counsel," was principally responsible for McCray's death. This theme was also brought up in the opening of the penalty phase to point out that Bergin was not facing any charges, let alone the death penalty. Finally, Mr. Bergrin could (and likely would) have invoked his Fifth Amendment privilege against self-incrimination.[6]

25. Similar reasoning existed with potential co-conspirators Jamal McNeil, Rakim Baskerville and Jamal Baskerville, all members of the Curry organization who were implicated to some extent in the McCray murder plot. Jamal McNeil had a long criminal history, which would have undermined his credibility. Jamal Baskerville's bias as Will Baskerville's family member is obvious. His involvement with the Curry organization in general and specifically the events surrounding the McCray murder would only have damaged Mr. Baskerville's case and helped the Government prove a drug conspiracy. And Rakim Baskerville had already been convicted and sentenced to life in prison for participating in a drug conspiracy along with Hakeem Curry in a previous trial. None of these witnesses, even if they would have waived their Fifth Amendment rights, would have aided Mr. Baskerville, and would likely have caused serious damage to the defense's ability to maintain credibility with the jury.

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DECLARATION OF CARL HERMAN

26. Deidra Baskerville, Mr. Baskerville's wife, also would have been of little or no value. Her bias was obvious. Her knowledge of the drug business Mr. Baskerville was engaged in would have been brought out by the Government, leaving her credibility in question. Also, the defense had to preserve her credibility for the penalty phase in case her testimony was needed at that time. Whether she was present for any meetings or not during the plot to kill McCray was a minor point which would not have been material to the jury's decision making.

26. Deidra Baskerville, Mr. Baskerville's wife, also would have been of little or no value. Her bias is obvious. Her knowledge of the drug business Mr. Baskerville was engaged in would have been brought out by the Government, leaving her credibility in question. Also, the defense had to preserve her credibility for the penalty phase in case her testimony was needed at that time. Whether she was present for any meetings or not during the plot to kill McCray was a minor point which would not have been material to the jury's decision making.

DECLARATION OF CARL HERMAN

27. Attorney Paul Feinberg, Anthony Young's original lawyer, was not called after a discussion with Mr. Baskerville. I felt that his testimony was of no value as it did not add any material inconsistencies to Anthony Young's testimony. Finally, Rasheeda Tarver was interviewed by the defense team's investigator, but after reviewing her potential testimony, the defense team decided she was of no value and would not make a good witness. Baskerville never disputed this decision. Tarver's credibility could have easily been impeached by the Government.

DECLARATION OF KENNETH KAYSER

27. Attorney Paul Feinberg, Anthony Young's original lawyer, was not called after a discussion with Mr. Baskerville. I felt that his testimony was of no value as it did not add any material inconsistencies to Anthony Young's testimony. Finally, Rasheeda Tarver was interviewed by the defense team's investigator, but after reviewing her potential testimony, the defense team decided she was of no value and would not make a good witness. Baskerville never disputed this decision. Tarver's credibility could have easily been impeached by the Government.

28. Mr. Baskerville next attacks my failure to challenge the testimony of Eric Dock, one of the Government's jailhouse informants. Specifically, he claims that I failed to call Paul Bergrin at the pre-trial *Massiah* hearing to advance an argument that Dock obtained information about the murder not from admissions Baskerville made to Dock in jail, but from pre-trial discovery in Mr. Baskerville's cell that Dock supposedly had accessed. Mr. Baskerville never requested to call Mr. Bergrin, as evidenced by the brief the defense submitted when moving to suppress under *Massiah*. This brief was discussed with Mr. Baskerville prior to its submission and neither Bergrin nor the theory that Dock had access to Mr. Baskerville's discovery was ever mentioned. Further, Mr. Baskerville's claim misunderstands the relevant timeline for the *Massiah* hearing, since the murder charges had not yet been brought by the Government during the time period relevant to the *Massiah* hearing. The *Massiah* hearing concerned solely the issue of whether Mr. Baskerville's statements could be used against him to prove the drug counts. There was never an issue or an objection by Mr. Baskerville that his statements to Dock could be used to prove the murder counts. Thus, even if the motion to suppress had been successful, the only result would have been a limiting instruction requiring the jury to consider Baskerville's admissions to Dock only on the murder counts, and not on the drug counts. Finally, an extensive brief was filed on this issue, and an extensive cross-examination was conducted of both the summary agent and Eric Dock himself.

28. Mr. Baskerville next attacks the failure to challenge the testimony of Eric Dock, one of the Government's jailhouse informants. Specifically, he claims that the trial team failed to call Paul Bergrin at the pre-trial *Massiah* hearing to advance an argument that Dock obtained information about the murder not from admissions Baskerville made to Dock in jail, but from pre-trial discovery in Mr. Baskerville's cell that Dock supposedly had accessed. Mr. Baskerville never requested to call Mr. Bergrin, as evidenced by the brief the defense submitted when moving to suppress under *Massiah*. This brief was discussed with Mr. Baskerville prior to its submission and neither Bergrin nor the theory that Dock had access to Mr. Baskerville's discovery was ever mentioned. Further, Mr. Baskerville's claim misunderstands the relevant time-line for the *Massiah* hearing, since the murder charges had not yet been brought by the Government during the time period relevant to the *Massiah* hearing. The *Massiah* hearing concerned solely the issue of whether Mr. Baskerville's statements could be used against him to prove the drug counts. There was never an issue or an objection by Mr. Baskerville that his statements to Dock could be used to prove the murder counts. Thus, even if the motion to suppress had been successful, the only result would have been a limiting instruction requiring the jury to consider Baskerville's admissions to Dock only on the murder counts, and not on the drug counts. Finally, an extensive brief was filed on this issue, and an extensive cross-examination was conducted of both the summary agent and Eric Dock himself.

29. Mr. Baskerville next complains about my alleged failure to object or challenge as speculative certain testimony of Anthony Young. This testimony concerned Young's statement that "if you cross the Baskervilles and somebody give you the name who did it, get rid of 'em." He also complains that I failed to challenge whether, by passing on the name of the informant to the drug gang, Mr. Baskerville was making a "request" – as opposed to a "demand" – to kill McCray, and that I failed to highlight that there was no direct contact between Mr. Baskerville and Anthony Young. I have no memory of Mr. Baskerville ever discussing these claims at the time Mr. Young testified. Regardless, there was no value in challenging any of these claims. First, objecting to the statement made by Young would have risked opening the door to past instances of similar conduct by the Curry gang members, which the defense was well-aware included intimidation, threats, and violence against those who had crossed or informed on the gang. Second, whether Mr. Baskerville's statement was considered a "request" or a "demand" to kill McCray was of no factual or legal consequence and would have further risked opening the door to more damaging evidence. Lastly, the Government never claimed that Young and Mr. Baskerville had direct contact, but that Mr. Baskerville started the chain of events that communicated the murder plot to his co-conspirators. There simply was no strategic reason to raise any of these challenges.

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DECLARATION OF CARL HERMAN

30. Mr. Baskerville next argues that I failed to object to certain "hearsay testimony" of Anthony Young. This claim involves a statement made to Young by Jamal McNeil that Baskerville was urging the gang to "hurry up and get rid of the CI." Mr. Baskerville fails to understand that this statement was a classic co-conspirator statement, which under the law is excluded from the definition of hearsay. Mr. Baskerville never raised this issue at the time of trial and I do not remember ever discussing it with him. An objection only would have highlighted to the jury the devastating impact of the statement and would have been overruled. The defense did make motions pre-trial which included a challenge to the Government's introduction of co-conspirator statements. The court ruled on this motion and made the Government outline the criteria for the introduction of these statements.

DECLARATION OF KENNETH KAYSER

30. Mr. Baskerville next argues that there was a failure to object to certain "hearsay testimony" of Anthony Young. This claim involves a statement made to Young by Jamal McNeil that Baskerville was urging the gang to "hurry up and get rid of the CI." Mr. Baskerville fails to understand that this statement was a classic co-conspirator statement, which under the law is excluded from the definition of hearsay. Mr. Baskerville never raised this issue at the time of trial and I do not remember ever discussing it with him. An objection only would have highlighted to the jury the devastating impact of the statement and would have been overruled. The defense did make motions pre-trial which included a challenge to the Government's introduction of co-conspirator statements. The court ruled on this motion and made the Government outline the criteria for the introduction of these statements.

31. Mr. Baskerville next argues that I failed to object to hearsay testimony by FBI Agent Manson. In fact, the objection to this testimony was made pre-trial through written briefs and argument before the court on the issue of "forfeiture by wrongdoing" under Federal Rule of Evidence 804(b)(6). Despite the defense's vigorous legal challenge, the Court overruled the objection after finding that the Government presented sufficient proof that Mr. Baskerville caused the hearsay declarant, Kemo McCray, to be unavailable at trial.

DECLARATION OF KENNETH KAYSER

31. Mr. Baskerville next argues that a failure to object to hearsay testimony by FBI Agent Manson. In fact, the objection to this testimony was made pre-trial through written briefs and argument before the court on the issue of "forfeiture by wrongdoing" under Federal Rule of Evidence 804(b)(6). Despite the defense's vigorous legal challenge, the Court overruled the objection after finding that the Government presented sufficient proof that Mr. Baskerville caused the hearsay declarant, Kemo McCray, to be unavailable at trial.

32. Mr. Baskerville next raises a general complaint that the trial team failed to "meaningfully cross-examine important witnesses." Nothing could be further from the truth. Mr. Kayser and I prepared for countless hours the cross-examinations of the Government's witnesses. Again, Mr. Baskerville may not have been looking at the cross-examinations with an eye towards avoiding a death sentence should the trial reach the penalty phase, but Mr. Kayser and I were prepared for every witness, we had reviewed every line of the voluminous discovery material and worked tirelessly to make sure "no stone was left unturned" because of the nature of the case and the potential for Mr. Baskerville to face the ultimate penalty. The record bears out, over nearly six weeks of trial, our detailed cross-examinations which attempted to undermine the Government's evidence to the best of our ability, and with Mr. Baskerville's active participation each day.

DECLARATION OF KENNETH KAYSER

32. Mr. Baskerville next raises a general complaint that the trial team failed to "meaningfully cross-examine important witnesses." Nothing could be further from the truth. Mr. Herman and I prepared for countless hours the cross-examinations of the Government's witnesses. Again, Mr. Baskerville may not have been looking at the cross-examinations with an eye towards avoiding a death sentence should the trial reach the penalty phase, but Mr. Herman and I, having to keep that eye in focus, were prepared for every witness, having carefully and thoroughly reviewed the voluminous discovery material and working hard to make sure "no stone was left unturned" because of the nature of the case and the potential for Mr. Baskerville to face the ultimate penalty. The record bears out, over nearly six weeks of trial, our detailed cross-examinations which attempted to undermine the Government's evidence to the best of our ability, and with Mr. Baskerville's active participation each day.

33. Mr. Baskerville next raises my failure to properly preserve a *Batson* claim that was raised on appeal. In fact, the trial team raised the *Batson* issue in the first instance, and the prosecutor provided facially race-neutral reasons for his peremptory challenges of three African-Americans on the jury panel. After hearing the explanations, and the court crediting them, the defense had no compelling basis on which to challenge the prosecutor's stated reasons as pretextual. The trial team simply did not believe the prosecutor gave pretextual reasons, so there was no legitimate basis to make any further objection. The trial team was fully prepared to make the type of comparison of similarly-situated white jurors as the defense team employed a very thorough jury consultant. This consultant had taken down every detail of the jurors' backgrounds. Notably, the trial team did not have the benefit of the notes made by the prosecutor during jury selection. These were turned over to appellate counsel during the pendency of the direct appeal, but even if the prosecutor's notes had been available, trial counsel's position would not have changed. The notes are consistent with the trial team's memory of the conduct of the relevant jurors, something that may not have been clear from the "cold" appellate record. For example, the "Jamaican" woman struck by the prosecutor was objectively not a good juror: anyone in the courtroom – including the jury consultant -- who heard her answers would have seen she was evasive on simple questions and that her demeanor was not appropriate for such a serious undertaking. Thus, no further objection could have, in good faith, been made.

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DECLARATION OF CARL HERMAN

34. Mr. Baskerville next raises my failure to challenge "Grand Jury irregularities." Mr. Baskerville claims that Government witness Eric Dock gave false testimony to the Grand Jury. There was no reason to believe the Government presented false testimony to the Grand Jury and thus there was no proper motion to be made regarding the Grand Jury. Based on the jury's verdict, there remains no objective basis to believe Eric Dock gave false testimony either at the Grand Jury or at trial.

DECLARATION OF KENNETH KAYSER

34. Mr. Baskerville next raises the failure to challenge "Grand Jury irregularities." Mr. Baskerville claims that Government witness Eric Dock gave false testimony to the Grand Jury. There was no reason to believe the Government presented false testimony to the Grand Jury and thus there was no proper motion to be made regarding the Grand Jury. Based on the jury's verdict, there remains no objective basis to believe Eric Dock gave false testimony either at the Grand Jury or at trial.

35. Mr. Baskerville next raises the trial team's failure to challenge delays in the discovery process, without specifying exactly what discovery he is talking about. In any case, there were virtually no issues about how the discovery in this case was provided by the Government as the discovery was timely and thorough, as one would imagine in a death-penalty case. Mr. Baskerville was provided copies of all the discovery material save for any material governed by a protective order. The defense had full use of the discovery provided and had no "surprises" as far as late or missing discovery. Mr. Baskerville never complained about discovery being untimely or incomplete.

DECLARATION OF KENNETH KAYSER

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DECLARATION OF CARL HERMAN

36. Mr. Baskerville claims that trial counsel failed to object to a jury charge defining the intent elements of Counts 1 and 2, the murder counts. Specifically he argues that the court charged the jury with regard to "premeditation" instead of the language used in the Superseding Indictment, "malice aforethought," thus relieving the Government of its burden of proof. This claim is factually incorrect as the record shows that the Court did charge the jury regarding malice aforethought. (Tr. at 5634-5635). In any event, "premeditation" is the highest form of malice aforethought, so any jury that found premeditation rationally could not have failed to find malice aforethought.

DECLARATION OF KENNETH KAYSER

36. Mr. Baskerville claims that trial counsel failed to object to a jury charge defining the intent elements of Counts 1 and 2, the murder counts. Specifically he argues that the court charged the jury with regard to "premeditation" instead of the language used in the Superseding Indictment, "malice aforethought," thus relieving the Government of its burden of proof. This claim is factually incorrect as the record shows that the Court did charge the jury regarding malice aforethought. (Tr. at 5634-5635). In any event, "premeditation" is the highest form of malice aforethought, so any jury that found premeditation rationally could not have failed to find malice aforethought.

DECLARATION OF CARL HERMAN

37. Mr. Baskerville claims that defense counsel failed to object or preserve the issue of an erroneous jury instruction regarding the definition of conspiracy. While he does not state a specific deficiency in the charge as given, a detailed review of the entire jury instruction was made prior to the charge conference and was discussed with Mr. Baskerville. Trial counsel believed the instruction was consistent with the law in the Third Circuit and therefore there was no objection to be made with regard to the conspiracy charge. Mr. Baskerville did not complain at the time about the jury charge.

DECLARATION OF KENNETH KAYSER

37. Mr. Baskerville claims that defense counsel failed to object or preserve the issue of an erroneous jury instruction regarding the definition of conspiracy. While he does not state a specific deficiency in the charge as given, a detailed review of the entire jury instruction was made prior to the charge conference and was discussed with Mr. Baskerville. Trial counsel believed the instruction was consistent with the law in the Third Circuit and therefore there was no objection to be made with regard to the conspiracy charge. Mr. Baskerville did not complain at the time about the jury charge.

DECLARATION OF CARL HERMAN

38. Mr. Baskerville also claims that the failure to ask for a "bifurcated trial" was ineffective. Mr. Baskerville perhaps means that the murder charge and the drug charges should have been tried separately. No severance motion was made because it would have been frivolous under the circumstances as the charges were intertwined. The motive for the murder was to eliminate the informant on the drug counts. Thus, evidence of the drug counts could not have been excluded on a separate trial of the murder counts under Rule 404(b). Thus, the severance motion would have been denied.

DECLARATION OF KENNETH KAYSER

38. Mr. Baskerville also claims that the failure to ask for a "bifurcated trial" was ineffective. Mr. Baskerville perhaps means that the murder charge and the drug charges should have been tried separately. No severance motion was made because it would have been frivolous under the circumstances as the charges were so intertwined. The motive for the murder was to eliminate the informant on the drug counts. Thus, evidence of the drug counts could not have been excluded on a separate trial of the murder counts under Rule 404(b). Thus, the severance motion would have been denied.

DECLARATION OF CARL HERMAN

39. Finally, Mr. Baskerville claims that I failed to object to his sentence, which resulted in a mandatory life sentence for the drug counts. Mr. Baskerville claims the court failed to ask him directly about his two prior drug felony convictions, which was the basis for the enhanced sentencing that resulted in a life sentence being imposed. The jury had already found in the penalty phase the aggravating factor that Mr. Baskerville had "previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance. 18 U.S.C. Section 3592(c)(10)." The Government introduced the certified judgments of conviction at the penalty phase. Mr. Baskerville agreed with the decision to concede these convictions so as not to lose credibility with the jury. Thus, there was no basis to challenge the validity of the convictions and their application under Title 21, United States Code, Section 851, at the sentencing hearing.

DECLARATION OF KENNETH KAYSER

39. Finally, Mr. Baskerville claims that the trial team failed to object to his sentence, which resulted in a mandatory life sentence for the drug counts. Mr. Baskerville claims the court failed to ask him directly about his two prior drug felony convictions, which was the basis for the enhanced sentencing that resulted in a life sentence being imposed. The jury had already found in the penalty phase the aggravating factor that Mr. Baskerville had "previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance. 18 U.S.C. Section 3592(c)(10)." The Government introduced the certified judgments of conviction at the penalty phase. Mr. Baskerville agreed with the decision to concede these convictions so as not to lose credibility with the jury. Thus, there was no basis to challenge the validity of the convictions and their application under Title 21, United States Code, Section 851, at the sentencing hearing.

[2] This argument is made at both paragraphs B (failure to investigate Hudson County phone system) and K (failure to challenge hearsay testimony of Marshal Cannon) of Mr. Baskerville's motion but will be answered together for purposes of this response.

[3] As it turns out, any investigation would have led to the same conclusion. The Government informs me that Hudson County Jail personnel again confirmed for purposes of this 2255 motion that the jail did not acquire the capability to record inmate calls until well after the time period in question, which is consistent with Deputy Marshal Cannon's testimony. Mr. Baskerville does not present any facts to contradict this in his motion.

[4] I have reviewed the portion of Mr. Baskerville's motion where he claims certain audio recordings of wiretapped conversations from United States v. Hakim Curry should have been used to impeach Young. (See pages 16-18, Declaration of William Baskerville). Mr. Baskerville's claim that he was not provided with these recordings is incorrect. The Government provided these recordings as part of its discovery but also indicated that because of a sealing issue it was self-suppressing the recordings and would not introduce them unless the defense consented or otherwise did something that opened the door to their admission. After reviewing the recordings, and discussing them with Mr. Baskerville, trial counsel concluded that the recordings would have both bolstered the Government's case and damaged Baskerville's defense. In all material respects the recordings would have corroborated large portions of Young's testimony. For example, in one such interception Bergrin called Curry immediately after Mr. Baskerville's initial appearance on November 25, 2003, and said among other things, "I got a chance to speak to William, and he said the informant is a guy by the name of K-mo." When Curry asked "where he from?", Bergrin replied, "I don't know . . . I'm going to go over now to speak to him [Mr. Baskerville] and see him." Curry then said, "All right, get detail and detail and call me back," and Bergrin replied, "All right." This conversation not only corroborated important aspects of Young's testimony, but more importantly was devastating independent proof supporting the Government's theory that Mr. Baskerville conspired with Bergrin and Curry to murder Kemo because he was an informant against Mr. Baskerville. This call alone would have completely undermined our defense theory that Mr. Baskerville was at most an unwitting collateral beneficiary of Bergrin and Curry's plan to murder Kemo. Moreover, introducing any of the calls would have likely allowed the Government to introduce other damaging evidence contained in the large volume of recordings which detailed the inner workings of the Curry drug organization. Since, any possible inconsistencies between the recordings and Young's testimony were minor, the potential benefit of introducing any of these recordings was dwarfed by the enormous damage the recordings would have done to the defense in this case. Further, as explained in footnote 7, discrediting Young would not have helped Mr. Baskerville's defense during either the guilt or penalty phase.

[5] This chain of custody argument is made at both paragraphs D (failure to investigate) and G (failure to challenge drug evidence) of Mr. Baskerville's motion but will be answered together for purposes of this response.

DECLARATION OF KENNETH KAYSER

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[6] In relation to potential testimony to be offered by Bergrin, I have reviewed the portion of Mr. Baskerville's motion where he claims that Agent Manson's testimony at the subsequent trial of Bergrin was inconsistent in some respects with her testimony at the Baskerville trial. (See page 10, paragraphs (B) and (C), Declaration of William Baskerville). Apparently, Bergrin believed that Young was not the shooter of McCray. Presently, I do not recall whether I knew about Roderick Boyd's statement which purported to cast doubt on Young being the shooter, but to imply that anyone other than Anthony Young was the shooter would have been detrimental to Mr. Baskerville's defense. Young had no direct contact with Mr. Baskerville. So, while he could speak to the conspiracy generally, he could not point the finger directly at Mr. Baskerville. Everything Young offered about Baskerville was second-hand. Young could be guilty without Baskerville being guilty. The in-jail cooperators who spoke directly to Mr. Baskerville were of primary concern. Further, Young was spared the death penalty through a plea agreement with the Government. Young being the shooter provided the defense a significant basis to ask the jury to spare Mr. Baskerville from the death penalty. Discrediting Young would not have helped Mr. Baskerville's defense during either the guilt or penalty phase.

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CERTIFICATION OF FILING AND SERVICE

I hereby certify that on July 29, 2019, the enclosed Notice of Motion and Certification of Counsel were filed electronically with the Clerk of the United States District Court. Steven Sanders, Assistant United States Attorney has been served via ECF filing. A courtesy copy has been served upon The Honorable Peter G. Sheridan, U.S.D.J. by regular mail.

/s/ Bruce Throckmorton

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