

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

WILLIAM BASKERVILLE,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 13-5881

(Crim. No. 03-836)

Hon. Peter G. Sheridan, U.S.D.J.

UNITED STATES' POST-HEARING BRIEF

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PRELIMINARY STATEMENT¹

In its November 15, 2018 Opinion, this Court rejected the bulk of William Baskerville’s motion to vacate sentence under 28 U.S.C. § 2255. But this Court granted an evidentiary hearing on two discrete issues: (1) whether William Baskerville’s trial counsel were ineffective for not calling as defense witnesses Hakeem Curry and Rakeem Baskerville (“Rakeem”); and (2) whether the Government violated its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), with respect to the Roderick Boyd FBI-302. ECF No. 49 at 31, 88; *see id.* at 113.

On May 7, 2019, this Court granted the Government’s motion to bifurcate the evidentiary hearing so that it could hear testimony first from Baskerville’s trial counsel—Carl Herman and Ken Kayser—and from Baskerville himself. ECF No. 66. That hearing took place on July 22 and 23, 2019.

The United States respectfully submits this Post-Hearing Brief in opposition to the brief filed by Baskerville, which raises four main claims: (1) suppressing the Boyd FBI-302 worked a *Brady* violation; (2) that *Brady* violation compels dismissing the indictment with prejudice; (3) trial counsel performed deficiently by not interviewing Curry and Rakeem; and (4) the indictment should be dismissed with prejudice because the Government, after interviewing defense counsel, drafted declarations for their signature. The first three lack any merit. The fourth essentially accuses the United States of manufacturing false testimony—an accusation that is both frivolous and borderline sanctionable.

¹ “H-Tr. __” refers to the transcript of the two-day evidentiary hearing. “ECF No. __ at __” refers to the page number in the ECF legend at the top of the cited pleading. “Tr. at __” refers to the pages of the Baskerville trial transcript. “SA_” refers to the pages of the Government’s Supplemental Appendix, filed herewith.

ARGUMENT

I. Baskerville Has Failed To Prove That Trial Counsel Lacked A Valid Strategic Reason For Declining To Interview Or Call Curry And Rakeem As Defense Witnesses

This Court ordered a hearing to obtain “a better understanding of whether” Mr. Herman’s and Mr. Kayser’s “decision not to call” Curry and Rakeem “could be considered sound trial strategy.” ECF No. 49 at 31. Baskerville bears the ultimate burden of persuasion, *Gov’t of V.I. v. Nicholas*, 759 F.2d 1073, 1081 (3d Cir. 1985), but he has failed to prove that the decision not to call Curry and Rakeem was not “sound trial strategy.” If anything, *the Government* has proved that calling Curry and Rakeem as defense witnesses to pursue a trial strategy that could have cost Baskerville his life would have been tantamount to malpractice.

A. The Legal Standards Governing A Defense Attorney’s Obligation To Interview Potential Defense Witnesses.

The Government already has described the legal standards governing ineffectiveness claims. ECF No. 16 at 16–18. This Court summarized them in its November 2018 Opinion. ECF No. 49 at 14–15. Below, the Government applies those standards to the selection of defense strategy and defense witnesses.

Witness selection is entrusted to defense counsel’s sound judgment, not to the defendant. *See Gov’t of V.I. v. Weatherwax*, 77 F.3d 1425, 1434 (3d Cir. 2006) (citing cases). In carrying out his duty to prepare for trial, “[a]n attorney can avoid activities that appear ‘distractive from other more important duties.’” *Harrington v. Richter*, 562 U.S. 86, 107 (2011) (quoting *Bobby v. Van Hook*, 558 U.S. 4, 11 (2009) (per curiam)).

That means, in this case, defense counsel were “entitled to formulate a strategy that was reasonable at the time and to balance limited resources in accord with effective trial tactics and strategies.” *Richter*, 562 U.S. at 107. “[A]ttorneys need not

pursue an investigation that would be fruitless, much less one that might be harmful to the defense.” *Id.* at 108. They were “not bound by an inflexible constitutional command to interview every possible witness.” *Lewis v. Mazurkiewicz*, 915 F.2d 106, 113 (3d Cir. 1990). Instead, they were “simply required to exercise reasonable professional judgment in deciding whether to interview” Curry and Rakeem. *See generally Strickland v. Washington*, 466 U.S. 668, 690–91 (1984) (“a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments”).

Put differently, “[t]he right to counsel ‘does not require that a criminal defense attorney leave no stone unturned and no witness unpursued.’” *Jacobs v. Horn*, 395 F.3d 92, 122 (3d Cir. 2005) (citation omitted). “There comes a point where a defense attorney will reasonably decide that another strategy is in order, thus ‘mak[ing] particular investigations unnecessary.’” *Cullen v. Pinholster*, 563 U.S. 170, 185 n.7 (2011) (alteration in original) (citation omitted). Counsel has no duty to investigate a particular defense after reasonably selecting a different and inconsistent defense. *See Williams v. Woodford*, 384 F.3d 567, 611 (9th Cir. 2004) (“Having reasonably selected an alibi defense as the primary defense theory, Ingber no longer had a duty to investigate a conflicting mental-state defense.”).²

² *Accord Doe v. Woodford*, 508 F.3d 563, 569 (9th Cir. 2007) (“petitioner’s trial counsel made a reasonable strategic choice to rely on petitioner’s claims of innocence and decided not to pursue further investigations into petitioner’s mental state since he testified that a mental state defense ‘would have been inconsistent’ with the theory of the case”); *Bean v. Calderon*, 163 F.3d 1073, 1081–82 (9th Cir. 1998) (counsel’s reasonable choice of an alibi defense ended counsel’s duty to investigate a conflicting defense of diminished mental capacity); *Turk v. White*, 116 F.3d 1264, 1266–67 (9th Cir. 1997) (defense counsel’s reasonable selection of a self-defense theory obviated counsel’s need to investigate a conflicting defense of incompetency); *Correll v. Stewart*, 137 F.3d 1404, 1411 (9th Cir. 1998) (counsel did not act unreasonably in choosing

In deciding whether to interview a witness, counsel often must rely on what his client tells him. *See Mazurkiewicz*, 915 F.2d at 111. Depending on the defendant's statements to counsel, the need for further investigation may be considerably diminished or eliminated altogether. *Strickland*, 466 U.S. at 691; *Lewis*, 915 F.2d at 113. "Defense counsel has no obligation to call, or even interview, a witness whose testimony would not have exculpated a defendant or whose testimony would have been inconsistent with a defense theory." *United States v. Jones*, 785 F. Supp. 1181, 1183 (E.D. Pa.), *aff'd*, 980 F.2d 725 (3d Cir. 1992) (table).

B. Defense Counsel Exercised Reasonable Professional Judgment In Deciding Not To Interview Or Call Curry And Rakeem As Defense Witnesses.

Messrs. Herman and Kayser chose not to interview Curry and Rakeem. H-Tr. at 34–36 (Herman); H-Tr. at 118, 143–44 (Kayser). The only issue this Court must resolve is whether the reasons defense counsel offered for that choice are credible and reasonable. The record compels an affirmative answer to that question.

1. Baskerville Never Alerted Defense Counsel That Curry and Rakeem Had Exculpatory Information.

Initially, Baskerville did not alert defense counsel that Curry and Rakeem had exculpatory information. That alone is fatal. *See Strickland*, 466 U.S. at 691 ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information

not to develop and present a *mens rea* defense that would have conflicted with the primary defense theory of misidentification); *United States v. Stern*, 519 F.2d 521, 524–25 (9th Cir. 1975) (failure to pursue an insanity defense which conflicted with principal defense theory not ineffective assistance of counsel).

supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information.”).

The hearing revealed a clear factual dispute on this issue that this Court now must resolve. Defense counsel testified that Baskerville never alerted them that Rakeem and Curry (each in a BOP facility far from New Jersey, SA1220–24) had relevant information. H-Tr. at 72–73 (Herman); H-Tr. at 120 (Kayser). Baskerville, by contrast, insisted that he had done so. H-Tr. at 238, 253, 258. The Government respectfully submits that defense counsel testified truthfully and that Baskerville lied.

Initially, defense counsel are highly respected defense attorneys experienced in murder cases generally and death penalty cases specifically. *See* H-Tr. at 64–65 (Herman); ECF No. 61–1 at 24–27; *see also* H-Tr. at 125–26 (Kayser); ECF No. 16–2 at 1–2, ¶¶ 1–4. Baskerville, on the other hand, is serving life in prison for murder and drug offenses and has prior drug convictions, all of which are fair game in evaluating his credibility. Further, Baskerville has made a number of false assertions in his § 2255 motion, including accusing trial and appellate counsel of having failed to make legal arguments that the record shows were made. *E.g.*, ECF No. 49 at 35 (Rule 804(b)(6) claim); *id.* at 66–67 (legal sufficiency claim).

Baskerville wrote a letter to Judge Pisano in April 2007, immediately after the guilt-phase summation. Nowhere in that letter did he mention defense counsel’s handling of the murder charges, much less criticize their failure to interview or call Curry and Rakeem. ECF No. 29 at 71; *see* H-Tr. at 262. Baskerville wrote, “I am completely aware that I have the right to put own [sic] a defence [sic] in my case such as present witnesses and even taking the stand in my own defence [sic] which I invoked the right not to do so.” ECF No. 29 at 72; *see* H-Tr. at 274–75.

That letter severely undermines the credibility of Baskerville's current claim that he instructed defense counsel to interview Curry and Rakeem. *See United States v. DiTomasso*, ___ F.3d ___, 2019 WL 3417264, at *12 (2d Cir. 2019) ("In that letter, DiTomasso 'did not raise' any semblance of 'his current claim that his lawyer was inept because he failed to call his [uncle] as a witness.'") (citation omitted). *See generally* 1 JOHN W. STRONG, MCCORMICK ON EVIDENCE § 34, at 114–15 (4th ed. 1992) ("if [a] former statement fails to mention a material circumstance presently testified to, which it would have been natural to mention in the prior statement, the prior statement is sufficiently inconsistent' to be admitted to impeach the present testimony").

Baskerville's hearing testimony on this issue beggars belief. For example, despite claiming that he instructed defense counsel to reach out to Curry and Rakeem, Baskerville admitted he acquiesced in defense counsel's strategic decision to rest without presenting a defense case because counsel, based on their years of experience, believed that they had shown reasonable doubt by attacking the Government's case. H-Tr. 245–47. That corroborates defense counsel's testimony that they had adopted a trial strategy, with which Baskerville ultimately agreed.

Baskerville's current testimony, that defense counsel swept his concerns under the rug, conflicts with his admission that, in April 2007, he told Judge Pisano that his attorneys had been working very hard. *Compare* H-Tr. at 244, *with* H-Tr. at 281. Baskerville also had to admit he did not know what Curry and Rakeem had to offer until he received their affidavits in 2014. Yet he claims he alerted trial counsel to the substance of those affidavits in April 2007. H-Tr. at 253–56. That makes no sense.

District Courts have routinely sided with defense counsel when similar credibility disputes have arisen. *E.g.*, *DiTommaso*, 2019 WL 3417264, at *12 (“the record was replete with circumstantial evidence ... supporting [trial counsel’s] declaration that Marcus had not told Ginsberg either that Marcus was guilty of the acts attributed to DiTommaso or that Marcus wanted to testify at DiTommaso’s trial”); *Gordon v. United States*, Civil No. 10–5065 (JBS), 2014 WL 2435572, at *3 (D.N.J. May 30, 2014) (“Gordon and Louderback discussed some possible witnesses before trial, but Gordon’s testimony that he gave a witness list to attorney Louderback, which Louderback denies, is incredible.”). This Court should do so here and find that Baskerville did not direct his trial counsel to interview Curry and Rakeem.

2. Even If Baskerville In Fact Alerted Defense Counsel To The Need To Interview Curry And Rakeem, He Waited Too Long To Do So.

Even were this Court to credit Baskerville’s claim that he waited until *after* Young testified to ask defense counsel to interview Curry and Rakeem, his ineffectiveness claim still would fail because that request came too late.

After investigation and deliberation, defense counsel settled on a trial strategy of accepting Young’s claim that he was the shooter and blaming the McCray murder on the Curry Organization and Bergrin. H-Tr. at 31–32, 68–69 (Herman); H-Tr. at 106–07, 134–39 (Kayser); *see infra* Point I.B.3.c. Indeed, defense counsel effectively opened on that theory on April 4, 2007, mocking the Government for awarding a cooperation agreement to a “cold-blooded killer.” Tr. 3309–14. At the hearing, however, Baskerville testified for the first time that he advised defense counsel to interview Curry and Rakeem sometime *after* Young testified, H-Tr. at 245, 259–60, *i.e.*, after April 13, 2007, *see* D.N.J. Crim. No. 03–836, ECF No. 196 (minute entry).

The relevance of any information from Curry and Rakeem was apparent from the Government's opening statement on April 4, 2007. *See* Tr. 3285–88. Regardless, by the middle of trial, it was too late for defense counsel to abruptly shift gears and pursue a strategy diametrically opposed to the one on which they had settled. That would have seriously jeopardized counsel's credibility with the jury. *Darden v. United States*, 708 F.3d 1225, 1229–30 (11th Cir. 2013) (“Any competent trial lawyer understands that in order to mount a successful case before a jury, credibility must never be sacrificed.”)

Moreover, it would have been virtually impossible for counsel or their investigators even to interview Curry (then in Federal Transfer Center in Oklahoma) and Rakeem (then in USP Big Sandy in Kentucky). *See* A1220–24. It also would have been impossible to secure their presence in this District for trial testimony. As this Court is aware, the BOP and U.S. Marshals require at least six weeks' notice in order to move federal prisoners out of their designated facilities and have them transported here for testimony. And Baskerville has submitted nothing whatsoever to suggest that Judge Pisano would have granted an open-ended continuance of a death-penalty trial to writ Curry and Rakeem into this District. *See United States v. Sparkman*, 500 F.3d 678, 682 (8th Cir. 2007) (“Sparkman's counsel was aware of Furr's imprisonment and thus could have anticipated that transporting him to trial would require significant lead time. The court has a substantial interest in the efficient administration of justice, and we would not lightly conclude that the court was required to continue a trial due to a timing problem that was largely of the defendant's own making.”).

In sum, even were this Court to credit Baskerville's claim that he waited until April 13, 2007 to ask trial counsel to interview Curry and Rakeem, his ineffectiveness claim still must fail.

3. Defense Counsel Were Aware Of Curry and Rakeem And Made A Reasonable Strategic Decision Not To Interview—Much Less Call—Them.

Whatever Baskerville did or didn't do, defense counsel were independently aware of Curry and Rakeem as possible witnesses. They reasonably chose not to interview or call them for several valid strategic reasons.

a. Fifth Amendment Privilege.

Defense counsel reasonably believed, based on their years of experience, that Curry and Rakeem—both of whom had Third Circuit appeals pending and were exposed to prosecution for the McCray murder—would have invoked their Fifth Amendment privilege. H-Tr. 78–79 (Herman); H-Tr. at 144 (Kayser); *see* ECF No. 16-2 at 15–16, ¶ 25 (Kayser Declaration). The reasonableness of their belief is corroborated in several important respects:

- Curry and Rakeem did not testify at their 2006 trial on drug conspiracy charges, SA6–14;
- According to a sworn declaration executed by Lawrence S. Lustberg, Esq.—standby counsel to Paul Bergrin and former appellate counsel for Curry—Curry and Rakeem intended to invoke their Fifth Amendment rights if subpoenaed by Bergrin in March 2013, SA1218, ¶ 6; and
- Curry Organization members Jamal McNeil and Jamal Baskerville, who according to Anthony Young were members of the McCray murder conspiracy, invoked their Fifth Amendment privilege when subpoenaed by Bergrin, SA538–41, SA938–41, SA943–44.

Defense counsel's judgment that Curry and Rakeem would not have waived their Fifth Amendment rights thus was not only valid at the time but confirmed by subsequent events. That alone justifies rejecting the failure-to-interview claim. *See*

Rosario v. United States, Crim. No. 12–81, 2016 WL 393542, at *5 (S.D.N.Y. Feb. 1, 2016) (“This conclusion is further buttressed by the significant likelihood, in light of the pending state charges against him—and the fact that he had never pled guilty to or been sentenced for heroin trafficking during 2009, that Cabrera would have invoked his Fifth Amendment privilege if called to testify.”) (citing *Greiner v. Wells*, 417 F.3d 305, 323 & n.24 (2d Cir. 2005) (discussing ABA Standards that generally defense counsel should not call to testify a witness in the presence of the jury who the lawyer knows will claim a valid privilege)).

b. Intractable Credibility Problems

Defense counsel also reasonably concluded Curry and Rakeem had intractable credibility issues that made them untenable defense witnesses. H-Tr. at 66–67, 76–80 (Herman); H-Tr. at 144–46 (Kayser).

Baskerville was Curry’s cousin and Rakeem’s brother; their bias was obvious. H-Tr. at 258–59; *see* H-Tr. at 79 (Herman); H-Tr. at 144–45 (Kayser). Beyond that, Curry and Rakeem had been convicted of drug conspiracy charges and sentenced to life imprisonment. SA14–19. Their convictions would have been admissible under Rule 609 to impeach their general credibility. H-Tr. at 79 (Herman); H-Tr. at 145 (Kayser). To make matters worse, the Curry trial revealed acts of violence and witness tampering by Curry that would have been fair game on cross-examination. This included the Derrick Berrian murder (which Curry admitted to Lachoy Walker he orchestrated) and a plot by Curry—extant at the time of Curry’s trial in 2006—to murder Walker, who was cooperating with the Government. *See* SA66–68 (detailing acts of violence instigated by Curry); *see also* D.N.J. Crim. No. 03–836, ECF No. 80 (granting counsel CJA funds to purchase the entire Curry trial transcript).

To top it all off, had Curry testified, he would have been forced to admit he obtained McCray's name—through Bergrin—from Baskerville (corroborating testimony from Young and from Rich Hosten, who was in pretrial detention with Baskerville on the day of his arrest. ECF No. 49 at 2). Had Curry denied that fact, he would have opened the door to the admission of the November 25, 2003 wiretap call proving that Bergrin told Curry that Baskerville had identified the informant as someone named “K-Mo” (*i.e.*, Kemo). *See* SA3; *see also United States v. Soures*, 736 F.2d 87 (3d Cir. 1984) (admitting otherwise inadmissible evidence may be necessary to prevent a party from misleading the jury); H-Tr. at 40–41, 47–49. That would have provided devastating independent proof of Baskerville's role in the murder conspiracy, and it would have strongly corroborated the account of that call provided by Young, who overheard Curry repeat Bergrin's mispronunciation of Kemo's name, ECF No. 49 at 2 (quoting Tr. 4352); *see* SA3.

The risk Curry would open the door to evidence inculcating Baskerville and corroborating Young was real, not just theoretical. After all, *Bergrin*, a veteran defense attorney, opened the door to an earlier November 25, 2003 wiretap intercept by misleadingly cross-examining an IRS agent at his own 2013 trial. *See* SA918–36.

In short, defense counsel reasonably concluded that whatever upside Curry's and Rakeem's putative testimony might have, it was dramatically outweighed by intractable credibility problems. *See Rodriguez- Rivera v. United States*, 116 F. Supp. 3d 35, 40 (D.P.R. 2015) (“Even a relatively inexperienced attorney would think three times before presenting an easily impeachable witness as a defense witness.”); *see also Richter*, 562 U.S. at 108 (“An attorney need not pursue an investigation that ... might be harmful to the defense.”).

c. Contradict Counsel's Chosen Defense Strategy.

Calling Curry and Rakeem also would have contradicted counsel's carefully chosen trial strategy, seriously jeopardizing defense counsel's efforts to maintain credibility with the jury.

After reviewing voluminous discovery and holding numerous consultations with Baskerville, H-Tr. at 66–68 (Herman); H-Tr. at 105, 126–34 (Kayser), Messrs. Herman and Kayser decided that the most effective trial strategy would be to accept Young's testimony that he personally shot and killed McCray on behalf of the Curry Organization and on the advice of Bergrin. H-Tr. at 31–32, 68–69 (Herman); H-Tr. at 106–07, 134–39 (Kayser). That allowed defense counsel to portray Baskerville as the unwitting beneficiary of a conspiracy carried out by others, focus on attacking the jailhouse informants who directly inculpated Baskerville, and maintain credibility with the jury in the event of a penalty phase. H-Tr. at 69, 70–71, 75 (Herman); H-Tr. at 126, 135–36 (Kayser).

Indeed, that Young (the confessed killer) had escaped the death penalty in return for his testimony and that Bergrin had not even been charged provided defense counsel with obvious mitigating factors in the event of a penalty phase. H-Tr. at 69–70 (Herman); H-Tr. at 139–41 (Kayser). And that strategy succeeded: the jurors spared Baskerville's life, selecting mitigating factors that prove they credited Young's testimony. *See* A22–23.

Defense counsel recognized that their strategy required the jury to credit Young's testimony that he personally shot and killed McCray on behalf of the Curry Organization and on the advice of Bergrin. H-Tr. at 70 (Herman); H-Tr. at 140 (Kayser). Calling Curry and Rakeem as defense witnesses could only have contradicted Young's account of the murder, which would have conflicted with their

strategy and, worse, undermined their credibility with the jury. H-Tr. at 74–75 (Herman); H-Tr. at 146 (Kayser). “Any competent trial lawyer understands that in order to mount a successful case before a jury, credibility must never be sacrificed.” *Darden*, 708 F.3d at 1229–30; *see Hyde v. Branker*, 286 F. App’x 822, 833 (4th Cir. 2008) (unreported) (“Hyde’s counsel essentially made the strategic choice to try to preserve their credibility with the jury by not asserting a defense they thought would fail, in the hopes of persuading the jury at sentencing to spare Hyde’s life.”).

No doubt, defense counsel did not know in April 2007 precisely what Curry and Rakeem would have said. But based on their experience and expertise they reasonably could have assumed that Curry and Rakeem would have provided self-serving testimony that exculpated both themselves and Baskerville. Based on the content of their current affidavits, that assumption would have proved correct. And having reviewed those affidavits, defense counsel have testified—credibly—that nothing in them would have caused them to alter their carefully chosen trial strategy. Put another way, defense counsel are just as confident today as they were in April 2007 that mounting a frontal assault on Young’s credibility would have hurt Baskerville’s chances. H-Tr. at 80 (Herman); H-Tr. at 146 (Kayser).

Indeed, Mr. Kayser adhered to his view—expressed during the guilt-phase summation in April 2007, Tr. at 5860—that “it would have been crazy for me to suggest that to a jury that Young was not the shooter since he confessed, pled guilty to it. It didn’t make a lot of sense.” H-Tr. at 108; *see* H-Tr. at 143. *See generally United States v. Jackson-Randolph*, 282 F.3d 369, 383 (6th Cir. 2002) (“Jackson-Randolph’s theory posits that Cohen would create a story admitting his involvement in a money-laundering scheme in order to avoid prosecution for failure to file income tax

returns. This does not make sense.”).³

Finally, it bears noting that this Court already has rejected a similar claim by Baskerville concerning defense counsel’s failure to call Bergrin as a witness. This Court considered defense counsel’s sworn declarations, which attested to their reasons for not wanting to call Bergrin, and held “trial counsel’s decision not to call Bergrin as a witness was based on an informed trial strategy that petitioner fails to overcome.” ECF No. 49 at 28. If it was reasonable trial strategy for defense counsel not to call Bergrin (who lacked some of the baggage that Curry and Rakeem carried), then *a fortiori* it was reasonable for defense counsel not to call Curry and Rakeem.

C. Baskerville’s Arguments Are Meritless

Baskerville nonetheless claims that defense counsel’s principal strategy—to avoid the death penalty while not seriously challenging the drug or murder counts—“proves to be an unfortunate mistake,” as “[c]hanges 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.” ECF No. 70 at 20. But “in making litigation decisions, ‘there is no general duty on the part of defense counsel to anticipate changes in the law.’” *Sistrunk v. Vaughn*, 96 F.3d 666, 670–71 (3d Cir. 1996) (citation omitted). Defense counsel *in 2007* had no duty to anticipate that the

³ Bergrin pursued that very defense in his 2013 trial. Not surprisingly, the jury rejected it. *See Lindsey v. Smith*, 820 F.2d 1137, 1152 (11th Cir. 1987) (“A *habeas* petitioner who proposes [an] alternative trial strategy that would itself have proved futile has failed to demonstrate that the representation at trial fell below an objective standard of reasonableness.”). Putting aside that Bergrin’s trial strategy failed, “*Strickland* and its progeny make clear that counsel’s strategic choices will not be second-guessed by *post-hoc* determinations that a different trial strategy would have fared better.” *Rolan v. Vaughn*, 445 F.3d 671, 681-82 (3d Cir. 2006).

Fair Sentencing Act would be enacted in 2010, much less that it would be made retroactive by Congress's passage of the First Step Act in 2018.

At any rate, defense counsel *did* challenge the murder counts, arguing to the jury that Baskerville was an unwitting beneficiary of a conspiracy carried out by others. Tr. at 5844, 5872–76. As set forth above, defense counsel's discretion is at its zenith when it comes to selecting defense strategy and may not be second-guessed with the benefit of hindsight. *See Rolan*, 445 F.3d at 681-82 (“*Strickland* and its progeny make clear that counsel's strategic choices will not be second-guessed by *post-hoc* determinations that a different trial strategy would have fared better.”).

Baskerville next claims that trial counsel could not have performed competently in making a cost-benefit determination about calling Curry and Rakeem as witnesses because they never ascertained what the benefit would be. ECF No. 70 at 21–22 (asking a series of rhetorical questions); *see id.* at 23 (“All of these considerations were based on assumptions by trial counsel without the benefit of actual investigation.”). But that misunderstands the Sixth Amendment jurisprudence and misstates the record. Counsel *did* perform a reasonable investigation: not only did they have the entire Curry trial transcript, they chose to accept Young's testimony that he shot McCray so they could blame the murder on the Curry Organization—allowing them to argue Baskerville was not involved (for guilt phase purposes) and that even if he was, Young was escaping capital punishment and Bergrin was not even charged (for penalty phase purposes). H-Tr. at 69, 70–71, 75 (Herman); H-Tr. at 126, 135–36 (Kayser).

Having adopted a reasonable trial strategy based on all they knew at the time, it was perfectly rational for defense counsel to conclude that whatever Curry and

Rakeem had to say would have conflicted with their chosen strategy (and, thus, not caused them to alter it). H-Tr. at 80 (Herman); H-Tr. at 108, 143, 146 (Kayser). Thus, they had no obligation to interview them. *See Pinholster*, 563 U.S. at 185 n.7 (“There comes a point where a defense attorney will reasonably decide that another strategy is in order, thus ‘mak[ing] particular investigations unnecessary.’”) (alteration in original) (citation omitted); *Jacobs*, 395 F.3d at 122 (“The right to counsel ‘does not require that a criminal defense attorney leave no stone unturned and no witness unpursued.’”) (citation omitted); *Williams*, 384 F.3d at 611 (“Having reasonably selected an alibi defense as the primary defense theory, Ingber no longer had a duty to investigate a conflicting mental-state defense.”).

Finally, though he cannot bring himself to say so explicitly, Baskerville—citing to the Curry calls—effectively argues that the reason defense counsel chose not to interview Curry and Rakeem is because they unreasonably adopted a trial strategy that made such an interview unnecessary. In effect, Baskerville, taking a page from the Bergrin playbook, now claims that had counsel scrutinized the Curry calls, they would have discovered Young was lying and, thus, pursued the same trial strategy Bergrin (unsuccessfully) pursued at his trial. ECF No. 70 at 22–23. But this Court already rejected any claim regarding the Curry calls, ECF No. 49 at 105, which are beyond the scope of the evidentiary hearing this Court ordered.

Besides, the notion that the Curry calls fatally undermine Young’s testimony is an outright fabrication that Baskerville (and Bergrin) hope will attain a patina of credibility through sheer repetition. The Government has already explained in the *Bergrin* case why the Curry calls do not impeach Young and why using them for impeachment purposes would have opened the door to the admission of the two

November 25, 2003 calls that powerfully corroborated Young's account. SA1241–49; SA1276–88. The Government will not lengthen this already-long brief by repeating those arguments here.

In sum, defense counsel adopted a reasonable trial strategy and did not completely fail to investigate Curry and Rakeem. They monitored the Curry trial in real time, had the transcript of that trial, and reasonably concluded that calling Curry and Rakeem would have hurt—rather than helped—Baskerville's defense. There was no deficient performance.

II. Baskerville Has Failed To Prove A Violation Of His Due Process Rights Under *Brady v. Maryland*, 373 U.S. 83 (1963)

This Court also ordered a hearing to address whether the Boyd 302 was suppressed and “material.” ECF No. 49 at 88.⁴ Baskerville addresses this claim in Point I of his brief. ECF No. 70 at 7–17. His arguments are meritless.

A. The Governing Legal Standards

To establish a due process violation under *Brady v. Maryland*, Baskerville “must show that: (1) evidence was suppressed; (2) the suppressed evidence was favorable to the defense; and (3) the suppressed evidence was material either to guilt or to punishment.” *United States v. Pelullo*, 399 F.3d 197, 209 (3d Cir. 2005) (internal quotation marks omitted); see *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999) (“There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State . . . ; and prejudice must have ensued.”). Baskerville must prove each of those elements. *Hollman v. Wilson*, 158 F.3d 177, 180 (3d Cir. 1998).

⁴ This Court noted that the parties “may wish to address whether this Court is properly considering this claim as a *Brady* claim” and, if so, whether “petitioner can properly bring this *Brady* claim at this time in this § 2255 proceeding.” ECF No. 49 at 88. Baskerville’s § 2255 motion claimed the Boyd 302 showed that Agent Manson testified falsely, ECF No. 1 at 11; see ECF No. 1–1 at 10, and his Traverse argued more pointedly that suppressing the Boyd 302 worked a *Brady* violation, ECF No. 29 at 57–59. Although the Traverse was filed well beyond the one-year limitations period, the *Brady* claim it raised clearly relates back to the allegations regarding the Boyd 302 in Baskerville’s timely filed *pro se* § 2255 motion. See Fed. R. Civ. P. 15(c); see also *Rainey v. Varner*, 603 F.3d 189, 198 (3d Cir. 2010) (“It is the policy of the courts to give a liberal construction to *pro se* habeas petitions.”) (quoting *United States ex rel. Montgomery v. Brierley*, 414 F.2d 552, 555 (3d Cir. 1969)).

B. Because The Record Is In Equipoise, Baskerville Has Failed To Prove That The Boyd 302 Was Suppressed.

The Government's principal Response took no position on whether the Boyd 302 had been produced to Baskerville, arguing that the information in that 302 was immaterial. *See* ECF No. 16 at 49–50; *see* ECF No. 34 at 7–8. Still, Baskerville must prove, by a preponderance of the evidence, that the Boyd 302 was suppressed. *See United States v. Stradford*, Crim. No. 06–275 (FJW), 2008 WL 2275999, at *13 (D.N.J. May 30, 2008) (“the burden is on the Defendant to prove that such information was suppressed”). He has failed to do so.

At the hearing, Baskerville denied knowing about the Boyd 302 until he reviewed the transcript of Bergrin's first trial, where the 302 was mentioned during cross-examination of Agent Manson. H-Tr. at 205. Defense counsel, for their part, did not deny seeing it; they simply could not recall whether they had seen it or not. H-Tr. at 33, 82, 90 (Herman); H-Tr. at 116, 122, 147–48 (Kayser). This Court, therefore, must make a factual finding based on the available evidence.

For starters, it is hardly surprising that 12 years after trial defense counsel do not recall an FBI-302 that, as Mr. Kayser said, “would be one page in boxes and boxes and boxes of paper.” H. Tr. at 147–48. That is especially so where the information it contained (suggesting that another Curry Organization member took credit for killing McCray) was otherwise available through other sources (*i.e.*, Johnnie Davis's testimony and reports from the Newark Police Department) and, therefore, not novel to them. More importantly, that supposed confession conflicted with the trial strategy defense counsel adopted. Indeed, given testimony from both counsel that they would not have altered their strategy based on the information contained in the Boyd 302, H-Tr. at 82 (Herman); H-Tr. at 148 (Kayser), it is more

likely than not that the document was produced, but considered insignificant, if not inconsistent with their view of the best defense.

Additional circumstantial evidence also indicates that the Boyd FBI-302 was, in fact, produced. The Government produced it to Bergrin in 2011, ECF No. 1-1 at 10, ¶ (B)(3), who utilized it at both his 2011 and 2013 trials. SA448–49 (2011), SA715– 20 (2013). It makes little sense for the Government to have withheld that single report from Baskerville in 2007, only to produce it to Bergrin four years later. *See generally United States v. Caldwell*, 448 F.3d 287, 292 (5th Cir. 2006) (a “court is permitted to make common-sense inferences from the circumstantial evidence”) (citation omitted). Indeed, the Jencks material produced to Bergrin was drawn from the Jencks material produced to Baskerville given the overlap in witnesses.

Giving Baskerville all the benefit of the doubt, we respectfully submit that the evidence is, at worst, in equipoise on the suppression element of Baskerville’s *Brady* claim. That being so, he has failed to meet his burden of persuasion. *See United States v. England*, 555 F.3d 616, 623 (7th Cir. 2009) (“because the evidence appears at least in equipoise, the preponderance standard is not met”); *cf. United States v. Douglas*, 885 F.3d 145, 153 (3d Cir. 2018) (“equipoise ... is not proof by a preponderance of the evidence”). This claim can be rejected on that basis alone.

C. The Boyd 302 Is Not Material.

At any rate, the information contained in the Boyd 302 is not material. Evidence is material “if there is a reasonable probability that, had it been disclosed, the result of the proceeding would have been different.” *United States v. Perez*, 280 F.3d 318, 348 (3d Cir. 2002). In applying this standard, “[t]he question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a

trial resulting in a verdict worthy of confidence.” *Strickler*, 527 U.S. at 289–90.

Baskerville makes two separate materiality arguments. Neither has merit.

1. **Impeaching Agent Manson**

Baskerville claims he could have used the 302 to impeach Agent Manson’s credibility and that this impeachment would have been so critical as to undermine the Government’s entire case. ECF No. 70 at 7–12. The record belies his claim.

Initially, the Government does not dispute that an answer Agent Manson gave on direct examination in the 2007 Baskerville trial was incomplete. Asked why she gave a picture of Maleek Lattimore to the Newark Police Department in July 2004, she gave two reasons: based on a description from one of the witnesses and Lattimore’s reputation as a hit man for the Curry Organization. Tr. at 3888. She left out a third reason: that she had received information from Boyd (in June 2004) that Lattimore was taking credit for the McCray murder. SA4.

Baskerville now pejoratively labels this as an intentional “lie” that he could have exposed before the jury. ECF No. at 9–10. But he offers no evidence—*none*—to explain *why* Agent Manson would have intentionally concealed immaterial information. After all, Lattimore’s status as a person of interest was readily discernible from the evidence that *was* disclosed. By the time Agent Manson testified, Detective Sabur already had told the jury that McCray’s step-father had picked Lattimore’s picture as the person who “resembled” the shooter. Tr. at 3364–66. And after Agent Manson testified, McCray’s step-father took the stand, described the shooter as someone with long dreadlocks, Tr. at 4472, and confirmed he had selected Lattimore’s picture but was only 30% sure of his identification, Tr. at 4475–80; *see* ECF Nos. 70-1 to 70-4. Agent Manson knew this evidence would be elicited, and so it strains credulity to argue she deliberately withheld the Boyd lead.

What Baskerville now portrays as an intentional lie was, at worst, an innocent misrecollection. Had defense counsel asked on cross-examination, “Didn’t you also have information that Lattimore had taken credit for the McCray murder,” Agent Manson undoubtedly would have answered “yes.” Impeaching her on this minor point would have made absolutely no difference to the outcome. *See United States v. Collins*, 551 F.3d 914, 925 (9th Cir. 2009) (“[W]e conclude that the recording has little value as impeachment evidence against either Kim or [Agent] Oz. Certainly, it does not undermine our confidence in the verdict.”); *United States v. Benford*, Crim. No. 05–10, 2012 WL 2411920, at *4 (C.D. Cal. June 22, 2012) (“there is not a reasonable probability that this discrepancy would have caused the jury to doubt Officer Melberg’s testimony rather than to conclude that the discrepancy was the result of a clerical mistake”).

In an effort to paint a sinister picture, *see* ECF No. 70 at 9, Baskerville contends Agent Manson again concealed the content of the FBI-302 when she testified at Bergrin’s 2011 trial. There, she was asked whether she had obtained information about Lattimore “from a source,” SA265, filling in the details during Bergrin’s cross-examination, SA448. But Baskerville cites no case suggesting (much less holding) that Agent Manson had to relay the full content of the Boyd 302 in her direct examination. Indeed, Agent Manson could not have done so because the information in the Boyd 302 was double-hearsay. And Third Circuit law required an attack on the integrity of her investigation in order to make those out-of-court assertions relevant for the non-hearsay purpose of explaining the course of her investigation. *See United States v. Christie*, 624 F.3d 558, 568 (3d Cir. 2010). That attack came only in Bergrin’s cross-examination of Agent Manson at the 2011 trial.

That attack, coupled with Bergrin's vitriolic opening statement at the 2013 retrial, led the Government in 2013 to ask Judge Cavanaugh to allow Agent Manson to testify on direct examination about the various leads she had received (precisely so it would not look like she was trying to conceal them). SA1225. Judge Cavanaugh granted the Government's motion. SA1231–35. *That* explains why Agent Manson's 2013 direct examination fronted the information in the Boyd 302, SA641–42, and puts the lie to Baskerville's effort to claim that Agent Manson somehow concealed "the truth" until 2013.

Absent that, however, the record shows that Agent Manson simply did not recall one of the reasons she viewed Lattimore as a potential suspect when she testified in 2007.⁵ And this Court has already found that impeachment on minor points would not have affected the outcome of Baskerville's trial. ECF No. 49 at 82–83. So too here.

Moreover, although Bergrin repeatedly used the Baskerville trial transcript to expose even minor discrepancies in a Government witness's subsequent testimony, he never cross-examined Agent Manson on her failure to mention the Boyd information in 2007. *See* SA306–492 (2011); *see also* SA710–900 (2013). Whatever impeachment value the Boyd 302 may have as to Agent Manson, even Bergrin did not think it was the case-cracker that Baskerville now makes it out to be.

Finally, Baskerville claims without support that Agent Manson was "an extremely important witness." ECF No. 70 at 17. Not so. Both on the drug charges and on the McCray murder, Agent Manson served largely as a clearinghouse of

⁵ Agent Manson testified that she was on maternity leave at the time of the Baskerville trial. Tr. at 3380.

information: virtually everything she testified to was corroborated either by her own 302s, video/audiotape, or the testimony of other witnesses. For example, she testified that in early 2005, Young walked in off the street and claimed to have information about the McCray murder. Tr. at 3889–91. She then detailed how Young told different versions of his involvement, and what steps she took to corroborate information he provided (such as Young’s inside knowledge of specific details of the murder, his involvement in melting the murder weapon, and talking to various inmates who overheard Baskerville discuss McCray). Tr. at 3839, 3871, 3880–87, 3889–97. That testimony was backed up not just by her 302s, but the testimony of Young, Tr. at 4332–429, 4564–97; Detective Sabur (who processed the crime scene), Tr. 3316–67; Devon Jones (the owner of the body shop where the gun was melted), Tr. 4105–123; and the informants who overheard Baskerville make incriminating statements about the murder, Tr. 4253–305, 4826–91, 5035–134, 5253–336.⁶ Put simply, Baskerville’s guilt was proved *not* through Agent Manson’s testimony but through the overwhelming evidence the Government elicited from other witnesses.

2. Alternative Defense Theory

Baskerville also argues that, “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, [defense counsel] could have taken Young on

⁶ Even McCray’s out-of-court assertions regarding his fear for his safety after his status as an informant became public following Baskerville’s arrest, which were admitted through Agent Manson under Rule 803(b)(6), Tr. at 3847–48, 3866–68, were corroborated by the testimony of McCray’s step-father, Tr. at 4461–62.

directly, challenging everything he said.” ECF No. 70 at 12. That falls woefully short of satisfying *Brady*’s materiality standard.

For starters, “this is not a case in which the FBI reports could have opened a whole new field of investigation that [Baskerville] never considered.” *United States v. DeCologero*, Crim. No. 01–10373, 2013 WL 3728409, at *7 (D. Mass. July 11, 2013), *aff’d*, 802 F.3d 155 (1st Cir. 2015). The theory that Lattimore killed McCray was readily available from evidence independent of the Boyd 302. As noted in the previous section, McCray’s step-father identified the shooter as having long dreadlocks, and selected (but did not positively identify) Lattimore’s photograph when shown a photo array. Tr. at 3364–66, 4006–09, 4472, 4475–80, 4483–85. Further, Agent Manson testified that Lattimore was a member of the Curry Organization and was reputed to be one of Curry’s hitmen. Tr. at 3888, 4009. And *the Government* introduced a photograph of Lattimore into evidence. *Id.*

It was defense counsel’s reasonable tactical choice—not the lack of any information from Boyd—that kept defense counsel from exploring the Lattimore theory or arguing it to the jury. *See DeCologero*, 2013 WL 3728409, at *7 (“Insofar as Paul A. argues the FBI reports would have led him to further exculpatory information, he has not shown any prejudice. Paul A. already knew before trial that Portalla, McConnell, and Nogueira were potential suspects.”). Baskerville’s suggestion that the Boyd 302 invariably would have caused defense counsel to alter their chosen strategy is speculation, unsupported by anything in the record.

More importantly, defense counsel credibly testified that having the Boyd information *would not* have caused them to alter their chosen trial strategy of accepting Young’s testimony that he personally shot McCray on behalf of the Curry

Organization and at the urging of Bergrin. H-Tr. at 82 (Herman); H-Tr. at 148 (Kayser). And Mr. Herman noted the possibility that Lattimore was lying. H-Tr. at 91 (“But it wasn’t the first murder I’ve been involved with where people were popping up and saying they committed a murder when they hadn’t.”). Had trial counsel argued that Lattimore killed McCray, they necessarily would have had to argue that Young lied about being the killer—depriving them of valuable mitigation arguments in the event of a penalty phase, and (by jeopardizing their own credibility with the jury) creating a very real risk that Baskerville would be executed. *See* H-Tr. at 74–75 (Herman).⁷

It bears repeating what the Government has stressed in prior submissions about the relevance of Young’s testimony to Baskerville’s guilt. To be sure, Young described the formation and execution of the conspiracy; but the most damaging evidence against Baskerville came from jailhouse informants who overheard Baskerville boasting that his cohorts (including Young) were out looking to kill McCray (and, after the homicide, that they had succeeded). *Compare* H-Tr. at 70–71,

⁷ Baskerville highlights Mr. Kayser’s testimony that he “might” have taken a different approach had he possessed sufficient information to prove Young was lying, ECF No. 70 at 12 (citing H-Tr. at 150), but his brief simply assumes (but never proves) Young lied. Though McCray’s step-father identified someone other than Young, Baskerville assiduously avoids discussing the myriad details Young knew about the McCray murder that only an insider would have known, including where McCray was working when he was located in March 2004; how he left the job site with an older man to buy lunch and, then, loose cigarettes; the dust mask and cigarette under McCray’s body; the positioning of the getaway car; the melting of the murder weapon; the content of the phone calls from Bergrin to Curry on November 25, 2003, and so on. Tr. at 5711–30, 5738–44, 5748–50. And never mind Baskerville’s admission—before Young confessed he shot McCray—that Rakeem was getting “Fat Ant” (*i.e.*, Young) to handle McCray. Tr. at 5808.

75, *with* ECF No. 49 at 4. And because those informants knew non-public information that could only have come to Baskerville from other Curry Organization members, their testimony bore special indicia of reliability, as the Government stressed in summation. Tr. at 5792–825. It blinks reality to suggest that seasoned defense counsel would have abandoned their reasonable strategy of pinning the murder on the Curry Organization and Bergrin (which hindsight proves was successful) in favor of a patently absurd strategy positing that Young walked in off the street and falsely confessed to a capital offense for no apparent reason (which, the Bergrin verdict shows, was unsuccessful).

Even assuming, *arguendo*, that the Boyd 302 might have prompted defense counsel to at least investigate the “blame Lattimore strategy,” Baskerville still must show that that investigation would have borne fruit. In *Brady* cases, “[t]he inquiry is whether the undisclosed evidence is admissible itself or could have led to the discovery of admissible evidence that could have made a difference in the outcome of the trial sufficient to establish a ‘reasonable probability’ of a different result.” *Johnson v. Folino*, 705 F.3d 117, 130 (3d Cir. 2013).

The 302 about Boyd is triple hearsay (an Agent’s out-of-court assertion about what Lattimore supposedly told Boyd). Thus, the 302 could not have been offered into evidence at Baskerville’s trial. *See United States v. DeCologero*, 802 F.3d 155, 164 (1st Cir. 2015) (“Because the Noe reports themselves are hearsay, they would not have been admissible at trial for the truth of the matters asserted, and ‘by definition [are] not material, because [they] never would have reached the jury and therefore could not have affected the trial outcome.’”) (citation omitted). Baskerville, therefore,

“has the burden of demonstrating how the disclosure of the reports would have led to admissible material exculpatory evidence.” *Id.*

Baskerville has failed to do that. He simply claims—without any factual support—that defense counsel, armed with the Boyd report, “could have taken Young on directly, challenging everything he said.” ECF No. 70 at 12. But that presupposes Boyd would have testified in court to what Lattimore said (which itself improperly assumes Lattimore was unavailable to testify. *See* Fed. R. Evid. 804(a), (b)(3)). It was *Baskerville’s* burden to produce affidavits from those witnesses averring that they would have testified at trial and the substance of their testimony. His failure to do so is fatal.

For example, in *DeCologero*, the defendants complained on collateral attack that the Government had withheld 302s that supported the alternative perpetrator theory they actually pursued at trial. The First Circuit nonetheless affirmed the District Court’s conclusion that the information in the reports was immaterial, rejecting a claim that the report would have prompted him to call the witness whose statements were summarized in the newly disclosed reports:

Paul A. argues that the reports would have prompted him to call Noe to testify at trial, and her testimony would have verified the allegations made in the Noe reports. However, Paul A. has not submitted any evidence to support this argument. For example, he has not provided an affidavit from Noe or any other evidence that Noe would have been available at trial and, furthermore, that she would have testified in accordance with the reports.

DeCologero, 802 F.3d at 164. Here, Baskerville does not even claim he would have called Boyd or Lattimore, much less tender affidavits from them.

Further, Bergrin’s 2013 trial confirms that Baskerville could not have made substantive use of the Boyd 302 and why any “blame Lattimore/Young is lying”

strategy would have fallen flat for Baskerville. Bergrin had *years* to prepare for his 2013 trial and yet never called Boyd (or Lattimore) as a defense witness; rather, he was content to exploit Boyd's hearsay assertions while cross-examining Agent Manson. SA448–49 (2011), SA715–20 (2013). And in his 2013 summation, Bergrin argued that Lattimore was the real killer and the Government had knowingly allowed Young to plead guilty to a murder he did not commit. SA1107–08, SA1112–13, SA1118–19, SA1141, SA1148–49. The Government laid bare the absurdity of that theory in its summation, SA971–72, SA974–75, and the jury necessarily credited Young's testimony in convicting Bergrin of the McCray murder counts, SA1209–16.

Put quite simply, having heard the Boyd information in support of the “blame Lattimore/Young is lying” defense theory, a federal jury *rejected* that theory. That is hardly a ringing endorsement of the materiality of the information in the Boyd 302, much less the theory that Young voluntarily confessed to a capital offense he did not commit to secure leniency on a state gun charge. The Supreme Court rejected a similar materiality claim where defendants, like Baskerville here, claimed the undisclosed information would have led them to pursue a different trial strategy. *See Turner v. United States*, 137 S. Ct. 1885, 1894 (2017) (“The problem for petitioners is that their current alternative theory would have had to persuade the jury that both Alston and Bennett falsely confessed to being active participants in a group attack that never occurred” and “that Yarborough falsely implicated himself in that group attack.”). *See generally Jackson-Randolph*, 282 F.3d at 383 (“Jackson-Randolph's theory posits that Cohen would create a story admitting his involvement in a

money-laundering scheme in order to avoid prosecution for failure to file income tax returns. This does not make sense.”). And so should this Court.

In sum, an FBI report containing double hearsay suggesting a different member of the Curry Organization carried out the murder would not have moved the needle. *See DeCologero*, 802 F.3d at 165 (“Paul A. asks us to vacate his conviction based solely on the disclosure of two hearsay reports,” but he “has not ‘establish[ed] a reasonable probability of a different result’ at trial.”) (citations omitted).⁸

⁸ *Accord Williams v. Ryan*, 623 F.3d 1258, 1276 (9th Cir. 2010) (“Thus, while the information in the Sweat letters might have changed the prosecutor’s theory of the case at trial, it would not have made Williams any ‘less guilty’ of first degree murder. Accordingly, the non-disclosure of the letters cannot constitute a *Brady* violation with respect to the jury’s finding of guilt on the murder charge.”); *Hammond v. Hall*, 586 F.3d 1289, 1321 (11th Cir. 2009) (“The false confession by Conner and the miscellaneous information relating to Kaplan do not connect to that defense and therefore would not have supported it.”).

III. Any *Brady* Claim Seeking Dismissal With Prejudice Is Beyond The Scope Of The Evidentiary Hearing And Meritless

Baskerville next claims “the prosecution of petitioner Baskerville should be dismissed due to Brady vi[o]lations related to the knowingly false testimony by FBI agent Manson.” ECF 70 at 18–21. The remedy demanded here conflicts with the remedy Baskerville sought in his Traverse, ECF No. 29 at 59 (“Petitioner’s conviction should be vacated and he should be granted a new trial”), but, more importantly, is without merit.

There was no *Brady* violation for the reasons explained in Point II. Moreover, while “dismissal for a *Brady* violation *may* be appropriate in cases of deliberate misconduct because those cases call for penalties which are not only corrective but are also highly deterrent,” *Gov’t of Virgin Islands v. Fahie*, 419 F.3d 249, 254–55 (3d Cir. 2005) (emphasis added), Baskerville has failed to show “deliberate misconduct.” The Government believes it produced the Boyd 302 to Baskerville and, in fact, produced it to Bergrin. The record supports, at best, an entirely inadvertent failure to produce (if any). *Id.* at 256 (“While her error compromised Fahie’s due process rights, we do not believe ... that the prosecutor’s misconduct was willful.”); *see United States v. Lang*, Crim. No. 15–18, 2019 WL 1673317, at *14 (D.V.I. Apr. 17, 2019) (“[T]he Court credits AUSA Andrews’ explanation of the circumstances surrounding the non-disclosure of the evidence, including his representation that the failure to disclose was not the product of a conscious decision to withhold exculpatory evidence on his part.”); *United States v. Lashley*, Crim. No. 09-307, 2011 WL 5237291, at *5 (E.D. Pa. Nov. 3, 2011) (declining to dismiss with prejudice where “the Court stands by its finding that [the prosecutor’s error—though a serious one—was inadvertent”), *aff’d*, 524 F. App’x 843, 846 (3d Cir. 2013) (not precedential).

To the extent Baskerville argues the Government failed to correct “Agent Manson’s knowingly false testimony,” ECF No 70 at 18, he raises a distinct claim under *Napue v. Illinois*, 360 U.S. 264 (1959). Even if properly before the Court, *see supra* n.4, that claim fails for the same reason as the *Brady* claim: an inadvertent failure to disclose a third reason why Lattimore’s picture was supplied to the Newark Police Department had absolutely no impact on the verdict. *See Dye v. Stender*, 208 F.3d 662, 667 (8th Cir. 2000) (“[F]or the same reasons that our confidence in the verdict is not undermined in the *Brady* context, we do not believe Dye could successfully show a reasonable likelihood that the jury would have been affected by any of the false testimony, a necessary component of a *Napue* claim.”); *see also Gibbs v. Lizzaraga*, Civil No. 16–2499, 2018 WL 7571323, at *14 (C.D. Cal. Sept. 17, 2018) (“For the same reasons explained above in connection with petitioner’s *Brady* claim, the Court cannot say that there is a reasonable probability that but for the jury’s failure to hear evidence that Gibbs’s cell phone received an incoming communication at 2:47 p.m. lasting 16 seconds in duration while the phone was in an unknown location, the outcome of petitioner’s trial would have been different.”), *report and recommendation adopted*, 2019 WL 668831 (C.D. Cal. Feb. 15, 2019).⁹

In sum, there was no violation of *Brady* or *Napue* and, thus, no basis for any remedy, much less the drastic sanction of dismissal with prejudice.

⁹ In support of his claim, Baskerville recycles his earlier assertion that Agent Manson deliberately lied and that she only revealed the truth at the 2013 Bergrin trial. ECF No. 70 at 18–19. The Government has already explained why that assertion is false: Agent Manson revealed the content of the Boyd 302 in her direct examination in 2013 because the Government had sought and received permission to front to the jury the various leads Agent Manson had before the investigation focused on Young. *See supra* pp.6–7. She did not have permission to do that at the 2011 trial.

IV. Baskerville's Request For A Dismissal With Prejudice Because The Government Drafted Declarations For Counsel's Signature Is Frivolous

With no other meritorious claim, Baskerville contends the Government, in responding to the § 2255 motion, fabricated defense counsel's declarations. *See* ECF No. 70 at 25 ("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."). Such "misrepresentations by the attorneys for the United States," he claims, should result in all charges against Baskerville being dismissed with prejudice. ECF No. 70 at 24. Along the way, Baskerville impugns trial counsel, who by his logic perjured themselves at the evidentiary hearing by adhering to the substance of their declarations.

Baskerville's claim should actually have the opposite effect. Rather than provide a basis for dismissing the charges, it is so obviously frivolous that it only reinforces why Baskerville's § 2255 motion should be denied. Such a misguided argument speaks volumes about the substantive merit of his first three claims.

"[B]aseless allegations of prosecutorial misconduct are not helpful to either the defendants or the profession." *United States v. Caballero*, 277 F.3d 1235, 1250 (10th Cir. 2002). Here, it is hard to conceive of a more baseless allegation. There is no misconduct at all in lawyers preparing affidavits for clients or other witnesses. "It is common practice for lawyers to draft affidavits for their client's signature; we know of no court that refuses to consider an affidavit simply because it is not personally written by the witness." *Zimmerman v. Hanks*, 248 F.3d 1162 (7th Cir. 2000) (table); *see United States v. Murphy*, 715 F.2d 39, 43 (2d Cir. 1983) ("In any event, prior to trial the prosecutors gave Murphy's counsel a draft affidavit prepared for Criden's signature, which set forth the substance of what Criden had told the prosecutors.

Under the circumstances, Murphy has shown no sufficient basis for a hearing to probe for additional details that the prosecutors may have learned from Criden.”).

What occurred here is similar to *Zimmerman* and *Murphy*. The Government drafted the declarations only *after* first sending defense counsel Baskerville’s § 2255 motion and securing Judge Pisano’s permission to interview them to gather the facts necessary to respond to Baskerville’s claims. *See* ECF No. 11 at 1–2, ¶ 1 (“trial counsel ... shall each submit to an interview by the United States’s counsel for the purpose of providing all reasonably necessary information concerning Petitioner’s claims of ineffective assistance of counsel”). Mr. Kayser’s testimony on the chronology that led to the drafting and signing of the declarations was clear:

I recall we were called down to the U.S. Attorney’s Office, I say we I was, and Carl was there; I don’t remember if I knew at the time he was going to be there. And you know, there was an indication that there was a 2255 action, and they wanted to talk to us about the case and prepare affidavits, and so they did that.

We talked about the case; I don’t remember how long we were there, it was I think at least a couple few hours. And I think we had also read -- may have read something submitted by Mr. Baskerville, I don’t recall what that was exactly but that’s my recollection. And then I received a draft which I made my modifications to and sent it back.

H-Tr. at 100; *accord id.* at 101.¹⁰ After those interviews, as Mr. Kayser made clear, declarations reflecting what was learned were drafted and sent to defense counsel to ensure that they accurately reflected what they had told the Government. The

¹⁰ Mr. Herman did not recall whether he met with the Government before receiving a draft certification, H-Tr. at 22, but the undersigned AUSAs—all of whom were present for the interview session Mr. Kayser specifically recalled—represent to this Court that defense counsel were debriefed in person for more than one hour, after which draft declarations were prepared and emailed to counsel for their review.

testimony on this was unequivocal: To the extent anything was inaccurate, defense counsel made necessary changes. H-Tr. at 22–23 (Herman); H-Tr. at 101–02 (Kayser). Defense counsel testified that they read the declarations before signing them, and the declarations were and are true and accurate. H-Tr. at 65–66 (Herman); H-Tr. 123–24 (Kayser). And Mr. Kayser specifically testified that he regarded this process as completely above-board:

A. I viewed it much as an affidavit or a certification in a civil case where a lawyer ordinarily prepares it and the client reads it and makes sure it's okay with him and signs it.

Q. Have you ever done that in a civil case?

A. Yeah, I mean I -- I haven't been involved in civil cases in a while now, but going back years yes, that's the way civil firms tend to do it. And I had did some civil litigation back in the day and I remember preparing affidavits or certifications for people and reviewing it with them. Much the same as this one was prepared I would talk to them, find out, you know, confirm what the facts were; I would do the drafting, probably I could write a little better, I would give to it them, make sure they agreed with it and then sign it.

H-Tr. at 104–05.

The Government stands by the process that led to the creation of the declarations and their substance, just as Messrs. Herman and Kayser did by testifying that their declarations were true and accurate when executed. Sadly, Baskerville's claim "shows how loose counsel can be with accusation of prosecutorial misconduct." *United States v. Lanier*, 879 F.3d 141, 151 (5th Cir.) ("While attorneys must zealously represent their clients, we lament the willingness of Lanier's counsel to distort the record and challenge opposing counsel's integrity with accusations that (in our view) could not have been made in good faith."), *cert. denied*, 139 S. Ct. 247 (2018).

CONCLUSION

For the foregoing reasons, and for the reasons set forth in the Government's initial Response, this Court should deny the remaining claims in Baskerville's § 2255 motion and decline to issue a certificate of appealability because he has not "made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see* Rule 11(a) of the Rules Governing Section 2255 Proceedings ("The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.").¹¹

Respectfully submitted,

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United States Attorney

By: s/ Steven G. Sanders
STEVEN G. SANDERS
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ROBERT L. FRAZER
Assistant U.S. Attorneys

Date: August 5, 2019
Newark, New Jersey

¹¹ And because there was no deficient performance in not calling Curry and Rakeem, there is no need to hear live testimony from them. *See* ECF No. 66 at 2.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

WILLIAM BASKERVILLE,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 13-5881

(Crim. No. 03–836)

Hon. Peter G. Sheridan, U.S.D.J.

**SUPPLEMENTAL APPENDIX OF THE UNITED STATES
VOL.I (PP. 1–670)**

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DATE RECORDED	NOVEMBER 25, 2003
TIME OF RECORDING	4:00 P.M.
CALL NUMBER	09349
SUBJECTS OF TAPE	HAKEEM CURRY (CURRY) PAUL BERGRIN (BERGRIN) UNIDENTIFIED FEMALE (UF)
PHONE NUMBERS	INCOMING CALL FROM () FROM (862) 205-9273
ABBREVIATIONS	UNINTELLIGIBLE (UI)

1 (PHONE RINGING)

2 CURRY: Paul.

3 BERGRIN: Hey Hak, I just came from, I just came from Magistrate's Court, I'm going
4 over to the actual cell block.

5 (SIDE CONVERSATION IN BACKGROUND)

6 BERGRIN: Hey Esther where is he on the 5th FL across the street?

7 UF: [UI] 4th floor.

8 BERGRIN: Where they take the prisoners across the street?

9 UF: Yeah go here and you want to press the basement and you will go right down.

10 BERGRIN: Alright.

11 UF: But buzz the, dial 295 there is nobody else in there.

12 BERGRIN: Oh, okay.

13 UF: To get in make the left, there is going to be a phone and another set of doors,
14 295.

15 BERGRIN: Alright, thanks a million.

16 (TELEPHONE CONVERSATION CONTINUES)

17 BERGRIN: Hak.

18 CURRY: Yeah.

19 BERGRIN: They bind him pretty heavy. They got four, four hand to hand sales. They
20 say they have him recorded and under surveillance with surveillance video.
21 He's facing life you know.

22 CURRY: Yeah.

1 BERGRIN: Yeah, um the informant, I'm gonna, he said, I got a chance to speak to
2 William and he said the informant is a guy by the name of Kamo.

3 CURRY: Kamo?

4 BERGRIN: Yeah.

5 CURRY: From where?

6 BERGRIN: I don't know. He's gonna, I'm going to go over now and speak with him and
7 see him.

8 CURRY: Alright get detail and detail and call me back.

9 BERGRIN: Alright.

10 (END OF RECORDING)

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- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 06/28/2004

On June 17, 2004, RODERICK BOYD, a Federal inmate at Passaic County Jail, was interviewed by the undersigned agents in the presence of his attorney, LAURIE FIERRO, telephone (201) 489-9888. BOYD had requested to speak to the agents regarding information on HAKIM CURRIE and CURRIE's associates.

BOYD is currently incarcerated with NORMAN SANDERS, OSCAR LAST NAME UNKNOWN, JASON HANNIBLE, ALQUADIR CLARK, MALIK LATIMORE, TAHID MITCHELL, ATIF AMEEN aka SAH. NORMAN SANDERS' girlfriend, PAULA, brought him a picture of LACHOY WALKER, at the instruction of HAKIM CURRIE, with further instruction to "Kill on Sight" or KOS because WALKER is a snitch. The picture shows WALKER standing alone in front of the BELLAGIO in Las Vegas two years ago at CURRIE's wedding.

PHIL, a drug dealer in the area of 30 Lenox Avenue, is bringing in money to SANDERS, and SANDERS distributes it to the rest of the crew. SANDERS is in charge now that CURRIE has been moved to Monmouth County Jail.

PHIL runs a large scale drug operation out the apartment building at 30 Lenox Avenue, East Orange. PHIL, age approximately 27, originally from Avon Avenue, has six to eight "runners" who work for him around the clock selling heroin and crack cocaine. He stashes the drugs inside apartment 480. The apartment belongs to his girlfriend's mother, TERESA LAST NAME UNKNOWN.

BOYD advised that LATIMORE and SANDERS talk openly about killing a snitch on S. Orange and 19th Street, Newark. LATIMORE killed him, and is still waiting on getting paid from CURRIE for the job. CURRIE owes LATIMORE \$37,000.

CURRIE hired PAUL BERGRIN to represent the members of his crew. CURRIE is paying BERGRIN directly, and BERGRIN is conspiring with his associates to represent CURRIE's associates. BERGRIN is calling the shots from behind the scenes, and CURRIE is paying him cash, under the table, in return.

Investigation on 06/17/04 at Paterson, NJ

File # 166E-NK-109413-M, 166E-NK-109314-B

Date dictated 6/17/04

by SO HENRY DILLON

by SA SHAWN A. MANSON/sam

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CRIMINAL NO. 04-280 (FSH)

-----x
UNITED STATES OF AMERICA, : TRIAL
:
-vs- : TRANSCRIPT
: OF
HAKEEM CURRY, et al., : PROCEEDINGS
:
Defendants. :
-----x

Newark, New Jersey
July 12, 2006

B E F O R E: HONORABLE FAITH S. HOCHBERG, U.S.D.J.

AND A JURY

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

CHRISTOPHER J. CHRISTIE, ESQ.,
United States Attorney,
BY: JOHN GAY, ESQ.,
ROBERT FRAZER, ESQ.,
Assistant United States Attorneys
For the Government

WALDER, HAYDEN & BROGAN, ESQS.,
BY: JAMES A. PLAISTED, ESQ.,
LIN SOLOMON, ESQ.,
Attorneys for the Defendant Curry

TROY ARCHIE, ESQ.,
Attorney for the Defendant Baskerville

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

JOHN KEVIN STONE, C.S.R.
Official Court Reporter.

JOHN KEVIN STONE, CSR

1 And if there's, you know, even if there's just an
2 hour of stuff, they get to hear your tape, if you change
3 your mind about witness --

4 MR. PLAISTED: Two seconds.

5 THE COURT: How long -- the tape is a short --

6 MR. PLAISTED: Yes. It's a -- it's -- yes, but
7 whatever we should do we should do.

8 THE COURT: Remember, I'm the one that's loopless
9 here. I don't know what's happening until it happens. The
10 Government has less than an hour rebuttal case, if you rest.

11 The other thing is since we're here, are -- we're
12 on the record, your clients are nowhere to be heard, nobody
13 could deem this coercive, I'm going --

14 MR. PLAISTED: Whenever Your Honor wants, we can do
15 that.

16 THE COURT: When do you want -- do you want to do
17 it now, go back in now, then bring the --

18 MR. ARCHIE: That's fine.

19 THE COURT: Does your client want to hear my
20 rulings on the documents before he makes a final decision on
21 testifying?

22 MR. PLAISTED: I don't think so.

23 MR. ARCHIE: No, Judge.

24 MR. PLAISTED: No, Your Honor. We've discussed it
25 at length many days --

1 THE COURT: Him testifying --

2 MR. PLAISTED: Many days.

3 We've discussed many times his testifying or not
4 testifying. He's arrived at the decision, and I'm glad to
5 put it on the record now, or whenever Your Honor deems
6 appropriate.

7 THE COURT: Well, you -- I'm letting -- I'm not
8 requiring it. You asked a long time ago for the
9 opportunity --

10 MR. PLAISTED: Yes, I want it, I want him to agree
11 on the record.

12 THE COURT: -- to do it.

13 MR. GAY: Might as well do it in front of --

14 THE COURT: That's the reason I've been raising --
15 I've tried to be a person of my word, and I've tried to
16 remember things, and I tried to keep lists of all the open
17 issues and go over them repeatedly.

18 Is there any other open issue that anybody can
19 think of? I've tried to keep tallies.

20 Mr. Archie, you're the quitest one at this trial.

21 MR. ARCHIE: Judge, I have one document to move in,
22 that's it.

23 THE COURT: And that's unobjected --

24 MR. ARCHIE: I believe so.

25 MR. GAY: Yes, I believe so. I got to

1 double-check.

2 Rob, was the one who was checking, but yes, I don't
3 think there's going to be an objection.

4 THE COURT: All right.

5 So plan -- you want to do -- you want to both make
6 your records now before we bring the jury in?

7 MR. GAY: If I can just make a suggestion. Why
8 don't we just have the jury come back after lunch and take
9 care of every bit --

10 MR. PLAISTED: Can't we give them the instruction?

11 MR. GAY: All right. Okay.

12 THE COURT: I'm going to give them the instruction
13 now and send them to lunch.

14 MR. PLAISTED: That's fine. Okay.

15 (In court).

16 THE COURT: Be seated.

17 Okay.

18 We're going to bring the jury in now.

19 THE CLERK: All rise.

20 (Jury enters).

21 THE COURT: All right.

22 Be seated everyone.

23 This is going to be very brief, this morning,
24 because you're about to go to lunch.

25 I just wanted to tell you before lunch the

JOHN KEVIN STONE. CSR

1 following: All counsel, both the Government and the defense
 2 and the court, wish to inform you that the occurrence with
 3 one juror's car, which you may have discussed or heard
 4 about, has no bearing on this case at all. There is no
 5 reason to believe it has anything to do with this case. I
 6 direct you not to further discuss it amongst yourselves, and
 7 not to consider it in any way. Further, simply put it out
 8 of your minds. Please enjoy your lunch and we'll proceed
 9 with the the case as soon as you're finished with your
 10 lunch. Thank you all very much.

11 THE CLERK: All rise.

12 (Jury exits).

13 THE COURT: Okay.

14 All right. Obviously everybody here needs lunch as
 15 well.

16 Is there -- is that Mr. Thomas? Hello, Mr. Thomas.

17 MR. THOMAS: How are you, Judge?

18 THE COURT: Wait a minute, Mr. Thomas --

19 MR. THOMAS: Judge, just for the record, and this
 20 is by agreement, I don't travel with an entourage, he was
 21 with his entourage, I'm not in his entourage.

22 (Laughter).

23 THE COURT: Absolutely, everyone is in your
 24 entourage, Mr. Thomas, especially with that stylish tie on.

25 Just teasing you, Mr. Thomas. Just a pleasure. I

1 only expected to see you with the mayor.

2 Did he actually take office?

3 MR. THOMAS: He took office, yes, on July 1st.

4 THE COURT: All right.

5 You don't know what happened, I'm --

6 MR. PLAISTED: Oh, I did, I met him at a jail
7 with --

8 MR. THOMAS: I heard, I just wanted to correct the
9 record, Cory is in my entourage, he's lost in the federal
10 system. Still, if I'm at city hall, I'm in his entourage.
11 He's here, he's in my entourage.

12 (Laughter).

13 THE COURT: Okay. We're going to send him a copy
14 of this transcript along with the prior portion where Mr.
15 Plaisted informed the court that Mr. Booker came in with an
16 entourage, which was just you, Mr. Thomas.

17 MR. THOMAS: I apologize.

18 (Laughter).

19 THE COURT: You are large enough to be an entourage
20 certainly in terms of your don't personality.

21 MR. THOMAS: Cory was a little nosey about what
22 goes on in federal court and I was trying to explain to him
23 what was going on.

24 THE COURT: Well, it's a public court, and even
25 he's allowed to come in, as are you, at any time. So it's a

1 pleasure to see you again. I hope you didn't mind the
2 good-natured ribbing.

3 MR. THOMAS: I didn't mind it, Your Honor.

4 THE COURT: All right.

5 Do you have an application or are you just here to
6 enjoy the ambience?

7 MR. THOMAS: No, Judge Mautone is on break, I can't
8 go, I just figured I'd come and sit in. I guess you're
9 going on break too.

10 THE COURT: All right.

11 Well, yes, we are.

12 Does anybody, either side have anything it wishes
13 to do before the lunch break?

14 MR. PLAISTED: We could do what I had asked Your
15 Honor to do, which is just to confirm my decision with Mr.
16 Curry.

17 THE COURT: Certainly, Mr. Plaisted.

18 MR. PLAISTED: What has happened is I have
19 discussed at length over the last two weeks and even before
20 then, my recommendation to Mr. Curry that he should not
21 testify in this case. He and I have discussed it a number
22 of times. My recommendation was that he should not. He has
23 come to a decision that he is willing to follow my advice in
24 that regard and he chooses not to testify in this case.

25 Is that correct, Mr. Curry?

JOHN KEVIN STONE, CSR

1 THE DEFENDANT: Yeah, I'm following your advice.

2 THE COURT: I'm sorry?

3 THE DEFENDANT: I'm just following my counsel
4 advice. I'm following his advice, my lawyer.

5 THE COURT: All right.

6 But you understand, of course, that he's explained
7 to you all the rights you have and you understand them, have
8 no other questions?

9 THE DEFENDANT: Yes, I'm just following his advice.

10 THE COURT: Okay. Great.

11 Thank you, Mr. Plaisted.

12 Mr. Plaisted, you of course have explained to him
13 that he has the right to both to and not to testify, if he
14 chooses.

15 MR. PLAISTED: I've gone through every permutation
16 of it with Mr. Curry at length, and we've discussed
17 different aspects of it as the trial has gone on, my advice
18 to him has been that -- and he has agreed to follow my
19 advice in that regard.

20 THE COURT: All right. Fine. Thank you.

21 And I certainly do not wish to ask any further
22 questions or in way intrude on the attorney-client
23 relationship or any strategy decisions that are made in that
24 respect.

25 Yes, Mr. Archie.

JOHN KEVIN STONE, CSR

1 MR. ARCHIE: Judge, I've also discussed, Your
2 Honor, my client's constitutional right to testify in his
3 own defense, and he indicates that he does not wish to
4 testify in this case.

5 THE COURT: He's told you that, sir?

6 MR. ARCHIE: Yes.

7 THE COURT: All right. Thank you, Mr. Archie, for
8 informing me of that.

9 All right. Is there anything further that anybody
10 else wishes to say before the lunch break?

11 Was there any the Government wanted?

12 MR. GAY: No, Your Honor.

13 I guess the only thing, nothing on that matter,
14 Judge, but before the jury comes in, are we going to resolve
15 the document issues or are we not?

16 THE COURT: Yes.

17 What my plan was, I'll let everybody have a bite to
18 eat, since it's been a long morning.

19 MR. GAY: Okay.

20 THE COURT: And not a normal morning. And then we
21 would try to resume as quickly as we could. I mean perhaps
22 counsel and everyone could convene back here just as fast as
23 they can.

24 MR. GAY: Yes.

25 THE COURT: So we don't keep the jury waiting too

UNITED STATES DISTRICT COURT
District of New Jersey

UNITED STATES OF AMERICA

v.

Case Number 04-00280-002

HAKEEM CURRY

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, HAKEEM CURRY, was represented by James Plaisted, Esq. and Lin Solomon, Esq.

The defendant was found guilty on counts 1, 3, 6, 7, 8, 9, 10, 11, 12, 13 and 14 by a jury verdict on July 24, 2006 after a plea of not guilty. Accordingly, the court has adjudicated that the defendant is guilty of the following offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Numbers</u>
21:846 [21:841(a)(1) & (b)(1)(A)]	Conspiracy to Distribute Five Kilograms or More of Cocaine and One Kilogram or More of Heroin	December 2005	1
21:841(a) & (b)(1)(B)	Distribution and Possession with Intent to Distribute 100 Grams or More of Heroin	March 5, 2004	3
18:1956(a)(1)(B)(I)	Conspiracy to Launder Narcotics Proceeds	January 29, 2004	6, 7, 8, 9, 10, 11, 12, 13 and 14

As pronounced on February 7, 2007, the defendant is sentenced as provided in pages 2 through 3 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. § 3553(a).

It is ordered that the defendant shall pay to the United States a special assessment of \$1,100.00, for counts 1, 3, and 6-14, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the ^{13th} day of February, 2007.

I HEREBY CERTIFY that the above and foregoing is a true and correct copy of the original on file in my office.

ATTEST 6-25-19

WILLIAM T. WALSH, Clerk
United States District Court
District of New Jersey

By:

Deputy Clerk


FAITH S. HOCHBERG
United States District Judge

Defendant: HAKEEM CURRY
Case Number: 04-00280-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for the remainder of defendant's natural life on Count 1 of the Indictment. The defendant is committed to the custody of the Bureau of Prisons for a term of 480 months on Count 3 of the Indictment, to be served concurrently with the sentence on Count 1 of the Indictment. The defendant is committed to the custody of the Bureau of Prisons for a term of 240 months on each of Counts 6, 7 and 8 of the Indictment, to be served concurrently with one another and concurrently with the sentences on Counts 1 and 3 of the Indictment. The defendant is committed to the custody of the Bureau of Prisons for a term of 240 months on each of Counts 9, 10 and 11 of the Indictment, to be served concurrently with one another and with the sentences on Counts 1 and 3 of the Indictment, but to be served consecutively to the sentences on Counts 6, 7 and 8 of the Indictment. The defendant is committed to the custody of the Bureau of Prisons for a term of 240 months on each of Counts 12, 13 and 14 of the Indictment, to be served concurrently with one another and with the sentences on Counts 1 and 3 of the Indictment, but to be served consecutively to the sentences on Counts 6, 7 and 8 of the Indictment and the sentences on Counts 9, 10 and 11 of the Indictment.

The Court makes the following recommendations to the Bureau of Prisons: the Court recommends that the Bureau of Prisons designate defendant to an appropriate facility where no other member of the Curry Organization is incarcerated.

The defendant shall remain in custody pending service of sentence.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: HAKEEM CURRY
Case Number: 04-00280-002

FINE

The defendant shall pay a total fine of \$8,000,000.

This fine, plus any interest pursuant to 18 U.S.C. § 3612(f)(1), is due immediately and shall be paid in full within 30 days of sentencing.

This amount is the total of the fines imposed on individual counts, as follows: \$2,500,000 on Count 1, \$1,000,000 on Count 3, and \$500,000 on each of Counts 6, 7, 8, 9, 10, 11, 12, 13 and 14.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
District of New Jersey

UNITED STATES OF AMERICA

v.

Case Number 04-00280-011

RAKIM BASKERVILLE

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, RAKIM BASKERVILLE, was represented by Troy A. Archie, Esq.

The defendant was found guilty on count 1 by a jury verdict on July 24, 2006 after a plea of not guilty. Accordingly, the court has adjudicated that the defendant is guilty of the following offense:

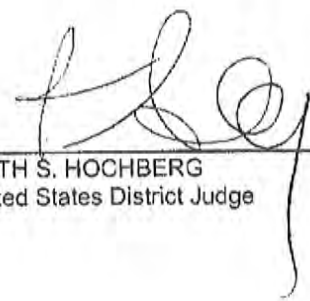
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number</u>
21:846 [21:841(a)(1) & (b)(1)(A)]	Conspiracy to Distribute more than Five Kilograms of Cocaine and more than One Kilogram of Heroin	December 2005	1

As pronounced on January 31, 2007, the defendant is sentenced as provided in pages 2 through 3 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. § 3553.

It is ordered that the defendant shall pay to the United States a special assessment of \$100.00, for count 1, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the 1st day of February, 2007.



FAITH S. HOCHBERG
United States District Judge

I HEREBY CERTIFY that the above and foregoing is a true and correct copy of the original on file in my office.

ATTEST 6-25-19
WILLIAM T. WALSH, Clerk
United States District Court
District of New Jersey

By: 

Deputy Clerk

Defendant: RAKIM BASKERVILLE
Case Number: 04-00280-011

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for the remainder of defendant's life.

The Court makes the following recommendations to the Bureau of Prisons: the Court recommends that the Bureau of Prisons designate defendant to an appropriate facility where no other members of the Curry Organization are incarcerated.

The defendant shall remain in custody pending service of sentence.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: RAKIM BASKERVILLE
Case Number: 04-00280-011

FINE

The defendant shall pay a fine of \$25,000.

This fine, plus any interest pursuant to 18 U.S.C. § 3612(f)(1), is due immediately and shall be paid in full within 30 days of sentencing.

The Court determines that the defendant does not have the ability to pay interest and therefore waives the interest requirement pursuant to 18 U.S.C. § 3612(f)(3).

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

RECEIVED
MAY 11 2007
AT 8:30
WILLIAM T. WALSH
CLERK

UNITED STATES OF AMERICA

v.

WILLIAM BASKERVILLE

Criminal No. 03-836 (JAP)

**PENALTY SELECTION STAGE
SPECIAL VERDICT FORM**

As to defendant William Baskerville, on the penalty selection stage issues submitted for our determination, we, the Jury, find as follows:

Step One: "Non-statutory" Aggravating Factors

For each Count, which one or more of the Non-statutory Aggravating Factors, if any, do you unanimously find the prosecution has proved beyond a reasonable doubt? Non-statutory Aggravating Factors are identified below and were explained in the Court's Penalty Selection Stage instructions to you. For each Non-statutory Aggravating Factor listed below, please put an "X" in the appropriate column under each Count to indicate whether you unanimously find that the prosecution has proven beyond a reasonable doubt the existence of that Non-statutory Aggravating Factor.

Non-statutory Aggravating Factors	Count 1		Count 2	
	We unanimously find this factor has been proved.	We do not unanimously find this factor has been proved.	We unanimously find this factor has been proved.	We do not unanimously find this factor has been proved.
Obstruction of Justice	X		X	
Future Dangerousness		X	X	
Victim Impact	X		X	

If you unanimously found at least one Non-statutory Aggravating Factor for a particular Count, you may consider that factor or those factors in **Step Three**, below, for that Count. Whether or not you find any Non-statutory Aggravating Factors, go on to **Step Two**.

Step Two: "Mitigating" Factors

Which Mitigating Factors, if any, do any of you find the defendant has proved by the greater weight of the evidence for each Count? Mitigating Factors were explained in the Court's Penalty Selection Stage instructions to you, and those factors specifically asserted by the defendant are listed below. You may also identify any further Mitigating Factors that any juror finds, and this section contains blank lines in which you may write these additional factors, if any. (If you need additional space, simply write "continued" on the bottom of the page and continue on the back.) You will recall that a finding that a Mitigating Factor has been proven by the greater weight of the evidence need not be unanimous. Please indicate the number of jurors finding any Mitigating Factor in the column for any Count for which those jurors find that the Mitigating Factor applies.

Mitigating Factors	Count 1 Number of Jurors Who Find Mitigating Factor		Count 2 Number of Jurors Who Find Mitigating Factor	
1. If William Baskerville is not executed, he will spend the rest of his life in a federal prison, without the possibility of release.	7		7	
2. William Baskerville did not personally shoot Kemo McCray.	4		4	
3. The individual who shot and killed Kemo McCray, Anthony Young, will not be sentenced to death and may not even receive a life sentence.	4		4	
4. Others responsible for contributing to the death of Kemo McCray have not been charged with murder or any other crime associated with his murder.	3		3	
5. Based upon his prison and jail records, it is unlikely that William Baskerville will present a risk to prison officials or other inmates if he is sentenced to life in prison without the possibility of release.	3		2	
6. William Baskerville is a loving father to his three children, Keilah, Asad, and E'Nyah, who will suffer grief and loss if he is sentenced to death.	7		7	
7. The growth and development of William Baskerville's three children will be adversely affected if he is executed.	5		5	
8. There are a number of William Baskerville's family members who will suffer grief and loss if William Baskerville is executed.	9		11	
9. There is lingering doubt about William Baskerville's specific intent, although it does not rise to the level of reasonable doubt.	0		2	

Step Two: Mitigating Factors (Continued)		
Mitigating Factors (Continued)	Count 1 Number of Jurors Who Find Mitigating Factor	Count 2 Number of Jurors Who Find Mitigating Factor
10. William Baskerville grew up in a home without a constant or positive father figure, with an often absent mother and was left as the oldest child to be a parental figure to his six siblings.	0	0
11. William Baskerville's childhood was characterized by poverty, frequent moves, and an unstable home environment.	0	0
12. William Baskerville's life will have value to others if he is sentenced to spend the rest of his life in prison without the possibility of release.	11	9
13. You may have residual or lingering doubts as to William Baskerville's guilt or innocence or his role in the offenses, even though those doubts did not rise to the level of "reasonable doubts" under the instructions given to you during the "guilt phase" of the trial.	1	2
Additional mitigating factor, if any (please identify): All the testimony in the guilt phase for these counts was convicted felons with rap sheets	2	2
Additional mitigating factor, if any (please identify): William Baskerville was ill served by his original lawyer.	9	10
Additional mitigating factor, if any (please identify): Kemo put himself in harms way.	2	2
Additional mitigating factor, if any (please identify):		

In Step Three, for each Count, each of you must weigh any mitigating factor or factors that you individually found to exist in this Step Two. Each of you may also weigh any mitigating factor or factors that another or others of your fellow jurors found to exist.

Step Three: Weighing The Factors

After weighing the "Statutory" Aggravating Factors found in the "eligibility stage" of the trial, together with any Non-statutory Aggravating Factors found in **Step One** of this "penalty selection stage," and any Mitigating Factors found in **Step Two**, as explained in the Court's Penalty Selection Stage instructions to you, what sentence do you impose for each Count? Please put an "X" in the column for each Count to indicate your finding that a particular sentence must be imposed.

Sentence	Count 1	Count 2
We the jury decide, by unanimous vote, that a sentence of life imprisonment without possibility of release shall be imposed upon defendant William Baskerville.		
We the jury decide, by unanimous vote, that a sentence of death shall be imposed upon defendant William Baskerville.		
We the jury, having carefully considered the issues before us, having made any appropriate findings in accordance with the Court's instructions, and having engaged in careful and thorough deliberation and discussion, are nonetheless unable to reach a unanimous verdict as to whether death is the appropriate sentence for William Baskerville. We understand that the consequence of this is that the defendant will be sentenced to life imprisonment without the possibility of release.	X	X

Certification: By signing below, first by juror number, then by name, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision, and that the individual juror would have made the same determination regarding a sentence for the crime or crimes in question regardless of the race, color, religious beliefs, national origin, or sex of the defendant, or the victim or victims. (See Instruction titled "Justice Without Discrimination" in Final Instructions for Penalty Selection Stage).

Nos. 07-1411 & 07-1467

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

UNITED STATES OF AMERICA

v.

**RAKIM BASKERVILLE and
HAKEEM CURRY,**

Appellants

**Consolidated Appeals from Final Judgments in a Criminal Case of the
United States District Court for the District of New Jersey (Crim. No.
04-280). Sat Below: Honorable Faith S. Hochberg, U.S.D.J.**

CONSOLIDATED BRIEF FOR APPELLEE

**RALPH J. MARRA, JR.
Acting United States Attorney
GEORGE S. LEONE
Chief, Appeals Division
Attorneys for Appellee
970 Broad Street
Newark, New Jersey 07102-2535
(973) 645-2750**

On the Brief:

**STEVEN G. SANDERS
Assistant U.S. Attorney
(973) 297-2019**

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TABLE OF ABBREVIATIONS

“BA”	refers to Defendant Rakim Baskerville’s Appendix.
“BB”	refers to Defendant Rakim Baskerville’s Brief.
“CA”	refers to Defendant Hakeem Curry’s Appendix.
“CB”	refers to Defendant Hakeem Curry’s Brief.
“Dkt.”	refers to a docket entry number on a docket sheet.
“SA”	refers to the Government’s separately bound Supplemental Appendix.

CROSS-REFERENCE TABLE

<u>Government's Argument Sections</u>	<u>Appellants' Argument Sections</u>
Point I	BB Point VI
Point II	BB Point I
Point III	BB Point II & CB Point II*
Point IV	BB Point III & CB Point III
Point V	BB Point IV
Point VI	BB Point V
Point VII	BB Point VI
Point VIII	BB Point VII
Point IX	CB Point I
Point X	CB Point IV

* As neither Defendant has included a statement pursuant to Federal Rule of Appellate Procedure 28(i), the only issues common to both Defendants are Points II and III of their respective briefs.

STATEMENT OF RELATED CASES AND PROCEEDINGS

In May 2006, this Court denied Hakeem Curry's petition for a writ of mandamus. CA294 (Appeal No. 06-2356). Of the thirteen coconspirators who pleaded guilty in the District Court, only two have appealed: William Lattimore's appeal is pending, Appeal No. 07-2338, and Rashid Pryor's judgment of conviction was affirmed. United States v. Pryor, No. 07-1018, 275 Fed. Appx. 99 (3d Cir. 2008) (not precedential).

STATEMENT OF THE ISSUES

I. Did the District Court properly deny Baskerville's motion for judgment of acquittal?

II. A. Was joinder proper under Rule 8(b) where Count One of the Indictment charged Baskerville and Curry with participating in an overarching cocaine- and heroin-distribution conspiracy?

B. Did the District Court abuse its discretion or plainly err when it declined to grant Baskerville a Rule 14 severance?

III. Did the District Court abuse its discretion when it denied Defendants' requests for a taint hearing?

IV. Did the District Court abuse its discretion when it permitted the Government to introduce, pursuant to Rule 404(b), uncharged drug dealing by

Curry, Baskerville, and other coconspirators to show the association, mutual trust, concert of action, knowledge, and intent required to prove the charged conspiracy?

V. Did Baskerville waive any Fourth Amendment challenge to the search of the residence located at 98 19th Avenue where his suppression motion alleged no facts and cited no law entitling him to relief?

VI. Did the District Court properly deny, without a hearing, Baskerville's motion to suppress evidence seized during a warrantless search of his minivan?

VII. Did the District Court plainly err by not *sua sponte* ordering a new trial for Baskerville because of alleged prosecutorial misconduct?

VIII. Did the District Court abuse its discretion when it denied Curry's request, made two years after indictment and on the eve of trial, for a substantial continuance to add a third attorney to his defense team to replace one who withdrew due to a conflict of interest?

IX. Where a defense witness opined that a prosecution witness had a reputation as "a liar and a thief," did the District Court plainly err when it permitted the Government to ask whether the witness was aware of specific instances of truthful conduct by the prosecution witness?

X. Where Curry failed to provide an offer of proof, did the District Court plainly err by denying Curry's request to ask a question on redirect examination that did not address matters covered on cross-examination?

STATEMENT OF FACTS

Introduction

From January 2000 until March 2004, defendant Hakeem Curry¹ ran a lucrative cocaine- and heroin-distribution operation in and around Newark, New Jersey (the “Organization”). Curry’s cousin, codefendant Rakim Baskerville, served as one of seventeen street-level managers. Over the life of the conspiracy, the Organization distributed between 350 and 2000 kilograms of cocaine, and between 300 and 500 kilograms of heroin. The Organization also was responsible for two murders ordered by Curry. After his arrest, moreover, Curry unsuccessfully attempted to recruit a hit man to murder Lachoy Walker, one of the Organization’s founding partners and the Government’s main cooperating witness.

No doubt, Curry had a powerful motive to prevent Walker from testifying at trial. Walker provided detailed testimony about the formation and operation of the Organization, which was corroborated by: (1) numerous wiretap recordings;² (2)

¹ The Government uses the spelling employed in the District Court for the sake of consistency. See DB11 n.2.

² A DEA task force began investigating Curry in November 2002, and intercepted numerous phone calls among Curry and his coconspirators between September 2003 and February 2004. CA1104-387. Walker interpreted certain code words and phrases for the jury, CA3814-19, and an expert witness opined that the coconspirators routinely discussed multi-kilogram quantities of cocaine and dollar amounts as large as \$75,000. CA6047-48, 6050-53, 6054-71, 6139-236.

testimony from DEA agents regarding surveillance of, and seizures of evidence from, Organization members; and (3) records subpoenaed from various entities showing that Curry (a) routinely bailed out and hired counsel for coconspirators who had been arrested, (b) laundered drug proceeds by using straw buyers to purchase luxury vehicles, and (c) spent thousands of dollars on jewelry and trips, money that could only have come from an illicit source of income. Construing “the evidence in the light most favorable to the government, as the verdict winner,” United States v. Kemp, 500 F.3d 257, 265 n.4 (3d Cir. 2007), proof of Curry’s and Baskerville’s guilt was overwhelming.

A. The Curry Organization’s Cocaine and Heroin Dealing.

1. 1993 To 1999.

Curry and Lachoy Walker met in or around 1984, when the two lived at the Georgia King Village (“GKV”) housing projects in Newark, New Jersey. CA3405-07, 4169. In 1993, Curry (then 18) suggested that he and Walker (then 20) pool their money and begin selling cocaine. CA3428-29. Curry purchased cocaine in New York City; Walker would repackage it into \$25 “clips;” and the two would sell it on the streets at GKV. CA3429-30, 4486. In 1994, childhood friend Ishmael Pray became a partner in Curry’s and Walker’s cocaine-distribution operation. CA3444-48, 4210-11, 4482, 8437. Two years later, Curry began

acquiring “bricks” of heroin for distribution. CA3461-62.³ Curry obtained the heroin from one of two suppliers, provided it to Walker, and Walker either sold it on the street at GKV or provided it to street-level dealers he had hired for that purpose. CA3462-65. Walker stopped selling drugs in December 1996 after he was incarcerated for an assault and kidnaping conviction. CA3464-69, 4174.⁴

In November 1997, Walker was released from custody after serving 14 months. CA3472, 4184, 4384. Curry picked up Walker in a silver Mercedes, took him to New York City, and spent between \$6000 and \$8000 on clothing for Walker and himself. CA3472-73, 4384. Eventually, the two returned to Curry’s lavishly furnished apartment in West Orange, where Curry explained that the Organization had grown so much in the past fourteen months that Curry had made \$400,000 in profits. CA3474-75, 3480-81, 3546, 4193. That growth stemmed from the fact that Curry had found a new heroin supplier, Alquan Loyal. CA3474-75, 3546-47. Curry was supplying heroin to various individuals for street-level distribution at various locations. CA3478. When Curry’s heroin supply dried up, Walker resorted to distributing cocaine for Curry at GKV. CA3547-49, 4231-33.

³ One “brick” consists of fifty glassine envelopes, each containing approximately .04 grams of heroin. CA6295, 7395-96, 7427-30.

⁴ In June 1997, Curry entered a guilty plea in a New Jersey state court to possession with intent to distribute a controlled dangerous substance and served his sentence on weekends. CA7699.

In mid-1998, Curry resumed distributing heroin. CA3550. Walker and Pray acted as street managers. CA3551. Curry supplied them with bricks of heroin, which they provided to “pitchers” (street-level dealers). CA3550-51. Curry charged Walker and Pray \$350 per brick, which they resold for \$500, paying \$50 to the pitcher, leaving them \$100 in profit. CA3553-56, 4213-14. Walker and Pray worked separate “shifts,” so that they would not “be running over each other,” allowing each “some time . . . to get some rest” so that “the operation would run smoothly.” CA3551-52. Walker watched the pitchers sell the heroin and served as a look-out; he also paid various pitchers to store his heroin supply. CA3555-56.

Walker also helped Curry purchase heroin from his supplier. CA3563. Walker was with Curry on several occasions when the supplier would take two suitcases containing 1500 to 2000 bricks of heroin from the trunk of his car and place them in the trunk of Curry’s Jeep Cherokee. CA3563-69. Curry divided up the bricks of heroin at an apartment in Irvington, New Jersey, that Walker had rented for use as a stash house. CA3564, 3569-70. Curry then telephoned various street-level managers (including Baskerville) to let them know he would be delivering quantities of heroin to them. CA3564, 3570-71. Thereafter, Curry either found the managers on the street or went to their homes to deliver the heroin. CA3464, 3570-71.

Curry kept tight control over his Organization by bailing out and hiring counsel to represent underlings (including Baskerville) who had been arrested. CA3608-10, 3613, 3617-18, 3623-25, 4184-85, 4187-88, 4212-13, 6983-84, 7829.⁵ Curry routinely used bail bondsman Scotty Berlin, CA5346, 5351, 5359, 5360-61, 5365-66, 6973-90, 7174-80, 7186-88, 7281-86, 7805-19, 7829, and Newark-based criminal defense attorney Paul Bergrin. CA1369, 3609-10, 3613, 4185, 7770. Bergrin “was the attorney for the business,” meaning Curry’s “heroin trade or organization.” CA3612, 8471. Curry was “constantly in contact with” Bergrin, “and ke[pt] tabs on [his subordinates] through the lawyer, see if anybody . . . [is] doing anything he didn’t like, or . . . telling on him;” Bergrin would report back directly to Curry. CA3609, 3613-19, 5358-59, 5365-67, 8444, 8571.

2. 2000 To 2004.

In early 2000, the Organization temporarily stopped selling drugs in GKV. CA3617-20. However, it “never skipped a beat,” functioning just as it had before 2000. CA3628. Curry was the boss, which meant he supplied heroin to all of the approximately seventeen street managers, who oversaw drug sales at any one of four areas in Newark — including Baskerville, who was responsible for 21st

⁵ In November 1999, Baskerville pleaded guilty in a New Jersey state court to possessing with intent to distribute 502 packets of heroin. CA4513-15, 7699.

Street on the Newark-Irvington border. CA3486, 3491-3500, 3507-30, 3637-48, 3875-76, 4386-89, 4405-11, 7294.

In early 2001, the Organization resumed selling heroin in GKV. CA3628, 3659, 4414-15, 4417-18, 4486. Initially, Curry provided Walker with ten bricks of heroin at a time; at the operation's peak, the amount increased to 80 bricks. CA3628-29, 3640, 3659, 4414-15, 4417-18. Walker initially sold the heroin himself, but as the operation expanded he hired up to three or four pitchers to sell the heroin for him. CA3629, 3640-41, 3659-60, 4414-15, 4417-18.

In addition to serving as a street manager at GKV, Walker performed many of the same services for the Organization that he had performed prior to 2000. Walker delivered bricks of heroin to coconspirators (and twin brothers) Jason and Justin Hannibal. CA3731-32. Walker also helped carry a bag filled with \$850,000 in cash to Curry's car, which Curry gave to his cocaine supplier. CA3721-23, 4193. Additionally, Walker accompanied Curry when Curry obtained anywhere from 1000 to 2000 bricks of heroin on consignment from his supplier and when Curry distributed that heroin to his street managers; Walker stashed heroin for Curry at the Irvington apartment; and Walker was present when Curry collected and counted money received from street managers. CA3631-49, 3659. In fact, Walker once saw Baskerville provide Curry with a "big bag" — approximately 24 by 30 inches — full of cash. CA3648-49.

By late 2002, the cocaine-distribution aspect of Curry's Organization was also thriving. CA3697, 3732. Curry received 25 to 50 kilograms every seven to ten days, and Walker broke them down into smaller quantities. CA3698-99, 3708, 3727-29, 3731, 4488. Baskerville was one of several street managers who regularly received 500 grams of cocaine for street-level sales. CA3708-09, 3875-76, 3891-92, 4475.⁶

In or around February 2003, Pray, who had been serving as a street manager, was "elevated" to "upper-level management," where he assumed responsibility for "wholesale cocaine distribution." CA3487. Pray drove a maroon minivan which various coconspirators (including Baskerville) also drove; the minivan had a "trap," a secret compartment in which to conceal narcotics, weapons, and cash, which Curry knew how to operate. CA3937-42, 3954, 3956-57, 6046, 7218.⁷

Pray obtained duffle bags full of cocaine from two sources, "Coz" and Atif Amin. CA3488-89, 3769-77, 3784-86, 3883-84, 3905-08, 4201-07, 4294-96,

⁶ At this time, Curry was stashing drugs, money, and guns at an apartment in Orange, New Jersey called "the Dungeon." CA1325, 3699, 3729-30, 4484-85, 4588, 5298-99, 5855-56. Several members (including Walker) lived at the Dungeon from time to time between 2003 and 2004. CA3703, 4306-08, 4485-86, 5779, 7219-20.

⁷ Agents concealed a tracking device under the minivan on January 30, 2004, when it was parked outside Curry's residence. CA4654-58, 4663-68, 5726-27, 5871.

4325, 4973-79, 5017-19, 5133, 5140-43, 5156-61, 5171-72, 5216-30, 5255-62, 5265-66, 5301-02, 5305, 5315-18, 5328-30, 5514-15, 5763-64, 5910-12, 5915-96. He then parsed out various quantities of cocaine to street managers, including Walker and Baskerville. CA1148-49, 1155, 1157-59, 1215, 1217-18, 1226-27, 1230-31, 1234, 3767-68, 3831-32, 3845-48, 3881-84, 3890-91, 4201-03, 4211, 4293, 4325, 4488, 4527-44, 4548-51, 5125-26, 5147, 5171, 5173, 5176-80, 5206-08, 5211-13, 5255-56, 5269-70, 5293-95, 5311-13, 5318-20, 5335-38, 5914-15, 5918, 6341-47, 6349-53, 6378-79, 6388, 7087.⁸ Pray kept a ledger reflecting how much was owed for cocaine that he had consigned to street managers. CA3908-10, 4199-4207, 4293-94, 5143-44, 5303-04, 5327, 5333-34, 5374; SA142-95.

Curry continued to focus on the heroin-distribution aspect of the Organization. He instructed Walker to deliver wholesale quantities of heroin to the Hannibal twins (who would distribute them to other street-level managers) or store them in a closet at the Dungeon. CA3760-62, 3794, 3831-38, 5147. In December 2003, however, Pray was shot and, then, arrested on an outstanding warrant, and the Hannibal twins and coconspirator Raheem Webb were arrested

⁸ On October 2, 2003, DEA agents intercepted a UPS package containing nine kilograms of cocaine destined for Amin. CA5216-30, 5255-62, 5642-44, 5758-59, 6166-71, 7298. Agents instructed UPS to advise Amin that the package would arrive after 3:00 p.m., and that same day Amin responded to Pray's request for "six more [kilograms]," by saying "it's going to have to be after three." CA1171, 6170-71.

with 360 bricks (*i.e.*, over \$60,000 worth) of Curry's heroin. CA3897-3902, 3915-16, 5372, 5394, 5494, 5869, 5893-94, 5905, 6279-6300, 6353-54, 6374, 6522-27, 7260, 7299. Curry, therefore, began collecting money owed to Pray by, and supplying cocaine to, Pray's customers. CA3902-03, 3905-06, 6537-61, 6374, 6390-91, 6403-04.

In early February 2004, Curry asked Walker, who had taken a hiatus from drug dealing, CA3895-96, 4297, 4331, 7211, to rejoin the Organization. Curry wanted Walker to hold the heroin supply as he no longer trusted the Hannibal twins with such large quantities. CA3900-02, 3910, 3916-17, 3926-27, 4319, 7213. Curry explained that another coconspirator, Taheed Mitchell, would pick up smaller quantities of heroin from Walker and deliver them to the Hannibals. CA3934-35. Curry also instructed Walker to find a new location to serve as a stash house. CA3911, 3923-24, 3926, 3930, 5385.

On February 23, 2004, Curry and Mitchell delivered a black duffle bag containing 200 bricks of heroin and two handguns to Walker. CA3973-76. Mitchell said he would call Walker to ask for various quantities he needed to deliver to the Hannibal twins, and Curry reminded Walker and Mitchell to use code when having such conversations. Id. Walker supplied Mitchell with his cell phone number for that purpose. CA3977. Walker took the bag containing the heroin into his apartment and put it under the bed, and he stashed in a drawer next

to his bed the two handguns (one of which Curry retrieved the next day). CA3979-81, 3985-86. Thereafter, Mitchell called Walker on several occasions to pick up various quantities of heroin for delivery to the Hannibal twins until the supply was exhausted. CA3981-84.

On February 25, 2004, Curry discovered something on his new Land Rover, which attorney Paul Bergrin explained was a transponder planted by law enforcement officers to track Curry's movements. CA1369, 3992-94, 5504-05. The transponder, which DEA agents had planted two days earlier, stopped transmitting that evening. CA4577-79, 4665-68, 5505-06, 7172-73. When Curry next met with Walker, he used a "radio frequency detector" to ensure that Walker was not concealing any recording devices. CA3994-95, 5537. Curry switched phones and provided his new number to Walker, and gave Walker \$200 and ordered him to buy a new phone. CA3996-97.

Two days later, after intercepting conversations about a cocaine shipment and witnessing what appeared to be a drug transaction, DEA agents arrested coconspirators Atif Amin, Oscar Larson, and Rasheed Pryor, and executed a search warrant at Larson's residence in Orange, New Jersey. CA4724-26, 4746-56, 5516-17, 5906, 5989, 6235-36, 6939-40, 6943, 7298. Agents recovered approximately five kilograms of cocaine, a razor blade, two scales, and a .45 caliber handgun. CA4726-34, 4756-57, 5906, 6311-12, 6943-47, 7298.

Despite discovering the transponder, and despite the arrests of Amin, Larson, and Pryor, Curry did not shut down the Organization. He called Walker several days later and asked him to meet in Irvington, New Jersey. CA3998. When Walker arrived, Curry mentioned that Amin had been arrested and expressed concern about the increasing law enforcement scrutiny. CA3999-4003. Curry then took a shopping bag out of his trunk, told Walker there was \$100,000 in it, and asked Walker hold it. CA3998-99, 4002, 4427. Later that day, Curry instructed Walker to give the \$100,000 to Curry's heroin supplier. CA4006-13, 4427-28.

On March 3, 2004, Walker was present when Curry received 200 bricks (400 grams) of heroin from his supplier. CA4029-32, 4427-28. Baskerville arrived in his own car. CA4033-34, 4428-29. Curry gave 100 bricks to Baskerville, gave 100 bricks to Walker, and drove Walker back to his house. CA4034-39, 4428-29, 4432, 7088. Curry instructed Walker to stash the heroin just as he had done previously and to dispense whatever quantities Mitchell requested. CA4038-39. Curry also said that Baskerville was complaining that Curry had given him only 100 bricks. Id. Walker stashed the heroin in a shoe box under his bed. CA4042-43, 4058.

On March 4, 2004, DEA agents arrested Walker after he went outside to warm up his car. CA4065-66, 4163, 4984. Walker told the agents the location of

the 100 bricks of heroin and the 9 millimeter handgun — the second of the two firearms Curry had given Walker on February 23rd. Walker ultimately agreed to cooperate. CA4066-67, 4070-71, 4163-65, 4189-92, 4309-10, 4312-13, 4985-86, 4992-95, 5011-12, 5521-26, 5834-36, 7299. The DEA devised a plan for Walker to make a controlled delivery of the heroin to Curry. CA4072-76, 4230-31, 4478-79, 4682-83, 5518, 5528-29, 5531-40, 5556-57, 5799-5800, 5899-903.

Walker made two phone calls to Curry pursuant to the plan devised by the DEA, and Curry agreed to meet Walker. CA1372-74, 4076-77, 5531, 5558. Curry pulled up in a Ford minivan, and (with DEA agents video- and audio-taping the controlled delivery) Walker put the bag containing the heroin under his jacket, got into the van with Curry, and placed the bag between the driver's and passenger's seat. CA4078-81, 5549-54, 5559-60. Curry asked, "Is that the shit?" and Walker responded affirmatively, explaining that his girlfriend did not want the heroin inside the house. CA1375, 4083, 4093. Curry became angry and tried to persuade Walker to store the drugs in his mother's house until he could secure a faster vehicle. CA1375-76, 4084, 4095. Curry then spontaneously asked Walker, "Where the gun at?" (*i.e.*, the second of the two handguns that Curry had given Walker on February 23rd); Walker explained that he had forgotten it in his rush to get the heroin out of his house. CA1376, 4084-85, 4169. DEA agents moved in when they heard Curry and Walker arguing loudly about what to do with the

heroin; they recovered the heroin and arrested Curry after a brief chase. CA1376-79, 4086, 4371-72, 4567-71, 4761-71, 4843-45, 4979-83, 5560-62, 5796-97, 5947-48, 7320.

Walker then called Tyheed Mitchell and asked him to meet at the Dungeon, where agents arrested Mitchell, the Hannibal twins, and Lattimore. CA1380, 4583, 5571, 5907, 5992-95. Agents recovered from the Dungeon, *inter alia*, a bag containing approximately 100 grams of cocaine, Pray's ledgers, numerous cell phones, boxes of ammunition for 9 millimeter and .357 handguns, and various pieces of jewelry, including a "GKV" medallion. CA4304, 4589-4609, 4624-31, 4637-38, 5571-72, 5779-80, 5784-85, 7220-21, 7299, 7320.

On the morning of March 8, 2004, Agents executed a search/arrest warrant at 98 19th Avenue, in Newark, New Jersey, which (according to Walker) was Baskerville's residence. CA7054. They recovered an invitation to Curry's wedding (listing several Organization members as groomsmen), two pieces of gold and diamond jewelry (which cost over \$6000 and which had been bought with cash), as well as a shirt showing on the front a pigeon sitting on a stool in a bull's eye with the words "sitting duck," and on the back the phrase, "Ain't no f*cking witness, I mind my f*cking business." CA4435-43, 4660-63, 4718, 4784-90, 4812-25, 5695-97, 6968-70, 7054, 7319, 7492-97, 7552-54. Baskerville was not at the residence when these warrants were executed, was declared a fugitive, and

was not arrested until U.S. Marshals located him outside of Baltimore, Maryland, in November 2005. CA5583-84, 7055-57, 7336-52, 7373-74.

Later on March 8th, agents arrested coconspirator Howard Norman Sanders and searched his residence. CA4609-11, 4717. They recovered, among other things, a .40 caliber semiautomatic weapon loaded with hollow-point bullets, as well as packets of heroin. CA4612-20, 4620-22, 7299. As agents concluded their search, they noticed Baskerville's Dodge minivan parked up the street. CA4631-32, 4638-39, 4709, 4714. Agents towed the minivan to the DEA field office, where a search revealed two separate traps containing 22 bricks of heroin wrapped in the same unusual white paper as the heroin recovered during the December 2003 arrest of the Hannibal twins and during the March 4, 2004 arrest of Walker. CA4640-54, 4710, 4714-16, 4721-22, 5701, 5894-97, 5925-28, 5942, 5944-45, 7091, 7299.⁹

On March 12, 2004, agents arrested Lamont Pray, and recovered 225 vials of powder cocaine, 24 vials crack cocaine, and some ammunition from his Ford Taurus. CA4658-60, 4669-70.

⁹ A DEA chemist opined that the heroin recovered from the Hannibal twins, from Walker, and from Baskerville's van probably derived from the same supply because (1) the bricks were wrapped in the same white paper, which was unusual, and (2) the heroin (a) had the same purity level, (b) was not adulterated (*i.e.*, diluted with some other substance), and (c) contained starch. CA7430-36, 7441-43, 7449-51.

B. The Violence In Furtherance Of The Organization.

1. The July 2001 Murder Of Darnell Anderson.

In Summer 2001, Ishmael Pray and Malik Sutton employed two pitchers, Fuquan Turner and Darnell Anderson, who sold heroin on 3rd Street in Newark. CA3660, 3664, 4217-18, 4221. Pray refused to supply Anderson with any more heroin because Anderson had refused to pay for the heroin Pray had advanced to him. CA3665, 4220, 4225. As a result of this dispute, Pray felt threatened. CA3665. A hit man hired by Pray and Sutton to assassinate Anderson mistakenly shot and wounded Turner instead. CA3665-66, 3669-72, 4221. Curry, who was not consulted in advance, was angry with Sutton. CA3673, 3675-80.

That evening, as Curry, Walker, and Pray were driving on Littleton Avenue in Newark, they spotted Anderson on the street. CA3681-82. Curry said to Pray, “We should get him right there.” CA3682. Using a 9 millimeter, Organization member William Lattimore shot Anderson on the street and fired five more shots at him after he fled into a nearby apartment, killing him. CA3686, 4221-22, 6515-20. Pray owed Lattimore \$3500 for the hit. CA3684-90, 4218, 4222-25, 4322-23.

2. The March 2004 Murder Of Derek Berrian.

On the afternoon of March 1, 2004, someone fired at least eight 9 millimeter rounds at Derrick Berrian on Badger Avenue in Newark, killing him. CA6479, 6491, 6497-98, 6500. Berrian was a key prosecution witness against Curry’s

heroin supplier, Alquan Loyal, who stood charged with the February 14, 2003, shooting death of Malik Ali Cook. CA6470-78, 6485-86. On March 3, 2004, while reading a newspaper article about the Berrian murder, Curry explained to Walker that Loyal had called Curry from jail asking whether Curry was going to allow Berrian to testify against Loyal, and Curry stated words to the effect, “You know I couldn’t let that happen.” CA4014-17, 4026-30.

3. The Plot to Murder Walker.

On or about March 12, 2004 (*i.e.*, after Curry’s arrest), Curry contacted Palmer Yarborough, a high-ranking member of the Bloods street gang who had recently shared a jail cell with Anthony Massenburg, one of Curry’s drug couriers. CA6660-73, 6702-03, 6788, 6821, 6841-42, 6851-53, 7158, 7275, 8123, 8159-60. Curry offered Yarborough between \$12,000 and \$15,000 “for the body of the snitch that was working for the police in Newark,” *i.e.*, Walker. CA6667, 6675, 6706, 6823-25, 6845, 6853.¹⁰ Yarborough told Curry that he could take care of it. CA6678. Yarborough then reported Curry’s request to a local law enforcement officer, who contacted the DEA. CA6679-83, 6686-90, 6753, 6768-80, 6792-

¹⁰ When Mitchell, Lattimore, and the Hannibal twins were brought to the DEA field office for processing, Curry, who was already in a holding cell, began screaming words to the effect, “It was Walker,” which everyone repeated. CA5572-77, 5694-95, 5838.

6808, 6814-15, 6816-18, 6827-28, 6830-38, 6843-48, 6855, 6993-94, 7002, 7120, 7159-61, 7269, 7271-73, 8166-67.

C. The Money Laundering.

Curry did not file income tax returns between 1997 and 2003, and he did not have a legitimate source of income during that period. CA7580-81, 7584-85, 7588. Curry concealed the income generated by his Organization by using “straw buyers” to purchase four luxury vehicles, CA7574-78, 7593, 7649:

- On August 26, 2000, Nicole Williams accompanied Curry to Zakar Motors, an automobile dealership located in Little Ferry, New Jersey. CA4874, 7468-69. Curry purchased a blue 2000 Mercedes-Benz CL500 for \$122,000, making two cash payments of \$55,000 and financing the remaining \$12,000. CA4876-81, 7600. At Curry’s request, Williams signed various papers, and title to the vehicle was placed in her name. CA4874-76, 4909, 7599-7602.
- On July 31, 2002, Williams again accompanied Curry to Zakar Motors. CA4890-91. Curry purchased a black 2003 Mercedes-Benz SL500R for \$111,640 by receiving a \$70,000 credit for trading in the 2000 Mercedes; paying additional cash; and financing the remainder. CA4893, 7612-18. Williams paid no consideration toward the new car, but title again was placed in her name at Curry’s request. CA4892-94, 4904, 7624.
- On September 24, 2002, coconspirator Eric Schuler brought his cousin, Lavern Jones, to Zakar Motors. CA4923-25. Jones signed his name to the title of a 2003 blue Range Rover but did not pay any portion of the \$81,390 purchase price. CA4925-28, 4931-32, 7605, 7623, 7631. Rather, Curry paid a cash deposit of \$74,780, followed by a cash payment of \$6610. CA7626-28.
- On January 29, 2004, Jones again accompanied Shuler to Zakar Motors where Schuler acquired a 2004 white Land Rover. CA4936-

39. Curry paid the \$78,000 purchase price by obtaining a credit for trading in the 2003 Range Rover and making an additional cash payment. CA7631-34. Once again, Jones allowed the car to be titled and registered in his name even though he did not provide any consideration for and did not drive the car. CA4939-42, 7053, 7636.

Zakar Motors filed four Forms 8300 with the Internal Revenue Service that improperly omitted to state that Curry was the source of the cash used to purchase the vehicles in question. CA7593, 7603-08, 7618-24, 7628-30, 7635-36, 7656-57.¹¹

¹¹ Curry made other efforts to conceal the source of his wealth and/or to spend the proceeds of his Organization between 2000 and 2004. *First*, Curry purchased the fixtures and inventory for a new clothing store called “The Closet,” which opened in September 2003, but he concealed his ownership interest by incorporating it in someone else’s name. CA3786-94, 4328-29, 6876-77, 7586-87, 7887-95, 7899-7908, 8500. *Second*, Curry used cash to purchase over \$100,000 worth of custom jewelry and watches. CA3749-56, 4193-94, 4327-28, 7473-90, 7539-42, 7546. *Third*, Curry spent thousands of dollars paying for various trips he took with members of his Organization, including two trips to Miami, Florida, in 2001; a February 2003 trip to the NBA All Star game in Atlanta, Georgia; and a February 2004 trip to the NBA All Star game in Los Angeles, California. CA3652-57, 3745-59, 3756-57, 3914, 4228-29, 4486-87, 5183-99, 5347-49, 5812, 6947-54, 6956-67, 7188-98. *Fourth*, Curry spent in excess of \$15,000 for his August 2003 wedding at the Bellagio Hotel in Las Vegas, Nevada, which was attended by several members of the Organization. CA3794-97, 5199-5202, 6954-56, 6967-68, 7673-79, 8474-75, 8481-84.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Criminal No. 2:09-cr-00369-WJM

UNITED STATES OF AMERICA, :
v. : TRANSCRIPT OF PROCEEDINGS
PAUL W. BERGRIN, : - Excerpt of Trial -
Defendant :
- - - - -x

Newark, New Jersey
October 17, 2011

B E F O R E:

THE HONORABLE WILLIAM J. MARTINI,
UNITED STATES DISTRICT JUDGE,
and a Jury

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

UNITED STATES ATTORNEY'S OFFICE
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- and -

GIBBONS PC
BY: LAWRENCE S. LUSTBERG, ESQ., Standby Counsel
AMANDA B. PROTESS, ESQ.
For Defendant Paul W. Bergrin

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

S/WALTER J. PERELLI

WALTER J. PERELLI, CCR, CRR
OFFICIAL COURT REPORTER

WALTER J. PERELLI, C.S.R., OFFICIAL COURT REPORTER, U.S.D.C.

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I N D E X

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
SHAWN BROKOS				
By Mr. Minish	90	-	-	-

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1 Those two case agents would be permitted to stay in court.

2 Thank you.

3 THE DEPUTY CLERK: All right?

4 THE COURT: Yes.

5 THE DEPUTY CLERK: Please rise for the Jury.

6 (Jury present.)

7 THE COURT: All right, everyone, please be seated.

8 Again, I mentioned, we will now proceed to testimony.

9 Of course as I told you, the openings are an outline of the
10 case of what people intend. They're not -- intend to prove or
11 not or argue what will not be proven, but now we'll get into
12 the testimony.

13 Mr. Gay, you have a witness?

14 MR. GAY: Yes, sir.

15 THE COURT: Okay.

16 MR. MINISH: Judge, at this time the Government calls
17 Special Agent of the FBI, Shawn Brokos.

18 THE COURT: All right. We're going to administer the
19 oath. When we administer the oath, everyone please pay
20 attention it to, Mr. Minish included. Everyone. Just a
21 moment.

22

23 S H A W N B R O K O S, called as a witness, having been first
24 duly sworn, is examined and testifies as follows:

25

1 THE DEPUTY CLERK: Please state your name for
2 the record.

3 THE WITNESS: My name is Shawn, S-h-a-w-n; middle
4 initial A.; last name Brokos, B-r-o-k-o-s.

5 THE DEPUTY CLERK: Thank you. You may be seated.

6 THE WITNESS: Thank you.

7 THE COURT: Good afternoon.

8 THE WITNESS: Thank you.

9 THE COURT: Agent, if you could just be sure to keep
10 your voice up and speak into the microphone, please.

11 THE WITNESS: Okay.

12 THE COURT: All right, Mr. Minish.

13 MR. MINISH: Thank you, Judge.

14 DIRECT EXAMINATION

15 BY MR. MINISH:

16 Q Good afternoon, Agent Brokos.

17 A Good afternoon.

18 Q By whom are you employed?

19 A I work as a Special Agent for the Federal Bureau of
20 Investigation.

21 Q And is the Federal Bureau of Investigation also known as
22 the FBI?

23 A It is.

24 Q And your title is that of Special Agent?

25 A My title is a Special Agent.

1 Q How long have you been with the FBI?

2 A In January it will be 16 years.

3 Q Could you give the Jury the benefit of your educational
4 background?

5 A I graduated from Washington & Lee University with a
6 Bachelors of Science in Finance; and then went on to work in
7 the banking industry after that and did some post-graduate work
8 on an MBA.

9 Q And you said you worked in banking. What sort of jobs did
10 you hold?

11 A Out of college I worked in corporate lending, and then from
12 there I went on to become a bank manager.

13 Q Where did you train to become a FBI agent?

14 A After I left the banking industry I went to -- I applied to
15 become a FBI agent, and I went to our training academy, which
16 is in Quantico, Virginia, and it's a 16-month long -- I'm
17 sorry -- 16-week long training academy. And in the Academy we
18 are taught to become proficient in firearms, proficient in
19 defensive tactics, and then we are also given a significant
20 amount of classroom instruction which is really giving us
21 instruction on the legal system, interviewing techniques,
22 report-writing, and then detailed knowledge on the federal
23 crimes that we will work once we eventually get to our field
24 office.

25 Q Now, did you receive any specialized training?

1 A Throughout my 16 years in the Bureau I've received
2 specialized training in public corruption, which is one of the
3 violations I've worked; I've also received specialized training
4 in gang investigations; and then I have received specialized
5 training as a hostage negotiator. I'm a Bureau-certified
6 hostage negotiator.

7 Q Are you married, Agent Brokos?

8 A Yes, I am.

9 MR. BERGRIN: Your Honor, I have to object as to
10 relevancy.

11 THE COURT: Sustained. It's sustained.

12 Q Ma'am --

13 THE COURT: May I interrupt you for a second, Mr.
14 Perelli.

15 (The Court confers with the Court Reporter off the
16 record.)

17 THE COURT: Let's proceed. Go ahead, Mr. Minish.

18 MR. MINISH: Thank you, Judge.

19 Q Agent, so that the Jury is clear, what year did you receive
20 your training at Quantico?

21 A 1996.

22 Q And since you've left Quantico, where have you been
23 assigned?

24 A After I left Quantico I was assigned to work in the Newark
25 Division and I've been here ever since. My first assignment --

1 when I first got out of Quantico I got to Newark, and I
2 actually got sent back to Virginia to work for two months on a
3 temporary duty assignment to work a double homicide. After
4 that I returned to Newark and was assigned to a public
5 corruption squad, and I remained on that squad for
6 approximately four or five years; and then I transferred to our
7 gang squad -- the violent crime gang squad, and I worked on
8 that squad for approximately five years.

9 After that I was assigned to work on our other violent
10 crimes squad. We have two: One handles gangs, the other
11 handles all of our other federal violations, which include bank
12 robberies, kidnappings, extortions, interstate theft. So I
13 worked on that squad for two years. And after that I was
14 assigned to the Red Bank office of the Newark Division, and in
15 Red Bank I was placed on a public -- a white collar squad --
16 I'm sorry -- a white collar squad but assigned to work public
17 corruption on that squad.

18 Q During the course of these various assignments, did you
19 receive any specific training with respect to gang
20 investigations?

21 A While I was on the gang squad, I did. I received
22 additional training through seminars and attending various
23 week-long seminars.

24 Q And what sort of subject matter did that training cover?

25 THE COURT: Keep your voice up, Mr. Minish. Use the

1 microphone or use the podium, one or the other.

2 A We -- we were taught how to work -- how to work a gang
3 investigation, and we were instructed on the best way to go
4 about doing that. And the various things you need to look into
5 when you're looking into a gang, a lot of us had no historical
6 knowledge of gangs so we learned basically what the gangs are,
7 what they consist of, what the hierarchy of a gang is, what
8 gangs do.

9 Gangs are out there --

10 THE COURT: Okay, there's no question.

11 Please, next question, Mr. Minish. Let's keep this
12 focused and move it forward, please.

13 Q Agent, could you explain the enterprise theory of
14 prosecution --

15 A Yes.

16 MR. BERGRIN: Objection, Judge.

17 Q -- as it relates to gangs?

18 THE COURT: We don't -- I'll see you at sidebar.

19 (At the sidebar.)

20 THE COURT: Where are you going? We don't need a
21 whole.

22 MR. MINISH: I just --

23 THE COURT: Wait a second. As I understand her
24 testimony, she did the investigation of the Baskerville/Kemo
25 sales. Right?

1 Bergrin can sit here and say all these different things -- this
2 is impugning his character. It has nothing to do with his
3 character.

4 THE COURT: That's exactly why it's not that relevant.

5 MR. MINISH: But it is relevant to explain how this
6 case started, Judge. The entire case starts with Kemo and how
7 he got involved.

8 THE COURT: I'll allow you to do it but I'm not going
9 to allow you to refer to the Crips.

10 MR. MINISH: But that is how he came in.

11 THE COURT: Well, that's too bad. I'm not going to
12 allow you to do it. Do you hear me now?

13 I'll allow you to talk about he was in the drug
14 network with other people, he was making buys, he was working
15 for them to try to find bigger suppliers and move up the chain
16 and he got to Baskerville and he made four controlled buys from
17 Baskerville.

18 Did he ever negotiate with Baskerville about doing
19 kilograms or anything?

20 MR. MINISH: No.

21 THE COURT: Keep it narrow low. Okay?

22 MR. LUSTBERG: Thank you, Judge.

23 (In open court.)

24 MR. MINISH: May I continue, Judge?

25 THE COURT: Yes. Go ahead.

1 Q Now, Agent, I think when we stopped, had you received --
2 during the course of your time in the FBI, have you received
3 any training with respect to gangs and investigating them?
4 Just yes or no.

5 A Yes.

6 Q Okay. And during the course of your career, just by way of
7 background, have you received any commendations?

8 A Yes.

9 Q Okay. And more than one, a number of them?

10 A I've received several of them.

11 THE COURT: We couldn't -- go ahead. Next question.

12 Q On the other side, Agent, have you received any reprimands?

13 A Yes, I have.

14 Q And what was the subject of the reprimand you received?

15 A I was suspended for seven days for insubordination.

16 Q And after that did you receive any additional
17 commendations.

18 MR. BERGRIN: Judge, I have to object. I don't know
19 how it has relevance into this case.

20 THE COURT: I'll allow it.

21 After that incident of insubordination, did you have
22 any commendations?

23 A The majority of the commendations were after the
24 insubordination incident.

25 Q Thank you.

1 Now, have you received training or did you receive
2 training with how to deal with informants generally?

3 A Generally at Quantico we received training on how to deal
4 with informants, but it's not until you get to your field
5 office where you really are getting the on-the-job training
6 that you learn how to properly deal with informants.

7 Q And over the course of your career, how many informants
8 have you worked with?

9 A I personally have handled in excess of 50 informants.

10 Q When you say "handled," is that a term of art?

11 A I am the handling agent, so the informants -- I am
12 responsible for that informant and what that informant will do,
13 and that informant reports to me. I also have a co-case agent
14 I guess you would call it, a secondary, but I am the primary
15 handling agent. So if that informant has information or is
16 corresponding, I am usually the point of contact.

17 Q Now, when you're talking about an informant, are you
18 talking about civilians or fellow members of law enforcement?

19 A Informants are civilians.

20 Q So that the Jury is clear, could you explain the term "Task
21 Force Officer"?

22 A A lot of times on the squads that we have in the Newark
23 Division -- and this is the same throughout the country -- we
24 have task force officers who are assigned to our squads to
25 support the squads. So, for example, on our gang squad we had

1 local police officers from, let's say, Newark or Sheriff's
2 Officers Essex County, Irvington police officers, and they are
3 detailed to our squad as a member of law enforcement. They're
4 not Special Agents but they work on our squad and they are
5 referred to as "Task Force Officers."

6 Q And again, so the Jury is clear, when you're talking about
7 an informant, you're not talking about a Special Agent or a
8 Task Force Officer?

9 A No. An informant is somebody who's not employed in law
10 enforcement.

11 Q Now, could you explain to the Jury the two types of
12 informants, meaning those who have a charge pending and those
13 who are paid?

14 A Informants typically fall into two different categories. A
15 lot of times if somebody has been charged with a crime we will
16 approach them, talk to them and solicit their cooperation, and
17 they will help us, and it's referred to as working off a
18 charge. And they are given consideration ultimately by the
19 court for their assistance in whatever investigation they are
20 helping us with. And the goal is to ultimately reduce whatever
21 charge or sentence they are facing. So that is one type of
22 informant.

23 And the second type of informant that we utilize is a
24 paid informant; simply somebody who is cooperating with the
25 government, assisting us in building an investigation strictly

1 for money.

2 Q Now, when you have these type of informants, are there some
3 who are pro-actively doing things as opposed to just merely
4 giving information?

5 A We really have two, again, two different types of
6 informants. There are some informants who want to just -- they
7 just want to provide information. They want to call and tell
8 us something they saw or they heard or they witnessed, that is
9 one type of informant. The second type of informant goes a
10 little bit further. They're willing to, again, call us and
11 meet with us and tell us what they know, but they'll take a
12 step further in that they will engage in what we call a
13 consensual recording. They will wear a recording device and
14 they will have a conversation with targets of our
15 investigation. And it's that type of informant that will -- if
16 a case goes to trial, will end up being exposed because the
17 case will go to trial and that informant will have to testify
18 as the one who wore the recording device or witnessed what they
19 witnessed.

20 Q When someone decides to become an informant for the FBI,
21 are there certain rules that are explained to them?

22 A We have very strict rules to explain to the informants.
23 It's similar to the rules of engagement. It's things that they
24 can and cannot do. But the most important rule that we do --
25 and we have written, it's on a document, it's a piece of paper.

1 I go through it with the informant along with my co-case agent,
2 and we make sure that that informant knows that just because
3 they are assisting us with an investigation, they are not a law
4 enforcement officer and they are not an agent of the
5 government. They are operating at our direction but they are
6 not an agent of the government and they are not allowed to go
7 out and solicit information or participate in criminal activity
8 merely to assist us. They can work at our direction.

9 Q Okay. So it's only from your authority that they are
10 allowed to do these things?

11 A Yes.

12 Q Do you explain the safety issues to them?

13 A We do. Right up front we tell them that if they have
14 agreed to become a cooperator, from that day forward we do not
15 use their names on any reports. They get a symbol number. So
16 in any report, if they're providing me with information or an
17 agent with information, they have a designated number. So you
18 will never see their true name in any reports. We tell them
19 that we will do our absolute best to protect their identity,
20 but we can't guarantee it in the instance where they may have
21 to go to court and testify, because if the defendant is taking
22 the case to trial and the informant has worn a recording device
23 or has received certain evidence that we need to show at trial,
24 that informant ultimately will have to testify and will become
25 exposed.

1 So we do explain that to them. But before that
2 happens we do everything we can to protect their identity.

3 Q Do you also run a criminal background check on these
4 individuals?

5 A Yes. As soon as we -- that's what we do right up -- right
6 away. And we go through that criminal history with them. And
7 just by the nature of being an informant, a lot of our
8 informants have significant criminal histories and we review
9 the criminal histories with them and discuss their previous
10 arrests.

11 Q So does having a criminal history disqualify someone from
12 being an informant?

13 A No.

14 Q Why not?

15 A Well, I'll use I guess a gang investigation as an example.
16 But most people that we deal with in the gang world, an
17 informant is not going to be able to make inroads unless he or
18 she has some sort of criminal past. He is not going to be
19 accepted by the gang. So most of our informants have some sort
20 of criminal background. It makes them more credible. I mean,
21 we actually need it that way. It makes them more credible.

22 Q And if there was drug-dealing or guns or something to do
23 with gangs, would they be able to more confidentially speak
24 properly --

25 A They'd understand the drug language. In the drug world

1 there's a whole different language. They'd understand that.
2 They'd understand the terms of how the gang operated a little
3 bit more, and a lot of times they're from the very areas that
4 some of the gangs we're targeting are, so they're also known.
5 They grew up with these people, they're not outsiders. Because
6 we can never get an outsider into a gang or into any kind of
7 criminal organization.

8 Q Did there come a time, Agent, when you became familiar with
9 someone named Kemo DeShawn McCray?

10 A Yes.

11 Q Do you recall about when that was?

12 A April of 2002.

13 Q Can you tell the Jury of what the circumstances were of how
14 the FBI first became aware of Kemo DeShawn McCray?

15 A I was actually working with Kemo's mother, is named
16 Delphine. Delphine had a boyfriend at the time who was
17 Christopher Spruill. And Christopher Spruill had been an
18 informant of mine for approximately a year or two. And I had
19 told Mr. Spruill that I was really interested in focusing on
20 the Grape Street Crips.

21 MR. BERGRIN: Objection.

22 Q Without telling us specifically what --

23 THE COURT: It's not relevant to this case but --

24 Q A gang investigation?

25 A I was working a gang investigation, and Mr. Spruill

1 suggested that Kemo, Delphine's son, would be very helpful in
2 this investigation because he had significant --

3 MR. BERGRIN: Objection as to what Mr. Spruill told
4 her, your Honor.

5 THE COURT: Sustained.

6 Q Based on what Mr. Spruill said, what did you do?

7 A I approached Kemo about being an informant, and --

8 Q Could you tell the Jury how that worked?

9 A Yes, because it wasn't a typical approach.

10 I had information that Kemo was in possession of a
11 gun, a shotgun. And I went to the apartment where I knew he
12 was staying, and Delphine was at the apartment. She opened the
13 door. She let us in, and I explained to her that I understand
14 that Kemo has a gun in the home.

15 Kemo was home at the time.

16 And she had allowed us to look in the closet where I
17 knew the gun to be. I found the gun.

18 We secured the gun, and then we went to get Kemo and
19 he actually ran out the back door and was gone.

20 So I ended up --

21 Q Did you seize that weapon?

22 A We seized the weapon, we secured the weapon and we took it
23 as evidence, yes.

24 Q And when is the next time you see Kemo?

25 A Well, at that time I explained to Delphine that we need

1 Kemo --

2 MR. BERGRIN: Objection. That wasn't the question.

3 A All right.

4 THE COURT: That's all right, I'll allow that.

5 Just what you explained to Delphine is fine.

6 A Delphine tried to say the gun --

7 THE COURT: No, objection as to what Delphine said.

8 THE WITNESS: Okay.

9 THE COURT: What you told Delphine is one thing.

10 That's permissible.

11 A (Continuing) I told her we need to get to the bottom of
12 who owns this gun. There was some question as to whose gun
13 this was. So I told Delphine we need to get to the bottom of
14 this, please bring Kemo to our office so we can get to the
15 bottom of this and figure out whose guns this is.

16 And she did, in fact, do that. Several days later she
17 came in along with Kemo.

18 I sat down along with another agent --

19 THE COURT: You have to respond to questions.

20 And you have to ask questions, Mr. Minish. I don't
21 want to just let this thing be a narrative, please.

22 MR. MINISH: Yes, Judge.

23 THE COURT: Okay?

24 Q Did there come a time when you met with Kemo's mother
25 Delphine and Kemo?

1 A Yes. And --

2 Q And during the course of that meeting, what was discussed?

3 A We discussed that Kemo could work off this gun charge,
4 possible gun charge by becoming an informant.

5 Q And just so the Jury is ultimately clear: Was Kemo ever
6 charged with the gun -- with the shotgun, possession of that
7 shotgun?

8 A No, he was not.

9 Q And to your knowledge, why wasn't he?

10 A To my knowledge, it's -- it is because the case itself was
11 not that strong about Kemo being in possession of that weapon.

12 Q And did you speak with members of the U.S. Attorney's
13 Office about that charge?

14 A Yes, I did.

15 Q And were the individuals in charge of this case or the
16 investigation in which you were involved in either myself or
17 Mr. Gay?

18 A No.

19 Q So then after your discussion, did you explain anything to
20 Kemo about what would happen to him with respect to that
21 charge?

22 A I didn't tell him one way or another after that discussion.
23 He left the office that day not knowing whether or not he was
24 going to be charged with that gun.

25 Q And did he make any agreement -- or did you agree, come to

1 any agreements with him about whether or not he would be
2 involved as working for the FBI as an informant?

3 A We did. We agreed that day -- he agreed right then and
4 there to work as an informant for me.

5 Q And what did that mean exactly; him saying, okay, I'll be
6 an informant; what does that actually mean?

7 A What that means initially is I tasked him with going out
8 and finding certain information out in this gang investigation
9 I had. We had already identified several players. I asked him
10 to go out, become more familiar with these individuals, see
11 what he could see out on the streets and what he could hear on
12 the streets and report back to me.

13 Q Did you give him any tests initially to see what kind of
14 informant he would be?

15 A I did. And I do this -- I did. I asked him -- I wanted to
16 see how reliable he would be and I asked him to call me every
17 day at a set time, and he did.

18 So for the first two weeks or so we talked every day
19 at a set time. And again, that's me checking to make sure he's
20 going to be reliable and he's going to uphold his end of this
21 deal and this relationship.

22 Q And was he successful in that?

23 A Yes, he was.

24 Q Now you said -- again, without saying the name -- but you
25 said there was an ongoing gang investigation. Is that correct?

1 A There was an ongoing gang investigation in Essex County,
2 yes.

3 Q Was Mr. McCray, Kemo, a member of that gang?

4 A He was not a member but he was associated with a gang
5 because his girlfriend at the time was part of the gang.

6 Q So what did that allow him access to that perhaps another
7 individual would not have been allowed to?

8 MR. BERGRIN: I'm going to object, Judge. I thought
9 we had a colloquy on that.

10 THE COURT: No, I'll allow that question. Overruled.

11 A He was allowed in the inner circle. He did not necessarily
12 attend gang meetings but he was allowed to socialize with these
13 individuals, he hung out on the street corner with them, he
14 overheard what they were doing, what they were planning. So
15 although he wasn't technically a member of the Crips, he was an
16 associate.

17 Q And did that allow him -- did the other gang members allow
18 him, meaning Mr. McCray, to commit any illegal acts in their
19 area?

20 A He -- well, we ultimately used him to make purchases of
21 drugs from these individuals; so, yes.

22 Q And would a person not affiliated with the gang have been
23 able to do that?

24 A No. No, it would have been very difficult to make inroads
25 into this gang, but because of the relationship and he had

1 known these individuals for some time, he was able to go in and
2 make controlled purchases of narcotics from them.

3 Q And we'll explain --

4 A Okay.

5 Q -- I'll ask you to explain that to the Jury in a few
6 minutes.

7 So the Jury is clear, what was the result of the
8 criminal history check you did on Mr. McCray?

9 A Specifically what his violations were or his -- yes. He
10 had a previous robbery charge for receiving stolen property, a
11 prior weapons conviction and a prior drug arrest, but I don't
12 recall the disposition of it.

13 Q Was there an obstructing the administration of law charge?

14 A Yes, there was.

15 Q And those now three or so charges, was that an unusually
16 long record for an informant?

17 A In gang investigations, not at all, no.

18 Q Was there anything about his record that prevented him from
19 becoming an informant?

20 A There was nothing that I saw on his record that prevented
21 him from being an informant.

22 Q Was he slated once you had decided to allow him to become
23 an informant to work a specific investigation or was it a
24 general cooperator?

25 A He was a general cooperator, meaning that any agent on the

1 squad could have used him in any one of their cases, but he was
2 specifically used by me to work in a -- in a gang
3 investigation.

4 Q And initially, was he -- did he right away start making
5 purchases of drugs, or was he initially just providing
6 information?

7 A Initially he was just providing information. And again,
8 this is part of the feeling-out process. I wanted to see how
9 reliable he was and what kind of inroads he could make. But,
10 yes, within a short period of time we proposed the idea of him
11 wearing a recording device and recording members of this gang.

12 Q Did the FBI come to an agreement about whether or not they
13 would pay Mr. McCray to be an informant?

14 A We did come to the agreement, and the reasoning behind that
15 was that Kemo at the time --

16 MR. BERGRIN: Objection, your Honor, there was no
17 question posed.

18 Q Why did you pay him?

19 A We paid --

20 THE COURT: Okay. Just a moment.

21 Overruled. Go ahead.

22 MR. MINISH: Thank you.

23 A We paid him because we needed him to be at our disposal
24 during the day, during the night, and not that that preclude
25 him from getting a job, but it would have made it difficult for

1 us to do this case if he had been working. So we compensated
2 him for living expenses.

3 Q Do you recall the amount of money he was paid?

4 A Initially it was a thousand dollars a month that he was
5 paid.

6 Q And you say "initially." I assume that means it changed.
7 What did it changes to?

8 A It went up to \$1500 a month.

9 Q During the course of time from April when this was
10 initiated in 2002 through March 2003, do you recall about how
11 much money the FBI ultimately paid to Mr. McCray?

12 A I believe it was about \$24,000.

13 Q And what was he supposed to use that money for?

14 A We had calculated that figure based on his living expenses.
15 He had told me -- I recall the rent was proximately \$750 in his
16 apartment, and then we gave him additional money for groceries
17 and miscellaneous expenses. But we arrived at the \$1,000 by
18 sitting down and going through and calculating what
19 realistically his monthly expenses would be.

20 Q Did he during that course, that period of time, did he live
21 in the same place while he was an informant?

22 A No, he moved three -- three times -- two times. The first
23 place, and then he moved two other times.

24 Q Okay. Just so it will move a little quicker later, could
25 you tell the Jury where he was at each location? What were the

1 three locations?

2 A The physical address?

3 Q Yes.

4 A The first address is 248 Wainwright Street in Newark; the
5 second address was 14th and Madison -- I want to say 7 -- 17 --
6 I can't recall, but its on 14th Street and Madison Avenue in
7 Newark; and the third location was 17 Wainwright, again in
8 Newark.

9 Q Did any of those three locations pose any problems for him
10 as an informant?

11 A When he had moved to the address on 14th -- at 14th and
12 Madison it was a very high drug activity area and it posed a
13 problem for us because we were using him to do these controlled
14 purchases of narcotics and he would do them in the area of his
15 residence. And when we tried to do it in that area, it's such
16 a hotbed of drug activity that we were not able to get close
17 enough. Our cars were not able to get close enough to surveil
18 the deals because of all the drug dealers. They would spot us.
19 They would call out "police," they would call out "Five-0." So
20 that posed a challenge for us at that location.

21 Q I want to show you what has been marked Government Exhibit
22 2298.

23 THE COURT: Are these in order, Mr. Minish, as far as
24 the books here?

25 MR. MINISH: I'm sorry, Judge. The exhibits that

1 we're going to use you mean?

2 THE COURT: Yeah.

3 MR. MINISH: No, they're in numeric order, not the
4 order necessarily that they'll be brought out. But it should
5 come up on your screen, the exhibit.

6 THE COURT: All right.

7 MR. MINISH: May I approach, Judge?

8 THE COURT: Go ahead.

9 Q Agent, I'm showing you what's been marked Government
10 Exhibit 2298. Do you recognize what that is?

11 A That's a photograph of Kemo McCray.

12 MR. MINISH: Judge, Defense Counsel has been provided
13 with a copy of this and we ask that this be moved into
14 evidence.

15 THE COURT: Gail?

16 (The Court and the Deputy Clerk confer off the
17 record.)

18 MR. BERGRIN: There's no objection, Judge.

19 THE COURT: Okay. It's in evidence.

20 (Government Exhibit 2298 is received in evidence.)

21 MR. MINISH: So now I'm publishing it to the Jury,
22 Judge.

23 Q That's the photograph of Mr. McCray?

24 A Yes, it is.

25 MR. MINISH: Judge, I'm just providing your Clerk -- I

1 saw you looking for --

2 THE COURT: I have it.

3 MR. MINISH: -- the exhibit list.

4 THE COURT: I have it now.

5 Okay. It's in evidence. Go ahead.

6 BY MR. MINISH:

7 Q All right. Now, when you're analyzing, Agent, whether
8 someone will be a successful informant or not, are there other
9 things you take into account besides their criminal record and
10 their physical location?

11 A Their ability to interact with people. Meaning, an
12 informant is somebody who can go up and talk to people and be
13 able to blend in in a social situation.

14 Q And how did Mr. McCray fare, in your analysis, in those
15 categories?

16 A He was excellent in that he was very congenial. He was
17 somebody that could talk to anybody, and he was well liked by
18 the people in the neighborhood where he grew up, so he had a
19 very easy time striking up a conversation with people.

20 Q Had he lived in that general area his entire life?

21 A He had.

22 Q How did you communicate with him generally?

23 A Generally via cell phone. That was the majority of our
24 conversations.

25 Q Do you recall what phone number he had at the time?

1 A I don't recall off the top of my head. I can --

2 Q Was it the same number all the way through?

3 A Yes, it was.

4 Q You have something in front of you?

5 A Yeah. If I look at a report it will --

6 Q Let me just ask a couple of questions.

7 Agent, during the course of this investigation as well
8 as any other investigation, as an FBI Agent, do you see a
9 series of reports?

10 A Yes, I do.

11 Q And are those reports often referred to as 302s?

12 A Yes, they're called FD-302s and we refer to them as "302s"
13 for short.

14 Q And during the course of this investigation, did you fill
15 out a number of 302s?

16 A Yes, I did.

17 Q Okay. And is there something that would refresh your
18 memory in front of you on one of those 302s?

19 A Actually I'm not sure because a lot of -- I wouldn't have
20 put Kemo's -- his phone number in my report because I would
21 have concealed that.

22 Q All right. That's fine.

23 Now, before we go into what Kemo actually did, so the
24 Jury is clear, who is his handler?

25 A I was.

1 Q Okay. And that makes you responsible for his work?

2 A I am responsible for him.

3 Q Now, without saying the name of the gang, was there an
4 investigation into a gang in the Newark area in the spring and
5 summer of 2002 that you were involved in?

6 A Yes. It was actually in Irvington, yes.

7 Q Oh, I'm sorry.

8 Had any of the members of that gang been arrested by
9 the time Mr. McCray became an informant?

10 A Yes. Yes.

11 Q And were they known to congregate in a specific area?

12 A Yes, they were.

13 Q And was there more than one or two members?

14 A Yes.

15 Q Okay. Do you have an approximate number of how many
16 members there were?

17 A Approximately 15.

18 Q And were they involved in drug trafficking?

19 A Among other activities, yes.

20 Q And what other activities?

21 A They were involved in armed robberies, homicides,
22 carjackings.

23 Q Now, did there come a time when you decided to use Mr.
24 McCray during the course of this investigation?

25 A Yes.

1 Q Could you tell the Jury how he was to be used?

2 A Mr. McCray was to be used to do what we call controlled
3 purchases of narcotics, which means that the Government would
4 provide Kemo with a recording device, a transmitter -- the
5 recording device so we could record the conversation, the
6 transmitter so that we could hear the conversation as law
7 enforcement -- and then money -- again, government money -- so
8 that he could go out and then purchase drugs from one of our
9 targeted individuals.

10 Q And did you actually use Mr. McCray in this manner in this
11 gang investigation?

12 A Yes, I did.

13 Q And could you approximate for the Jury how many purchases
14 he ultimately made from members of that gang?

15 A Approximately 30.

16 Q And was he involved with one or two members or from
17 numerous members?

18 A From numerous members.

19 Q Why was he able to make purchases from those individuals as
20 opposed to just someone else coming in off of the street to
21 make those purchases?

22 A Well, he knew those individuals, and again, his girlfriend
23 was a member of the gang, and he had the criminal history that
24 supported that. He had been previously involved in drugs, he
25 had been previously involved with weapons so he had the street

1 credibility, and he had the knowledge of these individuals and
2 they accepted him.

3 Q What was Mr. McCray's attitude toward doing these sort of
4 controlled buys?

5 A Initially he was somewhat uncomfortable with it because
6 you're wearing a recording device that could expose you as an
7 informant, but after he did one or two and got the hang of it
8 he became increasingly comfortable.

9 Q And did you have discussions with him about the safety
10 measures that were going to be taken?

11 A We did. We explained to him at length that when you do one
12 of these controlled purchases, we will have many members of law
13 enforcement out there in many different vehicles. And before
14 he even goes out to do one of these deals, we give him a verbal
15 signal that he can give to us, a distress signal, and also a
16 nonverbal signal so that we know if he's out there and he's in
17 the midst of one of these purchases and there's an issue,
18 there's something he will either say or physically do which
19 will indicate that he is not comfortable and we will respond
20 and we'll pull him out of the situation.

21 Q Even if that means ruining that deal?

22 A If his safety is in jeopardy, absolutely.

23 Q Do you recall what the hand signals or the physical signals
24 were for Mr. McCray?

25 A We had asked him -- a lot times he wore a hat. We would

1 ask him to throw off the hat. So if for some reason we
2 couldn't hear if there was an issue, if we saw him throw off
3 his hat, that was an indication we needed to respond and pull
4 him out.

5 Q And what was the verbal, if you recall, signal that Mr.
6 McCray would give if he was in danger?

7 A He actually came up with it and he would say, "What the
8 fuck," and scream it, and that was his verbal signal.

9 Q Now, if he had been successful, did he have a signal for
10 that also?

11 A When the deal was terminated and had been successful, he
12 would say, "Done deal. Done deal," so that I knew that the
13 deal had -- the transaction had occurred, the deal was done.
14 And that was our -- the way we communicated that.

15 Q Now, you said that you had informed Mr. McCray that there
16 would be a number of law enforcement vehicles in the area
17 during the course of these controlled buys. Could you explain
18 to the Jury what sort of surveillance was attempted during this
19 gang investigation specifically?

20 A Okay. For example, if he was living at 248 Wainwright,
21 it's an one-way street, we have a surveillance vehicle at the
22 end of the street, which is on Lyons Avenue, we'd have one at
23 the beginning of the block or maybe two blocks out depending,
24 and then we'd have a third vehicle that would hopefully blend
25 in, be right in the surrounding area of 248. Not right in

1 front of the location but somewhere close enough that we could
2 have eyes on what was happening.

3 Q You say "eyes on what was happening." What do you mean by
4 that?

5 A Eyes on to observe the deal. We'd have a car in position
6 so that they could actually observe the deal. The other two
7 cars may not be able to observe the deal. They can see the
8 target car coming down the street, and then after the deal they
9 could see the target car leaving but they may not be in a
10 position to see this actual hand-to-hand transaction as it's
11 occurring.

12 Q Did you attempt to gather video evidence?

13 A Yes.

14 Q Okay. And what would prevent you from making video
15 evidence?

16 A The only time we really are not able to get video evidence
17 is if we just can't get one of our vehicles in a position to
18 see the transaction, or if there's weather conditions where
19 it's raining or snowing or it's too dark. But ultimately we
20 try and get video of every single transaction.

21 Q Now, prior to sending out Mr. McCray on a controlled
22 purchase, could you explain to the Jury the procedures that
23 were used prior to him going out?

24 A What we do before we send Kemo out is we have a squad
25 briefing, and everybody who is going to be involved in the

1 controlled purchase is there and I tell them exactly where the
2 deal is going to happen. I make sure they have a photograph of
3 Kemo if they haven't seen or met him or dealt with him before
4 so they know who our informant is, and then in we have a target
5 in mind I have a photograph, if possible, of that target so
6 they know who our guy is, who the target is, and if I have a
7 vehicle identified, I provide them with that information so
8 that everybody going out knows what the situation is.

9 Q And then where is Mr. McCray dropped off prior to the
10 purchase?

11 A He's dropped off several blocks away.

12 Q And why is that?

13 A For his safety. We used unmarked cars so they don't
14 necessarily look like law enforcement cars, but still we would
15 drop him several blocks away so he's not seen being let out at
16 his house by one of us.

17 Q And what is he given prior to being let out of the vehicle?

18 A Before we let him out of the vehicle, the first thing we do
19 is we -- we search him. Before we're about to do a controlled
20 purchase of narcotics we search him. We want to make sure he
21 doesn't have any drugs on him, any contraband on him or in this
22 case money, and then what we would do is provide him with a
23 recording device, which is a concealed device, a transmitter,
24 and then we would give him what we call the buy money. If the
25 drug transaction was going to be \$800 we'd provide him with the

1 \$800.

2 Q So it's two devices; one is transmitting one's recording?

3 A Yes.

4 Q What do those devices look like?

5 A At that time they were concealed in beepers, little black
6 beepers. So he had a beeper as a recording device and then he
7 had a beeper as a translator.

8 Q Okay. Is the beeper also known as a pager before --

9 A Yes.

10 Q -- before cell phones, the things people would carry?

11 A Yes, a pager.

12 Q And did they look the same otherwise?

13 A They do, absolutely the same.

14 Q And why did you have one recording and one transmitting?

15 A We did not at that time have the technology to have the two
16 in one, so he had to have the recorder on him, and then we also
17 wanted to hear what was going on so we put a transmitter on
18 him.

19 Q And the transmitter, you're able to hear this then in
20 realtime?

21 A In realtime through our -- either our hand-held radios
22 which we took out with us, or the radio -- if it's one of our
23 Bureau vehicles it will come through the radio in our Bureau
24 vehicle.

25 Q Again, now not being specific with the exact purchases, but

1 did Mr. McCray make a number of controlled purchases of
2 narcotics from or related to that gang investigation?

3 A Yes, he did.

4 Q And ultimately were a number of members of that gang
5 arrested?

6 A Yes, they were.

7 Q Did any of those gang members -- ultimately, what was the
8 disposition of the gang members' cases?

9 A The gang members we arrested --

10 THE COURT: What's the --

11 MR. BERGRIN: Judge, I don't know the relevance of --

12 MR. MINISH: I can explain it.

13 THE COURT: No. Go ahead, next question.

14 Well, okay. I think I understand it. I'll allow it.

15 Go ahead.

16 MR. MINISH: Thank you, Judge.

17 Q Let me -- I'll try to be more specific.

18 Did any of the members of that gang that were
19 arrested, did any of them ultimately go to trial?

20 A No, they all cooperated immediately.

21 Q And did that mean they also pled guilty?

22 A Yes, they did.

23 Q Okay. Now, during the course of that process, did there
24 come a point with any of those individuals where Mr. McCray's
25 name had to be revealed?

1 A Never.

2 Q If they had not pled guilty and not cooperated, is there a
3 point in the judicial proceedings that you are aware of where
4 Mr. McCray's name would have been provided?

5 A If they hadn't cooperated, we would have had to have
6 indicted them, and at that stage the tapes Kemo made would have
7 had to have been turned over at some point to the defense and
8 his identity would have been exposed.

9 Q Based on them getting a copy of the recording?

10 A Yes. Yes, and hearing his voice.

11 Q During the course of this investigation, through either
12 these other gang members as well as other information Mr.
13 McCray provided, did you start to gather evidence about who was
14 supplying the drugs to that gang?

15 A We did, we started looking at the suppliers as well as the
16 gang itself.

17 Q Okay. And could you tell the Jury what sort of information
18 you were getting about the supplier of that gang?

19 A These individuals that we had arrested came in and
20 proffered, they came in and cooperated and they provided us
21 information as to who was supplying them with the drugs.

22 Q And based on the information you received, did an
23 individual named William Baskerville get on your radar?

24 A Yes. Through several proffers it was learned that William
25 Baskerville had been providing this gang with drugs.

1 Q Had you heard that name before?

2 A I had.

3 Q And what did you know William Baskerville to be, or what
4 did you know about Mr. Baskerville?

5 A I knew William Baskerville to be a drug dealer and he came
6 from a family of drug dealers, and I had seen him in the area
7 on many occasions.

8 Q And when you say "the area," you mean the area where the
9 gang investigation --

10 A The area in Irvington we were specifically targeting with
11 this gang investigation.

12 Q Were the those gang members that were charged, were they
13 charged by what's known as a criminal complaint?

14 A Yes, they were.

15 Q And in those criminal complaints, could you explain to the
16 Jury what needs to be provided in that complaint?

17 A The complaint has to be detailed enough to show what
18 evidence we have gathered against the individual we're
19 arresting. It doesn't have to be the entire investigation, but
20 it has to be enough so that a judge will issue us an arrest
21 warrant for that individual.

22 Q And so the Jury is clear: Those complaints, are they
23 signed by the agent sworn as true?

24 A They are sworn out by the agent in front of the magistrate
25 judge to be true and accurate, yes.

1 Q And do those complaints include a series of statements,
2 factual statements that support or at least allege to support
3 the guilt of the charged person?

4 A They do.

5 MR. BERGRIN: Objection, your Honor, as to that
6 question, as far as the guilt of the person.

7 THE COURT: Rephrase the question, Mr. Minish.

8 Q The statements that are attached to the complaint, are they
9 intended to support probable cause for the guilt of the named
10 person in the complaint?

11 A Yes, they are.

12 Q And does the judge then determine whether or not they do
13 support, those statements do support probable cause for the
14 individual named in the complaint?

15 A Yes, that is true.

16 Q And then based on that complaint being passed on by the
17 judge, are you able to obtain any other document?

18 A Based on the judge approving the complaint we're able to
19 obtain an arrest warrant for that individual.

20 Q Okay. And that general process, was that followed during
21 the course of this gang investigation for the individuals that
22 you said you were charged?

23 A Everybody we arrested we arrested via complaint. We did
24 not indict any of these individuals.

25 Q And in that complaint -- now I want to be more specific

1 with the language that was used in support of that probable
2 cause. Did you lay out every possible fact that might have led
3 the judge to believe that there was probable cause for these
4 various charged people?

5 A No, we did not lay out the entire investigation, we picked
6 several facts and put --

7 Q Why was that?

8 A Because we don't want to expose who the cooperator is. If
9 I put -- if I had put on the complaint every single drug
10 transaction that informant had done, it would -- if the
11 defendant saw it, he or she may be able to figure out who the
12 criminal informant was. So we try to be -- we want to be as
13 convincing to the judge as possible, but we also try to be
14 somewhat vague to protect the identity of our informants.

15 Q Okay. Now when you say "vague," the facts that you lay out
16 are not vague, are they?

17 A The facts are specific, but not every fact is laid out.

18 Q And again, this process was followed or this theory was
19 employed for each one of the complaints with these gang
20 members?

21 A Yes, it was.

22 Q And as far as you personally know, are those complaints,
23 once they are -- once these individuals are actually arrested
24 and charged, are they provided with a copy of that complaint?

25 A No, they're not provided -- oh, after, in court? Yes, I

1 personally don't provide it to them but in court, yes, they're
2 provided with a copy of it.

3 Q So anything that you did write or swear to they would have
4 access to?

5 A Yes. Yes.

6 Q Just to wrap up the gang thing. Did Mr. McCray ever have
7 to testify about anything related to that gang investigation?

8 A No, he did not.

9 Q Were there -- what was the last open individual involved in
10 that gang investigation? What time of the year was his case
11 resolved, or at least that signed a plea agreement?

12 A January of 2003.

13 Q January 2003.

14 Now you said you turned your attention at some point
15 to Mr. Baskerville. Correct?

16 A Yes, we did.

17 Q And you explained you got some information from these gang
18 members. Was there any other sources of information that you
19 had? Was Mr. McCray able to provide any information to you?

20 A Mr. McCray was able to also provide me knowledge of who the
21 supplier was, yes.

22 Q Okay. And what did he tell you -- or who did he tell you
23 was the supplier?

24 A The name?

25 Q The name he gave.

1 A The name he gave me was Cheeb.

2 Q Cheeb? How would you spell Cheeb?

3 A C-h-e-e-b.

4 Q Okay. And that's not a real name, is it?

5 A That's a street name, a nickname.

6 Q A nickname.

7 So that's who Mr. McCray believed was the individual
8 who was supplying that gang?

9 A Yes.

10 Q And the gang member, so the Jury is clear, gave you an
11 actual really name of William Baskerville?

12 A Yes, that is correct, yes.

13 Q During the course of wrapping up this gang investigation
14 and moving into Mr. Baskerville, did you learn anything else
15 about how this operation was run?

16 A How Mr. --

17 Q Mr. Baskerville.

18 A We had learned that he supplied this gang and that he
19 worked with other members of his family to sell drugs in the
20 Essex County area.

21 Q Did Mr. McCray know any of William Baskerville's family
22 members?

23 A He knew William Baskerville's brother well as he had been
24 incarcerated with him for a period of time.

25 Q And which brother was that?

1 A That's Rakeem Baskerville.

2 MR. MINISH: Judge, if I can approach?

3 THE COURT: You may. Go ahead.

4 Q Agent, I'm showing you what's been marked Government
5 Exhibit 2257. Do you recognize what that is?

6 A That's a picture of Rakeem Baskerville.

7 Q Okay.

8 MR. MINISH: Judge, this has been previously provided
9 to Defense Counsel, and I ask that it be admitted into
10 evidence.

11 THE COURT: What's the number again?

12 MR. MINISH: 2257.

13 THE COURT: All right. It's in evidence.

14 (Government Exhibit 2257 is received in evidence.)

15 MR. MINISH: Thank you, Judge. If we can publish it
16 to the Jury.

17 (The exhibit is published to the Jury.)

18 Q The picture now that's on the screen in the courtroom, who
19 is that?

20 A That is Rakeem Baskerville.

21 Q I should have done these together, but I'm showing you
22 what's been marked 2255. Do you recognize what that is?

23 A that's William Baskerville.

24 Q Okay.

25 MR. MINISH: Again, Judge, this has been provided to

1 Defense Counsel and I ask pit be moved into evidence.

2 THE COURT: Without objection, it's in evidence.

3 MR. BERGRIN: No objection.

4 (Government Exhibit 2255 is received in evidence.)

5 MR. MINISH: I'll publish that to the Jury.

6 (The exhibit is published to the Jury.)

7 Q Okay. So the photograph that's now on the screen in the
8 courtroom is William Baskerville?

9 A Yes, it is.

10 Q Based on your investigation into that gang that we were
11 talking about, was Mr. Baskerville, that being William,
12 actually a member of the gang?

13 A No, he was not a member of the gang.

14 Q Do you recall what time of year the investigation shifted
15 away from the gang and towards Mr. Baskerville?

16 A In January, February 2003.

17 Q If the gang investigation was all wrapped up, why would you
18 turn to Mr. Baskerville?

19 A What we had learned in working gang investigations is we
20 use the criminal enterprise theory, so --

21 Q Without telling us the theory, just why do you go about
22 doing it?

23 A We want to take out the whole gang, so that includes the
24 suppliers. Even though they technically may not be gang
25 members, they are still part of the criminal activity in that

1 they're supplying the gang. So we then go up the ladder to
2 find out who the suppliers are.

3 Q Okay.

4 A And that's what led us to focus on William Baskerville.

5 Q What information -- now you said that Mr. McCray referred
6 to the supplier as "Cheeb."

7 A Yes.

8 Q Did you make efforts to identify who Cheeb was?

9 A He had given us -- Kemo had given us a physical description
10 of Cheeb and he had told us that he drove a black Yukon with
11 chrome rims. So we were trying to see who fit that bill.

12 Q And how is it -- or did there come a time when you matched
13 up Cheeb and Mr. Baskerville?

14 A We did.

15 Q Can you explain to the Jury how that happened?

16 A Kemo had been providing us information on this individual
17 he knew to be Cheeb, and in the midst of one of our controlled
18 purchases with another individual, the individual known to be
19 Cheeb pulled up on scene. And I recognized him immediately. I
20 saw him clearly and I also saw his car and I recognized him to
21 be William Baskerville, so we learned that it was one and the
22 same person.

23 Q And did you do anything to confirm that idea with Mr.
24 McCray?

25 A I showed him a photo of William Baskerville, and he

1 identified him as such.

2 Q As Cheeb?

3 A Cheeb, yes.

4 Q Or -- okay.

5 Did your investigation reveal that Mr. McCray worked
6 with anybody beside -- you already said his brother -- any
7 other individual during the course of selling drugs?

8 A We had learned that William Baskerville was supplied by an
9 individual known as Hakeem Curry.

10 Q Did the name Terrell Thomas come up during the course of
11 the investigation?

12 A Yes. William Baskerville was supplying Terrell Thomas, who
13 was supplying the gang.

14 MR. MINISH: Judge, I'm showing the witness what's
15 been marked Government Exhibit 2259.

16 Do you recognize what that is?

17 A That is a picture of Terrell Thomas.

18 MR. MINISH: Judge, for the record, Defense Counsel
19 has a copy of this and we ask that that be moved into evidence.

20 THE COURT: All right. Without objection, it's in
21 evidence.

22 MR. BERGRIN: There's no objection, Judge.

23 (Government Exhibit 2259 is received in evidence.)

24 MR. MINISH: We'll publish that to the Jury, Judge.

25 (The exhibit is published to the Jury.)

1 Q The picture now again on the screen in the courtroom,
2 that's Terrell Thomas?

3 A It is.

4 Q So now armed with the identification of Mr. Baskerville,
5 knowing who his associates were and knowing who he had
6 supplied, what did you do?

7 A We set out to have Kemo make controlled purchases --
8 controlled purchases of narcotics from William Baskerville.

9 Q How did he go about doing that, or how did you request that
10 he go about doing that?

11 A He had actually -- when he knew him to be Cheeb, Cheeb had
12 actually given Kemo his phone number and told him: If you're
13 looking to buy crack cocaine, give me a call.

14 So we had the phone number. So we decided to set up
15 an actual deal where Kemo called the number, he called and
16 spoke to Cheeb, and we set up a purchase of narcotics.

17 Q Okay. Now you said that Mr. Baskerville then known as
18 Cheeb said "crack cocaine." Is that the phrase he actually
19 used?

20 A Mr. Baskerville -- or William Baskerville -- no, "drugs."
21 He would have said "drugs," but we were purchasing crack
22 cocaine.

23 Q And, again, I don't want to go through too much detail in
24 this area, but was there a process by which you went from this
25 point in the investigation until you were actually directing

1 dealing with Mr. Baskerville? Were there a number of other
2 individuals that you had to deal with --

3 A Yes, yes.

4 Q Okay. In general terms, could you just explain to the Jury
5 how -- what happened from this point in the investigation --

6 A Okay.

7 Q -- until you actually start dealing with William
8 Baskerville directly?

9 A We had been dealing with Terrell Thomas at the time Kemo
10 had been dealing with Terrell Thomas and making purchases from
11 Terrell Thomas, and he learned during one occasion that William
12 Baskerville was supplying Terrell Thomas, and we ended up being
13 able to have a direct connection then into William Baskerville
14 and taking Terrell Thomas out of it. But Terrell Thomas and
15 William Baskerville did work together. But Kemo was able to go
16 directly to William Baskerville.

17 Q And was Terrell Thomas -- so we can set him aside -- was he
18 ultimately charged?

19 A Yes, he was.

20 Q And what was the disposition of his charges?

21 A He pled guilty.

22 Q Were there any other individuals that Mr. McCray worked
23 towards gathering evidence about that ultimately were charged
24 and pled guilty?

25 A I'm not sure I understand your question.

1 Q I'm sorry, it was a terrible question.

2 A Yeah.

3 Q Just so we can turn our focus solely to Mr. Baskerville,
4 were there any other individuals that Mr. McCray provided the
5 FBI with information that were eventually charged and pled
6 guilty?

7 A At that point everybody had been charged and had pled
8 guilty, so we were solely focusing on William Baskerville.

9 MR. MINISH: Judge, I'm not sure --

10 THE COURT: Go ahead. Keep going.

11 MR. MINISH: We're going to set up some audio stuff.

12 THE COURT: Right now?

13 MR. MINISH: Not this second but we're getting close
14 to it.

15 THE COURT: If you have a few more questions before
16 you do that, let's do them and then we'll take a break.

17 MR. MINISH: Okay.

18 Q All right. So now you say eventually it focuses on Mr.
19 Baskerville?

20 A Yes, it does.

21 Q Okay. Could you explain to the Jury the -- I know you've
22 had conversations you discussed, but the first time -- let me
23 get the date. In early March --

24 A Yes.

25 Q -- of '03, the middle of March of '03, were there any

1 discussions between Mr. McCray and Mr. Baskerville about doing
2 drugs -- drug transactions?

3 A Yes. What had happened is Mr. William Baskerville had seen
4 Kemo out on the street and said, hey, when you are ready to
5 buy, give me a call.

6 He gave him his phone number. And at that point we
7 started setting up what we call the controlled purchase. So it
8 didn't happen right that day, but Kemo had called, said, I got
9 William Baskerville's phone number, he told me to call any time
10 I'd like to purchase drugs.

11 Q Now, in the areas we're going to get into there's a series
12 of recordings. In general, have you listened to each of these
13 recordings?

14 A Yes, I have.

15 Q And we'll discuss specific numbers.

16 A Okay.

17 Q Do you recognize the voices on those recordings?

18 A Yes, I do.

19 Q And whose voices are on those various recordings?

20 A We have obviously Kemo's voice, and then William
21 Baskerville's voice, and there are some recordings where we
22 have other individuals.

23 Q How is it that you are able to recognize Mr. McCray's voice
24 on the recording?

25 A I was talking to Mr. McCray on a daily basis. I mean, I

1 heard his voice repeatedly.

2 Q How about Mr. Baskerville?

3 A In the summer of 2002 I had actually stopped Mr.
4 Baskerville out on the street in Irvington and had spoken to
5 him. I had identified him and spoken to him, so I had known
6 his voice from that incident. And then during one of our first
7 encounters with William Baskerville, he drove right past me and
8 I was able to hear him on the transmitter talking to Kemo. He
9 was driving a vehicle, drove right past me and I heard him on
10 the transmitter talking to Kemo. Kemo actually got into his
11 car, and from that point on it confirmed that it was William
12 Baskerville through the voice.

13 Q So you are able to match the voice --

14 A I was.

15 Q Okay.

16 MR. MINISH: Judge, we're going to hand out the books.

17 THE COURT: Okay. Ladies and gentlemen, we'll take an
18 afternoon recess for about 15 minutes, please. Please don't
19 discuss anything about the case, and we'll see you in about 15
20 minutes.

21 THE DEPUTY CLERK: Please rise for the Jury.

22 (The Jury leaves the courtroom.)

23 THE COURT: All right, everyone, be seated.

24 You can step down, Agent. Thanks.

25 THE WITNESS: Thank you.

1 MR. MINISH: Judge, for the record, I'm showing the
2 witness a number of exhibits which would have been provided to
3 or made available to Defense Counsel. They are 4173; 4174;
4 4175; 2225; 2225a; 4176; 4177; 4178; 4179; 2226; 2226a; 4180;
5 4181; 4182; 4183; 4184; 4185; 4186; 4187; 2227; 2227a; 4191,
6 4193; 4194; 2228; 2228a; 4197; 4198; and finally, 2230a;

7 DIRECT EXAMINATION CONTINUES

8 BY MR. MINISH:

9 Q Agent, I'm going to ask you a series of questions about
10 these recordings.

11 A Okay.

12 Q Agent, amongst those various exhibits that I've shown you,
13 there are both video and audio recordings. Is that correct?

14 A That is correct.

15 Q And did you have the opportunity to review both the video
16 and the recorded -- the audio recordings?

17 A Yes, I did.

18 Q And with respect to the audio recordings, were you able to
19 overhear those recordings when the words were being spoken by
20 the individual on the recordings?

21 A Yes, I heard them realtime.

22 Q Realtime. Excuse me.

23 And if you could explain to the Jury how that
24 happened.

25 A Kemo was wearing a recording device, but he was also

1 wearing a transmitter, and the transmitter transmits, again, to
2 our hand-held radios or to our radio in our car. So I'm
3 hearing the deal as it's happening, so I'm hearing it realtime,
4 but it's also being recorded so I can then go back and listen
5 to it at a later date.

6 Q And did you, in fact, go back and listen to these on a
7 later date?

8 A Yes, I did.

9 Q From the transmitter or from the recording device, what do
10 you do with the actual recording device that Kemo is wearing?

11 A It's a digital recording device, so I take the device and I
12 have to download the information on it to a computer disk. So
13 then the original actually is not the recording device but it
14 becomes the computer disk once I've downloaded that
15 information.

16 Q And now you've said "worn" a couple of times.

17 A Said what? I'm sorry.

18 Q You've said "worn the device."

19 A Oh, yes.

20 Q How did Mr. McCray actually wear the device?

21 A Well, it's a beeper that you could clip onto your clothing.
22 However, he typically did not do that. We would try and have
23 the recording device inside a coat pocket, so if he had a
24 winter coat or any type of coat on we'd try to have it inside
25 the coat pocket so it would be closer to his mouth to better

1 pick up sound. But there are times where he also put it in his
2 lower coat pocket, and then we would just put the transmitter
3 in the other pocket.

4 Q Now, before -- did you take any steps to make sure that
5 these devices worked before Mr. McCray was sent out with them?

6 A With the transmitter, what we'd do is we always put a fresh
7 battery in it and we test it. As soon as it's on you can hear
8 it coming through your radio so you know it works.

9 The recording device we always test again before we go
10 out, too. The same thing, we put a fresh battery in it so we
11 know it's going to work and we test that as well.

12 Q Now we're going to discuss these various exhibits.

13 With respect to those various exhibits and the
14 transactions that were recorded, did you follow that procedure
15 for each one of those transactions?

16 A Yes, I did.

17 Q And were the devices in good working order each time?

18 A Yes, they were.

19 Q And when Mr. McCray got back to you, what did you do with
20 the devices?

21 A I would deactivate the recording device and then I would
22 deactivate the transmitter, and --

23 Q Did he do that or you personally did that?

24 A No, I always deactivated the recording device. There's
25 something in particular we use to turn it on and turn it off

1 that he wouldn't have known about, so I was the only one who
2 activated it and deactivated that.

3 Q And I guess we did skipped activate. When was it
4 activated, the device?

5 A Right before we dropped him off to make a controlled
6 purchase we would activate that.

7 Q Okay. And when you say "we," is that you or is that Mr.
8 McCray?

9 A Always me. I apologize. I would activate that.

10 Q So you would turn it on, you turned it off once you took
11 possession of those devices again, or did you let Mr. McCray
12 keep them?

13 A No, I took possession of the devices.

14 Q And then where did they go once you had possession of them
15 again?

16 A When I had possession of the devices I would go back to my
17 office again, I'd have to download the digital recording to a
18 disk. So I would hook it up to a computer, download it to a
19 disk, and what I would do is once I had that disk, that is the
20 original evidence. I would submit it into our evidence room
21 with the transmitter. I would just secure the transmitter.
22 Once that's off there's nothing more to do with that.

23 Q Would you explain to the Jury what the difference between
24 recording a call is and recording what you've described as a
25 body wire?

1 A Right. Okay. When we used -- when Kemo would make
2 recorded telephone conversations for us, he would do it two
3 ways: One way would be me being with him physically and using
4 just a hand-held recorder, the kind you put a cassette tape in,
5 along with an ear piece which he would put in his ear and he
6 would make the telephone call. And I'd be seated right next to
7 him, so I'd be able to overhear the call while it's recording.

8 The second way we made these recorded phone calls was
9 Kemo would call me from his cell phone. I'd be sitting at my
10 desk in the office. I would then patch him through to William
11 Baskerville's cell phone, and I would have the recording device
12 attached to my phone. So William Baskerville did not know I
13 was a party to the conversation but the recording device was
14 actually attached to my phone.

15 So if I was present with Kemo I would use the
16 hand-held recording device because I'd be literally right next
17 to him. But if we weren't able to do that, he could call me
18 from the street to my office and then I would patch him through
19 to William Baskerville.

20 Q Now again, speaking specifically of the exhibits I listed
21 earlier that I showed you, each one that was a call and each
22 one that was a body recording you had the opportunity to listen
23 to?

24 A Yes, I did.

25 Q And they were recorded in connection with the William

1 Baskerville investigation?

2 A Yes, they were.

3 Q And did you listen to the -- when you listened to the disks
4 or the cassettes or whatever they were, were they a fair and
5 accurate representation of what conversation you had overheard
6 at the time?

7 A Yes, they were.

8 MR. MINISH: Judge, I'd like to move all of these
9 things into evidence. I can provide the list again for the
10 Court.

11 THE COURT: I think we have the list.

12 Is there any objection?

13 MR. BERGRIN: There is none at all, Judge. Thank you.

14 THE COURT: So they're all in evidence, the ones that
15 you listed on the record.

16 (Goverment Exhibits 4173; 4174; 4175; 2225; 2225a;
17 4176; 4177; 4178; 4179; 2226; 2226a; 4180; 4181; 4182; 4183;
18 4184; 4185; 4186; 4187; 2227; 2227a; 4191, 4193; 4194; 2228;
19 2228a; 4197; 4198; and 230a are received in evidence.)

20 MR. MINISH: Thank you, Judge.

21 Q Now, Agent, when we broke, we had discussed -- you had
22 discussed with the Jury Mr. Thomas. How is it exactly that Mr.
23 Thomas -- what part did Mr. Thomas play in Mr. Baskerville's
24 organization?

25 A Mr. Thomas worked for William Baskerville.

1 Q Okay. Doing what exactly?

2 A He was supplying members of the gang that we were
3 investigating.

4 Q So in the chain, where would Mr. Baskerville be in relation
5 to Mr. Thomas?

6 A Gang members were purchasing their drugs from Terrell
7 Thomas, and Terrell Thomas was getting supplied by William
8 Baskerville.

9 Q So further up the chain?

10 A Further up the hierarchy, yes.

11 MR. MINISH: Now, for the record, Judge, we've handed
12 out transcript books to the Court, Defense Counsel and the
13 Jury. I didn't know if you wished to instruct them.

14 THE COURT: I do. Are you ready to start playing
15 these tapes?

16 MR. MINISH: Yes, Judge.

17 THE COURT: Ladies and gentlemen, you'll notice on
18 your chair there's also some headphones on the arm of your
19 chair. Okay? What's going to happen now is the Government is
20 going to play certain recordings that they've been referring to
21 just in the last few minutes. You also have a book of what's
22 called transcripts. You should understand that the actual
23 evidence is what's heard on the tape. The transcripts are an
24 aid to assist you in reading as you listen. But if for some
25 reason you were to listen to something that you feel is

1 different than the tape, if for some reason that would occur,
2 of course you're to rely on what you hear on the tape. Okay?
3 So that the transcripts are aids to assist you in reading while
4 you're listening to the transcripts. Okay?

5 We don't expect they'll be anything, but occasionally
6 there may be a word that you think is different. And of course
7 you have to rely on the actual evidence itself which is the
8 recordings. Okay?

9 All right. Go ahead, Mr. Minish.

10 MR. MINISH: Thank you, Judge. And just for the
11 Jury's edification, to use the headphones, there's a switch on
12 I think it's the right side that you have to turn the power on
13 and off. A green light will appear.

14 BY MR. MINISH:

15 Q Okay. Now, what I'd like to do, Agent, before we play the
16 recordings, if you could explain to the Jury the circumstances
17 building up to the March 17th transaction that we're going to
18 play a recording of.

19 A Okay. On March 17th we had tried to make contact with the
20 individual we knew to be Cheeb, and Kemo was not able to reach
21 him on the phone. So we called Terrell Thomas and we set up a
22 controlled purchase with Terrell Thomas. So Kemo proceeded to
23 the area in Irvington where Terrell Thomas was living, equipped
24 to buy \$200 worth of crack cocaine from Terrell Thomas.

25 As he is pulling into the area of where Terrell Thomas

1 lives, William Baskerville pulled up -- pulled up beside him
2 and Kemo actually got into William Baskerville's car and they
3 had the discussion about purchasing drugs.

4 Q And that process that you walked the Jury through before of
5 searching and giving them buy money and making sure and
6 transferring it, did that all happen prior to this deal?

7 A Yes, it did.

8 Q And if I could the ask the members of the Jury to turn to
9 the Exhibit 4175. It should be tabbed in your book.

10 THE COURT: 4175a. Correct?

11 MR. MINISH: I'm sorry, yes. The transcripts are all
12 marked with an "a" after the number.

13 And after the face page on to the actual second page
14 of the transcript.

15 If everybody could get their headphones on and put the
16 power on, we'll play the recording.

17 THE COURT: If for some reason you don't hear anything
18 coming out, raise your hand. Okay? We just want to make sure
19 everybody hears.

20 MR. MINISH: Wait, Judge, I'm sorry, there's -- Judge?
21 Judge, there's a number of people who raised their hand, Judge,
22 I didn't notice it right away.

23 THE COURT: Well, make sure they're all on, Mr.
24 Minish.

25 Are the buttons on the -- well, I don't know if it's

1 the left or the right, but...

2 THE WITNESS: On the right.

3 (There is a pause in the proceedings.)

4 MR. MINISH: We tested them this morning, Judge. They
5 all worked. I'm not sure exactly --

6 THE COURT: Let me see. There's a button on one of
7 the earphones. If you turn it the green light should go on.

8 JUROR NO. 10: Mine is blinking.

9 THE COURT: Yours is blinking?

10 JUROR NO. 10: Yeah.

11 THE WITNESS: The batteries --

12 THE COURT: Is yours blinking as well, Agent?

13 THE WITNESS: Mine is fine.

14 THE COURT: Yours is fine?

15 Who is having problems hearing?

16 Okay. Is your green light going on?

17 JUROR NO. 15: No.

18 THE COURT: It's not going on?

19 JUROR NO. 15: Yes.

20 THE COURT: Try switching it the other way. You did
21 both?

22 JUROR NO. 15: Yes.

23 MR. MINISH: Judge, I apologize. We tested them this
24 morning, they worked. I don't know if they were accidentally
25 switched on during the course of the day and the battery ran

1 out on them.

2 THE COURT: There's batteries in each one of them?

3 MR. MINISH: That is what gives it the effect --

4 THE COURT: I can't hear you, Mr. Minish, unless you
5 talk into the microphone.

6 MR. MINISH: I'm sorry. What gives the noise
7 cancellation effect is the battery, Judge. So if you click it
8 on you'll hear it clears out all the noise.

9 THE COURT: I just asked you: Is there a battery in
10 each one of these?

11 MR. MINISH: Yes. And that's --

12 THE WITNESS: It's right here.

13 THE COURT: Well, I'll listen to a suggestion. It's
14 your case. I'll listen to the suggestion. Tell me what you'd
15 like to do.

16 MR. MINISH: Judge, what I'd like to do is get the
17 Court's indulgence for five or ten minutes and we fix all the
18 things and make sure the batteries work and we start it up
19 again.

20 THE COURT: Who is here to fix them?

21 MR. MINISH: A person from our -- our paralegal just
22 walked outside to get the person to come back here from our
23 office, so he's already on his way.

24 THE COURT: Ladies and gentlemen, under the
25 circumstances we're going to have to recess for the day. This

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Criminal No. 2:09-cr-00369-WJM

UNITED STATES OF AMERICA, :
v. : TRANSCRIPT OF PROCEEDINGS
PAUL W. BERGRIN, :
Defendant. :
- - - - -x

Newark, New Jersey
October 18, 2011

B E F O R E:

THE HONORABLE WILLIAM J. MARTINI,
UNITED STATES DISTRICT JUDGE,
And a Jury

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

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

UNITED STATES ATTORNEY'S OFFICE

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JOSEPH N. MINISH

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- and -

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for the Defendant

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

S/WALTER J. PERELLI

WALTER J. PERELLI, CCR, CRR

Official Court Reporter

WALTER J. PERELLI, OFFICIAL COURT REPORTER, NEWARK, NJ

I N D E X

WITNESS DIRECT
 SHAWN BROKOS
 By Mr. Minish 4 (cont'd)

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1 adjust it. Okay?

2 Should they put the headphones on?

3 MR. MINISH: I just have one question --

4 THE COURT: Go ahead, ask the witness.

5 MR. MINISH: -- before we start.

6

7 S H A W N B R O K O S, recalled as a witness, having been
8 previously sworn, is examined and testifies further as
9 follows:

10 DIRECT EXAMINATION CONTINUES

11 BY MR. MINISH:

12 Q Agent, I'm going to refer you to Exhibit Number 4175a in
13 the transcript book.

14 A Yes.

15 Q We're going to play that recording. I just want you -- if
16 you could explain to the Jury what they're going to hear.

17 A Okay. This, on March 17, 2003. We had sent Kemo out
18 initially to do a drug buy off of William Baskerville but we
19 weren't successful in getting a hold of him. So we sent him
20 out to do a drug buy from Baskerville -- the individual who
21 worked under Mr. Baskerville, and that is Terrell Thomas.

22 So we had sent Kemo out with \$200 and told him to go
23 to Terrell Thomas' residence on 21st Street in Irvington and
24 purchase \$200 of crack cocaine from Terrell Thomas.

25 In the midst of doing this, William Baskerville

1 happens to pull up in his Cadillac Escalade, and Kemo gets into
2 William Baskerville's car and they have a discussion about
3 doing business together, meaning Kemo purchasing crack cocaine
4 from William Baskerville. So on the audio what you'll hear is,
5 I believe it begins with a car door shutting, Kemo getting in,
6 he's in the car with William Baskerville and they have the
7 discussion about purchasing cocaine.

8 Q Thank you.

9 MR. MINISH: If everybody could put their headphones
10 on and turn the switch on.

11 (Audiotape is played; audiotape is stopped.)

12 Q Thank you.

13 Now, Agent --

14 A That didn't play -- that portion of the transcript is not
15 what was heard on the audio.

16 (Audiotape is played.)

17 A There we go.

18 (Audiotape is stopped.)

19 Q Thank you.

20 Okay. Now, Agent, so the Jury is clear, did you
21 discuss this incident with Kemo after -- after he spoke to Mr.
22 Baskerville?

23 A Yes. He called me right away after he got out of Mr.
24 Baskerville's car, he called me and he said, it's going to be
25 about 45 minutes.

1 He wasn't sure whether or not he should wait to -- to
2 wait the 45 minutes for Baskerville to come back.

3 And I said, realistically do you think he'll be back
4 in 45 minutes?

5 And he said, I don't know.

6 So then I had to direct him, go ahead and do the deal
7 with Terrell Thomas. Because he wasn't sure, should I stop
8 what I'm doing? Because he had been directed to go purchase
9 \$200 from Terrell Thomas. So I instructed him go ahead and do
10 the purchase with Terrell Thomas and we'll regroup at that
11 stage.

12 Q Now, there's a couple of phrases I want to ask you about in
13 the transcript.

14 Where Mr. Baskerville says, "I don't got no raw," what
15 is he referring to?

16 A He's referring to raw cocaine, which is cocaine in powder
17 form, the rawless form.

18 Q And "I only got cook-up."

19 What is "cook-up"?

20 A "Cook-up" is a derivative of cocaine. It's cocaine that's
21 been cooked up with other ingredients that you take. It's
22 almost in a kind of a Play-Doh rock formation, and it enables
23 the user to put it in a pipe and smoke it. So it's a
24 different -- it is still cocaine but it's the derivative of
25 cocaine.

1 Q Is that commonly referred to as "crack cocaine"?

2 A It is crack cocaine.

3 Q Now I'll play a video Exhibit Number 4175 for the Jury.

4 Can you tell the Jury what this is?

5 A We had been set up on surveillance to do the March 17th
6 deal with Terrell Thomas, and I was actually on 21st Street,
7 the street where the deal was supposed to occur, and I am
8 videotaping -- I am set up to videotape the transaction. As
9 we're getting ready I notice William Baskerville driving by in
10 his Cadillac Escalade.

11 So what you'll see on the video is after about twenty
12 seconds you'll see the Escalade pull down the street, Kemo will
13 then walk from his car and get into the rear passenger side of
14 William Baskerville's vehicle, and they'll have a brief
15 conversation, and then you'll see Kemo exit the vehicle.

16 Q So the Jury understands, there's -- this is the video of
17 the audio that they just heard?

18 A Yes. Unfortunately, they're separate. When we do video we
19 do not use any audio with it. So I'm using a video camera but
20 there's no sound. Had there been sound it would have also
21 picked up the recording from the car that I was listening to on
22 the transmitter, so you'd be able to watch the audio and the
23 video simultaneously. But unfortunately the audio you heard
24 will now go with this video.

25 Q Thank you.

1 If we could play the video, please.

2 (Videotape is played.)

3 Q What are we seeing there?

4 A (Video playing) Right now this is just the typical street
5 traffic on 21st Street, a bunch of individuals.

6 That is a car that is of no consequence.

7 In just a minute you'll see the Cadillac Escalade pull
8 the street.

9 There it is. And that's William Baskerville's
10 vehicle.

11 So he's now pulled over, and Kemo -- Kemo's car door
12 just opened. Kemo's now getting out of his car and getting
13 William Baskerville's car.

14 Q And this door closing is what begins the transcript?

15 A That car shutting, that is the beginning of what was heard
16 on the audio clip that we had just played.

17 There's Kemo getting back out of William Baskerville's
18 vehicle.

19 And Baskerville drives off, and then Kemo gets back --
20 I believe he gets back into his car, goes around the corner to
21 call me to ask me what he should do.

22 MR. MINISH: You can stop it there.

23 (Videotape is stopped)

24 Q So now it was decided not to wait for Mr. Baskerville on
25 March 17th?

1 A Yes, it was. We had already had the \$200 and we were ready
2 to make that purchase from Terrell Thomas. We did not have
3 enough money to make a purchase of crack cocaine from William
4 Baskerville because we were intending to buy 28 grams, and that
5 would have cost anywhere between 700 and \$800.

6 Q All right. Now let's move forward to the next day.

7 Was anything arranged with respect to Mr. Baskerville
8 on 3/18?

9 A We had arranged to do the deal that should have happened,
10 or could have happened the evening before, we arranged to then
11 do that the following day, which would have been March 18th.

12 Q And when you say "arranged," what do you mean?

13 A We had -- Kemo had spoken to William Baskerville and told
14 him that he'd like to do the deal on March 18th.

15 Q And did Mr. Baskerville agree?

16 A He did agree.

17 Q Now, this is the first time Kemo is going to have purchased
18 from William Baskerville?

19 A This is our first purchase from William Baskerville.

20 Q I'd like to go through the process prior to the purchase
21 with you, Agent.

22 A Okay.

23 Q So before this deal, do you meet with Kemo?

24 A Yes, before we do this deal we meet with him at an arranged
25 meet -- a usual location which is an arranged meeting location.

1 Q Okay. And when you say "usual," that means not the FBI?

2 A Exactly. We didn't have him come down to the FBI office
3 nor did we meet him at his residence, we met at a middle ground
4 which is a discreet location where people would not drive by
5 and see us.

6 Q And why did you pick that location?

7 A It's an area that does not have a lot of traffic going
8 through it, an area in Irvington that I happen to know that did
9 not have a lot of traffic or law enforcement or gang members or
10 individuals so we could meet each other discreetly.

11 Q Now, when Mr. McCray gets there, what do you do with him?

12 A He gets into our -- we're using a surveillance van at this
13 point, and he gets into our van and we explain to him that
14 we're going to be giving him money, \$800 to be making a
15 purchase of crack cocaine from William Baskerville. And we get
16 him ready for the deal, meaning, you know, we initially search
17 him to make sure that he doesn't have any contraband on him.
18 If he has money on him, we take that and set it aside because
19 I'm going to be giving him money to make a purchase and I don't
20 want him co-mingling the money. We give him a recording device
21 which I activate, and then we give him a transmitter, which
22 again I activate, and then we give him the buy money, the cash
23 that we're going to use for the buy.

24 Q Okay. Did you do anything with that money prior to giving
25 it to Mr. McCray?

1 A I photocopied the money back at my office before the deal.

2 Q And what's the purpose of photocopying it?

3 A In the event that that money turns up at a later date on
4 the street, if that evening we happen to be out doing an arrest
5 of an individual and that individual has cash on them, we can
6 compare it to the buy money that Kemo used. In this sense it
7 would be -- if at some point we had to arrest William
8 Baskerville after we paid him the money and he did have that
9 cash on him, it would be further evidence that we had purchased
10 the narcotics off of William Baskerville.

11 But that's routine procedure, it wasn't specific to
12 this case. We do that in every controlled purchase that we do.

13 Q Now, was Mr. McCray able to keep any personal items on his
14 person?

15 A He's able to keep his cigarettes, his cell phone and some
16 personal items, but we make sure that the recording device is
17 not touching any of those items. The recording device has to
18 be alone in whatever pocket he puts it in because otherwise all
19 you get is interference. You could have the phone banging
20 against the device. So we make sure he's got it in a separate
21 pocket.

22 Q How about the transmitter?

23 A The same thing with the transmitter, that has to be in a
24 separate pocket with nothing in it.

25 Q And the buy money?

1 A The buy money, again, I always had him put it in a separate
2 pocket so -- I know he's nervous when he's about to do this
3 deal. I don't want him fumbling around trying to find money
4 and having his own money on him. We just have it in a
5 dedicated pocket where he can pull up the money and give it to
6 William Baskerville.

7 Q So we're talking about at a minimum three pockets with one
8 thing in each; a transmitter, recording device and buy money?

9 A Yes.

10 Q And did you on this occasion give him the exact purchase
11 amount or did you give him more than he needed?

12 A I gave him the exact purchase amount.

13 Q Do you recall what that exact purchase amount was?

14 A I can look at my report. I believe it was \$760. But I can
15 look at my report if that's all right.

16 Yes, \$760 is what we paid to him, which would have
17 been the exact change. He was purchasing 28 grams of crack
18 cocaine.

19 Q And that price had been arranged beforehand?

20 A It had been, the evening before. He says, I can give it
21 to -- on the transcript we had heard "I can give it to you for
22 27."

23 Q And what does that mean exactly for the Jury?

24 A \$27 a gram is what we -- we were purchasing.

25 Q How many grams were you purchasing?

1 A We were purchasing 28 grams, which is the equivalent of one
2 ounce.

3 Q Now, once that is all set up, are you there by yourself as
4 an agent or are there other agents involved?

5 A No, there's several agents. There's at least, four, five,
6 six other agents out on the deal at all times.

7 Q Could you explain to the Jury what those agents are doing?

8 A Before we do the deal we have a briefing in the squad area
9 as to what is going to transpire, and we decide who is going to
10 strategically be in what location to surveille the deal. So
11 when we're actually out on the deal, they go out -- we go out
12 well in advance of the deal happening and we try to get it set
13 up in strategic surveillance locations, again, so we can see
14 William Baskerville's car coming, we can try and see the deal
15 happening and we can see his car leaving.

16 So --

17 Q How many vehicles were involved?

18 A Three vehicles at a minimum -- at a minimum.

19 Q Well, how many were involved in this deal?

20 A Three.

21 Q And could you describe the two other vehicles -- not
22 yours -- where were they set up?

23 A We had one set up at the base of Wainwright, which is the
24 location which we were doing the deal, 228 Wainwright, so we
25 had one set up several blocks south of the deal; we have a

1 vehicle set up on Lyons Avenue, which is the intersection where
2 Kemo was living at the time so that when Baskerville drives
3 down the one-way street we know that he's either going to be
4 going left or right, so that vehicle would be able to see what
5 direction he goes; and I'm the third vehicle, I'm the vehicle
6 who is going to be parked right in the vicinity of 248
7 Wainwright, or as close as I can get.

8 Q Before Mr. McCray is sent to the area where the deal is
9 going to happen, do you do any radio checks or anything along
10 those lines?

11 A Before he's sent out of our van to proceed to the buy
12 location we make sure that every car can hear the transmitter
13 and that every car can hear me on the radio. There's actually
14 two radios, one that picks up the transmitter and one that
15 picks up the agents and police officers talking. So we do
16 radio checks to make sure that everybody can hear everything
17 that's going on.

18 Q And on this occasion, after you do that, does Mr. McCray
19 leave the van?

20 A Yes, he does.

21 Q And how does he get to the location?

22 A He -- at this stage he had his own vehicle, so he drives to
23 the location.

24 Q And did you attempt to drive towards where the deal was
25 going to happen?

1 A I did. I followed him, but several car lengths behind. So
2 I followed him to the location.

3 Q And during the deal, is there conversation between the
4 various law enforcement members?

5 A We're all talking as to -- we're reporting back to one
6 another what can we see, what do we hear. And at some point
7 somebody calls out on the radio that they are able to see -- at
8 this time we knew it to be a Monte Carlo that he should be
9 driving -- we knew he had the Escalade and a Monte Carlo, and
10 we were on the lookout for either vehicle. And somebody called
11 out on the radio that they saw the Monte Carlo proceeding to
12 the buy location.

13 Q Now, Agent, I'm going to refer you to the audio segment we
14 have that's referenced in 4176a of the transcript.

15 A Okay.

16 Q Would you explain to the Jury what they're going to hear?

17 A What -- what initially the Jury will hear on the transcript
18 is, we have Kemo set up, he's at the location -- let me just
19 make sure -- he's at the location and he's waiting, he's got
20 the recording device on, he's got the transmitter, he's got the
21 money, he's ready to go, we're all set up and Mr. Baskerville
22 is running late. So Kemo calls Baskerville to see where he is.

23 So what you've heard here is Kemo calling me saying:
24 I just called him and this is what happened, he's running late.

25 That happens again.

1 I call to get a status again because the deal is
2 running late. So you'll hear another conversation with Kemo
3 and myself. You're not going to hear me because it's Kemo on
4 the phone and he's got the recording device on so you can't
5 hear me on the phone with him, but he's speaking to me.

6 And then eventually William Baskerville shows up, and
7 then Kemo and Baskerville engage in a discussion, and Kemo
8 purchases the ounce of crack cocaine from Baskerville.

9 Q And these are going to be three short segments, these
10 clips?

11 A The first one is most likely a minute; the second one is
12 brief as well; and the third one is maybe four minutes. Yes,
13 they're brief.

14 Q Okay.

15 MR. MINISH: For the Court and Jury, we're going to
16 play them all the way through to move it along. Okay?

17 If everybody could put on their headphones.

18 (Audiotape is played; audiotape is stopped.)

19 MR. MINISH: We'll play number 2.

20 (Audiotape is played; audiotape is stopped.)

21 MR. MINISH: And we'll play the third clip, please.

22 (Audiotape is played; audiotape is stopped.)

23 BY MR. MINISH:

24 Q Agent, would you explain to the Jury what "UI" means on the
25 transcript that?

1 A That means "unintelligible," we just can't make out what is
2 being said.

3 Q And there's reference in this conversation to "cookies."
4 What are "cookies"?

5 A "Cookies" is just the street term for cook-up.

6 Q And again, that being --

7 A Crack, crack cocaine.

8 Q Crack cocaine.

9 And do you know what All-Star Weekend is referring to?

10 A The basketball game played in March?

11 I don't know what it is, but I know that this group,
12 Baskerville and his group of associates go to All-Star Weekend
13 every year, and I know it's something that they all take a trip
14 and go to.

15 Q And that's the NBA All-Star game?

16 A Yes, that's what it would be, yes.

17 Q Now I'm going to move forward, Agent, to March 21st, three
18 days later. Referring to the transcript marked 4178 --

19 THE COURT: 4178?

20 MR. MINISH: 4178A, Judge.

21 THE COURT: All right.

22 Q Would you explain to the Jury what these recordings are
23 going to refer to?

24 A Yes. These recordings are -- Kemo is trying to reach Will
25 Baskerville again. The first call you're going to hear is him

1 calling William Baskerville and getting Baskerville's voicemail
2 which sounds like a "shhhhhhh" sound, which is actually him
3 saying his street name, which is Cheeb, C-h-e-e-b. He doesn't
4 get him, he does not leave a voicemail.

5 In order to find William Baskerville we direct him to
6 call Terrell Thomas and ask, "Where is Will? I can't get a
7 hold of him."

8 And then after that, Kemo has a conversation with
9 Terrell. After that we then try and call Baskerville several
10 more times and are not able to get a hold of him.

11 Q I'm not going to ask that we play the entire transcript.
12 The pages we're referring to are pages 2 through the middle of
13 7, and we'll stop it.

14 (Audiotape is played; audiotape is stopped.)

15 THE COURT: Hold on, hold on.

16 It's too loud. It's too loud. Right?

17 Are there some jurors -- it's too loud.

18 (Audiotape resumes praying.)

19 THE COURT: It's too loud still.

20 Is that better?

21 (Audiotape is played.)

22 Q Now, Agent, who is "Fat Boy" that's referred to in that
23 transcript?

24 A Cheeb. It's another word Kemo used for William
25 Baskerville, also known as Cheeb.

1 Q And why is it that he's asking Terrell Thomas to assist him
2 in getting in contact with William Baskerville?

3 A Because Terrell Thomas worked for William Baskerville, he
4 sells drugs for William Baskerville.

5 Q We'll move forward now to 4179, and it's 4179a in your
6 transcript book.

7 Agent, tell the Jury what they're going to hear on
8 this audio clip.

9 A 4179. This is going to be the actual transaction that we
10 have set up where Kemo is going to this time be buying 50 grams
11 of crack cocaine. So it's similar to the deal from March 18th
12 in that we have Kemo set up in the same location, the 248
13 Wainwright, and again we have him set up like we had set him up
14 before. He's waiting at his residence, and we are just waiting
15 on William Baskerville to show up.

16 So I believe on the transcript you'll hear some
17 dialogue between William Baskerville -- I take that back --
18 William Baskerville calling Kemo. So that you'll hear Kemo's
19 side of the conversation, then you'll hear Kemo calling me
20 reporting what William Baskerville has said, and then
21 ultimately you will hear the transaction.

22 Q Now, you said the setup was the same as the last time. And
23 by that you mean how you outfitted Mr. McCray with the
24 transmitter and a recording device?

25 A Yes, how we outfitted him. We met him in the same exact

1 spot we had met him to do the March 18th deal. He was in his
2 vehicle. We searched him, we gave him the recording device,
3 the transmitter, the buy money, and had our surveillance units
4 in place and did the deal. This time we were able to videotape
5 the deal. We were in a better location to be able to videotape
6 it.

7 Q And how much buy money was Mr. McCray given?

8 A \$1,360. And that's --

9 Q Did you make an arrangement with Mr. McCray where he was to
10 report after the deal?

11 A We had arranged to meet back at the initial meeting
12 location, the location where we had prepared him to do the
13 deal. We had arranged to meet him back there after the deal
14 was done.

15 MR. MINISH: If everybody could put their headphones
16 back on, we're going to be on 4179a in the transcript book.

17 (Audiotape is played; audiotape is stopped.)

18 Q All right. Now, Agent, the conversation was that obviously
19 very quick with William Baskerville. Do we have a video that
20 covers this?

21 A We do. We do, we have a video.

22 And what you'll see in the video is Kemo initially
23 standing out in the front steps of his apartment, the Monte
24 Carlo pulling up. I think the video begins with Kemo actually
25 leaning into the Monte Carlo for a short period of time and

1 then Kemo walking away going back to his apartment.

2 Q And who's the driver of the Monte Carlo?

3 A William Baskerville.

4 MR. MINISH: If we could play that video, please.

5 (A videotape is played.)

6 MR. MINISH: For the record Judge, it's 2226a, the
7 video.)

8 A (Videotape playing) There's the Monte Carlo there. Kemo
9 had just leaned in and is now walking back -- he's right there
10 walking back to his apartment.

11 Q Is there anything --

12 A What's going to happen is Kemo is going to run back out to
13 the Monte Carlo because he didn't pay him the entire amount.
14 He found \$60 in his pocket and had to run back out and pay
15 Baskerville the rest. So you should see him go back to the car
16 any minute.

17 Right there. And that's it.

18 Q So it was an inadvertent mistake?

19 A It was an inadvertent mistake. We had given him \$1,360,
20 and at the initial transaction he paid him 1300, and he went to
21 the doorstep, stuck his hand in his pocket and realized he had
22 \$60 more. So he went right back to the car and paid
23 Baskerville the \$60.

24 Q Now, once this deal is done, explain to the Jury what Mr.
25 McCray does and what you do. What's the process?

1 A What he does -- and you can actually hear it on the
2 transcript -- is he calls to tell me it's done.

3 And the reason that took so long, there was a long
4 pause because I put him -- I'm on the phone with him. I put
5 him on hold because -- I'm on the radio or hand-held radio and
6 we're trying to ascertain where William Baskerville is going.
7 We're trying to make sure he's out of the area. And --

8 Q Why is that important?

9 A Before we meet with him again to get the drugs and the
10 recording device and the evidence, we want to make sure that
11 William Baskerville is well out of the area. It would look
12 very suspicious if Kemo all of a sudden hops in a car with us
13 and meets with us. So we always try and make sure that William
14 Baskerville is well out of the area.

15 Q And how do you go about doing that?

16 A We have the other -- it's not myself, but there's the other
17 surveillance vehicles that are out on the deal, and they
18 were -- they will surveille him out of the area, and then they
19 will radio to me and say, it's clear, we're all clear, at which
20 point I will tell Kemo to meet us at the prearranged location.

21 Q And did that happen in this case?

22 A It did.

23 Q And I know we skipped by, but did that happen in the prior
24 transaction that you testified about earlier?

25 A Yes, it did.

1 Q Now, once that signal is given, where does Mr. McCray go?

2 A He goes to the prearranged meeting location, the one we had
3 met at before the deal.

4 Q And who's at that location?

5 A Myself and another agent. The other surveillance units are
6 in the area in the event we need them for anything, but they
7 don't come with us to what we call the debrief. We don't need
8 them there.

9 Q And what type of vehicle are you in?

10 A I'm in a surveillance van or a mini-van. It's an unmarked
11 car, put it that way. It's not a traditional Bureau vehicle.

12 Q But it's a van, not a sedan?

13 A It was a Ford Windstar with dark tinted windows, yes.

14 Q What goes on inside -- well, let me ask you this: Does Mr.
15 McCray get into the van?

16 A He does, he gets into the van.

17 Q Once he's in the van, explain to the Jury what happens.

18 A The first thing he does is provides me with the crack
19 cocaine. He's got a baggie of crack cocaine that's probably
20 about this size. It's a rock-size amount of crack cocaine. He
21 hands me the drugs.

22 I secure the drugs. He then hands me the recording
23 device. I deactivate the recording device. And he hands me
24 the transmitter, and I turn off the transmitter. And then I
25 begin to debrief him on what happened, what he saw.

1 Q And the wrapping or the packaging this time, was it the
2 same as it was on the prior transaction that you testified
3 about?

4 A Yes, it was. It's a clear plastic bag.

5 Q And when you say "debrief," what do you mean by that?

6 A I like to hear from Kemo exactly what he saw, what he
7 heard, what he observed, because he's our eyes and ears out
8 there. I'm somewhat down street taking a video of it but I
9 can't see the things he can see. So I ask him specifically
10 what he happened to notice in this deal.

11 Q Okay. And what type of questions do you ask him?

12 A If anybody else is in the vehicle with him; if there's
13 anything unusual; did you notice William Baskerville to have a
14 cell phone on him; does he have more than one phone?

15 Because at this time we're trying to track his number
16 and we don't know if he uses many different phones as drug
17 dealers sometimes do. So that type of information.

18 Q And did you do the same thing at that first transaction?

19 A I did.

20 Q And did he provide you with any evidence or any information
21 that was noteworthy?

22 A Just me a minute, let me just look at my report.

23 What he told me on this specific occasion was that
24 Baskerville was driving and that he had two other unknown black
25 males in his vehicle, so that's something we wouldn't be able

1 to see from the street because William Baskerville's windows in
2 the Monte Carlo were so darkly tinted that we couldn't tell
3 that there were two other individuals in the car. So, yes.

4 Q And did he say anything about what he observed when he went
5 back with the \$60?

6 A At that point he said when he was returning the \$60, as he
7 was handing William Baskerville the money, William Baskerville
8 was counting the other money that Kemo had provided to him.

9 Q Where do you keep the cocaine that was purchased in the
10 van?

11 A I put it in my briefcase that I carry for work, and there's
12 a special pocket where I would put that, and then I would also
13 put the recording device and the transmitter in that briefcase.

14 Q Once you've resolved everything in the van, what happens
15 with Mr. McCray?

16 A Well, I first -- what I do, once I resolved everything with
17 Mr. McCray, with Kemo and I had debriefed him thoroughly, I
18 check with our surveillance units to make sure that we're again
19 all clear to release Kemo from the van. And once I get the
20 "all clear," we release Kemo from the van and he's done, he
21 goes about his business. But he knows at some point later to
22 expect a call from me because what I'm going to do is take the
23 drugs, take them back to my office and field-test them to make
24 sure that it is actually cocaine that we've just purchased.

25 Q Okay. We'll get to that in a second. But the "all clear,"

1 what is that referring to this time?

2 A That means that we know that William Baskerville is out of
3 the area.

4 Q All right. And do you get that signal on this transaction?

5 A I do.

6 Q And is Mr. McCray released from the van?

7 A He is.

8 Q And where do you go?

9 A I go back to the office.

10 Q And when you get back there, what did you do?

11 A I take the drugs and field test them, which means I just
12 take a tiny -- a small nominal amount out of the bag and put it
13 in one of our drug-testing kits, and that will tell me
14 conclusively whether or not we purchased cocaine. It doesn't
15 categorize it as crack cocaine but it says that it is fact
16 cocaine. And we want to do this because we want to make sure
17 that Kemo in fact purchased cocaine. If he purchased something
18 other than that -- which does happen on the street -- Kemo
19 would have to go back to William Baskerville and say, that's
20 not cocaine you gave me.

21 But we field-tested it, it tested positive for cocaine
22 base and we knew that we had made a legitimate purchase.

23 Q If it was not, in fact, cocaine and Kemo did make the call
24 back to Mr. Baskerville, what would that mean?

25 A That would be a telltale sign that he's an informant.

1 Because if Kemo was really taking the stuff and packaging it,
2 he's getting it more or less wholesale -- what Kemo said he was
3 doing was selling it retail out on the street, putting it in
4 little vials of crack cocaine for individual consumption. If
5 he goes to try to sell that on the street and he gets a
6 customer and a customer comes back to him and says that's not
7 crack cocaine, then Kemo has got problems.

8 So realistically in that instance what Kemo would do
9 would go right to William Baskerville and say, hey, you beat me
10 for these drugs. These are not drugs.

11 So we always field-test it to make sure what we bought
12 was actually the drug, and it gives Kemo that --

13 Q Did you do anything with the drugs when you get them back
14 to the FBI?

15 A I have to weigh them and package them so I can commit them
16 to evidence.

17 Q How are they packaged?

18 A We use what's called a K-Pack bag. It's a clear plastic
19 bag. We put the drugs in there and then we put our evidence
20 label on top and we heat-seal it. And I have to do this with
21 another agent witnessing me. And then we submit it into our
22 evidence room.

23 Q And on this occasion, after it was field-tested, did you
24 call Mr. McCray?

25 A I did.

1 Q Did you inform him it was cocaine?

2 A Yes, I did.

3 Q This process at the end, is this the same process you went
4 through in the first transaction?

5 A Yes, it is. Yes it was.

6 Q How much were you supposed to buy from Mr. Baskerville on
7 that day?

8 A On that day we were supposed to buy 50 grams of crack
9 cocaine.

10 Q How much did you actually get?

11 A I believe 46.7. But if I could see the lab report that
12 would help me. But I believe it was shy -- I know it was shy
13 of 50 grams.

14 Q Okay. And the first time you were supposed to buy 28, did
15 you get 28 on the first occasion?

16 A We were shy of 28. I want to say maybe 27.4, but nothing
17 that would cause concern. And again when we weigh them, we're
18 weighing it with a bag, so 28 could be 28. When we submit it
19 to the DEA lab, they weigh it net, no packaging, no bag, no
20 nothing, so then their weight comes in slightly less than 28.

21 Q All right. Now, having made this -- having made this
22 purchase, what's the next thing that happens in the --

23 A After this purchase?

24 Q Yes.

25 A What we do after this purchase is regroup, because we had

1 been working this still under our gang investigation that we
2 had been doing the area, and we had been working Mr.
3 Baskerville in conjunction with that gang investigation. He
4 was part of the gang members. At this stage we realized we
5 were going into a larger scale drug investigation, so I opened
6 a whole new investigation into William Baskerville and Rakeem
7 Baskerville and other individuals that we believed to be
8 supplying Terrell Thomas and the gang.

9 Q Now, moving forward to the middle of May, so now almost two
10 months later, what goes on at that point?

11 A We are at that stage we are looking to find William
12 Baskerville to set up another drug purchase from him.

13 Q And why is there such a gap between the March 21st deal and
14 now the middle of May?

15 A At that stage we were focusing on some other individuals
16 still related to finishing up some of the gang investigation,
17 and also we were having a hard time getting a hold of William
18 Baskerville, and we had been told that there was some drug bust
19 somewhere which I was not able to confirm, but there was a drug
20 bust somewhere --

21 MR. BERGRIN: Objection, your Honor, as to what she
22 was told.

23 THE COURT: All right. Sustained.

24 A (Continuing) We learned that William Baskerville was not
25 able to get --

1 MR. BERGRIN: Objection, your Honor.

2 THE COURT: Sustained.

3 A Kemo was having a hard time making a connection with
4 William Baskerville to purchase drugs.

5 THE COURT: Go ahead. Next question.

6 Q We're now on to around May 19th. What happens on May 19th?

7 A There's a telephone call between Kemo and William
8 Baskerville, and Kemo is finally successful in getting a hold
9 of William Baskerville, and we're still trying to do another
10 deal.

11 And what happens is, Baskerville says: Are you ready?

12 And we actually weren't ready to do the deal, we
13 didn't have the drug -- the buy money that we needed. So we
14 had to buy time.

15 So Kemo in this call makes up an excuse: I'm downtown
16 buying food for my son. So it was really -- this call was just
17 to buy us time, but we were gearing up to do another deal.

18 Q So let's skip by that recording --

19 A Okay.

20 Q -- to 5/22. What happens on 5/22? And I'm referring to
21 the recording marked for evidence 4183.

22 A On 5/22 I go out and meet with Kemo and I have the
23 hand-held recorder with me, and I instruct Kemo to call William
24 Baskerville so we can try and do another deal. We hadn't
25 anticipated doing a deal that evening. We were trying to set

1 up the call for that evening. And the understanding was we
2 were going to do the drug deal the following evening.

3 So I meet with Kemo, and he calls William Baskerville.
4 And William Baskerville says, if you want to do -- in effect,
5 we have to do this deal now. I'm going out of town and I will
6 not be back 'til Sunday night.

7 MR. MINISH: And if we can play -- if everybody can
8 flip their transcript books to 4183a and put on their
9 headphones.

10 (Audiotape is played; audiotape stopped.)

11 Q So, Agent, after that conversation with Mr. Baskerville,
12 what was the tactical decision that you made?

13 A I decided to go ahead and do the deal right then and there,
14 because we didn't want to wait until Sunday night. We had
15 already had a lot of start and stop with William Baskerville
16 from March 21st 'til May. So I told Kemo, let's just go ahead
17 and do the deal now, we'll go ahead and do it tonight.

18 Q And why was it difficult to do it that evening?

19 A Because I hadn't briefed the squad. I didn't have the
20 units out with me. I was out meeting Kemo by myself because
21 the initial -- the intent was merely to do a consensual phone
22 call, leave, come back and do the deal the following day.

23 Q How much money were you going to -- were you going to
24 purchase with?

25 A I believe -- just one second. He had on this deal, it was

1 \$900, and we were purchasing an ounce of crack cocaine.

2 Q Okay. So the set-up was a little different for this deal
3 than it was for the prior two?

4 A Yes, it was.

5 Q Could you just explain for the Jury briefly what the
6 differences were?

7 A The difference was, I was out there by myself in the
8 surveillance vehicle. I did not have members from the squad
9 with me, so I had called members of local law enforcement,
10 Irvington Police Department and Newark Police Department
11 through our Task Force Officer, so that I would have support
12 and security on the street but I did not have members of the
13 squad present during this transaction.

14 Q And were you able to put eyes on Mr. McCray?

15 A Because I didn't have other members from my squad
16 available, I -- I remained very close to Kemo while he did this
17 deal.

18 Q That means what; driving the van closer to the area?

19 A I parked my van right at the intersection where the
20 transaction was supposed to occur.

21 Q And is that closer than you normally are?

22 A That's much closer than we normally are. Again, I'm in an
23 unmarked vehicle with tinted windows so it's somewhat discreet,
24 but we typically don't get that close to the deal.

25 Q Why don't you typically get that close?

1 A Well, for two reasons: We don't want to be made in any
2 way, and also we don't want Kemo uncomfortable, because a lot
3 of times informants, and Kemo in particular, if he saw us too
4 close it would make him nervous. He wants peace of mind we're
5 out there, we're out there somewhere but we're not right on top
6 of him.

7 Q Okay.

8 MR. MINISH: Now, if we can -- everyone can open their
9 book to 4184A, and we'll play the recording marked in evidence
10 4184.

11 Q And this is the deal, Agent?

12 A This is the deal. It's -- it happens fairly quickly.

13 (Audiotape is played; audiotape is stopped.)

14 Q What is Mr. Baskerville referring to when he said, "I still
15 got a hundred fifty in my bag"?

16 A He still had more crack cocaine for purchase if Kemo wanted
17 to buy more. Because before this deal Kemo told him: I'm
18 trying to get together with a bunch of people and get a bunch
19 more money so we can buy more in that quantity.

20 So if he tells them that on the phone: I'll trying to
21 get my money together.

22 So William Baskerville wants him to know he still has
23 150 grams left in his bag in the car.

24 Q Moving forward another month, what happens on or about June
25 19th of 2003?

1 A On June 19th we do another transaction. This time we are
2 purchasing 28 grams, or an ounce of crack cocaine. This time
3 it's at a different location because Kemo at this stage had
4 moved to the area of 14th and Madison.

5 Q To a new home?

6 A Yes, to a new home.

7 MR. MINISH: I'm going to ask everybody to flip their
8 book to 4186a.

9 Q Agent, if you could explain to the Jury what they're going
10 to hear about.

11 A This is a phone call that Kemo makes to William Baskerville
12 and says that I'm ready for that little 50-bagger.

13 And I misspoke earlier, I meant we were buying 50
14 grams, we're not buying an ounce.

15 So what Kemo says: I'm ready for the 50 grams; so he
16 tells him that on the phone, and Will says: I'll be there in a
17 half hour or so.

18 Q And how much money was Mr. McCray given to make this
19 purchase?

20 A Just a minute.

21 1,400 -- \$1,410.

22 Q And what was the actual price that Mr. Baskerville needed
23 to be paid for the 50 grams?

24 A \$1400. We had given him an extra \$10 so that Kemo would
25 overpay him with the intent of saying, I need \$10 back.

1 Q And why would that matter?

2 A Just to elicit more conversation. Because the last deal
3 happened so quickly and we were trying to get more dialogue, we
4 were trying to get William Baskerville engaged in more
5 dialogue. So we thought if we overpaid him and Kemo had to go
6 back and ask for more money there would at least be more
7 dialogue on the table.

8 MR. MINISH: If everybody could put on their
9 headphones.

10 (Audiotape is played; audiotape is stopped.)

11 Q Now, if we would skip ahead to 4187. This is the actual
12 deal?

13 A Yes.

14 Q Now, again, without going into all the details, is the
15 process setting up Mr. McCray prior to this deal similar to
16 when you were by yourself or similar to the first deal?

17 A Similar to the first deal, or the first few deals. We had
18 our several vehicles out on this deal to include our
19 surveillance van which was able to take videotape of the
20 transaction.

21 Q And were you -- did you go through the process again of
22 searching him and outfitting him with the transmitters -- or
23 transmitter and the recording device and the buy money?

24 A Yes, I did.

25 Q And then after that was done, did he leave the van?

1 A Yes, he did.

2 Q And did he leave on foot or by car?

3 A This time it was on foot. We met him in the area of 14th
4 and Madison several blocks away, and we prepared him at that
5 location. We set him out on foot. So he walked back to his
6 residence on 14th Street.

7 MR. MINISH: If everyone could open their book to
8 4187, and if we could play the tape.

9 (Audiotape is played; audiotape is stopped.)

10 Q Okay. Now, Agent, you indicated that there was a video on
11 this transaction on June 19th?

12 A Yes, there is.

13 MR. MINISH: Judge, I'm going to ask that we play
14 2227a in evidence.

15 Q Would you explain to the Jury what they're going to see?

16 A Yes. We're on 14th Street at this point and we are parked
17 just south of where the deal is going to occur. You'll see the
18 Monte Carlo pull in in front of Kemo's apartment, and there's
19 a -- a short wait, and then Kemo comes out. And he leans into
20 the front passenger side door of the Monte Carlo and speaks to
21 William Baskerville, and another individual that we later
22 identified who was in the vehicle.

23 (Videotape is playing.)

24 A There's the Monte Carlo pulling up now.

25 There's Kemo at the vehicle.

1 Q That's Mr. McCray leaving?

2 A That is. He's walking back to his apartment, and then the
3 Monte Carlo drives off.

4 (Videotape is stopped.)

5 Q Now, again, I know technologically it didn't match up, but
6 does that video match with the audio that the Jury heard
7 previously?

8 A It did. And one of the reasons why this deal took so long
9 was that William Baskerville was actually on the phone with
10 somebody else, so Kemo was talking to this individual that
11 we -- that we knew to be Carwash, who Kemo recognized from the
12 street. So there's a lot of banter initially between Kemo and
13 Carwash until Will Baskerville is off the phone, and then the
14 hand-to-hand -- or the deal, the transaction occurs, and then
15 Kemo walks away and Will pulls off.

16 Q Now, did you go through the same process that you described
17 previously of meeting Mr. McCray after Mr. Baskerville has left
18 the area?

19 A We did. We waited until Mr. Baskerville was out of the
20 area, and on this particular instance we had to wait a little
21 while because Mr. Baskerville actually drove a few blocks away
22 and stayed there for -- for some time, so we waited until he
23 then left that second location.

24 And Kemo then walked to where we were parked and got
25 into our van and we did what we -- we took -- I took the drugs

1 from him, deactivated the recording device, turned off the
2 transmitter and then debriefed him.

3 Q Okay. And during the debriefing, what did Kemo tell you?

4 A He said that there was another individual in the car with
5 William Baskerville known to Kemo as "Carwash," and that he had
6 gotten that street name because he was always out washing cars
7 to try and make money. And he knew Carwash through the streets
8 and he knew Carwash to be somebody who cooks up the cocaine for
9 William Baskerville.

10 Q Had he seen -- I'm sorry -- Mr. McCray seen Carwash on the
11 prior occasion, the May 22nd transaction?

12 A Yes, he had.

13 Q And did he explain that to you?

14 A Yes, he did.

15 Q And did he explain whether there was anybody else in the
16 vehicle during that -- the prior transaction, the May 22nd
17 transaction?

18 A On the May 22nd transaction he had explained that there was
19 a heavy set man in the front passenger seat. The seat was all
20 the way reclined. And then there was a -- then Carwash was in
21 the back of the car.

22 Q And besides these two occasions that we're talking about,
23 had Mr. McCray seen Carwash on prior occasions?

24 A He had seen him out on the street with William Baskerville,
25 but not on previous -- the previous drug buys that we had done.

1

2 Q Now, the next purchase happens in September. Is that
3 correct?

4 A That is correct, September 9th.

5 Q So for the period of time from the middle of June through
6 July and August, why are there not purchases being made?

7 A It's a combination of several factors. One, we had a hard
8 time getting in touch with William Baskerville. He stopped
9 using that one phone that we were using and got another phone,
10 so we were trying to track him down and Kemo was trying to
11 track him down on the street. And it wasn't until I believe
12 middle of August that Kemo saw him again and was able to get a
13 good phone number for him. The other issue we were having is
14 that we, meaning the FBI, the government was out of what we
15 call "buy money." There was no more money left to do these
16 controlled purchases. So it was really those two factors.

17 Q So it was the end of the fiscal year or towards the end of
18 the fiscal year?

19 A We were coming very close to the end of the fiscal year.

20 Q And I apologize for missing this before, Agent, but Mr.
21 Baskerville -- excuse me -- during that transcript of the 6/19
22 transaction, the word "diesel" is used?

23 A Yes.

24 Q What does that refer to?

25 A That's the street term for dope, which is also heroin. And

1 we were trying -- at that stage we were also going to try and
2 buy heroin from William Baskerville.

3 Q And with respect to the 1410, by giving Mr. Baskerville too
4 much money hoping to elicit conversation, how did that work
5 out?

6 A William Baskerville handed Kemo back his ten dollars.

7 Q Now, let's move forward to September.

8 Could you just describe for the Jury -- I'm not going
9 to play the audio -- but if you could just describe for the
10 Jury in 4191 what's going on there.

11 A This is Kemo finally reconnecting with William Baskerville
12 on the phone. And Baskerville says: Where are you living at?

13 And Kemo says: I'm living on Wainwright, because he
14 had moved during this time.

15 And Kemo says, all right. Give me -- I'll give you a
16 was call back. Because they were trying to set up a deal. But
17 this is the first time they were able to connect on the phone
18 for a period of time. So we were doing with the intent again
19 to set up another drug deal.

20 Q Okay. And did another drug deal actually get set up?

21 A Not on that day, but several days later we did set it up,
22 yes.

23 Q Do you know the date of that deal?

24 A September 9th is when the drug deal actually happened.

25 Q If we could skip ahead to 4193 in the transcript books.

1 Referring to what the Jury is going to hear on that
2 recording, could you give them a preview of what they're going
3 to hear?

4 A 4193 did you say?

5 Q Correct.

6 A Okay. That's a telephone call between William Baskerville
7 and Kemo, and it's Baskerville apologizing because he was
8 supposed to meet Kemo earlier, and he got caught up, and Will
9 Baskerville says, give me ten minutes.

10 So this is just setting up the deal right before it's
11 going to happen. We know that in about ten minutes William
12 Baskerville is going to be coming by, so we're going to be
13 doing another drug purchase.

14 Q So let's skip by that audio and go right to the next one.
15 4194.

16 A This is actual audio recording of the -- of the deal
17 before --

18 Q What is the Jury going to hear?

19 A We had the recording device on Kemo at this stage. We're
20 ready to do the deal, and it doesn't happen in the ten minutes
21 that it's supposed to happen, so you'll hear Kemo trying to get
22 a hold of Will on the phone. So you'll hear only Kemo's end of
23 the phone call to William Baskerville.

24 And ultimately William Baskerville does show up, and
25 they do the deal in the driveway of where Kemo was living at

1 that time.

2 Q We're going to play the recording, and so the Jury is
3 clear, we're going to finish it towards the bottom of page 2,
4 the very the very first page with actual information on it.

5 THE COURT: Which transcript are we on now?

6 MR. MINISH: I'm sorry, Judge. It's 4194a.

7 THE COURT: All right. Thank you.

8 THE WITNESS: I believe we have a page 3. On this --
9 oh, I'm sorry.

10 MR. MINISH: Could everybody could put on their
11 headphones, please.

12 (Audiotape is played; audiotape is stopped.)

13 Q Agent, can you explain to the Jury what they heard here?

14 A I believe that -- I'm not sure if it was queued to the
15 right part, but that should have been the deal. It was hard
16 for me to hear because I didn't have my headphones on, but it
17 should have been the deal --

18 Q If you don't know, I don't want you to...

19 Moving forward to the video that was made in
20 connection with this, 2228a, is that the video of the
21 transaction on September 9th?

22 A It's a video of the transaction, yes. It's William
23 Baskerville arriving in a different car this time. He was
24 driving a Pontiac Grand Am with a Connecticut license plate, so
25 it was unusual for us to see him in a different car. But he

1 arrives in the Grand Am and he backs into Kemo's driveway. You
2 see Kemo who's out lifting weights put the weights down, walks
3 to the vehicle. At that point it's hard for us to see, it's
4 hard to see in the video. The transaction occurs, Kemo walks
5 away and then the car pulls away.

6 Q And how much money, buy money, was Mr. McCray given on that
7 day for that transaction?

8 A He was given \$800 to purchase --

9 Q And what were you expecting him to purchase?

10 A 28 grams of crack cocaine.

11 (Videotape is playing.)

12 A There's Kemo in the white T-shirt.

13 He's on the telephone just walking, waiting.

14 There's the Pontiac backing in. Kemo puts down his
15 weights and walks around the corner.

16 The car is now pulling out and Kemo is walking around
17 the corner.

18 (Videotape is stopped.)

19 Q Okay. Now, after that transaction did you go through the
20 same process again of waiting for Mr. Baskerville to leave the
21 area?

22 A We did, and again, on this deal it took a little longer to
23 regroup with Kemo because we noticed it was unusual car, we had
24 never seen that car and he also had his black Monte Carlo
25 parked at a different location, so we took a little longer than

1 usual to meet up with Kemo. So we wanted to make sure we had a
2 good idea of where William Baskerville was. But, yes, we did
3 meet up with him.

4 Q And during that process, were the drugs taken from him, the
5 device taken from him?

6 A Yes.

7 Q And was he debriefed?

8 A He was debriefed.

9 Q And did he provide any information about what was going on
10 in the vehicle, Mr. Baskerville's vehicle?

11 A He said that there was a black male in the front passenger
12 seat with a long beard built similarly to William Baskerville,
13 and then a third male in the back seat. And then he also
14 pointed out to us, which we had observed, about the Connecticut
15 license plate, the different car with the Connecticut license
16 plate.

17 Q And did he tell you anything about where Mr. Baskerville
18 got the drugs from?

19 A They were wrapped in tin foil this time, which is the first
20 time we had seen them wrapped in tin foil, and they were in the
21 tin foil wrapped in his T-shirt on his lap.

22 Q And when you say in "tin foil," you mean just the way you
23 fold up a sandwich?

24 A Yes, the same tin foil.

25 Q And on the prior occasions, the prior transactions, it had

1 been in that clear plastic bag with the knot on top that you
2 testified to early?

3 A Yes, it had been.

4 Q Moving ahead now another month into October, is there an
5 attempt made to make any final purchase from Mr. Baskerville?

6 A Yes. This is our final purchase that we do make from him
7 on October 23rd.

8 Q What happens on October 21st?

9 A On October 21st we have a -- I meet with Kemo and we have
10 him call William Baskerville to try and set up a deal, and
11 there is a telephone call between the two of them.

12 MR. MINISH: If everybody could open their books to
13 4197a.

14 We're going to start on page 3 of the transcript right
15 underneath where it says "End of Call Number One," if everybody
16 could put on their headphones.

17 A I think we're actually starting on page 2 on that one.

18 (Audiotape is played; audiotape stopped.)

19 Q I apologize, Agent, you're correct. Obviously, I meant it
20 was supposed to end there, not begin there. That's my fault.

21 But if you could explain to the Jury what they heard
22 during that conversation.

23 A What had happened is we met Kemo out on the street again
24 with the intent to have Kemo make a recorded call to William
25 Baskerville. And Kemo's phone had just run out of minutes so

1 we couldn't use his phone. So another agent who was with me at
2 the time had his personal cell phone on him, and he provided
3 that to Kemo so -- provided it to Kemo so Kemo could use that
4 phone to call William Baskerville but just blocked the number.

5 So when Kemo made the call apparently he didn't block
6 the number, and the call went to William Baskerville, and
7 Baskerville didn't pick up. So then what happened is,
8 Baskerville called the phone back right away, and that's why
9 he's confused at first: Who is this?

10 It's Kemo.

11 And then he says: Whose phone you got? A cracker
12 phone?

13 Because the voicemail on the phone when William
14 Baskerville called him back was the personal cell phone of
15 another agent on the squad. And Kemo had to make a quick
16 cover. He said, I just bought the phone off of fiend, because
17 it's clearly not Kemo's phone.

18 Q And a "fiend," meaning what?

19 A A drug addict who will sell anything they have to get more
20 drugs. So it would not be uncommon for a fiend to give a drug
21 dealer a phone and the drug dealer provides the fiend or the
22 drug addict with whatever drug it is they need.

23 Q Does the actual transaction happen two days later on
24 October 23rd?

25 A Yes, it does.

1 Q Now, if you could explain to the Jury what system Mr.
2 Baskerville put in place to make this transaction happen.

3 A This transaction was different from any transaction we had
4 done previously, because during the transaction itself Kemo
5 called William Baskerville again to ask how soon he would
6 arrive. And William Baskerville instructed Kemo, he gave
7 him -- William Baskerville gave Kemo a beeper number or a pager
8 number and said, call this number, put in "002," the amount of
9 grams you would like to purchase -- in this case it would be
10 28 -- and then "002."

11 So there was a code system that William Baskerville
12 was is the setting up with Kemo. So what you'll hear on this
13 transcript is a lot of confusion on Kemo's end because William
14 Baskerville provides him with the beeper number, but Kemo does
15 not write it down right. He tries to call it, it doesn't work.
16 He calls William Baskerville back. He finally gets a beeper
17 number right, he puts the code in the beeper and then
18 ultimately William Baskerville shows up for deal. But there's
19 a good amount of confusion occurring initially on this deal.

20 And again, what you're going to hear is Kemo talking.
21 You're not going to hear William Baskerville because you can't
22 hear that side of the telephone conversation.

23 Q Until the actual deal?

24 A Until the actual deal.

25 The deal happens at the end where William Baskerville

1 shows up, and it's a quick hand-to-hand transaction that we
2 were able to get a video of, and that's the end of the deal.

3 Q Now, prior to this deal happening, did you go through the
4 same process again of outfitting Mr. McCray with the devices,
5 searching him, providing him with buy money?

6 A Yes, we did.

7 Q And do you recall how much buy money he was given?

8 A He was given \$800 to purchase an ounce, or 28 grams of
9 crack cocaine.

10 Q The plan was to buy 28 grams?

11 A Yes, it was.

12 Q And did he leave the area where you were outfitting him
13 when the devices on foot or by car?

14 A He left on foot.

15 Q Was the setup of the agents similar to the other deals --
16 besides the one that you were there by yourself -- with various
17 cars?

18 A Yes, it was.

19 Q And what was the setup?

20 A This deal was going to -- was supposed to happen in front
21 of his residence on 19 Wainwright. So we had a car parked just
22 south of that to be able to see the Monte Carlo or whatever
23 vehicle William Baskerville was going to be in arrive, and we
24 had a car parked north of where the transaction was supposed to
25 occur to follow him out. And then myself and another agent

1 were parked at an intersection where we were able to view the
2 deal on Wainwright actually.

3 Q And you set up closer to the deal?

4 A I did, I set up closer to the deal.

5 MR. MINISH: If everyone could flip to page -- or tab
6 4198a, and if you could put on your headphones, we'll play the
7 recording.

8 (Audiotape is played; audiotape is stopped.)

9 THE COURT: Mr. Minish, are you done with this
10 conversation? Do you have any more questions on this
11 conversation?

12 MR. MINISH: We can certainly take a break, Judge.

13 THE COURT: Finish asking your questions on this
14 conversation and then we'll take a break. Or is there another
15 conversation you're going to go to?

16 MR. MINISH: We were going to play the video that
17 relates to this deal and ask the pertinent questions.

18 THE COURT: Do you have more tapes after this?

19 MR. MINISH: No. One more video.

20 THE COURT: What's that?

21 MR. MINISH: One more video.

22 THE COURT: How long is that video?

23 MR. MINISH: It's not very long, Judge, a minute or
24 two like the others.

25 THE COURT: Why don't we do that. And then you're

1 done with these recordings. Is that correct?

2 MR. MINISH: That's correct.

3 THE COURT: Okay. Then you're going the get into
4 another subject matter with the Agent.

5 MR. MINISH: I have a few wrap-up questions but, yes,
6 we're --

7 THE COURT: Why don't we do the video, ladies and
8 gentlemen, then we'll take the morning break. I know it's been
9 long but we've been trying to get through these in one shot

10 MR. MINISH: I'll go to the video.

11 THE COURT: Go to the video and then we'll take a
12 break for the morning.

13 MR. MINISH: It's for the record, it's number 2230a.

14 BY MR. MINISH:

15 Q Agent, would you tell the Jury what they're going to see.

16 A Kemo's house is on the left. This is 19 Wainwright. So
17 where he lives is on the left in this video, and on the right
18 side you're going to see William Baskerville pull up in the
19 Monte Carlo. Kemo will walk out of his apartment and walk past
20 the Monte Carlo and then lean into the passenger side door of
21 the Monte Carlo and that's where the transaction will occur

22 (Videotape is playing.)

23 A There's the Monte Carlo arriving on the scene pulling over.

24 There's Kemo now walking towards the Monte Carlo. And
25 unfortunately the rest of the deal is obscured by that van.

1 Q Is there anything in the balance of the video that's of
2 evidential value?

3 A No.

4 MR. MINISH: Stop video.

5 THE COURT: All right. Ladies and gentlemen, we'll
6 take a break for about 15 minutes or so and then we'll see you
7 back here in about 15 minutes. Please don't discuss anything
8 about the case.

9 Thank you.

10 THE DEPUTY CLERK: Please rise for the Jury.

11 (The Jury leaves the courtroom.)

12 THE COURT: All right, everyone, be seated, please.
13 We'll see you back in 15 minutes, okay? Quarter of or
14 so.

15 MR. LUSTBERG: Thank you, your Honor.

16 THE COURT: Mr. Minish, how much longer do you have
17 with this witness on direct?

18 MR. MINISH: On direct, a while, Judge. I mean, we're
19 now going to move into I guess the post-drug area forward to
20 the murder.

21 THE COURT: Thanks.

22 Do you have photographs you want me to review or --

23 MR. MINISH: We've decided, Judge, not to put them in
24 through this witness and we'll just discuss it this afternoon
25 when your Honor reviews a number of evidential issues.

1 MR. MINISH: You, Judge.

2 DIRECT EXAMINATION CONTINUES

3 BY MR. MINISH:

4 Q Agent, going back to the 4198a transcript, there's a couple
5 of things referred to I just want you to make clear for the
6 Jury.

7 What does "UM" stand for?

8 A Unknown male.

9 Q How about "UF"?

10 A Unknown female.

11 Q "Non-pertinent"?

12 A That's talk where it's not relevant to the drug deal. It
13 could be Kemo in this case. I believe he was talking to his
14 sister or another female. It's not pertinent to the deal so we
15 don't typically transcribe that.

16 Q And when they're referring to "pizza man," who are they
17 referring to?

18 A His sister had called for pizza delivery, and there was
19 literally a pizza man bringing the pizza.

20 Q And when they said "Kemo's pizza man," what did they mean?

21 A When they said "Kemo's pizza man"?

22 Q Let me direct you to it.

23 A I apologize, I didn't bring my transcript book back up with
24 me.

25 (A transcript book is handed to the witness by Mr.

1 Gay.)

2 THE WITNESS: Thank you.

3 Q It's the final page under part 4 of the transcript 4198a.
4 Directly under part 4 --

5 A Oh.

6 Q -- -1:1905.

7 A I'm sorry.

8 Kemo says, "Pizza man is outside."

9 Q And who is he referring to?

10 A Oh, he's referring to William Baskerville as arriving, but
11 they had ordered pizza as well and they were waiting on that
12 pizza delivery man. But in this case he meant Will Baskerville
13 was outside.

14 Q So it was a joke?

15 A It was a joke, yes.

16 Q Now, after this transaction did you again debrief Mr.
17 McCray?

18 A I did.

19 Q And did you go through the same process again of meeting in
20 a secure area?

21 A We did. Yes, we did.

22 Q Did Mr. Baskerville leave the area or was he observed
23 leaving the area by law enforcement?

24 A He was observed pulling away by law enforcement, and we
25 waited until he was out of the area and then we meet with Kemo

1 several blocks away to debrief him.

2 Q And did you go through the similar process that you've
3 described earlier --

4 A Yes, we did.

5 Q -- of taking the drugs?

6 A Taking the drugs off him immediately, deactivating the
7 recording device, turning off the transmitter, and then
8 debriefing him about the deal.

9 Q During the course of this debriefing, did Mr. McCray
10 provide you with any specific information?

11 A He said that William Baskerville had another male with him
12 in the car, an individual that Kemo knew as "Ray."

13 Q And did he know him by any other name?

14 A At this point he only knew him as "Ray."

15 Q Does he later -- or do you later identify who this
16 individual is?

17 A We later identify Ray to be Horatio Joines.

18 Q Could you explain to the Jury how that happened?

19 A We had surveilled William Baskerville driving with Horatio
20 Joines, and some of our task force members actually pulled over
21 the vehicle, stopped Baskerville's vehicle and identified both
22 males, and Joines provided his identification, and that's when
23 we learned who he truly was.

24 Q Did Horatio Joines have any nicknames that he went by?

25 A He went by Ray-Ray.

1 MR. MINISH: Judge, I'm going to show the witness
2 what's been marked Exhibit 2256, which Defense Counsel has.

3 Q Agent, do you recognize what that is?

4 A That's a photograph of Horatio Joines.

5 MR. MINISH: Judge, I'd like to move that into
6 evidence.

7 THE COURT: No objection?

8 MR. BERGRIN: Not at all, Judge.

9 THE COURT: All right.

10 (Government Exhibit 2256 is received in evidence.)

11 MR. MINISH: I'll publish that to the Jury.

12 Q So the photograph on the screens around the courtroom,
13 that's Horatio Joines?

14 A That's Horatio Joines, yes.

15 Q Now I want to go -- I'll show you what's been marked
16 Government Exhibit 2211.

17 MR. MINISH: Which again, Judge, Defense Counsel has a
18 copy of.

19 Q Do you recognize what that item is?

20 A This is a scrap piece of paper that William Baskerville had
21 provided to Kemo. This was during the time when William
22 Baskerville switched telephone numbers. So he had seen Kemo I
23 believe August 18th of 2003 out on the street and provided him
24 with a scrap piece of paper with the number (908) 413-0663 on
25 it.

1 And Kemo called me and told me that this has happened,
2 gave me the new number. And then it wasn't until August 22nd
3 that I actually met with Kemo to get the scrap piece of paper
4 from him and I submitted it as evidence. And that's what this
5 is, it's just my submission to evidence.

6 MR. MINISH: Judge, we'd like to move this into
7 evidence.

8 THE COURT: All right. It's in evidence.
9 There's no objection. Correct?

10 MR. BERGRIN: No objection.

11 (Government Exhibit 2211 is received in evidence.)

12 Q Now, Agent, just so we can finish this drug area, the last
13 three transactions, what was the weight you were supposed to be
14 buying for -- well, I'll do it by day.

15 A Okay.

16 Q The 6/19 deal, how much were you supposed to be buying?

17 A 50 grams.

18 Q And do you know exactly what you received?

19 A I do not recall.

20 Q Let me ask you this: Did you receive 50 grams?

21 A We received -- we were short of 50 grams. I believe it was
22 45.6, something along those lines.

23 Q And on September 9th, how much were you supposed to
24 receive?

25 A 28 grams.

1 Q And did you receive 28 grams?

2 A No, we were also short on that deal.

3 Q And on October 23rd, what were you supposed to receive?

4 A 28 grams.

5 Q And did you receive 28 grams?

6 A We were short of 28 grams as well on that deal.

7 Q Okay. Now you used the expression "short." What do you
8 mean by that?

9 A It's not the entire amount that we're purchasing, it's
10 somewhat less than that. It's something less than that.

11 THE COURT: Did you know how much less?

12 THE WITNESS: I do. I would have to refer to the DEA
13 lab report which would have the net amount.

14 THE COURT: Okay. Go ahead, Mr. Minish.

15 Q Did you discuss with Mr. McCray the idea of complaining to
16 Mr. Baskerville about not receiving exactly what had been
17 bargained for?

18 A We did discuss that, and we asked Kemo to make a call to
19 William Baskerville to say, in effect, why are you shorting me?
20 Why am I getting less than what I am paying for?

21 And he was hesitant to do it and he initially didn't
22 do it. And when they had the conversation Baskerville laughed
23 it off, and at that stage we didn't pursue it.

24 Q Why was Mr. McCray not comfortable doing this?

25 MR. BERGRIN: Objection, your Honor, as to the mental

1 state of Kemo DeShawn McCray.

2 THE COURT: Sustained.

3 MR. MINISH: We had a motion about --

4 THE COURT: What's that?

5 MR. MINISH: Should we do it at sidebar?

6 THE COURT: See if you could rephrase the question.

7 Maybe you can rephrase it.

8 Q Just yes or no, Agent: Did Mr. McCray express any concern
9 about making these type of calls to Mr. Baskerville?

10 A He told me that that's --

11 THE COURT: No, no, not--

12 A Yes.

13 THE COURT: -- what he told you.

14 That's all. Next question.

15 Q And did he provide a reason?

16 A Yes, he did.

17 THE COURT: Okay, all right. Next question.

18 MR. MINISH: This --

19 THE COURT: I'll see you at sidebar.

20 (At the sidebar.)

21 THE COURT: Go ahead. What is she going to say?

22 MR. MINISH: She's only going to say this is what
23 happens in the normal course of drug-dealing. This would be
24 dangerous for me to do. I wouldn't do that because I wouldn't
25 do that in the real world, and I don't think it's

1 disclose maybe, you know, my undercover nature. But if she's
2 going to say, I was afraid of Baskerville and I wouldn't call
3 him to do that, I'd want to know a lot more then.

4 MR. MINISH: Judge, I can tell you, the answers we
5 have previously discussed with the Agent would be not about
6 being fearful of Mr. Baskerville, but it's a very simple
7 question. I'm happy to ask it in a leading manner to elicit a
8 yes or no.

9 MR. BERGRIN: I don't object to the --

10 THE COURT: Let me hear the leading manner and we'll
11 go from there. But I think I would also like to know, I would
12 like to know the amount of drugs at some point.

13 MR. MINISH: We have a stipulation, Judge, that I was
14 going to read in next when the parties about the lab
15 certificates at which point they'll all be in evidence.

16 THE COURT: Do you know the amount?

17 MR. LUSTBERG: I don't know -- they're on the
18 certificates -- myself, I don't know off the top of my head.

19 MR. BERGRIN: We only took them at a gram or two at
20 the maximum.

21 THE COURT: Then it makes sense, fine.

22 (In open court.)

23 THE COURT: Proceed, Mr. Minish.

24 MR. MINISH: Thank you, Judge.

25 BY MR. MINISH:

1 Q Agent, just answering yes or no: Did Mr. McCray express to
2 you concern that to go back and question Mr. Baskerville would
3 not be a credible thing to do on the street if he was a real
4 drug purchaser for THE amounts that he was short?

5 A Yes.

6 Q Thank you.

7 MR. MINISH: Judge, at this point I'd like to read in
8 two stipulations --

9 THE COURT: All right.

10 MR. MINISH:

11 MR. MINISH: -- between the parties.

12 THE COURT: Ladies and gentlemen, let me explain to
13 you what a stipulation is. When the parties agree on a certain
14 facts, they enter into what is a stipulation, an agreement
15 that, in other words, they don't contest these facts, they
16 agree with these facts. It's still for you to consider and
17 you're the ultimate determiner of those facts, but they're not
18 in issue between the parties. Okay?

19 MR. MINISH: Government Exhibit 6000 is a stipulation
20 marked Stipulation Number 1.

21 (Reading) It is hereby stipulated and agreed by and
22 between the United States of America, Paul J. Fishman, United
23 States Attorney, Stephen G. Sanders, Assistant United States
24 Attorney, and Defendant Paul Bergrin, that if called to
25 testify, Roger Codino (phonetic), a retired senior forensic

1 chemist at the Drug Enforcement Administration Laboratory in
2 New York City would testify as follows: He examined the
3 substance described in Government Exhibit 2209a, a copy of
4 which is attached hereto and incorporated herein by reference,
5 and concluded to a reasonable degree of scientific certainty
6 that the substance described in Government Exhibit 2209a
7 contained cocaine base, also known as crack cocaine, the net
8 weight of which was 26 grams;

9 He examined the substance described in Government
10 Exhibit 2209b, a copy of which is attached hereto and
11 incorporated herein by reference, and concluded to a reasonable
12 degree of scientific certainty that the substance described in
13 Government Exhibit 2209b contained cocaine base, also known as
14 crack cocaine, the weight of which was 46.7 grams.

15 And it's signed by Mr. Sanders as well as Mr. Bergrin.

16 THE COURT: All right. Thank you.

17 MR. MINISH: Judge, I would like to check Stipulation
18 2 during the lunch break, so I'll wait to read that one.

19 THE COURT: Okay.

20 BY MR. MINISH:

21 Q So the Jury is clear, Agent, after the drugs are received,
22 where -- I'm sorry. You said you put them into evidence.
23 Where do they go from there?

24 A We put them into evidence and then we prepare what's called
25 a Lab Request. It's a letter requesting that the DEA lab in

1 New York examine these drugs.

2 So I go back down with our evidence custodian, we take
3 the drugs out of evidence and we Federal Express them or
4 overnight them to the DEA lab. And at that stage they're
5 analyzed by a chemist who tests them for cocaine, cocaine base
6 and gets the appropriate drug weights.

7 Q And did you have an opportunity to review the -- let me ask
8 this: Were all the drugs that were purchased during the course
9 of this investigation with Mr. Baskerville, were they all that
10 sent to the New York City laboratory, as you described?

11 A Yes, they were.

12 Q And were they all analyzed?

13 A They were all analyzed.

14 Q And I understand you may not know the specific weights off
15 the top of your head, but were the weights less than the
16 intended purchase amount each time, as you described?

17 A Yes, they were.

18 Q All right. Now, Agent, the last purchase having been made
19 of the drugs from Mr. Baskerville that we've heard about, what
20 is the next step in your investigation?

21 A The next step that we take is to present the case to an
22 Assistant United States Attorney with the intent to make a
23 prosecution on the case. We believed we have gathered
24 overwhelming evidence at that stage and wanted to take it to
25 the United States Attorney's Office to move now to the

1 prosecution stage from the evidence-gathering stage.

2 Q And had you been working with an Assistant United States
3 Attorney at that time?

4 A Yes, I had.

5 Q And who was that?

6 A At this stage it was John Gay.

7 Q Back when you were doing the gang part it was not?

8 A It was not.

9 Q And did you, in fact, have discussions about charging
10 decisions with Mr. Gay?

11 A Yes, we did. We had a meeting in early November regarding
12 that.

13 Q And did you have another meeting -- or maybe it's the same
14 meeting -- did you ultimately also have a meeting with members
15 of the Drug Enforcement Administration?

16 A We did. On November 10th we -- prior to that I had met
17 with John Gay and we had discussed the investigation and the
18 evidence, and then on November 10th we met, members of the FBI,
19 John Gay and members of the DEA met to discuss the
20 investigation.

21 Q Now, "DEA," you're saying that's the Drug Enforcement
22 Administration?

23 A Yes, it is.

24 Q And during the course of that meeting, what was discussed?

25 A We discussed the evidence that we had gathered in our

1 investigation and they discussed the nature of their
2 investigation. They had an investigation into --

3 THE COURT: We're getting into --

4 MR. BERGRIN: Objection, your Honor, clearly hearsay.

5 THE COURT: Hearsay, Mr. Minish.

6 MR. MINISH: Judge, it's not being offered for truth,
7 it's just offered for her to explain the decision that's she --

8 THE COURT: Why don't you do some leading questions in
9 this area, then.

10 MR. MINISH: That's fine, Judge.

11 Q Was there a meeting -- well, you've said there's a meeting
12 with the DEA. Correct?

13 A Yes.

14 Q And was the purpose of that meeting to determine what if
15 any conflicts their investigation would have with the
16 investigation you were doing with Mr. Baskerville?

17 A Yes.

18 Q And during the course of that meeting, were you informed
19 that a number of the targets of the DEA investigation were
20 above Mr. Baskerville in the drug chain?

21 A Yes.

22 MR. BERGRIN: Objection, your Honor.

23 THE COURT: Sustained, sustained. I mean -- go ahead,
24 sustained, next question.

25 When I sustain it don't look at me like that, Mr.

1 Minish, just ask the next question, please. I sustained the
2 objection. Don't look at me like that every time I sustain an
3 objection over something.

4 MR. MINISH: Judge, I'm just not sure what the
5 objection was.

6 THE COURT: Well, I sustained the objection.

7 You're getting into conversations. You're getting
8 into conversations.

9 MR. MINISH: Judge, could we be heard?

10 THE COURT: No. Go ahead. Next question.

11 Are you leading up to the fact that a complaint was
12 filed with the United States Magistrate setting forth the
13 evidence that she's testified to? Is that what you're leading
14 up to?

15 MR. MINISH: Yes, Judge, but there's information
16 that --

17 THE COURT: Don't tell me there's important
18 information in it right now. Try to get around -- ask
19 questions, if you can.

20 Q Based on that meeting, did you put off the time you were
21 intending to arrest Mr. Baskerville?

22 A Yes, we did.

23 Q And was it put off to a specific date?

24 A During the meeting it was put off for several weeks.
25 Ultimately we were able to get to a specific date.

1 Q Now, on 11/14, what if any steps had you taken to move
2 towards arresting Mr. Baskerville?

3 A I'm not sure I understand the question.

4 Q Had you had Mr. McCray make any contact with Mr.
5 Baskerville?

6 A Yes. We were getting closer to our arrest date, so what we
7 did is ask Kemo to have another meeting with William
8 Baskerville to order up more drugs so that on the day we
9 planned to arrest William Baskerville he would have drugs in
10 his possession.

11 Q Now again, just yes or no, Agent: Prior to the meeting
12 that you said you had, had it been your intention to continue
13 your investigation after arresting Mr. Baskerville beyond Mr.
14 Baskerville further up his drug chain?

15 A Yes, it had.

16 Q And based on -- without telling us what it was -- based on
17 that meeting, did you make a decision not to do that?

18 A Yes, we did.

19 Q Now we are moving towards the complaint now.

20 A Okay.

21 Q Could you please explain to the Jury what is involved in
22 drafting a complaint, a criminal complaint?

23 A In drafting a criminal complaint we specify some of the
24 facts of the investigation, not all of the facts of the
25 investigation, but enough to show -- be able to present to a

1 judge that we have probable cause and evidence to support the
2 judge issuing -- or I'm sorry -- supporting that complaint so
3 that we can then arrest that individual.

4 Q And did you have discussions with Mr. Gay with respect to
5 filling out that criminal complaint?

6 A Yes, we did.

7 Q And ultimately who was the person who signs the complaint,
8 the AUSA or the agent?

9 A The agent signs the complaint and swears it out in front of
10 the judge as to it being true and accurate, the facts contained
11 in it.

12 Q And now we've discussed six separate crack cocaine
13 purchases. How many did you ultimately decide to list in the
14 Complaint?

15 A We listed four of them.

16 Q And why did you list four of them?

17 A The decision to list four was so that we didn't provide in
18 the Complaint all of our evidence, but a sufficient amount of
19 evidence so if a judge reviewing this Complaint would see that
20 we had enough evidence to support the Complaint and arrest
21 William Baskerville.

22 Q Why wouldn't you just put all of the evidence in?

23 A Well, if we put all of it in, that would telegraph our
24 investigation so that when William Baskerville read the
25 Complaint he may easily, more easily be able to identify who

1 the informant was. So we try to be a little -- somewhat more
2 discreet. We don't want to put all of our evidence out there.
3 We want to put enough so that we can get a complaint but we
4 don't want to be so specific in nature that the finger would be
5 pointed to our informant, to Kemo.

6 Q Okay. So the goal was to hope that Kemo not be exposed by
7 the Complaint?

8 A Absolutely, yes.

9 Q And who actually produces the complaint, the typing and the
10 paper?

11 A The prosecutor.

12 Q And are you then provided with that printout of the
13 complaint?

14 A Yes, I am.

15 Q And what do you do when you are provided with that copy of
16 the complaint?

17 A I review it to make sure it's accurate.

18 Q And did you do that in this case?

19 A I did.

20 Q And --

21 A Because it -- I'm sorry.

22 Q And once you had reviewed it for accuracy, what was the
23 next step?

24 A We take it and present it to a federal magistrate judge,
25 and I have to swear again that the contents of the complaint

1 are true and accurate. And he or she --

2 Q Did you do that in this case?

3 A Yes, I did.

4 Q Were there any other documents that you requested from the
5 court in conjunction with the Complaint?

6 A We requested a federal arrest warrant for William
7 Baskerville.

8 MR. MINISH: Judge, may I approach the witness? I
9 have Government Exhibit 2222 which Defense Counsel happens a
10 copy of.

11 Q Agent, I'm showing you what's been marked Government
12 Exhibit 2222. Would you tell the Jury what that is?

13 A This is a -- actually this is a Certified Copy of the
14 Criminal Complaint that was presented to Judge Susan D.
15 Wigenton, United States Magistrate Judge.

16 Q Is your signature anywhere on it?

17 A Not on this copy. But I did sign it. This is not a copy
18 with my signature on it but my name is on it and my title.

19 Q And the Judge's signature?

20 A The Judge's signature, yes, that is on this.

21 Q Can you refer to page 2.

22 A Yes.

23 Q Okay. What in general is contained on page 2?

24 A What is contained on page 2 is the fact that I, Shawn
25 Manson at the time, Special Agent, am aware of the following

1 fact and --

2 Q It's on there that you lay out facts in the investigation?

3 A In this case we laid out four specific facts, yes, and the
4 four facts relate to four of the drug buys that we did.

5 MR. MINISH: Judge, at this time I would like to move
6 this into evidence.

7 THE COURT: If there's no objection.

8 MR. BERGRIN: There's none at all, Judge.

9 THE COURT: Okay.

10 MR. MINISH: I would publish this to the Jury.

11 (Government Exhibit 2222 is received in evidence.)

12 Q Up in the corner, the left hand corner there --

13 MR. MINISH: Can you zoom in on it.

14 (Mr. Minish confers with the tech off the record.)

15 Q -- it's United States v. William Baskerville is the
16 caption?

17 A Yes.

18 Q And that's because Mr. Baskerville is the defendant in this
19 case?

20 A Yes, it is.

21 Q Now, if we could move to the middle of the Complaint on the
22 first page.

23 A Yes.

24 Q Starting with "Knowingly."

25 Does that speak to the actual statute that Mr.

1 Baskerville is being charged with?

2 A This is the actual statute that he is being charged with,
3 yes.

4 Q Now we'll move on to the second page.

5 There's a series of four paragraphs after that opening
6 preamble you testified about. Is that correct, Agent?

7 A Yes, that is correct.

8 Q Now, in paragraph number 1, what is the date that it refers
9 to?

10 A On or about March 18th, 2003.

11 Q And which transaction does that refer to?

12 A That refers to the March 18th transaction, our first
13 transaction.

14 Q Now, if you look towards the end of the very first line of
15 paragraph 1, it says: "Hand confidential witness."

16 Who is that referring to?

17 A That is referring to Kemo.

18 Q And why wasn't his name put in there?

19 A We would never reveal our informant's names in a criminal
20 complaint or any legal document.

21 Q Now immediately following in the next line it says,
22 "Hereinafter, the CW."

23 Does that mean that throughout the balance of the
24 document it will say "CW" instead of "confidential witness"?

25 A Yes, now "confidential witness" has now been replaced with

1 "CW" as an abbreviation.

2 Q Moving to paragraph 2, which if any transaction does that
3 refer to?

4 A That refers to our transaction on May 22nd, 2003.

5 Q So there's no reference to the March 21st transaction. Is
6 that correct?

7 A No.

8 Q And again, Mr. McCray is referred to as the "CW"?

9 A Yes, he is.

10 Q Moving on to paragraph 3, which transaction is that
11 referring to?

12 A That is the September 9th, 2003 transaction.

13 Q And there is no mention of the 6/19 transaction. Is that
14 correct?

15 A That is correct.

16 Q Then finally in paragraph 4, which transaction is that
17 referring to?

18 A That is the last transaction, the October 23rd, 2003
19 transaction.

20 Q And that transaction was between Mr. Baskerville and Mr.
21 McCray?

22 A Yes.

23 Q Did you know whether or not in this -- if this document
24 would be provided to the Defendant, Mr. Baskerville?

25 A In court, yes, he would have the ability to see this.

1 Q Is November 18th it was signed and dated?

2 A Yes, that is the date it was signed.

3 Q Now, had you picked out at this point a date to make an
4 arrest of Mr. Baskerville?

5 A Yes, we had.

6 Q And what date was that?

7 A November 25th, 2003.

8 Q In the interim, between November 18th and November 25th,
9 was there anyone else arrested that Mr. McCray had infiltrated?

10 A We had also obtained a complaint for an individual by the
11 name of Richard Hosten who was another drug dealer that Kemo
12 McCray had been doing controlled purchases from.

13 MR. MINISH: I'm showing the witness what has been
14 marked 3067, and defense counsel has a copy of it.

15 Q Do you recognize that, who's in that picture?

16 A This is ha picture of Richard Hosten.

17 MR. MINISH: Judge, we ask that this be allowed into
18 evidence.

19 THE COURT: All right. It's in evidence.

20 (Government Exhibit 3067 is received in evidence.)

21 MR. MINISH: If we could publish that to the Jury.

22 THE COURT: This is 3069?

23 MR. MINISH: 7.

24 THE DEPUTY CLERK: 7.

25 Q Now, was the arrest of Mr. Hosten related to work of Mr.

1 McCray?

2 A No, it was a separate investigation -- I'm sorry, it was
3 related to the work of Kemo McCray, but a separate
4 investigation from William Baskerville.

5 Q So it's completely unrelated to William Baskerville?

6 A Yes.

7 Q Now, once you got the Complaint, did you try to arrest Mr.
8 Hosten?

9 A We did. In the morning we went to -- or the day we went to
10 arrest him he was not at his home and we could not locate him.

11 Q Did there come a time when you determined where Mr. Hosten
12 was located?

13 A Later in the day his defense attorney reached out for us
14 and said that we understand -- said that he understood we were
15 looking to arrest him --

16 MR. BERGRIN: Objection, your Honor, to what his
17 defense attorney said.

18 THE COURT: Sustained.

19 Q Were there arrangements made with his defense counsel about
20 surrendering Mr. Hosten to federal authorities?

21 A Yes.

22 Q And did those discussions go over a period of days?

23 A Yes, there was some stopping and starting during those
24 negotiations.

25 Q Ultimately what day does Mr. Hosten surrender himself?

1 A He surrenders himself on the afternoon of November 24th.

2 Q Now, again, so the Jury is clear, separate from Mr.
3 Baskerville, but Mr. McCray was a confidential informant in the
4 case against Mr. Hosten?

5 A Yes.

6 Q So the two defendants, the two charged individuals are not
7 related but Mr. McCray worked with both?

8 A Yes.

9 Q Now, he comes in on November 24th. Were you able to bring
10 him directly to Federal Court that day?

11 A We were not.

12 Q Why not?

13 A We bring him into our office, we have to process him. He
14 also cooperated. We spent some time talking to him. The
15 initial appearances in Federal Court were done that day, so we
16 had to hold him overnight in a holding facility and produce him
17 the next morning so that he could have his initial appearance
18 in court.

19 Q Now, did you try to cancel the arrest plan for Mr.
20 Baskerville the following morning?

21 A We did not because that had already been planned well in
22 advance and we had several agents who were going to be
23 participating in that arrest and we decided to proceed with it
24 and not postpone that. There were too many moving parts at
25 that stage.

1 Q Even though ultimately that decision may lead to both Mr.
2 Hosten and Mr. Baskerville being in the cell together?

3 A Yes.

4 Q With respect to the Baskerville arrest --

5 A Yes.

6 Q -- William Baskerville, could you explain to the Jury what
7 sort of operations plan, tactical plan was involved?

8 A What we do -- what we did in this instance is we had done
9 surveillance on the home, on the vehicles, and we had gotten a
10 good understanding of their schedule, Will Baskerville's
11 schedule, his wife's schedule and we felt comfortable that they
12 would be home at 6 a.m. to effect the arrest.

13 So before the arrest, I meet with members of the squad
14 and I brief them. I give them photographs of the house,
15 photographs of William Baskerville, photographs of his wife
16 and, I explain to them what our plan is. And our plan for this
17 arrest was to meet at -- in the area of William Baskerville's
18 house so that we could have several officers out there, some
19 going to the front door, some going to the side and knocking on
20 the door at 6 a.m. with the intent of arresting him at his home
21 in the early morning.

22 Q Do you recall about how many officers, agents, task force
23 Officers were involved?

24 A Approximately ten agents and/or task force Officers.

25 Q Had you planned to seize anything specifically when you

1 were there?

2 A We had planned to seize both vehicles, the Monte Carlo and
3 the Cadillac Escalade.

4 Q And why is that?

5 A Both had been used to -- in the drug deals that we had
6 witnessed, and as part of our forfeiture, our administrative
7 forfeiture laws, if a vehicle is used to transport narcotics
8 during a drug deal, we are authorized to begin forfeiting
9 proceedings on that vehicle and seize that vehicle.

10 Q Okay. When you say "our rules," you mean the FBI's rules?

11 A Yes, it is, it's the FBI's rules. This is --

12 Q So this is an internal decision, not one made through the
13 court system?

14 A This is not a criminal forfeiture which would be through
15 the court system, this is an administrative forfeiture which is
16 done through the FBI office.

17 Q Now, had any surveillance been done at the house the night
18 before the arrest was to be made?

19 A The night before we had surveilled both cars at that home
20 so we felt comfortable that they were home at that house.

21 Q Okay. And when you say "they," who were you actually
22 concerned with being in the house?

23 A We want William Baskerville to be home. His wife also
24 drove one of the vehicles so ultimately we'd like to have both
25 vehicles there. Because there were times where Baskerville was

1 in the Escalade and also the Monte Carlo. So we were hoping to
2 see both vehicles there, and that is what we did see the night
3 before the arrest.

4 Q When you arrived the morning of November 25th, 2003, what
5 time did the agents, again, agents/law enforcement officers,
6 other law enforcement officers get there?

7 A We arrived at 530 a.m., but we had sent another agent in
8 advance at 5 a.m. to confirm that the vehicles were there.

9 Q And was that confirmed?

10 A That was confirmed, yes.

11 Q So the rest of the team, the balance of the team arrives
12 approximately 5:30?

13 A Yes.

14 Q And what is done at that point at 5:30?

15 A We brief it again, the tactical plan, who's going to the
16 front door, who's going to the side door, what happens if he
17 doesn't answer the door. We're prepared to take the door by
18 force. And we have tools with us to be able to do something
19 like that. We also discuss if he doesn't answer the door we
20 can try to get him on the telephone. So we really go through
21 our tactical plan and then any contingencies that we may come
22 across.

23 Q Why do you go so early?

24 A We like to go early because we like to, one, make sure the
25 individuals are at home before they leave for work and go out

1 the door for the day; and also it's the element of surprise.
2 This way we're catching people first thing in the morning.
3 They're less likely to have weapons on them and they're less
4 alert at that time, which makes it safer. It's truly for us,
5 it's a safety reason. We like to get them out of their bed.
6 They're not, as I said, up, awake and the chance of having a
7 weapon on them is a lot less.

8 Q Now, once these ten or so members of the team were there,
9 are people assigned to various parts of the house?

10 A Yes. We cover all parts of the house. We cover the front
11 of the house, we cover the sides of the house, we cover the
12 back of the house.

13 Q And I know I asked that question a little inarticulately.
14 I meant the outside of the house.

15 A Yes.

16 Q Not the inside --

17 A The perimeter. Yes, we are covering the perimeter so we
18 have the perimeter surrounded.

19 Q Okay. Were you among the agents who went to the front
20 door?

21 A Yes, I did go to the front door.

22 Q Did you kick open the door, knock on the doors; what
23 happens?

24 A We knock on the door, and we knocked several times. And
25 William Baskerville is in an upstairs window. He looks out the

1 window, and we identify ourselves as FBI, police, and we ask
2 him to come down and open the door, and he does.

3 MR. MINISH: Judge, the photograph that's in evidence,
4 Exhibit 2255, can I just publish that to the Jury?

5 Q Is that the individual who's head was out the window when
6 you were knocking on the door?

7 A Yes, that's William Baskerville.

8 Q Did he, in fact, come to the front door?

9 A He did. He came to the front door in his boxer shorts.

10 Q Okay. And did he open the door?

11 A He opened the door.

12 Q And were you -- did you come in?

13 A We did come in, yes.

14 Q What did you do once you came in with Mr. Baskerville?

15 A Two of the agents handcuffed William Baskerville, and I
16 explained to him that he was under arrest by the FBI for
17 federal drug charges, and I showed him a copy of the Arrest
18 Warrant. And I explained to him that what would be happening
19 is we would be transporting him back to the Newark FBI office
20 where he would be processed.

21 And at that stage I would sit down with him and go
22 through the charges that he was facing in detail so that he
23 understood, and then I would also advise him of his rights when
24 we got back to the FBI office.

25 Q On that Arrest Warrant you referred to, is Mr.

1 Baskerville's name listed?

2 A Yes, it is.

3 Q Is the charge, the statute number --

4 A Yes, it is.

5 Q Did you show him a copy of the Complaint at that time?

6 A No, I did not.

7 Q Now, you said you would give him his rights later on at the
8 Newark office. Why not immediately like you see on TV?

9 A The scene was chaotic. His wife was there, she was visibly
10 upset. There are young children in the house. Plus, we're
11 also trying to clear the house, we're trying to do a protective
12 sweep, meaning we have agents going through the house to make
13 sure there are no other individuals at that location who could
14 possibly pose a threat.

15 So I explained to him that we would sit down back at
16 my office and go through the charges he was facing and I would
17 advise him of his rights at that time in a calmer environment
18 where he would be able to focus.

19 Q Was it important to you that he had the ability to focus on
20 those rights?

21 A Absolutely, yes. It's not something -- yes.

22 Q Did you instruct him not to speak to you?

23 A I told him: Do not say a word. We are not going to
24 question you. We are not going to talk at this stage. You are
25 under arrest. You are handcuffed. You will be transported by

1 two other agents or officers -- it was not me -- to the FBI
2 office. Nobody is to talk to you. Wait in the arrest room and
3 I will get there when I can.

4 Q Was he allowed to dress before he was transported out of
5 his home?

6 A I escorted his wife up to the bedroom so she could get
7 clothing for him, which we then provided for him to put on,
8 yes.

9 Q So when he left he had clothes on?

10 A Yes, he did, yes.

11 Q Now you said you made a protective search of the house.
12 Did you find anything that gave rise to concern for safety?

13 A We did not find any weapons in the house, no. But in the
14 protective sweep, what we typically do is go through all the
15 rooms, make sure --

16 MR. BERGRIN: Objection, your Honor. That's not part
17 of the question.

18 THE COURT: I agree. Sustained.

19 Q Was anything else discovered during the course of this
20 prospective search?

21 A In clearing William Baskerville's closet we found a large
22 sum of cash in the closet in plain view.

23 Q Do you recall how much money that was?

24 A \$5,328.

25 Q And were photographs taken of that money and where it was

1 located?

2 A Yes.

3 MR. MINISH: Judge, I'm going to show the Agent two
4 Government exhibits, they've been marked 2238a and 2238b.
5 Defense Counsel has previously been provided a copy.

6 THE COURT: All right.

7 Q Agent, I'd like you to take a look at those and tell me if
8 you recognize what's depicted in those photographs.

9 A What's depicted in the photographs is a several stacks of
10 money banded together by rubber bands, and this was located as
11 you walked into the -- as you opened the closet door, right to
12 the right on a shelf.

13 Q So that is the money you were testifying was found in Mr.
14 Baskerville's home?

15 A Yes.

16 MR. MINISH: Judge, we'd like to move those
17 photographs --

18 THE COURT: Okay. It's in evidence. No objection.

19 MR. MINISH: I would like to publish that to the Jury
20 then.

21 (Government Exhibits 2238a and 2238b are received in
22 evidence.)

23 Q Now, when you were staying at the house while Mr.
24 Baskerville was being transported, what responsibilities did
25 you have?

1 A I was responsible for, again, making sure that the house
2 was secure. And at that time I was talking to Dedre
3 Baskerville who is William Baskerville's wife, and I was
4 explaining to her the process of the day's events; that her
5 husband had been placed under arrest, that these were serious
6 charges, and that he most likely will not make bail and most
7 likely will not be home.

8 Q Now you said "Kemo" would not make bail?

9 A That he would most likely not make bail.

10 Q Mr. Baskerville you're referring to?

11 A Yes.

12 And I also explained to her at that time we were going
13 to be seizing both of their vehicles and transporting them back
14 to the FBI office. And I spent some time discussing this with
15 her to make sure she understood what was happening.

16 Q Did you answer any questions she may have had?

17 A Yes. She was -- yes, I did, yes.

18 Q Did you gain her permission to take photographs of the
19 home, including the photographs that we see in evidence now?

20 A Yes, we did.

21 Q Did Mrs. Baskerville make any statements with respect to
22 the ownership of the money?

23 A She told us that --

24 MR. BERGRIN: Objection, your Honor.

25 A Yes.

1 THE COURT: Sustained.

2 Q Based on that statement, did you seize the money?

3 A Yes.

4 Q Were there any other items that were seized during the
5 course of your time at the Baskerville home?

6 A Yes.

7 Q Can you tell the Jury what those are?

8 A There was a cell phone we saw in plain view as well as two
9 beepers. When we walked in the front door they were on a
10 counter right to the right, and we seized those items.

11 Q And did you seize them because you believed they were Mrs.
12 Baskerville's?

13 A We seized them because we believed them to be William
14 Baskerville's cell phone and the beepers that he had been using
15 during the last drug transaction.

16 Q Once you gathered up those items -- I'm sorry. Was there a
17 fifth item, a wallet?

18 A There was Mr. Baskerville's wallet, yes.

19 Q Once you seized those items, did you prepare a receipt for
20 having taken those items?

21 A Yes, I did.

22 MR. MINISH: Judge, I'm showing the witness what's
23 been marked Government Exhibit 2315. Defense Counsel has a
24 copy of it.

25 Q Do you recognize what that is, Agent?

1 A This is what we call a property receipt, and it's dated
2 November 25th, 2003. And what it states that what we are
3 seizing from the residence is one Nokia cell phone, one Nextel
4 cell phone, a Motorola pager, and \$5,328 in U.S. currency, and
5 lastly, a black wallet belonging to William Baskerville.

6 Q Okay. And what's the purpose of that document?

7 A The purpose is so that Dedre Baskerville knows the items
8 that we have taken from her home. And she had to sign to
9 acknowledge that we had taken them, and it's a record for us to
10 show what we seized at the scene.

11 Q And did Mrs. Baskerville, in fact, sign that document?

12 A She did.

13 MR. MINISH: Judge, I'd like to move this document
14 into evidence.

15 THE COURT: What number sit again?

16 MR. MINISH: It's 2315.

17 THE COURT: Okay. All right. No objection, it's in
18 evidence.

19 MR. BERGRIN: No objection, Judge. Thank you.

20 (Government Exhibit 2315 is received in evidence.)

21 MR. MINISH: In we can publish that to the Jury,
22 Judge.

23 THE COURT: Go ahead.

24 Q Now, I know you said you had a plan about taking the
25 vehicles. Did you, in fact, actually take Mr. Baskerville's

1 two vehicles?

2 A Yes, we did.

3 Q And with respect to the Monte Carlo, what happened?

4 A We transported both vehicles back to the FBI office. With
5 respect to the Monte Carlo, we later received a --

6 THE COURT: All right. We're going to recess right
7 now for lunch, okay, and we'll continue where appropriate after
8 lunch.

9 Ladies and gentlemen, we're going to recess for lunch
10 until quarter to two. And please don't discuss anything about
11 the case, and we'll see you back here in about an hour.

12 Thank you very much.

13 THE DEPUTY CLERK: Please rise for the Jury.

14 (The Jury leaves the courtroom.)

15 THE COURT: Agent, you can step down.

16 THE WITNESS: Thank you.

17 (Witness temporarily excused.)

18 THE COURT: Where are you going next, Mr. Minish, in
19 terms of cars? What were you doing?

20 Give me a proffer as to how much more you're doing
21 with respect to the arrest of Baskerville and everything else.

22 MR. MINISH: How much more time, Judge?

23 THE COURT: No. I want to know how much more detail
24 and information you're getting into with respect to the
25 Baskerville arrest.

1 MR. LUSTBERG: Judge, as the Court is aware, your
2 Honor circulated a proposed 404(b) instruction. We provided
3 some comments, I believe the Government has responded to that
4 as well. And if you like, I can just stand up at the
5 appropriate time and ask for that instruction.

6 THE COURT: Yeah. Well, that's what I'm saying. I
7 mean, I don't know when you'd want me to give the instruction.
8 At some point I should.

9 MR. LUSTBERG: I don't think we're at that point yet.

10 THE COURT: Okay.

11 MR. LUSTBERG: Thank you, Judge.

12 THE COURT: All right.

13 THE DEPUTY CLERK: Okay. Ready?

14 THE COURT: Yes, we're all set.

15 THE DEPUTY CLERK: Okay.

16 Please rise for the Jury.

17 (Jury present.)
18

19 S H A W N B R O K O S, resumes, testifies further as follows:
20

21 DIRECT EXAMINATOIN CONTINUES

22 BY MR. MINISH:
23

24 THE COURT: All right. Welcome.

25 Please be seated.

1 All right. Let's continue, Mr. Minish. Thanks.

2 MR. MINISH: Thank you, Judge.

3 Q Agent, when we left off we were talking about the two
4 vehicle that's you seized. With respect to the Monte Carlo,
5 did you search and find anything that may be related to
6 drug-trafficking in that vehicle?

7 A Yes, we did.

8 Q Would you tell the Jury what that was?

9 A We found a hidden trap built into the Monte Carlo.

10 Q Could you explain to the Jury what a "trap" is?

11 A A trap is an after-market device that is not initially in
12 the car when it's purchased, but you can take it to a mechanic
13 who can put in a trap somewhere within the vehicle in order to
14 conceal items. And there's various ways to get into the trap,
15 but usually it's a three or four-step process. For example,
16 you have to turn on the air conditioning, you have to turn on
17 the windshield wipers and do one other process and then the
18 trap wherever it is will open.

19 Q Was that vehicle ultimately seized administratively?

20 A It was not because it was a leased vehicle, so we actually
21 had to return it to the leasing company.

22 Q How about the Cadillac; was there anything found in the
23 Cadillac with respect to drug-trafficking?

24 A There was not.

25 Q And what happened to that vehicle?

1 A We returned that vehicle to Dedre Baskerville.

2 Q And why did you return -- why did you return it if you had
3 observed Mr. Baskerville driving it during the course of drug
4 transactions?

5 A Two reasons: One, our Forfeiture Unit determined that
6 there really was not enough equity in the vehicle, there was
7 not enough money that the Baskervilles had already paid on the
8 vehicle to make it worth our while to seize. We would actually
9 have to pay a good portion of the loan back, which could have
10 been done. But the second reason was we would be taking Dedre
11 Baskerville's sole means of transportation for her and her
12 children, and we made a decision at that point in time simply
13 not to do that.

14 Q And that vehicle was returned to Mrs. Baskerville?

15 A Yes, it was.

16 MR. MINISH: Judge, I'm going to show the witness a
17 number of exhibits.

18 THE COURT: Okay.

19 MR. MINISH: Defense Counsel has had the opportunity
20 to review them.

21 Judge, for the record they've had the opportunity to
22 review these items: They are Government Exhibits 2202a; 2202;
23 2203a; 2203; 2204a; 2204; 2205a; and 2205.

24 Q Agent, I'm going to ask you to review these exhibits and
25 let me know if you recognize what they are.

1 A 2202 --

2 Q Just a yes or no.

3 A Yes.

4 Q Review all of them, please.

5 A One-by-one?

6 Q Just look through the entire stack.

7 (There is a pause for the witness.)

8 A Okay.

9 Q Do you recognize what those items are?

10 A I do.

11 Q Could you explain to the Jury what each one is?

12 A Okay. Exhibit 2202, these are the drugs that we --

13 Q Just speak --

14 A Okay. Are the drugs that we purchased on May 22nd, 2003,
15 the crack cocaine; and then 2202a would be the packaging for
16 those drugs that the drugs initially came in; 2203 are the
17 drugs that we purchased on June 19, 2003, the crack cocaine;
18 2203 is the packaging that the drugs themselves came in; 2204
19 is the -- oh, there it is -- the drugs that we purchased on
20 September 9th, 2003, the crack cocaine; 2204a is the packaging
21 for those drugs purchased on September 9th; 2205 is the crack
22 cocaine purchased on October 23rd, 2003; and 2205a is the
23 packaging for drugs purchased on October 23rd, 2003.

24 Q And how are you able to identify all of those objects as
25 the objects you've testified them to be? Is there any stamps

1 or signatures or anything along those lines?

2 A My name is on them, there's a FBI evidence stamp with my
3 name on them and the date that we seized them.

4 MR. MINISH: Judge, at this time I'd like to move all
5 of those into --

6 MR. BERGRIN: No objection, Judge.

7 THE COURT: They're all in evidence.

8 (Government Exhibits 2202a; 2202; 2203a; 2203; 2204a;
9 2204; 2205a; and 2205 are received in evidence.)

10 MR. MINISH: Thank you.

11 And, Judge, I think this is the appropriate time to
12 read the second stipulation.

13 THE COURT: Go ahead, sure.

14 MR. MINISH: It's Stipulation Number 2, Government
15 Exhibit 6001 one:

16 (Reading) It is hereby stipulated and agreed by and
17 between the United States of America, Paul J. Fishman, United
18 States Attorney, Steven G. Sanders, Assistant United States
19 Attorney and Defendant Paul Bergrin, that if called to testify,
20 Brian O'Rourke a qualified forensic chemist at the Drug
21 Enforcement Administration Laboratory in New York City would
22 testify as follows: He examined Government Exhibit 2202 and
23 concluded to a reasonable degree of scientific certainty that
24 the item examined contained cocaine base, also known as crack
25 cocaine, the net weight of which was 26.7 grams;

1 He examined Government Exhibit 2203 and concluded to a
2 reasonable degree of scientific certainty that the item
3 examined contained cocaine base, also known as crack cocaine,
4 the net weight of which was 45.4 grams;

5 He examined Government Exhibit 2204 and concluded to a
6 reasonable degree of scientific certainty that the item
7 examined contained cocaine base, also known as crack cocaine,
8 the net weight of which was 21.2 grams;

9 He examined Government Exhibit 2205 and concluded to a
10 reasonable degree of scientific certainty the item examined
11 contained cocaine base, also known as crack cocaine, the net
12 weight of which was 24 grams.

13 And they're executed by Mr. Sanders on behalf of the
14 Government and Mr. Bergrin on behalf of himself.

15 THE COURT: Okay.

16 Q Okay. Now, Agent, did there come a time when you did get
17 back to the FBI the morning Mr. Baskerville was arrested?

18 A Yes.

19 Q Okay. And what did you do? Where did you find Mr.
20 Baskerville when you got there?

21 A Mr. Baskerville had been placed in our arrest room in our
22 FBI Newark office building.

23 Q What does the arrest room look like?

24 A It's a relatively small room with no windows other than a
25 small window in the door.

1 Q Table, chairs?

2 A Table, a chair. Table and chairs, yes.

3 Q And had anybody spoken to him prior to your arrival?

4 A Nobody had spoken to him.

5 Q Had he been in that room since he arrived?

6 A Yes, he had.

7 Q Did you go into that room and speak with him?

8 A I did.

9 Q And, tell the Jury what you said.

10 A What I explained to him was, again, I had a copy of the
11 Arrest Warrant with me and I explained to him that he was under
12 arrest for federal drug charges and that he is facing a
13 substantial amount of time in jail; that we had an undercover
14 agent who had made several drug purchases off of him and that
15 the Federal system -- I explained to him that the Federal
16 system is different than the State system, and in the Federal
17 system, what you get sentenced to is generally your sentence.
18 There is no parole. And that he is looking, again, at a
19 significant amount of time in jail, and that he should think
20 about -- take some time and think about this. And --

21 Q You said there was an undercover. Why did you tell him
22 there was an undercover and not a confidential informant?

23 A I was trying to protect the identity of Kemo and again
24 using an informant, so I just said that it was an undercover so
25 he would think that it may have been an undercover detective

1 making the buys off of him.

2 Q Did you explain to him his options with respect to how he
3 would handle himself while at the FBI?

4 A I did. I told him that he could cooperate with us and get
5 on board with us, and in doing so he would receive some sort of
6 consideration when it came time for sentencing because of his
7 cooperations and his efforts. And then the alternative would
8 be that he doesn't cooperate and he faces a substantial amount
9 of time.

10 Q Okay. Did Mr. Baskerville indicate to you that he
11 understood what you were explaining to him?

12 A Yes, he did.

13 Q And did you give him time to thing about that?

14 A I did.

15 Q So did you leave the room?

16 A I left the room.

17 Q And how long do you think you were gone for?

18 A I was gone for approximately 45 minutes or. Half hour, 45
19 minutes.

20 Q And did you go back in to see Mr. Baskerville after that?

21 A I did.

22 Q Could you explain to the Jury what you said to Mr.
23 Baskerville when you got there?

24 A I asked him if he had had sufficient time to think and if
25 he had an idea of what he'd like to do going forward.

1 Q Did he indicate whether he did or not?

2 A Yes, he did.

3 Q What did Mr. Baskerville tell you?

4 A He said that he is interested in talking but has concerns
5 about talking because he would implicate other family members,
6 and that he would feel more comfortable talking in the presence
7 of an attorney -- his attorney.

8 Q And did you say whether or not that was acceptable?

9 A Absolutely. I said, if you're interested in cooperating,
10 we can -- if we can get a hold of your attorney, we can set up
11 a meeting I'll sure this afternoon where you can come into
12 the -- into the United States Attorney's Office and sit down
13 with your attorney and we can talk about your cooperation.

14 Q But just so it's clear, Agent, he had not actually waived
15 any of his rights at this point?

16 A No, he had not.

17 Q Did you have him fill out or did you go over filling out a
18 form with him at this point?

19 A At this stage I sat down and I went through our Advice of
20 Rights form with him.

21 MR. MINISH: Judge, I'm showing the witness what's
22 been marked Government Exhibit 2314, which Defense Counsel has
23 a copy of.

24 Q Do you recognize what that is?

25 A This is our form FD-395, called an Advice of Rights form.

1 Q And is that the form you filled out with Mr. Baskerville?

2 A Yes, it is.

3 MR. MINISH: Judge, at this time I'd like to move that
4 into evidence.

5 THE COURT: All right. Without objection, it's in
6 evidence.

7 MR. BERGRIN: There's no objection, Judge, whatsoever.

8 MR. MINISH: We'll publish that to the Jury.

9 THE COURT: 2314?

10 MR. MINISH: Yes, Judge, 2314.

11 (Government Exhibit 2314 is received in evidence.)

12 Q Now, explain to the Jury the process of going over an
13 Advice of Rights that you handed Mr. Baskerville.

14 A I sat down with William Baskerville and I explained to him
15 what the form was. I then read through the form with him
16 line-by-line. After each line I read, I asked him to also read
17 it to me so I knew that he was understanding it, and I also
18 asked him to initial next to each line again to make sure he
19 understood.

20 Q And did he do so?

21 A He did. Those are his initials next to each line.

22 MR. MINISH: Now, if you could scan down a little bit
23 on the page.

24 Q Now, there's an area at the bottom where it says "Waiver of
25 Rights." Could you explain to the Jury what that section is?

1 A That section is if he chooses to waive his rights, meaning
2 that he will talk to us without counsel present and tell us
3 about his criminal activity.

4 Q And did Mr. Baskerville sign that section?

5 A He did not. He did not choose to waive his rights.

6 Q And there's writing at the bottom. If you could explain --
7 it's signed William Baskerville. Could you explain that to the
8 Jury?

9 A Even though he was not waiving his rights I asked him to
10 sign the form merely to acknowledge that he understood his
11 rights. So at the bottom I had asked him to write: "At this
12 time I wish not to waive my right," signed by William
13 Baskerville.

14 Q Did you have -- after this form was completed, did you have
15 a discussion with Mr. Baskerville about contacting his
16 attorney?

17 A Yes, we did.

18 Q And did he tell you who his attorney was?

19 A Yes, he did.

20 Q And just yes or no, Agent: Had you ever heard -- well, who
21 did he tell you it was?

22 A Paul Bergrin.

23 Q Had you heard of Mr. Paul Bergrin before?

24 A Yes.

25 Q Did you explain to him the process to make a call to Mr.

1 Bergrin?

2 A There's a phone in the arrest room that I let him use to
3 make telephone calls.

4 Q Okay. And did he make that call?

5 A Yes, he did.

6 Q How was he able to make that call?

7 A He first called his wife to get the telephone number, and
8 then he called Mr. Bergrin.

9 Q And did he get Mr. Bergrin on that call?

10 A He did not. I believe he then had to get a cell phone
11 number for Mr. Bergrin and he contacted him on his cell phone.

12 Q And did there come a time when he did connect from the FBI
13 with Mr. Bergrin?

14 A Yes.

15 Q And how do you know that?

16 A I heard him on the phone saying "Hi, Paul."

17 Q And what did you do when you heard him say, "Hi, Paul"?

18 A My partner and I stepped out of the room to give him
19 privacy.

20 Q And why would you do that?

21 A Because this is his attorney, he has that right to privacy.

22 Q All right. Did you come -- excuse me -- did there come a
23 time when you came back into the room after the phone call was
24 completed?

25 A Yes.

1 Q Did you ask Mr. Baskerville what he had decided about
2 cooperating?

3 A He said that he is not interested -- he spoke to his
4 attorney and he is not interested in cooperating.

5 Q Did he say anything specifically about what Mr. Bergrin
6 said to him?

7 A To not cooperate, to keep his mouth shut and not cooperate.

8 Q So did you continue to question him?

9 A No, that was it. We're done questioning him.

10 Q Okay. What's the next step in the process? Is he
11 processed, fingerprinted, photographed?

12 A I misspoke. We hadn't questioned him regarding -- there
13 hadn't been any questioning.

14 Q I'm sorry, it was an unartful question.

15 Did you question him after he said he did not want to
16 cooperate?

17 A No, we did not. We processed him.

18 Q Okay. After you processed him -- and that's photographing,
19 printing, identification stuff?

20 A Yes.

21 Q -- after that happens, where do you take Mr. Baskerville?

22 A We transport him to the United States Marshals Service,
23 which is here in Newark, and he is taken to a cell block there,
24 a holding cell.

25 Q And what's the purpose of bringing him to the Marshal's

1 lock-up?

2 A The Marshals also have to process him the same way we do,
3 and then he is held in a holding cell until his initial
4 appearance in front of the magistrate.

5 Q Okay. And the initial appearance is going to be his first
6 court appearance based on that Complaint?

7 A Yes, it is.

8 Q Do you have to stay with the prisoner -- well, did you
9 actually bring Mr. Baskerville to this building that morning?

10 A Yes, I did.

11 Q And when you were here did you have to stay with Mr.
12 Baskerville in the building?

13 A I did not.

14 Q Okay. So you handed the prisoner off to the Marshals?

15 A We turned custody over -- custody of Mr. Baskerville is
16 turned over to the United States Marshals.

17 Q Did the Marshals indicate to you when you had to be back?

18 A Yes. They asked us to be back 15 minutes before his
19 initial appearance so that we could help escort -- we could
20 help the Marshals escort Mr. Baskerville to the judge's
21 courtroom for his initial appearance.

22 Q Okay. Do you recall about what time that initial
23 appearance was?

24 A I believe it was -- that it was scheduled for 2 o'clock.

25 Q Did there come a time when you did come back to the

1 Marshal's office?

2 A Yes.

3 Q And was it around that time, before 2 o'clock?

4 A It was before 2 o'clock, yes.

5 Q Did you see Mr. Baskerville when you returned?

6 A Yes, I did.

7 Q And did you see him talking to anybody?

8 A Yes.

9 Q Okay. Who was he talking to?

10 A Paul Bergrin.

11 Q And where are they speaking?

12 A They are in a holding cell in the Marshal Service.

13 Q So you walked by it?

14 A I walked by it on the way to the waiting room where we are
15 instructed to wait before going to court. There are several
16 holding cells with windows in the door, and I observed Mr.
17 Baskerville in one of the rooms with Mr. Bergrin.

18 Q Now, how long do you think you wait until you get called
19 for court with the Marshals, if you know?

20 A A half hour or so, 45 minutes.

21 Q So does there come a time when you get the call about the
22 judge is ready for the prisoners?

23 A Yes.

24 Q And explain to the Jury that process. Are you involved in
25 that?

1 A We do. We help escort -- we helped escort Mr. Baskerville
2 to court. So we take him underneath the building, we walk with
3 him and the other people who were appearing in front of the
4 judge, and we escort them to the judge's chambers.

5 Q Judge's chambers or judge's courtroom?

6 A I'm sorry. Judge's courtroom, not chambers.

7 Q Did you on your way out, did you see Mr. Bergrin?

8 A No, I did not.

9 Q So he left some time while you were in the waiting room?

10 A Yes.

11 Q Did you eventually bring Mr. Baskerville to a courtroom
12 across the street or in this building?

13 A Across the street.

14 Q Did you do that?

15 A Yes, we did; yes, I did.

16 Q Now, once you arrived, what did you do?

17 A When I arrived I had a seat in the courtroom.

18 Q Did you get the opportunity to observe Mr. Bergrin that
19 day?

20 A I did. At some point Mr. Bergrin came in to the courtroom.

21 Q And what did you observe him do?

22 A He walked in and greeted several people. I believe he
23 talked to the court clerk or deputy clerk, and then he walked
24 back out.

25 Q Once the proceedings started, how many individuals were in

1 the -- I'm sorry -- making initial appearances that day?

2 A I believe three.

3 Q Was Mr. Baskerville first or second?

4 A He was third.

5 Q Okay. So did you sit through those other two proceedings?

6 A Yes, I did.

7 Q And just so the Jury is clear, was one of those two
8 individuals Richard Hosten, the other man that had been
9 arrested?

10 A Yes, it was.

11 Q Did you observe Mr. Bergrin come back into the courtroom
12 prior to Mr. Baskerville being called for his initial
13 appearance?

14 A Yes.

15 Q And did Mr. Baskerville -- excuse me -- did Mr. Bergrin, in
16 fact, make an appearance on behalf of Mr. Baskerville at the
17 initial appearance?

18 A Yes, he did.

19 Q During the course of the initial appearance, did the
20 Assistant United States Attorney explain the penalties that
21 William Baskerville faced based on the charge in the Complaint?

22 A Yes, he did.

23 MR. MINISH: Judge, at this time I'd like to move into
24 Evidence 2217. It's a certified copy of the transcript which
25 Defense Counsel has been provided with.

1 THE COURT: Okay. 2217.

2 MR. BERGRIN: I have no objection, Judge.

3 (Government Exhibit 2217 is received in evidence.)

4 THE COURT: All right.

5 MR. MINISH: As it's in evidence, Judge. I would just
6 like the Agent to read a couple of sentences from it.

7 THE COURT: Okay. 2317 is in evidence.

8 MR. MINISH: In we could publish page 2 and those
9 highlighted areas.

10 Q So the Jury is clear, Agent, who was the AUSA at that
11 initial appearance for the Government?

12 A John Gay.

13 MR. MINISH: For the record, Judge, we're on page 3,
14 line 3, the first full -- starting with the first full
15 sentence.

16 Q Who is speaking?

17 If we go back to page 2, it's on line 24.

18 A That's John Gay speaking to the Judge.

19 Q Then flipping forward to page 3, line 3, can you read that
20 highlighted sentence?

21 A (Reading) The maximum penalty for this charge is 40 years
22 and a \$2 million fine.

23 Q Further down, Agent, do you see Mr. Gay speaking again
24 starting at line 7?

25 A Yes.

1 Q Beginning at line 11, starting with that first full
2 sentence, could you read for the Jury the highlighted section?

3 A (Reading) He is facing a 5 year minimum based on the
4 charges. However, I would note, your Honor, that by my
5 calculation he is a career offender, which would place him at a
6 Level 37 for this charge given the nature of the case, also the
7 fact that he's failed to appear when ordered to on prior cases.

8 Q That's fine. Thank you.

9 So when this information was being stated by Mr. Gay,
10 you heard this at the time?

11 A Yes, I did.

12 Q And Mr. Baskerville was present?

13 A Yes, he was.

14 Q And Mr. Bergrin was present?

15 A Yes.

16 Q Was a second hearing scheduled after this hearing with
17 respect to Mr. Baskerville's bail motion?

18 A Yes, there was a detention hearing that was set for several
19 days later, I believe on December 4th.

20 Q And so the Jury is clear, is a detention hearing when a
21 bail argument will be made?

22 A Yes.

23 Q So at the end of this proceeding did you observe Mr.
24 Bergrin do anything?

25 A I observed Mr. Bergrin walk out of the courtroom, and I

1 walked out shortly thereafter, and when I walked out of the
2 courtroom I observed Mr. Bergrin on his cellular telephone
3 talking to someone.

4 Q Could you hear what he said?

5 A No, I could not.

6 Q Based on having a detention hearing, was there a charging
7 decision that you discussed with Mr. Gay?

8 A I -- I talked to Mr. Gay about the fact that we were going
9 to now indict William Baskerville for the drug charges.

10 Q And were the charges against Mr. Baskerville, in fact,
11 presented to a grand jury?

12 A Yes, they were presented to a grand jury.

13 Q And was a true bill indictment voted by the grand jury?

14 A Yes, there was.

15 Q Do you recall what day that was?

16 A I do not recall.

17 Q It was after the 11/25 --

18 A Yes.

19 Q -- appearance, the initial appearance you've discussed?

20 A Yes.

21 Q Okay. Was it prior to the detention hearing that we're
22 going to discuss?

23 A Yes.

24 Q Now, do you recall what day the detention hearing was?

25 A I believe it was December 5th.

1 MR. MINISH: Judge, I'm going to move in the same --
2 it's another certified transcript dated -- Exhibit Number 2218
3 and ask that that be moved into evidence and be allowed to
4 refresh the agent's memory.

5 THE COURT: Okay. 2218. Go ahead.

6 (Government Exhibit 2218 is received in evidence.)

7 Q Agent, have you reviewed that exhibit?

8 A Yes, I have.

9 Q Does that refresh your memory as to what --

10 A The detention hearing was held on December 4th, 2003, not
11 December 5th as I just stated.

12 Q Now, just to turn back to the indictment process. Was the
13 indictment limited in scope the way the complaint was as far as
14 evidence that was presented?

15 A No, what we did with the grand jury is we presented all the
16 evidence we had in the case. So every single drug buy that we
17 did, in addition to all the other evidence we had gathered in
18 the case, we presented that to the Federal Grand Jury.

19 Q Did you attend the detention hearing?

20 A I did.

21 Q And who was the AUSA representing the Government at that
22 hearing?

23 A John Gay.

24 Q And was Mr. Baskerville present?

25 A Yes, he was.

1 Q And who represented Mr. Baskerville?

2 A Mr. Bergrin.

3 Q Did there come a time during the course of that hearing
4 that, again, Mr. Gay discussed the penalties that the defendant
5 faced?

6 A Yes.

7 Q Agent, I'm going to direct your attention to line 3 -- I'm
8 sorry -- page 3, line 9 starting with "the defendant." Can you
9 read the balance of that paragraph?

10 A (Reading) The defendant is facing a life sentence and a \$4
11 million fine.

12 Q And who was making that statement?

13 A Mr. Gay.

14 Q Now, why did the penalty change from what it was in the
15 complaint from the initial appearance?

16 A What we had initially charged in the complaint was a 5 to
17 40 count based on the drugs. This now after we presented all
18 the evidence to the grand jury, it changed to a 10 to life
19 penalty.

20 Q Okay. And you're using terms of years. That's --

21 A Oh.

22 Q -- just so the Jury is clear, is it the amount of drugs
23 that changes the penalty, like the weight of drugs?

24 A Yes.

25 Q Okay. So more drugs --

1 A Harsher penalty.

2 Q Harsher penalty.

3 And this charge now in the Indictment was more harsh
4 or less harsh than in the complaint?

5 A This was more harsh.

6 Q Then if you skip down to line 12, would you read the
7 highlighted area?

8 A (Reading) He is considered a career offender.

9 Q And then finally, skipping down to line 14, the highlighted
10 area.

11 A (Reading) That would make him a Level 37, and he would be
12 looking at a sentence between 360 months and life if convicted
13 of that charge.

14 Q And again, was Mr. Baskerville there during the course of
15 this explanation of these penalties?

16 A Yes, he was.

17 Q And Mr. Bergrin?

18 A Yes.

19 Q And was the Defendant William Baskerville ultimately let
20 out on bail or no?

21 A No, he was detained.

22 Q Now, Agent, without saying what: After the court process
23 started with Mr. Baskerville, did you receive information that
24 caused you concern for Kemo's safety?

25 A Yes, we did.

1 Q Based on that information you received, what did you do?

2 A We immediately picked up Kemo from his residence and placed
3 him in a secure location.

4 Q Okay. What do you mean by "secure location"? Is that a
5 special FBI place?

6 A It's a hotel that we use.

7 Q And how long did he stay there?

8 A Approximately one week.

9 Q Did you personally believe this was a legitimate threat?

10 A Yes, I did, absolutely.

11 Q How about Mr. McCray, how seriously did he take it?

12 A Initially, not that seriously.

13 Q Did you explain his safety options?

14 A Yes, I did.

15 Q And what were the options you explained to him?

16 A We explained to him that he could -- we could apply, make
17 an application for him to the Witness Security Program and get
18 him into that program, or we could give him money to relocate
19 so that he and his family members could relocate to a
20 completely different remote area.

21 Q Now, the Witness Security Program is commonly referred to
22 as "witness protection"?

23 A Yes, it is.

24 Q So that's when you move and change your name?

25 A Yes.

1 Q And the relocation, can you explain that to the Jury?

2 A When we relocate people, we give them a lump sum of money
3 and they are given that money and they use it for their moving
4 expenses, and it's enough for them to get their feet on the
5 ground so they can establish themselves in a new location.

6 Q Did Mr. McCray at this point initially -- we're still in
7 2003 -- want to take advantage of either of those options?

8 A No, he did not.

9 Q And where did he want to live?

10 A He said that he would be safe going to a distant relative's
11 house.

12 Q Okay. And who was that distant relative?

13 A His stepfather, Johnny Davis.

14 Q And how distant did Mr. Davis live?

15 A At that time he was living in East Orange.

16 Q And why would that distance in Mr. McCray's mind keep him
17 safe?

18 MR. BERGRIN: Objection as to what's in his mind,
19 Judge.

20 THE COURT: Yeah, sustained.

21 Q Was it explained to you why -- just yes or no -- Mr. McCray
22 believed he was safe in East Orange?

23 A Yes.

24 Q Was the majority of the people involved with William
25 Baskerville Newark-based?

1 A Yes.

2 Q And Irvington-based?

3 A Yes.

4 Q And did Mr. McCray, in fact, go and live with Mr. Davis?

5 A Yes, he did.

6 Q Now, starting into the following year, in 2004, January and
7 February, where did Mr. McCray live?

8 A He ended up moving in with his girlfriend back to Newark in
9 a housing complex referred to as Bradley Court.

10 Q And where is Bradley Court located?

11 A On North Munn Avenue in --

12 Q What city?

13 A In Newark.

14 Q And where would South Orange Avenue be in relation to
15 Bradley Court?

16 A It's right off of the housing complex, it's very close to
17 it.

18 Q Did Mr. McCray indicate whether or not he felt safe in that
19 location?

20 A Yes, he did.

21 Q Did there come -- did Mr. McCray relate an incident to you
22 that changed his mind with respect to his safety?

23 A Yes.

24 Q Would you tell the Jury what he told you?

25 THE COURT: Well, is there an objection to that?

1 MR. BERGRIN: Objection, of course, Judge.

2 MR. MINISH: Can we be heard? I don't think it's
3 something the Jury --

4 THE COURT: Yeah, let me hear you.

5 (At the sidebar.)

6 THE COURT: What is she going to say, Mr. Minish?

7 MR. MINISH: That at some point Mr. McCray is walking
8 his dog, Rakeem Baskerville sees him, then Mr. McCray gets
9 scared and he runs away.

10 THE COURT: Go ahead.

11 MR. BERGRIN: Judge, I have no objection to that.

12 THE COURT: You have no objection?

13 MR. BERGRIN: No.

14 THE COURT: Okay. I didn't know where she was going.

15 MR. MINISH: How would you know?

16 MR. BERGRIN: Judge, I have no objection to that.

17 (In open court.)

18 THE COURT: I'll allow the question. Go ahead, Mr.
19 Minish.

20 MR. MINISH: Thank you, Judge.

21 Q Agent, could you please tell the Jury what Mr. McCray
22 related to you about an incident that occurred in that January,
23 February time?

24 A He was walking along South Orange Avenue and he noticed a
25 burgundy Impala pull up next to him, drive past him, put on the

1 brake lights, back up, and the individual in that car stared
2 him down, and he ran.

3 Q Did he recognize the individual in that vehicle?

4 A Yes.

5 Q Who was that individual?

6 A Rakeem Baskerville.

7 Q Did he get away as he was running, or was there a further
8 incident?

9 A No, he ran away.

10 Q Mr. McCray, you had indicated earlier, wasn't taking the
11 threats that seriously that you had explained to him the safety
12 issues. Did this change his mind?

13 A Yes.

14 Q Did Mr. McCray make a request of you with respect to his
15 change of heart?

16 A Yes. At this stage he asked to be relocated.

17 Q And did you begin that process?

18 A Yes, I did.

19 Q So the Jury understands, what's involved in the FBI
20 starting a relocation process?

21 A What we typically have to do is get a cost estimate. So if
22 Kemo is going to relocate to a certain area, he has to tell me
23 how much the rent is going to be. And we're able to cover two
24 months rent, security deposit, utilities and per diem food. So
25 there is a formula that goes into the dollar amount. So I have

1 to fill out paperwork supporting the request, pass it on to my
2 supervisor and ultimately up the chain until it's approved. So
3 it takes several days.

4 Q And this is as opposed to the immediate move to the hotel?

5 A Yes.

6 Q Was there another possibility which had been discussed with
7 respect to making Kemo safe?

8 A Yes. We had also talked about possibly arresting him.

9 Q And I'd like to now talk about that subject.

10 Did there come a time when you learned that Kemo had
11 lied to you?

12 A Yes.

13 Q Did could you explain to the Jury how you determined that?

14 A Kemo had been doing another drug investigation for us
15 unrelated to the William Baskerville investigation, and he had
16 made it seem as though two individuals were engaged in a
17 conspiracy when they really weren't. So what happened was,
18 after we arrested these two individuals and they cooperated and
19 they both denied knowledge of one another, we realized that
20 Kemo had lied to us about them being involved in the
21 conspiracy, so we questioned Kemo. And He admitted to us that
22 he had lied and fabricated that evidence, that they were not
23 involved in a conspiracy.

24 Q Okay. So what is the true story?

25 A The true story is that he owed one of the individuals

1 money, so he made it sound as if individual number one, who's
2 name is Tyrone Cox, was charging him a courier fee to take him
3 to his supplier of \$150. In reality -- and we provided Kemo
4 with that money to make that payment to Tyrone Cox. The
5 reality was Kemo just owed Tyrone Cox the money.

6 Q And ultimately he gave a statement admitting all of that?

7 A Yes.

8 Q Signed it?

9 A We took a handwritten statement from him and he came clean.

10 Q Now, based on Mr. McCray lying about that, what did the FBI
11 do or what did you do with respect to his status as a
12 confidential informant?

13 A I closed him out as a confidential informant, which means
14 he's no longer operable, meaning we no longer can use him, and
15 closed him out for cause, meaning if any other agent tried to
16 use him they would see he lied to us and there were issues in
17 using him as an informant.

18 Q Now, was the FBI responsible for his safety or no?

19 A Yes, we're still responsible for his safety. Even though
20 he's closed as an informant, we are still responsible for
21 protecting him and keeping him safe.

22 Q And why is that?

23 A Because he has still done work for us and there are --
24 well, because it's the right thing to do. He had done
25 substantial amount of work for us and we were still responsible

1 for his safety.

2 Q Was he still getting paid after he had gotten closed down?

3 A No.

4 Q So the rent and money was stopped?

5 A Yes, he was on his own.

6 Q Was there any concern about this affecting future
7 prosecutions?

8 THE COURT: Well --

9 MR. BERGRIN: I have to object to that question,
10 Judge.

11 THE COURT: The question I don't think is appropriate,
12 Mr. Minish. Rephrase it or go into another area.

13 MR. MINISH: Okay.

14 THE COURT: That's not her expertise.

15 MR. MINISH: That's fine.

16 Q With respect to Mr. Cox who you said was one of the
17 individuals, did he, in fact, sell cocaine to Mr. McCray?

18 A Yes, he did.

19 Q And with respect to the other individual, what was his
20 name?

21 A Richard Hosten.

22 Q Did he, in fact, sell cocaine or sell drugs to Mr. McCray?

23 A Yes, he did.

24 Q So they were both guilty of their individual crimes?

25 A Yes.

1 Q As far as other people who had not cooperated or signed a
2 plea agreement or indicated that they were going to cooperate,
3 were there any other individuals -- just yes or no -- that Kemo
4 had cooperated against that had not done one of those two
5 things?

6 MR. BERGRIN: Objection, your Honor.

7 THE COURT: Just a moment.

8 I'll see you at sidebar, Mr. Minish.

9 (At the sidebar.)

10 THE COURT: I'm sorry, I just don't know.

11 MR. MINISH: I apologize and I recognize it was an
12 inarticulate question.

13 THE COURT: Where are you going with these two other
14 individuals?

15 MR. MINISH: It's just to sort of ultimately eliminate
16 people that we were concerned about being involved with
17 anything after Kemo had made this mistake and lied. The simple
18 answer is going to be -- and I should have included Mr.
19 Baskerville in the question -- but the simple answer is that
20 there's two other individuals: There's Horatio Joines, and I
21 can't think of the other person's name, it's at my desk -- and
22 there were other cooperators who had made cases against them.
23 So it wasn't of much -- it wasn't a big deal, it was much to do
24 about nothing with respect to --

25 THE COURT: Let me see.

1 (In open court.)

2 BY MR. MINISH:

3 Q Agent, prior to March 7, 2004, of the various individuals
4 that Mr. McCray had cooperated against -- setting aside Mr.
5 Baskerville -- how many individuals had not either pled guilty
6 or had signed a plea agreement?

7 A They had all either pled guilty or signed a plea agreement.
8 The number though are you asking me?

9 Q No -- well, how many did not I guess. So, zero?

10 A Zero.

11 THE COURT: How many were there total?

12 THE WITNESS: Approximately 15.

13 THE COURT: Okay.

14 MR. MINISH: Judge, I'm going to move into a new area.
15 I'm not sure --

16 THE COURT: No, go ahead, it's only been an hour. So
17 proceed.

18 Q I'm going to direct your attention, Agent, to March 2nd
19 2004.

20 A Yes.

21 Q Were you working on that day?

22 A Yes, I was.

23 Q Do you recall what day of the week it was?

24 A It was a Tuesday.

25 Q And where were you in the early afternoon, mid-afternoon on

1 that day?

2 A I was in the squad area at the FBI building in Newark. I
3 was in my squad area.

4 Q Did anything come over the radio that morning -- or that
5 afternoon? Excuse me.

6 A We had heard on the radio that there had been a homicide on
7 South Orange Avenue in the area of 18th or 19th Street, and we
8 heard emergency personnel responding to the scene.

9 Q Okay. Now when you say you heard it, how were you able to
10 hear that?

11 A We all have hand-held radios on our desk, and with those
12 radios we're able to monitor local police traffic, and we do
13 that to get an idea of what was going on with either the Newark
14 Police Department or Irvington Police Department. So on that
15 particular day we had heard it come across the radio that there
16 had been a homicide in Newark.

17 Q Did you get contacted by anyone after that radio
18 transmission?

19 A Yes, I did.

20 Q Explain to the Jury what happened.

21 A I had been paged overhead numerous times by our command
22 center, and they -- I called to the command center and they
23 asked me to come up. And what had happened is, they had
24 received a series of phone calls from a woman identifying
25 herself as Delphine looking for me in -- she was very panicked

1 and distraught. They weren't sure --

2 Q Did you know who Delphine was that at that time?

3 A Kemo's mother, yes.

4 Q Did you get -- did you actually speak with Delphine?

5 A Yes. She called again while I was in the command center
6 and I spoke to her on the phone.

7 Q Did she tell you anything about Kemo?

8 MR. BERGRIN: Objection, Judge.

9 THE COURT: Sustained.

10 MR. MINISH: I wasn't asking for what she said, Judge.
11 Just did she or didn't she.

12 THE COURT: All right. Then I'll allow it.

13 Yes or no.

14 A Yes.

15 Q Based on that information, did you associate what Delphine
16 told you with what you heard on the radio?

17 A Yes.

18 Q And how did you react?

19 A I called one of the Newark Police task force officers who
20 works on our squad to verify that the homicide had been -- that
21 Kemo had, in fact, been murdered.

22 Q And were you able to verify that?

23 A Yes, I was.

24 Q Did you stay at the FBI after you verified that or did you
25 leave?

1 A I left.

2 Q And where did you go?

3 A I along with several members of my squad went out to the
4 scene of the murder.

5 Q And where was the scene of the murder?

6 A The intersection of South Orange Avenue and 19th Street.

7 Q Did you speak with anybody from the Newark Police
8 Department?

9 A I did. I spoke to the detective who had been assigned to
10 work the homicide.

11 Q And who was that detective?

12 A Detective Rashid Sabur.

13 Q Did you tell him anything about what you knew about the
14 victim in this homicide?

15 A I explained to Detective Sabur that Kemo McCray was an
16 informant of ours.

17 Q And why did you tell him that?

18 A Because I believed that he had been killed as a result of
19 him being an informant.

20 Q Did you agree to help Detective Sabur?

21 A Yes, I did.

22 Q Whose investigation is this homicide?

23 A This is a Newark Police Department homicide investigation
24 along with Essex County.

25 Q When you say Essex County, you mean the prosecutor's

1 office?

2 A The prosecutor's office, yes.

3 Q And why isn't it a FBI investigation?

4 A We typically do not investigate murders.

5 Q But you had a vested interest, the FBI had a vested
6 interest --

7 MR. BERGRIN: Objection. I ask he reframe the
8 question.

9 THE COURT: I didn't hear the whole question. Let me
10 hear the whole question and then I'll see.

11 Go ahead, Mr. Minish.

12 Q I understand a regular homicide, but the FBI, since this is
13 a CI, has a vested interest. Why isn't this a case that you
14 investigated?

15 A Newark would investigate it, they would handle the case and
16 we were merely in a position to assist them up until point that
17 we could prove that --

18 THE COURT: Sustained: That's all. There's
19 nothing...

20 Q Did you offer assistance to the Newark PD and the Essex
21 County Prosecutor's Office?

22 A Yes, we worked with them.

23 Q Did there come a time when you spoke with Johnny Davis?

24 A Yes.

25 Q And remind the Jury who Johnny Davis is.

1 A Johnny Davis is Kemo's stepfather.

2 Q And did you speak with him in person or on the phone?

3 A I met him in person after I left the seen, I then went to
4 Johnny Davis' home and I spoke to him in person.

5 Q And what was his reaction during his discussion with you?

6 MR. BERGRIN: Objection, Judge.

7 MR. MINISH: It's not hearsay, it's not being offered
8 for truth of the matter asserted.

9 THE COURT: Wait.

10 Try to be more specific with the question, Mr. Minish.

11 MR. MINISH: Okay.

12 Q Agent, did you speak with Mr. Davis?

13 A Yes, I did.

14 Q Okay. What did Mr. Davis tell you?

15 MR. BERGRIN: Objection, Judge.

16 THE COURT: Well, the objection is -- within the
17 parameters that I allowed it in, Mr. Minish, I trust that this
18 will be coming in. Correct?

19 MR. LUSTBERG: I don't think the Court has ruled on
20 the Johnny Davis statements.

21 THE COURT: I'll here you at sidebar.

22 (At the sidebar.)

23 THE COURT: Are you getting into Davis' statements
24 now?

25 MR. MINISH: Judge, this is merely -- and I apologize

1 if it wasn't clear -- but this is merely him saying, "I blame
2 the FBI."

3 THE COURT: What?

4 MR. MINISH: I blame the FBI, it's your fault, and he
5 was upset.

6 THE COURT: Well, that's not -- how does that come in
7 under a hearsay exception?

8 MR. MINISH: It's not hearsay, Judge, it's not being
9 offered for the truth of the matter asserted, it's just his
10 reaction and goes to what the Agent did. It's not even
11 particularly damning to Mr. Bergrin one way or the other.

12 MR. BERGRIN: I'll withdraw the objection if that's
13 all he's going to testify to. I have no problem with that.

14 MR. MINISH: Just part of the story.

15 THE COURT: I thought you were getting into the other
16 one I hadn't ruled on.

17 MR. BERGRIN: No objection, Judge.

18 (In open court.)

19 THE COURT: Okay. Go ahead, Mr. Minish. Repeat the
20 question again, please.

21 MR. MINISH: Thank you, Judge.

22 BY MR. MINISH:

23 Q Agent, what did Mr. Davis say to you?

24 A He accused me of being responsible for Kemo's death because
25 Kemo was an informant for us and I did not protect him.

1 Q And was he very upset or indifferent?

2 A He was extremely irate.

3 Q Ultimately, Agent, do you have a meeting with other members
4 of law enforcement about -- excuse me -- about Kemo's murder?

5 A Yes.

6 Q And which groups are present at that meeting?

7 A We have members of Newark Police Department, the Essex
8 County Prosecutor's Office, and members of the Drug Enforcement
9 Administration present at that meeting.

10 Q And during the course of that meeting, did the FBI provide
11 a list of potential subjects -- suspects -- excuse me -- to the
12 people attending the meeting?

13 A Yes, I did.

14 Q And do you recall who was on that list of potential
15 suspects?

16 A Yes, I do.

17 Q Would you tell the Court, or tell the Jury?

18 A Rakeem Baskerville, Hakeem Curry, Malik Lattimore, Jamal
19 Baskerville, and I believe that was mainly it.

20 Q And again, just yes or no: Was that because of their
21 association with William Baskerville's drug transactions or
22 drug-trafficking business?

23 A Yes.

24 Q Now, did you offer assistance with respect to the ongoing
25 investigation?

1 A Yes, we did.

2 Q If you could explain to the Jury -- now the drug
3 investigation is over and we're moving into a murder
4 investigation -- can you explain to the Jury the differences
5 between the two?

6 A Well, a drug investigation is proactive, we pro-actively
7 have an informant who's going out and doing under -- well,
8 controlled purchases of narcotics. So it's happening realtime,
9 we're building our evidence realtime.

10 A homicide investigation is historical. The murder
11 has happened and we have to work backwards; what eyewitnesses
12 do we have, what happened at the scene? So we're gathering all
13 our information historically. It's a very different type of
14 investigation.

15 Q Now, the videotaping of a crime like the various drug
16 transactions, are you able to do that for the homicide?

17 A No, it's already happened, there's nothing we can do to
18 collect evidence on a proactive basis.

19 Q How about recording, is there anything that could be
20 recorded with respect to the actual homicide?

21 A No.

22 Q So with that in mind, given the historical investigation,
23 what do you do?

24 A What we can do is go back to the witnesses and learn what
25 they saw, what they heard and try and build our case on witness

1 information and source information, what we hear on the
2 streets, what our informants are telling us.

3 Q Okay. Did you ultimately interview a number of your
4 informants?

5 A We canvassed all of our informants. We had a meeting on my
6 squad and the other violent crime squad and we said that
7 anybody who's got informants in this area, task your informants
8 with finding out who was responsible for that murder.

9 Q Did there come a time when you received -- did there come a
10 time when you received information from an informant?

11 A Yes.

12 Q And did he indicate who he had heard was involved in the
13 murder?

14 A We had received --

15 MR. BERGRIN: Objection, Judge.

16 THE COURT: I'm going to sustain it, Mr. Minish.

17 MR. MINISH: Okay.

18 Q Yes or no, agent: Did he provide you with information,
19 this cooperator, this informant, about who may have been
20 involved in the homicide?

21 A Yes.

22 Q Based on that, did you start to investigate an individual
23 known as Fat Ant?

24 A Yes.

25 Q And did the information that you were provided indicate

1 anything that was contrary to the subjects you believed were
2 involved in the murder?

3 MR. BERGRIN: Objection, Judge. It could be hearsay,
4 Judge.

5 MR. MINISH: Again, it's not really being offered for
6 the truth --

7 THE COURT: All right, all right, Mr. Minish.
8 I'm going to sustain the objection.

9 MR. MINISH: Judge, could we be heard briefly?

10 THE COURT: Well, ladies and gentlemen, we'll take an
11 afternoon recess for a few minutes, okay? About ten, 15
12 minutes. Please go to the jury room and don't discuss anything
13 about the case.

14 Thank you.

15 THE DEPUTY CLERK: Please rise for the Jury.

16 (The Jury leaves the courtroom.)

17 (Witness temporarily excused.)

18 THE COURT: Everyone be seated, please.

19 Mr. Bergrin, you have an objection?

20 MR. BERGRIN: Yes, Judge.

21 THE COURT: The question was: "Did the information
22 that you were provided indicate anything that was contrary to
23 the subjects you believed were involved in the murder?"

24 And that's what you objected to?

25 MR. BERGRIN: Absolutely. Absolute hearsay, Judge,

1 MR. MINISH: I will try to ask leading questions to
2 tailor it, Judge.

3 THE COURT: If Mr. Bergrin gets in there with either
4 her or someone else, with Lattimore or someone else or
5 something, then we may get more specific.

6 MR. MINISH: Thank you, Judge.

7 THE COURT: Thanks.

8 All right. You can bring out the Jury. Thanks.

9 THE DEPUTY CLERK: Please rise for the Jury.

10 (Jury present.)

11 THE COURT: All right, everyone, please be seated.
12 Thanks.

13 Mr. Minish, go ahead, please.

14 DIRECT EXAMINATION CONTINUES

15 BY MR. MINISH:

16 Q Agent, when we broke we were discussing the various
17 informants that you discussed obtaining information regarding
18 Kemo's murder. Is that correct?

19 A Yes.

20 Q Now, one of those informants -- well, let me ask you: How
21 many informants ultimately provided information relating to the
22 investigation?

23 A During what stage? Initially there was a handful, and then
24 eventually there was --

25 Q Initially.

1 A Initially? At least three different informants.

2 Q Now, one of them is named Shelton Leveret?

3 A Yes.

4 Q And did he provide you with information regarding what he
5 had learned about the murder of Kemo?

6 A Yes.

7 Q Based on that information, did you continue to investigate
8 members of the Hakeem Curry organization?

9 A Yes, I did.

10 Q And based on that information did you attempt to identify
11 an individual known as Fat Ant?

12 A Yes, I did.

13 Q And during the course of the investigation with regard to
14 Mr. Curry's organization, did you investigate --

15 THE COURT: Mr. Minish, these are leading questions.
16 Ask her: What did she do next?

17 MR. MINISH: I'm sorry, I was trying to tailor --

18 THE COURT: They're leading questions. Go ahead.

19 Q Was there a second individual who came and provided you
20 with information?

21 A Yes, there was.

22 Q And was that individual named Curtis Jordan?

23 A Yes.

24 Q And did he provide you with information specific to the
25 murder?

1 A Yes, he did.

2 Q Based on that information, who did you look to to
3 investigate?

4 A He had provided us --

5 MR. BERGRIN: Objection, your Honor, that's not the
6 question.

7 THE COURT: Sustained based on my ruling.

8 Go ahead.

9 Q Again, Agent, based on what he told you, who did you go and
10 investigate?

11 A An individual by the name of Anthony Rogers.

12 Q And did Anthony Rogers also have a nickname?

13 A He is also known as Fat Ant.

14 Q Do you want to review --

15 A Well -- no. Go ahead, I'm sorry.

16 Q Did you want to review a report to refresh your memory?

17 A No, I don't believe so.

18 Sorry. I may be confused with your question. But we
19 had two individuals --

20 MR. BERGRIN: There's no question posed, your Honor.

21 Q Let me -- Curtis Jordan --

22 A Yes.

23 Q -- is the second individual who provided information?

24 A Yes.

25 Q Based on that information, who did you attempt to

1 investigate?

2 A Fat Ant.

3 Q And did he go by another name, the individual that you were
4 trying to investigate, based solely on Curtis Jordan's
5 information?

6 A Anthony Rogers.

7 Q Now, moving to a third individual. Did you start an
8 investigation or look during the course of this investigation
9 to another individual?

10 A Yes.

11 Q Okay. And who did you look towards?

12 A Hakeem Curry.

13 Q A fourth source; did you speak to a fourth source with
14 information on the Kemo murder?

15 A Yes.

16 Q And that source, did he provide information?

17 A Yes.

18 Q And based on that information, who did you begin to look
19 at?

20 A William Baskerville.

21 MR. MINISH: Judge, I have to refresh -- I just have
22 to show a document.

23 MR. BERGRIN: The witness didn't say she needs her
24 memory refreshed, Judge.

25 THE COURT: What is the -- was it a question already

1 asked that she indicated she might have --

2 MR. MINISH: Let me ask this question, Judge, it might
3 make it easier.

4 THE COURT: Go ahead.

5 Q Did there come a time when you began to look at an
6 individual named Malik Lattimore?

7 A Yes.

8 Q And was that based on information that you received from a
9 source?

10 A Yes.

11 Q And ultimately does that information get passed as well as
12 this other information, get passed along to the Newark Police
13 Department?

14 A Yes, it does.

15 Q And, to your knowledge, did the Newark Police Department do
16 any further investigation with the information that you
17 provided?

18 A Yes, they did.

19 Q And can you tell us what that was?

20 A We had -- I had provided Detective Sabur with the name of
21 Malik Lattimore as a possible shooter in the homicide, and I
22 provided Detective Sabur with a photograph of Malik Lattimore.
23 Detective Sabur brought in a witness and showed that witness a
24 photograph of Malik Lattimore.

25 Q And when you say "a witness," you mean a witness in the

1 murder?

2 A Yes.

3 Q And what were the results of that photograph array?

4 A It was not conclusive.

5 Q Meaning?

6 A He was not able to identify -- the witness was not able to
7 identify Malik Lattimore as the shooter.

8 Q Now, did there come a time after Kemo was murdered when you
9 went to speak with William Baskerville?

10 A The next day, yes.

11 Q And where was William Baskerville the day after Kemo was
12 murdered?

13 A He was incarcerated at Hudson County Jail.

14 Q So you went to Hudson County Jail to speak to him?

15 A Yes, I did.

16 Q Explain to the Jury what you did when you got there.

17 A When I got there I asked permission to see an inmate by the
18 name of William Baskerville, and the guards pulled him down and
19 told him that he could speak to me if he wanted to. He did not
20 have to speak to me. And he filled out some sort of consent
21 form saying that he would like to speak to myself and my
22 partner who was with me at the time.

23 Q And did you speak to him?

24 A Yes, I did.

25 Q Okay. Was this a question and answer, or were you just

1 speaking at him?

2 A I am speaking at him.

3 Q And what did you tell him?

4 A I told him that Kemo McCray had been shot and killed and
5 that we were going to investigate this case to the absolute
6 fullest extent possible because he was a government witness,
7 and that we would not stop until we had identified everybody
8 involved in this murder. And that if he had any information,
9 now was the time to come forward with that information.

10 Q Did Mr. Baskerville have any reaction to your statements?

11 A He was visibly upset and said that he wanted time to think.

12 Q And did you give him a time limit on how much time he had
13 to think?

14 A I told him I would come back in one week.

15 Q And did you leave then or did you have further dialogue
16 with Mr. Baskerville?

17 A We left. I left.

18 Q Now, moving forward to March 5th, 2004, did you become
19 aware of arrests made related to the Curry organization?

20 A Yes, I did.

21 Q Was Hakeem Curry one of those individuals that was
22 arrested?

23 A Yes, he was.

24 Q Was Rakeem Baskerville one of those individuals arrested?

25 A Yes, he was.

1 Q Was he arrested on that day?

2 A Rakeem Baskerville was arrested later. He was on the run,
3 so he was not arrested that day, but there was an arrest
4 warrant issued for him.

5 Q And those charges were not related to the homicide.
6 Correct?

7 A They were not.

8 Q Now moving forward to March 9th, did you go back to speak
9 to Mr. Baskerville again?

10 A Yes, I did.

11 Q Would you tell the Jury what happened on that occasion?

12 A The same process. They pulled him out of his cell and the
13 guards again had him sign a consent form explaining to him that
14 he is under no obligation to talk to me. He signed the consent
15 form, and I spoke to him again.

16 Q And what did you tell him this time?

17 A This time I told him that we had information that he was
18 involved, directly involved in the conspiracy to kill our
19 informant and that the penalty for that is life in prison or
20 possibly punishable by death. It's a capital offense.

21 Q And did Mr. Baskerville have any reaction to your
22 statements?

23 A He turned white as a ghost.

24 Q And did he say anything?

25 A He again said he needs time to think about this.

1 Q Did he indicate anything about his original interest in
2 cooperating?

3 A He stated that he originally wanted to cooperate with the
4 federal investigators.

5 Q And back in November?

6 A Back in November.

7 Q Now, later on in March, some time after March 9th, did you
8 go back in again and see Mr. Baskerville?

9 A Yes, I did.

10 Q And did you see him?

11 A I did not.

12 Q Why not?

13 A He declined to see me.

14 Q Did you, once he declined, did you ever go back to try to
15 see him again?

16 A No, I did not.

17 Q Without telling us what they said, Agent, during this time
18 now -- we're in the later part of March of 2004 -- did you
19 begin to receive information from informants, incarcerated
20 informants about the murder?

21 A Yes, I did.

22 Q And based on that information, did you make an attempt to
23 record William Baskerville?

24 A Yes, I did.

25 Q Would you explain to the Jury what the process was?

1 A I have to -- in order to record an inmate in a federal
2 facility I have to receive approval from headquarters, so I had
3 to do a lengthy memo to headquarters explaining why I wanted to
4 record -- have an inmate record William Baskerville, what I
5 hoped to obtain from that recording, and also acknowledge that
6 that informant or that individual would not question William
7 Baskerville about his current drug charges.

8 Q And did you make that attempt?

9 A I did, and I received approval to go ahead and begin a
10 recording.

11 Q Was it successful?

12 A There was a recording done, but we were not able to
13 successfully --to get what we were hoping to get, meaning
14 Baskerville talking about his role in the murder.

15 Q Now, there comes a time -- again, we're in 2004 -- where
16 you are assigned somewhere other than Newark. Is that correct?

17 A Yes, it is.

18 Q Okay. What is the time period you're assigned outside of
19 New Jersey?

20 A I was sent on a temporary duty assignment from July of '04
21 until the end of September of 2004.

22 Q And was that in this country or out of this country?

23 A It was out -- outside of this country.

24 Q During that time were you able to work on the Baskerville
25 investigation?

1 A No, I was not.

2 Q I'm sorry, the Kemo murder investigation.

3 A No, I was not.

4 Q When you got back you said in September?

5 A Yes, September of 2004.

6 Q Okay. Was it back to the Newark office?

7 A Yes, it was.

8 Q Did you continue the investigation into the murder of Kemo
9 at that time?

10 A I did. Right before I had left I had received additional
11 source information that I picked up when I returned from --
12 when I returned to the Newark Division.

13 Q So based on things you had previously been told you
14 continued your investigation?

15 A Yes, I did.

16 Q Now, during this time you were -- what was the goal of the
17 investigation with respect to William Baskerville specifically?

18 A The goal was to determine what exactly William
19 Baskerville's role was in having Kemo killed; namely, that he
20 had ordered this hit. We knew he couldn't have pulled the
21 trigger, he was incarcerated.

22 Q And were there discussions about -- without telling us what
23 they are -- were there discussions about whether or not to
24 charge, or when to charge Mr. Baskerville with relation to the
25 murder?

1 A Yes.

2 Q And again, so the Jury is clear, the charge with the drugs
3 was still pending and open?

4 A Yes, it was.

5 Q In January of 2005, to your knowledge, does William
6 Baskerville get a new lawyer?

7 A Yes, he does.

8 Q Do you know that lawyer's name?

9 A Carl Herman.

10 Q Now, again, we're in January of '05. Did there come a time
11 when you received a call from another agent providing you with
12 information related to the Kemo murder?

13 A Yes.

14 Q And if you could explain to the Jury what information you
15 got.

16 A Okay. There was --

17 MR. BERGRIN: Objection, Judge.

18 THE COURT: Sustained.

19 MR. MINISH: Judge, she's going to explain the
20 circumstances of a call coming in. It's again not --

21 THE COURT: No, no, you're saying this is. Just a
22 moment.

23 This is a call from an agent?

24 MR. MINISH: Correct.

25 THE COURT: As a result of that call, without getting

1 into the call, what did you do after that?

2 THE WITNESS: I placed a call to an individual by the
3 name of Anthony Young.

4 THE COURT: Okay. Go ahead. Next.

5 Q And what did you discuss with Mr. Young?

6 A Mr. Young told me that he had firsthand knowledge of who
7 killed Kemo, why it happened, and he provided me with the
8 details of the conspiracy to have Kemo killed.

9 Q So had you received other similar calls of people claiming
10 to have knowledge prior to that day?

11 A Not like this.

12 Q And what do you mean, "not like this"?

13 A Well, the information that Anthony --

14 MR. BERGRIN: Objection, your Honor, to the
15 information that she received.

16 MR. MINISH: She's not even going to say what was
17 said.

18 THE COURT: I can't hear you, Mr. Minish.

19 MR. MINISH: It wouldn't be objectionable anyway, but
20 she's not even saying what he said. She's saying her reaction
21 based on information --

22 THE COURT: She said she had not gotten similar
23 information from anyone else, that's all. Now what's the next
24 question?

25 Q Based on -- what do you mean by "not similar information"?

1 A Anthony Young had such specific information as to what
2 happened that nobody -- somebody who was not involved in this
3 plot to kill Kemo would not have known. It was very specific
4 in nature.

5 Q Were they -- was the information you were provided with
6 respect to the murder, the crime scene?

7 A Not during the first call.

8 MR. MINISH: Judge, this is a difficult area that I
9 don't know if we can be heard for a minute to get into here in
10 front of the Jury.

11 THE COURT: All right. Let me hear you at sidebar.

12 (At the sidebar.)

13 MR. MINISH: There is a difficult -- the information
14 that Anthony Young initially provides is -- and I'm just going
15 to try to read it and make sure I'm accurate as possible -- is
16 that there's a call from Paul Bergrin that lists the dates and
17 the amounts in the complaint, that he pronounced the name
18 "Kamo," that Paul is Curry's boy, he keeps him on the payroll
19 to defend Curry's guys, things like that, and that's what makes
20 her believe him. So we have to be able to get that information
21 out.

22 THE COURT: How does that come through Anthony Young?

23 MR. MINISH: What's that?

24 THE COURT: At this juncture how does that come in
25 through her?

1 specificity of it; what he said, who he implicated.

2 MR. MINISH: No, Judge, I apologize. I'm not being
3 clear. What I offered it for is to explain what the Agent does
4 next. The Agent --

5 THE COURT: Thank you, thank you, Mr. Minish.

6 No, you can say Anthony Young called. I let her say:
7 He gave me great detail that nobody else would have known
8 unless they were at the crime scene, and then you go on from
9 there. Okay?

10 MR. MINISH: Okay.

11 (In open court.)

12 BY MR. MINISH:

13 Q Agent, based on that information you were provided from
14 Anthony Young, what was the next step you took in your
15 investigation?

16 A To corroborate the information he provided to us.

17 Q And were you able to do that?

18 A Yes, I was.

19 Q And did you make a determination whether or not you should
20 meet with this individual?

21 A Yes, I did.

22 Q Okay. And did you, in fact, meet with him?

23 A Yes, we did.

24 Q And when was that?

25 A Approximately three or four days later.

1 Q And where was that meeting?

2 A At the Newark FBI office.

3 Q Did you sit down with Anthony Young at that time?

4 A Yes, I did.

5 Q And did you interview him about his knowledge with respect
6 to the Kemo murder?

7 A Yes, I did.

8 Q And did you go through it in great detail?

9 A In great detail.

10 MR. MINISH: Judge, I'm showing the witness what's
11 been marked Government Exhibit 2263. Defense Counsel has a
12 copy of it.

13 Q Do you recognize that individual in that photo, Agent?

14 A Yes, I do.

15 Q Would you tell the Jury who it is?

16 A Anthony Young.

17 MR. MINISH: Judge, I'd like to move that photo into
18 evidence.

19 MR. BERGRIN: No objection, Judge.

20 MR. LUSTBERG: What's the exhibit number? I'm sorry.

21 MR. MINISH: 2263.

22 MR. LUSTBERG: Thank you.

23 THE COURT: It's in evidence.

24 (Government Exhibit 2263 is received in evidence.)

25 MR. MINISH: Can we publish it to the Jury?

1 Q So the individual who's on the screens now, Agent, that's
2 Anthony Young?

3 A Yes, it is.

4 Q And is that the individual who you met with at the FBI that
5 you were just discussing?

6 A Yes.

7 Q You said you made attempts to corroborate information that
8 he gave you.

9 Without telling us -- let me ask it this way: You
10 also had received some information regarding an individual you
11 testified, Anthony Rogers and Fat Ant?

12 A Yes.

13 Q Based on those -- Mr. Young coming in and that information,
14 what did you do?

15 A I learned them to be one and the same. I confirmed that
16 they were one and the same.

17 Q And how were you able to confirm that?

18 A Through what the sources told me about vehicles Anthony
19 Young drove and specific physical traits of Anthony Young I
20 learned that the individual described to me --

21 MR. BERGRIN: Objection, Judge, it's all hearsay
22 again.

23 THE COURT: I don't know where she's going on this.

24 Ladies and gentlemen, we're going recess for the
25 afternoon, okay, since we have to -- I'll have to address this

1 objection.

2 We'll recess for the afternoon. Again, we'll start
3 the same time. Please don't discuss anything about the case,
4 and we'll see you tomorrow morning. And thank you for your
5 patience and cooperation. Thank you.

6 (The Jury leaves the courtroom.)

7 THE DEPUTY CLERK: Please rise for Jury.

8 THE COURT: You can sit down, Agent -- well, stay
9 here, we may need you. We'll see.

10 The answer that she was providing was: Through what
11 sources me about vehicles Anthony Young drove and specific
12 physical traits of Anthony Young I learned that the individual
13 described to me; and then there was an objection.

14 Where were you going to be going with that answer, do
15 you know?

16 THE WITNESS: Just that the source information that
17 initially described Fat Ant, through that I was able to
18 confirm, that Anthony Young was Fat Ant.

19 THE COURT: Okay. Do you have any objection to that?

20 MR. BERGRIN: I do, your Honor, because there's a
21 confirmation based on information received by third sources or
22 third parties, out-of-court declarants that are not subject to
23 Sixth Amendment confrontation rights.

24 THE COURT: Just a moment.

25 Mr. Minish, go ahead, let me hear what you have to

1 say.

2 MR. MINISH: Judge, again --

3 THE COURT: First of all, the question and the answer
4 are not that clear to me, I'm sorry. But go ahead.

5 MR. MINISH: The idea, Judge -- I guess to make it
6 clear so we can cut to the chase is that based on the
7 information as your Honor indicated that we could get into
8 based on information, what did you do, this is the explanation.
9 She had information from these sources, she had now information
10 from Anthony Young, she has to do two things: One, sort of vet
11 Anthony Young's information; and two, see if she can put these
12 two individuals together, or the information that she's
13 gathered --

14 THE COURT: Which two individuals are we talking
15 about?

16 MR. MINISH: Well, Fat Ant and Anthony Rogers. And
17 perhaps that's my fault for not having the Agent say this, but
18 had not been identified. The information had been received but
19 Anthony Rogerws had not been identified. Fat Ant had not been
20 identified. And again, I apologize, if makes it more clear,
21 Judge. But now that Anthony Young comes in. Two and two
22 together makes: Oh, that guy that they were talking about,
23 this could be the same guy so let me look into it.

24 And that's -- it's nothing more than that.

25 THE COURT: Does Anthony Young say he's Fat Ant and

1 Anthony -- what was the other one, Anthony Jones?

2 MR. MINISH: I know one of his nicknames is Fat Ant
3 and I believe, although I'm going from memory on the CCH,
4 Anthony Rogers was an a/k/a. But I don't want to --

5 THE COURT: No, no, but I'm saying -- In this
6 interview with Anthony Young, he gives her information that
7 you're able to confirm that Anthony Fat and Anthony Rogers are
8 all one and the same, they're all Anthony Young? Is that what
9 you're --

10 THE WITNESS: That's part of it, yes.

11 THE COURT: Was that part of your investigation?

12 THE WITNESS: Yes.

13 THE COURT: Did Anthony Young tell you that; that his
14 nicknames are Fat, and Anthony Rogers?

15 THE WITNESS: He told me that his nickname is Fat Ant.
16 I don't recall about Anthony Rogers. But there was additional
17 information about the vehicle he drove and there was
18 information about the vehicles --

19 THE COURT: So, in other words --

20 THE WITNESS: -- drove is the same vehicle he would
21 drive.

22 THE COURT: -- what you're saying is, you got
23 information from him, and from that information you were able
24 to determine that Fat Ant was another nickname for Anthony
25 Rogers, Anthony Young?

1 THE WITNESS: Yes.

2 THE COURT: And that the vehicle that was being driven
3 was also his vehicle?

4 THE WITNESS: Yes.

5 THE COURT: Okay. And also, with respect to Anthony
6 Rogers, you weren't able to make a conclusory statement at that
7 point?

8 THE WITNESS: Yes.

9 THE COURT: I'll allow that.

10 MR. MINISH: Thank you, Judge.

11 THE COURT: We'll do it tomorrow morning. Okay?
12 How much longer do you have?

13 MR. MINISH: I don't think much longer Judge. I would
14 estimate certainly less than an hour.

15 THE COURT: Okay. All right. Then we'll recess as
16 far as the Agent is concerned.

17 You can step down, Agent. Thank you.

18 THE WITNESS: Thank you.

19 (Witness temporarily excused.)

20 THE COURT: Mr. Gay, I know you mentioned you have
21 comments with respect to the opening that you wanted to
22 address. Correct?

23 MR. GAY: Yes, Judge.

24 THE COURT: Do you have specific areas of the opening
25 that you want to -- because I haven't been able to read it.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Criminal No. 2:09-cr-00369-WJM

UNITED STATES OF AMERICA, :
 : TRANSCRIPT OF PROCEEDINGS
v. : - Trial -
 :
PAUL W. BERGRIN, :
 :
Defendant. :
- - - - -x

Newark, New Jersey
October 19, 2011

B E F O R E:

THE HONORABLE WILLIAM J. MARTINI,
UNITED STATES DISTRICT JUDGE,
And a Jury

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

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

UNITED STATES ATTORNEY'S OFFICE

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JOSEPH N. MINISH

STEVEN G. SANDERS

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For the Government

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- and -

GBBONS, PC

BY: LAWRENCE S. LUSTBERG, ESQ., Standby Counsel

AMANDA B. PROTESS, ESQ.

for the Defendant

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

S/WALTER J. PERELLI

WALTER J. PERELLI, CCR, CRR

Official Court Reporter

WALTER J. PERELLI, OFFICIAL COURT REPORTER, NEWARK, NJ

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1 THE DEPUTY CLERK: Please rise for the Jury.

2 (Jury present.)

3 THE COURT: Welcome, back. Good morning. I can
4 assure you we've been here since 9:15 addressing matters that
5 we had to address, but please be seated.

6 Mr. Minish, you can proceed.

7 MR. MINISH: Thank you, Judge.

8 Before I start with the questions, Judge, there's just
9 one housekeeping matter. Inadvertently yesterday in that stack
10 of various recordings there was one I didn't show the Agent.

11 THE COURT: That's fine.

12 DIRECT EXAMINATION CONTINUES

13 BY MR. MINISH:

14 Q Agent, I'm showing you what's been marked Government
15 Exhibit 2230, which Defense has had an opportunity Defendant to
16 view it.

17 Do you recognize what that is?

18 A Yes, I do.

19 Q Could you tell the jury what it is?

20 A It's a videotape from the October 23rd, 2003 drug
21 transaction.

22 Q That you testified about yesterday?

23 A Yes.

24 Q Okay.

25 MR. MINISH: Judge, we ask that this be moved into

1 evidence.

2 MR. BERGRIN: No objection, Judge.

3 THE COURT: It's in evidence.

4 (Government Exhibit 2230 is received in evidence.)

5 Q Now, Agent, when we left off yesterday an individual named
6 Anthony Young had come to the FBI. Is that correct?

7 A That is correct.

8 Q Okay. Could you again tell the jury what time of year that
9 was?

10 A That was in January of 2005.

11 Q Did Mr. Young provide you with information about the Kemo
12 DeShawn McCray murder?

13 A Yes, he did.

14 Q Did he provide you with any information directly related to
15 the murder scene, the crime scene?

16 A Yes, he did.

17 Q What specific facts did he tell you?

18 A He was able to --

19 MR. BERGRIN: Objection, your Honor, that's hearsay.

20 THE COURT: All right. The objection is -- well, let
21 me, first of all, when you say -- okay.

22 Ladies and gentlemen, what you're going to hear now is
23 what Mr. Young told the Agent regarding certain information or
24 knowledge he may have had regarding the crime scene, okay?
25 This is not being offered for the truth of what he said, it's

1 being offered to show what the Agent did as a result of what he
2 said. Okay? So whatever Mr. Young said at that point is not
3 being offered for the truth of actually what he said, but it
4 will help to show what the Agent then did with that information
5 and the actions she thereafter took. Okay?

6 So the objection is overruled. It's not being offered
7 for the truth of the matter.

8 MR. MINISH: Thank you, Judge.

9 Q Agent, again, we're going to do it in segments. So
10 specifically to the crime scene: Were there any specific facts
11 Mr. Young gave you in relation to the crime scene?

12 A He stated that Kemo's body was laying face down in a pool
13 of blood and that he had a dust mask, the kind -- well, a dust
14 mask around his face and a lit cigarette in his hand as he was
15 laying on the ground. And that he had braids in his hair,
16 short braids in his hair.

17 Q Now, based on that information, what's the next
18 investigative step you take as to that information only?

19 A With that information I immediately referred to the crime
20 scene photographs which corroborated what Anthony Young had
21 told me.

22 Q Now, with respect to the -- what happened -- did Mr. Young
23 provide you with any information with respect to the weapon and
24 what happened to the weapon after the murder?

25 A He provided me with information regarding the weapon that

1 was used and how the weapon had been -- how they got rid of the
2 weapon.

3 Q And what did he say?

4 A He said that he and another individual took the gun that
5 was used in the murder to a local auto body shop and had it
6 melted down by a friend of his who owned the auto body shop.

7 Q And based on that information, what investigative step did
8 you take?

9 A I went and interviewed the friend that Anthony Young had
10 told me about, the owner of this body shop, and I confirmed
11 that what Anthony Young told me was, in fact, true; that he and
12 Rakeem --

13 MR. BERGRIN: Objection, Judge. I ask that it be
14 stricken.

15 THE COURT: Did Mr. Young indicate who it was? You
16 said "a friend"; that he and a friend went to this auto body
17 shop?

18 THE WITNESS: He said specifically Rakeem Baskerville.

19 THE COURT: All right. Again, ladies and gentlemen,
20 this information that Mr. Young is relating to the Agent at
21 this point is not being offered for the truth, it's being
22 offered to show what the Agent did after she got the
23 information. Because at that point the Agent probably didn't
24 even know whether or not this information was accurate or not.
25 So she went and did certain things after the fact.

1 MR. BERGRIN: Judge, could we have a very short
2 sidebar? It's very important.

3 THE COURT: I thought we addressed all of this. Let's
4 go.

5 (At the sidebar.)

6 MR. BERGRIN: The problem with this testimony, I don't
7 believe they intend to call the guy who owns the yard or the
8 guy who allegedly melted the gun, so we have a very serious
9 confrontation clause problem as follows, Judge: Here's a
10 statement they take from the owner of the junk yard or the
11 garage, and he gives the statement that in August or
12 September -- he remembers it being very hot out -- Anthony
13 Young came with Rakeem Baskerville, August or September of
14 2004, which doesn't fit within their time frame and the gun was
15 melted. But he also talks about two other occasions where
16 Anthony Young came and had the gun melted.

17 So it creates --

18 THE COURT: Two other occasions or two -- with two
19 other different guns?

20 MR. BERGRIN: Yes.

21 So it creates a very serious problem as far as
22 confrontation and the jury having a complete -- the jury
23 doesn't have a complete and truthful picture Judge. I can't
24 cross-examine --

25 THE COURT: You can ask her about this report. This

1 objection is noted and let's proceed. You're not going to get
2 into any more conversations about what the junk yard guy said?

3 MR. MINISH: No, we're go into the photo arrays,
4 Judge.

5 (In open court.)

6 BY MR. MINISH:

7 Q Now, Agent, without telling us exactly what the individual
8 you spoke to said, were you able to confirm that a gun had been
9 melted at that body shop?

10 MR. BERGRIN: I...

11 A Yes, I was.

12 MR. MINISH: (After pause) I'm sorry, Judge, I was
13 waiting. I didn't know if there was an objection.

14 THE COURT: No, there's no objection. Let's go. The
15 T objection was noted. Okay.

16 Q Based on the information you received that day, did you
17 eventually speak with other individuals who worked at that body
18 shop?

19 A Yes, I did.

20 Q And could you tell us the name of those individuals, the
21 -names of those individuals?

22 A Devon Jones, and Delroy Hines, as well as the original
23 individual I spoke to by the name -- a man by the name of Ben
24 Hahn.

25 Q Now, during course of -- during the course of your

1 interviews with the other two individuals, Mr. Jones and Mr.
2 Hines, did you show either of them any photographs?

3 A Yes, I did.

4 Q And could you explain to the jury what you were doing with
5 those photographs?

6 A I was -- I wanted to see if either Mr. Jones or Mr. Hines
7 could give us a positive identification of Anthony Young and/or
8 Rakeem Baskerville.

9 Q Did you show both of those individual's photographs, or
10 just one? Devon Jones or Mr. Hines?

11 A I showed photographs to both of those individuals.

12 MR. MINISH: Judge, I'm going to show the witness
13 Government's Exhibits 2265 and 2266, which the Defendant has a
14 copy of.

15 Q Agent, could you tell the jury what is contained in those
16 exhibits?

17 A Exhibit 2265 is a photo array containing a photograph of
18 Anthony Young within it. It's six photos compiled, and Anthony
19 Young is one of the six individuals in the array.

20 Q And when you say "array," if you could just explain to the
21 jury what you mean by "array."

22 A An array is what we use when we are trying to obtain a
23 positive identification for a witness. It is a photograph of
24 the individual as well as similar looking photographs, and we
25 provide it to the witness so that they can look through it and

1 ID who they witnessed doing whatever it was in question.

2 Q And were those -- was a similar array as you described done
3 for Rakeem Baskerville?

4 A Yes, it was. Exhibit 2266 is a photo array containing a
5 photo of Rakeem Baskerville.

6 Q Are those two exhibits, the ones -- the exact photos that
7 were shown to Mr. Hines and Mr. Jones?

8 A Yes, they are.

9 Q All right.

10 MR. MINISH: Judge, at this time I would like to move
11 both of them into evidence.

12 THE COURT: They're both in evidence. There's no
13 objection, they're both in evidence.

14 MR. BERGRIN: No, Judge.

15 (Government's Exhibits 2265 and 2266 are received in
16 evidence.)

17 Q Without telling us what identification was made or not made
18 by Mr. Hines and Mr. Jones, what next investigative step did
19 you take?

20 A I'm not clear. Related to this investigation?

21 Q Yes.

22 A I then went to Anthony Young and showed him photographs of
23 Devon Jones and Delroy Hines.

24 MR. MINISH: Judge, I'm showing the witness what's
25 been marked Government exhibit 2268.

1 Q Do you recognize what that is?

2 A That is a photo of Devon Jones, yes.

3 Q Okay.

4 MR. MINISH: I'd like to move that into evidence,
5 please, Judge.

6 THE COURT: There's no objection, it's in evidence.

7 MR. BERGRIN: There's none, Judge.

8 (Government Exhibit 2268 is received in evidence)

9 Q Is that the photograph of Mr. Jones that you showed Anthony
10 Young?

11 A Yes, it is.

12 Q Now, going back now to other information that Anthony Young
13 provided you. Did he provide you with any information with
14 respect to the getaway vehicle that was used after the murder?

15 A Yes, he did.

16 Q And what did he tell you?

17 A He said that the getaway car was a silver and newer model
18 silver Grand Prix.

19 Q And what investigative steps did you take based on
20 receiving that information?

21 A We went back to the homicide reports, the homicide file and
22 looked at eyewitness statements and confirmed that witnesses
23 had observed a silver Grand Prix or Grand Am as the getaway
24 car.

25 Q When you say the "homicide file, you mean the Newark Police

1 Department or the Essex County Prosecutor's?

2 A Essex County Prosecutor's homicide file, yes.

3 Q Now, based on those steps that you took, was Mr. Young
4 brought to the United States Attorney's Office?

5 A Yes, he was.

6 Q And for what purpose was he brought to the United States
7 Attorney's Office?

8 A For a -- what we call a proffer meeting.

9 Q Okay. And what do you mean by "proffer," so the jury
10 understands?

11 A He, Mr. Young, was given the opportunity to have a lawyer
12 appointed to him, and he sat down with us, his lawyer, myself,
13 members of the United States Attorney's Office and told us what
14 he knew relevant to the murder.

15 Q Prior to that meeting, had Mr. Young been charged in
16 Federal Court with anything?

17 A He had been charged in Federal Court, yes.

18 Q And do you recall what he had been charged with?

19 A We arrested him for being what we call a felon in
20 possession of a weapon. He had previous felonies and was not
21 entitled to be carrying a firearms, he had been arrested
22 previously by local police for a gun. We adopted that charge
23 and we did what we call "trigger locking" him, meaning again,
24 he's a felon in possession of a weapon and was not able to
25 possess that weapon. So we arrested him based on that charge.

1 Q Now, is that the cause -- that charge, is that what
2 generated the ability of Mr. Young to get a lawyer?

3 A Yes, that is what did.

4 Q And was the lawyer for that gun possession charge the same
5 lawyer that showed up with Mr. Young at the proffer meeting?

6 A Yes.

7 Q During the course --

8 THE COURT: I just have a quick -- was that gun
9 possession charge formally brought after he had already told
10 you about some of the information about the Kemo murder?

11 THE WITNESS: We had arrested him after he told us
12 that information.

13 THE COURT: Okay.

14 Q Now, so Mr. Young is charged, he has a meeting at the U.S.
15 Attorney's Office. During the course of that meeting, did Mr.
16 Young tell you whether or not he was the shooter of Kemo
17 DeShawn McCray?

18 A He initially did not tell us he was the shooter of Kemo
19 DeShawn McCray.

20 Q Well, I'm talking specifically. At that meeting, did he --

21 A At the first meeting?

22 Q Did he tell you he was the shooter, or someone else was the
23 shooter?

24 A He told us that someone else was the shooter.

25 Q And who did --

1 THE COURT: Do we have a date or approximate time for
2 that meeting?

3 Q Was it, Agent -- do you recall when Mr. Young was charged
4 in the trigger lock case?

5 A I believe he was charged on February 6th of 2005.

6 Q And how much after that was the meeting, if you know?

7 A Shortly thereafter.

8 Q Okay. And by "shortly"; days, weeks, months?

9 A Possibly a week, a week or so.

10 Q So some time by the middle of February?

11 A Yes.

12 Q And now again, who did he identify as the shooter, the man
13 who actually pulled the trigger to kill Kemo?

14 A An individual by the name of Malsey, who we later
15 identified to be Jamal McNeil.

16 Q And when you say you identified him, how did you go about
17 identifying him?

18 A I showed Anthony Young a picture of the individual he
19 described to us as Malsey and he positively identified him as
20 Jamal McNeil.

21 Q Now, during the course of that interview, did Mr. Young --
22 well, I'm going to move on.

23 After that interview, what investigative steps did you
24 take to check out the version of events that Mr. Young had
25 given you?

1 A We began to investigate Jamal McNeil, who he was, what he
2 was doing, what areas he hung out in, what he did. And we were
3 trying to get as much information as possible on Jamal McNeil.

4 Q And what conclusions did you draw about Jamal McNeil?

5 A Can you --

6 Q What did you find out? You took these steps. What did you
7 find out?

8 A We found out that he was a drug dealer in the area of 22nd
9 Street in Irvington, New Jersey.

10 Q And was he associated with any specific group?

11 A He was associated with the Baskerville group, yes.

12 Q What other steps did you take with respect to the
13 information Mr. Young had provided?

14 A We set out to talk to sources to find out more information
15 about Anthony Young, and ultimately when Anthony Young was
16 incarcerated there were individuals who were locked up with
17 Anthony Young who provided us information on what Anthony Young
18 was saying while incarcerated.

19 Q Now, was there a specific individual who told you a -- a
20 specific source of information who told you about things
21 Anthony Young may have been saying in jail?

22 A Yes, there was.

23 Q And was the information that that source provided contrary
24 or consistent with what Mr. Young had told had you?

25 MR. BERGRIN: Objection.

1 MR. LUSTBERG: Objection, hearsay.

2 THE COURT: Yeah.

3 MR. MINISH: Judge, I think this could be easily
4 resolved but probably not in front of the jury.

5 THE COURT: Mr. Perelli, can you -- hold on a second.
6 Rephrase the question.

7 As a result of the information that the source
8 provided, Agent, what did you do next?

9 THE WITNESS: We -- I spoke to the source and the
10 source agreed to cooperate and wear a recording device.

11 THE COURT: Okay.

12 THE WITNESS: To elicit information from Mr.
13 Baskerville.

14 THE COURT: From Mr. Baskerville or Mr. Young?

15 THE WITNESS: I'm sorry. Mr. Young. I misspoke. I'm
16 sorry.

17 THE COURT: This is a jailhouse source. Correct?

18 THE WITNESS: Yes, it is.

19 THE COURT: Okay. Another inmate?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 BY MR. MINISH:

23 Q So did you actually go through the process, the approval
24 process to get the recording device?

25 A Yes. Yes, I did.

1 Q And was that source actually outfitted with a recording
2 device?

3 A Yes, he was.

4 Q And did that source have a conversation with Mr. Young?

5 A Yes, he did.

6 Q During the course of that conversation, did Mr. Young
7 address what that source had told you that caused you to wire
8 him up?

9 A He did not.

10 Q What was your concern, Agent, with respect to the version
11 of events Mr. Young had provided to you and the U.S. Attorney's
12 Office in February of '05?

13 A Mr. Young said that he was at the scene as a spectator and
14 a lookout, but the information from the source -- from several
15 sources we had provided that Anthony Young was actually the
16 shooter.

17 Q So these steps you're taking are to determine whether or
18 not Anthony Young was being completely honest with the
19 investigation?

20 A Yes. We were trying to vet out all of the information that
21 he provided to us.

22 Q Now, moving forward, Agent, there is, in approximately
23 August -- August of '05 -- moving forward now until January of
24 '06 -- were you working as an FBI Agent?

25 A Yes.

1 Q Were you coming to work in Newark? Again, I'm talking
2 about August '05 --

3 A Right.

4 Q -- through January of '06.

5 A I was not physically coming to work in Newark.

6 Q I know you were an FBI Agent.

7 A Yes.

8 Q But why weren't you working as an FBI Agent?

9 A I was on leave from August of '05 until January of '06.

10 Q What type of leave?

11 A Maternity leave.

12 THE COURT: Before we go any further.

13 Can you place the approximate date as to when the
14 inmate source was recorded and made recordings of Mr. Young?

15 THE WITNESS: If you give me a minute just to look at
16 my report, please.

17 THE COURT: Yes.

18 THE WITNESS: August the 3rd, 2005.

19 THE COURT: Had anybody been arrested yet with respect
20 to this murder before August 3rd, 2005?

21 THE WITNESS: No.

22 THE COURT: No? Okay. All right. Then my date is
23 wrong.

24 That's all. Go ahead by.

25 BY MR. MINISH:

1 Q When was Mr. Baskerville arrested?

2 A Oh, I apologize. Mr. Baskerville was indicted on -- in
3 March of 2005 for the conspiracy to murder Kemo.

4 THE COURT: Right. But Mr. Young had been in before
5 that date. Correct?

6 THE WITNESS: He had, yes.

7 THE COURT: And you were continuing to investigate Mr.
8 Young in terms of his accuracy as to what he was telling you as
9 late as August of 2005?

10 THE WITNESS: Yes.

11 THE COURT: Okay. Go ahead.

12 Q Now, prior to that August 2005, did you have any
13 communication with Anthony Young on or about May 16th of 2005?

14 A Yes, I did.

15 Q Okay. Could you explain to the jury what that was?

16 A He had left a voicemail message for me on my cell phone or
17 work phone stating that he believes the shooter was
18 left-handed.

19 Q And did you actually speak with him or it's literally a
20 voicemail message?

21 A Literally a voicemail message.

22 Q What investigative steps did you take based on that
23 information that Mr. Young provided?

24 A I recorded the voicemail message and submitted the
25 recording to evidence to preserve it.

1 Q Did you do anything to determine whether that information
2 Mr. Young provided was accurate?

3 THE COURT: Mr. Minish, your voice drops off when you
4 walk away from that microphone.

5 MR. MINISH: I'm sorry, Judge.

6 Q Did you take any steps to determine whether or not the
7 statement Mr. Young gave you was accurate?

8 A Yes, I did.

9 Q And would you tell the jury what steps you took?

10 A We analyzed the crime scene again and specifically how and
11 where Kemo was shot and the trajectory of the bullet, which
12 confirmed that the shooter must have been left-handed.

13 Q So now when you're back from maternity leave in January of
14 '06 -- that's correct?

15 A Yes, that is correct.

16 Q -- shortly thereafter, on or about February 9, 2006, does
17 Mr. Young get a new lawyer?

18 A Yes, he does.

19 Q And do you recall that lawyers' name?

20 A Gerald Fucella.

21 Q After Mr. Fucella begins his representation of Mr. Young,
22 is there another meeting between Mr. Young, members of the U.S.
23 Attorney's Office and his lawyer?

24 A Yes, there is.

25 Q And was that meeting on or about March 1st, 2006?

1 A Yes.

2 Q During the course of that meeting, did Mr. Young provide
3 additional or alternate information with respect to the murder?

4 A Yes, he did.

5 Q And what did he say?

6 A He said that he was not involved in the murder.

7 Q Okay. And what -- could you be more specific?

8 A That he wasn't there. That he was not part of this.

9 Q Okay. And what claim did he make with respect to how he
10 had the information that he had previously provided?

11 A That he had heard this information and that he was merely
12 passing on what he had heard, but he was not out at the scene
13 as he had originally told us.

14 Q Now, did you believe him?

15 A No.

16 Q And him having said that, what was the result of that
17 meeting?

18 A We immediately terminated the meeting and sent him back to
19 jail.

20 Q Now, a couple of weeks later, on or about March 13th, 2006,
21 again with his new lawyer, does Mr. Young proffer, make a --
22 have a proffer meeting at the U.S. Attorney's Office?

23 A Yes, he does.

24 Q During the course of that meeting, what, again, different
25 or adding information did Anthony Young do?

1 A He came in and said that he took back his previous
2 statement. He was, in fact, there; and not only was he there
3 but he was the shooter of Kemo.

4 Q Did he provide any other information with respect to what
5 happened on that day that was different from what information
6 he had provided originally?

7 A The information was the same other than the fact that he
8 was the shooter. He had switched his place in the conspiracy
9 with the individual he told us was Jamal McNeil. So the
10 information was the same other than he switched places with
11 Jamal McNeil initially.

12 Q Now, putting aside for the time being the crime scene, the
13 actual murder. During the course of these various meetings,
14 did Anthony Young provide information with respect to the
15 involvement of Mr. Bergrin?

16 A Yes, he did.

17 Q Okay. At the first phone call initially back to the FBI,
18 what did he tell you?

19 MR. LUSTBERG: Objection, hearsay.

20 THE COURT: Yeah, I'll see you at sidebar.

21 (At the sidebar.)

22 THE COURT: Go ahead. What's your objection?

23 MR. LUSTBERG: It's hearsay. He's about to say --

24 THE COURT: She's about to say --

25 MR. LUSTBERG: She's about to say what Anthony Young

1 MR. GAY: If it's possible for Mr. Minish to be given
2 some leeway to lead into this so we don't --

3 MR. LUSTBERG: Absolutely, no objection.

4 MR. GAY: I assume Mr. Lustberg will not object to
5 this.

6 MR. LUSTBERG: No objection.

7 MR. GAY: All right.

8 (In open court.)

9 BY MR. MINISH:

10 Q Agent, without telling us the substance of the phone call
11 or what Mr. Young said took place in the phone call, did Mr.
12 Young tell you about a phone call --

13 THE COURT: Did Mr. Young tell you about a phone call,
14 Agent?

15 THE WITNESS: Yes.

16 THE COURT: And did you as a result of that phone
17 call -- did you do anything to corroborate if a phone call was
18 made?

19 THE WITNESS: Yes, I did.

20 THE COURT: What did you check phone call records?

21 THE WITNESS: I checked call records, yes.

22 THE COURT: Okay. And you determined that a phone
23 call was, in fact, made based on phone call records from who to
24 who?

25 THE WITNESS: Yes. Are you asking me the name who to

1 who?

2 THE COURT: Yeah.

3 THE WITNESS: Okay. I corroborated that there was a
4 phone call made from Mr. Bergrin to Hakeem Curry.

5 THE COURT: And on what date was that made?

6 THE WITNESS: That was made on November 25th, 2003.

7 THE COURT: Okay.

8 BY MR. MINISH

9 Q And the time of day of the phone call, was that after Mr.
10 Baskerville's initial appearance that --

11 A Yes, it was.

12 MR. MINISH: Judge, we're close to the end. Could I
13 just have one minute?

14 (Mr. Gay confers with Mr. Gay off the record.)

15 MR. MINISH: Judge, the Government has no further
16 questions for this witness.

17 THE COURT: Ladies and gentlemen, we need to take just
18 ha short recess before we begin cross-examination. Okay? So
19 if you could please step in the jury room. Don't discuss
20 anything about the case. This won't be a long recess, we'll
21 probably have a second one this in the morning if we need to.
22 Okay?

23 THE DEPUTY CLERK: Please rise for the Jury.

24 (The Jury leaves the courtroom.)

25 (Witness temporarily excused.)

1 MR. BERGRIN: Thank you, Judge.

2 (A recess is taken.)

3 (Proceedings resume - Jury not present.)

4

5 S H A W N B R O K O S, resumes, testifies further as follows:

6

7 THE COURT: All right. We're all set? Mr. Bergrin,
8 you're all set?

9 MR. BERGRIN: Yes, your Honor.

10 (Please rise for the Jury.)

11 (Jury Present.)

12 THE COURT: All right. Mr. Bergrin, you can proceed
13 with cross-examination.

14 MR. BERGRIN: Thank you, your Honor.

15 CROSS-EXAMINATION

16 BY MR. BERGRIN:

17 Q Agent, you talked about having an interview with Mr. Ben
18 Han or going to the service station. Correct?

19 A Yes.

20 Q And you talked about Mr. Hahn being shown photographs.
21 Correct?

22 A Mr. Hahn was not shown photographs.

23 Q Mr. Hahn was interviewed by agents of the FBI on February
24 the 17th of 2005. Correct?

25 A That is correct.

1 Q And you're familiar with that particular report that was
2 prepared in reference to this, because you're the Lead Case
3 Agent. Correct?

4 A Yes.

5 Q And isn't it a fact that Mr. Hahn informed agents --

6 THE COURT: Mr. Bergrin, Mr. Bergrin, the tone.

7 MR. BERGRIN: I'm sorry, your Honor.

8 THE COURT: Maybe the volume is too high.

9 MR. BERGRIN: I'm so sorry, Judge.

10 THE COURT: That's okay.

11 You can move the microphone a little closer. Okay.

12 MR. BERGRIN: Thank you, Judge. I'm not used to these
13 microphones.

14 MR. MINISH: Judge, I hate to do this right from the
15 beginning but I have to object because I think I understand
16 where Mr. Bergrin is going with this.

17 THE COURT: I haven't heard yet. Let me see.

18 MR. BERGRIN: Thank you.

19 BY MR. BERGRIN:

20 Q Isn't it a fact that Mr. Hahn told agents of the FBI that
21 Anthony Young --

22 MR. MINISH: Objection, Judge.

23 Q -- had been --

24 MR. BERGRIN: I believe the door was clearly opened,
25 and we had that sidebar reference to this, your Honor.

1 THE COURT: Let me hear you at sidebar.

2 (At the sidebar.)

3 THE COURT: Complete the question. What was the
4 question? Isn't it a fact that Mr. Hahn said what?

5 MR. BERGRIN: If Anthony Young came to him on multiple
6 times.

7 The first time in August or September of 2004 with
8 Rak -- and that's of course Rakeem Baskerville -- at which time
9 he asked him -- he wanted to get rid of a gun for his brother
10 Rak.

11 It would leave the jury with the impression, Judge, it
12 was the murder weapon in this case. Anthony Young says that he
13 took the gun to Mr. Hahn on March the 2nd of 2004. Here is the
14 gun being taken there on August and September, and then Young
15 coming back with a second gun in October or November of 2004.
16 It leaves the wrong impression with the jury, like it's the
17 murder weapon in this case. He's done this multiple times. We
18 don't know if that was the weapon in this particular case.

19 MR. MINISH: Well, Judge, the --

20 MR. BERGRIN: Also --

21 MR. MINISH: The Agent didn't testify --

22 THE COURT: Wait a minute.

23 Also what? Was there anything else?

24 MR. BERGRIN: That's essentially the fact, your Honor.

25 THE COURT: Go ahead.

1 THE COURT: That objection is sustained.

2 BY MR. BERGRIN:

3 Q Agent, you testified that witnesses gave you a vehicle
4 description, correct, based upon your investigation?

5 A Yes.

6 Q And your testimony was that the vehicle that was observed
7 was a Grand Prix or a Grand Am. Correct?

8 A Yes.

9 Q And you testified that you confirmed with Anthony Young
10 that it was -- and Anthony Young said it was a, what, a Grand
11 Prix. Correct?

12 A Yes.

13 Q Tell this jury one witness, name one witness who told you
14 that it was a Grand Prix.

15 A It was in the -- I believe it was in the reports or I spoke
16 to Detective Sabur about it, one or the other. I personally
17 did not speak to the eyewitness at the murder scene who
18 provided the vehicle information.

19 Q You just testified before this jury that witnesses provided
20 you a car description and named a Grand Prix, which was
21 consistent with Anthony Young. You just testified about five
22 minutes to that effect. Correct?

23 A Then I misspoke. The witnesses did not provide that
24 information directly to me, they provided that to the
25 detectives at the scene who then relayed that information to

1 me.

2 Q Name one witness that was ever interviewed in this case
3 that ever described a Grand Prix vehicle other than Anthony
4 Young.

5 A I do not recall the name of the witness.

6 Q Isn't it a fact that there are no witnesses who have ever
7 relayed the fact that a Grand Prix vehicle was used?

8 A Mr. Bergrin, all I can tell you is I spoke to detective --
9 detectives at the scene and they relayed that information to
10 me. I did not personally speak to the witness who provided
11 that information.

12 Q You have the detectives' reports that you reviewed as part
13 of this investigation. Correct?

14 A Yes.

15 Q One of them was Detective Sabur. Correct?

16 A Yes.

17 Q The other one was Detective Vittiello. Correct?

18 A I believe so. I remember speaking to Detective Sabur and
19 reviewing his reports and other investigators.

20 Q And I'm sure you reviewed meticulously Detective Sabur's
21 report before taking the witness stand. Correct?

22 A I have reviewed it, yes.

23 Q Isn't it a fact that nowhere in Detective Sabur's report
24 does it ever mention a Grand Prix vehicle?

25 A I don't recall that. But he wasn't basing it on his

1 report, he was basing it on what witnesses had said.

2 Q Isn't it a fact that not contained in one Newark Police
3 report, whether it be the incident report, Detective Sabur's
4 report, Detective Vittielo's report or the continuation report,
5 not one witness ever, except for Anthony Young, describes a
6 Grand Prix vehicle?

7 A I don't know that to be accurate. All I can do is tell
8 you --

9 THE COURT: Wait, Agent.

10 A -- what I was told.

11 THE COURT: I think all he's asking is whether or not
12 in any of those reports there's reference to a Grand Prix
13 vehicle.

14 THE WITNESS: I -- I don't recall.

15 Q Do you have those reports with you?

16 A I do not.

17 Q Now, you testified in reference to the fact that you looked
18 at crime scene photos.

19 A Yes, I did.

20 Q And you confirmed or corroborated what Anthony Young said.
21 Correct?

22 A Yes, I did.

23 Q And Anthony Young told you that when he observed the victim
24 on the floor, that the victim had a dust mask on him or was
25 wearing a dust mask. Correct?

1 A He had been wearing a dust mask, yes.

2 Q That's not what you testified. You said that Anthony Young
3 told you and you corroborated it through the photographs that
4 the victim was wearing a dust mask. Correct?

5 A Yes.

6 Q Isn't it a fact that the victim was not wearing a dust
7 mask; it was several feet from his body?

8 A The dust mask was close to his face, I believe.

9 MR. BERGRIN: May I approach the witness, your Honor?

10 THE COURT: You may.

11 MR. BERGRIN: Thank you.

12 Q I'm going to show you what's been marked 2292g for
13 identification.

14 A Yes.

15 Q Isn't it a fact that the dust mask is not on the body of
16 one Kemo DeShawn McCray?

17 A The dust mask is near the body but not near the face. It
18 is certainly right next to the body.

19 Q And Anthony Young, according to your testimony, said that
20 the dust mask was around the face. Correct?

21 A What Anthony Young said was that Kemo had been wearing a
22 dust mask.

23 Q Your testimony about ten minutes ago before this jury was
24 that Anthony Young told you that Kemo had a dust mask around
25 his face when he observed the body. Isn't that in fact what

1 you said? In a pool of blood?

2 A Yes.

3 Q Now, Kemo McCray is on his side. Correct?

4 A Yes.

5 Q According to the -- he's not face down, he's on his side.
6 Correct?

7 A That is correct.

8 Q You just testified before the jury that Anthony Young told
9 you that the body was face down. Correct?

10 A Yes.

11 Q At the time that Anthony Young contacted the Federal Bureau
12 of Investigation, he was facing a state gun case. Correct?

13 A Yes, he was.

14 Q Possession of a weapon by a convicted felon. Correct,
15 ma'am?

16 A That would be the federal charge.

17 Q That would be the state case, too; unlawful possession of a
18 weapon and possession of a weapon by a convicted felon.
19 Correct?

20 A Yes.

21 Q And he was facing ten the 20 years in the state. Correct?

22 A I'm not familiar with what the state penalty would be.

23 Q Well, as the lead Case Agent in the case, ma'am, did you
24 ever ask him or did you ever do any research into how much time
25 he was facing on the state charge?

1 A I knew that he had several prior felonies and that him,
2 being charged with a gun, would carry substantial time. But I
3 never sat down and asked him: Is it 10 years, is it 20 years?

4 Q As a matter of fact, he had 11 prior felony convictions at
5 the time that you talked to him. Correct?

6 A I know he had several. I don't know it to be 11, but I can
7 tell you that he had several felony convictions.

8 Q You testified in reference to the fact that you confirmed
9 that the shooter was left-handed after examining the crime
10 scene. Correct?

11 A Yes.

12 Q You heard -- by the way, ma'am, do you know what a
13 pathologist is?

14 A Yes, I do.

15 Q Can you please explain to the jury what a pathologist is?

16 A That is the individual who reviews the decedent's body to
17 determine how the decedent had been killed.

18 Q And one of the things he reviews is the trajectory of a
19 bullet and the path that a bullet took. Correct?

20 A That is correct.

21 Q And the pathologist is one of the foremost experts on
22 bullet trajectory, positioning, closeness of a gun. Correct?

23 A I don't know that he would be an expert, but I know that
24 that is something he does in his review of the decedent's body.
25 I don't --

1 Q Who is the pathologist in this case?

2 A Dr. Shaikh.

3 Q And you've heard Dr. Shaikh's testimony. Correct? You've
4 interviewed Dr. Shaikh. Correct?

5 A I have not heard his testimony. I met him briefly.

6 Q Anal you read his pathology report. Correct?

7 A That is correct.

8 Q Did you review the transcripts in the trial of testimony in
9 United States vs. Baskerville of Dr. Shaikh?

10 A I reviewed portion of them.

11 Q Isn't it a fact that Dr. Shaikh stated that it is
12 impossible to tell whether shooter was right-handed or
13 left-handed?

14 A I -- I believe that is accurate.

15 Q So you come in before this jury and saying that you
16 confirmed that the shooter was left-handed, isn't that a fact
17 that that's a little bit inaccurate?

18 A In my belief with the evidence that I had in front of me, I
19 believed the shooter to be left-handed.

20 Q Ma'am, you had an expert pathology report on the trajectory
21 of the bullet. Correct?

22 A Yes.

23 Q And isn't it a fact that the doctor describing the bullet
24 wounds, the first wound he described was on the bottom of the
25 chin, approximately on the left-hand side. Correct?

1 A Yes, correct.

2 Q And that trajectory went from left to right, correct,
3 almost parallel with my hand. Correct?

4 A I don't recall the trajectory of that but I recall the
5 chin, yes.

6 Q The second shot, according to the expert, was, as he
7 labeled the wounds, was a little below it. That went again
8 from left to right. Correct?

9 A Yes, from left to right.

10 Q And the third wound, which he described is the fatal wound
11 in back of the ear, that went from front to back. Correct?

12 A Front to back --

13 Q Yes.

14 A Meaning from front -- front of the wound to --

15 Q Meaning from the trajectory of the bullet.

16 You're the Lead Case Agent. Correct?

17 A I'm just a little confused by your question.

18 Q I'll clarify it ma'am. I'm so sorry.

19 You've had an opportunity as the Lead Case Agent to
20 review all the reports in this case. Correct?

21 A Yes, that is correct.

22 Q And to read the testimony of prior witnesses. Correct?

23 A Yes.

24 Q And one of them that you reviewed was Dr. Shaikh. Correct?

25 A Yes.

1 Q And one of the testimony that you reviewed was Dr. Shaikh
2 as well as his report. Correct?

3 A Yes.

4 Q Isn't it a fact that he describes the fatal wound as going
5 from front to back?

6 A I do not recall that. My understanding is that the fatal
7 wound was from the neck through to the head, front of the head.

8 Q And if I was to show you that autopsy report, it would
9 refresh your recollection?

10 A Yes.

11 MR. BERGRIN: May I have one second, your Honor,
12 please?

13 THE COURT: Sure.

14 MR. BERGRIN: May I approach the witness, your Honor?

15 THE COURT: You may.

16 Q I'm going to show you what's been marked 2293alpha. Thank
17 you.

18 Ma'am, what is that exhibit?

19 A This is. What's titled a Certification of Autopsy
20 Procedure done by the State of New Jersey, Regional Medical
21 Examiner's Office on Kemo DeShawn McCray -- Kemo DeShawn Reed
22 McCray.

23 Q And does that describe the trajectory of the bullets as
24 done by an expert pathologist?

25 A It provides the evidence of injury and lists the three

1 gunshot wounds.

2 Q I ask you to review that report, because you testified that
3 you confirmed that the shooter was left-handed before this
4 jury.

5 A There was a gunshot wound behind the left ear.

6 Q And please explain to the jury, according to the expert,
7 the trajectory of that bullet.

8 A (Reading) The bullet tracked then perforated through the
9 left temporal lobe and left cerebellar hemisphere to then
10 fracture through the occipital region of the skull and
11 terminating just right of the inferior nuchal line.

12 Q Does it show -- does it tell the path of the bullet front
13 to back, back to front, left to right?

14 A It explains that the bullet was in this area (indicating)
15 of the neck, and that it was recovered somewhere in the region
16 of his head.

17 Q That's not my question, ma'am.

18 Isn't it a fact that the report, and Dr. Shaikh
19 specifically says the trajectory of the bullet is front to
20 back?

21 MR. MINISH: Judge, can I object to this? The Agent
22 has described four different times --

23 THE COURT: No.

24 MR. MINISH: -- Dr. Shaikh is going to testify --

25 THE COURT: He's asking her 70 that's what Dr. Shaikh

1 said in the report.

2 THE WITNESS: That is not what Dr. Shaikh said in the
3 report. That is my interpretation of how I read this report.

4 Q Isn't it a fact that Dr. Shaikh explains the path of the
5 bullet from front to back?

6 A If you can point that out to me in the report.

7 THE COURT: Hand back the report to Mr. Bergrin.

8 Find it. If there is such a reference, direct her
9 attention to that reference, if there is.

10 (There is a pause for Mr. Bergrin.)

11 MR. BERGRIN: Judge, it's in the testimony, it's
12 not --

13 THE COURT: All right. Don't -- Mr. Bergrin, don't
14 make reference to it. If it's not in the report -- and you
15 asked the question, and if it's not in the report --

16 MR. BERGRIN: Thank you, your Honor.

17 THE COURT: -- go ahead to your next question, please.

18 Q You've had a chance to review the testimony of Dr. Shaikh.
19 Correct?

20 A I have reviewed portions of his testimony.

21 Q And isn't it a fact that on that bullet wound, he says
22 clearly the bullet went from front to back?

23 A I, without reviewing his testimony, I can't answer you yes
24 or no.

25 Q You said that you confirmed that the shooter was

1 left-handed. Have you had any training in trajectory of
2 bullets?

3 A No, I have not.

4 Q Have you had any training in pathology?

5 A No, I have not.

6 Q The way the incident was explained to you and the way it
7 was sworn to, isn't it a fact that Mr. Young stated that he
8 went behind the victim with his right hand, grabbing his right
9 shoulder?

10 A He went behind him with his right hand, he did not say
11 which shoulder he grabbed.

12 Q And with his right hand behind him, he has the gun in his
13 left hand according to Mr. Young. Correct?

14 A Yes.

15 Q You wouldn't -- it wouldn't be logical, sensible to reach
16 to the left shoulder across the body if you're right behind
17 somebody. Correct?

18 A If Mr. Young is reaching to Kemo McCray, he's --

19 Q With his right hand.

20 A Yes.

21 Q And he's directly behind him.

22 A Yes.

23 Q You would reach to the shoulder the closest to you. That
24 would be the general, logical sense. Correct?

25 A I -- I can't answer that question. He reached behind him.

1 Where he grabbed him on the body --

2 Q If you're holding the gun with your left hand, if you reach
3 across, you're putting your hand in the trajectory of the gun.
4 Correct?

5 A No, you're not. Kemo is in front of him. Mr. Young grabs
6 him --

7 Q Correct.

8 A -- and then fires into the back of the head. He's not
9 reaching across his hand. His hand is not in front of him.
10 His hand is holding him in place as he shoots at the head.

11 Q If Mr. Young testifies that he grabbed him with his right
12 hand -- correct?

13 A I -- I did not hear Mr. Young testify. I do not know. I
14 can only tell you what he has told me through my interviews
15 with him, but I was not present when he testified.

16 Q Isn't it a fact that Mr. Young in his statement said that
17 Kemo was grabbed with the right hand?

18 MR. MINISH: Judge, if I could just ask -- Mr. Young
19 made a series of statements that the Agent referred to as well
20 as the testimony, that if Mr. Bergrin is going ask a question
21 about it, he needs to be specific about what and when and who
22 made it to --

23 THE COURT: First ask if she recalls that.

24 Q Do you recall that, Agent Brokos?

25 A Could you repeat the question?

1 Q Do you recall Anthony Young saying when he described what
2 Malsey did and then what he did, that Kemo was grabbed with the
3 right hand?

4 A I don't recall him saying that he was grabbed with the
5 right hand.

6 Q If you don't remember him saying which hand he grabbed him
7 with, isn't it a fact that you can't confirm in any manner
8 whatsoever that the shooter was left-handed?

9 A I misspoke. I thought we were talking about the earlier
10 interviews when.

11 Mr. Young came clean and admitted to being the
12 shooter, he did tell us that he grabbed him with his right hand
13 and shot him with his left hand.

14 Q And if he grabs him with his right hand and you're standing
15 directly behind the person, you would grab him in the shoulder
16 or the area closest to him. Correct?

17 A I can't tell you where Mr. Young grabbed him. All he told
18 me was that he grabbed him in the back. I don't know if it's
19 the left shoulder or the right shoulder, but he did it in order
20 to still Kemo, keep him still so that he could then fire with
21 his left hand into Kemo's head.

22 Q You testified before the jury that one of the other things
23 you confirmed was that the shooter was left-handed. Correct?

24 A Yes.

25 Q And you testified to that based upon your examination of

1 the crime scene. Correct?

2 A No, that would be not necessarily examination of the crime
3 scene, it would be more logistically how Kemo was -- how Mr.
4 Young was walking, how many Kemo was walking and the
5 positioning of their bodies. So in looking -- go ahead.

6 Q But the positioning of their bodies, wouldn't you have to
7 take into consideration the medical report and how the bullets
8 were shot in this particular case?

9 A Yes.

10 Q And you didn't even know the trajectories of the bullets,
11 as you testified before this jury. Correct?

12 A I understood them to be -- the fatal wound I understood to
13 be in the base of the neck and going somewhere in the head in
14 an upward direction.

15 THE COURT: And you describe the base of the neck to
16 be the left side of the neck before the ear. Correct?

17 THE WITNESS: I apologize. Yes.

18 THE COURT: That's okay.

19 Go ahead.

20 Q Isn't it a fact that you can't determine based upon the
21 statements that Anthony Young gave you, you can never determine
22 whether the shooter was left-handed or right-handed, so you
23 couldn't confirm anything?

24 A I confirmed it in speaking with Mr. Young who told me
25 exactly how he had shot Kemo, which corroborated other evidence

1 that we had that the shooter was left-handed.

2 Q What other evidence did you have the shooter was
3 left-handed?

4 A The evidence we had was the positioning of the shots and
5 how they were fired into Kemo's body. We had information that
6 the shooter was left-handed based on the way the bullets were
7 found inside Kemo --

8 Q And that came from, according to your testimony, that came
9 from the medical examiner?

10 A From the report, from my understanding of the report. I
11 did not speak to the medical examiner.

12 Q So if the medical examiner was to take this witness stand
13 and testify that it's physically and virtually impossible to
14 any degree of any medical certainty, to testify in reference to
15 what hand the gun was held or whether the shooter was
16 left-handed or right-handed, would you be inaccurate in what
17 you said to the jury about confirming that the shooter was
18 left-handed?

19 A If Dr. Shaikh had the benefit of Mr. Young's firsthand
20 information that he left-handedly shot Kemo, then perhaps he
21 could draw a conclusive statement.

22 Q Were you present when Dr. Shaikh was interviewed for
23 pretrial preparation?

24 A Yes, I was.

25 Q Isn't it a fact that a demonstration in front of Dr. Shaikh

1 according to Anthony Young's testimony was made or done?

2 A I believe so, yes.

3 Q So Dr. Shaikh had the benefit of what Anthony Young had
4 said. Correct?

5 MR. MINISH: Judge, which trial are we talking about
6 here?

7 MR. BERGRIN: United States vs. Baskerville. There's
8 only one trial.

9 THE COURT: All right. Just a moment, Mr. Bergrin.
10 When there's an objection, just don't respond.

11 MR. BERGRIN: Thank you, your Honor.

12 THE COURT: I'll respond.

13 Go ahead, Mr. Minish.

14 MR. MINISH: I'm just asking if Mr. Bergrin is
15 referring to Mr. Baskerville's trial or pretrial for this case.

16 THE COURT: Which one were you referring to, Mr.
17 Bergrin?

18 MR. BERGRIN: United States vs. Baskerville, your
19 Honor.

20 THE COURT: All right.

21 A That was not done as far as I'm aware of.

22 BY MR. BERGRIN:

23 Q You said that you also confirmed that Kemo had braids as
24 Anthony Young said. Correct?

25 A Yes.

1 Q You have the benefit of the crime scene photo in front of
2 you. Correct?

3 A Yes, I do.

4 Q What is around the head of Kemo?

5 A He has a doo-rag around his head.

6 Q Isn't it a fact that from that doo-rag, that doo-rag covers
7 his entire head and his hair line?

8 A In this photo it appears that way. But I can tell you from
9 experience that Kemo frequently wore a doo-rag and it went to
10 about here on his head, and underneath he wore braids.

11 Q You have the benefit of the photo in front of you. Isn't
12 that a clear depiction of the scene as it appeared on March the
13 2nd of 2004?

14 A Yes.

15 Q And isn't it a fact that the doo-rag completely covers the
16 hair so you could not confirm that Kemo had braids on March the
17 2nd of 2004?

18 A There are other photos I believe which may show it, not
19 necessarily this one.

20 Q That photo shows the entire head with the doo-rag.
21 Correct?

22 A Yes, but his body had also been slumped into a pool of
23 blood which makes it very difficult. I don't know if the
24 doo-rag had slipped or fallen or had been moved in some way.
25 In this photo can I tell you there's braids? No, I can't.

1 Q So by look at the photographs, isn't it a fact that you
2 were unable to confirm that on March the 2nd of 2004 that Kemo
3 had braids?

4 A In looking at this photograph I do not see the braids.

5 Q And if the doo-rag had slipped or had moved, then that's
6 something that Anthony Young wouldn't have seen. Correct?

7 A I don't know if I understand your question.

8 Q You said that you confirmed, you tried to confirm what
9 Anthony Young was saying to you. One of the things was the
10 Grand Prix. Correct?

11 A Yes.

12 Q But there's no evidence whatsoever that you can present to
13 us that there was a Grand Prix ever used. Correct?

14 A I can tell you that I spoke to homicide investigators and
15 there had been a silver Grand Prix described.

16 Q But it is not contained in any of the reports. Correct?

17 A I can't tell you that.

18 Q Well, you reviewed the reports before coming here.
19 Correct?

20 A I have reviewed them, yes.

21 Q Isn't it a fact that there's two eyewitnesses at the scene,
22 one being Johnny Davis. Correct?

23 A Yes.

24 Q And Johnny Davis merely describes a silver two-door car.
25 Correct?

1 A Yes.

2 Q And then there's a Mr. Stacey Williams. Correct?

3 A Yes.

4 Q And Mr. Stacey Williams describes a silver Grand Am.
5 Correct?

6 A Grand Am, yes.

7 Q Now, you testified that Detective Sabur told you that it
8 was a silver Grand Prix. Correct?

9 A I can't recall if he told me it was a Grand Am or a Grand
10 Prix.

11 Q Then why did you tell the jury that he told you it was a
12 Grand Prix?

13 A I may have misspoken. I know it was a silver Grand Am or
14 Grand Prix.

15 Q You told the jury that Detective Sabur told you it was a
16 silver Grand Prix. Correct?

17 A If that's what I said, yes. But what I'm -- what I'd like
18 to clarify is that I don't know if it was a silver Grand Am or
19 a Grand Prix, and I can tell you the two are very similar.

20 Q Now, you swore out a complaint for William Baskerville on
21 18 November of 2003. Correct, ma'am?

22 A That is correct.

23 Q And according to your direct testimony, the complaint would
24 never reveal a confidential witness' name. Correct?

25 A Correct.

1 Q As a matter of fact, it was your testimony that you left
2 out the two transactions to try to disguise the fact that it
3 was Kemo that had bought narcotics off of William Baskerville.
4 Is that your testimony?

5 A My testimony I believe was that we did not include all of
6 the controlled purchases that we had done.

7 Q Well, you included four out of six. Correct?

8 A Yes.

9 Q You included one wherein William Baskerville sold on March
10 the 18th of 2003, 26 grams to Mr. McCray. Correct?

11 A Yes, that is correct.

12 Q And you also included on the May 22nd transaction that
13 William Baskerville handed to the informant, Mr. McCray, 26
14 grams. Correct?

15 A Yes.

16 Q And on September the 9th of 2003, 28 grams. Correct?

17 A Yes.

18 Q And October the 23rd, 28 grams. Correct?

19 A Yes.

20 Q So you left out two transactions. Correct?

21 A That is correct.

22 Q And those are the two transactions that are approximately
23 50 grams each?

24 A Yes, that is correct.

25 Q Now, you knew based upon your investigation in this case

1 and your knowledge of William Baskerville that William
2 Baskerville did not deal usually in one-ounce weights.
3 Correct?

4 A That is not correct.

5 Q Well, do you remember testifying in a prior case, United
6 States vs. Baskerville?

7 A Yes.

8 Q Wasn't it your exact statement that you knew that William
9 Baskerville did not deal in gram weights? Wasn't that your
10 testimony that you told the prior jury?

11 A That he did not deal in gram weights?

12 Q Yes. Or small weights.

13 A Yes. But we also knew there were times where he did
14 deliver smaller quantities.

15 Q Your testimony was that William Baskerville was an
16 individual who made it clear that he doesn't deal in small
17 weights or small quantities of this magnitude that were sold to
18 Kemo. Correct?

19 A That is what he had told Kemo, yes.

20 Q And he made that very clear to Kemo; that he does not deal
21 in small gram weights. Correct?

22 A Yes.

23 Q Now, you not only did it one time with Kemo and Mr.
24 Baskerville, but you proceeded to do it four times. Correct?

25 A Proceeded to do what?

1 Q Have Kemo purchase small gram weights: 26 grams, 26 grams,
2 28 grams and 28 grams. And that was the gross weight.

3 Correct?

4 A That is the net weight.

5 Q Net weight.

6 So Kemo asked him for an ounce, correct, 28 grams?

7 A Yes.

8 Q Kemo asked him for an ounce; 28 grams. Correct?

9 A Correct.

10 Q Kemo asked him for an ounce, and he received 26 grams
11 instead of 28 grams. Correct?

12 A Yes.

13 Q And he did it on a fourth occasion. Right?

14 A Yes.

15 Q And as you testified, William Baskerville made it crystal
16 clear to Kemo that he doesn't usually do this for anybody.
17 Correct? And that's, as a matter of fact, the words that he
18 used you caught on tape?

19 A He told Kemo that it's easier for him to deal in grams --
20 in 50-gram quantities or more.

21 Q Now, you testified that you tried to hide the identity of
22 Kemo. Correct?

23 A Yes.

24 Q Isn't it a fact that Mr. Baskerville actually purchased --
25 excuse me -- sold to Kemo on at least two occasions right in

1 front of Kemo's house when Kemo was living on Wainwright
2 Street?

3 A Yes.

4 Q As a matter of fact, William Baskerville even went inside
5 the house on several occasions to inform Kemo that he had drugs
6 and was ready to drug them. Correct?

7 A I don't remember Mr. Baskerville going into the house, no.

8 Q But the sales were made in front of Kemo's house right on
9 Wainwright Street?

10 A Yes.

11 Q And on one occasion Kemo was outside lifting weights, so
12 that was his house or associated with it. Correct?

13 A He was associated with that house, yes.

14 Q Now, you were Kemo's handler and the Lead Case Agent here?

15 A Yes.

16 Q And it was your duty and obligation to disguise the drug
17 sales to protect the identity of your informant. Correct?

18 A That is correct.

19 Q And isn't it a fact that based upon the fact that there
20 were four sales made of an ounce to William Baskerville, it was
21 the same as putting Kemo's signature on that complaint?

22 A Absolutely not.

23 Q Well, when William Baskerville reviewed the complaint based
24 on your investigation and a cooperating witness Mr. Hosten, he
25 knew right way that the informant was Kemo. Correct?

1 A It is my understanding that in speaking with Mr. Hosten,
2 together they pieced together that it was Kemo.

3 Q And that was based upon the small amounts of drugs that
4 were sold, correct, to Kemo on those four occasions?

5 A I can't tell you if it was based on the small amounts, but
6 I can tell you that Mr. Baskerville and Mr. Hosten had a
7 conversation and described what had happened to them both and
8 collectively determined that informant was Kemo.

9 Q And it was based upon your investigation in this case that
10 it was based upon these small amounts, the ounces sold on
11 multiple occasions to Kemo, that William Baskerville usually --
12 and it was very, very rare that he dealt in those kind of
13 weights to the same person so many times?

14 A Yes.

15 Q Now, you testified -- William Baskerville, by the way, had
16 phone privileges at the jail. Correct?

17 A Yes, he did.

18 Q And he also had visitation privileges. Correct?

19 A Yes, he did.

20 Q As a matter of fact, you confirmed that he had been on the
21 phone as soon as he got back to the Hudson County Jail on
22 November 25th of 2003. Correct?

23 A Yes.

24 Q Now, you testified that at the Rule 5 initial appearance on
25 November 25th of 2004, the date of William Baskerville's

1 arrest, you testified as to what was contained and what was
2 said at that initial appearance. Correct? Isn't that the
3 questions that Mr. Minish asked you in reference to what was
4 said by the prosecutor and --

5 A Yes.

6 Q -- what was relayed to the judge in court?

7 A Yes, I did.

8 Q What you failed to reveal to the jury was that Mr. Gay
9 informed both myself, Mr. Baskerville and the judge that there
10 were videos, audios and surveillance. Correct?

11 MR. MINISH: Judge, I object to the characterization
12 about her "failing" to say something. There's been a lot of
13 objections about what comes in and what doesn't.

14 She answered every question that was asked.

15 THE COURT: All right. Mr. Minish.

16 I'll allow the question. Go ahead.

17 MR. BERGRIN: Thank you, Judge.

18 THE COURT: Instead of saying "failed": Did you
19 mention -- go ahead. Rephrase it.

20 Q Did you reveal to this jury during your questioning by Mr.
21 Minish that Mr. Gay informed everyone in court, to include Mr.
22 Baskerville and myself, that there were audio recordings?

23 THE COURT: No, Mr. Bergrin, I don't know if she was
24 asked that specific question. So rephrase your question again.
25 Just say: Did she --

1 MR. BERGRIN: I understand, Judge.

2 Q Were there audio recordings in this particular case?

3 A Yes, there were.

4 Q And on November 25th of 2003 in open court, did Mr. Gay
5 reveal it to the judge as well as me and Mr. Baskerville?

6 A I don't recall that.

7 Q Well, you just testified a few hours ago -- excuse me --
8 you testified yesterday in reference to the substance of what
9 was said at the initial appearance. Correct?

10 A Yes.

11 Q And you were able to recall the questions that Mr. Minish
12 asked you specifically about what was said at the initial
13 appearance, but you don't recall now whether it was ever said
14 that there was audios, videos and surveillances? Is that what
15 you're telling us?

16 A That is correct.

17 MR. BERGRIN: May I have one second, your Honor?

18 THE COURT: Sure.

19 MR. MINISH: And, Judge, again just the objection to
20 the tone. She read from the transcripts.

21 THE COURT: Mr. Minish, your objection is overruled.
22 The question is appropriate.

23 (Counsel confer off the record.)

24 MR. BERGRIN: Your Honor, with the Court's permission,
25 may I approach the witness?

1 THE COURT: Yes. Is this the transcript of the --

2 MR. BERGRIN: Yes, sir, and it's marked Government
3 Exhibit 2217.

4 THE COURT: And this is the official transcript of the
5 initial appearance?

6 MR. BERGRIN: That's the certified official transcript
7 of the court proceeding, Judge, of November the 25th of 2003.

8 Q Ma'am, I show you page 4 and ask you to look at lines 9
9 through 11, if that would help you. Okay, ma'am?

10 A Sure.

11 Q Thank you very much.

12 THE COURT: Take a moment and read those pages.

13 THE WITNESS: Okay.

14 THE COURT: Then what is the question, Mr. Bergrin?

15 Q Isn't it a fact that at the Rule 5 --

16 THE COURT: Give her a moment to read the page.

17 MR. BERGRIN: Yes, your Honor?

18 A Just to confirm, you said page 4 lines, 9 through 11?

19 MR. BERGRIN: Yes, ma'am.

20 A Okay.

21 Q Isn't it a fact that we were all informed that there were
22 audio recordings in open court by Mr. Gay on November 25th of
23 2003?

24 A Well, the page and lines you've directed me to, you
25 speaking --

1 Q I'm sorry.

2 A -- and what you're saying --

3 Q Could I have that one second, please? I might have put you
4 in the wrong place. I'm so sorry.

5 A That's okay.

6 Q I ask you to look at page 5, ma'am, I'm sorry. It's lines
7 5 through 7, please. Thank you very much.

8 A Yes, okay.

9 Q Isn't it a fact that it was revealed that there were
10 audiotapes?

11 A Yes.

12 Q Isn't it a fact that it was revealed that there were
13 videotapes?

14 A Yes.

15 Q And isn't it a fact that it was revealed that there were
16 surveillances?

17 A Yes.

18 Q Now, you testified of a reference to -- and you were
19 present during that initial appearance?

20 A Yes, I was.

21 Q And you saw William Baskerville standing there. Correct?

22 A Yes, I did.

23 Q And you saw him standing there as Mr. Gay informed all of
24 us of audios, videos, as well as surveillances. Correct?

25 A Yes, that is correct.

1 Q Now, you testified in reference to the fact that you spoke
2 to William Baskerville on November the 25th. Correct?

3 A Yes.

4 Q And you asked Mr. Baskerville if he wants to cooperate.
5 Correct?

6 A Yes.

7 Q And Mr. Baskerville told you that he wants to think about
8 it. Correct?

9 A Yes.

10 Q And he also told you that it would require him giving
11 evidence against his family. Correct?

12 A Yes.

13 Q Now, you spoke to William Baskerville another time after
14 that, after the initial appearance, correct, later on? Excuse
15 me. On November 25th also. Correct?

16 A After the initial appearance?

17 Q No, before the initial appearance. Isn't it a fact that
18 you interviewed him twice -- or asked him twice if he wants to
19 cooperate in this case?

20 A No, unless I'm not clear on your question. We had asked
21 him that morning and he said no. And then he had his initial
22 appearance.

23 Q And when he said no, you had him mark his rights waiver
24 form. Correct?

25 A We reviewed his rights with him, yes.

1 Q And on it he wrote in his own handwriting that he does not
2 want to cooperate, or words to that effect. Correct?

3 A I don't believe it was "cooperate." I think he said that
4 he did not wish to waive his rights.

5 Q He did not wish to waive his rights --

6 A Yes.

7 Q -- and speak to you. Correct?

8 A I think he just -- if I can look at it for a minute I can
9 tell you exactly what we had him say.

10 "At this time wish not to waive my right."

11 Q And that was William Baskerville in his own handwriting who
12 wrote that. Correct?

13 A That is correct.

14 Q Now, you were present in court when William Baskerville was
15 advised that he's a career offender. Correct?

16 A That is correct.

17 Q And William Baskerville at no time ever under any
18 circumstances indicated to you that he intended to cooperate,
19 correct, on November 25th.

20 A That's not correct.

21 Q Tell the jury what he said to you.

22 A He said that he would like to talk but he would feel more
23 comfortable doing it with his attorney present.

24 Q But he didn't waive his rights. Correct?

25 A That is correct.

1 Q And isn't it a fact that you were aware of William
2 Baskerville's background because you heard Mr. Gay allude to
3 the fact that he was a career criminal at the initial
4 appearance of November 25th?

5 A Yes, that is correct.

6 Q So William Baskerville had been through the system more
7 than one time. Correct?

8 A Yes, that is correct.

9 Q And is it fair to say based upon your experience, William
10 Baskerville knew that he had the option of cooperating or not
11 cooperating?

12 A I can't speak to what he knew historically, I can speak to
13 what I explained to him that day.

14 Q And William Baskerville at that day told you that he would
15 feel more comfortable with his attorney. Correct?

16 A He said that he would like to talk, but he would feel more
17 comfortable doing so in the presence of his attorney.

18 Q But he never said that he wanted to cooperate. Correct?

19 A I understood his statement to be that he would like to
20 talk, meaning that he would like to cooperate.

21 Q But he had told you that in order to cooperate he would
22 have to give up his family. Correct?

23 A Yes.

24 Q And he refused to invoke his rights and speak to you.
25 Correct? He refused to give up his rights and speak to you.

1 Correct?

2 A He -- he did not waive his right to speak to me without
3 counsel present. He told me that he would like to speak but
4 would feel more comfortable doing so with counsel present.

5 Q And as you sit here today, you can't testify in reference
6 to what William Baskerville told me or what I told him in
7 reference to cooperation. Isn't that a fact?

8 A I can only repeat what Mr. Baskerville told me after his
9 telephone call with you, but I did not hear your telephone call
10 with him.

11 Q Now, you testified in reference to the fact that William
12 Baskerville was facing up to 360 months, a Level 37. Correct?

13 A I believe I had read that from the transcript, and the
14 transcript said that after we had indicted him on the charge --
15 the charges, he was now facing 360 months to life, and I
16 believe he was at a Level 37.

17 Q Now, isn't it a fact that what he was facing between the
18 complaint stage and the indictment stage in reference to his
19 guideline level being 37, isn't it a fact that there would be
20 no difference whatsoever in his guideline level from the
21 complaint to the indictment?

22 A I can't speak to the guideline level. I can tell you he
23 was charged with a 5 to 40 count, meaning initially he would
24 face a range of 5 to 40 years given his criminal history.
25 After indictment he was facing a range of 360 months to life.

1 Again, his criminal history needed to be considered. So that I
2 can't speak to the guideline levels. I do recall that I read
3 that he's a Level 37. But I don't know where he was with the 5
4 to 40 counts.

5 Q Now, his guideline levels are based upon his criminal
6 history. Correct?

7 A That is correct.

8 Q And his criminal history did not change from the time that
9 he was arrested on the complaint until the time that he was
10 indicted. Correct?

11 A No, they did not.

12 Q The fact that he had made four to six transactions did not
13 change from the time that he was arrested until the time that
14 he was indicted. Correct?

15 A Meaning our evidence didn't change?

16 Q Meaning your evidence didn't change.

17 A Correct. That is correct.

18 Q So isn't it a fact that his guideline level would remain
19 the same whether it's a complaint or an indictment?

20 A I apologize. I can't answer that. I'm not as familiar
21 with the guideline levels. I can tell you by statute what he
22 was facing but I did not review the guideline.

23 Q Well, you knew based upon your experience -- at that
24 particular time you had been an Agent quite a few years. Is
25 that correct?

1 A That is correct, yes.

2 Q Are you telling this jury that you don't know that the
3 guideline level would be the same whether it's under the
4 complaint or under the indictment? Is that what you're telling
5 us?

6 A Yes.

7 Q Now, you also -- you testified a few seconds ago that the
8 guideline level is based upon your criminal history and his
9 criminal history didn't change. Correct?

10 A That is correct.

11 Q And the evidence of the hand-to-hand transactions didn't
12 change between the complaint and the indictment stage.
13 Correct?

14 A What had changed was the information -- the complaint was
15 factual but it did not contain all of our evidence. What we
16 then did was take the evidence and present it to a grand jury
17 in a much more detailed way. So the evidence presented to the
18 grand jury was much more detailed, and the indictment handed
19 down was of a harsher nature because it was -- because of the
20 stronger evidence that we presented to the grand jury.

21 Q All you did is added two transactions to the grand jury.
22 Correct? Is that a fact, ma'am?

23 A I -- I can't recall everything we presented to the grand
24 jury, but I know we presented our evidence.

25 Q The evidence consisted of two additional transactions.

1 Correct?

2 A Yes, and it may have consisted of other evidence as well.
3 But it certainly did, yes, it definitely consisted of those two
4 other transactions. There could have been supplemental
5 evidence in addition to those transactions.

6 Q Now, isn't it a fact that anything over 50 grams -- and you
7 know this based upon the fact you're an experienced Agent --
8 anything over 50 grams would trigger the statute of 10 to life?
9 Correct?

10 A I believe that to be the case but I don't want to say that
11 definitively.

12 Q Are you telling us that you don't know the statute that you
13 were investigating and charging William Baskerville with?

14 A I know it's a drug conspiracy and distribution statute, but
15 I can't tell you necessarily the penalties that are attributed
16 to that statute. I can tell you, again, what Mr. Gay
17 represented to the court, what those penalties were. But at
18 the time I can't tell you that I absolutely knew what those
19 penalties were. I knew what he had done to violate the law, I
20 knew the violation.

21 Q Two transactions, the first two transactions you charged
22 him with were over 50 grams. Correct?

23 A The first one was 28, and the second one was 50, yes.

24 Q So it was over 50 grams?

25 A Yes.

1 Q Now, William Baskerville has had independent
2 representation, independent of me since November of 2004.
3 Correct?

4 A Yes.

5 Q As a matter of fact, he's had, based upon your experience,
6 your training and your interaction with him, very experienced
7 defense attorneys. Correct?

8 A Yes.

9 Q More than two -- he's had three or four other defense
10 attorneys. Correct?

11 A I believe he has had two. I'm aware of two.

12 Q Well, you know he had Carl Herman. Correct?

13 A Yes, I do know that.

14 Q And you know he had Kenneth Kayser. Correct?

15 A I believe, yes.

16 Q Since November of 2004?

17 A I'm not exactly sure when they were appointed.

18 Q More than five years, approximately seven years he's had
19 independent counsel, totally unconnected to me. Correct?

20 A I don't want to put a time line on it, but I know that he
21 has had independent counsel of you, yes.

22 Q For a substantial period of time. Correct?

23 A Yes.

24 Q And isn't it a fact that he has not come in to cooperate in
25 these -- since he's had any kind of representation independent

1 of me?

2 A Well, he has had appeals pending and we have not been able
3 to contact him because of pending appeals.

4 Q Isn't it a fact that his attorneys never came in to speak
5 to you or to ask that he cooperate?

6 A That did not happen. We went to trial.

7 Q Isn't it a fact that William Baskerville had the option of
8 trial or cooperating. Correct?

9 A That is correct.

10 Q And isn't it a fact that he gave no indication whatsoever
11 of cooperating?

12 A That is my understanding.

13 MR. BERGRIN: Judge, could we have five minutes? A
14 five-minute break?

15 THE COURT: Do you have considerably longer.

16 MR. BERGRIN: Yes, your Honor.

17 THE COURT: Can you proceed, Mr. Bergrin? Because we
18 just took a recess. If you can proceed for a while longer.

19 MR. BERGRIN: Yes, your Honor.

20 Q Now, because William Baskerville is facing a statutory
21 maximum of life in prison -- correct -- isn't it a fact that
22 the likelihood of him getting life for hand-to-hand crack
23 transactions that he was indicted for was little to no chance
24 at all. Correct?

25 A I certainly can't answer that. That's only up to the

1 judge.

2 Q Based upon your experience and training, isn't it a fact
3 that there was about zero likelihood of William Baskerville
4 ever getting life in prison for the six hand-to-hand sales that
5 he was indicted for?

6 A Again, I cannot answer that. I can not speak for the
7 judge.

8 Q The standard operating procedures in a drug case are very
9 similar, correct, from one drug case to another as far as
10 informants?

11 A Yes, they are.

12 Q And the standard operating procedures are, you debrief the
13 informant. Correct?

14 A Yes, that is correct.

15 Q And then you search the informant?

16 A Yes.

17 Q You give him buy money that's recorded?

18 A Yes.

19 Q There are agents out on the street watching the
20 transaction?

21 A Yes, that's correct.

22 Q You protect the informant that's out there?

23 A Yes.

24 Q He usually has a transmitter or wire so you can hear what's
25 going on between him and the other person?

1 A Yes, that is correct.

2 Q And that's what happened in each one of these transactions
3 in this case. Correct?

4 A That did not happen on the May 22nd transaction.

5 Q Five out of six it happened. Right?

6 A Yes, that is correct.

7 Q Now, isn't it a fact that as the Lead Case Agent, again,
8 you're responsible for the safety and the protection of Mr.
9 McCray?

10 A Yes, that is correct.

11 Q And that's why you had approximately four to ten agents
12 outside doing surveillance on five out of six transactions
13 here?

14 A Yes, that is correct.

15 Q Can you explain to us why you had multiple drug deals set
16 up in front of Kemo's house on Wainwright Street when you had
17 the chance to designate the location?

18 A Because that is how Mr. Baskerville and Kemo had arranged
19 it. That is what makes most sense on the street.

20 Q Now, Kemo has the opportunity to tell Mr. Baskerville where
21 he's going to meet him. Correct?

22 A He does, but Baskerville and Kemo knew one another from the
23 streets. Baskerville knew where Kemo lived at that time
24 independent of us doing a deal in front of the house.

25 Q And you allowed the transactions, two of them, to go down

1 in front of Kemo's house. Correct?

2 A Majority of the transactions occurred in the area of his
3 residence, yes.

4 Q And as you stated, not only did William Baskerville know
5 where Kemo lived, they had a relationship. Correct?

6 A They saw each other on the streets and spoke periodically,
7 yes

8 Q As a matter of fact, Kemo had known Rakeem Baskerville.
9 Correct?

10 A That is correct.

11 Q And they had know each other for at least 10 years prior to
12 the transactions in this case. Correct?

13 A I can't testify at least 10 years, but I know that they had
14 known each other for some time.

15 Q As a matter of fact, they served time in jail together.
16 Correct?

17 A That is correct, yes.

18 Q Now, you also knew that Kemo's girlfriend was the first
19 cousin of Terrell Thomas. Right?

20 A Yes, I did know that.

21 Q And you knew about the relationship between Terrell Thomas
22 and William Baskerville. Correct?

23 A Yes.

24 Q And they had essentially a working relationship, or as you
25 described, partners. Correct?

1 A I would not -- if I testified as partners, I would call it
2 more of a working relationship in that William Baskerville
3 supplied Terrell Thomas. So Terrell Thomas to me would be more
4 of an underling. But yes, I feel more comfortable with that as
5 opposed to "partners." But they did work together in a drug
6 conspiracy.

7 Q And again, Kemo's girlfriend was the first cousin of
8 Terrell Thomas. Correct?

9 A That is correct.

10 Q And you knew that William Baskerville knew this. Correct?

11 A I don't know if William Baskerville knew that.

12 Q Well, Terrell Thomas had a long time working relationship
13 with William Baskerville. Right?

14 A I know he had a working relationship. For how long, I
15 can't testify to.

16 Q But they worked together on the street, and Kemo's
17 girlfriend was the first cousin of Terrell Thomas?

18 A That is my understanding, yes.

19 Q Now, you testified in reference to one interaction with
20 Rakeem Baskerville on South Orange Avenue and Bradley Court.
21 Correct?

22 A Yes.

23 Q And that occurred -- isn't it a fact that that occurred
24 approximately February 24th of 2004?

25 A Yes, that is correct.

1 Q And as a matter of fact, the area of Bradley Court is a
2 high narcotic area. Correct?

3 A Yes, that is correct.

4 Q It's known as a high crime area, an area targeted by law
5 enforcement. Correct?

6 A Correct.

7 Q And it's patrolled heavy by law enforcement?

8 A Yes.

9 Q Now, when Rakeem Baskerville, according to your debriefing
10 of Kemo, saw him on February 26th, he didn't chase him with the
11 car. Correct?

12 A No, he did not.

13 Q But Kemo observed Rakeem Baskerville staring at him and
14 Kemo stared back at Rakeem Baskerville. Correct?

15 A Kemo acknowledged -- I don't know that he stared back, but
16 he certainly recognized him to be Rakeem Baskerville and then
17 he ran.

18 Q Now, isn't it a fact that there were at least -- at least
19 two other incidents in December and January; December of 2003
20 and January of 2004, of Kemo being watched?

21 A We had other reports that people were looking for Kemo.

22 Q Ma'am, isn't it a fact that you debriefed Kemo on February
23 24th of 2000 -- February 24th of 2004, and he told you -- not
24 that you had other reports -- but Kemo told you that on two
25 other occasions, in December and January, he had seen Rakeem

1 Baskerville watching him?

2 A I don't believe he said "watching him," but he had seen
3 Rakeem Baskerville's car.

4 Q Isn't it a fact that he had -- he said that he saw Rakeem
5 Baskerville watching him? Isn't that what you testified to?

6 A Well, if I can look at my report. I don't know what I -- I
7 don't know if Kemo said "watching him."

8 What is the date of the report?

9 Q I don't have the report. Look at your report, please.

10 A On February 4th... I have a meeting with him on February
11 4th that was not relative to the Rakeem Baskerville.

12 Q February 24th. That's the date I'm talking about, ma'am.

13 A I don't have that report but I do recall what Kemo had told
14 me, was that he saw Rakeem Baskerville on South Orange Avenue
15 in a burgundy Impala, and Rakeem drove past Kemo, put the brake
16 lights on, reversed, looked out the window and stared at Kemo.
17 Kemo looked back at him and ran.

18 Q Do you remember being asked these questions in United
19 States vs. Baskerville?

20 A Yes, I do.

21 Q And do you remember saying that during December, January
22 and February there were three incidents where Kemo knew that he
23 was being watched by Rakeem Baskerville?

24 A He had contacted me and told me that he had seen Rakeem
25 Baskerville's car in the parking lot of the Bradley Court

1 housing complex where he was living at that time.

2 Q And that was December and January, and then February was
3 the stare-down. Correct?

4 A Yes, that is correct.

5 Q Now, based upon your investigation, you also had received
6 information from a Lakisha Wilson. Correct?

7 A Yes, I had.

8 Q And who is Likisha Wilson?

9 A She was his girlfriend at the time.

10 Q And she provided you information that people were looking
11 for Kemo. Correct?

12 A Yes.

13 Q On multiple occasions. Right?

14 A I believe on two occasions.

15 Q Yet, you allowed Kemo to move to East Orange, the next town
16 over, as his handler and protector?

17 A He had already moved to East Orange prior to this.

18 Q And that was okay with you?

19 A What he had told me was, he was moving to a residence that
20 nobody would know of. It was not okay with me. I would have
21 preferred that he moved somewhere far, far away. But what Kemo
22 wanted to do was go to what he described as a distant relative,
23 which happened to be his stepfather in East Orange. My
24 preference was not that he go there, but he felt safe doing
25 that, and that was what was ultimately arranged, yes.

1 Q So you have Rakeem Baskerville on February 24th have an
2 eye-to-eye with Kemo. Correct?

3 A Yes.

4 Q Close to Kemo's house. Correct?

5 A Yes.

6 Q You had Rakeem Baskerville's car being seen by Kemo on at
7 least two occasions right near his house. Correct?

8 A Yes, yes.

9 Q Where he was living in Bradley Courts?

10 A Yes, that is correct.

11 Q You had Terrell Thomas being the working relationship
12 individual with William Baskerville, and also being the first
13 cousin of Kemo's girlfriend that he was living with on Bradley
14 Courts. Correct?

15 A That's a separate girlfriend.

16 Q A different girlfriend?

17 A Two separate girlfriends, yes.

18 Q And then you had individuals who had informed Kemo's
19 girlfriend that individuals were watching him and looking at
20 him at Bradley Courts where he lived?

21 A Yes.

22 Q So based upon those facts, isn't it a fact that you
23 essentially knew that they had located Kemo before the homicide
24 in this case?

25 A I did not know that they had located Kemo. I knew that

1 they were looking for Kemo.

2 Q Well, they had been in the exact same area where Kemo was
3 living on three separate and prior occasions. Correct?

4 A They had been in the area, yes.

5 Q On three separate occasions, exactly where Kemo was living.
6 Correct?

7 A The one on South Orange Avenue was several blocks away, but
8 the other two were within the housing complex, yes.

9 Q Now, you testified before this jury that you had tested
10 Kemo. Correct?

11 A Yes, as to his reliability.

12 Q And as to his trustworthiness. Correct?

13 A Yes.

14 Q And you found Kemo, according to your testimony, to be a
15 reliable and trustworthy informant. Correct?

16 A Yes, I did.

17 Q Now, you also testified that you terminated Kemo based upon
18 the fact that he was lying about the courier fee. Right?

19 A Yes, that is correct.

20 Q And he had essentially taken or stolen money that was not
21 supposed to be designated for purchases. Correct?

22 A That is correct.

23 Q And that was the courier fee. Right?

24 A Yes.

25 Q That he used?

1 A Yes.

2 Q So he used money that the FBI had given him for drug
3 purchases for his own benefit. Correct?

4 A Yes, that is correct.

5 Q While he was a trustworthy, loyal, cooperative FBI
6 informant?

7 A Yes.

8 Q But that's not all the evidence you had against him,
9 correct, in reference to violations of the law. Isn't that a
10 fact?

11 A Yes.

12 Q You also had him incriminating and creating false evidence
13 against two individuals. Correct?

14 A That is correct, yes.

15 Q That being Richard Hosten and Tyrone Cox. And that could
16 have led to serious conspiracy charges against these two
17 individuals. Correct?

18 A Yes.

19 Q And he had created false evidence against them while a
20 cooperator for the Federal Bureau of Investigation under your
21 watch. Correct?

22 A Yes, that is correct.

23 Q Now, besides these two, what you failed to tell us about,
24 is that Kemo was also selling drugs behind your back. Correct?

25 A I didn't fail to tell you that. I can certainly elaborate

1 on that. I have a full statement that I took from Kemo about
2 everything he was doing behind our back.

3 Q Well, when you testified before the jury, all you did is
4 you mentioned the courier fee. Correct?

5 A That's what I was asked about, yes.

6 Q And you were asked about why Kemo was terminated, ma'am.
7 Wasn't that a fact? Wasn't that the question that you were
8 asked by Mr. Minish?

9 A I believe so. I believe I was asked --

10 Q So --

11 A I don't know that I was asked why. I believe I was asked
12 whether or not he was terminated.

13 Q Then why would you bring up the courier fee if you weren't
14 asked that question as to why he was terminated?

15 A There was a question related to what Kemo had done, and I
16 believe I was asked yes or no, had he done that.

17 Q You were asked why Kemo was terminated, and you say he was
18 terminated for the courier fee. Correct?

19 A I don't recall. I recall explaining the courier fee but I
20 can certainly tell you there were other things he did other
21 than that that led to us terminating him.

22 Q One was creating evidence and fabricating evidence against
23 two other individuals saying they were involved in a conspiracy
24 when they weren't involved in a conspiracy. Correct?

25 A Absolutely, yes.

1 Q And this was for his benefit, Kemo's benefit. Correct?

2 A Absolutely.

3 Q And also the fact that he was dealing heroin, crack cocaine
4 and cocaine. Correct?

5 A That is correct, yes.

6 Q Now, you were paying Kemo approximately a thousand dollars
7 a month, approximately?

8 A Approximately, yes.

9 Q And you said that you went through his living expenses with
10 him. Correct?

11 A Yes, I did.

12 Q And what were his expenses per month?

13 A What I recall at the time, the rent was approximately \$750,
14 and then he had utilities that he had to pay on top of that,
15 and then I think we left an amount in there for grocery money
16 as well.

17 Q Now, that didn't give him much money for his personal use.
18 Correct? He had rent to pay, which was 750?

19 A Right.

20 Q Correct?

21 A Yes.

22 Q He had groceries to buy. Correct?

23 A Right.

24 Q He had gas, electric and telephone. Correct?

25 A Yes.

1 Q Isn't it a fact that that came out to over a thousand
2 dollars a month?

3 A At the time we calculated it, a thousand dollars a month is
4 what he and I worked out together as a fair number.

5 Q Now, you knew that Kemo wasn't working. Correct?

6 A That is correct.

7 Q And the thousand dollars that you gave him you knew only
8 paid for his personal expenses. Correct?

9 A Yes.

10 Q Did you ever ask Kemo what he was doing for money to live
11 on?

12 A Yes, I did.

13 Q And did you ever figure out that he might be selling drugs
14 behind your back?

15 A At one point we did suspect that, yes, and we did confront
16 him, and he denied it.

17 Q But you didn't do any further investigation to corroborate
18 that. Correct?

19 A Yes, I did.

20 Q What investigation did you do?

21 A I spoke to local police officers who worked the area of
22 Newark at 14th and Madison where he was residing at the time,
23 and I had been told that he was dealing drugs. And so that I
24 set out to confirm that. And I asked local police officers to
25 keep an eye on him, to keep an eye on his activity and to see

1 if they could confirm that. And I was not able to confirm that
2 at the time.

3 Q Did you put him under FBI surveillance?

4 A I did not put him under FBI surveillance, no.

5 Q DEA surveillance?

6 A No.

7 Q Did you have anybody watching him or could you confirm that
8 anybody watched him at all?

9 A I wouldn't say "watching" him, but we had law enforcement
10 officers doing drive-bys in the area, to include myself and our
11 agents. But as far as constant surveillance, no.

12 Q Drive-bys in the areas. That means like driving your car
13 by once in a while when essentially drug dealers know the
14 people are being watched or are being driven by?

15 A Well, driving by could mean in an undercover vehicle so
16 that drug dealers would not necessarily know you're law
17 enforcement. We weren't going by in marked vehicles.

18 Q The bottom line is, he wasn't put under surveillance.
19 Correct?

20 A That is correct, yes.

21 Q And this was one of your most trusted and reliable and
22 loyal informants. Correct?

23 A At the time, yes.

24 Q And he was committing multiple crimes behind your back for
25 his benefit. Correct?

1 A That is correct, yes.

2 Q Now, based on your experience and working with Kemo as well
3 as other informants, isn't it a fact that even trustworthy
4 informants lie and steal and scheme to get others arrested?

5 MR. MINISH: Judge, I object to the question. If he's
6 got an exhibit that he wants to ask about --

7 THE COURT: Sustained. Your objection is appropriate.
8 Sustained.

9 Q Now, you began to work with Kemo based upon a gun charge.
10 Correct?

11 A That is correct.

12 Q That's how you met Kemo. Right?

13 A Yes.

14 Q Now, isn't it a fact that you held that gun charge over
15 Kemo's head as a means to get him to become an informant for
16 you?

17 A I -- when we left our first meeting about whether or not he
18 was going to work for us, I did not tell him whether or not he
19 was going to be charged with that gun.

20 Q Ma'am, isn't it a fact that Kemo had multiple convictions
21 as a felon?

22 A That is true, yes.

23 Q He had an armed robbery, he had an escape charge, and he
24 had a narcotic charge. Correct?

25 A That is accurate, yes.

1 Q So you let Kemo believe that he might be prosecuted on the
2 possession of the shotgun by a convicted felon under the
3 trigger lock law. Correct?

4 A Yes, I did.

5 Q And you knew at that time that you were going to dismiss
6 that case, or that case was getting dismissed. Isn't that a
7 fact?

8 A That is not a fact.

9 Q Well, you had had contact with the Office of the United
10 States Attorney. Right?

11 A I had contact with them after I had this first meeting with
12 Kemo. We --

13 Q How much -- I'm sorry, I didn't mean to interrupt you.

14 How much time lapsed from the time you told Kemo that
15 you were going to charge him or you intended to charge him with
16 a gun case until your meeting with the U.S. attorneys?

17 A Immediately after the meeting I contacted the AUSA that I
18 was working with at the time and presented to him what I knew,
19 and he told me that they would have to have some discussion at
20 their office and that he would get back to me. And that took
21 several days.

22 Q "Several days"; meaning two days?

23 A I don't want to testify to two days. I can tell you
24 several days.

25 Q Okay. In those several days when you got notification back

1 by the Office of the United States Attorney that it's not being
2 prosecuted based upon the conversation you had with the
3 Assistant United States Attorney, did you then go back to Kemo
4 and tell him that the gun case is not being prosecuted, it's
5 being dismissed?

6 A I did not tell him that it was being dismissed, but I said
7 it is not likely that he was to be prosecuted.

8 Q You had that conversation with Kemo?

9 A Yes.

10 Q And of course that's contained in a 302?

11 A That would not be contained in a 302.

12 Q Of course it's contained in your notes. Correct?

13 A I do not believe it's contained in my notes.

14 Q Ma'am, isn't it a fact that you held that gun charge, the
15 possession of the shotgun over Kemo's head and let Kemo believe
16 that he was facing substantial imprisonment as a convicted
17 felon?

18 A That is not true.

19 Q Now, at the time that you went to Kemo's house, you went
20 there based upon information, as you testified, from Mr.
21 Spruill that there was a gun in the house. Correct?

22 A Yes, that is correct.

23 Q And Mr. Spruill told you exactly where the gun was located?
24 Right?

25 A Yes.

1 Q And Mr. Spruill lived in that house. Right?

2 A No, he did not.

3 Q Mr. Spruill was familiar with the house?

4 A Yes, he was.

5 Q And he was familiar with who lived there. Correct?

6 A Yes, he was.

7 Q And one of the individuals that lived there was Kemo's
8 mother, Delphine. Correct?

9 A That is correct, yes.

10 Q And when you went there, the gun was found, as a matter of
11 fact, in Delphine's bedroom. Correct?

12 A Yes.

13 Q Now, Delphine was a convicted felon also. Correct?

14 A I don't -- I don't recall if she had -- I know she had
15 previous arrests. I don't know that she was a convicted felon.

16 Q Well, didn't you testify that no member of the household
17 was permitted to have a gun? Wasn't that your testimony?

18 A That is my testimony. And I do not believe that Delphine
19 had a permit to carry it, a 12-guage shotgun.

20 Q You knew that the possession of the weapon by Kemo was a
21 federal crime. Correct?

22 A It certainly could be a federal crime, yes. Yes.

23 Q You knew that the possession of the shotgun by Kemo with
24 Kemo's prior record was a federal crime. Correct?

25 A Yes. He was not able to possess any kind of a weapon.

1 Q So -- well, you just said to the jury a couple seconds ago,
2 "it could be."

3 It was a federal crime for a person that's been
4 convicted of multiple felonies to be in possession of a
5 shotgun. Correct?

6 A First, I had to ascertain that it was, in fact, Kemo's gun.
7 You're asking me at first, did I know it was a federal crime.

8 I first have to determine that that was Kemo's gun for
9 that --

10 Q Assuming that it's Kemo's -- I'm sorry, I don't mean to cut
11 you off.

12 A That's all right.

13 Q Assuming it's Kemo's gun, isn't it a fact that it's a
14 federal crime?

15 A Yes, that is a fact.

16 Q Then why would you swear under oath before a prior jury and
17 state that it was not a federal crime?

18 A I -- I don't recall. I don't know why I would have said
19 something like that, but apparently I must have misspoken.

20 Q Do you remember testifying in United States vs. Baskerville
21 that it wasn't a federal crime?

22 A I don't recall that.

23 THE COURT: Do you have a transcript, Mr. Bergrin?

24 MR. BERGRIN: Yes, your Honor.

25 I'll come back to that. I don't think these

1 transcripts have been marked for identification yet.

2 THE COURT: All right. We can mark it. Do you want
3 to give it a "D" marking?

4 MR. BERGRIN: Your Honor, may I approach the witness,
5 please?

6 THE COURT: You may.

7 MR. BERGRIN: Thank you, sir.

8 Q Ma'am, I'm going to show you what's been marked D-2 for
9 identification.

10 MR. MINISH: Judge, if Mr. Bergrin could just describe
11 the exhibit for the record.

12 MR. BERGRIN: It's the testimony, the sworn testimony
13 of Shawn Manson in United States vs. Baskerville, and I'm
14 looking specifically at page 3394, Mr. Minish.

15 MR. GAY: What's the entire exhibit though?

16 MR. BERGRIN: I just have --

17 MR. GAY: What page? Is this the --

18 MR. BERGRIN: This exhibit covers pages 3377 to 3408.

19 MR. GAY: Thanks.

20 MR. BERGRIN: You're welcome.

21 MR. BERGRIN: May I approach, Judge?

22 THE COURT: Go ahead.

23 Q I'm going to --

24 THE COURT: Did you mark it as D-1?

25 MR. BERGRIN: I marked it as D-2, your Honor.

1 THE COURT: D-2.

2 MR. BERGRIN: Yes, your Honor.

3 Q Ma'am. I'm going to show you what has been marked D-2 for
4 identification.

5 A Okay.

6 Q Just hold it like that, please. Thank you.

7 A Right here? All right.

8 Q That's your sworn testimony in United States vs.
9 Baskerville; a transcript of it?

10 A Yes, it is.

11 Q I ask you to look at the page that's been delineated 3394.

12 A Okay.

13 Q Specifically line 6.

14 A Okay. Yes, I see what you're referring to.

15 Q Isn't it a fact that you told the prior jury that it wasn't
16 a federal crime?

17 A Yes. What I said was, we weren't certain whether or not --

18 Q The question ma'am, is --

19 THE COURT: I'll allow her to read it.

20 Q All right. Go ahead. I'm sorry.

21 THE COURT: Go ahead.

22 A (Reading) We weren't certain whether or not we would charge
23 this because it wasn't a federal crime. We weren't sure if we
24 would charge it with the state.

25 Q But you knew that it was a federal crime, didn't you?

1 A I think at the time when I was testifying there was an
2 issue as to whether or not he was in possession of the gun. To
3 charge him with this we had to prove that he was in possession
4 of the weapon.

5 But certainly a felon possessing a weapon is a federal
6 crime, I do know that.

7 Q But that's not what you told the prior jury under oath.
8 You said that you didn't know if it was a federal crime or not.
9 Nothing about the possession. Correct?

10 A That is accurate, yes.

11 Q Now, you knew at the time that you entered Kemo's house
12 that the gun was not Delphine Smith's. Correct?

13 A Yes.

14 Q If you knew that the gun was not Delphine Smith's gun, then
15 why did you threaten Delphine Smith to arrest her and charge
16 her with possession of the gun unless Kemo comes and admits in
17 gun is his and cooperates?

18 A What happened was, Delphine Smith, after we found the
19 weapon, tried to tell me that that was her gun. And I told her
20 that I know that it's not her gun. It simply was not her gun.
21 And that if she would like to make a statement claiming that's
22 her gun, then I'm going to have to arrest her.

23 Q So you had arrested Mrs. Smith knowing that the gun was not
24 hers just to get to Kemo?

25 A She was telling me the gun was her gun. If she was

1 claiming that that was her gun, and she was not legally able to
2 have that gun, then I would have the authority to arrest her.

3 Did I believe that gun to be hers? I did not.

4 Q Did you ever do any forensic testing, by the way, on the
5 gun, whether fingerprints or DNA?

6 A I do not believe so.

7 Q You made a decision not to charge Kemo with the gun.
8 Correct?

9 A I did not make that decision, that was the prosecutor's
10 decision.

11 Q And, but you testified that the reason was, was because it
12 was a weak case. Correct?

13 A That is what I had been told, yes, by the prosecutors.

14 Q Well, when you went to the house to interview Kemo and
15 Delphine after you found the gun, Kemo ran out the back door,
16 correct, as you testified to with Mr. Minish?

17 A That is correct, yes.

18 Q So you had Kemo in flight. Right?

19 A Yes, that is correct.

20 Q And you know that flight is a state of the mind, state of
21 the head. Correct?

22 A I can't speak to his state of the mind, all I can tell you
23 is he ran out the door.

24 Q In your 16-week course to become a federal agent, a Special
25 Agent of the Federal Bureau of Investigation, you testified

1 that you took court and legal procedures. Correct?

2 A Yes.

3 Q And you learned the law. Correct?

4 A Yes.

5 Q And you didn't know that flight was a state of mind, a
6 conscientiousness of guilt. Are you telling this jury that?

7 A I can speculate as to why he ran if you'd like me to do
8 that.

9 Q But you didn't know as a matter of law that flight is a
10 conscientiousness of guilt. Is that what you're telling us, an
11 experienced Agent?

12 MR. MINISH: Judge, I object.

13 A I can't answer that.

14 MR. MINISH: She's not a lawyer and --

15 THE COURT: She answered the question. Next question.

16 Q You were going to arrest Delphine Smith on the date that
17 you went to the house. Correct? That's the bottom line?

18 A That is absolutely incorrect.

19 Q Well, you told her and you threatened her that she's facing
20 serious jail time and that you were going to arrest her.
21 Correct?

22 A I told her that if she kept up the fraud that this was her
23 gun, that, yes, I would have to arrest her.

24 Q Now, you told her that you want Kemo. Right?

25 A That I wanted Kemo?

1 Q You wanted Kemo to come in and speak to you and cooperate.
2 Right?

3 A That is correct, yes.

4 Q Now, a day later Kemo came in to the Federal Bureau of
5 Investigation?

6 A Yes, that is correct.

7 Q And at that time Kemo gave you a sworn statement that the
8 shotgun was his. Correct?

9 A That is not correct.

10 Q Isn't it a fact that Kemo admitted that the shotgun was
11 his?

12 A Yes, that is correct.

13 Q So you have the fact that you received the information from
14 your cooperating witness, Mr. Spruill --

15 A Yes.

16 Q -- that the gun is Kemo's. Correct?

17 A Yes, that is correct.

18 Q You have the exact location of the gun and you seize it?

19 A Yes.

20 Q You go to the house to speak to Kemo with the shotgun in
21 your hand and Kemo runs out the back door?

22 A If I can just correct you. We were at the house.

23 Q Yes.

24 A We seized the shotgun. It was during that meeting that
25 Kemo ran out the door. So I didn't go back a second time.

1 Q I'm sorry. So Kemo runs out the door while you have the
2 shotgun with you that you seized from the house. Is that
3 correct?

4 A That is correct, yes.

5 Q The next day he comes into the FBI and confesses to you
6 that the shotgun is his. Right?

7 A Yes.

8 Q And that's a weak case?

9 A All I can do is tell you what I was told by prosecutors at
10 the U.S. Attorney's Office as to the evidence -- I gather the
11 evidence, I presented it to them.

12 Q To you, is that a weak case?

13 THE COURT: All right. She answered the question, Mr.
14 Bergrin.

15 We're going to take a recess. I think you finished up
16 in this area?

17 MR. BERGRIN: Yes, sir.

18 THE COURT: All right. Ladies and gentlemen, we'll
19 take our luncheon recess. We'll see you back here in about an
20 hour. Please don't discuss anything about the case and enjoy
21 your lunch.

22 THE COURT: Agent, you can step down. Thanks.

23 We'll resume at 1:15.

24 MR. LUSTBERG: Thank you.

25 THE COURT: We're in recess. Thank you.

1 THE COURT: There was no harm done.

2 MR. MINISH: No, judge.

3 THE COURT: That's the more appropriate way, I agree.

4 MR. MINISH: Thank you, Judge.

5 THE DEPUTY CLERK: Ready for jurors?

6 THE COURT: We're all set.

7 Where is Mr. Gay though?

8 MR. MINISH: Mr. Gay is otherwise occupied.

9 THE COURT: We're all set? Okay.

10 THE DEPUTY CLERK: Please rise for the Jury.

11 (Jury present.)

12 THE COURT: Welcome back.

13 Please be seated.

14 Mr. Bergrin, you can proceed, please.

15 MR. BERGRIN: Thank you very much, Judge.

16 CROSS-EXAMINATION CONTINUES

17 BY MR. BERGRIN:

18 Q Good afternoon, Agent.

19 A Good afternoon.

20 Q Agent, you testified in reference -- and I'll be very brief
21 on it -- to Dr. Shaikh and the fact that one of the methods
22 that you used to confirm the reliability of Anthony Young was
23 your analysis of the way the shooting occurred. Correct?

24 A Yes, that is correct.

25 Q Now, you testified that you didn't know of any evidence

1 whatsoever wherein the trajectory of the bullet, the fatal
2 wound to the neck went from front to backwards. Correct?

3 A I'm still not clear on what you mean by "front to
4 backwards."

5 My understanding of the fatal wound was that the
6 bullet entered at the base of the neck, the base of the ear and
7 traveled up through the head. So I don't know if you're
8 meaning that that's the front. I'm not clear.

9 Q What I mean, front to back, I mean from the front of your
10 face is the front of your face, and the back of your head is
11 the back of your head in regular laymen terminology. Correct?
12 Do you understand now?

13 A Okay. So then what you would call the back, the back of
14 the neck --

15 Q So if someone was shot in the back of the neck and a report
16 says "from front to back," that means they were shot on an
17 angle. It was on the left side -- this angle, going toward the
18 back (indicating). Do you understand now?

19 THE COURT: Pointing to below your chin.

20 MR. BERGRIN: Yes.

21 THE COURT: You were pointing to below your chin.

22 A That's not as I understand it. The front of the wound I
23 understood to be at the base of the neck.

24 Q Correct. And the front of the wound was at the base of the
25 neck and --

1 THE COURT: Behind the ear?

2 THE WITNESS: Yes.

3 MR. BERGRIN: Behind the ear, yes, sir.

4 Q Was behind the ear. And if that bullet traveled, according
5 to a medical report -- and you are familiar with medical
6 reports because you review them during your career as an FBI
7 Agent. Correct?

8 A That is correct.

9 Q And you are familiar with Dr. Shaikh because you
10 interviewed him in preparation for this trial. Correct?

11 A I interviewed him in preparation for this trial, yes, I
12 did.

13 Q And when you interviewed him, did you review his autopsy
14 protocol and report?

15 A Yes, we did.

16 MR. BERGRIN: May I approach the witness one more
17 time?

18 THE COURT: Yes.

19 Q I show you 2283a and I'm going to ask you to look
20 specifically at page 3, the last two lines.

21 A Okay.

22 Q Dr. Shaikh specifies the trajectory of the bullet.
23 Correct?

24 A Yes, he does.

25 Q And in that trajectory that he meticulously lays out, it

1 shows a wound traveling -- or the position of the gun being
2 from front to back. Correct?

3 A The position of the gun being --

4 Q The shooter. The trajectory of the bullet, the bullet
5 traveling --

6 A Right.

7 Q -- from front to back. Correct?

8 A What the report says -- if I may?

9 Q Yes.

10 A The trajectory was left to right.

11 Q Left to right.

12 A Slightly upwards and backwards.

13 Q Backwards. Correct.

14 A Yes, slightly upwards and backwards.

15 Q So if a bullet travels backwards it's traveling toward the
16 back of the head, not toward the front. Correct?

17 A I can give you my understanding of this. Again --

18 Q I'm asking you based upon your interview with the doctor.

19 MR. MINISH: Judge, that's an improper question.

20 THE COURT: Sustained.

21 Q If someone was to stand behind the person and shoot as
22 Anthony Young alleged to you -- correct?

23 A Yes.

24 Q You understand me, ma'am?

25 A Yes.

1 Q And you doing your analysis to confirm the reliability of
2 the person, you would want to know if a person standing behind
3 the victim, Kemo, and pulling the trigger, if the bullet --
4 where the bullet would go. Correct?

5 A Yes, that is correct.

6 Q And that's an important aspect in this particular case.
7 Correct?

8 A Yes.

9 Q According to Dr. Shaikh, first of all, all three wounds
10 were on the side and they traveled from left to right across
11 the body. Correct.

12 THE COURT: Across the head?

13 MR. BERGRIN: Across the head.

14 A Yes.

15 Q And all -- and the last wound that he was able to note the
16 pure trajectory of the bullet travel was as you just testified.
17 Correct?

18 A Yes.

19 Q And that wouldn't be -- and that wouldn't be a depiction,
20 that wouldn't resemble somebody shooting from back and standing
21 in back of him. Correct?

22 A That is incorrect.

23 Q You testified also in reference to the fact that you
24 confirmed --

25 THE COURT: Where are you referring to, Mr. Bergrin?

1 Are you referring to a transcript?

2 MR. BERGRIN: I'm referring to the transcript of a Dr.
3 Shaikh, your Honor, and I'm specifically referring to page
4 4539.

5 THE COURT: Of what, the transcript from where?

6 MR. BERGRIN: Transcript of Dr. Shaikh, the trial of
7 United States vs. Baskerville, Judge.

8 THE COURT: All right. And what are you going to use
9 that for? That's not her testimony.

10 MR. BERGRIN: I'm going to ask her in reference to the
11 gun being in the left hand or the right hand, Judge, in her
12 experience.

13 THE COURT: Well, I don't know. Let me hear the
14 question because I don't know -- you're using the transcript of
15 another witness.

16 Q You just testified in reference to the fact that it would
17 be inaccurate based upon your experience, correct, of how the
18 bullet traveled of a person standing behind and shooting
19 compared to the medical report. Correct?

20 A I'm not testifying to my experience, I'm testifying to my
21 understanding of what Anthony Young told me how he shot Kemo,
22 that is what I'm testifying to, and my understanding as well as
23 to how this is written.

24 Q But based upon what Anthony Young told you, you used that
25 as one of the means or methods to determine that he's being

1 reliable and truthful to you. Correct?

2 A Yes.

3 MR. BERGRIN: May I show her the report, your Honor,
4 and see if it refreshes her recollection?

5 THE COURT: There's no indication her recollection
6 needs refreshing, Mr. Bergrin.

7 Q When you interviewed Dr. Shaikh, you're testifying that he
8 never told you, or you have no knowledge from any experts or
9 anybody that's analyzed the wounds that the wound traveled from
10 front to back. Correct? The trajectory of the bullet.

11 A Are you referring to the Baskerville trial --

12 Q Yes.

13 A Okay. I did not interview Dr. Shaikh until before this
14 trial, so I can't speak to what he testified to during the
15 Baskerville trial.

16 Q At the time that you made the decision in this case --

17 A Yes.

18 Q -- that Anthony Young was reliable, don't you think it
19 would have been proper to speak to the medical examiner?

20 A I read the report and I understood the report to read that
21 the bullet traveled from the base of the neck upwards through
22 the head. That was my understanding of this report.

23 Q And it's your understanding of this report that it never
24 traveled from front to back. Is that what you're telling us?

25 A If you're saying that the bullet traveled from here to here

1 (indicating) --

2 THE COURT: She's pointing to the right side of the
3 head --

4 THE WITNESS: I'm sorry.

5 THE COURT: -- to the left side behind the ear.

6 A I can't say that.

7 My understanding of the report was that the bullet
8 entered at the base of the neck under the left ear and traveled
9 upwards into his head.

10 MR. BERGRIN: Your Honor, I'm going to move on to
11 another area.

12 THE COURT: Go ahead.

13 Q You testified that you made the determination that you
14 could tell which hand the shooter shot him based on your
15 experience and training. Correct?

16 A That is correct.

17 Q So if a medical examiner was to testify in a question on
18 page 4541, United States vs. Baskerville, lines 16 to 21:
19 Doctor -- "QUESTION" --

20 MR. MINISH: Objection, Judge.

21 THE COURT: Sustained.

22 Q Isn't it a fact that it is physically and forensically and
23 scientifically impossible to tell which hand the shooter held
24 the gun in?

25 MR. MINISH: Judge, I think we need clarification on

1 the basis of knowledge.

2 A Yes.

3 THE COURT: No. She can answer that if she can answer
4 it.

5 Go ahead if you can answer that from your experience
6 and training.

7 A I can tell you from practical experience, yes, I can tell
8 you. I cannot speak from a scientific point of view but I can
9 tell from you a practical experience. Yes, it is entirely
10 possible that the shooter was left-handed and, in fact, we
11 learned the shooter to be left-handed.

12 Q As you sit there today you're telling this jury that from
13 practical experience you could tell whether a shooter shot with
14 his left hand or right hand?

15 A In this instance, after Mr. Young explained how he
16 physically grabbed Kemo with his right hand, took out his 9
17 millimeter and shot him at the base of the neck through the
18 head, yes. That knowledge combined with what I read in the
19 medical examiner's report led me to conclude that the shooter
20 was left-handed.

21 Q But you had a doctor testifying or a doctor stating
22 emphatically that it's certainly impossible --

23 MR. MINISH: Objection.

24 THE COURT: Sustained, Mr. Bergrin. That's not a
25 proper question.

1 Q Did you review Dr. Shaikh's report or did you ask Dr.
2 Shaikh that question?

3 A At that time I reviewed his reports and I did not ask him
4 that question.

5 Q Have you ever asked him that question?

6 A I have not asked him that question.

7 Q Well, don't you think it would be an important question to
8 ask the doctor if you're making that determination?

9 A The doctor does not have the benefit of the knowledge that
10 I have from Mr. Young telling me exactly how he did the
11 shooting, so I don't know that the doctor would scientifically
12 be able to make that conclusion without having the benefit of
13 the knowledge I had.

14 Q Well, you could have spoken to the doctor and gave him the
15 benefit of your knowledge, correct, and asked him if it's
16 possible to tell which hand the shooter shot from. Correct?

17 A I suppose I could have, yes.

18 Q You had no experience in pathology. Correct?

19 A That is correct, I have no experience in pathology.

20 Q And there's no such thing as a left-handed gun or a
21 right-handed gun. Correct?

22 A No, there is not.

23 Q And you had no experience in bullet trajectory either,
24 correct, besides pathology?

25 A I had no experience in pathology. Bullet trajectory, I

1 have some on-the-job knowledge but certainly not extensive
2 knowledge, no.

3 Q How many homicides have you investigated prior to the Kemo
4 DeShawn McCray homicide?

5 A Three.

6 Q Three homicides?

7 A Yes.

8 Q And during those homicides did you ever attend an autopsy?

9 A I did not.

10 Q Did you ever do an analysis of the trajectory of the
11 bullets?

12 A I did not do an analysis.

13 Q In this particular case, did you ever -- does the FBI have
14 programs available for scene reenactments?

15 A Yes, it does, yes.

16 Q And I'm certain that you did one in this case. Correct?

17 A Yes, we did a scene reenactment.

18 Q And was that videotaped or put onto a computer program?

19 A No, it was not.

20 Q Is that contained in your reports?

21 A No, it is -- I do not believe it is.

22 Q Who did the scene reenactment?

23 A We did it with Mr. Young. He reenacted how the scene
24 happened.

25 Q I'm talking about a scientific that scene reenactment using

1 a computer program.

2 A No, I did not do that.

3 Q The only reenactment you did was with Mr. Young. Correct?

4 A Yes, that is correct.

5 Q The FBI has experts in scene analysis. Correct?

6 A Yes.

7 Q Did you bring this case to any of the experts in scene
8 analysis to ask them the logical sequence of what happened in
9 this case and their opinion on it?

10 A I did not bring it -- I brought it to members of our
11 evidence response team who are responsible for responding to
12 crime scenes and handling and processing crime scenes. So I
13 did review it with them and we did reenact it and we certainly
14 discussed it.

15 Q And who are those individuals?

16 A These are individuals on my squad at the time.

17 Q When are those individuals?

18 A I believe Dan Garrabrant who was one of the members of the
19 Emergency Response Team, as well as other investigators on my
20 squad who had homicide knowledge and certainly would have more
21 in-depth understanding of bullet trajectories and crime scenes.

22 Q And they prepared reports for us. Correct?

23 A No, this is -- if I can explain this we're in our squad
24 area, we're reviewing what Mr. Young has said. We're trying to
25 do everything we can to corroborate his information, and we're

1 reviewing this report. And we have many agents trying to
2 reenact this while given the information Mr. Young provided to
3 us with the benefit of this report, and we went through it at
4 length. And it corroborated step-by-step how Mr. Young said it
5 happened, exactly step-by-step matched with how we were able to
6 reenact this.

7 Q Well, Mr. Young originally said that it was the way that
8 Malsey or Jamal McNeil said it happened. Correct?

9 A Yes.

10 Q And Mr. Young originally said that he had witnessed Jamal
11 McNeil do these particular acts. Correct?

12 A Yes. Yes.

13 Q Now you terminated Kemo as an informant and sent a memo to
14 the Director of the FBI. Correct?

15 A Yes, I did.

16 Q And even though you terminated him as an informant, it was
17 still your sworn duty to protect him. Correct?

18 A Yes, it is.

19 Q You gave Kemo the personal cell phone of Special Agent
20 Michael Brokos. Correct?

21 A I -- I gave him his working cell phone. I don't know that
22 I would have given him the personal cell phone.

23 Q And on that recording, if one was to call it, it says:
24 "This is the cell phone of Michael Brokos." Correct?

25 A No, it's his personal cell phone and the message said,

1 "This is Mike. Leave a message."

2 Q "This is Mike, leave a message"?

3 A Yes

4 Q Now, when you went to see William Baskerville after Kemo
5 was shot and killed, you went to see him the next day, correct,
6 on March the 3rd?

7 A That is correct.

8 Q Isn't it a fact that you told William Baskerville and
9 essentially threatened him with the death penalty and life
10 imprisonment?

11 A I told him that the statute of murdering a federal
12 informant is life imprisonment, yes.

13 Q And you also told him that you were going to do everything
14 in your power, correct, to make sure that he's punished for
15 this. Correct?

16 A I did not tell him that I would be punishing him. What I
17 told him initially was, we are going to investigate this
18 homicide to the absolute fullest extent possible, and whoever
19 is responsible for it will face a life imprisonment or possibly
20 death, because it would be a capital murder case punishable by
21 the death penalty. So I informed Mr. Baskerville of this.

22 Q And you said Mr. Baskerville turned white?

23 A Yes, he did.

24 Q The jury has seen a photograph of Mr. Baskerville, correct,
25 in court while it was played on the screen?

1 A Yes.

2 Q And I'm sure you note in the report that Mr. Baskerville
3 turned white?

4 A I may have. I don't know. But I can recall that he turned
5 white. I can look at my reports to see if I have that in there
6 if you would like.

7 Q So he went from brown skin to white skin right in your
8 presence?

9 A Yes, he did.*****

10 Q And you're about as sure about that as about all your
11 testimony in this case. Correct?

12 A I have never seen anything like that in my career. He
13 turned white as a ghost. And I recognize that's an expression,
14 but he literally turned a very pale color, and I could see he
15 was clearly upset.

16 Q And he was white as a ghost to you. Correct? It wasn't
17 just an expression. His skin turned white?

18 A I understand -- now, Mr. Bergrin, I can't tell you he
19 literally turned white. The expression "white as a ghost"; he
20 turned a very pale white, grayish color.

21 Q Now, you felt personally and professionally offended at the
22 fact that Kemo was killed. Correct?

23 A Yes.

24 Q And you took it personally. Correct?

25 A It was personally difficult for me to see -- to learn that

1 he had been killed, yes.

2 Q Now, you could have placed Kemo under arrest on February
3 the 24th when you ascertained that people were watching him.
4 Correct?

5 A That is correct.

6 Q And you made the decision not to place him under arrest.
7 Correct?

8 A I conferred with the Assistant United States Attorney that
9 I was working with at that time, and the decision was made not
10 to do it at that time, although the option still remained
11 available. But that day the decision was made not to place him
12 under arrest.

13 Q So you had him for charges for not only possession of a
14 shotgun as a convicted felon, you had him for drug distribution
15 of heroin, cocaine and crack sales. Correct?

16 A Yes.

17 Q You had him for stealing money from the FBI. Correct?

18 A Yes.

19 Q You had him for false swearing or creating charges against
20 an individual that was innocent. Correct?

21 A That is correct.

22 Q And you made the decision after consulting with the United
23 States Attorney not to charge him. Correct?

24 A That's incorrect.

25 Q Along with the U.S. Attorney; you both decided at that time

1 not to arrest him. Correct?

2 A No, if I said that, I misspoke. That is not correct. We
3 had talked about charging Kemo, and we were not sure what Kemo
4 would be charged with. Ultimately we knew we would charge him.
5 We didn't know what charge he would be charged with. The
6 decision that was made that day was to not arrest him that day.
7 But that doesn't mean that he wouldn't be charged. At some
8 point he would certainly be charged and held accountable for
9 what he had done.

10 Q Now, were any reports prepared or any charging documents
11 prepared by you and held off from arrest?

12 A They were not prepared by me, no.

13 Q Did you ever request that the Assistant U.S. Attorney
14 prepare an arrest complaint or a complaint for the arrest of
15 Kemo?

16 A Yes, and we were in the process of figuring out how to best
17 charge Kemo, what exactly were we going to charge him with.

18 Q And he wasn't put under surveillance. Correct?

19 A No, he was not.

20 Q When you went to John Davis' home on March the 2nd of 2004,
21 you said under your direct examination by Mr. Minish that Mr.
22 Davis blamed you for Kemo's death. Correct?

23 A That is correct.

24 Q As a matter of fact, you were at Mr. Davis' home searching
25 his home. Correct?

1 A Absolutely not. We were not search his home. We were
2 there to tell him -- to talk to him about the fact that his
3 stepson had just been murdered and to explain to the family and
4 his son, his small child at the time, that his father was not
5 going to be coming home. That was the purpose of our visit.

6 Q So you're telling us that agents were not searching his
7 house and that you weren't searching his house?

8 A We were not searching his house.

9 Q And you're about as sure as that as you are about all your
10 testimony in this case?

11 A Yes.

12 Q Did Mr. Davis order you out of his house?

13 A He certainly did, yes.

14 Q Now, Hakeem Curry and William Baskerville you knew were
15 first cousins. Correct?

16 A Yes.

17 Q And you knew that they grew up in the same home and were
18 raised by the same grandmother. Correct?

19 A I -- I believe I had read that. At the time of the
20 investigation I did not know that but I learned that after, of
21 course.

22 Q They weren't partners in the drug trade either. Correct?
23 Isn't that a fact?

24 A Well, if I can explain. My understanding is that William
25 Baskerville worked underneath Hakeem Curry. Hakeem Curry was

1 above Mr. Baskerville in the hierarchy.

2 Q And you're about as sure about that as all your testimony
3 in this case? Correct?

4 A Yes.

5 Q Who was William Baskerville's supplier of drugs?

6 A Mr. Baskerville had several suppliers, one of them being
7 Hakeem Curry, but he also had other suppliers.

8 Q Who was his main supplier?

9 A I understand he had several. I don't know who we could say
10 was his main supplier. I know he had a supplier by the name of
11 Jerome Hardy at one time, I know it was certainly Hakeem Curry
12 at one time, but we had made an strategic decision not to keep
13 investigating the upper echelon of this organization because it
14 would have bled into a DEA investigation. So we -- we stopped
15 at Mr. Baskerville.

16 Q Do you remember testifying that William Baskerville's main
17 supply was Jerome Hardy, an Essex County drug dealer?

18 A I do remember that we had identified Jerome Hardy as being
19 one of Mr. Baskerville's suppliers, yes.

20 Q And as a matter of fact, you said under oath that Hakeem
21 Curry only supplied William Baskerville "from time to time."
22 That means remotely. Correct?

23 A My understanding is that Hakeem Curry supplied William
24 Baskerville, yes, he did. Was he his constant supplier? I
25 don't have that information, but he certainly did supply him,

1 as did others.

2 Q Hakeem Curry supplied William Baskerville, was your exact
3 words under oath in a prior testimony, was "from time to time."
4 Correct?

5 A Yes.

6 Q But the main supplier of William Baskerville was a guy by
7 the name of Jerome Hardy. Right?

8 A He was one of the suppliers. I don't know -- I know him to
9 be one of the suppliers. Mr. Baskerville --

10 Q And you had -- I'm sorry. And you had no evidence
11 whatsoever that Hakeem Curry dealt crack cocaine. Correct?

12 A I had evidence that Hakeem Curry dealt cocaine. I don't
13 think -- I did not have evidence personally that he dealt crack
14 cocaine. I had evidence that he dealt cocaine in kilo forms.

15 Q And William Baskerville was dealing crack cocaine.
16 Correct?

17 A That is correct.

18 Q As a matter of fact, you asked Kemo to speak to William
19 Baskerville about getting heroin. Correct?

20 A Yes, I did.

21 Q And William Baskerville told Kemo that, I'm not going to
22 deal with heroin because I can't make enough money on it and
23 neither can you. Correct? Or words to that effect?

24 A That is what was explained in the one transcript, yes.

25 Q And that's predominantly what William Baskerville's first

1 cousin, Hakeem Curry, dealt. Correct?

2 A I believe Hakeem Curry dealt heroin as well as cocaine.

3 Q But he was a heroin dealer. Correct?

4 A As well as a cocaine dealer.

5 Q And William Baskerville refused to go to him as a source.
6 Correct?

7 A For what?

8 Q For supply -- to supply Kemo with heroin when Kemo asked
9 for it.

10 A He didn't refuse to go. What he said is there's not enough
11 money to be made. By the time you pay me and I have to get it
12 from my connect, we're just not going to make enough money.

13 That's all. He didn't refuse to go.

14 Q But according to your testimony a couple of minutes ago,
15 William Baskerville was underneath Hakeem Curry, a part of his
16 organization.

17 A Yes.

18 Q So you're telling us that William Baskerville couldn't have
19 gone just straight to his leader and say: Give me heroin, I
20 want to give it to Kemo, or to sell it to somebody else?

21 A But he's a middleman, he still needs to make money on it.
22 So I don't know that he's getting -- I don't know what the
23 arrangement was, but he -- I can only repeat what the
24 transcript said, and that's that William Baskerville felt that
25 he would not be making enough money if he were selling heroin.

1 I don't know the arrangement he had with getting
2 heroin from Hakeem Curry.

3 Q Do you know an individual by the name of Abdul Williams?

4 A Yes, I do.

5 Q Also known as "Mutalib."

6 A Yes.

7 Q You had an opportunity to speak to Mutalib, correct, or
8 Abdul Williams?

9 A I have not.

10 Q Members of the FBI did?

11 A Yes, they have.

12 Q Isn't it a fact that he denied doing any business with
13 Hakeem Curry?

14 MR. MINISH: I object to this line of questioning.

15 THE COURT: Sustained.

16 Q From November 26th until November 30th, within the four to
17 five-day window that Anthony Young testified in reference to
18 the meeting with me, you've had a chance, like you said, to
19 review telephone records. Correct?

20 A Yes.

21 Q Isn't it a fact that there is not one telephone call from
22 November 26th of 2003 to November 30th of 2003 between me and
23 Mr. Curry?

24 A I don't recall that. But if I looked at the records I
25 could definitively tell you yes or no.

1 Q Well, you knew that you'd be testifying here today. Did
2 you have a chance to review all the records in this case?

3 A I have reviewed the records. I can't speak to -- I mean,
4 if I look at the records I can certainly tell you whether or
5 not calls were made between November 26th and November 30th.
6 But if you're asking me to -- to say yes or no, I don't feel
7 comfortable with doing that without looking at the records.

8 Q To confirm Anthony Young's reliability, did you look for
9 phone calls between Mr. Curry -- me and Mr. Curry from November
10 26th of 2003 to November 30th of 2003?

11 A I looked for a pattern of phone calls from the day of
12 arrest, November 25th, going forward. And what I can tell you
13 is there is a series of call activity. I can't tell you on
14 what dates they are without seeing the analysis I've done.

15 Q Well --

16 A But there are a significant amount of calls between you and
17 Hakeem Curry. Between those two dates, again, without looking
18 at a report and my analysis, I can't tell you.

19 Q Well, Mr. Young said there was a meeting between me, Mr.
20 Curry as well as others between November 26th and November
21 30th. Correct?

22 A Yes, that's correct.

23 Q Are you telling us that you don't remember if there are any
24 calls between me and Mr. Curry from November 26th to November
25 30th?

1 A Again, without looking at the analysis I've done, I don't
2 recall that. But that would not preclude there being a meeting
3 happening.

4 Q That was Thanksgiving weekend. Correct?

5 A Yes, it was.

6 Q The fourth and the fifth day. The fourth day and the fifth
7 day.

8 Do you have any surveillance from any law enforcement
9 offices whatsoever of me and Hakeem Curry meeting or anybody
10 else in that time period?

11 A No, I do not.

12 Q Do you have any chatter on any telephone calls concerning
13 that meeting from November 26th through November 30th.

14 THE COURT: You can answer it, if you can.

15 THE WITNESS: I don't know if I can answer that.

16 MR. MINISH: Judge, maybe we should be heard.

17 THE COURT: All right. Why don't you rephrase the
18 question. "Chatter" may be --

19 MR. MINISH: I don't think it's the chatter, Judge, I
20 think it's an evidence issue that --

21 THE COURT: Okay. All right. Let's hear you at
22 sidebar.

23 (At the sidebar.)

24 THE COURT: All right.

25 MR. MINISH: Judge, the issue is, what I'm

1 interpreting from what the Agent is doing is that she's been
2 instructed specifically not to discuss anything about the
3 unsealed -- the improperly sealed question -- or recordings on
4 wiretap, and what she's interpreting Mr. Bergrin's question is
5 -- and I think fairly so -- is to ask about that. So she's
6 trying not to cause a mistrial by causing her problems. But
7 he's asking her flat out, are there questions (sic), and I
8 think --

9 THE COURT: Are the telephone calls we're talking
10 about post-November 30th?

11 MR. MINISH: I don't remember the exact dates, Judge.
12 I know there are post-arrest of Mr. Baskerville.

13 THE COURT: Okay.

14 MR. MINISH: Again, I don't have them in front of me.

15 THE COURT: And those were all ones --

16 MR. MINISH: That were improperly sealed.

17 THE COURT: So they're not evidential.

18 MR. MINISH: Yes. And Mr. Bergrin is really making
19 this an issue at this point and I'm not sure how we "unring"
20 this bell.

21 THE COURT: Are there records of phone numbers that
22 reflect Mr. Bergrin's to Mr. Curry?

23 MR. LUSTBERG: Yes.

24 MR. MINISH: Yes.

25 MR. LUSTBERG: These are phone records.

1 THE COURT: If you get into it I'll let you get into
2 that there were records.

3 MR. MINISH: But he's asking specifically about phone
4 calls, chatter. "Chatter" is verbal, that's not phone records.
5 So he's --

6 THE COURT: Why don't ask you -- I thought --

7 MR. BERGRIN: I'll move on, Judge. I have the phone
8 records.

9 THE COURT: I thought that question was asking for
10 whether, were there wiretaps going on at that time, too.

11 MR. MINISH: That's the whole point. It's the
12 wiretaps that were improperly sealed. And that's again, what
13 the Agent is trying to avoid saying --

14 THE COURT: All right.

15 MR. BERGRIN: I'll move on, Judge. I won't ask the
16 question.

17 MR. LUSTBERG: Withdraw the question.

18 MR. BERGRIN: I'll withdraw the question.

19 THE COURT: Okay.

20 MR. MINISH: Thank you.

21 (In open court.)

22 MR. BERGRIN: I'll mark this D-3 for identification.

23 (Counsel confer off the record.)

24 MR. BERGRIN: May I approach the witness, your Honor?

25 THE COURT: The last question is withdrawn?

1 MR. BERGRIN: It's withdrawn, Judge.

2 THE COURT: Okay.

3 BY MR. BERGRIN:

4 Q I'm going to show you what's been marked D-3 for
5 identification.

6 A Okay.

7 Q Are those phone records?

8 A These are phone records, yes, from what appear to be your
9 cell phone from 10/14/2003 to July 3rd, 2004.

10 Q From November 26th -- and Hakeem Curry's number appears on
11 that too. Correct, ma'am?

12 A If you just give me a minute, I'm reviewing it.

13 Yes, it does.

14 Q From November the 26th of 2003 'til December 1st of 2003,
15 within that four or five, even six daytime frame, isn't it a
16 fact that there's not one call between me and Mr. Curry on
17 those phone records?

18 A From November.

19 Q 26th.

20 A -- 26th, yes.

21 Q In 2003.

22 A 'Til October 27th?

23 Q No. November --

24 A I'm sorry.

25 Q November 26th to November 30th, even December 1st of

1 2000 --

2 A I apologize. There's markings on it. I thought that's
3 where you were directing me to.

4 All right. November 25th, okay. And then pick up
5 December 4th?

6 Q I'm asking you a specific question.

7 A Yes.

8 Q Are there any calls between me and Mr. Curry from November
9 26th until even up to December 3rd?

10 A There does not appear to be, no.

11 Q And that's approximately a nine-day period. Correct?

12 A Yes. Again, this is from your cell phone, this is not from
13 your office line though.

14 Q Do you have any knowledge that my office was open
15 Thanksgiving weekend?

16 A I do not.

17 Q You've reviewed my office phone calls, correct, or my phone
18 numbers in my office and records. Correct?

19 A Yes, I have.

20 Q Isn't it a fact that there are no calls from November 26th
21 until returning to work in December?

22 A I can't answer that, again, without seeing the records. I
23 just don't recall.

24 Q And as you sit here today you don't recall any phone calls
25 between those two numbers?

1 A During that period of time?

2 Q Yes.

3 A I can't say whether there were or weren't without looking
4 at the records.

5 Q Now, are you familiar with the area known as Avon Avenue
6 and 17th Street in Newark?

7 A Yes, I am.

8 Q Can you describe that area to us?

9 A It's an intersection in Newark that is where Jamal
10 Baskerville resides.

11 Q What kind of area is it? How would you describe the area?

12 A I would call it a gang and drug area, yes.

13 Q And it's an area that's heavily patrolled, correct, by law
14 enforcement officers, to the best of your knowledge and
15 recollection?

16 A Yes.

17 Q Did you check with any law enforcement officers that do
18 surveillance, that do drive-bys, that patrol that area to see
19 if I was there or they recognized an individual that fit my
20 description between that particular period of November 26th and
21 November 30th of 2003?

22 A I had asked sources whether or not they had seen your
23 vehicle in the area.

24 Q Did you ask any law enforcement sources?

25 A I did not.

1 Q Did you interview anybody in the Baskerville residence,
2 whether it be his wife or anybody else that lived there, to see
3 if I came to that residence between November 26th and November
4 30th?

5 A No, I did not.

6 Q Did you speak to any of his neighbors to see if they could
7 recognize either me or my car at that particular time?

8 A No, I did not.

9 Q Now, on November the 25th there's an allegation that Rakeem
10 Baskerville was in the car with Anthony Young, correct, when I
11 supposedly called Hakeem Curry?

12 A There's an allegation Rakeem was in the car? Yes.

13 Q By Anthony Young. Correct?

14 A Yes.

15 Q Did you look at telephone -- review telephone records for
16 November the 25th of 2003?

17 A Yes, I did.

18 Q And as a matter of fact, you were present at United States
19 vs. Baskerville trial when there were three stipulations
20 admitted: 131, 132, 133 that happened to do with the times,
21 the specific times on November 25th of 2003 of calls that came
22 in to Mr. Curry. Correct?

23 A I'm not familiar with the stipulations, but I can tell you,
24 yes, there were calls. If you want to be more specific I
25 can --

1 Q I'll be more specific, ma'am.

2 Do you have your 302 from January 14th of 2005?

3 A Yes, I do. Give me just one minute, please.

4 (There is a pause for the witness.)

5 A Okay. Yes.

6 Q And on that 302, does it list phone calls and times?

7 A My January 14th, 2005 302 is my Report of Interview with
8 Anthony Young. It does not list calls or times.

9 Q Do you have any 302s -- do you have your 302 of January the
10 18th?

11 A Yes, I do.

12 Q Does that list any calls and times?

13 A No, it does not.

14 MR. BERGRIN: May I have one second, Judge?

15 (There is a pause for Mr. Bergrin.)

16 MR. BERGRIN: I'm sorry, your Honor, the Court's
17 indulgence.

18 May I have two minutes, Judge? I'm sorry.

19 (There is a pause for Mr. Bergrin.)

20 MR. BERGRIN: I'm sorry, your Honor. I apologize.

21 THE COURT: All right.

22 BY MR. BERGRIN:

23 Q I ask you to look at -- do you have a 302 of January 18th
24 for an investigation on January the 14th prepared by Michael
25 Brokos and by yourself, Shawn Manson? I asked you about that.

1 A Yes, for an investigation on January 14th, 2005?

2 Q Yes.

3 A Yes, I do, I have that in front of me.

4 Q And that's your 302 for this particular period. Correct?

5 A That's my 302 -- there's actually two on --

6 MR. MINISH: I'm sorry to interrupt, Judge. If we
7 could just identify it by the number. They're all stamped with
8 a number on the bottom.

9 THE COURT: Okay.

10 MR. BERGRIN: I'm using a personal one, Judge, I don't
11 have the stamped one, I don't have the prosecutor's exhibit
12 number.

13 THE COURT: Is there a date?

14 MR. BERGRIN: It's dated January the 14th of 2005.

15 May I approach the witness, Judge?

16 THE COURT: Yes. All right. Is that the only
17 identifying thing on it?

18 Can I see it for a moment?

19 MR. BERGRIN: Yes.

20 THE COURT: It's a 302 report, the date of the
21 transcription is March 19th, 2005 but it relates to something
22 occurred before.

23 MR. BERGRIN: January 14th, yes.

24 THE COURT: Okay. Is that sufficient for
25 identification purposes, Mr. Minish?

1 MR. MINISH: Perhaps if he just shows it to the
2 witness and, Judge, she can find it in her book. I think
3 there's a problem with the communication.

4 THE COURT: All right.

5 MR. BERGRIN: Thank you.

6 This is the copy that I received, Judge.

7 BY MR. BERGRIN:

8 Q I show you the last page of the date of the transcription
9 is March 19th of 2005, it's a report of January the 18th of
10 2005 for an investigation on January the 14th of 2005.

11 A Okay.

12 Q Was there an analysis done of calls on November 25th of
13 2003?

14 A This is not part of the report you're referencing. I don't
15 know why -- to answer your question, there's an analysis of
16 calls but it is not supposed to be attached to this report.
17 They are two separate documents.

18 Q But the document that I was provided, there's an analysis
19 of calls. Correct?

20 A Yes.

21 Q And those calls pertain to November the 25th of 2005, the
22 date of William Baskerville's arraignment. Correct?

23 A Yes.

24 Q And those -- there's an analysis -- and you've seen that
25 analysis before. Correct?

1 A Yes, I have.

2 Q Isn't it a fact that it shows that a call came in to Hakeem
3 Curry from my cell phone line at 3:59 p.m., 3:59 in the
4 afternoon, on January -- excuse me -- November 25th of 2003,
5 the date of the arraignment?

6 A What it shows is that you placed a call to Curry at 3:59.

7 Q And it was approximately a two-minute conversation.
8 Correct?

9 A I can't say that. I can only tell that at 3:59 you made a
10 call to Curry.

11 Q But there's another call right after that at 4:01.
12 Correct?

13 A Yes, there is.

14 Q And at 4:01 -- which is two minutes later, correct?

15 A Yes.

16 Q -- Hakeem Curry is calling Rakeem Baskerville. Correct?

17 A Yes, that's accurate.

18 Q Did you ever ask Anthony Young based upon this analysis
19 whether Rakeem Baskerville was really inside the vehicle of
20 Hakeem Curry as he alleged after reading and analyzing those
21 records?

22 A Yes.

23 Q And what did he say to you -- excuse me. I'll withdraw
24 that question.

25 There's also two calls in there at 4:17 and 4:18 in

1 the afternoon, correct, on November 25th?

2 A Yes, that is correct.

3 Q And that's also my cell phone calling Mr. Curry?

4 A Yes, that is correct.

5 Q And then I make a phone call at 4:19, correct, to Dedre
6 Baskerville?

7 A Yes.

8 Q So the jury is clear, there's a call to me at -- there's a
9 call wherein I'm calling Hakeem Curry at 3:59. Correct?

10 A Yes.

11 Q And then at 4:10 Hakeem Curry is calling Rakeem
12 Baskerville. Correct?

13 A Yes, that is correct.

14 Q And then I'm calling Hakeem Curry at 4:17 and 4:18.
15 Correct, in the afternoon?

16 A Yes. The reason there's a difference in the time is the
17 4:17 time stamp was taken from Curry's phone records, and then
18 the 4:18 time stamp was taken from your call records.

19 Q So there's one call. Correct?

20 A I believe there to be one call, it's just a difference in
21 the records.

22 Q And then at 4:19, approximately a minute later, I'm calling
23 Dedre Baskerville. Correct?

24 A Yes.

25 Q Thank you very much.

1 MR. BERGRIN: Could I take the record back, Judge?

2 May I approach?

3 THE COURT: Should we mark that document as a
4 Defendant's exhibit?

5 MR. BERGRIN: Please, Judge.

6 THE COURT: Yeah. The document just referred to?

7 MR. BERGRIN: D-4, Judge.

8 THE COURT: Is D-4 for the record.

9 MR. MINISH: Judge, for the record we found that it's
10 J-02938.

11 THE COURT: Okay.

12 Q Now, you testified that you have never taken any courses in
13 homicide investigations. Correct?

14 A That is correct.

15 Q And you've never taken any courses in the collection and
16 examination of homicide scenes, evidence at homicide scenes.
17 Is that correct?

18 A That is correct.

19 Q And you've never taken any courses in the analysis of
20 evidence at a homicide. Is that correct?

21 A That is correct.

22 Q Now, everybody that graduates the Academy of the 16-week
23 course is considered a "Special Agent." Correct?

24 A Yes, that's correct.

25 Q It's not a specialized title. Everybody becomes a Special

1 Agent after 16 weeks of taking the course. Correct?

2 A If you get through Quantico you are then deemed a Special
3 Agent. That's our title.

4 Q And you talked about a reprimand that you received for
5 insubordination and the loss of a week's pay.

6 A Yes.

7 Q Do you remember doing that on direct examination by Mr.
8 Minish?

9 A I do.

10 Q Now, you were instructed not to speak about an
11 investigation with another employee that might be investigated.
12 Correct?

13 A Yes.

14 Q But despite those orders, you went behind the back of the
15 individual that was ordering you and spoke to that individual.
16 Correct?

17 A That's not correct.

18 Q Well, that's the allegation that was made against you, that
19 you violated a direct order and spoke to the person after being
20 told not to speak to them. Correct?

21 A Yes. I had misunderstood the instructions. I was not
22 supposed to speak to the individual, period. I thought I had
23 been instructed not to speak to the individual about the
24 investigation, which I did not do. But I was asked, did I
25 speak to the individual? And I said yes.

1 Q And you still lost a week's pay. Correct?

2 A Yes, I did.

3 Q Now, have you ever had any experience in dealing with shell
4 casings and the forensic examination of shell casings?

5 A No, I have not.

6 Q In this particular case, on March the 2nd of 2004, there
7 were four shell casings collected in the area of South Orange
8 Avenue and 19th Street. Correct?

9 A That is correct, yes.

10 Q Do you know what was done with those shell casings once
11 they were picked up and collected?

12 A They were analyzed.

13 Q What were they analyzed for?

14 A To see how the bullet would have gone through the shell
15 casings, the stria and the markings.

16 Q Do you know if they were ever tested for DNA?

17 A I do not know that.

18 Q From March the 2nd of 2004 until today's date, did you ever
19 ask that they be tested for DNA?

20 A I did not.

21 Q Did you ever ask that they be fingerprinted?

22 A I did not, no.

23 Q Describe the area of South Orange Avenue and 19th Street.

24 A Again, it's a fairly busy intersection. There's a bar on
25 the corner, again, another somewhat -- I would say another drug

1 activity area.

2 Q Now, you took over the investigation from the Newark Police
3 Department and the Essex County Prosecutor's Office. Correct?

4 A We -- yes, we did.

5 Q When did you take it over?

6 A Not until we had indicted William Baskerville for the
7 conspiracy to commit the murder.

8 Q And that was in 2005. Correct?

9 A That was in March of 2005 I believe, yes.

10 Q At any time assisting the prosecutor's office or assisting
11 the Newark Police Department, did you ever go back to the scene
12 known as South Orange Avenue and 19th Street?

13 A Yes, I did.

14 Q And when you went back to the scene, did you ever canvass
15 for potential witnesses?

16 A Yes.

17 Q And who did you speak to?

18 A We attempted to speak to several individuals and did not
19 get any cooperation.

20 Q Who were those individuals?

21 A We went to the bar which was called the Sand Pit where
22 individuals were and we did not get cooperation, we were not
23 getting eyewitnesses.

24 Q Were you able to take down any names of the people that you
25 spoke to?

1 A I did not.

2 Q Did you go to -- there are two three-family residences in
3 that area. Correct?

4 A I don't know. I don't believe there are. I don't know.

5 Q There are buildings --

6 A Yes, I know there are buildings.

7 Q Did you ever go door to door in the buildings to people
8 that had windows facing that particular location?

9 A I did not because I had spoken to Detective Sabur and the
10 Essex County investigators, and they had done a thorough
11 canvass. And I had asked them: Is there videotape evidence?
12 Do you have any videotapes?

13 And they tried to pull videotapes from the local
14 establishments, and that was negative.

15 So after that eventually the scene gets cold and
16 there's not much left for us to do. We did make efforts to do
17 that but we did not make any progress with that.

18 Q You said you made efforts to do that. Did you go to any of
19 the buildings and try to speak to individuals that live in
20 those buildings?

21 A I did not go to the buildings. I went --

22 Q Did you --

23 A -- to the area where the actual homicide happened. But
24 there's a bar right on the corner and we did go to that bar.

25 Q Did you speak to the owner of the bar?

1 A I do not believe I spoke to the owner.

2 Q Did you speak to any of the employees of the bar?

3 A We spoke to -- I believe Detective Sabur had been in
4 contact with the owner and had a rapport with the owner and the
5 employees, so I did not speak to them, but we spoke to
6 individuals who were inside the bar.

7 Q And what are their names?

8 A I don't recall their names.

9 Q What date did you speak to them?

10 A I would say within a week.

11 Q Within a week of what?

12 A Of the murder.

13 Q But you didn't take down any names. Correct? You didn't
14 prepare any reports. Correct?

15 A We were not getting cooperation. We simply were not
16 getting cooperation.

17 Q My question to you, ma'am is: You did not take down any
18 names or you did not prepare any reports. Correct?

19 A I was not able to find any witnesses, so I wouldn't take a
20 name of something that was negative.

21 Q Did you at any time go into any of the stores on South
22 Orange Avenue?

23 A I did not, because I had spoken to Detective Sabur who had
24 done that. He and his team had canvassed the area in great
25 detail, and again, tried to get videotapes and any surveillance

1 equipment. And I had relied on him to do that; him, as well as
2 the folks from Essex County who were investigating this.

3 Q Did you ever check to see what they did and who they spoke
4 to?

5 A I had read their reports, yes.

6 Q And isn't it a fact that their reports say that they
7 canvassed on one day, and that was March the 2nd of 2004?

8 A I believe that's correct. I --

9 Q So what happens if somebody wasn't home or around on March
10 the 2nd of 2004 when they canvassed, you didn't think it would
11 be appropriate or right to go back to the area and go back
12 again and again and again trying to attempt to locate witnesses
13 and to see if anybody potentially saw what occurred?

14 A Absolutely. And it was my understanding that Detective
15 Sabur was doing that. I was in constant contact with him. And
16 this is still their crime scene, this is not our crime scene,
17 this is theirs, and I understood he and his investigators were
18 going out there and doing interviews.

19 Q But you just testified a few minutes ago that Detective
20 Sabur only canvassed on March the 2nd of 2004. Didn't you just
21 tell us that?

22 A I read his reports of his canvass from that day. I --

23 Q And isn't it a fact that his report says specifically that
24 the only day that they canvassed, and the prosecutor's
25 investigator said that they canvassed the area on March the

1 2nd, 2004, and there was no further canvassing done after that
2 according to their reports. Correct?

3 A Without seeing the report I can't say that that's correct.

4 Q Well, you just reviewed the reports before we broke.
5 Correct? I gave you a copy of the report to review.

6 A You did not.

7 Q Did you read the report before you testified today in
8 court?

9 A I have read it, yes. Yes.

10 Q Did you read the report of the homicide section of the
11 Essex County Prosecutor's Office?

12 A Yes, I have read that.

13 Q And who prepared that report?

14 A If I could see it I could tell you. I don't recall.

15 Q You said that you worked with the homicide squad of the
16 prosecutor's office and you also worked with the homicide squad
17 of the Newark Police Department. Correct?

18 A Yes, that is correct.

19 Q Who did you deal with in the Essex County Prosecutor's
20 Office?

21 A Investigator Susan Bzick.

22 Q And did you read her report prior to coming here today?

23 A I have read it, yes.

24 Q And does that report state anything about canvassing the
25 area?

1 A Without seeing it, I don't recall.

2 Q You didn't think it would be your obligation investigating
3 the death of an informant to recanvass the area?

4 A We had gone back to the area, and as I said, we did not get
5 cooperation. And I spoke to Detective Sabur and Investigator
6 Bzick at length about what else we could do to cultivate
7 eyewitnesses, and I did in fact speak to one of their witnesses
8 who had observed -- had observed what had happened at the
9 scene, and I did -- I did interview that individual.

10 Q And who was that?

11 A Stacey Webb Williams.

12 Q And based upon Stacey Webb Williams, do you remember what
13 he said to you?

14 A He said that he had seen a getaway car which appeared to
15 be --

16 Q I'm talking about in reference to witnessing who did the
17 shooting.

18 A He had said, I believe, that -- he did give us a physical
19 description, and I can't recall what it was. But he had given
20 us a physical description of a black male at the scene.

21 Q Do you know if Stacey Williams, Webb Williams, was ever
22 shown any photographs?

23 A I believe he was, yes.

24 Q And are you as sure about that as about all your testimony
25 in this case?

1 A Could you repeat the question?

2 Q Are you about as sure about that, that she was shown
3 photographs as you are about all your testimony in this case?

4 A I believe he was shown photographs by the prosecutor's
5 office. Without seeing the reports I don't want to say
6 definitively that he was.

7 Q After reading Stacey Webb Williams's statement, did you
8 ever ask that Stacey Webb Williams be shown any photographs?

9 A Yes, I believe I did. Yes.

10 Q And is that contained in your report?

11 A I -- I don't know if it's in my report or not.

12 Q I ask you to look at your report.

13 A I don't have that report in front of me.

14 MR. BERGRIN: May I have one second, your Honor?

15 THE COURT: Sure.

16 Q Now, when was Stacey Webb Williams talked to?

17 A Again, without having the report to refresh my memory, I do
18 not know.

19 Q You're investigating a homicide. Correct?

20 A Yes.

21 Q And you're assisting the prosecutor's office and Newark
22 Police Department. Correct?

23 A Yes.

24 Q Isn't it a fact that Stacey Webb Williams said that he may
25 be able to identify the shooter in the case?

1 A Yes.

2 Q And as you sit here today, isn't it a fact that you can't
3 tell us whether Stacey Webb Williams was shown any photographs?

4 A I believe he was shown a photograph but I can't tell you
5 conclusively without seeing a report from the investigator's
6 office.

7 Q And would there be a report prepared for Stacey Williams in
8 reference to Stacey Williams seeing any photographic arrays?

9 A By the prosecutor's office?

10 Q Yes.

11 A I can't answer to how they operate. I would imagine they
12 would have done a report, but I can't answer.

13 Q Isn't it a fact that there was no photograph shown at all
14 to Stacey Webb Williams of either Anthony Young, Jamal McNeil,
15 Malik Lattimore or anybody else?

16 MR. MINISH: Judge, I would object to this question.
17 It's been answered again and again.

18 THE COURT: I'll allow it.

19 Go ahead, one last time.

20 MR. BERGRIN: Thank you.

21 THE COURT: Do you know if that happened?

22 THE WITNESS: I do not know, but if you have the
23 reports I will certainly look at them to help better answer
24 that question.

25 MR. BERGRIN: Your Honor, I have a group of reports.

1 I'm just trying to organ them, Judge. I just received
2 them.

3 THE COURT: We're not going through each one of these
4 right now.

5 Is the Government aware of any report that shows that
6 there was a photograph shown?

7 MR. MINISH: Personally, Judge, I'm not sure. I'm
8 looking through it myself.

9 THE COURT: All right.

10 MR. MINISH: I -- all right.

11 THE COURT: What's your next question, Mr. Bergrin?
12 What are you doing?

13 MR. BERGRIN: I'll have this marked as D-5 for
14 identification.

15 THE COURT: What is "this"?

16 MR. BERGRIN: These are the reports of Detective
17 Sabur.

18 THE COURT: Is that all of them right there?

19 MR. BERGRIN: Yes, four pages in all, Judge.

20 THE COURT: All right.

21 MR. BERGRIN: I'll have D-6 marked, Judge, Stacey
22 Webb's --

23 THE COURT: What is D-6?

24 MR. BERGRIN: Stacey Webb's statement dated March the
25 4th of 2004.

1 THE COURT: Stacey?

2 MR. BERGRIN: Stacey Webb, Williams.

3 THE COURT: All right.

4 BY MR. BERGRIN:

5 Q I show you first what has been marked D-6 for
6 identification.

7 MR. BERGRIN: May I approach, your Honor?

8 THE COURT: Yes.

9 Q Is that the statement of Stacey Webb Williams dated March
10 the 4th of 2004?

11 A Yes, it is.

12 Q Is there any indication whatsoever in that report that
13 photographs were ever shown to Mr. Williams?

14 A If you just give me a minute to look through this.

15 MR. MINISH: Judge, if I could be heard briefly I
16 think we might be able to resolve it.

17 THE COURT: We're almost there.

18 Is there anything in that report that shows the
19 photograph was shown?

20 THE WITNESS: This does not indicate that a photo was
21 shown at this time.

22 Q And you have no other evidence to offer us that any other
23 statements were taken from Stacey Webb Williams. Correct?

24 A I took a statement from Stacey Webb Williams subsequent to
25 March 2nd.

1 Q And you testified that you didn't show Mr. Williams any
2 photographs. Correct?

3 A I don't believe I testified to that. I may have shown him
4 photographs. I don't recall, again, without seeing my reports.

5 I recall speaking to him and he felt that he might be
6 able to identify the individual, he wasn't certain that he
7 could. At that stage I cannot recall if I went back and showed
8 him photographs. I was more concerned with the vehicle that he
9 identified because he had a very clear memory of a silver
10 Grand Am leaving the crime scene.

11 Q And my question to you, and the bottom line and the last
12 question I'll ask about Mr. Williams is: Looking at your
13 reports, do you have any reports to reflect that Stacey Webb
14 Williams was shown any photographs?

15 A I interviewed Stacey Webb Williams so I will have a report.
16 I do not have it in front of me. In that report it will state
17 whether or not I had shown him photographs. Without having the
18 benefit of my report in front of me, I cannot answer that.

19 Q Does the U.S. Attorney, the prosecutor have a copy of your
20 report?

21 MR. MINISH: Judge, everyone has a copy of the report.
22 If Mr. Bergrin has a question about it he should show it to
23 her.

24 MR. BERGRIN: Judge, I think that --

25 THE COURT: Just a moment.

1 I assume all of your 302 reports involving this whole
2 investigation the U.S. Attorney has. Correct?

3 THE WITNESS: Yes.

4 THE COURT: Mr. Bergrin.

5 BY MR. BERGRIN:

6 Q Now, did you ever do a GPS analysis?

7 What is a GPS analysis? What is a GPS on a telephone?

8 A If I'm understanding your question correctly, a GPS
9 analysis would enable us to see where -- what tower that cell
10 phone hit during a certain particular call.

11 Q And that would tell essentially where the person was or the
12 location of that person at the time they either made a call or
13 a call came in. Correct?

14 A Yes.

15 Q On my phone you had my telephone records. Correct?

16 A Yes.

17 Q For the period of November 25th to November 30th whether
18 this meeting was supposed to have occurred in Newark. Correct?

19 A Yes.

20 Q Did you ever do a GPS or a cell tower analysis to determine
21 if I was ever in Newark during the Thanksgiving weekend during
22 this alleged meeting?

23 A I attempted to but was told that the records were too old
24 to be able to do the cell phone analysis or the GPS analysis.

25 Q Well, when did you request them?

1 A I recall that I requested them most likely a year after the
2 fact and --

3 Q And you're telling us a year after the fact there were no
4 GPS cell records?

5 A Yes.

6 Q Did you ever do an EZ Pass analysis to see whether I
7 traveled to Newark during the Thanksgiving weekend whether this
8 alleged meeting occurred?

9 A I did not -- I do have your EZ Pass records. I did not do
10 and analysis because you were frequently in Newark and
11 sometimes residing in Newark. So for you to travel up and
12 down, let's say, the Garden State Parkway would not have led me
13 to any conclusion.

14 Q You said I was residing in Newark?

15 A I believe at times you were staying in Newark as well as
16 staying in other locations.

17 Q Where was I staying in Newark?

18 A I believe -- it is my understanding that you were staying
19 with your girlfriend at the time in Belleville.

20 Q Belleville is not Newark. Correct?

21 A I apologize. I misspoke. I meant Essex County.

22 Q And you said I was residing and staying with my girlfriend
23 in Belleville also?

24 A That is one of the possibilities, yes.

25 Q I'm not asking about possibilities. Do you have evidence

1 or any proof that I ever stayed in Belleville even one day of
2 my life?

3 A Yes, I do.

4 Q You have records to show that I stayed in Belleville?

5 A I have information that you stayed in Belleville, yes.

6 Q From November the 25th to November 30th, are there any EZ
7 Pass records that I traveled to Newark or was in the Newark
8 area making any phone calls or receiving any phone calls?

9 A I would have to go back and look at the records, but
10 without doing that I don't know. But I --

11 Q Do you recall --

12 A Yes.

13 Q Do you recall from November 25th to November 30th, November
14 26th to November 30th where this meeting occurred, do you
15 recall as you sit there today, knowing that you were going to
16 testify today in this particular case, ever seeing any cell
17 phone calls to my phone call, to my phone or me making a call
18 during this four or five-day period from a Newark cell tower or
19 cell tower within Newark?

20 A Well, again, I'd have to see -- I looked at the records, I
21 did not see a call. But I did not have the cell site data.
22 And if I could just clarify: Your EZ Pass records we could not
23 get going back that far.

24 Q But my cell phone tower records, you did not see any calls
25 coming to my phone or me making any phone calls during this

1 Thanksgiving day weekend period. Correct?

2 MR. MINISH: Judge, I object. That's not what the
3 witness testified to. He's mischaracterizing it.

4 THE COURT: Rephrase the question, Mr. Bergrin.

5 Q You had my cell phone records. Correct?

6 A Yes, we do have your cell phone records.

7 Q And you did a GPS analysis of the cell towers, correct, of
8 any phone calls that came in to my cell phone or any calls that
9 went out. Correct?

10 A I had attempted to do a GPS analysis but I was not able to
11 get the cell site data because I had been told that data was
12 too old. All I have are your cell phone records to see call
13 activity. I cannot tell you what tower it bounced off of; nor
14 can I tell from your EZ Pass records because I was not able to
15 get them going back that far.

16 Q So as you sit here today you have no evidence to offer this
17 Court in reference to either my cell phone records and the GPS
18 of my cell phone records, or the EZ Pass. Correct?

19 A I do not have EZ Pass. I have your is cell phone records
20 with your call activity, yes, I do have that.

21 Q But you have no GPS locations. Correct?

22 A That is correct, yes.

23 Q Now, you were told and you received information of who
24 allegedly was at this meeting four or five days later.
25 Correct?

1 A Yes.

2 Q And you were given several different versions as to who was
3 present. Correct?

4 A Yes.

5 Q Now, did you ever speak to any of the individuals that were
6 allegedly present to confirm whether I was there?

7 A I can -- should I address it one-by-one with the
8 individuals --

9 Q Let's start with individuals that have never been charged
10 from November 25th until today with any criminal offenses.

11 A Okay.

12 Q That are free. Jamal Baskerville. Did you ask Jamal
13 Baskerville if I was ever at any meeting, or he ever even met
14 me in his life?

15 A I did not speak to Jamal Baskerville.

16 Q Jamal McNeil also known as Malsey?

17 A He -- it was not done by myself, but a fellow agent did
18 talk to Jamal McNeil after he had been arrested on narcotics
19 violations and attempted to solicit his cooperation, and he did
20 not cooperate.

21 Q Did you ever show anybody in the area of where these
22 alleged meetings occurred or this alleged meeting occurred four
23 or five days later a photograph of me or of my vehicle?

24 A I did not because I already had sources telling me that
25 they knew the vehicle you were driving and they knew -- the

1 sources I was speaking to were aware of who you were. There
2 was no need to show a photograph. Now --

3 Q Anybody at this meeting, Hakeem Curry, William Baskerville?
4 When you arrested William Baskerville -- excuse me -- when you
5 went back to speak to William Baskerville on March the 3rd and
6 then March 9th again, did you ask him if I was at the meeting?

7 A I could not question William Baskerville, he was in
8 custody.

9 Q So Jamal Baskerville, Jamal McNeil were never questioned in
10 reference to me being at that meeting and giving you any
11 information whatsoever about that meeting?

12 A I never spoke to Jamal Baskerville. And again, with Jamal
13 McNeil, he was arrested on narcotics violations and agents
14 attempted to talk to him to learn more information about the
15 evidence that led to you, and he declined to cooperate.

16 Q And he's out free now. Correct?

17 A I do not believe he is.

18 Q You do not believe he is? And you're sure about that as
19 you are about all your testimony in this case?

20 A I will not say that. It's my understanding that he was
21 convicted at a trial for a narcotics violation.

22 Q And when was that?

23 A I believe last year.

24 Q And where was that?

25 A In Union County.

1 Q And did you check the records to see where he is now, any
2 kind of prison records or jail records or even court records?

3 A I have not. It could have -- it may have even been Essex
4 County, but I believe Essex or Union County he went to. He was
5 convicted I believe of narcotics, and after a jury trial, and
6 has been sentenced.

7 Q And what was he sentenced to? Where was his sentence?

8 A That's what -- I apologize, I just don't know. It would be
9 easy enough to find out, but it is my understanding that he's
10 incarcerated.

11 Q And you don't know where he's incarcerated, you don't know
12 what sentence he received. Correct?

13 A That is correct.

14 Q But you're positive that he was convicted?

15 MR. MINISH: Judge, he's mischaracterizing the
16 witness' testimony.

17 THE COURT: Okay, no --

18 MR. MINISH: She never said she's positive. She said
19 "I think."

20 THE COURT: Sustained.

21 Go ahead.

22 Q You think he's convicted?

23 A That is the information I received from another
24 investigator, yes.

25 Q But you never confirmed that information. Correct?

1 A I personally did not confirm it.

2 Q Did you try to speak to him at the institution where he's
3 at?

4 A I did not because I had been told that he refused to
5 cooperate, so that I did not go back and try and solicit his
6 cooperation.

7 Q He refused to cooperate at one time. Did you ever go back
8 to him, is my question, and attempt to question him?

9 A I did not, no.

10 Q Did you ever interview Rasheeda Tarver?

11 A Yes, I did.

12 Q When did you interview her?

13 A Shortly after we began talking to Anthony Young. But the
14 dates I specifically can't tell you, again, without my reports.
15 But I did speak to her.

16 Q Did you ever ask her about whether Anthony Young threatened
17 her with a gun?

18 A I don't know that I asked her that. I know he had been
19 charged with that. I don't know that I asked her that.

20 Q Didn't you think it was important to find out the
21 background of your informant?

22 A Well, I had talked to her about the fact that he tried to
23 set her house on fire, so it's not as if I didn't try and
24 solicit that information. But about him pointing a gun at her?
25 I do not recall that.

1 Q But he was charged with that. Correct?

2 A I believe he was charged with terroristic threats.

3 Q With a gun. Correct?

4 A Yeah, I -- I don't want to say definitively. I do believe
5 that is correct, yes.

6 Q Against Rasheeda Tarver. Correct?

7 A Yes.

8 Q And you also know that according to Rasheeda Tarver he had
9 burned or "arsoned" her house down. Correct?

10 A I believe he tried to set her house on fire, yes.

11 Q And you heard Anthony Young testify under oath and swear
12 that he never burnt down or attempted to arson Rasheeda
13 Tarver's house. Correct?

14 MR. MINISH: Objection, Judge. She's not testified to
15 that and in fact it's not true.

16 THE COURT: She hasn't testified to that. Rephrase
17 the question. Sustained.

18 Q Did you ask Anthony Young whether he ever burned down or
19 attempted to burn down Rasheeda Tarver's house?

20 A Yes.

21 Q And how did he respond to you?

22 A He denied, he denied doing that.

23 Q Did you ask Anthony Young whether he ever threatened
24 Rasheeda Tarver with a gun?

25 A I asked him if he had threaten her. Again, I can't recall

1 with a gun or not, but he admitted that he had threatened her.

2 Q Did you know why he denied it in court before a jury such
3 as this?

4 MR. MINISH: Judge, objection. Again, I'm not sure
5 why this would be proper examination.

6 THE COURT: Sustained.

7 MR. MINISH: Mr. Young is going to testify.

8 Q Did you ever review the transcript of Anthony Young's
9 testimony to see whether he was a truthful cooperator?

10 THE COURT: What transcript? Where?

11 MR. BERGRIN: I'm sorry, Judge.

12 Q The transcript of Anthony Young's testimony in United
13 States vs. William Baskerville.

14 A I did not review his testimony.

15 Q Did you ever speak to the prosecution in reference to
16 whether Anthony Young may have committed perjury or not told
17 the truth in the United States vs. Baskerville trial?

18 A I did not.

19 Q Did you ever subpoena the terroristic threat reports and
20 statements of Anthony Young and Rasheeda Tarver?

21 A Yes, I did.

22 Q And you had evidence in your possession, sworn statements
23 that Anthony Young had threatened Rasheeda Tarver with a gun.
24 Correct?

25 A I had what she had reported. There was no disposition. It

1 was a domestic violence charge and it was a "he said; she
2 said." So I don't know that there was any disposition for the
3 investigation, but I had the initial complaint lodged by
4 Rasheeda Tarver.

5 Q And it reflected what I just told you, correct, or asked
6 you?

7 A Without reviewing it, again I don't want to confirm that,
8 but I can say that the report was that he had threatened her
9 and that he had tried to set her house on fire.

10 Q Did you review any of the arson reports on the house fire?

11 A I did not.

12 Q Did you ever subpoena them?

13 A I did not.

14 Q One of the bases or motivations for Anthony Young
15 supposedly coming to the FBI in January -- or contacting the
16 FBI on January the 14th, 2005 was that he said he was in fear.
17 Correct?

18 A Yes, he was.

19 Q Did you ever -- and he said he was asking for protection
20 for him and Rasheeda Tarver. Correct?

21 A Yes.

22 Q Did you ever ask Rasheeda Tarver when you interviewed her
23 whether she was in fear for her life?

24 A I did not interview her immediately. I interviewed her
25 somewhat after the fact, and she explained that Anthony Young

1 had told her what he had done to make him in fear of his life
2 and she was aware of it.

3 Q Was Rasheeda Tarver ever in fear of her life?

4 A I don't believe she was.

5 Q As a matter of fact, is all this contained in a 302 by you?

6 A It should be, yes.

7 Q The fact that you reviewed the assault and terroristic
8 threat charges of Anthony Young and Rasheeda Tarver?

9 A No. What would be contained in my 302 is my meeting with
10 Rasheeda Tarver.

11 Q When was the last time you reviewed the reports of Rasheeda
12 Tarver?

13 A I haven't seen them for some time. I can tell you we
14 specifically interviewed her relative to her role in driving
15 Anthony Young and Rakeem Baskerville to the -- to the garage
16 where they melted down the gun. That was my primary -- my main
17 reason in speaking to Rasheeda Tarver, and I believe I did a
18 report about that.

19 Q And did your report reflect everything that you talked
20 about with Rasheeda Tarver?

21 A Yes, I would imagine it did. I don't have it in front of
22 me. But again, my main purpose in interviewing Rasheeda Tarver
23 was to see that -- to have her corroborate the fact that she
24 drove Anthony Young and Rakeem Baskerville to the garage to
25 have the gun melted down.

1 Q How many times have you spoken to Rasheeda Tarver?

2 A I would say probably two or three times.

3 Q And does your report reflect that you spoke to her two or
4 three times?

5 A Yes.

6 Q And you're about as sure about that as about all your
7 testimony in this case?

8 A Again, without having the reports in front of me I do not
9 want to confirm that. But I believe I spoke to her at least
10 two times, and I believe I have reports for both of those
11 events.

12 Q And you knew that you would be testifying in this case.
13 Correct?

14 A Yes.

15 Q And you knew that you'd be testifying about Anthony Young
16 and everything that you did in this case. Correct?

17 A That is correct.

18 Q Are you telling us that you didn't review those reports
19 before coming to the stand today?

20 A I did not specifically review my reports relating to
21 Rasheeda Tarver, but again, I can tell you I have a very clear
22 memory of the purpose of the interview and what she said during
23 the interview.

24 Q Did you ever interview an attorney by the name of Paul
25 Feinberg?

1 A I do not believe so no.

2 Q Did you ever interview an attorney by the name of Melinda
3 Hawkins Taylor?

4 A I would not have interviewed her, but she was certainly
5 present with Anthony Young when she represented him. But I did
6 not interview her.

7 Q While you were present during the interview of Anthony
8 Young, I'm sure you've heard Melinda Hawkins tell him to tell
9 the truth. Correct?

10 A Yes.

11 Q And how many times did you hear Melinda Hawkins tell him to
12 tell the truth? At least five or six times. Correct?

13 A I can't recall.

14 Q Multiple times. Correct?

15 A Again, I can't recall. I know she told him to tell the
16 truth. If it was two times, five times, I can't recall, but I
17 know she did instruct him to tell the truth certainly.

18 Q But you know it was more than once. Correct?

19 A Again, I don't recall. I know she told him to tell the
20 truth.

21 THE COURT: Mr. Bergrin, we're going to take a break
22 for the afternoon.

23 Ladies and gentlemen, we'll take a break. We'll see
24 you in a little bit, probably about 15 minutes. Okay? Please
25 don't discuss anything about the case and we'll see you back

1 Thank you.

2 Mr. Bergrin, proceed.

3 MR. BERGRIN: Thank you, your Honor. Thank you very
4 much.

5 CROSS-EXAMINATION CONTINUES

6 BY MR. BERGRIN:

7 Q You testified on direct examination yesterday that Johnny
8 Davis was unable to identify the person that murdered his son,
9 Kemo DeShawn McCray. Correct?

10 A Yes.

11 Q Was that your testimony yesterday?

12 A Yes.

13 Q Now, you were familiar with the fact that Mr. Davis gave a
14 statement on March the 2nd of 2004. Correct?

15 A Yes.

16 Q And in that statement he gave a description of the person
17 that shot and killed his son. Correct?

18 A Yes, he did.

19 Q And that description was pretty meticulous, wasn't it?

20 A I believe he was able to give height, weight, complexion,
21 hair style.

22 Q And the hair style was not a bald male. Correct?

23 A That is correct.

24 Q And through your investigation and through speaking to
25 Anthony Young, you knew that Anthony Young was bald on March

1 the 2nd of 2004 when Kemo was shot. Correct?

2 A Yes, that is correct.

3 Q Johnny Davis said that the person that shot and killed his
4 son had dreadlocks down to his shoulders. Correct?

5 A Yes.

6 Q As a matter of fact, based on that description --

7 MR. MINISH: I object to this line of questioning. He
8 can't just read in Johnny Davis' statement.

9 MR. BERGRIN: I don't want to do that, your Honor.
10 This goes to identification.

11 THE COURT: That's all right, I'll allow it.

12 MR. BERGRIN: Thank you. Thank you very much, Judge.

13 Q Based on that identification and description given by
14 Johnny Davis -- and as a matter of fact, he gave it within
15 hours of the shooting. Correct?

16 A Yes, he did.

17 Q Based upon that there was a photograph or a name given to
18 the Newark Police Department. Correct?

19 A Yes, that's correct.

20 Q And that name was William Malik Lattimore. Correct?

21 A Yes.

22 Q And the photographic array was assembled based upon that.
23 Correct?

24 A That is correct.

25 Q And on or about July the 23rd of 2004, six photographs were

1 prepared into an array, correct, for showing to Johnny Davis?

2 MR. MINISH: Again, Judge, this witness didn't do
3 that. The witness who did do that will be testifying.

4 THE COURT: Well, she could answer it.

5 Go ahead. If she -- you know, go ahead.

6 Q You knew about the photographic array that was shown to Mr.
7 Davis as the Lead Agent in this case. Correct?

8 A Yes, I did. Yes.

9 Q And you knew that it was shown on July the 23rd of 2004?
10 As a matter of fact, you testified that he didn't make an
11 identification when Mr. Minish asked you the question.
12 Correct, ma'am?

13 A Yes. I just don't want to testify to that date without
14 seeing the report. If you have the report I can give you the
15 date. But I do recall that he was not able to make an
16 identification. I clearly recall that. I just don't recall
17 the date of the interview.

18 MR. BERGRIN: May I approach the witness, please, your
19 Honor?

20 THE COURT: Yes.

21 MR. BERGRIN: Thank you very much.

22 Q I'm showing you what's been marked D-7 for identification.

23 A Thank you.

24 Q Please look at that, ma'am.

25 A Okay.

1 Q What is that?

2 A This is a statement taken, a voluntary statement of Johnny
3 Lee Davis dated July 23rd, 2004.

4 Q Is that the date that the photographic array was shown to
5 Mr. Davis?

6 A Just give me a moment, I'm reading through it.

7 (After pause) This references the fact that he looked
8 at photographs at police headquarters of possible suspects in
9 that case.

10 Yes, on July 23rd, he had the opportunity to view six
11 black males in color photographs. So, yes, that is correct.

12 Q And none of those black males were bald. Correct?

13 A No, they were not.

14 Q They all had dreadlocks down to their shoulders. Correct,
15 ma'am?

16 A That is correct.

17 Q And you testified before this jury that Johnny Davis was
18 unable to make an identification. Wasn't that your testimony?

19 A Yes.

20 Q Looking at the statement that Mr. Davis gave on July 23rd
21 of 2003 -- 2004, excuse me -- isn't it a fact that Johnny Davis
22 said -- picked out a photograph of Malik Lattimore?

23 THE COURT: Rephrase that question because -- go
24 ahead, Mr. Bergrin.

25 Q Johnny Davis had the opportunity to review six photographs

1 of black males with shoulder-length dreadlocks. Correct?

2 A Yes.

3 Q He picked out Photograph Number 5, correct, or Position
4 Number 5?

5 A I don't see that in this report. It says that he had the
6 opportunity to view six black males in color photographs.

7 Q Let me show you what's attached to that particular report.

8 Excuse me.

9 A Okay, yes.

10 So he did identify Photograph Number 5 as being the
11 person he believes -- this was not what we would consider a
12 positive identification, but he picked out a photograph of
13 somebody he believes resembled the shooter based on hair and
14 complexion.

15 Q And face. Correct?

16 A It does not say anything about face. It says about hair
17 and complexion as the person who shot Kemo. I don't see
18 anything about face.

19 I believe it's based on the hair and the complexion.

20 Q Was he asked any questions pertaining to the photographs
21 and the identification?

22 A He was asked if he was -- per the report you had just shown
23 me, he was asked if he had the opportunity to view the
24 photographs, and he acknowledged that he did.

25 Q Isn't it a fact that Johnny Davis was asked the question:

1 "Mr. Davis, are you sure? Mr. Davis, are you sure" -- on page
2 two, July 23, 2004 -- "that the black male you choose in
3 Photograph Number 5 resembles the same black male that you
4 observed shoot and kill Kemo DeShawn Reed McCray?"

5 And didn't he respond "Yes"?

6 A Yes, that's absolutely true. The person resembled the
7 shooter. He did not identify the shooter, he resembled a
8 person -- he identified a person who resembled the shooter, and
9 that he was sure of.

10 Q The person that typed this statement, did you speak to him
11 or interview him, that person that had shown Mr. McCray the
12 photograph of the identification, Detective Keith Sheppard of
13 the Newark Police Department?

14 A I did not speak to Keith Sheppard, no.

15 Q Did you ever show Mr. Davis any follow-up photographs?

16 A No, I did not. I never showed Mr. Davis any photographs.

17 This was not done by me, this was done by the Essex
18 County Prosecutor's Office.

19 Q When the FBI took over the investigation, did you ever
20 follow up the identification of Johnny Davis with any
21 additional photographs?

22 A I -- I do not recall that we showed him photographs.

23 Q Well, wouldn't that be a very important part? You have an
24 individual, as you know, based upon your investigation in this
25 case, that's within a foot, correct, of the person --

1 A Yes.

2 Q -- that did the shooting of the son. Correct?

3 A Yes.

4 Q As a matter of fact, he was so close he could feel the
5 powder burning on his skin. Correct?

6 A Yes.

7 Q Did you ever ask Mr. Davis what he meant by that the word
8 "resemble"?

9 A I did not ask him that, no.

10 Q Mr. Davis made some handwritten statement on the
11 photographic identification form. Correct?

12 A Yes, he did.

13 THE COURT: Could we have that form marked as --

14 MR. BERGRIN: Should I include it just as part of that
15 particular exhibit, your Honor, because it's all the July
16 23rd --

17 THE COURT: D-7? It's all part of D-7?

18 MR. BERGRIN: Yes, sir.

19 THE COURT: And this part has to do with the
20 photographic identification?

21 MR. BERGRIN: Yes, sir.

22 THE COURT: Is that it for the record?

23 MR. BERGRIN: Yes, sir.

24 THE COURT: All right. It's D-7, part of D-7.

25 MR. BERGRIN: May I approach the witness, sir?

1 THE COURT: Yes, sir.

2 MR. BERGRIN: Thank you, sir.

3 Q Ma'am, Have you had an opportunity to review D-7?

4 A Yes.

5 Q And isn't it a fact that Johnny Davis' own handwriting
6 wrote that he believes that the person that he picked out in
7 Photograph Number 5 shot his son Kemo?

8 A I believe --

9 Q "I believe shot ex-son Kemo." Isn't that what Johnny Davis
10 wrote?

11 A If I can read that again?

12 Q Yes, ma'am, absolutely. Thank you.

13 THE COURT: Question is: Is that what he wrote? Is
14 that his writing or is that what he wrote?

15 THE WITNESS: I'm assuming this is his writing. He's
16 signing it. I wasn't present for this. But --

17 MR. MINISH: Again, Judge, I don't know if this is the
18 appropriate witness. Mr. Davis is going to testify. He can be
19 asked the question.

20 THE COURT: All right. Enough.

21 Go ahead.

22 Q Isn't that what he wrote?

23 A He believed --

24 THE COURT: She doesn't if that's his signature or
25 that's what he wrote, his handwriting. So, Mr. Bergrin, go

1 ahead.

2 Q Is the form signed by Mr. Davis -- by an individual by the
3 name of Johnny Davis?

4 A Yes, it is.

5 Q On July 23rd?

6 THE COURT: 2004?

7 MR. BERGRIN: 2004. Yes, sir.

8 A Just give me a minute.

9 There's a time but there is no date.

10 Q Do you remember in his sworn statement Mr. Davis was asked:
11 "How can you tell us why you chose this Photograph Number 5?"

12 And, in fact, Mr. Davis responded: Because his hair
13 resembles and his face and his complexion resembles the same
14 that I saw shoot and kill Kemo?

15 A Yes. Again, he is able to identify an individual who
16 resembles the shooter. I do not believe he positively
17 identifies the shooter.

18 Q And you never followed up to ask Mr. Davis what he meant by
19 "resembles". Correct?

20 A I understood "resembled" to mean that it "looked like."
21 Exactly what "resembles" is. It looked like. It's not in fact
22 the shooter but its somebody that looks like the shooter from
23 the complexion and also from the hair style.

24 Q But Mr. Davis, in reference to that particular issue in
25 question, was asked a follow-up question, if she's sure that

1 this is the person that resembles the male that he observed
2 shoot Kemo. And he said "yes." Correct?

3 A In you can show me that. I don't want to say "correct"
4 without having seen it.

5 Q I'm asking to you look at this statement of July 23rd of
6 2004 of Johnny Lee Davis, page 2, the fourth question down,
7 please.

8 A (Reading) Mr. Davis, are you sure that the black male you
9 chose in Photograph Number 5 does resemble the same black male
10 that you observed kill Kemo DeShawn Reed?"

11 And the answer is "yes." So he's confirming the
12 photograph he identified resembles the individual he believes
13 shot Kemo.

14 Q And you didn't ask him -- you didn't think it was important
15 as the Lead Case Agent trying to make an identification of the
16 right shooter in this case what he meant by "resemble"?

17 A I understood -- I did not ask for clarification because I
18 understood "resemble" to mean "looked like." So I -- I
19 believed I understood what that meant so I did not feel that I
20 needed clarification.

21 Q Did you ever show Johnny Davis a photograph of Anthony
22 Young?

23 A I do not believe I did.

24 Q And, to the best of your knowledge and recollection, did
25 anybody ever show Johnny Davis a photograph of Anthony Young?

1 A I believe your investigators have.

2 Q Now, have you ever asked Johnny Davis if the shooter had a
3 New York Yankee hat?

4 A Did I ever ask Johnny Davis?

5 Q Yes. Did you ever ask him as the lead investigator in this
6 case.

7 A No, I did not.

8 Q To the best of your knowledge and recollection, did you
9 ever ask Johnny Davis if the shooter had a blue fleece shirt on
10 or jacket?

11 A I believe I asked Johnny Davis what he was wearing, yes.

12 Q Now, Johnny Davis was an eyewitness and right next to Kemo.
13 Correct?

14 A Yes.

15 Q And you had information from Anthony Young that he was
16 wearing a New York Yankee hat, correct, with the "NY" label in
17 the front?

18 A Yes. But we're talking about two different times. This
19 statement was taken the day of the murder. So the day of the
20 murder we wouldn't have been able to ask information that we
21 had later received from Anthony Young.

22 Q I understand that, ma'am. But you knew where Johnny Davis
23 lived. Correct?

24 A Yes, I did.

25 Q You knew how to reach Johnny Davis. Correct?

1 A I -- yes. At the time Mr. Davis was not speaking to me.

2 Q But since that time -- and when was that?

3 A That was after the homicide, he would not speak to me.

4 Q But in January of 2005 did you ever contact him when
5 Anthony Young came in?

6 A I did not, he would not speak to me.

7 Q Since January of 2005 he is speaking to you. Correct?

8 A Yes, he is. As of recently, he is speaking to me.

9 Q And you know where to reach him. Correct?

10 A Yes, I do.

11 Q And you know how to talk to him. Correct?

12 A Yes, I do.

13 Q And you have never shown him a photograph of Anthony Young.
14 Correct?

15 A I don't know.

16 I'm not trying to be evasive, but what happened, if I
17 can explain, is as we were developing a lot of this information
18 I was on maternity leave and another investigator picked up the
19 case, so I don't want to speak to what another investigator
20 did. I can tell you, I did not show him a photograph of
21 Anthony Young recently.

22 Q You were the lead investigator in this case. Correct?

23 A That is correct.

24 Q And when you came back from maternity leave you had a
25 chance to review the case file, I'm sure, to bring yourself

1 up-to-date. Correct?

2 A Well, Mr. Davis testified at the trial of Mr. Baskerville
3 so I know he had met with the agents. I know he had met with
4 the prosecutor and I know he had given statements.

5 Q Have you ever seen any additional statements other than
6 March the 2nd of 2004, any additional sworn statements of
7 Johnny Davis?

8 A No, I have not.

9 Q And you never, as the case agent coming back from maternity
10 leave, showed him any photographs or took any additional
11 statements. Correct?

12 A I did not, because I -- I did not.

13 Q Now, have you ever heard the name Roderick Boyd?

14 A Yes, I have.

15 Q Based upon information that you received from Roderick
16 Boyd -- and this was an individual that was confined to the
17 Passaic County Jail. Correct?

18 A That is correct, yes.

19 Q And your investigation disclosed that Malik Lattimore was
20 confined at the Passaic County Jail. Correct?

21 A Yes.

22 Q Based upon information you received from Roderick Boyd, did
23 you ever charge -- excuse me -- did you ever charge Malik
24 Lattimore with the murder of Kemo McCray?

25 A No, I did not.

1 Q You know an individual by the name of Eric Dock. Correct?

2 A Yes, I do.

3 Q And you know an individual by the name of Troy Bell.

4 Correct?

5 A That is correct, yes.

6 Q And Troy Bell and Eric Dock were cooperating witnesses with
7 the United States Government. Correct?

8 A Yes.

9 Q Based upon information that you received from Roderick
10 Boyd, in combination with Eric Dock, in combination with Troy
11 Bell, and in combination of Johnny Davis' identification in the
12 case, did you ever charge Malik Lattimore?

13 A No, we did not.

14 MR. MINISH: Judge, can we be heard briefly? I think
15 we're moving into an area that may create an issue.

16 THE COURT: Okay.

17 (At the sidebar.)

18 THE COURT: What is that?

19 MR. MINISH: Judge, Mr. Bergrin -- and I'm just sort
20 of guessing I guess -- seems to be implying that there is
21 evidence from Eric Dock and Malik -- Eric Dock and Troy Bell
22 that could provide information that would point to an
23 individual other than Mr. Baskerville and, in fact --

24 THE COURT: Other than Mr. Young?

25 MR. MINISH: I'm sorry, other than Mr. Young and, in

1 THE COURT: Is it in the discovery?

2 MR. BERGRIN: It is, Judge. And Mr. Minish knows
3 that. As a matter of fact --

4 MR. MINISH: I don't, Judge. It could be a faulty
5 memory, but I'm unaware of it.

6 MR. BERGRIN: Let me put it on the record because this
7 should be clear, Judge. Eric Dock says specifically as well as
8 Troy Bell as late as one week before the homicide that Williams
9 Lattimore -- excuse me -- Malik Lattimore and Rakeem
10 Baskerville are looking for Kemo to kill him. They said --
11 they used the word "kill."

12 MR. MINISH: Judge, that's exactly the point. That
13 doesn't make him this shooter. There's a number of people
14 looking for him. Mr. Bergrin is making a gigantic leap from
15 one to the other.

16 THE COURT: He didn't get into any of the specificity.

17 MR. MINISH: Absolutely.

18 THE COURT: So let's just get into another area.
19 Don't even touch it anywhere more.

20 MR. BERGRIN: Yes, sir.

21 THE COURT: Okay.

22 MR. MINISH: Thank you, Judge.

23 (In open court.)

24 BY MR. BERGRIN:

25 Q You testified on direct examination yesterday that you've

1 had the opportunity the review the scene photos in this case.

2 Correct?

3 A Yes.

4 Q Is there any evidence based upon your examination of the
5 scene photos and you going to the scene on March the 2nd of
6 2004 that Kemo was shot on the sidewalk?

7 A Just before I answer that, I was not at the crime scene, I
8 was there after it was processed. But in reviewing the photos,
9 the evidence is that he was in the street. He's in the street.

10 Q There's no evidence that you have whatsoever that Kemo was
11 shot on the sidewalk based upon your review of the photographs
12 in this case. Correct?

13 A Where he was physically shot, I can't testify to. But I
14 can testify to where the body lay after he was shot, and that
15 was in the street, it was not on the sidewalk.

16 Q Did you see any blood on the sidewalk?

17 A I was not at the crime scene.

18 Q Did you see any photographs in your examination of the
19 crime scene that depicted any blood on the sidewalk or any
20 blood splattering, any droplets at all on the sidewalk?

21 A The photographs I reviewed show a tremendous amount of
22 blood in the street. I can't say whether it was on the
23 sidewalk or not. But I can clearly tell you it was in the
24 street.

25 Q Do you know how far -- did you take measurements or ask

1 that measurements be taken from the body to the sidewalk?

2 A It is my understanding that the crime scene investigator
3 did that. I personally did not do that.

4 Q And have you seen those measurements, as you just testified
5 to?

6 A I -- yes, I've seen the report. There's an actual sketch
7 as to the scene, and I have seen that.

8 Q And you saw -- and you saw measurements in reviewing the
9 reports?

10 A I can tell you there's a sketch. I can't tell you if
11 it's -- if there's a measurement by feet or inches, but I can
12 tell you there's a sketch, the sidewalk, and then where the
13 body --

14 Q My question to you -- did you understand my question,
15 ma'am?

16 A I'm sorry, perhaps I misunderstood you.

17 Q Isn't it a fact that no measurements were taken from the
18 distance of the sidewalk to where the pool of blood was?

19 A I can't answer that. I didn't prepare that report.

20 Q Have you read the report as the Lead Investigative Agent in
21 this case?

22 A I have read the report, and I just simply don't recall if
23 measurements were taken or not. Again, I can recall the
24 diagram, the sketch that was made that shows that he was
25 clearly next to the sidewalk, but I do not believe that he was

1 on the sidewalk. How far from the sidewalk, I could not tell
2 you.

3 Q Now, when Anthony Young began to cooperate or came into the
4 FBI on January the 5th, 2005 and then later on began
5 cooperating, did you ever ask him what he was wearing on the
6 day of the shooting?

7 A I believe I did. He did not come in on January 5th as you
8 stated though.

9 Q Excuse me. January the 18th he came. But when he began to
10 cooperate --

11 A Okay.

12 Q -- did you ever ask him what he was wearing --

13 A Yes.

14 Q -- at the time that he did the shooting?

15 A Yes, I believe I did. Yes.

16 Q And what if anything did he give as far as the clothing
17 that he was wearing?

18 A I believe he said -- if I can just look at my report for a
19 minute, but I believe he was wearing blue jeans and a hooded
20 sweat shirt.

21 Q Did he say anything about a blue fleece?

22 A I believe he did.

23 Q Did he say anything about a New York Yankee hat?

24 A Not initially, but I believe in subsequent meetings, yes.

25 Q How many times did it take you to talk to him before he

1 said he was wearing a blue Yankee hat?

2 A I believe that detail came out later on, it did not
3 initially come out.

4 Q How long later on from the first time you met with him?

5 A A period of months. Again, in the beginning he was not
6 representing himself to be the shooter so we weren't initially
7 concerned with what he was wearing.

8 Q When he identified himself as the shooter, did you ask him
9 what he was wearing?

10 A Yes.

11 Q Did he ever say that he was wearing a blue New York Yankees
12 hat?

13 A Yes.

14 Q And was that the first time you talked to him after he
15 admitted he had been the shooter?

16 A Yes.

17 Q And do you have a 302 to that effect or report to that
18 effect?

19 A I do not because that was during a proffer session in which
20 I did not prepare a 302.

21 Q Did you take notes during that proffer session?

22 A I did not.

23 Q Did you take notes during any of the proffer sessions?

24 A I believe I may have taken minimal notes, but typically the
25 agent does not take notes, the prosecutors or the Assistant

1 United States Attorneys take notes.

2 Q Did you record any of the proffer sessions?

3 A With a recorder, a recording device?

4 Q Yes.

5 A No. No, we did not.

6 Q So you can't tell us what he told the agents or the
7 prosecutors during the proffer sessions. Correct?

8 A I recall that he said that he was wearing jeans, a blue
9 hooded sweat shirt and the Yankees hat.

10 Q What date did he tell that you?

11 A I don't -- I don't recall. We --

12 Q How many proffer sessions into meeting Anthony Young did he
13 tell you that?

14 A Well, I had the initial phone call with him in January, I
15 met with him four days later again where he did not claim to be
16 the shooter but out at the scene, we proffered with him I
17 believe two other times in which he maintained that he was at
18 the scene but not the shooter. I believe after that there was
19 another meeting where he came in and denied being present at
20 all in which we sent him home, and I believe it was the meeting
21 after that in which he came clean with the fact that he was the
22 shooter.

23 Q You said four -- so four times?

24 A I'm giving you generalities. Without the dates in front of
25 me, I don't know. But I believe that to be a correct --

1 correct chain of events.

2 Q You used the words, "believe," you "think." You knew that
3 you would testify in court today. Correct?

4 A Yes.

5 Q And you knew the importance of Anthony Young to this case.
6 Correct?

7 A Yes.

8 Q And you don't have any notes or any reports whatsoever in
9 reference to the proffer sessions or when Anthony Young said
10 certain things?

11 A I don't have reports because I didn't take reports during
12 proffer sessions. The agent does not take notes or do reports
13 at that time, so I don't those. I have detailed reports of my
14 initial meeting with Anthony Young, and then I also know that
15 he testified at trial, so there is substantial information.
16 But I don't have notes from the proffer session simply because
17 I did not take notes.

18 Q Did you ever at any time promise Anthony Young that he's
19 going home and getting out of jail?

20 A Never.

21 Q And if you did you'd obviously reflect that in a report,
22 correct, and have to get the super -- excuse me -- the approval
23 of either the United States Attorney or a supervisor in your
24 office. Correct?

25 A I couldn't make him that promise. I would not have the

1 ability to make that promise.

2 Q And those words would never come out of your mouth ever.
3 Correct?

4 A I did not tell him that. I can tell you what I did tell
5 him, but I did not tell him that.

6 Q My question to you is: Did you ever promise Anthony Young
7 that he would be getting out and going home?

8 A I did not make him that promise.

9 Q Now, when Anthony Young began to cooperate, or at any time
10 during his entire period of cooperation, even up until today,
11 did you ever ask Anthony Young if he still has the New York
12 Yankee hat?

13 A I asked him what he did with the clothes he was wearing,
14 yes.

15 Q And of course that would definitely be contained in a
16 report. Correct?

17 A I believe it is in a report, yes.

18 Q You have your report in front of you?

19 A I don't have that one.

20 Q What did Anthony Young do with the clothing that he wore on
21 March the 2nd of 2004?

22 A He disposed them in the same dumpster where he threw the
23 remnants of the 9 millimeter that they had melted down.

24 Q And when did he do that?

25 A The day he had melted down the gun, what was left of the

1 gun he took and threw in a dumpster outside of the auto body
2 shop, and with the remnants of the gun he threw out a bag of
3 clothes that he wore at the scene.

4 Q And you're saying that's contained in an FBI 302?

5 A I believe it is, yes.

6 MR. BERGRIN: Your Honor, can you please order the
7 Prosecutor to turn that over to us if that 302 exists? We've
8 never seen that.

9 THE COURT: Well, if it exists it was turned over to
10 the Defendant and the Defense.

11 Does it exist?

12 MR. MINISH: Judge, we have -- unless there's --

13 THE COURT: No, Mr. Minish, I'm asking --

14 MR. MINISH: I don't know.

15 THE COURT: Well, the Agent says it's in a 302. She
16 believes it's in an FBI 302, so take a look for it.

17 Is the Defense representing that they haven't found
18 it?

19 MR. BERGRIN: There is none, Judge.

20 THE COURT: All right. Well, if that's the case,
21 there is none. And then if you have one -- the Agent seems to
22 recall that there is an FBI 302 report about this.

23 THE WITNESS: Yes.

24 THE COURT: Okay. Well, the Defendants are
25 representing they don't have it. You're saying you don't know

1 if you have it, Mr. Minish, which is a little, you know -- then
2 that's it. You don't have it. It doesn't exist I guess.
3 Unless you -- okay, sit down, Mr. Minish, please.

4 I'm saying, if you have it -- she's representing as
5 the agent that she recalls make a 302 report. You would have
6 it. You would have turned it over to the Defense. Now, the
7 Defense is saying "we never got it." So if you have it, turn
8 it over, or let's get on with another issue, that's all.

9 MR. MINISH: Judge, it's easy to say, but there as you
10 can see are volumes and volumes of books --

11 THE COURT: Don't talk to me about the volumes of
12 books. It's your case.

13 MR. MINISH: Everything we have we turned over.

14 THE COURT: Do you want me to embarrass you? Mr.
15 Minish, you're the Government, it's your case. They're
16 representing they don't have it. Your witness is saying she
17 thinks she has it.

18 MR. MINISH: They represented they didn't have
19 something before and they did have it, Judge.

20 THE COURT: Well, then, Mr. Minish, show them that
21 they made a misrepresentation.

22 MR. MINISH: Judge, we're going to look for it. But
23 again --

24 THE COURT: It's your obligation, you're the
25 Government. She -- it's your witness. She says she has a

1 recollection that there's a 302 report about this. The Defense
2 is saying -- and if they're wrong in their representation then
3 I'll deal with them -- they're saying, we don't have it.
4 You're saying, oh, there's volumes of books here.

5 They're your books.

6 MR. MINISH: What I'm saying is, I will look for it.
7 But I don't have it at any fingers tips.

8 THE COURT: You didn't say that at first. Sit down,
9 please.

10 Look, you didn't say that at first. That's all you
11 had to say, you know? You don't have a recollection yourself
12 that you have a 302 report.

13 We'll see who's right here. And if the Defense is
14 playing games and saying, oh, we thought we didn't have it but
15 we do, we'll deal with that, too.

16 She just made a representation -- she just testified
17 she has a recollection. Now her recollection may be mistaken.
18 If it is, it is. You know, if it's mistaken and she doesn't --
19 she didn't make a 302 report, you know, that's it. Okay.

20 All right. Thank you. And she'll help you try to
21 find it if you can't find it.

22 BY MR. BERGRIN:

23 Q Now, Rakeem Baskerville's van was seized by federal agents
24 on March the 5th of 2004. Correct?

25 A Yes.

1 Q Do you know if any forensic examination was done with that
2 van?

3 A I do not know.

4 Q Did you ever request that any type of canines, any type of
5 dogs sniffed to see if there were any guns in there or the
6 smell of gun powder or ballistics?

7 A No. I had no reason to believe that the gun had been in
8 the van.

9 Q Well, didn't you receive information from Mr. Young that
10 the gun had been in the year, in the trap at one time?

11 A Before the homicide?

12 Q Yes.

13 A That they kept guns in there. I don't know about the
14 murder weapon being kept in there.

15 Q Did you ever ask that a canine sniff it and determine
16 whether a gun was in there?

17 A I did not.

18 Q Did you ever ask that it be printed to see if there are
19 remaining prints of who might have been in that van?

20 A I did not.

21 Q Did you ever ask any DNA be taken and tested from the van
22 to see if, for instance, Jamal McNeil or Hakeem Curry were in
23 that van?

24 A It's my understanding that they were in the van. I
25 wouldn't have asked for testing of that. I did not need that

1 to help prove this investigation.

2 Q On March the 2nd of 2005 -- excuse me -- March the 2nd of
3 2004 the Kemo shooting occurred. Correct?

4 A Yes.

5 Q Three days later the van was seized. Correct?

6 A Yes.

7 Q Did you ever do, or request as the Lead Investigative
8 Agent, any forensic testing inside the van or of that van?

9 A If I can just clarify. I was not the Lead Investigative
10 Agent on the underlying investigation which led to that van
11 being seized. That was a drug investigation led by the Drug
12 Enforcement Administration, and they seized that vehicle
13 pursuant to their drug arrest, so they took the vehicle. That
14 was not in conjunction with my investigation.

15 Q But the vehicle was in the possession of government agents.
16 Correct?

17 A Yes.

18 Q And you were assisting the Essex County Prosecutor's Office
19 and the Newark Police Department in this investigation.
20 Correct?

21 A Yes.

22 Q And it was taken days after the homicide. Correct?

23 A Yes.

24 Q And you never requested that any forensic analysis at all,
25 ever -- even when you took over the investigation -- be done to

1 that van. Correct?

2 A I did not.

3 Q And it was in the possession of the Government from March
4 5th until it was sold or disposed of. Correct?

5 A I -- I can't answer that. I don't know what happened with
6 the van and I don't know what the DEA ordered to be done with
7 the van as far as testing and analysis.

8 Q Anthony Young provided information in reference to visits
9 at the Hudson County Jail of William Baskerville. Correct?

10 A Yes, he did.

11 Q And you subpoenaed the jail records of William Baskerville
12 to see who visited him?

13 A Yes, I did.

14 Q Did you ever see Jamal McNeil's name on the visitation
15 records?

16 A I do not recall seeing that on there.

17 Q Did you ever show a photograph of Jamal McNeil to any of
18 the correction officers at the Hudson County Jail that worked
19 there?

20 A I did not.

21 Q Did you ever ask for the videos from the Hudson County Jail
22 of who signed in on the visitors' log or went to visit William
23 Baskerville?

24 A I would have done that if I could narrow down a date and
25 time. But what Anthony Young told me is that when Jamal McNeil

1 went there he used an alias, so I was not able to pinpoint an
2 exact time and date that he would have been there to try and
3 pull a video record.

4 Q Well, Anthony Young said that Jamal McNeil went to see
5 William Baskerville after the homicide. Correct?

6 A Yes.

7 Q So on March the 3rd of 2004, did you pull the videos?

8 A I did not pull the videos.

9 Q On March the 4th, did you pull the videos?

10 A No.

11 Q You looked at the visitor's log for March the 3rd, correct,
12 of 2005 -- 2004 -- excuse me. Correct?

13 A Yes.

14 Q And you reviewed it. Correct?

15 A Yes.

16 Q And isn't it a fact that there's no signatures on there
17 that you could even relate to a fictitious name that visited
18 William Baskerville on that date. Correct?

19 A I don't know what the signatures looked like, so I don't
20 know if there would be a fictitious name or not.

21 Q How many people visited him on March the 3rd, 2004?

22 A If you have the records and you can show them to me, I can
23 tell you. I know we have them. I don't recall who visited him
24 or how many people visited him the day after the murder. I
25 know I did and I know somebody was there before me, I believe

1 one of his brothers was there to visit him before me, Rakeem
2 Baskerville, but I do not recall seeing Jamal McNeil on -- on
3 the visiting log.

4 Q Did you ever ask for handwriting samples of Jamal McNeil?

5 A No, I did not.

6 Q And you could get those without even a court order.
7 Correct?

8 A That is correct.

9 Q Did you ever compare the signatures on the visitor's log of
10 all the people that visited William Baskerville to see if
11 there's a similar signature that visited William Baskerville
12 eight to ten times?

13 A No, I did not.

14 Q Does you ever stop Jamal McNeil and ask him for a consent
15 to see if he has -- if you could search him and his wallet for
16 his identifications?

17 A I did not.

18 Q Did you ever have any law enforcement officers stop him and
19 search him for his identifications to see if he has phony
20 identifications on him?

21 A I did not.

22 Q Now, on November 25th, going back to the initial appearance
23 and the first appearance of William Baskerville, William
24 Baskerville was not facing life in prison. Correct?

25 A That is correct.

1 Q And as a matter of fact, no decisions had been made on
2 bail, and the bail hearing was actually adjourned until
3 December the 4th and a determination as to whether to detain
4 him. Correct?

5 A Yes, he was remanded that day with the opportunity to have
6 a bail hearing on December 4th, that is correct.

7 Q So no decision had been made whether he was going to get
8 bail or not going to get bail until the December 4th hearing.
9 Correct, ma'am?

10 A Yes.

11 Q On November 25th when William Baskerville was arrested, you
12 had an opportunity to interview Dedre Baskerville. Correct?

13 A Yes, I did.

14 Q And she was cooperative with you?

15 A Yes, she was.

16 Q She answered your questions?

17 A Yes.

18 Q Since November 25th of 2004, have you ever gone back to
19 Dedre Baskerville?

20 A I did. I went back to serve her with a subpoena.

21 Q Did you ever interview Dedre Baskerville from November 25th
22 until today?

23 A No, she obtained an attorney and we were not able to
24 interview her.

25 Q Did you speak to her attorney about being able to interview

1 Dedre?

2 A I personally did not, but I believe the AUSA spoke to her
3 attorney about talking to her.

4 Q And do you know if Dedre Baskerville was willing to speak
5 to you?

6 A She was not willing to speak to us.

7 Q Was Dedre Baskerville ever subpoenaed before a federal
8 grand jury?

9 A Yes, she was.

10 Q Did she testify?

11 A She did not testify.

12 Q Do you remember who was in court with William Baskerville
13 on November 25th of 2003 when he was arrested?

14 A As far as defendants or family members?

15 Q As far as family members.

16 A I believe Dedre Baskerville did come to court. I don't
17 know. I can't recall.

18 Q And when she came to court did you try to interview her?

19 A No.

20 Q Did you try to speak to her?

21 A No. My last conversation with Dedre Baskerville was
22 earlier that day when I had told her that as soon as I find out
23 when the initial appearance was I would let her know so she
24 could plan on attending it.

25 Q Now, you had reviewed the wedding invitation records of who

1 was at Hakeem Curry's wedding. Correct?

2 A I don't believe I have.

3 Q Well, federal agents subpoenaed that. Correct? You're
4 aware of that as part of this investigation. Correct?

5 A Yes.

6 Q Did you have a chance to review that?

7 A I have not.

8 Q Did you have a chance to speak to the federal agents that
9 reviewed the records and subpoenaed it?

10 A I did not.

11 Q Did you ever have an opportunity to speak to William
12 Baskerville's attorneys, James Plaisted or Vincent Nuzzi?

13 A No, I did not.

14 Baskerville's attorneys?

15 Q Excuse me. Curry's attorneys

16 A Okay. The answer is still no. No, I did not.

17 Q Do you know an individual by the name of Annette Walker?

18 A I don't believe so.

19 Q Have you ever interviewed anybody named Lachoy Walker?

20 A I have not.

21 Q Did you ever look up any records pertaining to an Annette
22 Walker?

23 A I have not.

24 Q Do you know if any Annette Walkers have cooperated with the
25 Government?

1 A If Annette Walker has?

2 Q Yes.

3 A I do not know.

4 Q In your reviewing the reports on Lachoy Walker, do you know
5 if he mentions Annette Walker?

6 A I did not review his reports.

7 Q As the Lead Case Agent in the case, you have not reviewed
8 Lachoy Walker's reports?

9 A I was not present for his interview nor have I reviewed his
10 reports.

11 Q Who interviewed Lachoy Walker?

12 A I don't know. I think maybe there's some confusion,
13 because there was a DEA investigation that was running along
14 with our investigation, and I believe members of that DEA
15 interviewed him. And I'm familiar with information that he's
16 provided as it pertains to you, but I am not familiar with
17 anything else in addition to that information.

18 Q You as the Lead Agent in the case, did you ever interview
19 Lachoy Walker?

20 A I did not.

21 Q Do you know if there were any FBI 302s prepared on Lachoy
22 Walker?

23 A I do not believe so.

24 Q When Anthony Young identified Jamal McNeil as the shooter
25 of Kemo DeShawn McCray, was Anthony Young willing to testify in

1 court under oath against Jamal McNeil?

2 A We hadn't gotten that far. I never specifically asked him.
3 He had provided that information but we were nowhere near
4 him -- first of all, making an arrest of Jamal McNeil, let
5 alone taking that case to prosecution. So I did not ask him if
6 he was willing to testify.

7 Q Was a photograph of Jamal McNeil ever shown to Anthony
8 Young?

9 A Yes, it was.

10 Q And what, if anything, did Anthony Young do to that
11 photograph?

12 A He ID'd that photograph as the individual he knew to be
13 Malsey, and he identified a picture of Jamal McNeil as Malsey.

14 Q And Anthony Young repeatedly contacted you, correct, and
15 asked for additional meetings with you. Correct?

16 A He did contact me. I would not say "repeatedly" asked for
17 additional meetings with me, but he did contact me, yes.

18 Q And how many times did he contact you?

19 A I don't want to necessarily quantify it, but several times.

20 Q And did you ever mark down the dates of when he contacted
21 you?

22 A I would not have marked them down. I would have called the
23 AUSAs to advise them that he would like to have a meeting.

24 Q And each time that he contacted you he asked for additional
25 meetings. Correct?

1 A I -- I understood that he had additional information that
2 he wanted to provide, yes, but it's not as simple as him
3 picking up the phone and telling that information. We have to
4 do it -- he's got counsel and we have -- we have to do it in
5 the form of what we call a proffer session. So if he had
6 additional information we would have set up a meeting.

7 Q But he would contact you without counsel and ask to speak
8 to you. Correct?

9 A That is correct, that did happen, yes.

10 Q And this is before he stated that he was the shooter.
11 Correct?

12 A Yes.

13 Q And he kept telling you about how he wants to cooperate.
14 Correct?

15 A Yes.

16 Q And that he was willing to do anything to get the shooter
17 of Kemo McCray. Correct?

18 A No. No. He wanted to provide the information. It wasn't
19 so much -- no, that's not accurate.

20 Q He told you that he's willing to cooperate against the
21 shooter of Kemo McCray. Correct?

22 A He's willing to cooperate regarding his role in the
23 conspiracy to kill Kemo, yes.

24 Q And against the person that did the shooting. Isn't that a
25 fact?

1 A He was willing to cooperate as to what his role was in the
2 conspiracy, and he had identified Jamal McNeil as the shooter.

3 Q As you sit here today, are you telling us that he wasn't
4 willing to cooperate all the way and testify?

5 A No, he was willing.

6 Q In --

7 A Perhaps I'm misunderstanding your question, but he was
8 certainly willing to come in and tell us what his role was in
9 the conspiracy to kill Kemo.

10 Q And he kept telling you that it was Jamal McNeil that did
11 the shooting and killed Kemo. Correct?

12 A Yes. That is correct, yes.

13 Q How many times did he tell you that?

14 A He told us that repeatedly until the proffer in which he
15 came clean, which was several months after January of 2005.

16 Q How many times did he tell you that, how many meetings?

17 A Four or five meetings.

18 Q At least. Correct?

19 A I -- I believe it may have been the fifth meeting when he
20 came clean, so I don't want to lock myself into something. But
21 there were several meets, yes, in which he absolutely claimed
22 that Jamal McNeil was the shooter.

23 Q Now, before Young admitted that he was this shooter, he was
24 out there dealing heroin. Correct?

25 A Yes.

1 Q And drugs?

2 A Yes.

3 Q He was dealing crack and cocaine?

4 A I believe he was dealing heroin.

5 Q Did Young -- did you ever charge Young with narcotic
6 violations before you charged him with the murder?

7 A No. I had no evidence of him dealing narcotics other than
8 what he had told me, but I -- so --

9 Q So you had the admission of Anthony Young?

10 A Yes.

11 Q Correct?

12 A Yes, I did.

13 Q And he told you that he was dealing heroin as well as
14 drugs. Correct?

15 A I believe he limited it to heroin. But, yes, he did tell
16 us that he was dealing heroin in a specific area in Newark and
17 that he worked with Rakeem Baskerville under Hakeem Curry to
18 sell heroin, which corroborated his role in the drug
19 conspiracy.

20 Q Did he ever get charged for that?

21 A Not by the Federal Government, no.

22 Q By the State Government?

23 A I do not believe so. I know he has a prior drug arrest.
24 But him telling me as of recently when we first spoke that he
25 was selling drugs with Rakeem Baskerville and working for

1 headache, I do not believe he was charged by anybody in
2 conjunction with that information.

3 Q For a year and a half approximately Anthony Young accused
4 McNeil of the murder. Correct?

5 A It was some time in the middle of 2006, yes, when he came
6 clean.

7 Q And you keep saying he "came clean."

8 For a year and a half he accused Jamal McNeil of a
9 death penalty eligible murder. Correct?

10 A Yes.

11 Q And you had shown a photograph or asked that a photograph
12 of Jamal McNeil be shown to Johnny Davis. Correct?

13 A Yes.

14 Q And Johnny Davis did not identify the photograph of Jamal
15 McNeil. Isn't that a fact?

16 A That is a fact.

17 Q Did you ever charge Anthony Young at that point with false
18 swearing or providing false information to a federal agent?

19 A Well, I suppose we could have, but we charged him with the
20 homicide of a Government informant.

21 Q Before you charged him with the homicide of the Government
22 informant, during the five to eight meetings that Anthony Young
23 accused Jamal McNeil of murder, my question to you is a
24 specific one: When you realized that he was lying to you, did
25 you ever charge Anthony Young with false swearing or false

1 statements to an agent?

2 A No. No, we did not.

3 Q Isn't it a fact it's your philosophy that: You work with
4 us and we'll work with you and help you with any charges that
5 you may have?

6 A My philosophy with an informant?

7 Q Yes.

8 A Yes.

9 Q And it's your belief as an Agent that you could help an
10 informant with the charges that they have. Correct?

11 A I personally cannot help them, but what I can do is argue
12 their case to the prosecutor who can then argue the case to the
13 judge. So I do have a say in it, but I do not have the final
14 say. So what I represent to that individual is: I will help
15 you as best I can, but I cannot make you any promises.

16 Q And isn't it -- the FBI has what they call "rules of
17 engagement." Correct?

18 A Yes.

19 Q And they have policies and procedures for dealing with
20 informants. Correct?

21 A Yes.

22 Q And isn't it a fact that you're supposed to terminate an
23 informant in the cooperation as soon as you determine that
24 they're not telling the truth and they're lying?

25 A Yes.

1 THE COURT: Mr. Bergrin, do you have much more?

2 MR. BERGRIN: No, Judge, I'm just actually trying to
3 clean it up so I can move to the rest that I have.

4 THE COURT: Well, there's going to be redirect?

5 MR. MINISH: Yes, Judge.

6 THE COURT: Then why don't we recess for the day since
7 there's going to be redirect and you can check your notes that
8 way.

9 All right. Ladies and gentlemen, we're going to
10 recess for the day. We'll start again tomorrow the same time,
11 same place. Please don't discuss anything about the case
12 amongst yourselves, at home or with anyone, don't read any
13 newspaper accounts or any news accounts of the case. If you
14 hear them or see them, disregard them. Okay? Again, it's very
15 important. We've got a ways to go so it's very important that
16 you don't make any predeterminations either. Okay?

17 So we'll see you tomorrow morning. And have a safe
18 ride home.

19 THE DEPUTY CLERK: Please rise for the Jury.

20 (The Jury leaves the courtroom.)

21 THE COURT: All right. Agent, you can step down.
22 Thank you very much.

23 THE WITNESS: Thank you.

24 (Witness temporarily excused.)

25 THE COURT: All right, everyone, be seated. We'll

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Criminal No. 2:09-cr-00369-WJM

UNITED STATES OF AMERICA, :
: TRANSCRIPT OF PROCEEDINGS
v. : - Trial -
:
PAUL W. BERGRIN, :
:
Defendant :
- - - - -x

Newark, New Jersey
October 20, 2011

B E F O R E:

THE HONORABLE WILLIAM J. MARTINI,
UNITED STATES DISTRICT JUDGE,
and a Jury

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

S/WALTER J. PERELLI

WALTER J. PERELLI, CCR, CRR
OFFICIAL COURT REPORTER

WALTER J. PERELLI, C.S.R., OFFICIAL COURT REPORTER, U.S.D.C.

I N D E X

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1 THE COURT: Before you do.

2 Ladies and gentlemen, let me just explain. Yesterday
3 there was some discussion with respect to what's referred to as
4 an FBI 302 report, which are reports that the agents make as to
5 things when they do an investigation, things that occur and
6 they type up reports based from their notes. The Government,
7 Mr. Minish did check to see if there was an FBI 302 report
8 regarding the disposal of the clothes. If you recall, there
9 was some testimony about clothes being disposed in a bin at the
10 auto mechanic shop.

11 There's not a 302 report, but the Agent did have notes
12 of that part of the investigation, and those notes were, in
13 fact, turned over last night to the Defendant.

14 Is that correct?

15 MR. BERGRIN: That's correct, your Honor.

16 THE COURT: Mr. Minish, is that a correct account?

17 MR. MINISH: That is correct, Judge.

18 THE COURT: Thank you, Mr. Minish and the Agent, for
19 finding those notes and turning them over.

20 CROSS-EXAMINATION CONTINUES

21 BY MR. BERGRIN:

22 THE COURT: Proceed, Mr. Bergrin.

23 MR. BERGRIN: Good mother.

24 Q So you testified so vehemently yesterday that you put it
25 into your 302. In the 302 all that is stated is essentially

1 that you went to the service station, correct, and you spoke at
2 an interview as to what an individual said to you. Correct?

3 A Are you referring to Anthony Young?

4 Q I'm talking about the interview at the service station
5 pertaining to the gun and the melting of the gun.

6 A Yes, I spoke to three individuals at the service station.

7 Q Right. There was nothing in there whatsoever about Anthony
8 Young disposing of the clothing. Correct?

9 A No, there was not.

10 Q Now, you had information that there was blood on the
11 clothing of Anthony Young. Correct?

12 A Yes.

13 Q And the blood -- where was the blood on the clothing,
14 according to your investigation?

15 A I believe the blood per Anthony Young was on his hooded
16 sweatshirt,

17 Q His hooded sweatshirt?

18 A His fleece, yes.

19 Q And you also had information that the hooded sweatshirt was
20 placed into a motor vehicle before it was disposed of.
21 Correct?

22 A Yes.

23 Q And whose motor vehicle was that?

24 A Well, after the shooting it would have been in the getaway
25 car.

1 Q Before it was disposed of, isn't it a fact that you had
2 information, according to your notes that we received last
3 night --

4 A Okay.

5 Q -- that the sweatshirt full of blood was placed into the
6 back seat of a motor vehicle? Isn't that a fact? Not the
7 getaway car, but the back seat of a motor vehicle. Correct?

8 A In addition to the getaway vehicle the hooded sweatshirt
9 was also placed in the back of Jamal McNeil's vehicle.

10 Q And you knew what kind of vehicle that was because Anthony
11 Young was a cooperating witness. Correct?

12 A I did not know what kind of vehicle Jamal McNeil was
13 driving.

14 Q Well, you didn't think it would be important?

15 You have a sweatshirt with blood allegedly that could
16 have proved that Anthony Young was the shooter, correct, if he
17 had the blood of Kemo McCray on him. Correct?

18 A I had proven --

19 Q You can answer my question. It's not a hard question.

20 A I had -- thank you.

21 MR. MINISH: Judge, I object to Mr. Bergrin's
22 comments.

23 THE COURT: Mr. Bergrin, let her answer, please.

24 MR. BERGRIN: Sorry Judge,

25 THE COURT: Don't interrupt her.

1 MR. BERGRIN: Yes, Judge.

2 Q You had information that there may be blood on a
3 sweatshirt. Correct?

4 A That is correct, yes.

5 Q And if the blood was placed -- excuse me -- the sweatshirt
6 was placed in the back seat of an automobile. Correct?

7 A Yes, that is correct.

8 Q Anthony Young was a cooperating witness. Is that a fact?

9 A Yes, it is.

10 Q And Anthony Young, was he ever asked what kind of vehicle
11 Jamal McNeil drove?

12 A No, he was not.

13 Q Did you ever ask Anthony Young if Jamal McNeil may have
14 that vehicle still at the present time, the time he started to
15 talk to you?

16 A No, I did not.

17 Q You didn't think it would be important to possibly seize or
18 get a warrant or even look at the back of Jamal McNeil's
19 vehicle so you could test it for potential DNA that would tie
20 Anthony Young into this particular case? That wasn't an
21 important fact to you?

22 A That was not because I already had proven that Mr. Young
23 was the shooter. I did not have a doubt in my mind and did not
24 feel the need to follow up on that fact. In addition to, this
25 was several years after the fact.

1 Q DNA is microscopic at times. Correct?

2 A I can't answer that.

3 Q Are you telling us in all your academy training and all
4 your experience that you don't know about DNA and seizing DNA
5 evidence?

6 A I do, yes.

7 Q DNA is microscopic. You could get it many, many, many
8 years after the incident. Correct?

9 A That is correct.

10 Q And you never made any attempt whatsoever to collect the
11 DNA that may have been contained -- may have been contained in
12 Jamal McNeil's car. Correct?

13 A I did not because I had already proven that Anthony Young
14 was the shooter so I did not take that further investigative
15 step. Could I have --

16 Q Did,

17 A I'm sorry, could I have?

18 Absolutely I could have, but I did not at this point
19 in time because, as I said, I had no doubt in my mind that
20 Anthony Young was the shooter.

21 Q In your mind, being your second homicide investigation.
22 Correct?

23 A In my mind, after reviewing all of the evidence and
24 corroborating everything that Anthony Young told me.

25 Q And we already went through what you corroborated and the

1 fact that what you corroborated wasn't be corroborated.

2 Correct?

3 A I do not agree with that.

4 Q Well, you said that you corroborated the fact that Anthony
5 Young, according to Anthony Young, shot Kemo on the sidewalk.

6 Correct?

7 A I did not say he shot him on the sidewalk.

8 Q Well, you knew that Anthony Young said that he shot him on
9 the sidewalk. Correct?

10 A After talking to Anthony Young he explained to us exactly
11 how he shot Kemo McCray, and that after shooting Kemo McCray
12 the body fell into the street, off of the sidewalk.

13 Q And you spoke to the crime scene individual, correct, Mr.
14 Gowzer?

15 A I did not.

16 Q Who did the crime scene for the Essex County Prosecutor's
17 Office?

18 A I did not.

19 Q You didn't think it was important to see if there was any
20 blood splatter, drippings, even body particles on the sidewalk
21 or the fact that an individual could have fallen to the place
22 where the body allegedly was found?

23 A Mr. Bergrin, Anthony Young told me that he went up behind
24 Kemo and shot him in the back of the head while holding him.
25 As he was doing that, the body -- Anthony Young told me the

1 body slumped to the ground off of the sidewalk into the street,
2 which was also represented in the crime scene investigator's
3 report. There's a picture that depicts that, as well as the
4 crime scene photos that depict that very information.

5 Q The picture depicts the fact that the body is slumped after
6 being shot on the sidewalk. Correct?

7 A Yes, it does.

8 MR. BERGRIN: May I approach the witness, your Honor?

9 THE COURT: Yes.

10 Q I show you what's been marked D-8 for identification.

11 What is D-8?

12 A D-8 is a photograph of Kemo's body after the murder. It's
13 covered with a blanket.

14 Q And isn't it a fact that there is no blood splatter, blood
15 dripping or any type of blood smears from the sidewalk to where
16 the body is of Kemo McCray?

17 A I don't want to testify that that's absolutely true, but I
18 do not see it in the photo, if that's what you're asking me. I
19 do not see blood splatter in the photo, I see a substantial
20 amount of blood around the body where it fell but I do not see
21 it on the sidewalk.

22 Q And that photo accurately reflects Kemo McCray according
23 the your analysis and investigation in this case. Correct?

24 A Well, I believe in this photo he had been turned over.
25 When he initially fell he was face down in a pool of blood, and

1 I believe in this photo he may have been turned over and placed
2 on his back and covered with a sheet.

3 Q And there's a substantial distance from the sidewalk to
4 where the body is the. Correct?

5 A There is a distance. I couldn't tell you how far it is,
6 but there is certainly a distance.

7 Q You couldn't tell us how far it is because you didn't take
8 measurements or ask that measurements be taken when you arrived
9 at the scene on March the 2nd of 2004?

10 A When I arrived at the scene the scene had already been
11 processed and the body had already been taken away, so I did
12 not ask for that.

13 Now, whether --

14 Q In your entire investigation you never asked that
15 dimensions or measurements be taken, correct, whether it be
16 from the photographs, from the scene diagrams or from any other
17 depictions. Correct?

18 A I did not, because this was not an issue for me. Anthony
19 Young explained to me how he shot and killed Kemo. It was not
20 an issue to me. He explained how the body fell, that there was
21 a mask next to the body, which is in fact depicted not in this
22 picture but in another photo, and --

23 Q Isn't it a fact that --

24 A -- and that the hair was in braids and that there was a
25 cigarette hanging out of his hands that was found near the

1 crime scene. There was evidence that he told me about that
2 nobody else out of law enforcement would have known.

3 Q Nobody else in law enforcement.

4 What about a spectator or somebody that drove by or
5 came to the scene afterwards? Isn't it a fact what Anthony
6 Young told would -- may have seen the exact same thing that
7 Anthony Young saw? Isn't that a fact?

8 A That is a fact. If he had come up to the body as he
9 initially said he did to look at the body to confirm that Kemo
10 was dead, yes, he would have seen the ski mask, he would
11 have -- I don't believe he would have seen the braids because
12 at that point the doo-rag had fallen. So --

13 Q You have -- excuse me. You have no evidence that the
14 doo-rag had fallen. When you saw the photographs, the doo-rag
15 completely covered the head. Correct?

16 A I don't believe it completely covered the head, but I do
17 know Kemo had braids in his hair that day.

18 Q Underneath a doo-rag that could not be seen, even according
19 to the medical examiner who arrived on the scene. Correct?

20 A The braids could not be seen, is that what you're asking
21 me?

22 Q Yes, the braids could not be seen underneath the doo-rag.

23 A I -- I don't know. If that's what the medical examiner
24 said, I don't know.

25 Q You looked at the photographs yesterday and the

1 photographs -- not one photograph depicted where you could see
2 braids in the hair. The doo-rag completely covered the head.
3 Isn't that a fact?

4 A That is a fact, but the autopsy photos showed the braids.

5 Q Well, the autopsy showed -- the autopsy photos were taken
6 without the doo-rag on the head. Correct?

7 A That is correct. However --

8 Q So --

9 A If the doo-rag comes to here and you've got braids
10 underneath, that's something that only the shooter is going to
11 be able to see because he is that close, he is grabbing
12 somebody at the base of their neck. That is evidence that
13 unless you are the shooter, not even a spectator, that you
14 would know.

15 Q The doo-rag completely covered all the braids on the head
16 of Kemo DeShawn McCray on March the 2nd of 2004. Isn't that a
17 fact?

18 A Yes, it is, as he lay there on the ground. But as he was
19 standing walking down the street, that is not a fact.

20 Q Well, you didn't see him walking down the street. How
21 would you know that?

22 MR. MINISH: Judge, I object to this line of
23 questioning.

24 THE COURT: No, no, no, I'll allow that question
25 because -- yeah, go ahead.

1 MR. MINISH: The Agent wasn't there before or after.

2 THE COURT: But she said -- so what's the basis for
3 saying: As he walked down the street he had braids out of his
4 doo-rag?

5 THE WITNESS: I'm relying on what Anthony Young told
6 me.

7 THE COURT: Right. Okay.

8 BY MR. BERGRIN:

9 Q Thank you.

10 Now, do you know an individual by the name of Keith
11 Stevens?

12 A Yes, I do.

13 Q And Keith Stevens tried to record me as a cooperating
14 witness with you. Correct?

15 A He did, in fact, record you, yes.

16 Q He did record me. Isn't it a fact I told Keith Stevens
17 that I am innocent?

18 MR. MINISH: Judge, objection. This is absolutely an
19 improper self-serving statement by the Defendant.

20 THE COURT: All right. I'll hear you at sidebar.

21 (At the sidebar.)

22 THE COURT: What's the circumstances? She had a
23 cooperating witness trying to have a body tape?

24 MR. MINISH: Record, yeah, and Mr. Bergrin sort of
25 cleans himself and says: I would never do this, I would never

1 come in as a prior consistent statement to rebut a claim of
2 recent fabrication. So we can deal with it at that point.

3 THE COURT: Okay.

4 MR. BERGRIN: I have no problem with that, Judge.

5 MR. LUSTBERG: Thank you.

6 THE COURT: Okay.

7 (In open court.)

8 THE COURT: Mr. Minish, your objection is sustained.

9 MR. MINISH: Thank you, Judge.

10 THE COURT: Get.

11 MR. GAY: A new area, Mr. Bergrin, please.

12 BY MR. BERGRIN:

13 Q Did you ever pull any court records as to an individual by
14 the name of Abdul Williams and what dates I represented him as
15 part of your investigation in this case?

16 A We did pull his court records, yes. Yes. And the dates of
17 representation. Without looking at them I can't tell when you
18 represented him.

19 Q Do you know what years?

20 A I believe 2006.

21 Q Now, on May the 20th I was arrested. Correct?

22 A Yes.

23 Q Of 2000 --

24 A 2009.

25 Q 2009.

1 A Yes.

2 Q And at the time of my arrest I was with Ashley Jauregui.
3 Correct?

4 A Yes, that is correct.

5 Q As a matter of fact, she was wearing a parochial school
6 uniform; plaid skirt, plaid shirt, jacket?

7 A Yes.

8 Q Crisscross tie?

9 A I remember the parochial skirt, yes.

10 Q And you knew at that time that she was 13 years old.
11 Correct?

12 A Yes, I did.

13 Q Can you explain to me why or explain to the jury why you
14 handcuffed her hands behind her back and paraded her in front
15 of me?

16 A I did not handcuff Ashley, members of our arrest team did.

17 As you recall, I was with you and I was looking
18 directly at you and I was speaking with you. They were on the
19 other side of your vehicle, and members did handcuff her until
20 I looked over and explained that that was Ashley. They
21 initially thought that that was Yolanda.

22 Q A 13 year old girl in a Catholic school uniform, and they
23 initially thought it was Yolanda. Is that what you're telling
24 this jury?

25 THE COURT: How is this relevant, Mr. Bergrin?

1 MR. BERGRIN: I'll move on to a different area, Judge.

2 I'm sorry.

3 Q The Tahoe vehicle of Jamal Baskerville; you remember that?

4 A Yes.

5 Q Do you recall what state the plate were from?

6 A I believe North Carolina.

7 Q Isn't it a fact that in all your interviews with Anthony

8 Young he never mentioned the fact that Jamal Baskerville had

9 Carolina plates or his vehicle?

10 A I don't believe -- I don't know that we discussed that he
11 mentioned the Chevy Tahoe but I don't believe we discussed what
12 state the license plate was from.

13 Q And this is a vehicle that he said he followed to the
14 scene. Correct?

15 A Jamal Baskerville was one of the individuals who responded
16 to the scene to attempt to surveille Kemo, yes.

17 Q And this is a vehicle that Anthony Young said that he
18 followed to the scene. Correct?

19 A I don't know that he followed it but I know they went
20 en route together. I'm not sure that Anthony Young followed
21 the vehicle. He may have. I know they traveled together to
22 the scene to set up surveillance on the various locations in
23 the area of 19th and South Orange Avenue.

24 Q Well, didn't Anthony Young say that this vehicle was in
25 front of his vehicle?

1 A I don't recall that.

2 MR. BERGRIN: Excuse me one second, Judge.

3 I have no further yes, Judge. Thank you.

4 THE COURT: Thank you, Mr. Bergrin.

5 Mr. Minish, do you have any redirect?

6 MR. MINISH: I do, Judge, thank you.

7 REDIRECT EXAMINATION

8 BY MR. MINISH:

9 Q Agent, Mr. Bergrin has asked you a number of questions
10 about Anthony Young, so I'm going to start there.

11 Did Anthony Young tell you that Kemo DeShawn McCray
12 had braids the day he was shot?

13 A Yes.

14 Q Were you later able to confirm that through photographs?

15 A Yes.

16 Q Did he tell you whether or not he had a cigarette near him
17 on the day he was murdered?

18 A Yes, he did.

19 Q Were you able to confirm that, again through photographs
20 and other evidence?

21 A Yes, I was.

22 Q Did Anthony Young tell you about a dust mask that Kemo had?

23 A Yes, he did.

24 Q Were you able to confirm that later through photographs and
25 other evidence?

1 A Yes.

2 Q I'm going to show you --

3 MR. MINISH: Judge, can we just be heard for a second?
4 I don't want to cause an issue with the Court.

5 THE COURT: What is it?

6 MR. MINISH: There's something I want to show the
7 Court before we ask the witness.

8 THE COURT: Well, you can just ask her to identify it
9 for now. She's not going to --

10 MR. MINISH: Well, I would ask it be put into evidence
11 now, too. Mr. Bergrin has made an issue of it.

12 THE COURT: Well, let's see.

13 (At the sidebar.)

14 THE COURT: This is one he referred to?

15 MR. MINISH: He referred to this during the course of
16 it; I referred to that; and I believe the Agent during her
17 response referred to this. So, Judge, at this point I'd just
18 like to move these three photographs into evidence.

19 THE COURT: Well, go ahead, Mr. Bergrin, or Mr.
20 Lustberg. Go ahead.

21 These were not taken by her nor was she on the scene
22 when she be observed --

23 MR. MINISH: Well, Judge --

24 THE COURT: Nor was she on the scene when she observed
25 the body. Right?

1 coming in now. They'd probably come in through the crime scene
2 fellow anyhow.

3 MR. BERGRIN: No objection.

4 MR. LUSTBERG: Just so it's clear we're not waiving
5 any objections we may have to certain autopsy photos down the
6 road. But we can deal with those later.

7 THE COURT: Okay.

8 (In open court.)

9 THE COURT: All right, Mr. Minish, you may proceed.

10 MR. MINISH: Thank you.

11 For the record, Judge, I'm showing the witness
12 Government's Exhibits 2296f, g, and b.

13 THE COURT: 2296?

14 MR. MINISH: 2296f, g, and b.

15 BY MR. MINISH:

16 Q Agent, I'd like you to take a look at those exhibits and
17 tell me: Do you recognize what's contained in those exhibits
18 or what's depicted in those three photographs?

19 A 2296g is a photograph of Kemo McCray after he had been
20 shot. And in this picture he has been --

21 Q Before you describe it, just do you recognize what's in
22 these photographs?

23 A I'm sorry.

24 Yes.

25 Q Okay. You can check all three of them.

1 A Yes, I do, I recognize all three, yes.

2 MR. MINISH: Judge, we ask that these be moved into
3 evidence and we be allowed to publish them to the jury.

4 THE COURT: There's no objection --

5 MR. BERGRIN: There's no objection, Judge.

6 THE COURT: -- at this time they'll be moved into
7 evidence, ladies and gentlemen.

8 (Government's Exhibits 2296f, 2296g, and 2296b are
9 received in evidence.)

10 MR. MINISH: All right, then if we could publish to
11 the jury --

12 MR. BERGRIN: I have no objection at all, Judge.

13 MR. MINISH: -- 2296.

14 (An exhibit is published to the Jury.)

15 Q Now, Agent, is this one of the photographs that you
16 reviewed after speaking to Anthony Young?

17 A Yes.

18 Q Could you tell the jury what that object is at -- well, who
19 is the individual lying there?

20 A That's a photograph of Kemo laying face down.

21 Q And at Mr. McCray's elbow there appears to be a white
22 object. Could you tell the jury what that is?

23 A Yes, that's a dust mask.

24 Q And there are two objects in the middle towards the bottom.
25 Could you explain what those are?

1 A Those are handyman-type work gloves.

2 Q Now, if we could put up photograph 2296g.

3 Is that the photograph that Mr. Bergrin referred to
4 earlier with you?

5 A Yes, that is.

6 Q Okay. What's the difference -- I still see the gloves and
7 still see the dust mask -- what's the difference between those
8 two photos?

9 A The first photo depicts how Kemo McCray fell, slumped to
10 the ground after being shot. This picture depicts Kemo after
11 being rolled over and placed on his back.

12 Q And having been rolled over, he was rolled away from the
13 gloves?

14 A He was rolled away from the gloves and the face mask and
15 the pool of blood.

16 Q Now, if we could put up photograph 2296b.

17 Okay. Now, for perspective sake I'd like you to
18 describe for the jury: What's in that picture?

19 A That picture is the intersection of South Orange Avenue and
20 South 19th Street, and it's a picture of Kemo a small distance
21 from the sidewalk into the street. And the numbers that you
22 see on the screen are I believe the shell casings that were
23 found at the scene, 1, 2, 3 and 4.

24 Q And Mr. McCray's body is underneath the white towel or --

25 A Yes, it is. And in this picture his feet would be at the

1 far end of the photograph and his head would be at the closer
2 end of the photograph, the bottom of the photograph.

3 Q So again, so that's clear. I have my -- if my back is to
4 the stores there, it's heading this way (demonstrating)?

5 A Yes.

6 MR. MINISH: Sorry, Judge. For the record I was just
7 pointing --

8 THE COURT: The head is closer to this white line. Is
9 that it? Is that what --

10 THE WITNESS: His feet are closer to the Sand Pit.

11 MR. MINISH: To the "2." Is that correct? Or to
12 the --

13 THE WITNESS: His head is closer to the number "2" on
14 the picture, yes.

15 MR. MINISH: So the feet closer back to the curb?

16 THE COURT: Which is the white street line?

17 MR. MINISH: Yes.

18 THE COURT: Okay. Is that the dust mask to the right
19 of the sheet.

20 THE WITNESS: Yes, it is, as well as the gloves.

21 THE COURT: Okay.

22 BY MR. MINISH:

23 Q Now, Mr. Bergrin asked you a number of questions with
24 regards to safety, conversations you had with Mr. McCray.

25 A Yes.

1 Q What did you recommend Mr. McCray do when he felt his
2 safety was in jeopardy?

3 A I recommended that he relocate out of the area, far from
4 the area, immediately.

5 Q And by what means did you recommend him leaving, whether it
6 was the witness security or a relocation? I know you've
7 already described both.

8 A He did not want to -- he did not choose the Witness
9 Security Program, so I recommended that he relocate, and by
10 doing that we would provide him money, funds so that he can --
11 he could take his family and relocate.

12 Q Do you as an FBI Agent have the authority to order someone
13 to accept this sort of assistance?

14 A No, I do not.

15 Q Do you have any authority to force an individual to move or
16 to enter the Witness Security Program?

17 A No, I do not.

18 Q What was Mr. McCray's decision with respect to the Witness
19 Security Program?

20 A He did not want to go into the Witness Security Program and
21 initially did not want to relocate. He did not want to leave
22 his family or his friends.

23 Q Mr. Bergrin also asked you some questions about the
24 charging decisions with respect to various individuals. But in
25 general, who was in charge of charging decisions with respect

1 to the evidence that you've gathered?

2 A The United States Attorney's Office is responsible. We as
3 the investigative agency provide the evidence to the United
4 States Attorney's Office who then ultimately makes the charging
5 decision.

6 Q And so the jury is clear, with respect to the charge of a
7 shotgun initially that Kemo possessed or you had evidence that
8 he possessed it, who was the AUSA that you were dealing with at
9 that time; or more specifically, was it Mr. Gay or myself?

10 A No, it was not.

11 Q Also on cross-examination you also discussed the amount of
12 time between where Mr. Bergrin was no longer Mr. Baskerville's
13 lawyer and how much time he had to cooperate thereafter.

14 Was Mr. Baskerville provided with a new attorney on or
15 about January 3rd, 2005?

16 A Yes.

17 Q At that time what phase of gathering evidence with respect
18 to whether or not to indict Mr. Baskerville for the murder
19 charges were you in?

20 A We were presenting evidence to a federal grand jury with
21 the hopes of securing an indictment for William Baskerville on
22 the murder of Kemo McCray.

23 Q And on or about March 9th of that same year, was Mr.
24 Baskerville, in fact, indicted for that murder?

25 A He was indicted for conspiracy to commit murder and the

1 murder, yes.

2 Q Now, and again to continue with Mr. Baskerville so that the
3 jury is clear.

4 When the actual trial of Mr. Baskerville rolled
5 around, were you the Case Agent for the trial?

6 A I was not. I was on maternity leave for five months, so I
7 was on maternity leave I believe two months before the trial
8 and then three months after the trial. Although I did come and
9 testify at the trial, I came off of maternity leave to testify.

10 Q Okay. Do you recall what date you actually testified?

11 A I believe it was April 4th, 5th, 6th.

12 Q So in the early --

13 A Possibly 7th.

14 It was three or four days. So I believe it started
15 April 4th, of 2007.

16 Q 2007, all right.

17 Prior to that, do you know how long the trial had been
18 going on before that?

19 A I --

20 Q Your testimony. Excuse me.

21 A My testimony?

22 Yeah, I believe I may have been the first witness or
23 close to the first witness, maybe the second witness.

24 Q Now, you were asked some questions about toll records.
25 Correct?

1 A Yes.

2 Q And Mr. Bergrin showed you what was marked J02938.

3 MR. MINISH: I believe that's a Defense exhibit list
4 Judge. I just don't have that list.

5 Q Were you shown this item?

6 A Yes, I was.

7 Q Now, tell the jury what that depicts. How was that
8 created?

9 A That is created using phone records that we had obtained
10 for Malik Lattimore, Rakeem Baskerville, Dedre Baskerville, the
11 Hudson County Jail, and Paul Bergrin's cell phone, and it
12 depicts call activity on the date of November 25th, 2003.

13 Q Where did you get the information that was used to create
14 this list?

15 A From toll records of the various individuals.

16 Q But who provides the toll records? Does the FBI have
17 independent sources of toll records?

18 A No, we had to subpoena those toll records.

19 Q From where?

20 A From the various phone carriers, whether it's Sprint,
21 Nextel, AT&T, Verizon. We had to subpoena those records.

22 Q And do those reports indicate that you received the toll
23 records, the duration of the calls?

24 Let me ask you this: The exact --

25 A Yes.

1 Q -- duration of the calls?

2 A No, they don't. They show when a call was placed.

3 Q Okay. And if a call lasted ten seconds or 59 seconds, is
4 there any differentiation made in those records?

5 A There's no way to tell.

6 Q So it's just a minute -- full minutes?

7 A It's a full minute, exactly, yes.

8 Q Now, you also were asked questions about GPS data. Does
9 the FBI have independent information with respect to GPS data
10 for the phone company -- or excuse me -- for various phones?

11 A Yes.

12 Q You have independent -- I'm sorry, I asked an inarticulate
13 question. I apologize.

14 Does the FBI have independent GPS information about
15 various individuals' phones?

16 A No. We are required to obtain a court order to get GPS
17 information on an individual's phone.

18 Q And where is that information held?

19 A With the phone company.

20 Q And are you able to enforce rules on how long they keep
21 this information?

22 A Absolutely not, no. They have a time frame that they will
23 store this information, and once you're out of that time frame
24 there is no way to recover that data.

25 Q Now, Mr. Bergrin asked you a number of questions about the

1 left-handedness of the shooter or your determination about
2 that.

3 A Yes.

4 Q When you made your decision with respect to what Anthony
5 Young had told you, were you basing it only on the medical
6 examiner's report?

7 A No, I was not.

8 Q What else were you basing it on?

9 A I was basing it on the information he had provided to me
10 and the specific nature with how he had approached Anthony
11 Young. He walked -- I'm sorry -- how Anthony Young approached
12 Kemo McCray. He walked past him, he then turned around,
13 grabbed him in the back of the head and then shot him with his
14 left hand, which corroborated the medical examiner's report in
15 that a bullet traveled from the left side of his chin area
16 going through to the right side.

17 There was another shot that was similar in nature.
18 And then there was another shot at the base of the neck, the
19 left side that went up through the head, and how it traveled in
20 head, I don't know. I believe it may have moved around once
21 inside the head. But I was able to piece together what Anthony
22 Young said, because he was very detailed, very explicit in how
23 he shot Kemo McCray.

24 Q And were there other individuals, eyewitnesses that
25 indicated that the shooter was behind Mr. McCray when he shot

1 him?

2 A Yes, there was an eyewitness who provided us with that
3 information, yes.

4 Q You were also asked questions -- oh, excuse me, I'm sorry.
5 And just to -- is there a difference between the standard by
6 which the medical examiner making a decision with respect to a
7 degree of medical and scientific certainty, is that different
8 than the standard you were using with respect to corroborating
9 Anthony Young?

10 A Absolutely. His would be scientific in nature, and ours is
11 applying what Mr. Young told us to what we're reading in the
12 report. But his is scientific in nature.

13 Q You were asked questions about Mr. Baskerville dealing in
14 crack cocaine but Mr. Curry dealing in powder coke. Could you
15 explain to the jury how that works?

16 A Hakeem Curry was selling kilograms of cocaine, and that
17 would be raw cocaine sold in a brick form. In order to convert
18 it to crack cocaine you have to take the raw cocaine and do
19 what's called "cooking it up," which means you're mixing it
20 with other ingredients and actually changing the form, and it
21 becomes more of a Play-Doh type of form or a rock form, much
22 more hard and solid. And that is what William Baskerville was
23 doing. He was taking the raw cocaine and having people cook up
24 the cocaine for him and selling it in the cooked up form, which
25 is crack.

1 Q And did you have additional evidence that Mr. Baskerville
2 did take raw cocaine and cook it for sale on the street?

3 A We had interviewed the individual that cooked it up for
4 William Baskerville.

5 Q And who was that individual?

6 A His name is -- his street name is Carwash, but his real
7 name is James Murphy, and he was present on some of the
8 transactions that we had, some of the drug deals that we had
9 discussed earlier.

10 MR. MINISH: Judge, I'm going to show the witness two
11 documents. One is J00349, and the other is J00401.

12 THE COURT: Are these the exhibit numbers or --

13 MR. MINISH: I'm sorry, Judge. These are the Jencks
14 numbers. I have a copy for the Court.

15 THE COURT: Okay. Jencks numbers, so they're not
16 exhibit numbers.

17 MR. MINISH: I'm sorry, I might have given you -- did
18 I give you two? Let me check.

19 THE DEPUTY CLERK: I'm sorry?

20 MR. MINISH: Okay. Again, just for the record, Judge,
21 it's J00346; J00349; and J00401.

22 THE COURT: All right. I don't have 346. I have 349
23 and 401. So...

24 MR. MINISH: I apologize.

25 I have another copy, Judge. 346 is the one you're

1 missing?

2 THE DEPUTY CLERK: Yes.

3 THE COURT: Yes.

4 MR. MINISH: I have it right here.

5 MR. BERGRIN: Judge, could we have an identification
6 of this?

7 MR. LUSTBERG: Could you just tell us what they are,
8 please?

9 MR. MINISH: Okay.

10 MR. LUSTBERG: Sorry. There's a lot of... thank you.

11 (Counsel confer off the record.)

12 BY MR. MINISH:

13 Q Agent, I'm showing you what's been marked J00346 and
14 J00349. Do you recognize what those two items are?

15 A This is a proffer agreement dated March 1, 2006 in United
16 States vs. Anthony Young, and it is signed by -- agreed and
17 accepted to by Anthony Young, and his attorney at the time,
18 Gerald Fusella.

19 Q Okay. And what's the other item?

20 A This is also a proffer agreement. This one is dated
21 February 8th, 2005, and it is a proffer agreement, agreed and
22 accepted to by Anthony Young with his attorney at the time,
23 Melinda Hawkins Taylor.

24 Q Are you familiar with what those two items are used for?

25 A Yes.

1 Q Could you explain to the jury?

2 A It's an agreement in which Anthony Young is able to come in
3 and tell us what he knows, and as long as he is truthful and
4 accurate -- it's not just Anthony Young -- but when a defendant
5 comes in and is truthful and accurate, he has the ability to
6 tell us everything he knows and every crime he's been involved
7 in without the jeopardy of further prosecution. However, if we
8 find out what he's telling us is not true, we do have the
9 ability to take that information and corroborate it
10 independently to prove what they have said.

11 Q I would like you, if you can read -- I'm showing you now
12 J00346. If you could read what's said in paragraph 1.

13 A (Reading) Number one: No statements made by your client
14 during the interview will be used against your client in the
15 Government's case-in-chief at trial or for purposes of
16 sentencing, except as provided below.

17 Q Thank you.

18 And you don't have to read it again, but is that the
19 same paragraph 1 that's in J00349?

20 A The wording is somewhat different but the majority of the
21 language is the same, yes. Paragraph 1 on the second one
22 begins: (Reading) Should your client be prosecuted, no
23 statements made by your client during the interview will be
24 used against your client in the Government's case-in-chief at
25 trial or for purposes of sentencing, except as provided below.

1 Q So is it your understanding that the evidence that is given
2 at these proffer agreements is not to be used to prosecute a
3 defendant if he follows the rules?

4 A Absolutely. If a defendant comes in and is truthful and
5 tells us everything he knows, not just part of what he knows,
6 but everything he knows, then he cannot be prosecuted for those
7 crimes under this agreement.

8 Q Well, not that he can't be prosecuted for the crimes, but
9 with that information?

10 A I'm sorry, I misspoke. Yes, with that information.

11 MR. MINISH: Now, again, Judge, I am showing Defense
12 Counsel, J00401.

13 MR. LUSTBERG: Thank you.

14 Q Do you recognize what that is?

15 A This is a Plea Agreement with Anthony Young dated January
16 23rd, 2007.

17 Q Can you review that Plea Agreement, and to the extent that
18 you'd be able, to explain to the jury which charges Mr. Young
19 actually pled guilty to? And I direct your attention to the
20 first paragraph on --

21 A Yes -- I can read the charges, if you'd like.

22 Q That's fine.

23 A Okay.

24 THE COURT: Well, no, we're not going to read this
25 whole --

1 MR. MINISH: Not the whole charge, just tell what he
2 pled to, Judge.

3 THE COURT: You're talking about Count 1 of the
4 Information?

5 THE WITNESS: Yes. There's more than -- in here is
6 listed I believe three counts.

7 THE COURT: Right.

8 THE WITNESS: Yes.

9 Q And what are those three counts?

10 A Okay. Count 1 is a violation of 18 United States Code,
11 Section 1512, which is -- this is just discussing the
12 penalties. Just a minute.

13 Q It's on the first page?

14 A Yeah, on the first page.

15 THE COURT: Can you read the first paragraph on the
16 first page?

17 THE WITNESS: Yep.

18 A (Continuing) The first one is conspire to murder a witness,
19 contrary to Title 18 United States Code, 1512; the second one
20 is conspire to retaliate against an informant, contrary to
21 Title 18, United States Code 1513; and the third is
22 possession -- possess ammunition and a firearm after having
23 been convicted of a crime punishable by imprisonment for a term
24 exceeding one year, in violation of Title 18, United States
25 Code Section 922.

1 Q Okay. Now, Agent, that gun that Anthony Young pled to, is
2 that related to Kemo or related to the state case that you
3 discussed earlier?

4 A It's related to the state case, it's not related to the gun
5 used to kill Kemo.

6 Q Okay. So Mr. Young pled guilty for what he did with the
7 murder and for the gun he told you about that --

8 A Yes.

9 Q -- or had been charged with? Excuse me.

10 A Yes.

11 MR. MINISH: And the last thing with respect to this,
12 Judge.

13 Q The very last paragraph, paragraph 20, page 10, can you
14 read that for jury?

15 A Paragraph 20 states that pursuant to U.S.S.G. Section
16 5G1.1, Section (c), Section 2, Anthony Young shall not be
17 sentenced to less than imprisonment for life.

18 Q Now, Agent, was he also, so the jury is clear, given a
19 cooperation agreement in connection with that plea agreement?

20 A Yes, he was.

21 Q And in that cooperation agreement was there largely the
22 concept that if he cooperated, testified truthfully, the
23 Government would make a request of the court on Mr. Young's
24 behalf to be sentenced to less than life?

25 A Yes, that was part of the agreement, yes.

1 Q But if he did not cooperate, what was he to be sentenced
2 to?

3 A Life in prison.

4 Q Is there any parole that you're aware of in the federal
5 system?

6 A The federal system carries no parole. When you're
7 sentenced to life it's exactly what it is; it's life in prison.

8 Q Now, to move into another area. There were some questions
9 about the quality of Kemo, Mr. McCray -- excuse me -- as a
10 cooperator, as a source of information.

11 A Yes.

12 Q Could you tell the jury approximately how many arrests and
13 convictions were directly led to by the work Mr. McCray did?

14 MR. BERGRIN: Objection, Judge.

15 THE COURT: Sustained.

16 MR. MINISH: Judge, could we be heard?

17 THE COURT: All right. I'll hear you.

18 (At the sidebar.)

19 THE COURT: I didn't hear the full question but I
20 think I know where you're going.

21 MR. MINISH: I'm not sure what the objection is,
22 Judge. Mr. Bergrin seemed to go into this area.

23 THE COURT: First, what was the question? Because I
24 didn't hear it.

25 MR. MINISH: I'm sorry. How many individuals did Mr.

1 MR. MINISH: There was some limitation. There was an
2 issue --

3 THE COURT: Didn't she testify that everyone else pled
4 guilty?

5 MR. BERGRIN: Yes, Judge.

6 THE COURT: Except for Baskerville?

7 MR. BERGRIN: Yes.

8 THE COURT: Didn't she already say --

9 MR. MINISH: I believe it was sort of --

10 THE COURT: She said everybody either pled guilty or
11 cooperated except for Baskerville. She did that on your
12 direct.

13 MR. LUSTBERG: That's correct.

14 THE COURT: That's what I recall. It had to be this
15 witness. She said everybody cooperated. You know, so you
16 don't have to get into it again.

17 MR. MINISH: That's fine, Judge,

18 THE COURT: It's already done. She said that on
19 direct.

20 MR. MINISH: Okay.

21 THE COURT: Okay.

22 (In open court.)

23 THE COURT: The objection is sustained.

24 Go ahead.

25 MR. MINISH: Thank you, Judge.

1 BY MR. MINISH:

2 Q Now, Mr. Bergrin asked you questions about Johnny Davis
3 Dave and the ability -- Mr. Bergrin asked questions about
4 Johnny Davis Dave and the photo array that was shown to him.
5 To your knowledge, what vantage point did Mr. Davis have with
6 respect to the shooter in the case?

7 MR. BERGRIN: Objection, Judge. That will be
8 testified to by Mr. Davis.

9 MR. MINISH: Mr. Bergrin is the one who brought this
10 up as an issue, went all the way through the photo array.

11 THE COURT: No, we'll hear from Mr. Davis I assume.
12 No. Whatever her knowledge was came was from Mr. Davis, so
13 I'll -- sustained.

14 Mr. Davis will be a witness. Correct?

15 MR. MINISH: Yes, Judge. I'm only responding to --

16 THE COURT: It's okay, Mr. Minish.

17 Mr. Davis will be a witness. He will tell us best.
18 He was there. Whatever she learned was from Mr. Davis or may
19 have been from an investigator. But Mr. Davis will -- if you
20 ask him the question, will be able to relate where he was, what
21 he observed?

22 MR. MINISH: Judge, if I could just have one second.

23 THE COURT: Sure.

24 (There is a pause for Mr. Minish.)

25 BY MR. MINISH:

1 Q Okay, just two final areas, Agent.

2 With respect to Mr. Young's testimony, you testified
3 how there were changes over time, that the shooter -- he
4 admitted finally to being the shooter. With respect to
5 information that he gave about Mr. Bergrin, did the story ever
6 change?

7 A Absolutely not. And we were able to corroborate what he
8 told us specifically about Mr. Bergrin's involvement in the
9 murder.

10 Q Mr. Bergrin asked you a number of questions with respect to
11 what William Baskerville did the day he was arrested at the
12 FBI.

13 A Yes.

14 Q After he spoke with Mr. Bergrin, did William Baskerville
15 say anything to you?

16 A He said that "my attorney has told me not to cooperate."

17 MR. MINISH: I have nothing further, Judge.

18 THE COURT: All right.

19 RECROSS-EXAMINATION

20 BY MR. BERGRIN:

21 Q Mr. Baskerville had been through the system multiple times
22 in his past. Correct?

23 A He had been through the state system multiple times. I
24 believe this is his first federal arrest.

25 Q He had multiple convictions. Correct?

1 A That is correct, yes.

2 Q And Mr. Baskerville was explained by you the fact that he
3 could cooperate. Correct?

4 A That is correct, yes.

5 Q As a matter of fact, you went back to see him on multiple
6 occasions to tell him that he could cooperate and that you
7 recommend that he cooperate. Correct?

8 A I told him initially, I talked to him initially about
9 cooperating and then when I went back to see him the day after
10 the murder --

11 Q On March the 3rd --

12 A Yes.

13 Q -- you told him he could cooperate again. Correct?

14 A Yes, I -- I suggested that it would be in his best interest
15 to cooperate.

16 Q And then on March 9th you went back again and told him he
17 could cooperate. Correct?

18 A Yes, I did.

19 Q And as a matter of fact, he had for the last seven years,
20 he has had a counsel totally independent of me. Correct?

21 A I don't know who his previous counsel was. I was only
22 familiar with the fact you were his counsel on this charge. I
23 don't know who his other attorneys -- oh, you mean the past
24 seven years?

25 Q For the past seven years --

1 A Okay.

2 Q -- I have not been associated with the case of United
3 States vs. Baskerville. Isn't that a fact?

4 A Yes. I apologize. I thought you meant prior to his
5 arrest.

6 Yes, for the past seven years you have not been his
7 counsel.

8 Q And he's had multiple counsel during those last seven
9 years. Correct?

10 A I'm aware of two other attorneys that he has had, yes.

11 Q And not one time did any of those other attorneys or Mr.
12 Baskerville ever give any hint, suggestion, inclination
13 whatsoever of cooperating. Correct?

14 MR. MINISH: Judge, that's beyond the scope of the
15 knowledge of this witness.

16 THE COURT: No.

17 MR. MINISH: The cooperation certainly would have come
18 to the U.S. Attorney's Office, not to this Agent.

19 THE COURT: Overruled.

20 MR. BERGRIN: Thank you, Judge.

21 Q Isn't that a fact, ma'am?

22 A It is my understanding that he was pending appeal and that
23 the notion of cooperation could be broached, could only be
24 broached after those appeals had been satisfied.

25 Q You could cooperate while an appeal is pending. Isn't that

1 a fact? You could cooperate at any time?

2 A Yes, that is a fact.

3 Q So why would you tell the jury that he has to wait for an
4 appeal? He could cooperate at any time. Isn't that a fact?

5 MR. MINISH: I object to --

6 THE COURT: You asked that question, Mr. Bergrin.
7 You're getting argumentative. You asked that question; she
8 answered it.

9 Q When you saw William Baskerville, isn't it a fact he told
10 you that if I cooperate, I have to give evidence against my
11 family, my loved ones?

12 A He said that he would be cooperating against family
13 members, yes.

14 Q And he said that he had to think about it. Correct?

15 A That is correct, yes.

16 Q And you have no idea what I told Mr. Baskerville. Isn't
17 that a fact?

18 A I can only tell you what he told me after he hung up the
19 phone, and that was that "my attorney Paul Bergrin has told me
20 not to cooperate."

21 Q You have no idea what I told William Baskerville, whether
22 to cooperate, whether to think about it, whether it's his
23 decision; you have no idea whatsoever. Isn't that a fact?

24 A Again, I did not hear you on the phone call, I could only
25 hear what Mr. Baskerville told me after the phone call

1 concluded.

2 Q And when was that?

3 A That was in the arrest room when he was able to make that
4 telephone call to you.

5 Q Isn't that a recorded call?

6 A No, it is not.

7 Q And you're telling me that you didn't -- there is -- did
8 you ever ask him after that November 25th, you asked him
9 multiple times whether he wanted to cooperate, correct, on
10 March 3rd, on March 9th again. Correct?

11 A Yes.

12 Q And he told you that he did not want to cooperate.
13 Correct?

14 A He said that he would think about it, that --

15 Q He would think about it?

16 A That he was thinking about it.

17 Q And he knew how to reach you. Correct? You gave him your
18 name, didn't you?

19 A Yes, he had my name.

20 Q And he had your telephone number. Correct?

21 A Yes, he did -- I -- I -- I don't know. I imagine he could
22 have found my through the FBI, so I did not provide him with my
23 telephone number but I imagine he could have certainly
24 contacted me at the FBI.

25 Q And William Baskerville nor any family member of his ever

1 contacted you. Correct?

2 A No, they had not.

3 Q In including his wife. Isn't that a fact?

4 A No. I mean, I've had some dialogue with her but it was not
5 regarding his cooperation.

6 Q Now, you testified that Anthony Young knew that Kemo had
7 braids on March the 2nd of 2004. We've talked about that
8 before during examination. Isn't that a fact?

9 A Yes.

10 Q Kemo was known to wear his hair in braids. Correct?

11 A Yes, he frequently did wear it in braids.

12 Q And the photograph that you showed of Kemo lifting weights,
13 that was a photograph without braids. But Kemo was known to
14 consistently wear his hair in braids. Correct?

15 A Not consistently. There were times where he would wear it
16 out.

17 Q During the videos in this particular case, every single one
18 of them, Kemo had his hair in braids. Isn't that a fact?

19 A I believe that is true, yes.

20 Q The pictures, every single photograph of the crime scene in
21 this case, isn't it a fact, without any equivocation
22 whatsoever, that there are no braids that are seen in any one
23 of these pictures?

24 A I -- if I can review --

25 MR. MINISH: I have the photographs.

1 THE WITNESS: Okay.

2 MR. MINISH: The three that were discussed I'm
3 providing to the Agent.

4 THE WITNESS: Okay.

5 (Photographs are handed to the witness by Mr. Minish.)

6 A I believe in this photograph you can see some --

7 THE COURT: What's this exhibit number?

8 THE WITNESS: I'm sorry. 2296f.

9 A (Continuing) And I believe in this photograph you can see
10 some of the braids under the doo-rag that he had on his head.

11 Q So if the police or the medical examiner who were at the
12 scene testified that they could not see the hair because he was
13 wearing a doo-rag, are you telling us that would be incorrect?

14 THE WITNESS: No.

15 MR. MINISH: That's an improper question.

16 THE COURT: Yeah, that's an improper question.

17 MR. BERGRIN: I'll move on, Judge.

18 Q You said that Mr. Young told you about the dust mask.
19 Correct?

20 A Yes.

21 Q Isn't it a fact that Mr. Young specifically told you that
22 the dust mask was around the neck of Kemo when he saw him on
23 the ground? Isn't that a fact?

24 A If I can just look at my initial report of interview --

25 Q Please do that?

1 A -- to get the exact wording of what he would have told me.

2 The individual got out of the car, walked up to Kemo's
3 body and saw Kemo laying in the street, face down with a half
4 lit cigarette in his right hand and a dust mask around his
5 neck.

6 Q I want you to tell -- I want you to show the jury one
7 photograph of Kemo McCray lying in the street with a dust mask
8 around his neck. Show us one.

9 A I cannot do that.

10 MR. MINISH: Judge, again, the medical -- we've
11 already limited this area because the crime scene person is
12 going to come and describe what the body looked like when it
13 fell as opposed to the results after.

14 THE COURT: Do you have a photograph with the dust
15 mask around --

16 MR. MINISH: We do not, Judge.

17 THE COURT: Okay, then this is a proper question.
18 Okay.

19 MR. BERGRIN: Thank you, your Honor.

20 Q You said that Kemo was found face down. Isn't it a fact
21 that during my cross-examination, even during your direct
22 examination, Keo was found on his side. Isn't that a fact?

23 A I don't know if I -- I may not be making this clear enough.
24 He is found -- this is the picture of exactly how he was found.
25 He's slumped on his side but his face is down. So I don't know

1 if I didn't describe it accurately or not.

2 Q Face down would be the nose against the pavement
3 pathologically. Isn't that a fact?

4 A That is how this picture depicts it, yes. His face is down
5 and his nose is down on the pavement in a pool of blood.

6 Q Isn't it --

7 THE COURT: Just a moment. The exhibit number so we
8 have a reference, please.

9 THE WITNESS: I'm sorry. 2296f.

10 THE COURT: All right.

11 Q Isn't it a fact that photograph 2296l shows that his face
12 is on the side, his cheek, as depicted in the anatomical report
13 of the doctor that went to the scene?

14 A 2296l?

15 Q 2296, the photograph -- I'm sorry.

16 MR. BERGRIN: May I approach, your Honor?

17 THE COURT: Yes, you can.

18 Q Isn't it a fact that his face is on his cheek -- that his
19 cheek is on the sidewalk?

20 THE COURT: Which cheek; his right cheek?

21 MR. BERGRIN: His right cheek.

22 A His right cheek is certainly on the sidewalk, as is his
23 nose, yes.

24 Q He's not face down, he's on his side. Isn't that a fact?

25 A I don't -- I guess it's a matter of opinion. When I look

1 at this, he is slumped on his side but his face is certainly
2 facing down on the sidewalk. It may be at an angle, but his
3 face is down on the sidewalk.

4 Q And the photographs that you have, do you see one speck of
5 blood on the sidewalk or between the sidewalk and Kemo's body,
6 one even drop of blood?

7 A From the photographs I cannot tell if there's a drop of
8 blood. I mean, the one that I have is certainly a close-up and
9 there's a great amount of blood by the head. The only other
10 photo I have is from a distance away, and from this photograph
11 I can't tell if there's blood on the sidewalk or not.

12 Q Well, you went to the crime scene, correct, on March the
13 2nd of 2004?

14 A Yes.

15 Q Are you telling this jury that you saw blood on the
16 sidewalk?

17 A I -- I did not see blood on the sidewalk.

18 Q Are you telling this jury that you saw blood from the
19 sidewalk to where the pool of blood was found?

20 A I did not.

21 Q Thank you.

22 Now, you testified on redirect by Mr. Minish a few
23 minutes ago that there was a small distance from the sidewalk
24 to where the body was.

25 A Yes.

1 Q What is a "small distance"; how many feet?

2 A I would say -- I don't want to be locked into a number
3 because I realize there's an expert who is going to testify to
4 this. But in looking at the photograph, I'd say possibly two
5 feet.

6 Q Two feet? Are you sure about that?

7 A I'm not sure, that's what I'm saying. I only have this
8 photograph to go by. There's a professional report that was
9 done.

10 Q And isn't it a fact that no measurements were ever taken?

11 A Again, Mr. Bergrin, I am not sure of that. I know --

12 THE COURT: That's been asked several times.

13 Q Did you read the initial report of the responding police
14 officers from the Newark Police Department, Police Officer
15 Darius Smith and Police Officer Dudley?

16 A Yes, I did.

17 Q Isn't it a fact that they depicted the body in the middle
18 of the street?

19 A I don't recall that.

20 MR. BERGRIN: May I have one minute, your Honor?

21 THE COURT: Yeah.

22 MR. BERGRIN: Thank you.

23 MR. MINISH: I'm just not sure how proper it is to be
24 crossing this witness who said she wasn't there, when the body
25 was there with the police report that another officer did in

1 another department.

2 THE COURT: Let me see what the next question will be.

3 She was asked questions about these photographs by,
4 Mr. Minish.

5 MR. MINISH: I have no objection to the photographs.
6 It was just --

7 THE COURT: I may agree. So let me just see.

8 (There is a pause Mr. Mr. Bergrin.)

9 MR. BERGRIN: I'm just pointing out the exact spot for
10 you, Judge.

11 I'll move on to the next question while Mr. Lustberg
12 is finding it, Judge.

13 THE COURT: All right.

14 BY MR. BERGRIN:

15 Q Mr. Minish asked you about safety. Now, you had several
16 options to make sure Kemo was protected. Correct?

17 A Yes. Yes, we do.

18 Q And as a matter of fact, you knew that Kemo had a
19 confrontation on the 24th February of 2004. Correct?

20 A I know that --

21 Q An eye-to-eye stare-down essentially?

22 A Yes.

23 Q And you had other evidence of at least -- at least two to
24 three other occasions where he was being watched in close
25 proximity to where he was living. Correct?

1 A Yes.

2 Q Now, you never arrested him, which you could have done.

3 Correct?

4 A We did not get the opportunity to arrest him because he had
5 been murdered before that could happen.

6 Q You could have arrested him on February the 24th when Kemo
7 confirmed the fears. So you had time before he was murdered,
8 you had time on February 24th. You could have taken him
9 directly into custody. Correct?

10 A Yes, I could have.

11 Q And you could have placed him under surveillance. Correct?

12 A Yes.

13 Q And you never placed him under surveillance. Isn't that a
14 fact?

15 A That is a fact, yes.

16 Q Now, you said that it is the U.S. Attorney who makes this
17 decision as far as charging. Correct?

18 A Yes.

19 Q You have a right, or you have the option or alternative to
20 take a case to the state if the Federal Government does not
21 want to prosecute it, correct, and ask the state to charge the
22 individual. Correct?

23 A Yes.

24 Q And you never did that in this particular case at all?

25 A Which -- which arrest are you talking about?

1 Q I'm talking about when you found out that Kemo was dealing
2 heroin, crack and cocaine, or the gun, or stealing money from
3 the FBI from money that was designated for buys of narcotics.

4 A We would prosecute that federally. I would not turn
5 something like that over to the state. We would prosecute him
6 federally for that.

7 Q Let's talk about the gun, the shotgun.

8 A Yes.

9 Q When you made the determination in conjunction with the
10 Assistant United States Attorney that the case is weak after
11 Kemo confessed to it and was turned down for prosecution, you
12 never brought it to the state. Correct?

13 A I did not bring it to the state.

14 Q You held it over Kemo's head as a means to get him to
15 cooperate and continue with you. Isn't that a fact?

16 A I explained to Mr. McCray, which is -- what happened is
17 that we remained that -- we have that right to charge him, and
18 it had not been decided the day we had that discussion whether
19 or not he was going to be charged, but at any point we had that
20 right to charge him.

21 Q But the AUSA with your knowledge had made the decision that
22 they're not going to charge Kemo DeShawn McCray with possession
23 of the shotgun by a convicted felon. Correct?

24 A Yes.

25 Q And that was a short time after the case was brought to

1 them. Isn't that a fact?

2 A Yes.

3 Q And you never gave Kemo the courtesy of even letting him
4 know that, that he's not going to be charged, so that he could
5 make a determination as to whether to complete his cooperation
6 or continue his cooperation with you?

7 A That's not true.

8 Q You told Kemo that he's not being charged with the gun?

9 A I told him that the decision is out there and that he could
10 be charged, but at this stage it's unlikely that he would be
11 charged. And so we're clear, Kemo McCray has a to sign a
12 document that he's cooperating with us voluntarily. I cannot
13 force him nor can I force anybody to cooperate with the
14 Government, it is done on a voluntary basis.

15 Q Kemo was never informed, is my question -- please answer my
16 question, ma'am -- Kemo was never informed that he's not being
17 prosecuted and the case had been -- a decision had been made
18 that he's not being prosecuted for possession of the shotgun by
19 a convicted felon. Isn't that a fact?

20 A I could not be that definitive. I told him it was likely
21 that he was not to be prosecuted, but again, we have the option
22 to prosecute him at any point. So I told him it was not likely
23 that he would be prosecuted.

24 Q When did you tell him that?

25 A Several days after that initial meeting.

1 Q And of course that's documented?

2 A That would not be documented.

3 Q There's not one report, not one hand-written note, nothing
4 which depicts that. Isn't that a fact?

5 A There is a cooperation agreement that he signs with us, but
6 there is not anything that depicts that he -- that would record
7 the fact that he has a possible pending gun charge.

8 Q And the cooperation agreement says that he's pending
9 charges for possession of the gun. Correct?

10 A No, it would not say that at all. It's an agreement that
11 he enters into -- it's a standard agreement that he enters into
12 with the Federal Government saying that he is cooperating with
13 us voluntarily. He is not being coerced or forced to do so.

14 Q Because he has the gun case over his head and it's being
15 held against him. Isn't that a fact?

16 A That is not a fact.

17 MR. BERGRIN: I'll move on, Judge.

18 (Counsel confer off the record.)

19 Q I'm going to show you what's been marked 02938.

20 You testified with Mr. Minish pertaining to that
21 document. Correct?

22 A Yes, I did.

23 Q And you testified that you couldn't tell how long the call
24 was. Correct?

25 A What is on this document is the start time of the call, so

1 the duration of the call is not listed on this document.

2 Q That's fair enough.

3 There is a call at 3:59, correct, from me to Mr.
4 Curry?

5 A Yes, that is correct.

6 Q And then there's a call at 4:01. Correct?

7 A Yes, that is correct.

8 Q And who is the call two minutes later after I speak to Mr.
9 Curry?

10 A It's from Curry to Rakeem Baskerville.

11 Q I'm sorry, I didn't hear you. From who?

12 A From Hakeem Curry to Rakeem Baskerville.

13 Q On November 25th of 2003, two minutes later. Correct?

14 A That is -- according to this document, yes, that is
15 correct.

16 Q And you have no reason to believe that that document is not
17 accurate. Isn't that a fact?

18 A I believe this is accurate, yes.

19 Q Thank you very much.

20 Now, you talked about GPS records. Do you know how
21 long GPS records for cell phones to determine where the cell
22 tower is, do you know how long they are held?

23 A I think there's two different distinctions. There's GPS
24 capability where we can actually put a phone at a location; and
25 then there's cell site data. I believe they're two separate

1 things. So I want to make sure I'm answering your question
2 correctly.

3 Q And I appreciate that.

4 Cell phone data in reference to placing a cell phone
5 at a particular location.

6 A Yes.

7 Q How long are those records kept?

8 A That's realtime. You use a GPS device to track somebody's
9 phone to tell you where they are at that point in time.

10 Q And there's also records of that, because that is
11 transmitted, correct, to a particular computer system at the
12 phone system depending upon which user or carrier you have.
13 Correct?

14 A Yes.

15 Q How long are those records kept?

16 A I can't say specifically how long, but I know it's not
17 long.

18 Q As an Agent and as the Lead Case Agent in this case you're
19 telling us that you didn't check to see how long those
20 records --

21 MR. MINISH: Judge, she's --

22 THE COURT: All right. Sustained.

23 MR. BERGRIN: Thank you, your Honor.

24 Q Mr. Minish asked you about the hand of a shooter, correct,
25 left hand versus the right hand.

1 A Yes.

2 Q After leaving court yesterday did you review the testimony
3 or the report of Dr. Shaikh?

4 A I did not

5 Q Did you speak to anybody in reference to Dr. Shaikh's
6 testimony pertaining to the fact that you can't determine which
7 hand the shooter has?

8 A I did not.

9 Q Like you testified before, you had absolutely no training
10 whatsoever in pathology and trajectory of bullets. Correct?

11 A I do not.

12 Q Or any evidence training in reference to scene reenactment
13 or scene recollection. Correct?

14 A That is correct.

15 Q The standards used by a doctor, you testified,
16 scientific -- beyond a scientific reliability, correct, or to a
17 medical certainty?

18 A I testified that they're scientific in nature.

19 Q And scientific in nature is more reliable than you with no
20 experience. Correct?

21 A What I was saying is Dr. Shaikh is scientific in nature.
22 What I am doing is taking that information and applying it in
23 practical terms given the information I had from Anthony Young.

24 Q Scientific reliability is more definitive than your
25 opinion. Correct?

1 A Yes.

2 Q Now, you testified in reference to the proffer agreements
3 of Mr. Young. Correct?

4 A Yes, I can.

5 Q And multiple proffer agreements were signed with Attorney
6 Hawkins Taylor. Correct?

7 A I was shown one proffer agreement that was signed by her.

8 Q But you knew that there were multiple proffer sessions with
9 Ms. Hawkins Taylor, correct, and Anthony Young?

10 A Yes. I don't know how many proffer agreements were signed
11 but I know there were multiple proffers, yes.

12 Q And you were only shown one by Mr. Minish. Correct?

13 A Yes.

14 Q Now, isn't it a fact that during those proffer sessions
15 with Ms. Hawkins Taylor, Anthony Young continued to falsely
16 accuse Jamal McNeil, his friend, of the murder of Kemo?
17 Correct?

18 A That is correct.

19 Q And then during the proffer session at a later time,
20 Anthony Young denied even being at the scene or observing
21 anything. Correct?

22 A Yes, that is correct.

23 Q And that was after being explained multiple times to
24 Anthony Young he had to be truthful, honest and up front.
25 Correct?

1 A Yes.

2 Q Now, you testified that Anthony Young could get life in
3 prison. Correct?

4 A Yes.

5 Q Under his plea agreement.

6 A Yes.

7 Q Isn't it a fact that the Office of the United States
8 Attorney is the office or the determining factor as to whether
9 Anthony Young is telling the truth? Isn't that a fact, ma'am?

10 A I'm not sure I -- I understand. I know the United States
11 Attorney's Office makes a motion on behalf of Anthony Young in
12 that they provide the facts that he has stated, and in doing so
13 would assume that that is the truth as to what he is saying,
14 yes.

15 Q Did you ever tell Anthony Young yourself to tell the truth?

16 A Absolutely.

17 Q And you're sure about that. Right?

18 A I am certain about that.

19 Q So if Anthony Young was to say that you never told him --

20 MR. MINISH: Judge, again.

21 THE COURT: Sustained.

22 MR. BERGRIN: I have no further questions.

23 Thank you, your Honor.

24 Thank you, Ms. Brokos.

25 THE COURT: Is there any further redirect?

1 MR. MINISH: Nothing.

2 THE COURT: All right. Ladies and gentlemen, we'll
3 recess. We've completed our examination of this witness, so
4 we'll take a 15-minute --

5 MR. BERGRIN: Judge, I'm sorry, I found that portion.
6 Mr. Lustberg found it.

7 THE COURT: I don't know if that's going to be a
8 permissible question. Let me hear the question.

9 BY MR. BERGRIN:

10 Q Isn't it a fact that the responding police officers --

11 THE COURT: No. There was some -- let me see the
12 area. May I?

13 MR. BERGRIN: It's line 5 at the end, your Honor.

14 (A document is handed up to the Court.)

15 THE COURT: All right. This is in relationship to the
16 witness' testimony that she believed the body was a few feet
17 from the curb. Correct?

18 MR. BERGRIN: Yes, sir.

19 THE COURT: Okay. But that was based on your
20 observation of that photograph. Correct?

21 THE WITNESS: That is correct.

22 THE COURT: So I don't know what your question is, Mr.
23 Bergrin.

24 MR. BERGRIN: My question will be: Isn't it a fact
25 that that responding police officers found it in the middle of

1 the street?

2 THE COURT: Sustained. The objection is sustained.

3 You'll have a chance -- the people at the crime scene
4 will determine where the body was found.

5 MR. BERGRIN: Thank you, Judge.

6 THE COURT: She says from the photograph -- she wasn't
7 there, but from the photograph she thinks it's a few feet from
8 the curb.

9 MR. BERGRIN: could I just ask one additional
10 question?

11 Q Did you read the report, the incident report from Newark
12 Police Officers Darius Smith and Dudley?

13 A Yes, I did.

14 MR. BERGRIN: Okay.

15 THE COURT: Okay.

16 MR. BERGRIN: I have nothing further.

17 THE COURT: Ladies and gentlemen, we'll take about a
18 15 minute recess. Please don't discuss anything about the case
19 and we'll see you back in 15 minutes. Thanks.

20 THE DEPUTY CLERK: Please rise for the Jury.

21 (The Jury leaves the courtroom.)

22 THE COURT: Everyone can be seated.

23 We'll take a recess.

24 Agent. You can step down.

25 (Witness excused.)

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No.
09-cr-369-WJM
v. :
TRANSCRIPT OF
PAUL W. BERGRIN, : TRIAL PROCEEDINGS
Defendant. :
-----x

Newark, New Jersey
November 9, 2011

BEFORE:

THE HON. WILLIAM J. MARTINI, U.S.D.J.

Reported by
CHARLES P. McGUIRE, C.C.R.
Official Court Reporter

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

s/CHARLES P. McGUIRE, C.C.R.

1 A F T E R N O O N S E S S I O N

2 (Defendant present)

3 (Jury out)

4 THE COURT CLERK: Please remain seated.

5 THE COURT: All right, everyone.

6 All right. Is Mr. Cleary here? Is the attorney
7 here?

8 THE COURT CLERK: Yes, he is.

9 THE COURT: All right.

10 Mr. Cleary, if you would please step forward to
11 the podium.

12 Thank you.

13 The record should reflect that after my
14 questioning of Mr. Jamal Baskerville before the lunch
15 recess, based on his answers, I determined that it was
16 appropriate for Mr. Baskerville to consult with an attorney.

17 Mr. Cleary was kind enough to come here on very
18 short notice. He is one of our C.J.A. attorneys.

19 And I gave him a brief statement as to the issue
20 as far as related to him that Mr. Jamal Baskerville was
21 being called by subpoena on behalf of the defense to testify
22 as to whether or not he knew Mr. Bergrin at all or had ever
23 met him, but that in this Court's opinion, even that limited
24 testimony would entitle the Government to do some
25 cross-examination regarding the Kemo matter in some respect,

1 how much, I didn't know, but whatever it was, I explained
2 that to Mr. Baskerville, and I also explained that by
3 testifying, he could be incriminating himself and that he
4 also could be running the risk of perjury, depending upon
5 his testimony and what the truth is, et cetera.

6 And I indicated he would have a right to a lawyer,
7 and I told him I would ask a lawyer to consult with him,
8 which Mr. Cleary, again, has had a chance now, I think,
9 right, to speak with him?

10 MR. CLEARY: Yes, Judge.

11 THE COURT: All right. Could you tell the Court
12 if he intends to testify?

13 MR. CLEARY: Your Honor, based on my limited
14 knowledge of this case, my brief discussions with the
15 Government and Mr. Baskerville, he intends to plead the
16 Fifth.

17 THE COURT: All right.

18 Do we need to put him on the stand for that
19 purpose?

20 MR. BERGRIN: No, Judge.

21 THE COURT: All right. We have the representation
22 of counsel that he would assert his Fifth Amendment
23 privilege in the event he were to be asked any questions, so
24 the Defendant has no objection to not putting him on the
25 stand.

1 Thank you, Mr. Cleary.

2 MR. CLEARY: Thank you, Your Honor.

3 THE COURT: Please submit the appropriate voucher.

4 MR. CLEARY: I will. Thank you, Judge.

5 THE COURT: I know it took you several hours, so
6 go ahead and do it. Okay? By the time you got here, left
7 and everything else. Thank you very much.

8 MR. CLEARY: Thank you, Judge.

9 THE COURT: All right, then. We'll bring back the
10 jury.

11 Mr. Bergrin and Mr. Lustberg, do you have any
12 other witnesses?

13 MR. BERGRIN: No, Judge.

14 THE COURT: Do you have any other documents you
15 need to move in?

16 MR. BERGRIN: Yes, Your Honor.

17 MR. LUSTBERG: Yes, Judge.

18 THE COURT: Are there any issues with those before
19 we bring back the jury?

20 MR. GAY: Judge, we're looking through these now.

21 (Off the record discussion)

22 MR. LUSTBERG: Okay. There are some exhibits that
23 we need to go through. I don't know how Your Honor wants us
24 to do it.

25 MR. GAY: I can say this, Judge. Certainly we

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

1 MR. BERGRIN: Excellent, Judge. Thank you.

2 (Government Exhibit 7500 marked in evidence)

3 MR. MINISH: I just need a minute to organize my
4 stuff, Judge.

5 THE COURT: Okay. We can get the witness sworn.

6 THE COURT CLERK: Placing your left hand on the
7 bible, raising your right hand:

8 S H A W N B R O K O S, called as a witness on behalf of
9 the Government, and having been duly sworn, testified as
10 follows:

11 THE COURT CLERK: Please be seated.

12 Please state your name, spelling it for the
13 record.

14 THE WITNESS: My name is Shawn, S-h-a-w-n, middle
15 initial A, last name Brokos, B-r-o-k-o-s.

16 DIRECT EXAMINATION

17 BY MR. MINISH:

18 Q. Agent, by whom are you employed?

19 A. I'm employed by the Federal Bureau of Investigation.

20 Q. Okay, and that's also known as the F.B.I.?

21 A. Yes, it is.

22 Q. And what's your title?

23 A. I'm a Special Agent with the F.B.I.

24 Q. And how long have you been employed by the F.B.I.?

25 A. For 17 years now.

1 Q. Would you give briefly the jury the benefit of your
2 educational background?

3 A. I have a B.S. degree, I majored in business
4 administration, and I graduated in 1991. I then went on to
5 work in banking, doing commercial lending, and subsequently,
6 I joined the F.B.I.

7 Q. Okay. And did you receive any training prior to
8 becoming a Special Agent?

9 A. I attended our training academy, which is in Quantico,
10 Virginia, and it's a 16-week-long academy where we actually
11 live there in Quantico, Virginia, and we are taught to
12 become proficient in firearms, defensive tactics, and we're
13 given significant classroom instruction for legal training,
14 interview techniques, report-writing, those types of things.

15 Q. And do you recall the year? Was that about January of
16 1996?

17 A. I started Quantico in January of 1996 and I graduated
18 in April of 1996, and then I was sent to the Newark Division
19 in -- right out of Quantico, so I came to Newark right out
20 of Quantico.

21 Q. Besides that general training, have you received any
22 specialized training?

23 A. I have received specialized training. I'm a certified
24 hostage negotiator for the Bureau, which means I can be
25 deployed and sent anywhere in the states or outside of the

1 country to serve as a negotiator. I've received training in
2 white-collar investigations, and I've also received training
3 in gang investigations.

4 Q. Okay. Not to be overly personal: Are you a married
5 woman?

6 A. Yes, I am.

7 Q. And is your husband also an F.B.I. agent?

8 A. Yes, he is.

9 Q. And did you meet while you were both at the F.B.I.?

10 A. Yes, we did.

11 Q. All right. Now, you said since the academy, you've
12 been at the Newark Division; is that correct?

13 A. Yes, it is.

14 Q. And could you just briefly tell the jury the various
15 areas you've worked in?

16 A. When I was first sent to Newark, I was assigned to a
17 white collar public corruption squad. Given that I had a
18 background in finance, I was sent right to a white collar
19 squad. So I worked on the public corruption squad for
20 approximately five years. After that, I was transferred to
21 a violent crimes squad, and I worked on that squad for
22 approximately five years. And then after that, I was sent
23 to our Red Bank office of the F.B.I., and I returned to work
24 in public corruption at that time.

25 Q. Now, during the course of your employment at the

1 F.B.I., have you received any commendations?

2 A. Yes, I have.

3 Q. Okay, and during the course of the F.B.I. -- working
4 with the F.B.I., have you received any reprimands?

5 A. Yes, I have.

6 Q. And was that seven days for insubordination?

7 A. Yes. Yes, it was.

8 MR. BERGRIN: Seven days for what? Could we hear
9 that again, please, Judge? Seven days with what?
10 Suspension?

11 THE WITNESS: It was a seven-day suspension for
12 insubordination.

13 Q. And since that insubordination, have you received
14 additional commendations?

15 A. Yes, I have.

16 Q. Now, you said at some point, you were working in
17 violent crimes or a violent crime area.

18 A. Yes.

19 Q. Do you recall what the name of that task force was?

20 A. It's called the Violent Crimes Criminal Enterprise
21 Task Force.

22 Q. And during the course of your work with that task
23 force, did you have the occasion to work with informants?

24 A. Yes.

25 Q. Could you explain the difference -- or how many

1 informants do you think you worked with during that period
2 of time?

3 A. Throughout my career, or on the gang squad?

4 Q. Okay. Throughout your career.

5 A. I -- close to a hundred.

6 Q. And do you know what the term "handler" means?

7 A. Yes. I would be the handling agent. So if there's an
8 informant, there's usually an agent who's designated to be
9 the handling agent, meaning the point of contact and the
10 person to whom that informant reports.

11 Q. Now, when you're talking about an informant, is this a
12 fellow F.B.I. agent, or a civilian?

13 A. No, these are civilians.

14 Q. And just so the jury's clear, another term I hear is
15 TFO. What does TFO mean?

16 A. TFO stands for task force officer, and typically on a
17 lot of our squads we have local or State Police officers
18 detailed to our squad to help us, and particularly on the
19 gang squad, we had several task force officers, for example,
20 a police officer from East Orange or a police officer from
21 Irvington, somebody who is local to that area and could
22 really bring their knowledge base and their expertise. So
23 that's a TFO. It's a law enforcement officer.

24 Q. Just not an actual F.B.I. agent, just someone working
25 with the F.B.I.

1 A. Yes.

2 Q. Now, going back to the informants, could you explain
3 the difference to the jury between someone working off a
4 case as well as getting paid, or versus getting paid?

5 A. Typically, there are two types of informants. If we
6 go out and arrest somebody and they decide they want to
7 cooperate, they then -- then the term is working off a
8 charge. So if they've been arrested and they would like to
9 receive consideration from the judge come sentencing, they
10 can cooperate with us, become an informant, and try and
11 reduce time that they may or may not serve in prison. So
12 that would be working off a charge.

13 The second is an individual who comes in off the
14 street who wants to be paid for information. They don't
15 have any pending charges, so they're doing it for the money.

16 Q. Going specifically to the ones working off the case,
17 were you able to make them any promises about what their
18 sentence will be?

19 A. No. Sentences are determined by the judge. There's
20 -- you know, I have no say in that.

21 Q. How about what they're charged with; are you in charge
22 of that?

23 A. That's the prosecutor's decision, the charging
24 decision.

25 Q. Largely, you can work with the state, but largely the

1 United States Attorney's Office; correct?

2 A. I'm sorry. Yes. It's the Federal prosecutors, the
3 United States Attorney's Office.

4 Q. Is there a difference between the individual providing
5 information as opposed to a proactive informant?

6 A. Yes. Again, I guess there's two different types of
7 informants if you look at it this way, too. There's people
8 who come in who strictly want to provide information. They
9 want to call us or come meet with us and say that they saw
10 this or they heard this. They don't want to become
11 proactively involved, meaning that they are willing to wear
12 a recording device or do anything, you know, of a more
13 proactive nature. So you have the kinds that just want to
14 come in and tell us what they saw or heard or witnessed
15 versus the witnesses who or the cooperators who wear a
16 recording device and actually go in and have covert
17 meetings.

18 Q. Actively involved in an investigation.

19 A. Exactly, yes.

20 Q. Did there come a time when you met an individual named
21 Kemo Deshawn McCray?

22 A. Yes.

23 Q. Could you explain to the jury the circumstances of
24 that meeting ?

25 A. I met him in I believe late March or April of 2002,

1 and I had received information from another informant at the
2 time that Kemo McCray was in possession of a shotgun at his
3 residence where he was living at the time. So I went to the
4 residence along with another law enforcement officer. We --
5 we were allowed to come in the house. I explained that I
6 had information that we had knowledge that there was a gun
7 in the house. We went in and retrieved the gun, which was
8 exactly where my informant said it was. And at the time,
9 Kemo was at the house, his mother was at the house, and his
10 sister was at the house.

11 Q. And what happened after you retrieved the gun?

12 A. We secured the gun, and then I went to talk to all
13 three of them. I spoke to Delphine McCray, who was Kemo's
14 mother, and his sister, and as I was going to speak to Kemo,
15 he ran out the side door.

16 Q. Now, did there come a time when you eventually
17 determined whose gun it was?

18 A. Yes.

19 Q. Could you just explain very briefly what happened?

20 A. Kemo came down to the F.B.I. office and admitted to us
21 that it was his shotgun.

22 Q. And prior to that, had you had any conversations with
23 his mother?

24 A. Yes, I had spoken to his mother. She had also --

25 MR. LEVY: Objection, Your Honor.

1 THE COURT: What's the objection?

2 MR. LEVY: Withdraw the objection.

3 MR. BERGRIN: Withdraw the objection, Your Honor.

4 THE COURT: Go ahead.

5 A. Okay. So I had spoken to Mrs. McCray, who had said
6 really that it was her gun, she was trying to take the
7 weight for her son. She then came around and said it's not
8 my gun, it's Kemo's gun, I'm going to have him do the right
9 thing, I'm going to bring him down and you can talk to him.
10 So she actually brought him down to the F.B.I. office, and
11 we spoke to him and we took an statement for him.

12 Q. Now you used an expression, "take the weight." What
13 does that mean?

14 A. She would take the blame for it. She would say, this
15 is my gun, this is not my son's gun, so if somebody were to
16 be charged, she would then be the person charged because
17 she's saying this is my gun.

18 Q. Ultimately, was anybody charged with this?

19 A. No.

20 Q. Why not?

21 A. At the time when Kemo had come down to the office and
22 we took a statement from him, I called the United States
23 Attorney's Office, I was dealing with a different A.U.S.A.
24 at the time, and I called that A.U.S.A. --

25 Q. Now, when you say "different," you mean different from

1 myself?

2 A. I'm sorry. Yes.

3 Q. And different from Mr. Gay?

4 A. Yes. It was -- his name was Brian Howe, and he was
5 working with me on an underlying investigation, and I spoke
6 to A.U.S.A. Howe about the facts, and he said he would talk
7 to his --

8 MR. BERGRIN: Objection to what Brian Howe said,
9 Judge. Object to that.

10 Q. Based on what he told you, was he ever charged?

11 A. There was a decision not to charge him.

12 Q. Okay, and did he provide you with reasons?

13 A. Yes, he did.

14 Q. Was that decision yours, or the U. S. Attorney's
15 Office?

16 A. That was the United States Attorney's Office's
17 decision.

18 Q. Now, did there come a time when Mr. McCray decided to
19 become an informant for you?

20 A. Yes.

21 Q. Okay. Can you tell the jury the circumstances of that
22 decision?

23 A. It was actually as we were taking his statements. We
24 explained to him that there was a chance he could be
25 charged. At the time I hadn't yet spoken to the A.U.S.A., I

1 didn't know whether he was going to be charged or not, but I
2 said there was a chance you could be charged, and you have
3 an opportunity to work off this charge.

4 And he agreed to become an informant for us right
5 then and there.

6 Q. Okay. And was he immediately made a proactive
7 informant, or was there a process?

8 A. No, there's a process. We sat down with him,
9 explained to him exactly what being an informant entails,
10 what his responsibilities would be. He does not become an
11 F.B.I. agent. He is working at our direction. We task him
12 to gather information. We have to know that he's being
13 credible.

14 And we also explained to him that we seek to try
15 and protect his identity. After that day when I write
16 reports, he's no longer known as Kemo McCray, he's given a
17 symbol number, so in all of my reports, I refer to him using
18 just a symbol number, and that's to protect his identity.

19 So I explained what, you know, for lack of a
20 better word the rules of engagement to him, and he
21 understood them, and he said he would like to become an
22 informant.

23 Q. And did you do any tests to see how -- whether he'd be
24 a good informant or not?

25 A. Yes, I did, and this isn't specific to --

1 Q. Would you briefly just tell the jury what that's
2 about?

3 A. Yes. I wanted to test his reliability, so I asked
4 that he call me at the same time every day, whether or not
5 he had information for me or not, but I just wanted to make
6 sure that he was somebody who was reliable, and that was for
7 a period of about two weeks, and I determined he was
8 reliable.

9 Q. Now, once you determined he was reliable, did you
10 decide to use him in a more proactive manner?

11 A. We did. At that stage, we broached the topic of him
12 about wearing a recording device. We were working a gang
13 investigation, and it's important for us to have somebody
14 get into that gang, not just tell us what they're saying but
15 actually have a recording of what they're saying, and he --

16 Q. And what was the gang you were investigating?

17 MR. BERGRIN: Objection, Your Honor. I mean, this
18 has been grilled on by -- in the past.

19 THE COURT: Wait. What was the question?

20 MR. MINISH: What was the gang you were
21 investigating?

22 We'll stipulate that Mr. Bergrin was not a member
23 of the gang.

24 MR. BERGRIN: It is not a gang case, Judge.

25 THE WITNESS: It wasn't.

1 THE COURT: No, I'll allow it.

2 Go ahead.

3 Q. What was the gang you were investigating?

4 A. We were investigating the Grape Street Crips in
5 Irvington, New Jersey.

6 Q. Now, during the course of this investigation, how is
7 it -- or let me ask it this way. Did Mr. McCray get
8 involved in this investigation?

9 A. He did. He was affiliated with the Crips. He was not
10 officially a Crips member, but he was affiliated.

11 Q. What does that mean? Can you explain the difference
12 between affiliated and member?

13 A. Well, he hadn't been jumped into the gang, which is an
14 expression. He hadn't been formally inducted into the gang.
15 But he was an associate. He was allowed to talk to them, to
16 meet with them, to have discussions with them that somebody
17 on the outside would not be allowed to have. So he was
18 privy to what the gang was doing, but he himself was not an
19 official Grape Street Crips member.

20 THE COURT: Mr. Minish, tell me when it would be a
21 good time to break for lunch.

22 MR. MINISH: This is fine, Judge.

23 THE COURT: All right. Then we're going to break
24 for lunch at this time. Forty-five minutes.

25 MR. MINISH: Judge, if we could just be heard

1 A F T E R N O O N S E S S I O N

2 (Defendant present)

3 THE COURT CLERK: All rise.

4 (The jury enters)

5 (The witness resumed the stand.)

6 THE COURT: Be seated.

7 All right. Mr. Minish, continue.

8 MR. MINISH: Thank you, Judge.

9 DIRECT EXAMINATION (CONTINUED)

10 BY MR. MINISH:

11 Q. Agent, when we left off, you were talking about Mr.
12 McCray.

13 Did you do any research into his criminal
14 background?

15 A. Yes, I did.

16 Q. Okay. Could you tell the jury what you found?

17 A. I found that he had a prior weapons and robbery
18 conviction, an escape conviction, and a drug arrest.

19 THE COURT: Let me just stop one second.

20 Earlier, there was a mention of a gang, the Crips.
21 Was that it?

22 MR. MINISH: The Grape Street Crips.

23 THE COURT: We want it understood that there's no
24 allegations here that Mr. Bergrin in any way is involved
25 with that.

1 Okay. Go ahead.

2 MR. MINISH: Thank you, Judge.

3 BY MR. MINISH:

4 Q. Based on that criminal history, was he disqualified as
5 a cooperator?

6 A. No, he was not.

7 Q. And why not?

8 A. It's very typical in gang investigations that you have
9 a cooperator who has a criminal history.

10 Q. Now, is that an unusually long record for someone,
11 criminal record with someone who's going to be an informant?

12 A. No.

13 Q. As far as Mr. McCray goes personally, did you have any
14 impressions of him one way or the other whether he would be
15 successful, his ability to communicate?

16 A. Yes.

17 Q. Could you tell the jury what you found?

18 MR. BERGRIN: Judge, I believe it's improper for
19 her to give an opinion.

20 THE COURT: No, this is an experienced officer, or
21 Agent. She's had other individuals.

22 MR. BERGRIN: I'll withdraw the objection, Judge.

23 THE COURT: Sorry.

24 MR. BERGRIN: I'll withdraw the objection.

25 THE COURT: Thank you.

1 A. Kemo was very congenial. He got along well with
2 others, was easy to talk to, had a good sense of humor.

3 Q. And did he take directions well from you?

4 A. Yes, he did.

5 Q. Now, at some point, did Mr. McCray become operational?

6 A. Yes, he did.

7 Q. And again, if you could just very briefly remind the
8 jury what operational means.

9 A. Operational means we're actually placing him in a
10 scenario where he is wearing a recording device and going in
11 and meeting with targets of our investigation.

12 Q. And was he paid, or working off a charge?

13 A. At that point, he became a paid informant.

14 Q. Do you recall the approximate amounts he was paid?

15 A. Initially, it was about a thousand dollars a month,
16 and at some point, I know it changed to approximately \$1,500
17 a month.

18 Q. And would the total amount be somewhere in the
19 neighborhood of \$24,000?

20 A. Yes.

21 Q. Was that comparable with other informants at the time?

22 A. Yes.

23 Q. Mr. McCray lived in multiple areas during the course
24 of your involvement with him?

25 A. Yes, he did.

1 Q. Could you tell the jury just very briefly where those
2 three areas were?

3 A. Okay. They're all in Newark. At first he lived on
4 Wainwright Street, by Wainwright and Lyons. He then moved
5 to 14th and Madison, and then he moved to Wainwright, but
6 the address was 17 Wainwright.

7 Q. And is that near Bradley Court?

8 A. He also -- there's also another location. At some
9 point, he did move to Bradley Court, yes.

10 Q. Now, again, for context purposes -- we're eventually
11 going to discuss the investigation you used him for. Are
12 these the locations he lived at during those time periods?

13 A. Yes.

14 Q. How did you communicate with Mr. McCray?

15 A. Via cell phone, and then he'd also come down to our
16 office, or I'd meet him out on the street in a discreet
17 location.

18 Q. Do you recall his cell phone number?

19 A. I know it's 973-987-0369. I'm not a hundred percent
20 sure. If I see it in my report, I -- I would recognize it.

21 Q. And how often did he speak to you?

22 A. During the investigation, I spoke to him very
23 frequently, daily, sometimes several times a day.

24 Q. Were you considered his handler?

25 A. Yes, I was.

1 Q. I'm going to --

2 MR. MINISH: Would you just briefly put up 2298 in
3 evidence?

4 Q. Do you recognize who is contained in that photograph?

5 A. Yes. That's a photo of Kemo.

6 Q. Now, do you recall the Grape Street Crips
7 investigation, what time of year that was?

8 A. It began in early 2002.

9 Q. And did Mr. McCray make buys into that gang?

10 A. Yes, he did.

11 Q. Now, I want to kind of move past that investigation as
12 quickly as we can.

13 But when he's making buys, could you just explain
14 to the jury the safety devices that were involved, that you
15 instituted?

16 A. Okay.

17 Before we sent him out, we have a briefing in our
18 squad area, and I let the agents know and the task force
19 officers know what we're about to do, where we're going to
20 do it. I provide them with a photo of Kemo, if they haven't
21 already met Kemo, and I also provide targets, photographs of
22 our targets. So I brief them on what we propose to happen,
23 and we establish a -- a code so if things go bad. There's a
24 verbal code, and also a physical kind of warning sign that
25 we'd know, so if we have to respond out on the scene while

1 Kemo's doing something operationally, we know to get in
2 there.

3 Q. Do you recall what those signals were?

4 A. Kemo -- Kemo actually came up with it, and he would
5 make a statement, This is fucked up. That was his
6 statement. If we heard that on the transmitting device that
7 he was wearing, we knew we had to come in and pull him out.

8 The second thing was, he usually had something on
9 his head, and if the -- you know, if we saw him take it off,
10 that was the sign that there was a problem. If he took off
11 his hat or whatever was wearing on his head, he threw it, we
12 knew there was a problem.

13 Q. Now, you said you heard. How is it you were able to
14 hear what Mr. McCray was saying?

15 A. Before he goes out, he's outfitted with a transmitter,
16 which is a device that we put on his body, which enables us
17 to hear him in real time. So we have radios in our bureau
18 cars, and we also have handheld radios. So we check that
19 before we send him out to make sure that everybody is
20 reading him on the radio.

21 Q. Now, without getting into specifics of this
22 investigation, were a number of individuals arrested?

23 A. Yes, there were.

24 Q. Did any of those individuals ultimately go to trial?

25 A. They did not.

1 Q. Okay. And again, I'm talking about the Grape Street
2 Crips.

3 A. Yes.

4 Q. Was Kemo revealed to any of those individuals as the
5 informant?

6 A. No, he was not.

7 Q. And why was that?

8 A. Because they all cooperated postarrest. They came in
9 and they cooperated.

10 Q. By pleading guilty, you mean?

11 A. Yes.

12 Q. Okay. So he didn't have to testify against any of the
13 Crips.

14 A. He did not.

15 Q. Now, at some point towards the end of that
16 investigation, did your investigation turn in a different
17 direction?

18 A. Yes, it did.

19 Q. Could you explain to the jury where you went from the
20 Crips going forward?

21 A. We started investigating the suppliers to the Grape
22 Street Crips.

23 Q. And what names did you come across or what individuals
24 did you come across?

25 A. We came across the names of William Baskerville and

1 Rakim Baskerville, Terrell Thomas.

2 Q. And how did you first get to Terrell Thomas?

3 A. There was an individual by the name of Dwan Singleton
4 who we did a controlled purchase from, a buy, we bought
5 drugs off of him, and he led us to Terrell Thomas.

6 Q. And who, if anybody, did Terrell Thomas lead you to?

7 A. William Baskerville.

8 Q. Can you just briefly explain to the jury the
9 circumstances of getting to Mr. Baskerville?

10 A. We went -- it was a night in March in 2003. We went
11 to make a purchase of crack cocaine from Terrell Thomas, and
12 during that purchase, William Baskerville pulled up, and
13 Kemo started speaking to William Baskerville, and during the
14 course of the conversation, Will said, If you need anything,
15 go see my -- my man Terrell, and, you know, and I'll be back
16 to deal with you.

17 Q. Did there come a time when you were making an attempt
18 to identify Mr. Baskerville?

19 A. Yes. Right around that same time.

20 Q. And could you just briefly explain that to the jury?

21 A. We had -- Kemo had been giving us information on an
22 individual known as Cheeb, and he gave us a description, the
23 car he was driving. I checked with another informant, who
24 said that based on the car and the physical description,
25 that's -- Cheeb is William Baskerville.

1 Q. Did you personally ever speak with William
2 Baskerville?

3 A. I did. The summer before, he had been riding around
4 in the same Cadillac Escalade in the same area, it's one
5 square block in Irvington, and we had actually stopped his
6 car. It appeared that there was a drug transaction, and we
7 stopped the car, and I identified him then.

8 Q. You spoke with him?

9 A. I did. Yeah, we stopped the car, we asked to check
10 his ID. He got out of the car, and I spoke to him.

11 Q. And just so the jury's clear, when you say Cheeb,
12 phonetically, anyway, it's C-h-e-e-b?

13 A. Yes.

14 Q. Now, so moving forward to the Baskerville
15 investigation, okay?

16 A. Yes.

17 Q. Did Mr. McCray attempt to -- was he actively involved
18 in the Baskerville investigation?

19 A. Yes, he was.

20 Q. And did he -- in fact, was he tasked with making
21 purchases from Mr. Baskerville?

22 A. Yes, he was.

23 Q. Now, I don't want to repeat what you've already said,
24 the preparation at the squad room you've already discussed,
25 and the safety signals. Can you just explain, prior to

1 making a purchase, what you did with Mr. McCray out on the
2 street?

3 A. We would meet Mr. McCray out on the street in a covert
4 vehicle at a discreet location. I would provide him with
5 buy money, money that, you know, he would use to purchase
6 the drugs. I would provide him with a recording device and
7 the transmitter, two separate devices, and I would search
8 him prior to him going in. I would make sure he didn't have
9 anything else on him, and check, again, do a radio check,
10 make sure everybody is copying us, because we have several
11 agents out there, it's not just myself; we typically have,
12 you know, three to six agents out there. And we make sure
13 everybody's ready, and then we send him out.

14 Q. I'm sorry, you might have said it and I missed it. Is
15 the money photocopied before you leave?

16 A. It is. We photocopy the money in the office before we
17 leave.

18 Q. Is he given just a stack of money to make a purchase,
19 or a specific amount?

20 A. He is given for the most part a specific amount.
21 There were times when we would give him a little bit more
22 just to elicit conversation where he would have to go back
23 and ask for change just so we could get a discussion of
24 money changing hands on the recording device.

25 Q. Now, I guess -- well, I won't say it goes without

1 saying. Could you just -- were the recording devices,
2 transmitting devices obvious to someone looking at him?

3 A. No.

4 Q. So without saying specifically what they were, were
5 they secret? Like, could you tell from looking at him where
6 those devices were?

7 A. No, they're concealed in -- they're concealed.

8 Q. Now, how close could you get to the area where the buy
9 was to take place to drop off Mr. McCray?

10 A. We would typically drop him off -- well, there were
11 times when he did have his own vehicle, and when he did not
12 have his own vehicle, we would drop him off several blocks
13 away, and then he would have to walk to the locations.

14 Q. And why was that?

15 A. Because even though we were using covert vehicles, we
16 didn't want him to be seen getting out of our -- our car.
17 We just didn't want anybody to see that.

18 Q. Now, was there ever a use of video?

19 A. Yes.

20 Q. Okay. Could you just explain to the jury your ability
21 to use video of any of these transactions?

22 A. If we were in a -- if we had a good vantage point and
23 had the ability to see what was going on, we would just take
24 a video with a handheld camcorder in one of our covert
25 vehicles. So we typically tried to do that at all times, if

1 possible.

2 Q. Now, at the end of the transaction, if it was
3 completed, was there a signal Mr. McCray was supposed to
4 give you?

5 A. He was say Done deal, done deal.

6 Q. And after that, what would happen?

7 A. Then he would call me, and I would tell him to just
8 sit tight, because what we like to do is just follow the
9 target out to make sure he's not in the area.

10 Q. In this case, Mr. Baskerville?

11 A. Yes, in this case, Mr. Baskerville.

12 And I would then meet with Kemo, he would provide
13 me with the drugs, and then I would deactivate the recording
14 device, I'd take the transmitter back, and I would take
15 possession of the recording device, transmitter, and the
16 drugs.

17 Q. Was he searched?

18 A. Yes, he was.

19 Q. And then after you received the drugs from Mr. McCray,
20 what happened next? What, if anything, did you do with
21 them?

22 A. We would field-test the drugs just to make sure that
23 they were what we intended to buy, in this case, crack
24 cocaine or cocaine.

25 Q. And that's a test you do on the street, or back at the

1 F.B.I.?

2 A. We've done it both ways, typically at -- we've done it
3 both ways.

4 Q. And is the transmitter also shut off?

5 A. Yes.

6 Q. Then when you come back, did you speak with Mr. McCray
7 about what happened on the street?

8 A. Yes. We would debrief him, and he would tell us what
9 he saw, what he heard. You know, he is our eyes and ears
10 out there, so we rely on him to provide us with information.

11 Q. Were the drugs eventually weighed and sent to a lab?

12 A. Yes.

13 Q. Were a number of recordings made during the course of
14 this investigation?

15 A. Yes.

16 Q. Again, I'm talking about the William Baskerville. And
17 were a number of videotapes made?

18 A. Yes.

19 MR. MINISH: I don't know, Judge, if there's an
20 objection, but I'm just going to try to show them all in one
21 shot.

22 THE COURT: Show them to counsel, see if there's
23 any problem.

24 Any issue?

25 MR. BERGRIN: We have no objection whatsoever,

1 Judge.

2 MR. MINISH: I'm just going to read off the list.

3 THE COURT: You have no objections to them going
4 into evidence?

5 MR. BERGRIN: No, Judge.

6 MR. MINISH: So I'm just going to read them for
7 the record. It's Exhibit 4173, 4174, 4175, 4176, 4177,
8 4178, 4179, 4180, 4181, 4182, 4183, 4184, 4185, 4186, 4187,
9 4188, 4189, 4190, 4191, 4192, 4193, 4194, 4195, 4196, 4197,
10 4198, 4199, 4200, 4201.

11 We're not going to play them all.

12 THE COURT: I know.

13 (Laughter)

14 MR. MINISH: Also Exhibits 2225, 2226, 2227, 2228,
15 2229, 2231, and 2230.

16 THE COURT: Into evidence.

17 (Government Exhibits 4173 through 4201 and 2225
18 through 2231 marked in evidence)

19 MR. MINISH: These, Judge, are the digitized
20 versions of the VHS tapes. It's 2225A, 2226A, 2227A, 2228A,
21 2229A, 2230A, and 2231A.

22 THE COURT: Into evidence.

23 (Government Exhibits 2225A through 2231A marked in
24 evidence)

25 MR. MINISH: Judge, I apologize, I know they're in

1 evidence. Just so the record is clear.

2 BY MR. MINISH:

3 Q. Agent, have you viewed these various exhibits that I
4 just read the list off of?

5 A. Yes, I have.

6 Q. And these VHS tapes?

7 A. Yes, I have.

8 Q. Are they related to the Baskerville investigation?

9 A. Yes, they are.

10 Q. Both audio recordings and video recordings?

11 A. Yes.

12 MR. MINISH: Thank you.

13 MR. BERGRIN: Judge, can I just ask, can I have
14 the start number? We had 4173 as the start number. What is
15 the end number?

16 THE COURT: Scott's got it.

17 (Off the record discussion)

18 MR. BERGRIN: Thank you. Thank you, Your Honor.

19 THE COURT CLERK: 2225 through --

20 MR. BERGRIN: Okay. We have that. Thank you.

21 MR. GAY: Sure.

22 BY MR. MINISH:

23 Q. In connection with those audiotapes, Agent, were
24 transcripts made?

25 A. Yes, they were.

1 Q. And did you personally listen to the audio recordings
2 and match them up with the transcripts?

3 A. Yes, I did.

4 Q. And I show you again --

5 MR. MINISH: Do you have any objection to these
6 transcripts?

7 (Off the record discussion)

8 THE COURT: Any objection?

9 MR. MINISH: No objection, Judge.

10 THE COURT: Okay. These are the transcripts of
11 all the videotapes --

12 MR. MINISH: Not literally all of them, Judge.

13 THE COURT: Go ahead.

14 MR. MINISH: But it's 4173, 4174, 4175, 4176,
15 4177, 4178 -- I'm sorry, and they're all A, 4179A, 4180A,
16 4181A, 4182A, 4183A, 4184A, 4185A, 4186A, 4187A, 4188A,
17 4189A, 4190A, 4191A, 4192A, 4193A, 4194A, 4195A, 4196A,
18 4197A, 4198A, 4199A, 4200A, and 4201A.

19 THE COURT: Into evidence.

20 (Government Exhibits 4173A through 4201A marked in
21 evidence)

22 MR. MINISH: Thank you, Judge.

23 Q. Now, again, so we can get into the -- move a little
24 quicker on this area, Agent, I'm going to direct your
25 attention to March 17th of 2003.

1 A. Okay.

2 Q. Now, prior to that day, had there been any contact
3 with Mr. Baskerville -- or, I'm sorry, Mr. McCray? Had he
4 made any contact with Mr. Baskerville?

5 A. Kemo had made contact with William Baskerville.
6 Baskerville had provided Kemo with his cellular telephone
7 number and said if you're looking to buy drugs, give me a
8 call.

9 Q. And did he --

10 MR. LEVY: Objection.

11 THE COURT: Objection, what?

12 MR. LEVY: Hearsay.

13 THE COURT: How about it, Mr. Minish?

14 MR. GAY: Perhaps we should go to sidebar for
15 this. This was -- I just don't -- there are some things we
16 probably don't want to say in front of the jury about the
17 grounds for this.

18 THE COURT: All right.

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1 (The following takes place in open court)

2 THE COURT: All right. Continue, Mr. Minish.

3 BY MR. MINISH:

4 Q. Just very briefly, if you could explain what
5 Mr. McCray told you about trying to get a deal with
6 Mr. Baskerville prior to March 17th.

7 A. Kemo had said that he had run into William Baskerville
8 out on the street. Baskerville had provided Kemo with his
9 cell phone number, saying that if you're looking to buy
10 drugs, give me a call. We had tried to contact William
11 Baskerville via phone. We weren't getting a call back. So
12 at this stage, nothing had happened.

13 Q. And did you make additional attempts to -- or did you
14 have Mr. McCray make additional attempts to contact
15 Mr. Baskerville?

16 A. Yes, he had to make several recorded phone calls to
17 William Baskerville. He kept getting the voicemail.

18 Q. And did you have Mr. McCray speak to Terrell Thomas in
19 an attempt --

20 A. Yes.

21 Q. -- to get in contact with him?

22 A. Yes, we did.

23 Q. Did there come a time when you actually were able to
24 get in contact with Mr. Baskerville?

25 A. Yes.

1 Q. Excuse me. I apologize. Where Mr. McCray was able to
2 get in contact with William Baskerville.

3 A. Yes.

4 Q. Now, if we could skip to -- on March 17th, was there
5 an actual buy that was made?

6 A. There was a buy that day from Terrell Thomas.

7 Q. And was Mr. Baskerville caught on tape that day?

8 A. Yes, he was. As we -- as Kemo was on his way to see
9 Terrell Thomas to purchase crack cocaine, William
10 Baskerville pulled up in his Cadillac Escalade, and Kemo got
11 into Will Baskerville's car, and they had a conversation
12 regarding drugs.

13 MR. MINISH: Judge, we'd like to play the first
14 clip now.

15 Q. I want to direct your attention, it's 4175 in your
16 black notebooks. 4175A.

17 A JUROR: Mr. Minish, could you say it again?

18 MR. MINISH: 4175A.

19 MR. GAY: And remember you have to turn the
20 headphones on with the green light. You have to have the
21 green light going.

22 THE COURT: Do you have another binder?

23 MR. GAY: Yes, Judge. I thought we had one for
24 you.

25 THE COURT: Well, wait. Maybe I've got it.

1 MR. MINISH: 4175A.

2 THE COURT: All right. Thank you. I'm sorry.

3 MR. MINISH: This clip, so everybody's aware,
4 starts a few seconds in.

5 Do you have headphones up here?

6 If we could play it.

7 (Recording marked Government Exhibit 4175A played)

8 (Playback ends)

9 Q. Agent, there's attributions on the left-hand side, WB
10 and KM. Who are those attributed to?

11 A. WB is William Baskerville, and KM is Kemo McCray.

12 Q. Now, in this -- well, the first full line attributed
13 to WB, Mr. Baskerville, he says, "I only got cookup."

14 What's cookup?

15 A. Cookup is crack cocaine, so it's a derivative of
16 cocaine that's actually been cooked up into -- it's not a
17 powdery substance any more, it's almost like a Play-Doh type
18 substance.

19 Q. And some users want that, and some users want
20 something different?

21 A. You can smoke the crack cocaine form. You put it in a
22 glass pipe and you can smoke it.

23 Q. And at some point in the -- let's say the first line
24 of the second attribution, it says: "I'll give you that for
25 \$27." What does that mean?

1 A. That's the price per gram. So \$27 per gram.

2 MR. LEVY: Objection, Your Honor. The transcript
3 speaks for itself. This agent's not a party to the
4 conversation.

5 THE COURT: What's that?

6 MR. LEVY: The transcript speaks for itself. This
7 agent is not a party to this transcript.

8 THE COURT: What were you going to say, Mr. Gay?

9 MR. GAY: This relates to what we talked about
10 before. The briefings that she had with Kemo are all
11 relevant to what she's saying here. So she learned it from
12 him. That's -- it's not just the transcript alone, it's
13 what she learned from him as well based on the argument we
14 had at sidebar.

15 THE COURT: Well, I'm also assuming that all
16 you're going to do is to clarify some -- what might be
17 considered otherwise as code words or words that or things
18 that someone else not familiar with the situation would
19 know. Correct?

20 MR. MINISH: That's correct, Judge.

21 THE COURT: I'm going to allow her to say it.

22 BY MR. MINISH:

23 Q. And I apologize for not making clear, your information
24 is based on what Mr. McCray told you also?

25 A. Yes, it is.

1 Q. Now, in the three lines from the bottom, where it says
2 WB, in the middle of that line it says "You pay Rel too."

3 Who's Rel?

4 A. Rel is the nickname for Terrell Thomas.

5 Q. And that's the individual who moved you to William
6 Baskerville?

7 A. Yes, it is.

8 Q. Or moved the investigation to?

9 All right.

10 MR. MINISH: I'm going to play, Judge, a video,
11 it's 2225A. There's no audio.

12 Q. Can you explain, Agent, what the jury is looking at?

13 A. We're filming about a block away, and at some point,
14 you'll see William Baskerville's black Cadillac Escalade
15 pull down the street, and then you'll see Kemo get into
16 Baskerville's car.

17 That's not it.

18 Q. And this is that same day, March 17th?

19 A. This is March 17th.

20 There's Baskerville's Cadillac Escalade. And he's
21 driving down 21st Street in Irvington.

22 There's Kemo in the white T-shirt getting out of
23 his car, and he's about to enter Will Baskerville's car.

24 And that's where they have the discussion that we
25 just heard.

1 Q. Does Kemo eventually get out of the vehicle?

2 A. Yes.

3 So then he calls me after this. He returns to his
4 car and he calls me.

5 Q. And then you go through that process that you've
6 already discussed of searching and retrieving the drugs?

7 A. We actually hadn't done a -- that was not a buy. That
8 was just a conversation. We actually were buying from
9 Terrell Thomas that night.

10 Q. I apologize. You're a hundred percent right.

11 If we move to the -- on the 18th, 4176, and the
12 transcript, 4176A, and direct everybody's attention to about
13 two-thirds, three-quarters of the way down, where it says
14 "Start: Horn beeps," 20:19, that's where the recording is
15 going to go, and then for a couple of pages after.

16 (Recording marked Government Exhibit 4176 played)

17 (Playback stopped)

18 Q. Agent, on page two in the first page of text in the
19 transcript under that 2019, in the attribution KM,
20 Mr. McCray, where it says "He here."

21 A. Yeah.

22 Q. Do you know who he's referring to?

23 A. He's letting me know that William Baskerville is here.

24 Q. Through the transmitter?

25 A. Yes.

1 Q. Now, a couple lines down, when we get to KM again, the
2 third KM, the first one coming up on the bottom, it says
3 "Cookies," question mark?

4 A. Yes.

5 Q. Based on your investigation and what Mr. McKay told
6 you, what are cookies?

7 A. That's a street term for cookup, which is crack
8 cocaine.

9 Q. Now, flipping to the second page, the fourth
10 attribution to William Baskerville, it says "Raw," question
11 mark.

12 What's raw?

13 A. Raw is cocaine that's in the raw powdery form, before
14 it's been cooked up.

15 Q. And then in Mr. Baskerville's second or the next
16 attribution down, one, two, three, in the fourth line of
17 that paragraph, it says "50 grams or more."

18 A. Right.

19 Q. Based on what Mr. McCray told you and your
20 investigation, what was the significance of buying in
21 50-gram quantities?

22 A. The more you buy, the more profit William Baskerville
23 can make on it. So he -- you know, it's in his interest to
24 sell higher quantities to get the better profit margin on
25 it.

1 Q. So he was encouraging Mr. McCray to buy from him in
2 large quantities?

3 A. Yes.

4 Q. All right. Now, on that date, did Mr. McCray actually
5 buy any crack cocaine?

6 A. He did.

7 Q. Okay. Do you recall how much he bought?

8 A. He bought 28 grams on that day.

9 Q. And how much did he pay for it?

10 A. I believe \$780, but I have it in my report, if I could
11 look at that.

12 Q. If you need to refresh your memory.

13 A. He paid \$760 for 28 grams of crack cocaine.

14 Q. Do you know how much he actually got? Did he actually
15 get 28 grams?

16 A. I believe he got less than 28 grams.

17 Q. Now, let's move forward ahead a couple of days.

18 Was there another purchase on March 21st?

19 A. Yes, there was.

20 Q. Now, in between those days, without having to play the
21 audiotape, can you just briefly described for the jury what
22 was going on in the investigation with respect to
23 Mr. Baskerville?

24 A. Relying on the transcripts, you mean?

25 Q. Well, were you able to get in contact with

1 Mr. Baskerville?

2 A. We were trying to get in -- there were some recorded
3 phone calls. We were trying to get in touch with
4 Mr. Baskerville. We were talking to Terrell Thomas, saying,
5 hey, I'm looking for Cheeb.

6 Q. On March 21st, did you actually get in touch with him?

7 A. We did.

8 Q. If we could skip ahead to 4179A, and again, it's page
9 three, on the bottom. It's the cover page, first page, next
10 page, where it says Start, one hour, 23:48 on the
11 transcript.

12 How much drugs were you going to buy that day; did
13 you know?

14 A. We had provided him with money to buy 50 grams of
15 crack cocaine.

16 Q. Do you recall how much money it was?

17 A. We -- it should have been 1,350. I think we gave them
18 1,360.

19 MR. MINISH: Everybody ready?

20 (Recording marked Government Exhibit 4179 played)

21 (Playback ends)

22 Q. Now, Agent, based on -- did you speak with Mr. McCray
23 after this?

24 A. Yes, I did.

25 Q. And did he purchase crack from Mr. Baskerville?

1 A. He purchased 50 grams of crack cocaine.

2 Q. Did you go through those procedures of searching him
3 and field testing and sending it to the lab?

4 A. Yes, I did.

5 Q. Now, there's a reference, it says, "Can I get that bag
6 that you're eatin' in?" Did Mr. McCray explain what that is
7 to you?

8 A. He did. I think he was trying to get something to
9 conceal the drugs instead of just taking them in a -- you
10 know, a clear plastic Baggie that they're in, just so he can
11 conceal them, because he was in the car --

12 Q. So the jury's clear, what do the drugs look like when
13 Mr. McCray received them?

14 A. They're in a clear Ziploc Baggie, like a sandwich
15 Baggie.

16 Q. Now, skipping ahead again, from the time period from
17 March 21st through May 19th, what is going on in the
18 Baskerville investigation? Generally, I mean. Like are you
19 attempting to make more purchases?

20 A. We are. We were having a tough time getting ahold of
21 William Baskerville. It was hit or miss. We tried to get
22 him on the phone. We couldn't get in contact with him. So
23 between March and May, there's a series of missed phone
24 calls, and Kemo would report back to me that he'd seen
25 Baskerville out on the street, but we were never able to

1 make a connection or reconnect with him until May.

2 Q. Now, and among those things we're not going to play,
3 4180, 4181 and 4182, those are recordings that were made
4 trying to get Mr. Baskerville?

5 A. In an effort to track down William Baskerville. So we
6 were contacting Terrell Thomas, trying to, you know, get to
7 Will.

8 Q. Now, on May 22nd, moving forward, did you get back in
9 contact with Mr. Baskerville?

10 A. Kemo made contact with Mr. Baskerville, yes.

11 Q. And did you try or did Mr. Baskerville -- excuse me.
12 Did Mr. McCray attempt to set up a drug purchase?

13 A. Actually, we were just trying to get in touch with him
14 that evening. We were trying to set up a drug purchase for
15 the following morning.

16 Q. On May 22nd?

17 A. Yes.

18 Q. Okay. And were you able to do that?

19 A. Well, there was a -- I think there was a series of
20 phone conversations, and Kemo was looking to do it the
21 following day, and Will said something to the effect of, I'm
22 going out of town, it's kind of -- it's now or never, so if
23 you want to do it, get your money together and let's do it
24 now.

25 Q. So you were able to do it.

1 A. Yes.

2 Q. And how much were you buying?

3 A. We were -- we purchased an ounce of crack cocaine,
4 which is 28 grams.

5 Q. And how much money did he use?

6 A. He paid \$900.

7 Q. I'm going to direct everyone's attention to 4183A in
8 the transcript book, and the first page of actual text
9 starts "Phone Ringing," and ends at the bottom, and then
10 we're going to roll into the second page.

11 (Recording marked Government Exhibit 4183 played)

12 (Playback ends)

13 Q. Let's flip right into the next one, 4184A.

14 It starts four lines down, five lines down, "Car
15 pulls up."

16 (Recording marked Government Exhibit 4184 played)

17 (Playback ends)

18 Q. Who's making that noise at the end?

19 A. That's Kemo. That's something he often did when the
20 deal was done. He'd make a noise like that.

21 Q. Now, you started to say that the deal was -- the speed
22 of the deal -- if you could very, very briefly just explain
23 what happened over the course of May 22nd.

24 A. We had not anticipated doing a buy that night, but
25 when Will said tell them to get their money together, let's

1 get this thing done, I spoke to Kemo after that phone
2 conversation, and his preference was just to go ahead and do
3 it that night because we'd had so much back and forth with
4 Will Baskerville, are we going to do a buy or are we not,
5 and Kemo felt more comfortable, let's just do it. So we
6 ended up doing the deal that night.

7 Q. And how much did you buy?

8 A. We bought 28 grams for \$900.

9 Q. All right. Now, let's move forward again a couple of
10 days -- excuse me, a month or so, to 6/19 of 2003.

11 Now, in between May 22nd and June 19th, did you
12 make any attempts to buy any other type of drugs from
13 Mr. Baskerville?

14 A. Kemo was trying to have a conversation with Will
15 Baskerville about purchasing heroin.

16 Q. And how is heroin referred to, at least at that time
17 on the street?

18 A. Diesel, or D, or dope.

19 Q. Now, let's move to 619. Were you able to set up a
20 date -- excuse me, a buy on that day?

21 A. Yes, we were.

22 Q. Let's go to 4186, please.

23 (Recording marked Government Exhibit 4186 played)

24 (Playback ends)

25 Q. All right. Agent, when he refers to the "50 bagger,"

1 what is Mr. McCray referring to?

2 A. The 50 grams of crack cocaine.

3 Q. And what's going on in this conversation?

4 A. We were looking to do a buy, we were trying to set it
5 up, and Kemo's just calling Will to see where he's at.

6 Q. And there's beeping on the recording. Do you know the
7 cause of that?

8 A. That's just interference because at the time, Kemo had
9 a Nextel cell phone, and we actually used a handheld
10 recorder, and for whatever reason, with him talking on the
11 Nextel, we would get interference on the handheld recorder.

12 Q. Now, later that day, did you, in fact, purchase crack
13 cocaine from Mr. Baskerville?

14 A. Yes, we did.

15 Q. Okay. I want to skip to 4187.

16 (Recording marked Government Exhibit 4187 played)

17 (Playback ends)

18 Q. Agent, there's an attribution, "UM," throughout this
19 transcript?

20 A Yes.

21 Q. What does "UM" stand for?

22 A. Unknown male. At that stage, we had not identified
23 who that was.

24 Q. During the course of the investigation, did you
25 eventually identify him?

1 A. Yes, we did.

2 Q. And who was that?

3 A. His names was James Murphy also known as Car Wash, and
4 he was the individual who cooked up the cocaine for Will
5 Baskerville.

6 Q. Now, at the end, they're talking about diesel, or, I'm
7 sorry, heroin. Can you explain what was going on with that
8 conversation?

9 A. Kemo's still asking what's the deal with diesel, can I
10 buy some dope from you? And Baskerville's saying the price
11 is -- the price that he would get it for is just too high,
12 so he'd have to sell it to Kemo -- you know, he's a
13 middleman, so he would have to sell it to Kemo for a higher
14 price, and he's saying it doesn't make sense, but he's going
15 to look into it, and they can both make some money.

16 Q. Did you in fact -- or did Mr. McCray in fact purchase
17 crack cocaine that day?

18 A. Yes, he did.

19 Q. And how much did he buy?

20 A. Fifty grams.

21 Q. And do you recall how much he paid for it?

22 A. \$1,400.

23 Q. Now, I know the first one you said you were shorted a
24 little bit and got a little less than what you'd ask for.

25 How about these others ones on May 21st -- excuse me, March

1 21st, May 22nd, and now June 19th? Did you get what you
2 were paid for?

3 A. We were repeatedly getting shorted. It was not quite
4 either weighing 50 grams or 28 grams. It was definitely shy
5 of the amount we were trying to buy.

6 Q. All right. Let's move forward to September of that
7 year.

8 Go to 4194.

9 (Recording marked Government Exhibit 4194 played)

10 (Playback ends)

11 Q. In the interim, could you just explain to the jury
12 what was going on in the investigation with respect to
13 Mr. Baskerville?

14 A. Our investigation was continuing into Mr. Baskerville,
15 and at this stage, we were trying to identify other
16 co-conspirators that he's dealing with.

17 Q. And were you continuing to try to make purchases from
18 Mr. Baskerville?

19 A. Yes, we were.

20 Q. And did you, in fact, make or did Mr. McCray make one
21 on September 9th of 2003?

22 A. Yes, he did.

23 Q. I direct everybody's attention to 4194A, and about
24 three-quarters of the way down, where it says "Start."

25 (Recording marked Government Exhibit 4194 played)

1 (Playback ends)

2 Q. Now, Agent, did that meeting result in a purchase of
3 crack cocaine?

4 A. Yes. We purchased 28 grams for \$800.

5 Q. Now, moving forward to the final purchase with respect
6 to this part of the investigation, October 23rd, was there
7 another purchase from Mr. Baskerville made?

8 A. Yes, this was our final purchase.

9 Q. And in the interim, were there additional
10 conversations, trying to speak with Mr. Baskerville?

11 A. Yes, there were.

12 Q. All right. I'm going to direct everybody's attention
13 to 4198.

14 (Recording marked Government Exhibit 4198 played)

15 (Playback ends)

16 Q. What was going on, Agent, in that conversation?

17 A. The one we just played?

18 Q. The one we just played, yes.

19 A. Yes. That's the exchange.

20 Q. 98. On 4198, what was going on?

21 A. That's when we were trying to do the purchase from
22 Will Baskerville, and he had given -- he had told Kemo to
23 try to reach him on a beeper, so -- I'm sorry, to put in a
24 code, 002, how many grams he wanted and followed up by 002.
25 So that part I know you didn't hear, but at the tail end,

1 Kemo finally gets it right, there's back and forth about how
2 to work the beeper, Kemo finally gets it right, he puts in
3 28 grams, and then Will shows up with 28 grams.

4 Q. All right. So, now, the final thing, we will just
5 play the video from. Was there video on that day?

6 A. Yes, there was.

7 Q. And we'll just play that. That's 2230A.

8 Can you just describe for the jury what they're
9 going to see?

10 A. We're looking down Wainwright Street, and Kemo's house
11 is to the left in this video, and at some point, you'll see
12 Will Baskerville -- there's Will pulling up in the Monte
13 Carlo, and he pulls over to the side, and you'll see Kemo
14 come out and talk to will.

15 There's Kemo walking across the street in the
16 black coat. And he goes over to the passenger side.

17 Q. Did Mr. McCray, in fact, purchase cocaine, crack
18 cocaine on that day?

19 A. Yes, he did.

20 Q. Do you recall how much he bought?

21 A. He purchased 28 grams.

22 Q. For how much?

23 A. \$800.

24 MR. MINISH: Judge, we have a couple stipulations
25 related to this evidence.

1 Q. Agent, I'm going to show you a number of exhibits --

2 MR. MINISH: I'm sorry. Is there an objection to
3 these being moved into evidence?

4 MR. BERGRIN: There is none, Judge.

5 THE COURT: There's no objection into evidence?

6 MR. BERGRIN: No, Judge.

7 (Government Exhibits 2202, 2202A, 2203, 2203A, 2204
8 and 2205 marked in evidence)

9 Q. Agent, I'm showing you what has been marked 2202,
10 2202A, 2203, 2203A, 2204, 2205.

11 Is that the cocaine -- excuse me, the cocaine, the
12 crack cocaine that was purchased from Mr. Baskerville that
13 you discussed today?

14 A. I believe it is. Let me just go through them.

15 There's also packaging, which is a separate
16 envelope, but yes, this is the crack cocaine.

17 Q. Now, again, I know we talked about the first four.
18 Did you get shorted on the last two purchases also?

19 A. Yes.

20 Q. Did you ever say anything or have Mr. McCray say
21 anything to William Baskerville about not getting what you
22 paid for?

23 A. We did. We had Kemo call Will and say, what's the
24 deal, I'm always get getting shorted. And Will just laughed
25 it off.

1 Q. Did you do anything further or did Mr. McCray do
2 anything further?

3 A. No, we didn't. We deferred to Kemo and his comfort
4 level, and he didn't think it was worth doing.

5 MR. MINISH: Judge, I have a few stipulations.

6 THE COURT: These are stipulations?

7 MR. MINISH: Relating to the drugs.

8 MR. BERGRIN: We have no objection, Judge.

9 THE COURT: Go ahead.

10 MR. MINISH: Thank you, Judge.

11 I just want to quickly publish it to the jury, I
12 guess.

13 THE COURT: We want the same amount back.

14 (Laughter)

15 (Government Exhibits 2202, 2202A, 2203, 2203A, 2204
16 and 2205 were published to the jury.)

17 MR. MINISH: And I'll read the stipulations while
18 we're doing that.

19 This is United States of America in this case
20 here.

21 "It is hereby stipulated and agreed by and between
22 the United States of America, Paul J. Fishman, United States
23 Attorney, Steven G. Sanders, Assistant United States
24 Attorney, and Defendant Paul Bergrin that if called upon to
25 testify, Roger Godino, a retired senior forensic chemist

1 with the Drug Enforcement Administration Laboratory in New
2 York City, would testify as follows: He examined the
3 substance described in Government Exhibit 2209A, a copy of
4 which is attached hereto and incorporated herein by
5 reference, and concluded to a reasonable degree of
6 scientific certainty that the substance described in
7 Government Exhibit 2209A contains cocaine base, also known
8 as crack cocaine, the net weight of which was 26 grams. He
9 examined the substance described in Government Exhibit
10 2209B, a copy of which is attached hereto and incorporated
11 herein by reference, and concluded to a reasonable degree of
12 scientific certainty that the substance described in
13 Government Exhibit 2209B contained cocaine base, also known
14 as crack cocaine, the net weight of which was 46.7 grams."

15 Signed by Mr. Sanders and Mr. Bergrin, and that's
16 Exhibit 6000.

17 Stipulation number two, Judge, is Government
18 Exhibit 6001.

19 "It is also stipulated and agreed by and between
20 the United States of America, Paul J. Fishman, United States
21 Attorney, Steven G. Sanders, Assistant United States
22 Attorney, and Defendant Paul Bergrin that if called to
23 testify, Brian O'Rourke, a qualified forensic chemist at the
24 Drug Enforcement Administration Laboratory in New York City,
25 would testify as follows: That, number one, he examined

1 Government Exhibit 2202 and concluded to a reasonable degree
2 of scientific certainty that the item examined contained
3 cocaine base, also known as crack cocaine, the net weight of
4 which was 26.7 grams; that, number two, he examined
5 Exhibit 2203 and concluded to a reasonable degree of
6 scientific certainty that the item examined contained
7 cocaine base, also known as crack cocaine, the net weight of
8 which was 45.4 grams; number three, he examined Government
9 Exhibit 2204 and concluded to a reasonable degree of
10 scientific certainty that the items examined contained
11 cocaine base, also known as crack cocaine, the net weight of
12 which was 21.2 grams; and, finally, number four, he examined
13 Government Exhibit 2205 and concluded to a reasonable degree
14 of scientific certainty the item examined contained cocaine
15 base, also known as crack cocaine, the net weight of which
16 was 24 grams."

17 Again, it is signed by Mr. Sanders and Mr.
18 Bergrin.

19 THE COURT: Wait a minute. Before we go forth,
20 finish up and get these back.

21 All right, Mr. Minish.

22 BY MR. MINISH:

23 Q. During the course of this investigation, did you come
24 across an individual named Horatio Joines?

25 A. Yes, I did.

1 Q. And I show you photograph, Government Exhibit 2256.

2 Do you recognize who that is?

3 A. Yes, I do.

4 Q. Can you tell the jury who that is?

5 A. That's a photograph of Horatio Joines.

6 MR. MINISH: Judge I'd offer this into evidence.

7 THE COURT: Any objection?

8 MR. BERGRIN: I don't have any objection to that,
9 Judge.

10 THE COURT: Into evidence.

11 (Government Exhibit 2256 marked in evidence)

12 MR. MINISH: We'll put it on just briefly for the
13 jury.

14 Q. Would you explain to the jury the circumstances during
15 the course of the Baskerville investigation that led you to
16 Mr. Joines?

17 A. Mr. Joines was present on some of these drug
18 transactions. He was with William Baskerville, and we IDed
19 him as being Baskerville's partner.

20 Q. Now, are there additional purchases that were made
21 from Mr. Baskerville, or is the investigation over?

22 A. The investigation was over at that stage.

23 Q. Okay. Just explain to the jury what the next step is.

24 A. The next step is to prepare to arrest William
25 Baskerville, and others in the investigation, but to prepare

1 to arrest William Baskerville.

2 Q. Now, did you do that by yourself, or did you do that
3 in conjunction with others?

4 A. The arrest, or preparing for prosecution?

5 Q. The charging. The charging.

6 A. Oh, the charging is done by the United States
7 Attorney's Office, so I meet with the A.U.S.A. who was
8 handling the case at the time.

9 Q. And who was that?

10 A. That is John Gay.

11 Q. And did you provide him with the various evidence that
12 you had accumulated over the course of the investigation?

13 A. Yes, I did.

14 Q. And was Mr. Baskerville ultimately charged?

15 A. Yes, he was.

16 MR. MINISH: This is 2222.

17 Q. Agent, I'm showing you what's been marked Government
18 Exhibit 2222. Do you know what that is?

19 A. That is a criminal complaint in United States of
20 America v. William Baskerville that lays out the violations
21 for which we were going to be arresting William Baskerville,
22 and it is signed by me. This copy is not signed by me, but
23 I swear it out in front of the judge.

24 Q. If you could just briefly explain to the jury what the
25 process is in getting that complaint actually signed.

1 Excuse me, by the judge.

2 A. By the judge? I either meet with the judge in the
3 courtroom or in chambers, and I swear out in front of the
4 judge that the contents of the complaint are true and
5 accurate to the best of my knowledge, and I swear it out in
6 front of the judge, and he authorizes it.

7 Q. Do you actually do the typing or does someone else do
8 that?

9 A. The complaint was typed by John Gay.

10 Q. And in that complaint, are all of the purchases
11 mentioned?

12 A. No. Four of them are mentioned.

13 Q. And why were only four mentioned, if you know?

14 A. We did that in an effort to try and be -- we didn't
15 want to telegraph all of our purchases. We were trying to
16 be sporadic. So it was done in an effort to kind of conceal
17 the identity of Kemo. And he's referred to in here as a
18 confidential witness or CW. He's not named in here.

19 MR. MINISH: Judge, we offer 2222 into evidence.

20 THE COURT: Any objection?

21 MR. BERGRIN: There is none, Judge.

22 THE COURT: Into evidence.

23 (Government Exhibit 2222 marked in evidence)

24 Q. And at the time, that's your maiden name, Shawn --

25 A. Yes.

1 Q. Now, you said that Mr. McCray's name was not mentioned
2 in the complaint.

3 A. Yes.

4 Q. Okay. Can you just direct the jury to where he is
5 referred to or how he is referred to?

6 A. In paragraph -- well, where it says number one, "On or
7 about March 18th, 2003, William Baskerville handed a
8 confidential witness (hereinafter, the "CW"). So he's known
9 throughout the rest of this document as CW.

10 Q. And in paragraph two, three and four, the same way?

11 A. Yes.

12 Q. Now, I want to ask you about another individual named
13 Richard Hosten.

14 A. Yes.

15 Q. Did you come across him during the course of your
16 investigation? Hosten, h-o-s-t-e-n?

17 A. Yes, it is, and yes, we did.

18 Q. I show you what has been marked Government Exhibit
19 3067. Do you recognize who is in that photograph?

20 A. Yes, I do.

21 Q. Who is that?

22 A. That is a photograph of Richard Hosten.

23 MR. MINISH: Judge, we offer that in evidence
24 also.

25 THE COURT: Any objection?

1 MR. BERGRIN: No objection whatsoever, Judge.

2 THE COURT: In evidence.

3 (Government Exhibit 3067 marked in evidence)

4 Q. Did you eventually arrest Mr. Hosten?

5 A. Yes, we did.

6 Q. And based on whose efforts was Mr. Hosten arrested?

7 A. Kemo, unrelated to William Baskerville, had done
8 several controlled purchases of crack cocaine from Richard
9 Hosten.

10 Q. And so the jury is clear, during the course of the
11 William Baskerville investigation, there's other
12 investigations going on?

13 A. Yes, there are.

14 Q. And was the same process gone through getting a
15 complaint, swearing it out in front of the judge for
16 Mr. Hosten?

17 A. Yes, it was.

18 Q. Now, did there come a time when you arranged to make
19 an arrest of Mr. Hosten?

20 A. Yes.

21 Q. How about Mr. Baskerville?

22 A. We had arranged to arrest Hosten a week before
23 Mr. Baskerville.

24 Q. So arrangements were made.

25 A. Yes.

1 Q. And Mr. Hosten, you said a week before. Did it work
2 out that way?

3 A. It did not. The morning we went to arrest him at his
4 residence, he was not there.

5 Q. So did you eventually have him arrested?

6 A. He eventually surrendered through his attorney to us.
7 His attorney contacted us.

8 Q. And on the day -- well, surrendered; is he technically
9 arrested when he surrendered?

10 A. Yes, he's arrested.

11 Q. So at the point at which he's arrested and processed,
12 where is Mr. Baskerville in the -- had he been arrested, not
13 yet been arrested?

14 A. He was arrested the next -- the next morning.

15 Q. So about, if you recall, about what time is Richard
16 Hosten arrested?

17 A. He's arrested midafternoon on November 24th. Again,
18 this is going back and forth with his attorney, his defense
19 attorney. We meet him at his defense's attorney's office,
20 where we arrest him, we bring him back to our F.B.I. office,
21 where we process him, and he is then housed overnight
22 because he can't get in front of a judge to make his initial
23 appearance because it was too late in the day.

24 Q. If you could just very briefly explain to the jury
25 what you mean by it's too late for an initial appearance.

1 A. By this time, it was probably -- it was probably three
2 o'clock, even after three o'clock, and the initial
3 appearances for that day had already been done, so he would
4 not appear in court until the next morning.

5 Q. So to your understanding, once the Defendants are
6 arrested, they're brought to a Magistrate Judge?

7 A. Yes, they are, for what is called their initial
8 appearance. But that day, they had already been done, so we
9 had to lodge him overnight to take him the first thing the
10 next morning to court.

11 Q. And Mr. Baskerville was scheduled to be arrested that
12 morning?

13 A. Yes, he was.

14 Q. Was there any consideration given to calling that off?

15 A. That, we had thought about it but decided against it
16 because there had been so much planning and preparation that
17 had gone into it that we decided to go ahead with it.

18 Q. If you can just very briefly explain to the jury what
19 you mean by preparation and planning.

20 A. Typically when we go out to execute a Federal arrest
21 warrant, we take anywhere from eight to 10 members of the
22 squad with us, and it's for our, you know, for safety
23 reasons. We make sure we have enough agents present, agents
24 or task force officers present. So everybody knew to meet
25 at 5 a.m. the following morning, the wheels were already in

1 motion, we didn't want to call everybody off.

2 Q. And did you, in fact, arrest Mr. Baskerville that
3 following morning?

4 A. Yes, we did.

5 Q. And so the jury's clear, that's November 25th --

6 A. Yes, it was.

7 Q. -- of 2003.

8 A. Yes.

9 Q. Were you present at the arrest?

10 A. Yes, I was.

11 Q. And was he arrested -- were there any incidents, or
12 was he arrested without incidents?

13 A. It was an arrest without incidents. There were no
14 issues.

15 Q. Just describe again very briefly entering the house
16 for the jury.

17 A. We knocked on the front door. I believe he saw us
18 from an upstairs window. This is a single-family residence.
19 He ends up coming down, answering the front door and letting
20 us in.

21 Q. And was anybody else home with Mr. Baskerville?

22 A. His wife, and they had two or three small children,
23 toddler-age children.

24 Q. Did you -- well, what's the process for making the
25 house safe?

1 A. What we do is, any time we have an arrest, we go in
2 and do what we call clearing the house, because now we're
3 inside the house, Mr. Baskerville has been handcuffed, his
4 wife is there, but we don't know who else is in this house,
5 so just as protocol, we go in and we go through the house,
6 just doing a cursory search to make sure there is no other
7 bad guys or no other threats in the house.

8 Q. And was there?

9 A. No. No.

10 Q. Now, with respect to Mr. Baskerville's vehicles, the
11 ones that you saw in the videotape, did you locate them at
12 the time?

13 A. They were both in the driveway at the time.

14 Q. What, if anything, happened to those vehicles?

15 A. We seized both those vehicles.

16 Q. And that's a Cadillac and a Monte Carlo?

17 A. Yes, it is.

18 Q. Was anything else seized from the home?

19 A. We seized cash, approximately, I think, \$5,328 in
20 cash, a cell phone, I believe two beepers, and his wallet.

21 Q. I'm going to show you what's been marked 2238A and
22 2255.

23 Q. Agent, do you recognize, first, what's in 2238A?

24 A. Yes, I do.

25 Q. Okay. What is that?

1 A. This is a photograph taken of stacks of cash which we
2 found when we entered William Baskerville's closet.

3 Q. How about 2255?

4 A. That is a photograph of William Baskerville.

5 MR. MINISH: Judge, we offer both of these into
6 evidence.

7 THE COURT: Any objection?

8 MR. BERGRIN: None, Judge.

9 THE COURT: Into evidence.

10 (Government Exhibits 2238A and 2235 marked in
11 evidence)

12 MR. MINISH: If you could publish 2238 first.

13 Q. That's the cash on the right-hand side?

14 A. Yes, it is.

15 Q. And the next photo?

16 And that's Mr. Baskerville.

17 A. Yes, it is.

18 Q. William Baskerville.

19 A. Yes.

20 Q. Did you have any conversations with Mr. Baskerville
21 that morning?

22 A. Yes, I did. As we were going inside the front door, I
23 explained to Mr. Baskerville that he had been charged by the
24 F.B.I. for Federal drug violations and that he was going to
25 be transported back to our F.B.I. office where he was going

1 to be processed, and I also explained that we were seizing
2 both of his vehicles, both had been used in furtherance of
3 drug sales and drug activity, and I explained to him that
4 two agents or task force officers from our squad will be
5 transporting him back to the office and that I would be
6 there subsequently to sit down with him and talk to him in
7 further detail and explain to him what was going on.

8 Q. So did you actually transport him back?

9 A. I did not.

10 Q. What did you do instead?

11 A. I stayed and I spoke to Diedre Baskerville, who is his
12 wife.

13 Q. And do you recall about what time this would have
14 been?

15 A. I can -- if I can just look. I know we were doing
16 this early in the morning. I want to say, you know, we
17 started off at 6 a.m., so we arrested him shortly
18 thereafter.

19 Q. Okay. Just so you can put them to the side, Agent,
20 the Monte Carlo, was that eventually searched?

21 A. Yes, it was.

22 Q. And did you find anything of interest in the search of
23 the Monte Carlo?

24 A. We found that he had a concealed trap built into the
25 Monte Carlo. Within that trap, there was drug

1 paraphernalia, but no drugs.

2 Q. And was that vehicle seized?

3 A. We were not able to seize it. It turned out it was a
4 leased vehicle, so we are not able to seize that.

5 Q. And how about the Cadillac?

6 A. The Cadillac we did bring back to our office. We
7 discussed seizing it. We decided to return it to Diedre
8 Baskerville.

9 Q. Why is that?

10 A. There was two reasons. There was not a lot of equity
11 in the car, so it wouldn't have been worth us getting the
12 car, and the second reason is, that was personal means of
13 getting to school and transporting her children, so we -- we
14 just made a decision to return the car to her.

15 Q. How old were the children? Multiple children, or one
16 child, or --

17 A. I want to say there were at least two. To my memory,
18 there were three children there. But they were young.

19 Q. School age?

20 A. I don't even think school age. I remember in their
21 cribs, you know. Young.

22 Q. Did there come a time when you actually went back to
23 the F.B.I. and met with Mr. Baskerville?

24 A. Yes, I did.

25 Q. Can you describe what you did when you got back to the

1 F.B.I.?

2 A. I went back, and he was now seated in our arrest room,
3 and I explained to him again, this time in detail, that he
4 had been charged with a -- with undercover sales, he had
5 been charged with undercover sales of crack cocaine. And I
6 explained to him what the Federal system is like. He had
7 never been arrested Federally. Our system is very much
8 different than the state system. And I explained the
9 details of what the charges were.

10 Q. Did you provide him with any information about his
11 potential penalties?

12 A. I -- I told him in the Federal system that there is --
13 there is not a good likelihood that he would make bail,
14 which is very much different than the state system, and I
15 did advise him of his penalty.

16 Q. And did you ask him whether or not he wished to
17 cooperate?

18 A. Yes, I did.

19 Q. Please describe that for the jury.

20 A. I had the conversation with him that he's been
21 charged, these are very serious charges, they carry a
22 substantial amount of time, if he'd like to cooperate and
23 get on board with us, we would be open to hearing what he
24 has to say.

25 Q. And what did Mr. Baskerville tell you?

1 A. That in cooperating, he'd be giving up family members,
2 but that he would agree to talk to us, he just wanted to do
3 so in the presence of his attorney.

4 Q. And did he tell you who his attorney was?

5 A. Yes.

6 Q. Who was that?

7 A. Paul Bergrin.

8 Q. And do you see Mr. Bergrin in court today?

9 A. Yes, I do.

10 Q. Would you identify --

11 MR. BERGRIN: We'll stipulate to identification,
12 Judge.

13 THE COURT: Thank you. For the record.

14 MR. BERGRIN: Thank you, Judge.

15 Q. And did you arrange a phone call with Mr. Bergrin --

16 A. Yes, I did.

17 Q. Or, excuse me, between Mr. Baskerville and Mr.
18 Bergrin?

19 A. We had given him the opportunity to call his wife as
20 well as calling his attorney, Paul Bergrin, and he was able
21 to make contact with Mr. Bergrin.

22 Q. How do you know he was able to make contact?

23 A. He -- there's a phone in the arrest room. He dialed
24 and said, Hey, Paul, it's Will, and at that time, I stepped
25 out of the room.

1 Q. Did there come a time when you went back into the
2 room?

3 A. After the phone call concluded, I walked back into the
4 room.

5 Q. And did Mr. Baskerville agree to cooperate?

6 A. No. He no longer --

7 Q. And what did he say?

8 A. I'm sorry.

9 Q. What did he say?

10 A. He no longer wanted to cooperate.

11 Q. Agent, I'm going to show you what's been marked as
12 Government Exhibit 2314. Do you recognize what that is?

13 A. That is our advice of rights form.

14 Q. And could you just explain to the jury what that is?

15 A. This is a document that we go through with anybody who
16 is in custody, and it is -- it's their rights, which we read
17 to them, we also ask them to read, and they have the choice
18 to waive those rights, meaning that they'll talk to us, or
19 they say that, you know, they would rather have a lawyer, or
20 they don't want to talk.

21 Q. Okay, and what did Mr. Baskerville -- did he fill that
22 out?

23 A. He did fill this out. He initialed after each
24 sentence: "Before we ask any questions, you must understand
25 your rights." His initials are to the left of that to

1 indicate that he read it and understood it.

2 So then, going through the document, he says he
3 does not wish to waive his rights.

4 Q. And did you record that on the document?

5 A. I asked him to write at the bottom, "At this time wish
6 not to waive my right," and then he signed it William
7 Baskerville.

8 MR. MINISH: Judge, we offer that into evidence.

9 THE COURT: Any objection?

10 MR. BERGRIN: No objection.

11 (Government Exhibit 2314 marked in evidence)

12 THE COURT: Jurors, would you like to take a short
13 break?

14 Some who are saying yes, some who are saying no.

15 We're going to have to take some break before the
16 end of the day. Would now be a good time?

17 Why don't we take a short break?

18 (Recess taken)

19 THE COURT CLERK: All rise.

20 (The jury enters)

21 (The witness resumed the stand.)

22 THE COURT: Be seated.

23 There's been a very minor change in plans. We're
24 going to stop at four o'clock today in deference to one of
25 our jurors, who has been very strong on this, but I think

1 she's feeling a little bit under the weather. So I want to
2 make sure everybody gets home okay.

3 Let's go.

4 MR. MINISH: Judge, if I could ask the jurors to
5 make sure that are their headphones are turned off. We're
6 not going to be playing any more audio.

7 Thank you.

8 BY MR. MINISH:

9 Q. Agent --

10 A. Yes.

11 Q. -- now we're at the time after Mr. Baskerville has
12 been arrested. Has he been processed?

13 A. He is.

14 Q. Would you just very briefly explain to the jury what
15 that is?

16 A. He's brought to our F.B.I. office, where he is
17 photographed and fingerprinted and entered into our
18 database.

19 Q. In order to get him to what is called an initial
20 appearance, what is the process?

21 A. What we do is, after he is processed at our office, we
22 then transport him to the United States Marshal Service,
23 where the Marshals also process him just like we do, they
24 photograph him, fingerprint him, and he is then held in a
25 cellblock or a holding -- holding facility, and he is taken

1 up to court by Marshals and agents.

2 Q. And where is their office?

3 A. Their office is at the Federal Courthouse, not --

4 Q. Not this one.

5 A. Not this one.

6 Q. The one across the street?

7 A. The new -- yes.

8 Q. And did you, in fact, do that?

9 A. Yes, we did.

10 Q. Do you recall about what time the initial appearance
11 was scheduled for?

12 A. I believe two or 2:30.

13 Q. Do you drop him off, or do you stay with the prisoner?

14 A. We -- we drop him off. He gets processed. We're
15 asked to stay in the area. We don't stay with the prisoner,
16 but we're asked to stay in the area because when the time
17 comes for his initial appearance, we then escort
18 Mr. Baskerville to court along with the Marshals.

19 Q. Did you, in fact, come back prior to the initial
20 appearance?

21 A. Yes, we did.

22 Q. And did you have the opportunity to observe Mr.
23 Baskerville at that time?

24 A. Yes, he was in a cellblock, and he was talking to
25 Mr. Bergrin at the time.

1 Q. And this is prior to the initial appearance.

2 A. Yes.

3 Q. Do you recall which judge Mr. Baskerville was taken to
4 for his initial appearance?

5 A. Judge Falk.

6 Q. Falk, F-a-l-k?

7 A. Yes.

8 Q. Very briefly, if you could just describe for the jury
9 what the scene is like at the initial appearance once the
10 prisoners are brought in.

11 A. Okay. During this day, I think there were two or
12 three prisoners brought in, and the judge calls each one of
13 them up individually. The United States Attorney is on one
14 side. He presents the facts of their case, the complaint
15 information, and then the Defendant makes his appearance.

16 Q. Now, was Mr. Hosten amongst this group?

17 A. Yes, he was.

18 Q. And again, so the jury's clear, Kemo had bought -- Mr.
19 McCray had bought from Mr. Hosten also; correct?

20 A. Yes, he had.

21 Q. Who was the A.U.S.A. handling the Baskerville matter
22 that day?

23 A. John Gay.

24 Q. Did you see Mr. Bergrin in court that day?

25 A. Yes, I did.

1 Q. Okay. What, if anything, did you observe him do?

2 A. I observed him walk into the courtroom. He then
3 walked back out. I saw him make a phone call. I believe he
4 did not come back in until Mr. Baskerville was called for
5 his initial appearance.

6 Q. Because the other people had been called first?

7 A. Other people were making their appearances, yes.

8 Q. And they had different attorneys.

9 A. They did.

10 MR. MINISH: Judge, Government Exhibit 2217, which
11 is a certified transcript of the initial appearance.

12 MR. BERGRIN: We have a copy. Thank you.

13 MR. MINISH: Judge, I offer this into evidence.

14 THE COURT: No objection. Into evidence.

15 MR. GAY: No objection, Mr. Bergrin?

16 MR. BERGRIN: Can I just --

17 THE COURT: I'm sorry. I thought you said no
18 objection.

19 MR. BERGRIN: I'm sorry. I said I had, sir.

20 I have no questions, Judge. I have no objections
21 to it either.

22 THE COURT: Okay. Into evidence. Thank you.

23 (Government Exhibit 2217 marked in evidence)

24 Q. All right, Agent. I'm going to direct your attention
25 to the very bottom of page two. I'm pointing at page 24,

1 line two. Who is attributed there as the speaker?

2 A. Mr. Gay.

3 MR. MINISH: Can we put it on the screen?

4 Q. And just those bottom two lines, if you could read
5 those bottom two lines.

6 A. "Mr. Gay: Yes, Your Honor. The Defendant is charged
7 with knowingly and intentionally distributing and
8 possessing -- " --

9 Q. And then on to the next page?

10 A. -- " -- with intent to distribute more than five grams
11 of a mixture of substance which contained cocaine base, in
12 violation of Title 21 United States Code section 841. The
13 maximum penalty for this charge is 40 years, and a two
14 million dollar fine."

15 Q. If I could stop you there. Cocaine base; are you
16 familiar with that, what cocaine base is?

17 A. Yes.

18 Q. And is that legal terminology for crack cocaine?

19 A. Yes, it is.

20 Q. Now, if you could just skip down to Mr. Gay again,
21 does Mr. Gay address the bail issue?

22 A. Yes, he does.

23 Q. Okay. If you could read that next paragraph, just
24 starting with line seven.

25 A. "Your Honor, the Government requests detention in this

1 matter based on both risk of flight and danger to the
2 community. As Your Honor can see from the complaint, this
3 is an extremely strong case against this Defendant. He is
4 facing a five-year minimum based on the charges. However, I
5 would note, Your Honor, that by my calculation, he is a
6 career offender, which would place him at a level 37 for
7 this charge, given the nature of the case, also the fact
8 that he's failed to appear when ordered to on prior cases.
9 He committed offenses in the past while on release,
10 probation, or parole; and the fact that he also has a
11 violent criminal history, the Government feels that
12 detention is appropriate in this case."

13 Q. That's it. Thank you.

14 Now, I know you said that you explained to
15 Mr. Baskerville how bail works in the Federal system as
16 opposed to the state system.

17 A. Yes, I --

18 Q. Could you very briefly explain that to the jury?

19 A. In the Federal system, the Magistrate Judge makes a
20 decision based on danger to the community or risk of flight
21 or both, and frequently in our Federal cases, in these types
22 of cases, I should say, the likelihood of the Defendant
23 getting remanded, meaning not able to make bail, is very
24 high.

25 Q. And in your observations, was Mr. Bergrin present

1 during the course of what Mr. Gay was saying?

2 A. Yes, he was.

3 Q. And did the Court at that time make an actual decision
4 with respect to bail, or put it off for another day?

5 A. Yes, he scheduled the bail hearing for I believe --
6 originally maybe December 3rd, and it got changed to
7 December 5th, I believe.

8 MR. MINISH: Judge, 2218. I ask that this be
9 moved into evidence.

10 THE COURT: Any objection?

11 MR. BERGRIN: Can I just have one moment, please?

12 THE COURT: Yes.

13 MR. BERGRIN: Thank you, Your Honor.

14 There's no objection, Judge.

15 THE COURT: Into evidence. Go ahead.

16 MR. MINISH: Thank you, Judge.

17 (Government Exhibit 2218 marked in evidence)

18 Q. All right. I'm going to direct your attention to the
19 bottom of the second page, Agent, starting towards the right
20 side of line 23.

21 Okay. Is that Mr. Gay speaking?

22 A. Yes, it is.

23 Q. Okay. And I apologize. Before we start, what was the
24 date of the hearing?

25 A. Oh. I apologize. It's December 4th, 2003.

1 Q. And again, directing your attention to line 23,
2 Mr. Gay is speaking there?

3 A. Yes, he is.

4 Q. And if you could read the portion I've highlighted on
5 that page.

6 A. "In addition, it's on an -- actually a higher charge
7 than what's contained in the complaint."

8 Q. Okay. And what is he talking about there? What is
9 it, "it's"?

10 A. I'm not sure.

11 Q. Is it the indictment?

12 A. Oh, the indictment, yes. "I have a copy of the
13 indictment for Your Honor." So he is referring to the
14 indictments. So there's -- he has been indicted now. We
15 appeared in front of the grand jury, and he's facing a
16 higher charge.

17 Q. So the jury is clear, can you just explain the
18 transition from complaint through grand jury to indictment?

19 A. So the complaint was what I -- I presented the facts
20 as I know them to the judge and I swear them out in front of
21 the judge, and he -- I get what's called a complaint.

22 Another way of charging somebody is through the
23 grand jury. We present evidence to the grand jury, and we
24 can arrest him based on the grand jury voting on that.

25 Q. And did that happen in this case?

1 A. It did. Subsequent to him being charged, we then
2 presented all our evidence to a grand jury, and the grand
3 jury felt that there was enough evidence to secure an
4 indictment.

5 Q. And I direct your attention to page three, to the
6 right of line eight.

7 A. Okay.

8 Q. Is that Mr. Gay still speaking?

9 A. Yes, it is.

10 Q. And if you could just read that for the jury.

11 A. "On the second charge, Your Honor, the Defendant is
12 facing a life sentence and a \$4 million fine.

13 "In addition, if you look at the Defendant's
14 criminal history, he is considered a career offender. He
15 has a prior robbery conviction as well as convictions for
16 distribution of narcotics. And under the current charge,
17 that would make him a level 37, and he would be looking at a
18 sentence between 360 months and life if convicted of that
19 charge, of the charges in the indictment."

20 Q. And was Mr. Bergrin present at this hearing?

21 A. Yes, he was.

22 Q. Did the court ultimately make a decision?

23 A. Yes.

24 Q. I direct your attention to page 10, line five. If you
25 could just read the highlighted area there. Is that the

1 Court speaking?

2 A. Yes, this is Judge Falk speaking.

3 THE COURT: No, this is, I think --

4 Q. Who is the Judge here?

5 THE COURT: I think it's Judge Wigenton.

6 THE WITNESS: Oh, yes, it is Wigenton.

7 THE COURT: They change. The Magistrate Judges
8 sit on criminal duty from week to week. So Judge Falk's
9 probably ended on Friday, Judge Wigenton started on Monday.
10 That's why this occurred.

11 Go ahead.

12 A. "As a result, detention will be ordered at this
13 juncture."

14 Q. And what does detention mean for William Baskerville?

15 A. That means that Will Baskerville is now being held
16 without bail.

17 Q. Until when?

18 A. Until there is anything further in this case,
19 depending on what he does.

20 Q. You mean trial or plea or --

21 A. Right, trial, the -- the outcome, the outcome, the
22 judicial outcome of the case, yes.

23 Q. I'm sorry. Just so the jury's clear, in between the
24 initial appearance and the bail -- the detention hearing,
25 was Mr. Baskerville incarcerated, or was he released?

1 A. No, he was incarcerated. From that initial
2 appearance, he was ordered to be remanded pending the --
3 pending the detention hearing.

4 Q. Now, I just want to hop back for a second to the day
5 of the initial appearance.

6 A. Yes.

7 Q. Without discussing why, did you move Mr. McCray to a
8 hotel for safety purposes that evening?

9 A. Yes, we did.

10 Q. And did you explain to him various safety options or
11 options to make him secure?

12 A. Yes, we did.

13 Q. Okay. Just tell the jury what you explained to Mr.
14 McCray that night.

15 A. We took him to a hotel in an effort to hide him and
16 protect him, and we explained to him that to further protect
17 him, we could move him out of the area or we could try and
18 seek that he -- seek entrance on his behalf into the Witness
19 Security Program.

20 Q. And who makes the decision whether he gets into the
21 witness security program?

22 A. That program's run by the U.S. Marshals, so they -- we
23 can make an application on his behalf. My office does it as
24 well as your office, the F.B.I. as well as the United States
25 Attorney's Office. But that decision is ultimately made by

1 the United States Marshal Service.

2 Q. And was Mr. McCray interested in that?

3 A. He was not interested in that, no.

4 Q. Okay. And what did he instead do, if anything ?

5 A. His proposal was to move far away. What he considered
6 to be far away was an apartment in East Orange.

7 Q. And why was that far away, in Mr. McCray's mind?

8 A. He felt that that was far away because it was an
9 address that nobody knew about, he could stay there with his
10 stepfather and nobody would know about that location.

11 Q. Now, I want to move forward to December of that year.

12 Did you receive any information with respect to a
13 threat about -- on Mr. McCray's life?

14 A. Yes, I did.

15 Q. Based on that information that you received, what did
16 you do?

17 A. We again met with Mr. McCray and explained to him that
18 his safety is in jeopardy.

19 Q. And why did you make that explanation? What did you
20 learn through your sources?

21 A. We learned that members of William Baskerville's crew
22 had gone to locate Kemo in an attempt to kill Kemo because
23 he was a snitch.

24 Q. And was that from one source, two sources, three
25 sources?

1 A. At that time, in mid-December, it was three sources.

2 Q. Do you recall who they were?

3 A. Yes, I do.

4 Q. Could you tell the jury?

5 A. The first source -- I first received a call on
6 December 15th from a defense attorney named David Glazer,
7 who was representing Calvin Rush, another individual that we
8 had charged. Calvin Rush was very panicked because he had
9 been approached by two or three males with guns looking for
10 Kemo with the intent to kill Kemo.

11 We met with Calvin Rush, and we then found out
12 further information that Kemo's cousin had been approached
13 by who we believed to be the same males, again looking for
14 Kemo. They thought this cousin, who's named Tay, was Kemo.
15 Tay was able to talk his way out of it and say he was not
16 Kemo, so he got away.

17 And then Kemo's girlfriend at the time, who
18 resided in Irvington, also told us that William
19 Baskerville's crew was there looking for Kemo to kill Kemo.

20 Q. Okay. Now, moving forward to January, did Kemo do
21 anything to violate F.B.I. orders?

22 A. He did. We discovered in January that apart from the
23 William Baskerville case, there was another drug case, gang
24 case that he was helping us with, and there were two
25 individuals that we arrested. He led us to believe that it

1 was conspiracy, that these two individuals were working
2 together to sell crack cocaine when, in fact, they weren't.
3 So we confronted Kemo about that.

4 Q. Okay. Were they selling drugs?

5 A. They were both selling drugs, but independent of one
6 another. It was not a conspiracy.

7 Q. And why did Kemo make it seem like they were?

8 A. He owed one of the individuals money, so he said that
9 he needed a -- he went to the first individual, and that
10 individual would take him to the second individual, who's
11 Richard Hosten, and there was a courier fee, so Kemo
12 explained to us I needed additional money because it's a
13 courier fee because this guy is going to take me to this
14 guy. So he made it sound as if it was a conspiracy just to
15 get money, so we ended up paying the courier fee.

16 Q. Now you said Richard Hosten was one of those
17 individuals?

18 A. Yes.

19 Q. And it was the same Richard Hosten that made the
20 initial appearance the same day as William Baskerville?

21 A. Yes.

22 Q. Did he eventually plead guilty?

23 A. Yes, he did.

24 Q. Did he agree to cooperate?

25 A. Yes, he did.

1 Q. And did he, in fact, testify in a number of different
2 proceedings for the Government?

3 A. Yes, he has.

4 Q. Now, moving forward to February 4th with respect to
5 this Kemo lie, what, if anything, happened on that day? Did
6 he give a statement to you?

7 A. February -- I thought it was the 2nd. Okay. Yeah.
8 You know what? I apologize. It's February 4th. We brought
9 him down to the F.B.I. office, and he provided a statement
10 to -- not myself, but to two task force officers, and he
11 gave a full statement on what he had done regarding the
12 courier fee, and also the fact that he was selling drugs on
13 the side while he was working as an informant for us.

14 Q. And do you recall about how much money he had taken?

15 A. I don't recall. I could look at his statement if you
16 want me to.

17 Q. We can move on.

18 Based on this information now, what, if anything,
19 did you do with Mr. McCray as a confidential informant?

20 A. We closed him as a confidential informant, meaning we
21 terminated him. He was no longer going to be operational
22 for us. He was no longer going to be carried on our books
23 as an informant. He is closed, he is closed out, he is no
24 longer an informant. That was explained to him that day.

25 Q. And was he continued to be paid by the F.B.I.?

1 A. No, he's no longer paid. He's terminated.

2 Q. As a CI.

3 A. Yes.

4 Q. Now, are you still responsible for his safety, or have
5 you absolved yourself of that at this point?

6 A. No, we are absolutely still responsible for his
7 safety. I mean, the fact is, he went out and cooperated and
8 worked for us for a long period of time, so we are
9 responsible for safeguarding him.

10 Q. Just that you're not going to use him going forward,
11 proactive.

12 A. No, we cannot use him going forward.

13 Q. Did there come a time when you had a conversation with
14 his mother about safety issues?

15 A. Yes, his mother was very concerned about him.

16 Q. And based on what she told you, what, if anything, did
17 you do?

18 A. We again spoke to Kemo and said that there was
19 additional information that I had learned about threats on
20 Kemo and the fact that they were getting very close to
21 locating him, and so we spoke to Kemo and made him aware of
22 this.

23 Q. And was there any specific area where they thought
24 Kemo might be, these individuals?

25 A. They were narrowing in on Bradley Court, which is a

1 housing complex in Newark, and we -- I had learned that
2 several males had gone there to look for him.

3 Q. Did he live in that area?

4 A. At that time, he was. He was staying with his girl --
5 girlfriend, a different girlfriend than the Irvington
6 girlfriend, but he was staying with his girlfriend in
7 Bradley Court.

8 Q. And do you recall the reason -- was a reason given for
9 why people were looking to kill him?

10 A. Because he's a snitch. That's exactly what was --
11 that is exactly what I learned, that they're looking to kill
12 him because he's a snitch.

13 Q. Did Mr. McCray himself relate anything to you with
14 respect to his concerns for his safety in February?

15 A. He did. He had reported to me an incident where he
16 was walking on South Orange Avenue, and he saw Rakim
17 Baskerville pull up in -- in his burgundy car and stare down
18 Kemo, and Kemo said he just ran. So he called to report to
19 me this episode of a staredown by Rakim Baskerville.

20 Q. And with respect to William Baskerville, who is Rakim
21 Baskerville?

22 A. That is his brother.

23 Q. And do they have any business dealings here that
24 you're aware of?

25 A. They deal drugs together.

1 Q. Now, did you discuss living arrangements with
2 Mr. McCray in late February of -- now we're in 2004; right?

3 A. I did. I told him he's got to get out of Bradley
4 Court, he's got to get away from that area.

5 He told me that he was going to go back and live
6 with his stepfather in East Orange.

7 Q. And who is his stepfather?

8 A. Johnny Davis.

9 Q. Do you know whether he did or he didn't?

10 A. I do not believe he did.

11 Q. All right. Now, I'm going to direct your attention to
12 March 2nd, 2004.

13 A. Okay.

14 Q. Were you working on that day?

15 A. Yes, I was.

16 Q. And was it a Tuesday?

17 A. Yes.

18 Q. Were you in your office in the F.B.I., or somewhere
19 else?

20 A. I was in our -- I was in our squad area at the F.B.I.,
21 at my F.B.I. office.

22 Q. So the jury is clear, are there various radios that
23 law enforcement broadcasts over in your squad area?

24 A. Yes. The -- we have a Newark F.B.I. radio, and then
25 our task force officers have their respective police

1 departments there, so we can hear what's going on in
2 Irvington, East Orange, Newark. So we have radio traffic
3 from the different municipalities as well as our F.B.I.
4 Newark radio.

5 Q. Did you get any information about a murder in Newark
6 that day?

7 A. We did. We had heard over the radio that there had
8 been a homicide on South Orange Avenue and 19th.

9 Q. And did there come a time when you recognized that
10 that might have significance to the F.B.I.?

11 A. Yes. Yes.

12 Q. Would you tell the jury the circumstances of how you
13 learned that?

14 A. I was -- shortly after I had heard -- we had heard the
15 radio traffic, I was getting paged overhead by our command
16 center, and they were telling me to come up to the command
17 center. I went up there, and they -- I was told that
18 Delphine McCray had been repeatedly calling, looking to talk
19 to me.

20 Q. And did you learn why?

21 A. As I was in there, she called again. I spoke to her,
22 and she was telling me that Kemo had been shot and killed.

23 Q. And what, if anything, did you do once you had that
24 information?

25 A. We then went out to the scene.

1 Q. And you say "we." You mean members of the F.B.I.?

2 A. Members of my squad.

3 Q. And when you arrived there, do you recall who, if
4 anyone, was there?

5 A. There -- there was nobody there any more.

6 Q. Nobody in law enforcement.

7 A. I'm sorry. Yeah, in law enforcement. The people who
8 had responded to the scene were no longer there.

9 Q. Did there come a time when you spoke to Newark
10 Detective Sabur?

11 A. Yes.

12 Q. Do you recall when you spoke with him?

13 A. Either that day -- I believe I spoke to him that day
14 on the phone, and then the following morning, I met with
15 him.

16 Q. And did you have any conversations related to the
17 investigation, without telling us what it was, with
18 Detective Sabur?

19 A. Yes.

20 Q. And did ultimately you go to Johnny Davis's home?

21 A. We went to Johnny Davis's house on March 2nd, the day
22 of the murder.

23 Q. And did you have any conversations with people there?

24 A. We did. We -- when we first got there, Mr. Davis was
25 not there.

1 MR. LEVY: Objection, Your Honor.

2 THE COURT: What's the objection?

3 MR. LEVY: Calls for a yes or no.

4 THE COURT: I'm sorry?

5 MR. LEVY: The question calls for a yes or no.

6 Q. What did you do when you got there?

7 A. I spoke to Johnny Davis's daughter, and as I was
8 speaking to her, he entered the house, and --

9 Q. Was he happy that you were there?

10 A. He threw me out.

11 Q. And did you, in fact, leave, or did members of the
12 F.B.I. task force that were there?

13 A. Yes, we left.

14 Q. Now, was this, at least initially at this point, an
15 F.B.I. investigation, the homicide that we're speaking
16 about, or someone else's investigation?

17 A. No, this is Newark P.D. homicide, and they work in
18 conjunction with the Essex County Prosecutor's Office. So
19 this was their murder.

20 Q. Now, are you familiar with the term proactive
21 investigation as opposed to historical investigation?

22 A. Yes.

23 Q. Okay. Would you explain to the jury what the
24 difference is?

25 A. A proactive investigation is when you have a source

1 who's into -- you know, it could be any type of
2 investigation, but that source is actually able to go out
3 and proactively investigate. That crime is happening real
4 time, right now, and we're able to see it unfold real time.
5 That's proactive.

6 Historically, it's a case where we know the crime
7 has already occurred, so we are going back trying to piece
8 together evidence to make sense of the crime.

9 Q. So with respect to the actual crime, are you able to
10 set up videos and recordings like you did for the drug case?

11 A. No. The murder is a historical investigation.

12 Q. So based on this historical investigation, did there
13 come a time when you assisted Newark P.D. in their
14 investigation?

15 A. Yes.

16 Q. Okay. What steps did you take?

17 A. We met with them the next day as well as Essex County
18 Prosecutor's Office, and we provided them -- we explained
19 that Kemo was an informant. I had told them things that I
20 had learned. I provided them with information that I
21 believed would assist them in trying to find the people
22 responsible for killing Kemo.

23 Q. Okay. Without you telling them, would they have known
24 he was a cooperator for the F.B.I.?

25 A. They would not have been able to confirm it. Delphine

1 McCray, Kemo's mother, may have made statements to the
2 detective, to Rashid Sabur.

3 Q. Did there come a time when you spoke with William
4 Baskerville?

5 A. Yes.

6 Q. Do you recall in relation to the murder when you went
7 to speak with him?

8 A. The next day, following that meeting that I just
9 discussed, we left and went to speak to William Baskerville.

10 Q. Where was he?

11 A. He was lodged at Hudson County Jail.

12 Q. And did you, in fact, get the opportunity to speak to
13 him?

14 A. Yes, I did.

15 Q. And what did you say to him?

16 A. We said that we have learned that there has been a
17 homicide, and we have reason to believe he's involved in it.

18 Q. And what reaction, if any, did you see from Mr.
19 Baskerville?

20 A. He got visibly upset. The blood drained from his
21 face, looked like he was about to cry. He could barely
22 speak.

23 Q. And did you ask him whether or not he wished to
24 provide information about this crime?

25 A. I did. I said we -- I explained to him that it's

1 still not too late to cooperate, we'd like to hear anything
2 he has to say related to this murder.

3 And he said that he'd like to think about it.

4 So I then said I'll come back in a week. You've
5 got a week to think about it. I'll be back.

6 Q. Now, moving forward, prior to going back to see
7 Mr. Baskerville, did you become aware of a significant
8 arrest made by the D.E.A. of individuals that are related to
9 I guess both literally and financially to Mr. Baskerville?

10 A. Yes, I did.

11 Q. Okay. And who was arrested, or who were arrest
12 warrants issued for?

13 A. They were members of the Hakeem Curry drug
14 organization, which is also related to the William
15 Baskerville drug organization.

16 Q. Was Hakeem Curry amongst those individuals arrested?

17 A. Yes.

18 Q. Was an arrest warrant issued for Rakim Baskerville at
19 that time?

20 A. Yes, there was.

21 Q. And do you recall how many days after the murder that
22 was?

23 A. I believe it was on March 4th or 5th.

24 Q. So two or three days after.

25 A. Right.

1 Q. Did there come a time when you went back to see Mr.
2 Baskerville?

3 A. Yes, I went back on March 9th to see him.

4 Q. And did you have any further discussions about the
5 investigation?

6 A. Yes, I did. I explained to him that we are gathering
7 significant evidence, and that if he was found to be
8 responsible for this, he is facing life in prison or even
9 the death penalty. I explained to him the penalties for
10 having a Federal cooperator killed.

11 Q. And did he, in fact, agree to cooperate?

12 A. He still did not agree to cooperate, but he again said
13 that --

14 MR. LEVY: Objection, Your Honor.

15 THE COURT: What's the objection?

16 MR. LEVY: Hearsay.

17 THE COURT: How about it?

18 MR. MINISH: I can move on, Judge. It's a
19 statement against interest, but it doesn't matter.

20 THE COURT: I'll sustain the objection.

21 Q. Based upon what he said, did he cooperate with you?

22 A. He did not.

23 Q. Did you have the opportunity to speak with Mr. Hosten?

24 A. Yes, I did. That same day, I spoke to Mr. Hosten.

25 Q. And at that point, was he cooperating with the

1 Government?

2 A. Yes, he was.

3 Q. And did he provide you with information that furthered
4 your investigation?

5 A. Yes, he did.

6 Q. Could you tell the jury what he told you?

7 MR. LEVY: Objection; hearsay.

8 THE COURT: Mr. Minish?

9 MR. MINISH: I understood that was Your Honor's
10 ruling, Judge. This is part of the investigation. But I'll
11 ask it a little differently.

12 Q. Based on -- was he an informant of yours?

13 A. He was not. He was cooperating with us. I hadn't
14 opened him as an informant, but he was definitely
15 cooperating with us.

16 Q. Okay. Did he provide you with information that
17 furthered your investigation?

18 A. Yes.

19 Q. And based on that information, what, if anything, did
20 you do?

21 A. We continued to investigate William Baskerville and
22 his associates in this murder.

23 Q. And what did you learn that caused you to do that from
24 Mr. Hosten?

25 A. That William Baskerville was responsible for having

1 Kemo killed.

2 Q. Now, later in March, did you again go back to see
3 Mr. Baskerville, William, that is?

4 A. Yes.

5 Q. Did you get the opportunity to actually see him?

6 A. I did not.

7 Q. Why not?

8 A. He refused to see us.

9 Q. Now, moving ahead, in the middle of March, now, of
10 '04, did there come a time when you received information
11 from yet another source?

12 A. Yes.

13 Q. Okay. Do you recall the name of those -- that source?

14 A. Yes, I do.

15 Q. Who was that?

16 A. Shelton Leverett.

17 Q. And based on -- was Mr. Leverett a cooperator?

18 A. Yes, he -- yes, he was. Yes.

19 Q. And based on what he told you, did you take steps in
20 your investigation?

21 A. Yes.

22 Q. And what steps did you take?

23 A. We continued to investigate William Baskerville and
24 his associates, and he particularly pointed us to an
25 individual known as Ant.

1 Q. And what specifically -- what did you learn from Mr.
2 -- excuse me, from Mr. Leverett that led you to that
3 individual?

4 A. I learned from Mr. Leverett that Ant was the shooter,
5 and he had killed Kemo on --

6 MR. BERGRIN: Objection, Your Honor.

7 THE COURT: What's the objection?

8 MR. LEVY: Hearsay again.

9 THE COURT: I think this is the issue that we had
10 discussed. I'll allow it.

11 A. -- that he had killed Kemo on behalf of William
12 Baskerville and Hakeem Curry because Kemo was a snitch.

13 Q. Did you receive any correspondence or someone at the
14 U. S. Attorney's Office receive any correspondence around
15 this time?

16 A. Right around the same time, we received -- the U. S.
17 Attorney's Office, I believe it was sent to the attention of
18 John Gay, received a letter from two individuals who were
19 incarcerated with William Baskerville at the time at Hudson
20 County Jail.

21 Q. Do you recall their names?

22 A. Troy Bell and Eric Dock.

23 Q. And did they provide information that furthered your
24 investigation?

25 A. They -- they did. We met with them, and they provided

1 us with a detailed log of conversations that they had with
2 William Baskerville relative to killing Kemo and the
3 conspiracy to kill Kemo.

4 Q. And did they speak specifically of the methodology
5 that was used by the group?

6 A. Yes, they did.

7 Q. And what, if anything, that you remember did you learn
8 about how the process worked, the actual murder itself?

9 A. That they have guns that they keep at a stash house,
10 they have getaway vehicles, and after a murder is committed,
11 they use this getaway vehicle, and they are able to conceal
12 the gun at the stash house.

13 Q. Now, around the time of April 26, 2004, did you make
14 any attempts to record William Baskerville?

15 A. We did. Both Eric Dock and Troy Bell agreed to wear a
16 recording device and go into Hudson County Jail to record
17 William Baskerville.

18 Q. Ultimately, did it -- did that attempt bear any
19 evidence?

20 A. It did not.

21 Q. Now, moving forward to later in April, did any other
22 -- were you continuing to investigate the murder?

23 A. Yes.

24 Q. Were you provided information by any additional
25 sources?

1 A. I had another source that I was working with at the
2 time, and --

3 Q. Who was that?

4 A. Ernest Cuyler, also known as Koby. His street name is
5 Koby. We had arrested Koby, he was cooperating with us, and
6 he -- I had learned from Koby that E. T. Hak, who is also
7 known as Hakeem Curry, had two snitches killed, and one of
8 the snitches killed was at South Orange Avenue and South
9 19th Street in Newark.

10 Q. Did he provide any information about an individual
11 named Ant?

12 A. Yes. He again said that Ant is part of --

13 MR. LEVY: Objection, Your Honor.

14 THE COURT: Same objection?

15 MR. LEVY: Hearsay.

16 THE COURT: I'll allow it.

17 Go ahead.

18 A. He -- I learned from Koby that Ant is a cousin of
19 Rakim Baskerville, and he had recently got out of prison,
20 and he went on to describe Ant as a member of the
21 Baskerville and Curry organization.

22 Q. Now, are you aware of an individual named Derek
23 Berrian?

24 A. Yes.

25 Q. Okay. And was he murdered?

1 A. Derek Berrian was murdered the day before Kemo was
2 murdered.

3 Q. And did you become aware of --

4 MR. BERGRIN: Judge, I don't know how that has any
5 relevancy whatsoever to this.

6 THE COURT: I don't, either. What is the --

7 MR. BERGRIN: I would request a sidebar on that.

8 THE COURT: Well, wait.

9 What's the relevancy?

10 MR. MINISH: It's part of the investigation,
11 Judge, that deals with Rakim Baskerville.

12 THE COURT: Okay. Go ahead.

13 MR. MINISH: We're not alleging Mr. Bergrin.

14 Q. Did you learn anything about the Derek Berrian murder
15 and -- with respect to Rakim Baskerville?

16 A. I had learned that there was an arrest warrant issued
17 for Rakim Baskerville related to the murder of Derek
18 Berrian.

19 Q. Now, did there come a time when you focused the
20 attention of your investigation at trying to identify a
21 shooter amongst the Curry group?

22 A. Yes.

23 Q. And did an individual named Malik Lattimore come to
24 your attention?

25 A. Yes, he did.

1 Q. And why did he come to your attention?

2 A. Through another source that we had developed at the
3 time.

4 Q. And who was that?

5 A. His name is Roderick Boyd.

6 Q. And what did you learn from Mr. Boyd?

7 A. I learned from Mr. Boyd two things. One, he was
8 incarcerated with several members of the Curry and
9 Baskerville organization, and that he had found a photo that
10 said KOS, meaning kill on site, of Lachoy Walker, I believe
11 his name is. And the second thing is, he said that Malik
12 Lattimore is one of the enforcers for the Curry
13 Organization, and that Lattimore killed the snitch at South
14 Orange Avenue and South 19th Street.

15 Q. Now, without telling me what was said, did you also
16 have a meeting with Mr. Pozo in July?

17 A. A coworker of mine, another F.B.I. agent, met with --

18 Q. Oh, I apologize. Did someone in law enforcement meet
19 with him?

20 A. Yes.

21 Q. And did he provide information, again, without telling
22 me what it was, related to Mr. Bergrin?

23 A. Yes, he did.

24 Q. Now, you said Malik Lattimore is now on the radar of
25 the F.B.I.?

1 A. Yes, he is.

2 Q. And what, if anything, did you do with that
3 information?

4 A. I passed that information on to Investigator Sabur and
5 Investigator Susan Bzik, Investigator Bzik is Sabur's
6 counterpart at Essex County Prosecutor's Office, and I had
7 asked that they show -- that they put together a photo array
8 containing Malik Lattimore's photograph for Johnny Davis to
9 look at.

10 Q. And do you know whether or not that happened?

11 A. Yes, it did happen.

12 Q. And do you know whether or not he was able to identify
13 Mr. Lattimore?

14 A. There was no positive ID of Mr. Lattimore.

15 Q. As a result of that, what did you do next?

16 A. We continued to develop information as best as
17 possible through different sources. We were trying to
18 obtain more information on Malik Lattimore, but we kept
19 focusing on just trying to get as much information as
20 possible.

21 Q. And did the information lead you to anyone other than
22 William Baskerville, or was he was he still the focus of
23 your investigation?

24 A. William Baskerville?

25 Q. Yes.

1 A. Yes.

2 Q. Did you speak with anybody in October about that?

3 A. I can't recall in October.

4 Q. Did you speak to an individual named Marc Joseph?

5 A. Oh, yes. Yes, I did.

6 Q. And who is Marc Joseph? Is he a source of
7 information?

8 A. He was not a source. He was incarcerated in Monmouth
9 County, and he had advised he had information, so I met with
10 him.

11 Q. Okay, and did he provide you information with respect
12 to your investigation?

13 A. Yes, he did.

14 Q. And what did you learn from Mr. Joseph?

15 A. I learned from Mr. Joseph that Mr. Baskerville -- that
16 William Baskerville was responsible for the murder of Kemo.

17 Q. Now, how about moving forward: Did there come a time
18 when you spoke with an Eddie Williams?

19 A. Yes.

20 Q. Did he also have information for you?

21 A. Yes, he came in to the United States Attorney's Office
22 and proffered and advised that William Baskerville had Kemo
23 pushed. Those are the words he used. He had Kemo murdered.

24 Q. "Pushed" meaning murdered?

25 A. Murdered.

1 Q. Now, when you use the word "proffer," could you just
2 explain to the jury what proffer means?

3 A. That's a medium where somebody who has been charged
4 with a crime, in our case, a Federal crime, comes in and has
5 an opportunity to meet with the prosecutor, the A.U.S.A.s,
6 in the presence of his defense attorney and he or she is
7 able to talk to us about information that he has or crimes
8 that he has been involved with --

9 MR. BERGRIN: Objection.

10 MR. LEVY: Objection, Your Honor.

11 THE COURT: What's the objection?

12 MR. LEVY: Your ruling I think I understand, but
13 now I think we're getting into pieces of what --

14 THE COURT: I think she's just explaining what a
15 proffer is.

16 MR. MINISH: Generally, Judge, and that's all it
17 is.

18 THE COURT: Okay.

19 A. He is able to tell us what information he has, and we
20 do not use that information against him, unless we find out
21 he's not being truthful with us.

22 Q. So is his attorney present?

23 A. Yes.

24 Q. Or the Defendant --

25 A. There is a defense attorney that is present on that

1 individual's behalf.

2 Q. Is the A.U.S.A. present?

3 A. The A.U.S.A., and agents.

4 Q. And is there an agreement that's signed?

5 A. He signs an agreement, a proffer agreement, yes.

6 Q. Now, moving forward to November 30th of '04, did there
7 come a time when you read anything in the newspaper that
8 furthered your investigation?

9 A. Yes. There was an article written in the Star-Ledger
10 again relating to the murder of the informant, and there was
11 -- I learned from that article that Mr. Bergrin had -- had
12 provided the name of Kemo to William Baskerville.

13 MR. BERGRIN: Judge, could I be heard on that,
14 please?

15 THE COURT: Could you be heard on it?

16 MR. BERGRIN: I'd like to be heard at sidebar.

17 THE COURT: Yes.

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1 (The following takes place in open court)

2 THE COURT: All right. Continue, Mr. Minish.

3 MR. MINISH: Thank you, Judge.

4 BY MR. MINISH:

5 Q. Now, the article that you're talking about --

6 MR. MINISH: For the record, Judge, I've shown the
7 witness Exhibit 5001.

8 A. Yes.

9 Q. Is that the article you're talking about?

10 A. Yes, it is.

11 Q. And you were interrupted, but if you can just explain
12 what you learned with respect to Mr. Bergrin from that
13 article.

14 A. Well, he was interviewed by the reporter, and he made
15 comments in the article, and I read those comments.

16 Q. And what were the comments?

17 A. That -- he said that he had called Curry, Hakeem Curry
18 after William Baskerville's arrest and asked for -- looked
19 to speak to the mother to ask for bail money, and also in
20 there, I learned that he had provided the name of our
21 informant to Hakeem Curry.

22 Q. Now, what we've talked about so far is information
23 you're getting from the outside; right?

24 A. Yes.

25 Q. I want to direct your attention to what you were able

1 to glean from the murder scene itself.

2 A. Okay.

3 Q. We're now a number of months later. What, if
4 anything, were you able to piece together about who was --
5 well, what evidence were you able to glean from the crime
6 scene?

7 A. We had learned from the crime scene that there had
8 been I believe a medium-complected black male, stocky build,
9 who had been seen standing over Kemo, shooting Kemo, and
10 then getting into a silver Grand Am and driving north on
11 South 19th Street.

12 Q. Did you learn anything with respect to the vehicle,
13 whether the vehicle had plates on it or not?

14 A. The description at the scene was that there were no
15 plates on the car.

16 Q. Are you familiar with a BOLO?

17 A. A BOLO was put out that day for --

18 Q. What is a BOLO?

19 A. Oh, I'm sorry. It's just an abbreviation for be on
20 the lookout for, so it goes out to all law enforcement. So
21 whatever information is obtained from the scene is
22 automatically, immediately put out to all of law enforcement
23 so they know to be on the lookout for this car.

24 Q. And did it speak to, that BOLO -- was there a BOLO
25 done with respect to the Kemo murder on March 2nd, 2004?

1 A. Yes, there was.

2 Q. And did it speak to whether or not the vehicle had
3 plates?

4 A. It said that the vehicle did not have plates.

5 Q. With respect to the hair style, at the time, what did
6 you believe the shooter's hair style was?

7 A. A -- that he had dreads or braids. I believe it was
8 braids.

9 Q. And did you -- as far as motivation goes, at this
10 time, did you believe this was a robbery, or something else?

11 A. I did not believe it to be a robbery.

12 Q. Why not?

13 A. There was nothing taken from him. The description was
14 that it was an execution in broad daylight.

15 Q. And with respect to the number of shots that were
16 fired, did you learn anything?

17 A. I learned that there were three to four shots fired,
18 but then I also became familiar with the physical evidence
19 recovered from the scene.

20 Q. And from multiple weapons, or from the same weapon?

21 A. From the same weapon, from a nine millimeter. Four
22 shell casings were recovered at the scene, all from a nine
23 millimeter.

24 Q. And did you have the opportunity to observe
25 Mr. McCray's body?

1 A. I observed autopsy photos of Mr. McCray's body, yes.

2 Q. And crime scene photos?

3 A. And crime scene photos.

4 Q. Now, I'm going to move you towards January of '05,
5 okay?

6 A. Okay.

7 Q. Where are you in stage -- excuse me -- with respect to
8 Mr. Baskerville, had any charging decisions been made?

9 A. We were at that time going, presenting our case in
10 front of the grand jury in an attempt to secure an
11 indictment against William Baskerville.

12 Q. For what charges?

13 A. For the conspiracy to commit murder. Killing Kemo.

14 Q. So that -- in addition to the drug charges.

15 A. This would be a superceding indictment. He had
16 already been indicted for the drug charges. We were now
17 going back in front of a different grand jury and presenting
18 the evidence we had on the murder conspiracy.

19 Q. Now, on or about the middle of January, did you
20 receive information or a call from an agent, without telling
21 me what they said, about an individual offering information
22 to the F.B.I. about this murder?

23 A. Yes, I did.

24 Q. And do you recall the agent's name who contacted you?

25 A. William Gale.

1 Q. Do you remember the day you received the information
2 that he provided you?

3 A. It was Friday, January the 14th, 2005.

4 Q. Okay. Now, based on what Agent Gale told you, what if
5 any steps did you take to meet this individual?

6 A. I telephonically contacted this individual.

7 Q. Okay. Who was the individual?

8 A. His name is Anthony Young.

9 Q. So what steps did you take to gather information from
10 Mr. Young?

11 A. I spoke to him on the phone that afternoon, and then I
12 set up a meeting to talk to him in person for -- for Monday.

13 Q. And did he provide you with information related to the
14 murder?

15 A. Yes, he did.

16 Q. Was the information he provided consistent with or
17 contrary to information you had?

18 A. It was consistent with the information we already
19 knew.

20 Q. Okay. Such as?

21 A. Such as, he told us who the shooter was. He --

22 MR. LEVY: Objection, Your Honor.

23 THE COURT: How about it?

24 MR. MINISH: It's the same thing, Judge.

25 THE COURT: Well, no. There are limits to that.

1 MR. LEVY: Thank you.

2 Q. He provided you with information related to the
3 murder? Just yes or no.

4 A. Yes.

5 Q. And was there anything specific that he told you,
6 without telling us what it was, that indicated to you he had
7 inside information?

8 A. Yes.

9 Q. Now, when this individual came in, did you go back and
10 find information you had been provided previously that
11 became relevant?

12 A. Yes.

13 Q. Okay. Could you tell the jury what information you
14 had been provided during your investigation that became
15 relevant to you?

16 MR. LEVY: Same objection, Your Honor.

17 THE COURT: Well, it's not hearsay yet. I mean,
18 you can gather information. She's an F.B.I. agent.

19 No, I'll let her testify.

20 MR. MINISH: I'll do it the same way, Judge, and I
21 apologize if I'm doing it awkwardly.

22 Q. Was there a source of information that you had
23 gathered during the course of the investigation that we have
24 not necessarily discussed already?

25 A. Yes.

1 Q. Did any of that become relevant only when Anthony
2 Young walk in the door?

3 A. Yes.

4 Q. Who was the source of that information?

5 A. I may be confused by your question. We had physical
6 evidence, and I also had source information, so I'm not
7 sure --

8 Q. Okay. The source information.

9 A. Okay. I had -- previously, I had two sources telling
10 me that Ant was the enforcer for the group, and that Ant had
11 killed Kemo. And prior to that, I had also had identified
12 Ant as being a member of the Baskerville organization.

13 Q. And did you believe that that individual would be the
14 same as Anthony Young?

15 A. I did, based -- I had learned from these sources that
16 Anthony -- that Ant was a black male, approximately
17 five-ten, two-thirty, missing his front teeth but wore
18 dentures, and drove a light blue Chrysler LHS.

19 Q. During the course of your investigation, did you learn
20 whether or not Mr. Young drove that sort of car?

21 A. Yes.

22 Q. And during the course of your investigation, did you
23 learn whether or not Mr. Young is missing front teeth?

24 A. Yes.

25 Q. And that he does wear dentures or a device?

1 A. Yes.

2 Q. Now, did Mr. Young indicate whether or not he was
3 involved with the Curry Organization?

4 A. Yes.

5 Q. Now, based on that information, did he indicate to you
6 that any specific individual was involved in this murder?

7 MR. LEVY: Same objection, Your Honor. Hearsay.

8 THE COURT: I'll sustain the objection.

9 MR. MINISH: Judge, I think this one we may want,
10 if I could be heard briefly at sidebar.

11 THE COURT: No, no. I'm not going to keep running
12 to sidebar. No, I'm going to sustain the objection.

13 Q. Well, based on what Mr. Young told you, did your
14 investigation turn in any specific direction or toward any
15 specific person?

16 A. We learned that an individual by the name of Jamal
17 McNeil was the shooter. Jamal McNeil was a member of the
18 Baskerville organization.

19 Q. And what steps did you take with respect to Jamal
20 McNeil?

21 A. We began to investigate him and find out as much
22 information about him as we could.

23 Q. And were you able to ultimately identify who this was?

24 A. We identified him, yes.

25 Q. And what did you do with that information?

1 A. I then passed that information on to Detective Sabur
2 and Investigator Bzik, and again requested that a photo
3 array containing Jamal McNeil's photo be presented to Johnny
4 Davis.

5 Q. Are you aware of whether or not that photo array was
6 actually presented to Mr. Davis?

7 A. Yes, it was. Yes, I'm aware.

8 Q. And was there any identification made?

9 A. There was no identification made by Mr. Davis.

10 Q. Now, during the course of looking at Mr. McNeil as
11 part of your investigation, did anybody else pop up on your
12 radar, get on your radar as far as being the actual shooter?

13 A. At that time, we were getting information -- I had
14 learned from sources that Anthony Young was the shooter.

15 Q. Meaning -- well, where were these sources from?

16 A. These sources were incarcerated with Anthony Young at
17 Hudson County Jail, and I had heard from these sources, and
18 one specific source in mind.

19 Q. And who was that?

20 A. His name was Hassan Miller.

21 Q. And what did he tell you? What did you learn from
22 Mr. Miller?

23 MR. LEVY: Objection, Your Honor.

24 THE COURT: I'll sustain what he told you.

25 Q. Based on what Mr. Miller told you, did you begin to

1 look at Anthony Young as shooter?

2 A. Yes, our focus shifted to Anthony Young as the
3 shooter.

4 Q. And what steps did your investigation take with
5 respect to Anthony Young and Hassan Miller?

6 A. Hassan Miller agreed to wear a recording device, and
7 we sent him in to the Hudson County Jail to have a recorded
8 conversation with Anthony Young.

9 Q. And what was your hope with respect to that recording?

10 A. To elicit information that Anthony Young was the
11 shooter, that he'd admit to it on the recorded conversation.

12 Q. And did that, in fact, happen?

13 A. The conversation happened, but we did not -- Mr. Young
14 did not admit to being the shooter during the conversation.

15 Q. Now, with respect to Mr. Young specifically, did there
16 come a time when he was moved into Federal custody?

17 A. Yes.

18 Q. Please explain to the jury the circumstances from when
19 he walked in the door to see you to him then being in
20 Federal custody.

21 A. In I believe it was December of '04, he had been
22 arrested by Newark police department for possessing a
23 weapon. We then adopted that charge Federally in what's
24 referred to as a Trigger Lock. Anthony Young is a
25 previously convicted felon; he is not able to possess a

1 weapon. So we then adopt that local gun case and we charged
2 him with being a felon in possession of a weapon.

3 Q. And do you know why that case was chosen to be -- to
4 have a Federal charge brought?

5 A. Because of his -- his previous criminal history that
6 he had.

7 Q. As opposed to other state charges, like why was that
8 adopted?

9 A. It was presented -- it was just presented to your
10 office along with other potential Trigger Locks.

11 Q. Were there any safety concerns involved?

12 A. Oh, okay. Yes. He expressed -- I had learned from
13 him that he was very concerned about his safety, and so he
14 was arrested and placed in custody.

15 Q. And when he's in Federal custody, is that different
16 from state custody?

17 A. Well, if he had been in -- yes. The answer is yes.

18 Q. And he did come into Federal custody.

19 A. Yes, he did.

20 Q. With respect to the hand with which the shooter shot
21 Kemo, did you and the F.B.I. make any determination which
22 hand you believed or location you believed the shooter was
23 at?

24 A. We had learned -- yes.

25 Q. Could you explain to the jury what process you went

1 through to come to your determination?

2 A. We had learned from witnesses at the crime scene and
3 as well as the autopsy information that Kemo was shot from
4 behind. And the autopsy revealed that there were three
5 shots, the fatal wound was right here at the base of his
6 left ear, and there were two other shots, both being
7 through-and-through shots, meaning that the bullet went
8 right through. One was in the chin area -- they were both
9 in the chin area. So --

10 Q. With that information, what, if anything, did your
11 squad attempt to do?

12 A. Given the information we had, we re-enacted the crime
13 scene using members of the squad, and based on our
14 re-enactment, we determined that the only way to get wounds
15 consistent with what was in the photos would be a
16 left-handed person shooting Kemo, based on where the holes
17 were.

18 Q. Okay. Now, when you say the only way, literally the
19 only way, or --

20 A. No, I think using common sense. I mean, we walked
21 through this, we looked at the photos, we had the witness
22 information, and in our enactment, the most feasible way
23 would be for a left-handed shooter to shoot Kemo.

24 Q. Now, with that in mind, did you investigate anything
25 with respect to which hand Mr. McNeil used?

1 A. We did. We tried to get back to his previous arrests,
2 and sometimes on police reports it will note if he's
3 right-handed or left-handed. I believe that we were able to
4 confirm that he -- he was left-handed.

5 Q. And again, I apologize for asking this out of order.
6 That was prior to Mr. Davis doing the photo array you had
7 made that determination?

8 A. Yes. Yes.

9 Q. And again, without telling us what he said, did you
10 inquire of Mr. Young whether Mr. McNeil was, in fact, a
11 lefty?

12 A. Yes.

13 THE COURT: Wait. What was that question?

14 Q. Did you inquire of Mr. Young whether Mr. McNeil was,
15 in fact, a lefty? Just, did you inquire?

16 MR. GAY: Left-handed.

17 MR. MINISH: Left-handed.

18 THE COURT: You're not saying that he is
19 left-handed. Just inquired.

20 MR. MINISH: Inquired.

21 Q. Did you inquire? Without telling us, did he provide
22 an answer?

23 THE COURT: All right.

24 A. Yes, he provided an answer.

25 Q. Now, moving forward, how many times did you speak to

1 Mr. Young prior to him coming to the United States
2 Attorney's Office? If you recall. In person. Let's make
3 that in person.

4 A. Very few times. I mean, the first time he came in,
5 which was in January, I want to say January 18th, 2005.
6 Shortly thereafter, he was incarcerated, and we -- I don't
7 believe we met with him until sometime after that.

8 Q. Was he eventually brought to the United States
9 Attorney's Office for the proffer, like you explained to the
10 jury?

11 A. He was, yes.

12 Q. Was he provided an attorney?

13 A. He was given an attorney, yes.

14 Q. Do you recall who that attorney was?

15 A. I believe it was Melinda Hawkins.

16 Q. During the course of this, was Mr. Baskerville
17 ultimately indicted for the murder of Kemo?

18 A. Yes. He was indicted -- yes, he was indicted in March
19 of '05, and I think that's right around the time when we
20 began the proffers.

21 Q. And I apologize, I've hopped around a little bit here,
22 but moving back to the after Hassan Miller time, that
23 recording that you spoke about --

24 A. Yes.

25 Q. Did there come a time when Mr. Young got a new

1 attorney?

2 A. Yes.

3 Q. Okay. Do you recall who that attorney was?

4 A. Gerry Fusella.

5 Q. And did Mr. Fusella bring Anthony Young into the U. S.
6 Attorney's Office for a proffer?

7 A. Yes, he did.

8 Q. And that agreement, just so the jury is clear, that
9 you said was signed, can you just very, very briefly explain
10 what that agreement -- what protections that agreement
11 provides to the Defendant?

12 A. It basically holds him harmless of him telling us of
13 criminal activity that he's involved in.

14 Q. He can say what he wants and you can't use that
15 information --

16 A. Yes.

17 Q. -- against him?

18 Was it explained to Mr. Young -- well, did
19 Mr. Young make any admissions during the course of
20 your interviews with him as well as proffers as to his
21 participation in the murder?

22 A. Yes, he did.

23 Q. Okay. What did he tell you?

24 A. He was the look --

25 MR. LEVY: Objection.

1 THE COURT: Yes. How about that? I'm not going
2 to have him -- are you going to bring this person in to
3 testify?

4 MR. MINISH: Yes, he is going to come in and
5 testify, Judge.

6 THE COURT: Well, let him tell it, then.

7 Q. Did he --

8 MR. MINISH: Judge, can I just be heard briefly?

9 (Pause)

10 THE COURT: No need to be heard?

11 MR. MINISH: No.

12 THE COURT: Good. I don't want to stand that
13 close to you anyway, the way you're coughing.

14 (Laughter)

15 THE COURT: Don't take it personally, Mr. Minish.

16 (Laughter)

17 MR. MINISH: No, Judge.

18 Q. Did Mr. Young give you a version of events of how the
19 murder occurred?

20 A. Yes, he did.

21 Q. And ultimately, did he come back in a second time with
22 Mr. Fusella and give you a second version of events?

23 A. Yes, he did.

24 Q. Okay. And was that contrary to the first?

25 A. Yes, it was.

1 Q. Did you tell him whether or not you believed him?

2 A. I did tell him that I did not believe him. I'm sorry,
3 kind of an awkward question. I did tell him I don't believe
4 him.

5 Q. And was he kept there for the balance of what the
6 proffer was, or was he sent back?

7 A. He was sent back, immediately sent back.

8 Q. When he came back -- or, I'm sorry, excuse me. Did he
9 come back again to the U. S. Attorney's Office for another
10 proffer?

11 A. About a week later, he came back again for another
12 proffer.

13 Q. Now, when he came back, was there another version of
14 what he had said?

15 A. Yes.

16 Q. And did he make any admissions to you about his
17 responsibility at that time?

18 A. Yes, he did.

19 Q. And based on that, what he told you, did you determine
20 who the shooter was of Mr. McCray?

21 A. Yes, I was able to determine who the shooter was.

22 Q. And who was the shooter?

23 A. Anthony Young.

24 Q. Now, once Mr. Young provided that information, what if
25 any steps did you take to attempt to corroborate the

1 information he provided you?

2 A. I again went back to witness information and physical
3 evidence recovered from the crime scene.

4 Q. And with respect to -- I don't want to go back through
5 each detail, but with respect to the vehicle, did he provide
6 information that was consistent with that vehicle?

7 A. Yes, he did.

8 Q. How about the tags, whether there were license plates?

9 A. There were no license plates.

10 Q. Did he describe -- did he provide you any information
11 about where Kemo was working?

12 A. Yes, he did.

13 Q. And the route he took up and back South Orange Avenue?

14 A. Yes, he did.

15 Q. How about the clothing?

16 MR. LEVY: Objection.

17 THE COURT: What's the objection?

18 MR. LEVY: You're ruling on hearsay, Your Honor.

19 This is effectively -- the substance of the information is
20 now coming out after sustaining the objection.

21 THE COURT: No, I'll allow her to give this
22 testimony.

23 Q. With respect to his clothing, Agent, were you able to
24 confirm anything that Mr. Young told you with respect to the
25 clothing that Mr. McCray was wearing?

- 1 A. Yes.
- 2 Q. Was there any discussion of a dust mask?
- 3 A. Yes.
- 4 Q. How about the number of shots?
- 5 A. Yes.
- 6 Q. The type of weapon?
- 7 A. Yes.
- 8 Q. And the direction the getaway car went?
- 9 A. Yes.
- 10 Q. Did he provide any information with respect to
- 11 Mr. Bergrin specifically, without telling us what it was?
- 12 A. Yes, he did.
- 13 Q. Now, moving forward into June of '06, --
- 14 A. Okay.
- 15 Q. -- excuse me, June of -- yes, did Mr. Young provided
- 16 you with any information about the weapon and what
- 17 ultimately happened to the weapon that was used to fire --
- 18 excuse me, fire at Mr. McCray?
- 19 A. Yes, he did.
- 20 Q. And based on that information, what steps did you take
- 21 in your investigation?
- 22 A. I then conducted several interviews based on that
- 23 information.
- 24 Q. Where did you go?
- 25 A. I went to a body shop located at 12th and Avon and I

1 interviewed three employees there, and I learned from those
2 employees that Rakim Baskerville and William Baskerville had
3 come in and asked for the gun to be melted.

4 Q. Who came?

5 A. I'm sorry. Anthony Young and Rakim Baskerville.

6 Q. Was William Baskerville out at that point, or was he
7 still in jail?

8 A. William Baskerville was in jail at the time.

9 Q. Among those, without telling us exactly what they
10 said, were among those individuals a person named Devon
11 Jones?

12 A. Yes.

13 Q. And did you do an investigation with respect to the
14 melting of the weapon?

15 A. Yes, I did.

16 Q. And did Mr. Jones provide you with information?

17 A. Yes, he did.

18 Q. Did you go back and provide Mr. Jones with -- excuse
19 me, Mr. Young with a photo of Devon Jones?

20 A. Yes, I did.

21 Q. And what was your purpose in doing that?

22 A. I had asked Anthony Young to see if he could identify
23 Devon Jones as one of the individuals who melted the gun,
24 and he identified him.

25 Q. Did you then do the reverse with Mr. Jones?

1 A. I did. With Mr. Jones, I did a photo array, so --

2 Q. Could you explain the difference to the jury?

3 A. A photo array consists typically at least for the
4 F.B.I. of six photographs, three on top, three on the
5 bottom, and we give it to a witness so that they can look at
6 the arrays, see if they can make an identification. If an
7 individual explains to us that they're more familiar with
8 the person or seem to have a closer relationship or
9 knowledge of that individual, sometimes we'll just show them
10 a photograph.

11 And in the case of Anthony Young, we just showed
12 him a photograph of Devon Jones because he seemed familiar
13 with that individual.

14 In the case of --

15 Q. With respect to Devon Jones, did you show him a photo
16 array, or a single photo?

17 A. We did a photo array.

18 Q. And who -- well, there's six people.

19 A. Yes.

20 Q. Was Anthony Young contained in one of those photo
21 arrays?

22 A. We actually did two photo arrays. In the first,
23 Anthony Young's photo was contained in there, and in the
24 second photo array, Rakim Baskerville's photo was contained
25 in it.

1 Q. And you showed them both to Mr. Jones?

2 A. Yes, I did.

3 Q. And did he review them?

4 A. Yes, he did.

5 Q. Was he able to make any identification?

6 A. Yes, he was.

7 Q. And what was he able to identify or to the extent he
8 was able to identify?

9 A. He identified Anthony Young from the photo array as
10 one of the individuals who came in and wanted the gun
11 melted, and with respect to Rakim Baskerville, he advised
12 that the photo of Rakim resembled the individual who came in
13 with Anthony Young.

14 Q. But he wasn't sure?

15 A. He was not sure.

16 Q. Based on your discussions with Mr. Young, were you
17 able to confirm any other -- excuse me -- any other
18 information that you had been provided by your sources,
19 specifically with respect to a search at Bradley Court?

20 A. Yes, I was.

21 Q. Based on your discussions with Mr. Young, were you
22 able to confirm anything that your sources had previously
23 provided that you've already testified about with respect to
24 searching for Mr. McCray at Bradley Court?

25 A. Yes, I was able to do that with Mr. Young.

1 Q. And with respect to the -- excuse me. Did you review
2 photos with respect to the hair style that Mr. Young
3 indicated that Kemo had on that day?

4 A. Yes, I did.

5 THE COURT: How are we doing?

6 Want to stop?

7 I know how you're doing, Mr. Minish.

8 (Laughter)

9 THE COURT: All right. It's just about four
10 o'clock.

11 I'm concerned. Our juror has been good all day,
12 she hasn't felt well earlier, and I'm a little concerned
13 about some of her comments. I want to make sure she can get
14 home okay, so I think we're going to break for today.

15 We'll start again tomorrow at nine o'clock. Be
16 here at quarter to nine, for the jurors.

17 Please don't discuss the case, don't read about
18 the case, don't talk about the case, don't watch anything,
19 and certainly don't do any research.

20 See you tomorrow.

21 (The jury exits)

22 THE COURT: Ma'am, you can step down.

23 All right, counsel, 8:30 tomorrow morning.

24 MR. BERGRIN: Judge, can I put one thing on the
25 record, please?

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

WILLIAM BASKERVILLE,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 13-5881

(Crim. No. 03–836)

Hon. Peter G. Sheridan, U.S.D.J.

**SUPPLEMENTAL APPENDIX OF THE UNITED STATES
VOL. II (PP. 671–1288)**

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1 (Defendant present)

2 THE COURT CLERK: All rise.

3 (The jury enters)

4 S H A W N B R O K O S, called as a witness on behalf of
5 the Government, and having been previously sworn, resumed
6 the stand and testified as follows:

7 THE COURT CLERK: Be seated.

8 Remain seated.

9 THE COURT: Good morning.

10 THE JURY: Good morning.

11 THE COURT: I understand we had a few traffic
12 problems this morning. I'm glad you made it.

13 With respect to the limiting instruction, I
14 thought I would give that after, or now? What do you say?

15 MR. LEVY: Defense would prefer you give it now,
16 Your Honor.

17 THE COURT: Any problem?

18 MR. MINISH: No, Judge.

19 THE COURT: All right.

20 Ladies and gentlemen, during Agent Brokos's
21 testimony, I have allowed the Government to elicit testimony
22 from her that sheds light on the background of the
23 Government's investigation. I am instructing you that the
24 testimony given by her about information that she testified
25 she obtained from her sources is not to be considered for

1 the purposes of determining whether the information provided
2 to her is, in fact, true. Rather, to the extent the
3 credibility of the Government's investigation has been
4 challenged by the Defendant, you may only consider this
5 information for the limited purpose of assessing the
6 reasonableness of the Government's investigation generally,
7 and Agent Brokos's actions specifically. In other words,
8 you may not consider it for the truth, but for the actions.

9 That said, the agent's here.

10 Mr. Minish.

11 MR. MINISH: Thank you, Judge.

12 Judge, just one thing. I was told back at the
13 office that it perhaps wasn't clear about of the
14 stipulations.

15 THE COURT: You were told by whom?

16 MR. MINISH: Mr. Gay when we were back at the
17 office that perhaps one of the stipulations wasn't clear, so
18 I just want to briefly go back to a question with the
19 witness.

20 THE COURT: One of the stipulations you read
21 yesterday?

22 MR. MINISH: Yes.

23 DIRECT EXAMINATION (CONTINUED)

24 BY MR. MINISH:

25 Q. Agent, there were two stipulations; right?

1 A. Yes, there was.

2 Q. Now, the first stipulation dealt with the initial two
3 drugs that were purchased?

4 A. Yes.

5 Q. Were those drugs destroyed during the course of the --
6 or after the Crips investigation was completed?

7 A. Yes, those two were destroyed.

8 Q. So we don't -- we no longer have those drugs.

9 A. They were not passed around to the jury.

10 Q. The jury only saw the last four.

11 A. Yes.

12 Q. If you could just very briefly explain to the jury why
13 those two -- the initial two purchases were destroyed.

14 A. Those first two transactions fell under what I had
15 captioned at the time as a Grape Street Crips case. After
16 those two transactions, I opened a separate investigation
17 into William Baskerville, Rakim Baskerville. The Crips case
18 has subsequently been closed, and I had to destroy those
19 drugs. So the first two buys, which was March 18th, 2003
20 and March 21st, 2003, those -- both of those crack cocaine
21 samples have been destroyed.

22 MR. MINISH: And, Judge, just for the record,
23 that's why for that exhibit, the stipulation that the jury
24 will have, there is a lapsed certificate for those two and
25 not the others.

1 THE COURT: Okay.

2 Q. Now, going back to where we left off, Agent, you were
3 discussing various things that Mr. Young had told you;
4 correct?

5 A. Yes.

6 Q. Now, did Mr. Young describe the hair style that Kemo
7 had on that day?

8 A. Yes, he did.

9 Q. Okay, and what was that hair style?

10 A. He advised -- I learned from him that Kemo wore his
11 hair that day in partial braids.

12 Q. Now, did you take any steps to confirm whether or not
13 that was true on that day?

14 A. Yes, I did.

15 Q. And what steps did you take?

16 A. I looked at the crime scene photos, and then the
17 autopsy photos.

18 MR. MINISH: Judge, I've discussed with
19 Mr. Bergrin before, we're going to move Government Exhibits
20 2292T and 2292M into evidence, subject to the connection
21 from the medical examiner when he testifies.

22 THE COURT: Any objection?

23 MR. BERGRIN: No. No. Not subject to attachment,
24 Judge.

25 THE COURT: Go ahead. Thank you. Into evidence.

1 (Government Exhibits 2292M and 2292T marked in
2 evidence)

3 Q. I'm giving you those two exhibits, Agent, as well as
4 2296F, which is already in evidence.

5 A. Okay.

6 Q. Now, first, if we can put up 2296T.

7 2296F.

8 Agent, what -- or just explain to the jury how
9 that photograph aided you in your attempt to figure out the
10 hair style that Mr. McCray had on that day.

11 A. If you look under the handkerchief that he had on his
12 head, at the base of it, by his ear, it appears -- it's not
13 all that clear, but it appears that those are braids -- I'm
14 sorry, braids.

15 Q. Well, you said it wasn't that clear, so what step did
16 you take next?

17 A. I then had to go to the autopsy photos that were
18 taken, and I confirmed from those photos that his hair, in
19 fact, was in braids.

20 MR. MINISH: If we could put up 2292T.

21 Q. Now, Agent, if you could explain what the jury is
22 looking at there.

23 A. Okay. This is a photo of Kemo. You can see his --
24 it's the left side of his head. His ear is actually being
25 held forward by a pair of tweezers, and that is one of the

1 shots that he sustained right behind the ear, and there is a
2 clip actually pulling the braids back so that a clear photo
3 of the -- of the -- the shot can be taken, the bullet wound.

4 Q. But for the clip, where would that hair be?

5 A. The hair would be down over -- over the wound and, you
6 know, over the ear.

7 MR. MINISH: Okay. If we can put up 2292M.

8 MR. LEVY: Your Honor, for the record, we're not
9 objecting, but none of these have previously been
10 identified.

11 MR. MINISH: They were both moved into evidence
12 before we started.

13 MR. BERGRIN: They're subject to the medical
14 examiner, Your Honor.

15 THE COURT: Yes, subject to the medical, that's
16 what Mr. Minish said.

17 MR. BERGRIN: Yes, Your Honor.

18 THE COURT: Go ahead.

19 Q. Could you tell the jury what they're looking at here?

20 A. This is a photograph of the handkerchief that Kemo was
21 wearing on his head the day he was shot, and the hole in it
22 actually shows where the bullet actually went through, so
23 the base of the kerchief shows where the kerchief ended, and
24 his hair would have been shown underneath, his braids would
25 come out underneath that kerchief. If you go back -- I'm

1 sorry.

2 Q. If you can circle the hole you're discussing in this
3 photograph.

4 (The witness complied.)

5 Q. Now, so the jury's clear, that hole was lined up with
6 the bullet hole?

7 A. Yes, if you take that and then go back to the previous
8 photo that was just on the screen, that is where the bullet
9 hole -- or, I'm sorry, the bullet wound was, over his left
10 ear, right -- you know, right here.

11 Q. And is that the hole at the bottom of that
12 handkerchief or whatever you're calling it?

13 A. Yes, it is.

14 MR. MINISH: Could you go back to the prior
15 photograph?

16 You can clear the screen, Agent.

17 THE COURT: I think she was talking about 2296F.

18 THE WITNESS: How do I clear --

19 MR. MINISH: No, that's the correct photograph I
20 was looking at.

21 If you can just clear the screen.

22 The bottom left, I'm sorry. The bottom left
23 button.

24 (Off the record discussion)

25 THE COURT: Is this the photograph you meant?

1 THE WITNESS: It is.

2 THE COURT: Okay. Go ahead.

3 Q. So the hole in the do-rag, the bandanna, that was over
4 that hole?

5 A. Yes, it was.

6 MR. MINISH: You can take that down.

7 Q. Now, did there come a time when Mr. Young pled guilty?

8 A. Yes.

9 Q. Do you recall what he pled guilty to?

10 A. He pled guilty to the murder of Kemo, murdering a
11 Federal witness.

12 Q. Was it two separate conspiracies related --

13 A. It is, it's two separate conspiracies.

14 Q. Both related to the murder?

15 A. Yes.

16 Q. How about that gun charge that you discussed briefly
17 that he had, just the possession of a gun?

18 A. Yes, he pled guilty to that as well.

19 Q. Now, was that prior to or after Mr. Baskerville's
20 William Baskerville, that is, trial?

21 A. He pled guilty prior to William Baskerville's trial.

22 Q. Did you -- I'm sorry. With respect to his plea, was
23 it a plea agreement, or did he just plead to the indictment?

24 A. No, it was a plea agreement.

25 Q. And as part of that plea agreement, do you know what

1 his sentence was? Or what was called for in the plea
2 agreement.

3 A. Mandatory life. Well, actually -- no, I'm sorry,
4 mandatory life in the plea agreement.

5 Q. And did Mr. Baskerville, William Baskerville, actually
6 go to trial?

7 A. Yes, he did.

8 Q. And did you testify in it?

9 A. I did.

10 Q. And did Mr. Young?

11 A. Yes, he did.

12 Q. After that, was Mr. Young sentenced?

13 A. Yes, he was.

14 Q. And what sentence did he actually get?

15 A. He received a sentence of 30 years, I believe.

16 Q. And do you know why that happened?

17 A. He was given -- the judge had given him some
18 consideration because of his cooperation and his testimony
19 in the William Baskerville matter.

20 Q. And just so the record's clear, was it Judge
21 Cavanaugh, or a different judge?

22 A. It was Judge Pisano.

23 Q. Since that time, Agent, have you continued to look
24 into various things that Mr. Young has told you?

25 A. Yes, I have.

1 Q. Have you learned or been able to confirm anything that
2 Mr. Young told you that you prior to the trial had not been
3 able to confirm?

4 A. Prior to the Baskerville trial?

5 Q. Correct.

6 A. Yes.

7 Q. And was among those his use of a dumpster?

8 A. Yes.

9 Q. Could you explain that to the jury?

10 A. I learned from Anthony Young that he had taken his
11 murder weapon used to kill Kemo and he had it melted down at
12 an auto body shop in Newark, and the remnants of what was
13 melted down, he took that along with his bloody fleece
14 jacket that he was wearing at the time and threw it --

15 MR. BERGRIN: Judge, I have to object. I mean,
16 she's getting into really specific details of Anthony Young,
17 who is going to testify, and I believe this is beyond the
18 Judge's ruling.

19 THE COURT: No, I'll allow it. Go ahead.

20 A. He took those items and threw them in a dumpster
21 across the street from the auto body shop, and we confirmed
22 that there was, in fact, a dumpster located across the
23 street at a location known as the International Youth
24 Organization on I think 12th and Woodlawn in Newark. So I
25 had interviewed the individual whose company performed

1 construction at the IYO, they were undergoing a major
2 renovation project, and there were, in fact, dumpsters
3 located across the street from the garage being the -- at
4 the IYO.

5 Q. So now the timing is clear because you're talking
6 about a long period of time.

7 A. Right.

8 Q. When was Mr. McCray murdered?

9 A. He was murdered on March 2nd, 2004.

10 Q. When did Anthony Young come and speak with you?

11 A. He came in person the first time January 14th -- I'm
12 sorry, January 18th of 2005.

13 Q. And when did he actually tell you about the dumpster?

14 A. That was in March of 2006.

15 Q. Okay. 2000 -- at that time --

16 A. I apologize. He told me in -- earlier about the
17 dumpster. I do, I apologize. He told me in January 18th of
18 2005.

19 Q. Now, at that point, was there a dumpster, or did you
20 check whether there was a dumpster in the area?

21 A. We did. We had agents go out to the area, and we did
22 not see a dumpster at that location.

23 Q. So the information you gathered was about stuff that
24 happened prior to Mr. Young --

25 A. Right, when we interviewed the individual whose

1 company performed the construction, he advised that going
2 back to late 2003 and throughout 2004, there was a major
3 renovation project at the IYO that required a series of
4 dumpsters being placed right outside the IYO, which is
5 across the street from Ben's Garage or the auto body garage.

6 MR. MINISH: Now, if we could put up -- I just
7 want to go through a couple, a few things in evidence and
8 then move into a new area.

9 This one is actually in evidence already, 2256.

10 Do you know who that individual is, Agent?

11 THE COURT: Wait. You said it's in evidence?

12 MR. MINISH: It is in evidence.

13 THE COURT: You're not putting it up anywhere?

14 MR. MINISH: Oh, I'm sorry, Your Honor.

15 THE COURT: Go ahead.

16 A. That's a photograph of Horatio Joines, also known as
17 Ray-Ray.

18 Q. So his nickname is Ray-Ray?

19 A. His street name is Ray-Ray, yes.

20 Q. Now, I believe the record showed that yesterday, you
21 said he was Mr. Baskerville's partner. If you could just
22 explain the type of partner he was.

23 A. In the drug-dealing business.

24 Q. Agent, I'm going to show you Government Exhibit 2211.
25 Do you recognize what that is?

1 A. Yes, I do.

2 Q. Okay. What is that?

3 A. This is a scrap piece of paper containing telephone
4 number 908-413-0663, which was provided to Kemo in August of
5 2003 by William Baskerville. William Baskerville had
6 changed his phone number and saw Kemo on the street and gave
7 him his new cell phone number, and Kemo then provided this
8 to me, and I marked it on August 22nd, 2003 as receiving it,
9 and placed it into evidence.

10 Q. And that was just a means to connect with
11 Mr. Baskerville during the course of the drug investigation?

12 A. Yes, because after June of '03, we were not able to
13 get ahold of him -- Kemo was not able to get ahold of him.
14 We did not realize that he had a new phone number, so this
15 was our way to get back in touch with him.

16 MR. MINISH: Judge, we offer that into evidence.

17 THE COURT: Any objection?

18 MR. BERGRIN: No, Judge.

19 THE COURT: Into evidence.

20 (Government Exhibit 2211 marked in evidence)

21 Q. Now, already in evidence --

22 MR. MINISH: If you could put up photograph 3099.

23 q. Do you recognize who that woman is?

24 A. That is Lavinia Mears.

25 Q. And during the course of your investigation, did you

1 gain knowledge of whom she works for?

2 A. Yes, I did.

3 Q. Okay, and how is she related to this case
4 specifically?

5 A. I learned that she is part of the defense team.

6 Q. And 3525?

7 A. Yes.

8 Q. Okay. Do you recognize who that is?

9 A. Yes, I do.

10 Q. Okay. Who is that?

11 A. That is Louis Stephens.

12 Q. And do you know what his involvement in this case is,
13 if any?

14 A. He is an investigator for Mr. Bergrin.

15 MR. MINISH: Take that down.

16 Q. Agent, I want to show you a series of photographs and
17 just see if you recognize who they are.

18 MR. MINISH: Judge, I'm showing Defendant 2259,
19 2261, 2263.

20 MR. BERGRIN: Okay.

21 THE COURT: Is there any objection to any of these
22 going in?

23 MR. BERGRIN: I haven't seen them. Just one
24 moment, Judge?

25 THE COURT: Here, show them to Mr. Bergrin again.

1 MR. BERGRIN: Judge, I don't understand what the
2 connection is to this particular case.

3 THE COURT: Okay. Well, then, I'll let him do the
4 questioning first.

5 MR. BERGRIN: Yes, Judge, please.

6 Q. I show you what's been marked 2259. Do you recognize
7 who that is?

8 A. That is Terrell Thomas, also known as Rel.

9 Q. Okay, and is that the individual who you discussed
10 earlier being involved with Mr. Baskerville in the drug
11 organization?

12 A. Yes, it is.

13 MR. MINISH: Judge, we offer that into evidence.

14 THE COURT: Any objection?

15 MR. BERGRIN: No objection.

16 THE COURT: In evidence.

17 (Government Exhibit 2259 marked in evidence)

18 Q. I'm going to show you what's been marked 2263. Do you
19 recognize who that is?

20 A. That is a photograph of Anthony Young, also known as
21 Ant.

22 MR. MINISH: Judge, we offer that into evidence.

23 THE COURT: Any objection?

24 MR. BERGRIN: No objection.

25 THE COURT: Into evidence.

1 (Government Exhibit 2263 marked in evidence)

2 Q. Show you what's been marked 2261. Do you know who
3 that is?

4 A. I believe that is Jamal Baskerville, also known as --

5 MR. BERGRIN: Who is that? I'm sorry?

6 THE WITNESS: Jamal Baskerville, also known as
7 Mal.

8 MR. BERGRIN: 2261 is Jamal Baskerville?

9 All right. I have no objection to that. I don't
10 care.

11 THE COURT: Okay. In evidence.

12 (Government Exhibit 2261 marked in evidence

13 MR. MINISH: If you could briefly put that up.

14 Q. And is that a brother of William Baskerville?

15 A. That is a brother of William and Rakim Baskerville.

16 Q. Agent, yesterday, you testified about two different
17 photo arrays you provided to Devon Jones. Is that correct?

18 A. Yes.

19 Q. Showing you what's been marked 2265 and 2266, can you
20 tell the jury what is 2265?

21 A. 2265 is a photo array containing a photo of Anthony
22 Young in the -- as photo number two in this array.

23 Q. And that was the one shown to Mr. Jones?

24 A. Yes, it was.

25 Q. Okay. And how about 2266?

1 A. This is a photo array again shown to Mr. Jones
2 containing a photograph of Rakim Baskerville, and he is
3 number three in this array.

4 MR. MINISH: I offer these both into evidence,
5 Judge.

6 THE COURT: Any objection?

7 MR. BERGRIN: I have no objection, Judge.

8 THE COURT: In evidence.

9 (Government Exhibits 2265 and 2266 marked in evidence)

10 MR. MINISH: If we could just briefly put up 2365.

11 Q. This is the array shown Mr. Jones?

12 A. Yes, it was.

13 Q. And was he able to identify anybody in this array?

14 A. He identified Anthony Young, the individual under the
15 number two.

16 MR. MINISH: If you could put up 2266.

17 Q. Was that shown to Mr. Jones also?

18 A. Yes, it was.

19 Q. Okay, and was he able to identify anybody in that
20 photograph?

21 A. He picked out number three, Rakim Baskerville, as the
22 individual who possibly accompanied Anthony Young.

23 MR. MINISH: 2268.

24 MR. BERGRIN: May I see it?

25 MR. MINISH: Do you have any objection?

1 MR. BERGRIN: No.

2 MR. MINISH: Judge, Mr. Bergrin said he has no
3 objection. I'm just going to move 2268 into evidence.

4 THE COURT: Into evidence.

5 MR. BERGRIN: There is none, Judge.

6 (Government Exhibit 2268 marked in evidence)

7 Q. Could you tell the jury who they're looking at?

8 A. This is a photograph of Devon Jones.

9 Q. And what specific use did you have for this
10 photograph?

11 A. This is the photograph we showed to Anthony Young, who
12 confirmed to us that this is one of the individuals who
13 melted down the murder weapon.

14 (Off the record discussion between counsel)

15 MR. MINISH: Judge, Mr. Bergrin has indicated he
16 has no objections to 2314 and 2315 going into evidence.

17 THE COURT: Mr. Bergrin?

18 MR. BERGRIN: There's no objection, sir.

19 THE COURT: Into evidence.

20 (Government Exhibits 2314 and 2315 marked in evidence)

21 MR. MINISH: Could you put up 2314, please?

22 Q. Could you tell the jury what they're looking at?

23 A. This is an advice of rights form that we went through
24 with Mr. William Baskerville on the day of his arrest, which
25 is November 25th, 2003, which he signed and indicated he did

1 not wish to waive his right.

2 Q. And you already testified about that, but that's when
3 you went back to speak to him?

4 A. Yes. Yes.

5 Q. At the F.B.I.

6 A. Yes.

7 Q. Showing you what has been marked 2315, if you can put
8 that up?

9 A. Okay.

10 Q. Can you tell the jury what they're looking at?

11 A. This is a property -- receipt for property seized,
12 which -- these five items we took from Mr. Baskerville's
13 house during the morning of his arrest, and it just lists
14 them out, and at the bottom, his wife signed to acknowledge
15 that these items had been seized from their home.

16 THE COURT: You know, ladies and gentlemen, I
17 notice you looking and straining to see some of these
18 documents and different things that are going into evidence.

19 I just want to remind you that at the end of the
20 case, when you are to deliberate, you will have copies of
21 all these. So don't think you're looking at these once,
22 they're going to go away and you're going to have to
23 remember. You will have access to these things eventually.

24 Go ahead.

25 MR. MINISH: Thank you, Judge.

1 Q. I'm going to show you, Agent, what's been marked --

2 (Off the record discussion between counsel)

3 MR. MINISH: Judge, I'm showing the agent what's
4 been marked Government Exhibit 4213. I do not believe
5 Mr. Bergrin has an objection to this going into evidence.

6 THE COURT: Mr. Bergrin?

7 MR. BERGRIN: There's no objection as well, Judge.

8 THE COURT: Okay. In evidence.

9 (Government Exhibit 4213 marked in evidence)

10 Q. Agent, have you seen this exhibit before?

11 A. Yes, I have.

12 Q. Can you tell the jury what it is?

13 A. This is a disc containing a recorded conversation
14 between a cooperating witness at the time, Hassan Miller,
15 and Anthony Young, dated --

16 Q. Maybe I gave you the wrong -- excuse me.

17 MR. BERGRIN: Your Honor, she's identified it,
18 so --

19 MR. MINISH: I apologize, Judge. Maybe I provided
20 the wrong --

21 No, you are right and I was wrong. I was wrong.

22 THE COURT: It's the appropriate one?

23 MR. MINISH: That's the appropriate one, Judge. I
24 was wrong.

25 THE COURT: Okay.

1 A. So it's the disc containing a recorded conversation
2 that Hassan Miller had with Anthony Young at Hudson County
3 Jail, dated August 3rd, 2005.

4 (Off the record discussion between counsel)

5 MR. MINISH: Judge, I apologize. Mr. Bergrin does
6 not have --

7 THE COURT: Wait. I'm having trouble hearing you.

8 MR. MINISH: I'm sorry. I just want to make it
9 clear for the record whether Mr. Bergrin has an objection,
10 because I did misinform him of what this is, whether the
11 4213 goes into evidence.

12 THE COURT: Well, wait, wait, wait. Is that --

13 MR. MINISH: It's what the agent said, but when I
14 had asked him originally --

15 THE COURT: Is this different -- is this the one
16 we just discussed?

17 MR. MINISH: Yes.

18 THE COURT: I don't think Mr. Bergrin has any
19 problem; do you? Want to look?

20 Show him.

21 MR. BERGRIN: 2316?

22 MR. MINISH: The first.

23 THE COURT: Show him the one that we just went
24 over.

25 MR. MINISH: This is the one we just went over.

1 Hassan Miller testimony.

2 (Off the record discussion between counsel)

3 THE COURT: No objection to any of these, Mr.
4 Bergrin?

5 MR. BERGRIN: No, Judge.

6 THE COURT: Go ahead. Into evidence.

7 Q. Agent, I'm going to show you what has been marked
8 Government Exhibit 2316.

9 A. Yes.

10 Q. Okay. Do you recognize what 2316 is?

11 A. Yes, it is. This is a cassette recording of a
12 voicemail message left on my phone by Anthony Young on May
13 -- May 11th, 2005.

14 Q. Okay. Briefly, what's contained in that?

15 A. This is where he makes a statement that the shooter is
16 left-handed.

17 Q. Now, 2316A, could you just explain to the jury what
18 that is?

19 A. That's just a digitized recording of this cassette
20 tape, and the date on here is May 16th, 2005. The voicemail
21 was actually left on May 11th, 2005. This is just the date
22 I put it into evidence.

23 Q. At the point at which Mr. Young left you that message,
24 who was the individual you were looking at for the murder of
25 Mr. McCray?

1 A. At that time, it was Jamal McNeil.

2 Q. I show you what's been marked Government Exhibit 2267.
3 Do you recognize the individual that's contained in that
4 photograph.

5 A. Yes, I do.

6 Q. Who is that?

7 A. Jamal McNeil.

8 MR. MINISH: Judge, we offer that into evidence.

9 THE COURT: Any objection?

10 MR. BERGRIN: None at all, Judge.

11 THE COURT: Into evidence.

12 (Government Exhibit 2267 marked in evidence)

13 MR. MINISH: Would you just briefly put that up?

14 Q. Agent, I'm going to show you what's been marked 2213.

15 MR. BERGRIN: Oh, okay. Thank you.

16 (Off the record discussion between counsel)

17 MR. MINISH: Do you have an objection to it going
18 in?

19 MR. BERGRIN: There's none at all.

20 MR. MINISH: Judge, I believe Mr. Bergrin does not
21 have an objection. I'd like to move Exhibit 2213 into
22 evidence.

23 THE COURT: Mr. Bergrin?

24 MR. BERGRIN: There's no objection at all, Judge.

25 THE COURT: Into evidence.

1 (Government Exhibit 2213 marked in evidence)

2 Q. Agent, do you recognize what that is?

3 A. Yes, I do.

4 Q. Can you tell the jury what that is?

5 A. This is the inmates visiting log from the Hudson
6 County Jail. The start date is March 3rd, 2004, and this
7 lists individuals who have come to visit various inmates,
8 William Baskerville, mainly.

9 Q. Okay. Now, I'm going to direct your attention to the
10 day after Mr. McCray was murdered.

11 A. Yes.

12 Q. Is there a record of anybody specifically visiting
13 Mr. Baskerville?

14 A. Yes. His wife visited him, it's in the middle of the
15 page, Diedre Baskerville visited him at approximately
16 9 a.m., and then at approximately --

17 Q. If you could skip -- can you go to the next page?

18 A. Yes, the next page.

19 On the top of the next page, at approximately
20 10:20 a.m., Rakim Baskerville and Horatio Joines visit
21 William Baskerville.

22 Q. Thank you.

23 Did that visitation have any significance to your
24 investigation, Agent?

25 A. Yes, it did.

1 Q. Point it out to the jury, please.

2 A. We had information that these individuals were part of
3 the conspiracy to kill Kemo, so by them coming and visiting
4 him helped further our investigation.

5 Q. Now, I want to shift gears with you, Agent, if I can.

6 During the course of your investigation of the
7 murder, did your attention turn to Mr. Bergrin at any point?

8 A. Yes, it did.

9 Q. And during that time, did you have a cooperator named
10 Shelton Leverett?

11 A. Yes, I did.

12 Q. And did Mr. Leverett agree to wear a wire?

13 A. Yes, he did.

14 Q. Okay, and go through that same process that Mr. McCray
15 did with you?

16 A. Yes, he did.

17 Q. And did he agree to wear a wire and speak with Mr.
18 Bergrin?

19 A. Yes, he did.

20 Q. Was he, in fact, outfitted with the device --

21 A. He was.

22 Q. -- the recording device?

23 A. Yes, he was.

24 Q. And was he outfitted with a -- forgive me, I
25 apologize -- the transmitter?

- 1 A. The transmitter?
- 2 Q. The transmitter?
- 3 A. He was not outfitted with a transmitter.
- 4 Q. Okay. Why not?
- 5 A. For safety reasons. We had -- I --
- 6 Q. Well, we don't have to go into detail.
- 7 A. Okay.
- 8 Q. But he was not wearing it going into Mr. Bergrin's
- 9 office?
- 10 A. He was not wearing a transmitter. He only wore a
- 11 recording device.
- 12 Q. When you outfitted him with the device -- I'm sorry.
- 13 Did you personally outfit him with the device?
- 14 A. There are occasions where I did, and we also had a
- 15 task force officer on the squad at the time who also would
- 16 activate the device and provide it to him. So it was either
- 17 the task force officer or myself who did it.
- 18 Q. Were you present if the task force officer did?
- 19 A. There were times where she would be with him in the
- 20 car because she would take him to Mr. Bergrin's office, she
- 21 would drive him there, and I was not in that car, I was in a
- 22 separate vehicle.
- 23 Q. Well, let me ask it this way. To your knowledge, was
- 24 the device in good and working order --
- 25 A. Yes.

- 1 Q. -- each time it was used?
- 2 A. Yes, we always tested it before it went out.
- 3 Q. And what type of device was it?
- 4 A. It was what's known as an Eagle or a Hawk recording
5 device. It's a digital recording device.
- 6 Q. And is it a secret device?
- 7 A. It's a concealed device, yes.
- 8 Q. And did you or the task force officer turn it off and
9 on?
- 10 A. Yes, we did.
- 11 Q. Now, were those recordings that were made, were they
12 made consensually?
- 13 A. They were.
- 14 Q. And prior to the recordings -- or prior to
15 Mr. Leverett leaving with the device, was anything put on
16 the recording by either you or the task force agent?
- 17 A. On the beginning of each recording, we put on what is
18 called a preamble, and that indicates the date, the time,
19 the location, who the recording is going to be with, and our
20 names. Whoever's doing the preamble, you state your name.
- 21 Q. Okay. And were batteries checked?
- 22 A. Yes.
- 23 Q. And did you get it back each time in working order?
- 24 A. Yes, we did.
- 25 Q. And was the device then turned off?

1 A. Yes, it's then deactivated.

2 Q. And did you check the approximate length to match with
3 the time Mr. Leverett would have been out of your presence?

4 A. Right, because simultaneously we're also keeping
5 surveillance notes when he goes into the location, when he
6 comes back out of the location.

7 Q. Now, if you can just very briefly explain to the jury
8 the process once you get that device back. What do you do
9 with it?

10 A. I take the device and I -- I hook it up to a computer
11 using a USB cable, which enables the computer to read this
12 device. There's special software that then brings up what's
13 contained on that recording device. I take the data that is
14 on the device and I then transfer it to a disc using this
15 special software.

16 Q. Can it be manipulated in any way?

17 A. No, it cannot.

18 Q. Can it be deleted prior to the files --

19 MR. BERGRIN: Your Honor, I'm going to have to
20 object.

21 THE COURT: What's the objection?

22 MR. BERGRIN: First of all, she's far from an
23 expert, and the second thing is, we have never received any
24 kind of surveillance notes or reports whatsoever in
25 reference to any of this. So we have a problem with Rule

1 16.

2 THE COURT: Wait a second.

3 MR. MINISH: Judge, they have been provided with
4 any and all things we have with the 302s and the reports,
5 and, secondly, we're not asking her in her expert opinion,
6 just explaining whether she believes she can do anything as
7 she's gone through the process.

8 THE COURT: As far as the expert, I'm not
9 concerned with. I think she can testify what she observed,
10 what she did with this device. She's already testified she
11 used these before. So I'll allow that testimony.

12 How about this claim that Mr. Bergrin didn't get
13 some information about these notes?

14 MR. MINISH: Judge, I mean, obviously I don't have
15 it right in front of me, but it's my understanding that any
16 and all things that Agent Brokos -- and we went through her
17 file -- was provided to Mr. Bergrin with respect to this as
18 well as --

19 MR. BERGRIN: She just testified that she prepared
20 notes and surveillance reports. We've received absolutely
21 nothing, Judge.

22 THE COURT: Where are those notes and surveillance
23 reports?

24 THE WITNESS: Back at the U. S. Attorney's Office.

25 BY MR. MINISH:

1 Q. Have they been marked in any way?

2 A. I -- with a Jencks number? I believe so.

3 MR. MINISH: I guess we could check.

4 THE COURT: Are you representing to me that these
5 were turned over with the other Jencks material?

6 MR. MINISH: As far as I know, Judge, yes, I am.
7 I mean we're not going to go into anything beyond that.
8 We're just authenticating the tapes. We're not going into
9 the notes, anything she said, anything she saw, but we will
10 be able to go back and check.

11 THE COURT: Well, I think Mr. Bergrin's argument
12 was, he wanted it for cross-examination purposes. But can
13 we get a Jencks number a date and time?

14 MR. GAY: Judge, I apologize for this, but we
15 turned all the stuff over, Judge. If Mr. Bergrin can come
16 up with a specific number or something that he's talking
17 about here. He has this stuff. And this has happened
18 before, and we've -- well, I won't -- he has the stuff,
19 Judge. For him to stand up and say, I don't have it, and
20 then later when I go and tell him, yes, you do, and he goes
21 through it and he has it, it's -- that's what's going to
22 happen here, too.

23 THE COURT: All right, but perhaps we could
24 alleviate a little of this. Do you have it listed with a
25 number somewhere so we can direct him to this? There's a

1 lot of materials.

2 MR. MINISH: There is a great deal of material,
3 Judge.

4 THE COURT: Can we have someone check just to find
5 out what the number is?

6 MR. GAY: Yes, I'll do that, Judge.

7 THE COURT: All right.

8 MR. LEVY: Your Honor, this goes to the issue of
9 the index we discussed previously.

10 THE COURT: Okay, but I'm not getting into that
11 now. It's not like this case just began yesterday. This
12 has been around. And I continue to be amazed that there can
13 be even arguments that something wasn't turned over.

14 But I'm going to give the Government their
15 opportunity -- as soon as you can, maybe you can have
16 somebody look now --

17 MR. GAY: I will, Judge.

18 THE COURT: -- to determine the number and tell
19 Mr. Bergrin when he got it.

20 Continue.

21 MR. MINISH: Thank you, Judge.

22 BY MR. MINISH:

23 Q. All right. I think you were saying -- I asked you
24 whether or not the recording can be manipulated in any way.
25 Are you aware of any way it can be manipulated?

1 A. It cannot be manipulated.

2 Q. Okay. Explain to the jury why you believe that.

3 A. There's a -- it's special software we use. All you
4 can do is transfer the data. There's -- there's no way to
5 do anything other than that that I'm aware of. I mean, it's
6 just a software program that takes you through it step by
7 step, so there's nowhere where you can alter anything that's
8 on the recording.

9 Q. Okay, and once it is downloaded --

10 A. Right.

11 Q. -- are you able to listen to it?

12 A. I am able to listen to it.

13 Q. And what steps do you take once you're -- I'm sorry.
14 Just so the jury is clear, are you listening to it on a
15 computer, or on a disc?

16 A. I am listening to it on a disc.

17 Q. Once you have that disc, tell the jury the steps you
18 take.

19 A. That disc then becomes what's considered our original
20 evidence, and once I have the disc, I am then -- the data
21 has been transferred to that disc, I am able to go back to
22 the recording device and delete the conversation that's on
23 the recording device. So that disc now becomes our original
24 evidence. I take that and submit it in to our -- provide it
25 to our evidence people.

1 Q. And do you listen to the recording?

2 A. I do.

3 Q. And now I'm going to ask you about some specific
4 recordings. Okay?

5 A. Okay.

6 MR. MINISH: Judge, I'm showing Mr. Bergrin
7 Government Exhibit 4130, 31, 32, 4133, 4134, 4232, 4233,
8 4234, 4235, all of which he has been previously provided.

9 Do you want to look at these?

10 (Off the record discussion between counsel)

11 Q. Agent, I'm showing you what's been marked Government
12 Exhibit 4131. Do you recognize what that is?

13 A. I do. That is a disc containing a consensual
14 recording with Shelton Leverett and Mr. Bergrin on June 26,
15 2006.

16 Q. And did you listen to that?

17 A. I did.

18 Q. And was a transcript drafted with respect to that?

19 A. Yes, it was.

20 Q. And did you listen to the recording and the -- look at
21 the transcript?

22 A. Yes, I did.

23 Q. And is the transcript accurate?

24 A. Yes, it is.

25 Q. How about 4130?

1 A. This is a consensual recording, again dated May 10th,
2 2006, between Shelton Leverett and Mr. Bergrin.

3 Q. And did you go through the same process with the
4 transcript on this one?

5 A. I did. This one is audio and video.

6 Q. Now, explain to the jury how you get audio-video. A
7 different device?

8 A. There is a different device. We have what's called an
9 Eagle and what's called a Hawk. The Hawk device enables the
10 cooperating -- the cooperator to obtain audio and video
11 recording. The Eagle is audio only. They're very similar
12 devices, though.

13 Q. How about 4132?

14 A. This is a disc containing a consensual recording with
15 Shelton Leverett and Paul Bergrin, dated July 10th, 2006.

16 Q. And did you go through that same method with the
17 transcript, making sure it was accurate with that device --

18 A. Yes, I did.

19 Q. Excuse me -- with that recording.

20 A. Yes.

21 Q. And I'm showing you 4133.

22 A. This is a disc containing a consensual recording with
23 Shelton Leverett, Mr. Baskerville, and I believe Abdul
24 Williams, dated July 26, 2006.

25 Q. Okay. Now, you say you believe Abdul Williams. Why

1 do you say you believe Abdul Williams?

2 A. Because Shelton Leverett had a conversation with Abdul
3 Williams around that time. I just am not sure if it's that
4 one or --

5 Q. Well, are you familiar with Mr. Williams's voice?

6 A. I -- I am.

7 Q. 4134.

8 A. This is a consensual recording with Shelton Leverett
9 and Paul Bergrin again. I don't know if Abdul Williams is
10 on this one or on the previous one but it's dated July 31 --

11 Q. Well, is there something that you can check so that
12 you can be sure?

13 A. I can check the transcript, if we have copies of the
14 transcripts.

15 Q. Okay.

16 A. Or if my summary is here.

17 Q. Sorry, we don't have them with us.

18 A. Okay.

19 Q. You listened to that recording?

20 A. I did.

21 Q. And is that your initials on that recording?

22 A. Yes, it is.

23 Q. Okay, and what date did you initial that?

24 A. January 11, 2013.

25 Q. And on that date, did you match that with the

1 corresponding transcript?

2 A. Yes, I did. This is a separate one, though. This
3 one's dated November 8th, 2006.

4 Q. Okay. So that's 4233?

5 A. Yes.

6 MR. MINISH: I apologize, Judge.

7 Q. Why don't we just do it this way: 4131, is that your
8 signature on there, do you have your initials on there?

9 A. Yes, my initials and the date.

10 Q. Okay, and what's the date?

11 A. January 11 of 2013.

12 Q. And what does that initial and signatures mean, I
13 mean, the date mean?

14 A. That's when I went back and prepared this with the
15 original that's in evidence and listened to it and compared
16 it to the transcript.

17 Q. Okay. Is 4130 initialed also?

18 A. Yes, it is, January 11th, 2013, and I did the same
19 thing with this.

20 Q. Transcript and the original disc.

21 A. Yes.

22 Q. How about 4132?

23 A. Same thing, January 11th, 2013. I compared it to the
24 original and the transcript.

25 Q. How about 4133?

1 A. Yes, I -- I initialed and dated it January 11th, 2013.

2 I compared it to the original and the transcript.

3 Q. Okay. Now you've said you've compared them. Were
4 they accurate?

5 A. Yes.

6 Q. How about 4233?

7 A. I initialed and dated this, January 11th, 2013, and I
8 compared it to the transcript as well as the original, and
9 it was accurate.

10 Q. 4134?

11 A. I initialed and dated it January 11, 2013 and again
12 compared it with the transcript and the original in
13 evidence, and it was accurate.

14 Q. Okay. 4235?

15 A. Yes. This is a recording dated November 13th, 2006.
16 I initialed and dated it on January 11th, 2013, and compared
17 it to the original and the transcript, and it was accurate.

18 Q. 4232?

19 A. Yes. This is a telephone recording, and I initialed
20 and dated it on January 11th, 2013, and found it to be
21 accurate. It's of a call dated July 31st, 2006.

22 Q. And 4234.

23 A. This is a consensual call from November 8th, 2006, and
24 I initialed it and dated it January 11th, 2013 and found it
25 to be accurate.

1 Q. And so the jury's clear, all of these recordings were
2 made by Mr. Leverett?

3 A. Yes, they were.

4 Q. And on those transcripts, are there attributions like
5 with the William Baskerville, the WB, and the KM for Mr.
6 McCray?

7 A. Yes, there are.

8 Q. And did you check whether those attributions were, in
9 fact, accurate?

10 A. Yes, I did.

11 MR. MINISH: Judge, we offer all these recordings
12 into evidence.

13 MR. LUSTBERG: One moment, Judge.

14 Are you just offering the recordings?

15 MR. MINISH: Yes.

16 MR. LUSTBERG: Your Honor, we have the recordings
17 and don't object. We do not currently believe we have the
18 transcripts, but we're checking.

19 THE COURT: You don't have the --

20 MR. LUSTBERG: I don't think he's moving the
21 transcripts at this moment.

22 MR. GAY: We're not. But they have them.

23 THE COURT: Go ahead.

24 MR. MINISH: Well, Judge, just for the record
25 subject to them having them, we offer the transcripts also,

1 but we'll discuss that after we make our determination.

2 THE COURT: Okay.

3 (Government Exhibits 4130, 4131, 4132, 4133, 4134,
4 4232, 4233, 4234 and 4235 marked in evidence)

5 MR. MINISH: I'm sorry, Judge. May I just have a
6 second?

7 Judge, I have no further questions.

8 THE COURT: Mr. Bergrin?

9 MR. BERGRIN: Thank you, Your Honor. May I have
10 just a minute to get set up, Judge?

11 THE COURT: I'm sorry?

12 MR. BERGRIN: May I have just a minute to get set
13 up, please?

14 THE COURT: Yes.

15 MR. BERGRIN: Thank you.

16 Thank you. Thank you, ladies and gentlemen, for
17 your indulgence.

18 CROSS-EXAMINATION

19 BY MR. BERGRIN:

20 Q. Agent Brokos, you talked about informants, and you
21 spent a lot of time about information you received from
22 informants; correct?

23 A. Yes.

24 Q. Now, you talked about also and identified the
25 recording made August the 3rd of 2005 between Hassan Miller

1 and Anthony Young; correct?

2 A. I identified it. Is that the question?

3 Q. Yes, you identified it.

4 A. Yes.

5 Q. And that was a recording made at the Hudson County
6 Jail; correct?

7 A. That is correct.

8 Q. And that was a recording between Anthony Young and
9 Hassan Miller; correct?

10 A. That is correct.

11 Q. Isn't it a fact that in that recording, Anthony Young
12 tells Hassan Miller that he wasn't even present at the
13 scene, that he was several blocks away and that he did not
14 do the shooting? Isn't that a fact, ma'am?

15 A. That is the initial story he told us, and that is what
16 he says in this recording.

17 Q. And that is what he told his good friend and
18 confidant, Hassan Miller; correct?

19 A. He also told him he was the triggerman.

20 Q. That is what he told his friend Hassan Miller;
21 correct?

22 A. Among many other things, Mr. Bergrin.

23 Q. And as a matter of fact, he never said that he was the
24 triggerman because isn't it a fact you testified several --
25 you testified yesterday that Anthony Young did not

1 incriminate himself as the shooter. Isn't that what you
2 said yesterday?

3 A. I believe I said yesterday that it was inconclusive,
4 meaning that there were times where he seemed to implicate
5 himself, and there were times where he claimed that he was
6 blocks away and was a witness.

7 Q. But one of the things he said is that he told the
8 Prosecutor's Office and he told John Gay and the rest of the
9 prosecutors on August the 3rd, 2005, when this recording was
10 made, after he had gone in to you, correct, after he had
11 proffered and gone to the U.S. Attorneys and the F.B.I. that
12 he was not even present at the scene, that he was at least
13 two blocks away with Hakeem Curry in a van, and that he did
14 not do the shooting. Isn't that what he said clearly on
15 that recording?

16 A. He says that he is several blocks away, and that is
17 consistent with what he told us when he initially came in.

18 MR. BERGRIN: Judge, can you please instruct the
19 witness? She doesn't answer the question. If you ask her
20 what time, she tells you who made the watch.

21 THE WITNESS: You asked about a proffer --

22 THE COURT: No. Wait. Hold it.

23 THE WITNESS: Sorry.

24 THE COURT: Hold it.

25 The witness is instructed to answer the question

1 as asked.

2 However, I've got to give a witness a little bit
3 of leeway --

4 MR. BERGRIN: Okay.

5 THE COURT: -- if some form of explanation is
6 necessary to clarify.

7 And I don't think that this witness has gone
8 astray. I think she's clarifying the point.

9 If you believe she's not, Mr. Bergrin, I'm sure
10 I'll hear from you.

11 MR. BERGRIN: Yes, sir.

12 THE COURT: Go ahead.

13 BY MR. BERGRIN:

14 Q. Now, he said to his friend and his confidant that he
15 was several blocks away in the van and he didn't do the
16 shooting; correct?

17 A. That is correct, at that portion of the tape, yes,
18 that you're referring to.

19 Q. Now, besides that recording that you had on August the
20 3rd of 2005, you had every witness that was at the scene
21 identify the shooter with dreadlocks, correct,
22 shoulder-length deadlocks.

23 A. I believe it is either shoulder-length dreadlocks or
24 braids.

25 Q. Or braids.

1 A. Yes.

2 Q. Now, who identified the shooter with braids? Tell us
3 one witness.

4 A. I believe that was Johnny Davis. I just am not clear
5 if he said dreadlocks or braids.

6 Q. That was Johnny Davis?

7 You've had a chance to -- I mean, you're the case
8 agent in this case. I'm sure you had a chance to read
9 Johnny Davis's sworn statement that he gave almost an hour
10 after the shooting on March the 2nd of 2004. Isn't it a
11 fact that that statement says specifically, not subject to
12 interpretation, braids, that the shooter had shoulder-length
13 dreadlocks? Correct?

14 A. I believe that is accurate, yes.

15 Q. And isn't it a fact that all of the reports that went
16 out from the police officers at the scene, from Detective
17 Sabur, said that the shooter had shoulder-length dreadlocks,
18 a black male?

19 A. I believe that's the case. I'm not sure how it's
20 exactly worded in the BOLO.

21 Q. Thank you.

22 Now, you had also talked about speaking to
23 individuals, other informants, such as Dock and Bell,
24 correct, Troy Bell and Eric Dock; correct?

25 A. Yes.

1 Q. And those were informants that you spoke to that were
2 with William Baskerville at the Hudson County Jail; correct?

3 A. Yes, that is correct.

4 Q. And isn't it a fact that in reference to the
5 identification of the shooter, both of them told you that
6 William Baskerville had informed them that Malik Lattimore,
7 and this was approximately two weeks before the shooting of
8 Kemo McCray, Mr. McCray, that Malik Lattimore was looking
9 for Mr. McCray, correct, to kill him, or words to that
10 effect, ma'am?

11 A. I believe the words were that Malik Lattimore was
12 looking for the snitches.

13 Q. Correct.

14 And you had a chance to speak to Bell and Dock;
15 correct?

16 A. Yes.

17 Q. They didn't say looking for the snitches; they said
18 looking for Mr. McCray or Kemo; correct?

19 A. They --

20 Q. They identified Kemo specifically.

21 THE COURT: Well -- go ahead.

22 A. We focused specifically on McCray, but they said
23 snitches.

24 Q. Now, on January the 7th of 2005, you also spoke to an
25 informant, correct, and that informant specifically told you

1 that Malik Lattimore is owed money, correct, for killing
2 William Lattimore -- excuse me, for killing Mr. McCray;
3 correct?

4 A. Can you repeat the date? I don't believe I --

5 Q. January 7th of 2005.

6 A. I -- if you can show me the report. That date just
7 does not sound --

8 Q. Of course, ma'am. Well, you testified to a lot of
9 dates here.

10 A. Right.

11 Q. And you testified to specifics. Was that part of your
12 preparation in coming to court today?

13 A. What's the question?

14 Q. You testified as to a lot of dates and a lot of
15 specifics with details, and you didn't have any problems as
16 Mr. Minish was asking you questions. Obviously you prepared
17 with him for your testimony today; correct?

18 A. I have prepared. I'm just asking you if you could
19 indicate the date, because in my memory, that's -- that's
20 not accurate. But if you show me my report --

21 Q. Yes, ma'am. I will do my --

22 A. My memory was that it was after January, if it's the
23 informant I think you're referring to.

24 Q. I'm going to show to you what has been marked J-02614,
25 a report dated January 4th of 2005, the date I just told you

1 about.

2 MR. BERGRIN: May I approach the witness, Judge?

3 THE COURT: Yes.

4 Q. And I ask you to look at -- it's actually 02613 -- I'm
5 sorry.

6 MR. BERGRIN: Let me pull out the whole report,
7 Judge. I'm sorry.

8 May I approach the witness, Judge?

9 THE COURT: Yes.

10 Now, what is that you're giving her, Mr. Bergrin?

11 MR. BERGRIN: That's a report written by this
12 officer, dated January 4th of 2005, the date that I gave
13 her.

14 A. Yes. Okay.

15 Q. Thank you.

16 Now, that's a report which says that William
17 Lattimore -- first of all, who is that informant that's
18 talking in that report?

19 A. This is an individual known as Roderick Boyd.

20 Q. Roderick Boyd?

21 A. Yes.

22 Q. And he's an individual that informed you that Malik
23 Lattimore confessed to him to the killing of Mr. McCray;
24 correct?

25 A. That is not accurate.

1 Q. Well, didn't he say that he was incarcerated at the
2 Passaic County Jail with Malik Lattimore?

3 A. Yes, and that he had received --

4 Q. Well, I just asked you one question.

5 A. Yes.

6 Q. He was locked up with William Lattimore; correct?

7 A. Yes, that's correct.

8 Q. And isn't it a fact that he also told you -- and you
9 had a chance to talk to Roderick Boyd; correct?

10 A. Yes, I did.

11 Q. And isn't it a fact that you prepared a 302 in
12 reference to your discussion with Roderick Boyd? Correct?

13 A. Yes, I believe there are two. This is the second one.

14 Q. And isn't it a fact that Mr. Boyd specifically told
15 you that Malik Lattimore confessed to him to the killing of
16 Kemo Deshawn McCray?

17 A. I believe that Roderick Boyd told me that he had
18 information obtained from individuals that he was
19 incarcerated with that Malik Lattimore was responsible for
20 killing a snitch.

21 Q. And are you as sure about that as all your testimony
22 today and yesterday?

23 A. If you can show me my initial report --

24 Q. I am going to do that.

25 A. -- on Roderick Boyd.

1 Q. Yes, ma'am.

2 When did you speak to Roderick Boyd?

3 A. I initially spoke to him in I want to say June of
4 2004.

5 MR. BERGRIN: May I have one minute, Judge?

6 THE COURT: Yes.

7 A. I may -- I may have the report, Mr. Bergrin, if you
8 would like me to look.

9 Q. I'll get it for you. You can look. If you find it
10 first, that will be great. I have them in date order.

11 I have it, ma'am.

12 I'm going to show you a report by the name of --
13 the date of June 17th of 2004, okay?

14 MR. MINISH: Mr. Bergrin, could you tell us the J
15 number involved?

16 MR. BERGRIN: It's 02978.

17 Q. I'm going to ask you to look at the -- one, two,
18 three, four -- the fifth paragraph.

19 MR. BERGRIN: May I take this back?

20 Thank you.

21 THE COURT: So we're clear, Mr. Bergrin, your
22 question is?

23 MR. BERGRIN: My question is, Your Honor:

24 Q. Isn't it a fact that Roderick Boyd advised you that
25 Lattimore and Sanders talked openly about killing a snitch

1 on South Orange Avenue and 19th Street in Newark? Isn't
2 that exactly where Mr. McCray was shot and killed?

3 A. Yes.

4 Q. And Lattimore killed him; isn't that what Mr. Boyd
5 told you?

6 A. Yes.

7 Q. So he didn't talk about a snitch; he talked about a
8 specific killing at a specific place. Correct, ma'am?

9 A. Yes, that is correct.

10 MR. BERGRIN: Thank you.

11 Judge, I'm sorry, I just want to keep these in
12 order, okay, Judge?

13 Q. Now, you testified in reference to an Ernest -- I
14 guess you pronounce it Cuyler, C-u-y-l-e-r?

15 A. Cuyler.

16 Q. And when you testified before this jury, you said that
17 he had informed you that Anthony Young was an enforcer? Is
18 that what you said yesterday?

19 A. I don't believe that Ernest Cuyler called him an
20 enforcer. I believe he stated that he is a cousin of Rakim
21 Baskerville, and he went on to describe Ant.

22 Q. Well, you know -- excuse me. You know that he is not
23 a cousin of Rakim Baskerville; correct?

24 A. By blood, but on the streets, he was known as a
25 cousin.

1 Q. Now, you testified that you had evidence that Anthony
2 Young was an enforcer for the organization; correct?

3 A. Yes.

4 Q. Who told you that Anthony Young was an enforcer?

5 A. Two individuals, two sources.

6 Q. What two sources?

7 A. Curtis Jordan and Shelton Leverett.

8 Q. And I'm sure you prepared a 302 in reference to that;
9 correct?

10 A. Yes, I did.

11 Q. What date did you prepare it?

12 A. The one on Curtis Jordan I believe is October 8th,
13 2003 -- October I feel confident with, I'm not sure if it's
14 October 8th -- and then the one for Shelton Leverett would
15 be March 17th, 18th, 19th of 2004.

16 Q. Do you have that with you?

17 A. I believe I do.

18 Q. Can I see that, please, ma'am?

19 THE COURT: Can I just ask the witness: What's a
20 302?

21 MR. BERGRIN: I'm sorry, I should asked you that.

22 THE COURT: I mean, we know, but tell the jury.

23 THE WITNESS: A 302 is a report of interview. So
24 if I interview somebody, I document the details in a 302.

25 THE COURT: Thank you.

1 Go ahead.

2 A. Okay. I have one of the reports.

3 BY MR. BERGRIN:

4 Q. And who is that informant?

5 A. This is Curtis Jordan.

6 MR. MINISH: Judge, if we could just get the J
7 number.

8 THE WITNESS: J-02657.

9 THE COURT: And the date of it?

10 THE WITNESS: October 7th, 2003.

11 THE COURT: Go ahead.

12 Q. October 7, 2003?

13 A. Yes.

14 Q. And what did Mr. Jordan tell you?

15 A. That -- would you like me to read it or --

16 Q. Just in reference to and Anthony Young.

17 A. That he -- he doesn't use the word enforcer. He says
18 that he is the muscle for the Baskerville group.

19 Q. Muscle for the Baskerville group.

20 Now, you've had a chance to read Lachoy Walker's
21 or hear Lachoy Walker testify; correct?

22 A. That is incorrect. I was not here for that.

23 Q. You were not here for that?

24 A. I was not.

25 Q. Have you ever had a chance to talk to Lachoy Walker?

1 A. I have never spoken to Mr. Walker.

2 Q. Have you ever spoken to anybody within the
3 organization that ever told you as part of the organization
4 that Anthony Young ever was an enforcer or muscle for the
5 organization?

6 A. Yes.

7 Q. Now, this individual, Curtis Jordan; who is he?

8 A. He was an informant of mine who was associated with
9 the Baskerville crew.

10 Q. Did you ever speak to Detective Snowden, who spent a
11 year investigating Baskerville and the organization?

12 A. I have spoken to Detective Snowden.

13 Q. Isn't it a fact that Snowden makes no mention
14 whatsoever --

15 MR. MINISH: Judge, objection.

16 THE COURT: What's the objection?

17 MR. MINISH: It's not a proper question as asked.

18 Agent Snowden -- excuse me, Detective Snowden was on and off
19 the stand. He didn't specify whether she discussed with him
20 Baskerville.

21 THE COURT: Well, let me hear Mr. Bergrin's
22 question.

23 MR. BERGRIN: Thank you.

24 BY MR. BERGRIN:

25 Q. Detective Snowden outlined the organization, and isn't

1 it a fact that he makes no mention of Anthony Young and
2 tells you nothing about Anthony Young ever being a muscle,
3 informant, during his entire knowledge of the organization?

4 A. I wasn't present when I believe -- I believe he
5 outlined them in court; I wasn't present for that. But
6 Anthony Young was a newcomer, he was part of the group, but
7 he had recently gotten out of prison, so I believe during
8 the time of the Curry case, he was not on their radar
9 screen.

10 Q. The Curry investigation lasted until Mr. Curry was
11 arrested in March of 2005 --

12 A. Right.

13 Q. -- and that's the period that Detective Snowden of
14 D.E.A. had the organization under intense investigation;
15 correct?

16 A. That is correct. I don't want to speak for Detective
17 Snowden. I just don't know what he said. I can tell you
18 what I know, but I don't want to hold myself to what he may
19 or may not have testified to.

20 THE COURT: Well I don't know if he's asking you
21 what he testified to. I think he is asking if he told you
22 this.

23 Am I correct, Mr. Bergrin?

24 MR. BERGRIN: That's correct.

25 THE COURT: So if he didn't tell you, you can say

1 so.

2 THE WITNESS: Okay.

3 Q. Now, I want to go into a new area right now.

4 You testified in reference to the melting of the
5 gun; correct?

6 A. That is correct.

7 Q. Now, you let the jury believe that the gun was melted
8 in March, correct, after the Kemo homicide, in about March
9 2, March the 2nd, the date of the Kemo murder of 2004;
10 correct?

11 A. I stated that that's when the gun was melted.

12 Q. You stated that that was when the gun was melted.

13 A. I have learned that from Anthony Young, I believe.

14 Q. Strictly from Anthony Young; correct?

15 A. I then corroborated it, but I learned, initially
16 learned from Anthony Young that he took the gun to be melted
17 that evening at Ben's Garage.

18 Q. Well, on February 17th, wasn't Ben Hahn interviewed by
19 members of the F.B.I.?

20 A. Yes, he was.

21 Q. And isn't it a fact that Mr. Hahn informed in a sworn
22 statement the F.B.I. that Anthony Young never came to him
23 with a gun until October of 2004?

24 A. I believe that was his statement, and I believe he was
25 lying.

1 Q. And isn't it a fact that he agreed to take a polygraph
2 exam?

3 A. Which showed he was deceptive.

4 Q. No, he never took the polygraph exam; isn't that a
5 fact?

6 A. He certainly did take the polygraph exam, and it
7 indicated that he was deceptive.

8 Q. And isn't it a fact that he gave a sworn statement, a
9 second sworn statement saying that he had a relationship
10 with Anthony Young? Correct?

11 A. Yes.

12 Q. And that wasn't the first time that Anthony Young had
13 been to that shop; correct?

14 A. Anthony Young, I believe, according to his statement,
15 had been to his shop many times.

16 Q. To repair -- have cars repaired; correct?

17 A. Yes. Yes.

18 Q. And as a matter of fact, Ben Hahn was cooperative with
19 the F.B.I.; correct?

20 A. I would not call him cooperative at all.

21 Q. And in Ben Hahn's sworn statement that he gave to the
22 F.B.I., he told you crystal clear that Anthony Young did not
23 come to his shop until October of 2004; correct?

24 A. That is in his statement. That is correct.
25 however --

1 Q. And then he said that Anthony Young came back a second
2 time in approximately November-December of 2004; correct?

3 A. Yes, and in his statement, he says he comes back in a
4 blue Chrysler LHS, which Anthony Young did not have at that
5 time.

6 So I cannot put any stock in what Ben Hahn says
7 about the timing of having that gun melted. He
8 eventually --

9 Q. One thing you know also is that you went and spoke to
10 a Devon Jones; correct?

11 A. Yes, I did.

12 Q. Did you ever ask Devon Jones when -- when Anthony
13 Young came there?

14 A. He was not able to be specific with the date. In his
15 memory, it was very -- it was cold out, and when they came
16 in -- he was bundled up, and he remembers the two males who
17 came in were bundled up as well.

18 Q. Which would be consistent with Ben Hahn as being cold
19 outside; correct?

20 A. Which is consistent with it being March, yes.

21 Q. March. On the date of March the 2nd, it was 70
22 degrees outside; correct? Nobody would be bundled up and it
23 wouldn't be cold and freezing in 70 degrees; correct?

24 A. That day was also windy, and we're talking about the
25 evening time. The gun was melted down in the evening. The

1 temperature could have changed from what it was, 67 degrees
2 at 2 p.m. to, you know, in the evening, it could have
3 dropped significantly.

4 Q. Isn't it a fact that Devon Jones swore under oath that
5 it was close to December, close to December when Anthony
6 Young first brought the gun in?

7 A. Are you referring to his testimony in --

8 Q. Yes, his testimony that I'm sure you've read in this
9 case.

10 MR. MINISH: Objection -- Judge, I object. If
11 he's going to ask questions about her investigation, that's
12 one thing, what he was told, but to go through Mr. Jones's
13 testimony is improper. He's going to testify. Mr. Bergrin
14 is picking and choosing parts of his testimony during the
15 course of his cross-examination.

16 THE COURT: Okay. Look, I'm not going to tell him
17 how to do his cross-examination. But I think to be fair to
18 the witness, we're talking about -- there have been a lot of
19 statements a lot of testimony.

20 MR. BERGRIN: Yes, Your Honor.

21 THE COURT: I think in order to be fair to her you
22 have to tell her what it is you're referring to to make sure
23 she has knowledge of it or has seen it, rather than just
24 talking about it. So if it's specific testimony, tell her
25 what it is.

1 MR. BERGRIN: Yes, Your Honor. Absolutely.

2 Q. Now, you took a statement or you interviewed Devon
3 Jones; correct?

4 A. Yes, I did.

5 Q. And isn't it a fact that your 302 does not reflect
6 anything about when you asked Mr. Jones when the melting
7 occurred? Isn't that a fact?

8 A. I believe I took several statements from Mr. Jones, so
9 without looking at them, I can't --

10 Q. Well, do you have the 302s with you?

11 A. I don't believe I have those 302s.

12 Q. I'm going to show you a 302 of Devon Jones. It's
13 dated June the 13th of 2006. It's J-06606.

14 MR. BERGRIN: May I approach, Your Honor?

15 THE COURT: Yes.

16 Q. Now, you knew that there were problems with the dates,
17 correct, because of what Ben Hahn told you under his sworn
18 testimony, in a sworn statement, correct? Ben Hahn clearly
19 made it -- Ben Hahn clearly told the F.B.I. that Anthony
20 Young did not come into his shop until October or November;
21 correct?

22 A. Mr. Bergrin, I was not relying on Ben Hahn whatsoever.
23 I was relying on Anthony Young.

24 Q. My question to you is, that is what Ben Hahn told to
25 you in a sworn statement; correct?

1 A. Which I did not believe to be credible, so I was not
2 using that as a basis of a timeline. I was going by what
3 Anthony Young had represented to me. I then went and
4 confirmed that he had, in fact, melted the gun down. I
5 spoke to Devon Jones, who admitted he melted the gun. I
6 don't know if I have the timing of it in here or not. I
7 spoke to him on multiple occasions, this being one of them,
8 and if I can just look through this.

9 Q. Sure.

10 A. There is -- there is no timing -- timing meaning date,
11 of --

12 Q. And you don't even ask him what the weather was like
13 outside; correct?

14 A. I -- not during this time, but in subsequent meetings,
15 we did, and I can tell you when we did. It was during the
16 photo array, and I asked him would he be able to identify
17 these individuals, and he said when they came in, they were
18 dressed, they had hats on and it was cold out and they were
19 wearing big bulky coats. So I clearly remember that, so I
20 believe it's during the -- subsequent to June 13th, I went
21 back and provided Mr. Jones with the photo arrays.

22 Q. Of course you would have put that into a 302 because
23 the time and the date's important; correct?

24 A. I don't know if I put it -- I don't know. I don't
25 have that second 302. If you have it, can you provide it to

1 me so I can --

2 Q. We don't have a second 302. We have a 302 of the
3 interview of Devon Jones, and you never ask him for a
4 particular time; correct? Isn't that a fact?

5 A. There is a second 302 where he does an identification.

6 Q. We have never been provided that.

7 But you have read the transcript of Devon Jones's
8 testimony; correct?

9 A. I have not read his transcript. I believe I was
10 present when he testified at the prior proceeding.

11 Q. And isn't it a fact that you heard Devon Jones state
12 specifically: "You remember it being cold and toward the
13 end of the year?"

14 And Devon Jones confirmed: "It was close up to
15 December or a little bit more down, somewhere right between
16 there."

17 Isn't that a fact of what he testified? You heard
18 it come out of his mouth; correct?

19 MR. MINISH: Judge, can we be heard at sidebar?

20 THE COURT: Be heard at sidebar?

21 MR. MINISH: Please.

22 THE COURT: Yes.

23 Are you objecting to that?

24 MR. MINISH: I am. I'm sorry, Judge. Yes, I am
25 objecting.

1 (The following takes place in open court)

2 THE COURT: All right. Mr. Bergrin, next
3 question.

4 MR. BERGRIN: Thank you, Judge.

5 BY MR. BERGRIN:

6 Q. Now, Devon Jones provided you as part of your
7 investigation with the name of another individual, Rocky,
8 that was present; correct?

9 A. Yes.

10 Q. And isn't it a fact you never spoke to Rocky?

11 A. That is incorrect. We also took -- I also have the
12 302 on -- I'm blanking on his name, but he is known as
13 Rocky. We spoke to that second individual.

14 Q. What is Rocky's name?

15 A. I just said I'm blanking on it. It will come to me.
16 But Devon Jones, the day we approached him on June 13th,
17 2006, he explained that there was a second male, and he took
18 us to the auto shop where the second male was working, and
19 we interviewed him as well, and he corroborated what Devon
20 Jones said.

21 Q. Where was the auto shop located?

22 A. It's possibly Maplewood. I believe in Maplewood. I
23 have it in a report. We went to his job, took him out of
24 his job, interviewed him in the park that is next to the
25 auto shop where he worked, and he also told us that he was

1 part of melting down this gun.

2 Q. Did you ask him the date when the gun was melted?

3 A. I can't recall if I asked him the date or not, but
4 again, he corroborated that Anthony Young had come into the
5 shop, and they helped him melt down that gun.

6 Q. Did you ask him what the weather was like?

7 A. Again, without seeing my report, I -- I just don't
8 recall. He may have --

9 MR. BERGRIN: Judge, during the break, can we get
10 a copy of that report, please?

11 Thank you.

12 THE COURT: Wait. Mr. Gay, you say they have it?

13 MR. GAY: They have all this stuff, Judge.

14 THE COURT: Well, if you can find a copy of it,
15 please produce it again.

16 MR. GAY: Will do, Judge.

17 THE COURT: Go ahead.

18 BY MR. BERGRIN:

19 Q. Now, Anthony Young had called you approximately a year
20 later, after he first came to the F.B.I., correct, and he
21 told you that he took the gun to Ben's not on the day of the
22 Kemo shooting, but he said he took it on March the 3rd;
23 isn't that a fact?

24 A. I believe he initially told us that he took it the day
25 after the murder, but in subsequent meetings, he then told

1 us he took it the evening of the murder.

2 Q. But the first time that he talked to you or gave you
3 information in reference to any melting, he told you that it
4 was not the day of the shooting; correct?

5 A. I believe the initial -- he initially did tell us that
6 it was the next day, March the 3rd, 2004.

7 Q. Now, the information that you had received as part of
8 your investigation and the information at the scene was that
9 the motor vehicle involved was a Pontiac Grand Am; correct?

10 A. Someone had made a statement that -- oh, I believe it
11 may have gone out on the BOLO as a Pontiac Grand Am, but the
12 witness had said that it was a silver Grand Am.

13 Q. Silver Grand Am; correct?

14 A. Yes.

15 Q. When you spoke to Anthony Young, okay, isn't it a fact
16 that he never mentioned a Grand Am in the statement that he
17 gave you on January the 14th or January the 18th of 2004?

18 A. In that statement, he said it was a silver Grand Prix.
19 Subsequent to that, he told us it was a silver Grand Am.

20 Q. He initially told you and you put down in your report
21 that it was a Grand Prix; correct?

22 A. That is correct.

23 Q. As a matter of fact, he mentioned it multiple times;
24 correct?

25 A. Multiple times during that interview?

1 Q. Yes, more than once, it was a Grand Prix.

2 A. I -- I know he mentioned it. How many times he
3 mentioned it, I don't know, but he did tell us it was a
4 Grand Prix.

5 Q. And when he told you it was a Grand Prix, isn't it a
6 fact that in prior testimony, you testified that you had
7 received information that it was a Grand Prix as compared to
8 a Grand Am? Isn't that what you testified previously?

9 MR. MINISH: Judge, if we could just know when.

10 Q. In 2011 and in 2007.

11 MR. MINISH: Is there a Jencks number?

12 MR. BERGRIN: No, I'm asking the question, Judge.

13 THE COURT: He's talking about testimony.

14 Do you recall the testimony? Do you recall?

15 THE WITNESS: I recall my testimony. I'm just not
16 sure if he's referring to me speaking to Anthony Young, if I
17 received it from Anthony Young, or if I received it from --

18 THE COURT: Why don't you rephrase the question.

19 MR. BERGRIN: Okay.

20 Q. Isn't it a fact that you testified previously that
21 Detective Sabur told you that the car, the getaway car was a
22 Grand Prix and not a Grand Am?

23 A. I think my previous testimony was that I could not
24 recall if he told me it was a Grand Prix or a Grand Am, and
25 I later went back and looked, and it was a Grand Am that he

1 told me it was. But I think when I testified, I just
2 couldn't recall.

3 Q. Now, you said -- and I'll point you to page 68, lines
4 six and seven of your prior testimony.

5 Isn't it a fact you tried to corroborate Anthony
6 Young and say that the vehicle was a Grand Prix and not a
7 Grand Am, because that's what Anthony Young had told you?

8 MR. MINISH: Mr. Bergrin, which date are we
9 talking about?

10 MR. BERGRIN: It's the trial of 2011.

11 MR. MINISH: Okay. Thanks.

12 MR. BERGRIN: And it's the transcript date of
13 October the 19th.

14 THE COURT: Do you have that transcript?

15 THE WITNESS: I do.

16 THE COURT: She has the transcript, Mr. Bergrin.
17 Would you tell her where?

18 Q. I ask you, ma'am, to look at page 68, lines six
19 through eight.

20 A. Sixty-eight, lines six through eight.

21 Q. Yes.

22 A. "And your testimony was that the vehicle that was
23 observed was a Grand Prix or a Grand Am, correct?

24 "Yes."

25 Q. But you had no evidence whatsoever that it was a Grand

1 Prix; correct, except from Anthony Young. Isn't that a
2 fact? Isn't that a fact? You can answer that yes or no.

3 A. That is correct, but in my testimony, I believe in the
4 prior proceeding, at the time, I just couldn't recall if
5 Detective Sabur had told me it was a Grand Prix or Grand Am.
6 I later went back and looked. It was a Grand Am that he had
7 told me, which is consistent with what Anthony Young told
8 me, subsequent to the first meeting of him.

9 Q. But the first meeting, he lied to you and told you it
10 was a Grand Prix; correct?

11 A. The first meeting, he said it was a Grand Prix.
12 Subsequent to that meeting, he explained to us that it was a
13 grand -- a newer model silver Grand Am.

14 Q. And isn't it a fact that -- I'll ask you to look at
15 line 15 of that same page.

16 Isn't it a fact you said in your testimony that
17 Sabur had told you that it was a Grand Prix when Sabur never
18 said that to you?

19 A. It was in the -- I believe it was in the reports or I
20 spoke to Detective Sabur about it, one or the other. "I
21 personally did not speak to the eyewitnesses at the murder
22 scene who provided the vehicle information."

23 Q. Now, you had no information other than Anthony Young's
24 word, which he later changed to a different car; isn't that
25 a fact?

1 A. No. I -- I must have misspoken here, because I had
2 spoken to Stacey Webb Williams, who was the one who gave the
3 vehicle description of a silver Grand Am, and I had spoken
4 to him.

5 Q. Now, you later admitted that you misspoke; correct?

6 A. Oh. Okay.

7 Q. On line 23.

8 A. Okay.

9 Q. So nobody ever gave you any information about the
10 vehicle except Anthony Young, and it was Anthony Young who
11 essentially lied to you and told you it was a Grand Prix;
12 correct?

13 A. That's not correct. I spoke to Stacey Webb Williams
14 personally, who said that it was a silver Grand Am. But --

15 Q. But Anthony Young made it clear to you that it was a
16 Grand Prix; correct?

17 A. During the first meeting, he stated it was a Grand
18 Prix. Subsequently, he explained that it was a newer model
19 silver Grand Am.

20 Q. Now, did you ever do any investigation to determine if
21 there ever was a rental car --

22 A. Yes.

23 Q. -- by the Curry organization on that date?

24 A. Yes, I did.

25 Q. Did you ever contact Enterprise Rent-A-Car?

1 A. Yes, we had subpoenaed them.

2 Q. And isn't it a fact that there were no records of a
3 Grand Am being rented by Mr. Curry or anybody associated
4 with him on that date?

5 A. That is not accurate. They could not find records
6 because we were not able to be specific enough as to where
7 the car was rented from.

8 Q. Now, Mr. Young had told you that he met Mr. Curry,
9 correct, after the shooting at a location, a garage in West
10 Orange; correct?

11 A. At which -- we spoke to Mr. Young many times, and as
12 you're aware, when he first came in, he told us one version,
13 and then subsequently told us another version.

14 Q. And he kept -- every time he spoke to you, he kept
15 changing his versions; correct?

16 A. No, there was one version where he said he was a
17 witness and there is the truth, when he told us that he was
18 the shooter. So I just -- if you could be more clear. I'm
19 just not sure at what point you're talking about.

20 Q. When Mr. Young proffered to you, isn't it a fact that
21 he told you that he met Mr. Curry at a location, a garage in
22 West Orange, and left the vehicle there, the rental car
23 there? Isn't that a fact?

24 A. There -- when he initially comes to us on January
25 18th, he is with Hakeem Curry in a car, the burgundy van,

1 and then they go out to that West Orange location.

2 Q. Did you ever ask him to take you to that location so
3 you could find out who stored the car there?

4 A. We -- he did not -- he was not able to take us to the
5 location. He was incarcerated. But based on his
6 description, we did go out to that that apartment complex.
7 We were only able to get the area. We weren't able to get
8 the specific apartment. But I am familiar with the
9 apartment complex.

10 Q. Were you able to locate any individuals associated
11 with Hakeem Curry to confirm or corroborate what Anthony
12 Young had said?

13 A. I -- I did not do that. I was -- I did not do that.
14 I had, however, passed that information on to the D.E.A.
15 They were the ones who were very familiar with --

16 Q. And nobody was able to corroborate, anybody in that
17 development, in that garage, in that area, that information
18 that Anthony Young gave you; correct?

19 A. I don't believe that's accurate. I believe they were
20 able to confirm that they had an apartment in that area, but
21 they weren't able to tell exactly where that apartment was.

22 Q. And whose apartment was it?

23 A. I believe it was a friend -- a friend or girlfriend of
24 Hakeem Curry's.

25 Q. Well, that's what Anthony Young said.

1 A. Yes.

2 Q. Who was the individual? Did he ever give a name? Did
3 you ever get a description? Did you ever get a location?

4 A. I had gotten a location. I was not able to get a
5 name. Mr. Young did not know the name, and the D.E.A.
6 agents who were familiar with the Curry part of this case
7 could tell me that that sounded familiar but were not able
8 to give me an exact name of a girlfriend or an apartment
9 number.

10 Q. But nobody was ever identified; correct?

11 A. Identified as being the owner of the garage?

12 Q. As the owner of the garage, correct.

13 A. No.

14 Q. Nobody was ever identified as the person that rented
15 the car; correct?

16 A. We were not able to obtain the records from the rental
17 company. It's my understanding that Hakeem Curry rented the
18 car.

19 Q. Based upon Anthony Young's mouth; correct? You were
20 unable to identify, you are unable to corroborate anything
21 that Anthony Young said about that location.

22 A. I was able to corroborate that Hakeem Curry frequently
23 had rental vehicles that he used during his -- in the course
24 of his drug dealing.

25 Q. We're talking about this vehicle in question in this

1 particular case on March the 2nd of 2004.

2 A. No, I tried to go to L Rack, which is the -- the
3 holding company for Enterprise Rental, and they were not
4 able to find the records because we could not be specific
5 enough. I was told that they rent hundreds of vehicles a
6 day. For me to look for this one vehicle without having a
7 name associated to it, they weren't able to find.

8 Q. So you're unable to corroborate that part of Anthony
9 Young's story; correct? That's my question. It's a simple
10 question.

11 A. Through Enterprise.

12 Q. Yes.

13 A. Yes.

14 Q. Now, you said that you were able to corroborate what
15 Anthony Young said by looking at crime scene photos;
16 correct?

17 A. Yes.

18 Q. Now, isn't it a fact that you testified that Anthony
19 Young told you about a dust mask around the face? Correct?

20 A. Yes.

21 Q. Anthony Young told you that the individual that he
22 shot was shot when he wore a dust mask around his face;
23 correct? Isn't that exactly what he told you?

24 A. I believe he said it was around the neck.

25 Q. Around the neck.

1 A. Yes.

2 Q. There is no evidence whatsoever that when Mr. McCray
3 was shot, he had a dust mask around his neck; correct?

4 A. Mr. Bergrin, in the crime scene photos, a dust mask is
5 clearly depicted right next to Kemo's body.

6 Q. Right next to his hands and his forearms; correct?
7 Nothing whatsoever to depict that a dust mask was around the
8 neck or that Anthony Young -- excuse me, that Mr. McCray was
9 wearing it; correct? Is that a fact?

10 A. In the photo, it's right next to the body and if you
11 noticed in the photo, the string around the dust mask is
12 broken, indicating that it may have fallen off.

13 Q. You have no evidence to offer as you sit here today
14 that the person Kemo Deshawn McCray, either through John
15 Davis, any witnesses at the scene, Stacey Webb Williams,
16 anybody at the scene ever saw Mr. McCray with a dust mask
17 around his neck; isn't that a fact?

18 A. I believe that Johnny Davis testified that Kemo while
19 he was working was wearing the dusk mask around his face.

20 Q. At the time of the shooting, we're talking about.

21 A. At the time of the shooting, the -- Anthony Young told
22 us that he had a dust mask around his neck, and in the
23 picture, all I can tell you is there's a dust mask right
24 next to the body. To me, it is very compelling.

25 Q. Now, Anthony Young also told you that when he left,

1 when he left the scene, the individual had a dust mask
2 around his neck; correct?

3 A. I don't think he qualified it by saying when he left
4 the scene. He said when he -- okay. I see what you mean.
5 When Anthony Young -- in the first statement, where he says
6 he is going to make sure Kemo is, in fact, dead --

7 Q. That's correct.

8 A. -- he looked at the body --

9 Q. He said the dust mask was around his neck; correct?

10 A. That's correct, he does say that, yes.

11 Q. False statement by Anthony Young, right? Lie?

12 A. I would absolutely disagree. To me it is extremely
13 compelling that you have the person saying he either
14 witnessed or shot Kemo telling us there's a dust mask around
15 the neck, and in the photo, there is a dust mask right next
16 to the body. To me, that is very compelling.

17 Q. Anthony Young told you that when he left Mr. McCray
18 that the dust mask was around his neck.

19 THE COURT: Now, you see, this is what I'm talking
20 about, though, about being repetitious.

21 MR. BERGRIN: I understand, Judge. I'll move on
22 to the next area.

23 THE COURT: Okay.

24 Q. Mr. Young told you that after Mr. McCray was shot that
25 he jumped over the body; correct?

1 A. Yes.

2 Q. Anthony Young told you that the shooter was
3 left-handed; right?

4 A. Anthony -- can you just repeat that question?

5 Q. Anthony Young told you that the shooter was
6 left-handed; correct?

7 A. Initially, he made no comment about the shooter being
8 left-handed.

9 Q. But then as he -- he's at the Hudson County Jail;
10 correct?

11 A. Yes.

12 Q. He's not released; correct?

13 A. That is correct.

14 Q. He's in jail; right?

15 A. Yes.

16 Q. And he calls you and leaves a message saying that the
17 shooter was left-handed; correct?

18 A. That is correct.

19 Q. At a time where he's trying to frame and scheming and
20 scamming against Jamal McNeil; correct?

21 A. The reason he had left that call is I had asked him
22 prior to that if it was possible that the shooter was
23 left-handed. So his response, his message to me was in
24 response to a question that I had posed to him after I had
25 reviewed the crime scene photographs.

1 Q. And he told you that the shooter was left-handed;
2 correct?

3 A. Yes.

4 Q. At a time when he's framing Jamal McNeil for the
5 shooting and the killing death of Kemo McCray; correct?

6 A. At that time, I believe he is -- yes, that is when he
7 is implicating Jamal McNeil as the shooter and he is placing
8 himself as a witness.

9 Q. And then also at a time when he's trying to get out of
10 jail, pointing the finger at another individual for a
11 murder; correct?

12 You can answer that yes or no. It's a simple
13 question.

14 A. I will certainly answer your question. I just want to
15 make sure I'm being accurate.

16 His motivation was not to get out of jail. He was
17 initially trying to finger Jamal McNeil and -- Jamal
18 Baskerville, Malsey -- I'm sorry, Jamal McNeil is Malsey,
19 Jamal Baskerville is Mal -- he was trying to finger them
20 because he was very much afraid of them because he had
21 provided information to his girlfriend that --

22 Q. We're going to get into that.

23 A. I just want to explain his motivation if you're going
24 to ask me the question.

25 But anyway, he was very afraid of those two

1 because he said they had committed a murder and so they were
2 out to get him. So his motivation was to implicate those
3 two individuals.

4 Q. Implicate them in a murder of somebody and say that
5 they were the shooters, that Jamal McNeil was the shooter;
6 correct?

7 A. That is correct, and that --

8 Q. And then you corroborated the fact that Jamal McNeil
9 was left-handed; isn't that a fact?

10 A. I believe I did. We started investigating Jamal
11 McNeil, and I obtained his prior arrest reports, and my
12 memory is on the arrest reports that it indicated that he
13 was left-handed. I don't want to say for certain, but that
14 is my memory.

15 Q. Now, how many autopsies have you attended in your
16 career?

17 A. I have never seen a full autopsy, but I have seen a
18 partial autopsy.

19 Q. Now, you have no training in pathology; correct?

20 A. That is correct.

21 Q. You have no training in bullet path or trajectory;
22 correct?

23 A. That is correct.

24 Q. You have no training in blood splatter, trailing, or
25 drippings; correct?

1 A. That is correct.

2 Q. Now, you said that you confirmed that the shooter was
3 left-handed; correct?

4 A. Yes.

5 Q. And that was after examining the crime scene,
6 according to you; right?

7 A. Yes.

8 Q. Now, when you got to the crime scene, the body wasn't
9 even there; correct?

10 A. I am referring to the crime scene photographs. I'm
11 not referring to what I saw at that day, because when I
12 arrived, there was no one at the scene, no members of law
13 enforcement, and the body had already been taken to the
14 morgue.

15 Q. You knew who the pathologist was in this case, the
16 medical examiner; right?

17 A. Yes.

18 Q. And you knew he was the expert in reference to
19 trajectory and in reference to the wounds that were
20 inflicted upon Mr. McCray; correct?

21 A. Yes.

22 Q. And isn't it a fact that you never asked the doctor if
23 anybody could determine if the shooter was right-handed or
24 left-handed?

25 A. That is not correct.

1 Q. When did you ask him that?

2 A. I believe prior to the prior proceeding last year.

3 Q. Did you ask him before you gave the opinion or made an
4 opinion that the shooter was left-handed?

5 A. I used his report as a basis for my opinion. I didn't
6 speak to him, but I used his written report on Kemo as a
7 basis of my opinion.

8 Q. And what part of the report did you use?

9 A. Where he discusses the three wounds, the wounds, the
10 fatal wound behind the ear and then the two
11 through-and-through shots.

12 Q. And isn't it a fact that you knew at the time and even
13 when you testified before the jury that it is physically and
14 scientifically impossible to determine if a shooter is
15 right-handed or left-handed? Isn't it a fact that you know
16 that for a fact?

17 A. It is a fact unless that individual has information
18 provided by witnesses. So in a vacuum, the ME has the body,
19 and I don't believe the ME, the medical examiner, will
20 conclusively state that it is left-handed or right-handed.
21 But if that ME is provided with the details of the case as
22 we in law enforcement understand them, then they may not
23 provide a scientific opinion, but they can say that it is
24 consistent with their report.

25 Q. Now, you said that you examined the wounds and were

1 unable to tell by the wounds whether the shooter was
2 right-handed or left-handed; is that correct?

3 A. By the location of the wounds.

4 Q. By the location of the wounds. And isn't it a fact
5 that because a bullet travels from left to right, it is
6 impossible to tell -- and that's all you have in this case,
7 you have a bullet trajectory and the path of a bullet -- it
8 its physically impossible to tell if a shooter is
9 left-handed or right-handed? Isn't that a fact?

10 A. Can you repeat that? I'm sorry.

11 Q. From the trajectory of a bullet, from the path of a
12 bullet, the way the bullet travels in a person, isn't it a
13 fact that it is physically and scientifically impossible to
14 ever determine whether a person is left-handed or
15 right-handed?

16 A. I think there's some confusion. I took his report and
17 I took the scientific fact and I applied it to the witness
18 information I had, and that is how I drew my conclusion. By
19 reading his report alone, I would not -- I I don't know if I
20 would be able to -- I think I would be able to maybe come to
21 an understanding that it was a left-handed shooter, but
22 without the witness information that I was also provided, I
23 don't think I could come to that conclusion.

24 Q. Now, so you had the medical examiner's report;
25 correct?

1 A. Yes, that is correct.

2 Q. And then you had Anthony Young's version of what
3 happened; right?

4 A. Yes, and I also had the crime scene photographs and
5 the autopsy photographs.

6 Q. Well, the crime scene photographs; what did the crime
7 scene photographs show? You have four shell casings;
8 correct?

9 A. What do they show me as far as what?

10 Q. As far as the shooter being left-handed. You tell me.

11 A. They show Kemo lying on the ground in a prone position
12 with blood pooling, and I believe you can see that the
13 wounds were here. I'm not sure if that's on the prone --

14 Q. So the wounds were on the left side; correct?

15 A. Right.

16 Q. And you have four shell casings.

17 A. That is correct.

18 Q. And you have a victim that's laying in a certain
19 position; correct?

20 A. In a prone position, yes.

21 Q. And isn't it a fact that you could not determine from
22 that whatsoever the hand of a shooter?

23 A. You can't determine, but I can tell you if you look at
24 the photographs and you know that Kemo is shot from behind,
25 from an individual behind him, and the shots are here, if I

1 have somebody standing in front of me, and -- I am a
2 right-handed shooter -- a right-handed shooter is going to
3 have to go like that to fire the shots into Mr. McCray.

4 Q. Except if he's on the side of him and not in back of
5 him; correct?

6 A. But the information we had was that he was behind him.

7 Q. You had information from Mr. Young, according to
8 Mr. Young, that he spun the victim around; correct? Isn't
9 that what he initially told you? Isn't that a fact?

10 A. He initially told us that, but -- before even Anthony
11 Young, I had information from Stacey Williams, who said that
12 the shooter was behind the victim, and Mr. Young --

13 Q. You had information from Stacey Williams that the
14 shooter was behind the victim?

15 A. Standing -- I don't want to use the word "behind." I
16 believe he said standing over the victim, --

17 Q. But that's not behind the victim; correct?

18 A. Well, Mr. Bergrin, he is standing over him, shooting.
19 So I am comfortable with saying that's also behind. He
20 can't stand over him from the front. He's standing over
21 him, firing shots into him.

22 Q. You can stand over him from the front, side, or from
23 the back; isn't that a fact?

24 A. Then Kemo would have been laying face up.

25 Q. That's not true.

1 THE COURT: Well, wait.

2 A. You're asking my --

3 THE COURT: Hold it. Hold it. Hold it. You're
4 not testifying, Mr. Bergrin.

5 MR. BERGRIN: I understand, Judge.

6 THE COURT: If you don't want to believe it,
7 that's your business. It's up to the jury to believe what
8 they think.

9 Let's go.

10 Q. Now, did you ever tell the jury that you were able to
11 determine that the shooter was left-handed by the way the
12 bullets were found inside of Kemo? Did those words come out
13 of your mouth?

14 A. I -- I can't recall. I believe I may have said that,
15 but I don't -- I don't know.

16 Q. Well, look at page 83, line four to seven.

17 A. "The evidence we had was the positioning of the shots
18 and how they were fired into Kemo's body. We had
19 information that the shooter was left-handed based on the
20 way the bullets were found inside of Kemo."

21 Q. How many bullets were found inside of Kemo?

22 A. Well, there were the two through-and-through shots --

23 Q. No, how many bullets. The question to you is a simple
24 one: How many bullets were found inside of Kemo?

25 A. I believe there were one or two bullet fragments found

1 inside him in the back.

2 Q. Isn't it a fact that there was one fragment found in
3 Kemo?

4 A. If it's one, I can't remember if it's one or two, but
5 I believe there was definitely a fragment found inside his
6 head.

7 Q. And you are able to tell jury that based upon the way
8 the bullet was found -- you said bullets; correct?

9 A. "...the way the bullets..." So --

10 Q. Well, you said multiple bullets; correct?

11 A. I may have been -- again, I don't if there's one or
12 two fragments. If you're telling me it's one, I am okay
13 with that.

14 Q. Well, you read the autopsy report and you spoke to
15 Dr. Shaikh several times; correct?

16 A. Yes.

17 Q. Isn't it a fact that there was one bullet inside of
18 him, but it's impossible to tell based upon a bullet found
19 inside someone whether the shooter was left-handed or
20 right-handed?

21 A. I was not going based on the location of the bullet.
22 Again, Mr. Bergrin, I'm going by a commonsense approach to
23 this, the way he was shot, the position of the shot, which
24 is behind the ear. It is very difficult to shoot somebody
25 from any other angle, if you're going to shoot somebody from

1 the front, to go up and shoot them behind the ear. So,
2 again, it's consistent with the shooter being behind Kemo.

3 Q. Now, did you interview Dr. Shaikh in pretrial
4 preparation?

5 A. In preparation -- I know there's been -- I did not for
6 the first proceeding. For the second proceeding, I did.
7 The proceeding last year, I did.

8 Q. Did you do any demonstrations for Dr. Shaikh?

9 A. Yes, I believe we did, before last year's proceeding.

10 Q. Then why did you tell the jury that Dr. Shaikh when he
11 gave his opinion that it was impossible to tell that a
12 shooter is left-handed that he never had the benefit of
13 Mr. Young's information or demonstration?

14 A. I think you were asking me about his previous
15 testimony in the underlying Baskerville murder.

16 Q. That was in 2011, ma'am.

17 A. Right, and you were asking me about what he had said
18 in the Baskerville matter, which was in 2007.

19 Q. I asked you the question --

20 MR. MINISH: Could we have the page, Your Honor?

21 MR. BERGRIN: Transcript, 83, line 19 to 23.

22 MR. MINISH: I'm sorry. Again?

23 MR. BERGRIN: Page 83, line 19 to 21.

24 Q. Isn't it a fact that you said that Dr. Shaikh never
25 had the benefit of Mr. Young's information?

1 A. What I said is, if Dr. Shaikh had the benefit of
2 Mr. Young's firsthand information that he left-handedly shot
3 Kemo, then perhaps he could draw a conclusive statement.

4 Q. Now, isn't it a fact that you had demonstrated to
5 Dr. Shaikh and had spoke to him and interviewed him?

6 A. Yes, that is a fact.

7 Q. Thank you.

8 A. But, again, you're referring to his previous
9 testimony.

10 Q. I'm referring to his testimony in 2011; isn't that a
11 fact?

12 MR. MINISH: Well, Judge, so the record is clear,
13 Dr. Shaikh testified after the Agent in 2011, not before.

14 MR. BERGRIN: She had read his testimony, Judge.

15 A. I was on maternity leave during this.

16 THE COURT: All right. There's no reason to --
17 you can redirect.

18 Q. Now, you said that you confirmed the fact that
19 Mr. McCray had partial braids, correct, through Mr. -- as to
20 what Mr. Anthony Young told you; right?

21 A. That is correct.

22 Q. Now, Mr. McCray wore his hair in braids; correct?

23 A. Most times, he did. There was times where he'd take
24 the braids out and he'd just wear it in a big ponytail.

25 Q. Well, every photograph of all these six -- all six

1 transactions with Mr. Baskerville, he had his hair in
2 braids; correct?

3 A. I believe that to be correct. He also had his hood
4 up, I think, in one of them, but I do -- most of the time,
5 he did wear his hair in braids.

6 Q. And Mr. Young knew Mr. McCray for many, many years;
7 correct?

8 A. I believe he knew of him. The association was really
9 through Rakim Baskerville, who knew Kemo McCray.

10 Q. With Anthony Young, is that what you're telling us?
11 You're telling us that as the case agent in this case, the
12 lead agent, that Mr. Young knew of Mr. McCray --

13 A. No. I apologize. He knew Kemo McCray, but I -- I
14 guess I'm trying to say he wasn't as familiar with him as
15 Rakim Baskerville, but he did know Kemo. Now, whether he
16 had seen Kemo recently, I don't know.

17 Q. Isn't it a fact that he knew Kemo since he's 12 years
18 old?

19 A. Yes.

20 Q. So he didn't know of him; correct?

21 A. He -- no, he knew -- he did know him, but I believe --

22 Q. Thank you.

23 A. -- that the closer relationship was Rakim.

24 Q. Now, you said that he confirmed that he had partial
25 braids at the autopsy. Is that what you said?

1 A. I looked at the autopsy photo, which indicated that he
2 had braids in his hair.

3 Q. Now, you also said that you confirmed he had braids
4 based upon looking at the scene photos; correct?

5 A. Yes.

6 Q. Isn't it a fact that the scene photos clearly depict
7 that he wore a do-rag on his head?

8 A. He was wearing that -- the Brick City handkerchief.

9 Q. The handkerchief, correct?

10 A. Yes.

11 Q. And the handkerchief completely covered his head and
12 his hair as the witnesses clearly testified, as you were
13 present for their testimony?

14 A. Which witness testified to that?

15 Q. The witnesses that testified. Mr. Sabur, Detective
16 Sabur testified to that clearly, didn't he, and he was at
17 the scene.

18 A. Johnny Davis just testified yesterday, he motioned
19 with his hands, that handkerchief went like this.

20 Q. You heard Detective Sabur's testimony was at the
21 scene; correct?

22 A. Mr. -- yes, I -- I believe I heard --

23 Q. And you've also had a chance to look at all the scene
24 photographs; correct?

25 A. Yes, I have.

1 Q. And isn't it a fact that in every one of the scene
2 photographs that you've identified, it is physically
3 impossible to tell that an individual had partial braids
4 based upon the do-rag that Mr. McCray had?

5 A. Mr. Bergrin, all I can tell you is, I looked at the
6 photographs, and it appeared to me under the handkerchief,
7 which ended right about here, because the bullet hole was
8 right through part of the handkerchief, that underneath that
9 are braids, and that's what I saw in the photograph. I then
10 went back to the autopsy photographs and I saw that his hair
11 was in braids. So for Anthony Young to tell me he was able
12 to see braids, he put the gun right to where the braids
13 were, the handkerchief, and then the braids were right under
14 that. So for Mr. Young to have had a firsthand view of that
15 is consistent with how the handkerchief was worn on his
16 head.

17 Q. Isn't it a fact that Mr. Young told you initially that
18 there was no braids, and that he couldn't -- he didn't even
19 know that Mr. McCray had a do-rag on his head? Isn't that
20 what he first told you? And you heard his -- isn't that
21 what the first testimony was?

22 A. Anthony Young first told me on January 18th, 2005 that
23 Kemo had his hair in partial braids.

24 Q. And you're about as sure about that as all your
25 testimony in this case; correct?

1 A. I am certain. I can pull the 302 out and show you his
2 statement to me.

3 Q. The January 18th statement; right?

4 A. Yes.

5 THE COURT: Does the jury want to take a break
6 this morning?

7 All right. Mr. Bergrin, I think we're going to
8 stop right here. We'll let you continue with this
9 questioning.

10 We'll take a short break.

11 THE COURT CLERK: All rise.

12 (The jury exits)

13 (Recess taken)

14 (Defendant present)

15 (The witness resumed the stand.)

16 THE COURT CLERK: All rise.

17 (The jury enters)

18 THE COURT: Be seated. All right. Mr. Bergrin?

19 MR. BERGRIN: Thank you, sir.

20 BY MR. BERGRIN:

21 Q. Before I ask you about the do-rag and the braids --
22 I'm sorry, ma'am. Do you need time?

23 A. No, I'm just blowing my nose. I apologize. I'm
24 sorry.

25 MR. BERGRIN: Okay. No problem at all.

1 Q. I want to bring you back to your interview of Delroy
2 Hines, and I thank you for providing me that 302.

3 You have a 302 and you prepared one dated July the
4 11th of 2006; correct?

5 A. I don't have it in front of me, but I'm assuming
6 you're reading from the 302 that that date's correct.

7 Q. Yes, ma'am.

8 A. Okay.

9 Q. And you said that Devon Jones brought you to the
10 location where Mr. Delroy Hines was located; correct?

11 A. Yes, he did.

12 Q. And you were able to interview Delroy Hines; correct?

13 A. Yes.

14 Q. And one thing that Delroy Hines made clear to you in
15 the course of this investigation, which essentially
16 corroborated Ben Hahn and not Anthony Young, was that the
17 gun was brought during the winter, correct? Isn't that the
18 words that he used to you, the guns were brought during the
19 winter?

20 A. Yes, which corroborates Anthony Young. I don't know
21 how that would corroborate Ben Hahn. That's contradictory
22 to what Ben Hahn had said.

23 Q. Because the males were wearing coats and winter hats;
24 correct?

25 A. If I could see it. I just -- I'm assuming you're

1 reading from it, but I --

2 MR. BERGRIN: May I approach, sir?

3 Q. Is that the 302 of one Devon Jones?

4 A. This is Delroy --

5 Q. Delroy Hines, excuse me.

6 A. -- Hines, yes, and he does say in here he recalls it
7 was during the winter because the males were wearing coats
8 and winter hats. They came to the shop at about 8 or 9 p.m.

9 Q. Thank you.

10 A. Again, which is consistent with Anthony Young.

11 Q. Well, Anthony Young said it was in March, on March the
12 3rd first, and then he changed it to the day of the
13 shooting; correct?

14 A. Yes, that is correct.

15 Q. And on that particular day, it wasn't freezing, it
16 wasn't cold --

17 THE COURT: I really do think we've been over
18 this.

19 MR. BERGRIN: All right. I'll move on, Judge. I
20 promised the Court that I wouldn't repeat. I'm sorry,
21 Judge.

22 My apologies to the jury.

23 Q. Now, I want to go to your January 18th 302. Do you
24 have it in front of you?

25 Excuse me. Your January 14th 302.

1 A. Yes, I have it.

2 Q. And your January 18th 302.

3 A. Yes, I have both of them here in front of me.

4 Q. I want you to point out in there where you mention the
5 fact that Anthony Young ever informed you that when he saw
6 Mr. McCray on March the 2nd that he was wearing a do-rag or
7 a bandanna on his head.

8 A. He does not. He said that Kemo's hair was in partial
9 braids.

10 Q. No, I asked you a simple question. You don't have to
11 -- you don't have to volunteer information.

12 MR. MINISH: Objection, Judge. The question
13 before the break was about braids, whether he was wearing
14 partial braids.

15 THE COURT: Chuck, may I have the question that
16 Mr. Bergrin asked of the witness?

17 (Record read)

18 THE COURT: Okay. Can you answer that question?

19 MR. BERGRIN: Thank you.

20 THE COURT: Can you answer that question?

21 A. It is not in my -- my report.

22 Q. Thank you.

23 Now, how do you define partial braids?

24 A. I am defining that by what he saw. He could not speak
25 to --

1 Q. No, I'm asking you, how do you define partial braids?
2 Not what Anthony Young saw. I'm asking you, how do you
3 define partial braids?

4 A. That means you could have some of your hair in braids
5 and the rest could be out. That's my --

6 Q. Isn't it a fact that on March the 2nd of 2004, the
7 head of Kemo McCray as you saw it at the autopsy was fully
8 braided?

9 A. Yes.

10 Q. Now, as you saw and reviewed the photographs of
11 Mr. McCray, isn't it a fact that the do-rag completely
12 covered the braids of his head?

13 A. That is not a fact.

14 Q. Well, look at -- I ask you to look at your transcript
15 that you have in front of you dated October 20th of 2011,
16 page 18, lines 15 to 18.

17 A. You said page 18?

18 Q. Yes, please, ma'am.

19 A. Just a second.

20 October 11th?

21 Q. October 20th, ma'am --

22 A. Oh.

23 Q. -- of 2011.

24 A. Page 18. Okay.

25 Q. Isn't it a fact that you swore that as he laid there

1 on the ground as you saw the photograph that you could not
2 tell that the -- that he had braids in his hair, that it
3 completely covered, the do-rag completely covered his
4 braids?

5 A. I --

6 Q. Isn't that what you said? Isn't that the words that
7 came out of your mouth? As you looked at the photograph as
8 he laid there on the ground, you cannot tell that he had
9 braids in his hair?

10 A. This is in response to a photograph you were showing
11 me, which was him laying on the ground. So I want to make
12 it clear, you had shown me photographs and there were other
13 photographs, and the photograph I believe you showed me, it
14 was from behind, and you could not see in that photograph
15 that he had partial braids. So I said, as he lay there on
16 the ground, he was standing -- well, this is going to be out
17 of context now, but --

18 Q. Well, we have no photographs of him standing; isn't
19 that a fact? There are no scene photographs of --

20 THE COURT: You know, I really don't know why
21 we're arguing over whether you can see the braids or not.

22 MR. BERGRIN: I'll move on to another area.

23 THE COURT: We have the photographs. The jury
24 will look. If they can see them, they can see them; if they
25 can't, they can't. Why are we getting involved in all this?

1 MR. BERGRIN: No problem, Your Honor.

2 Q. Now, wouldn't you admit that everything that Anthony
3 Young told you that he saw could be seen either by driving
4 by or by being at the scene afterwards? Isn't that a fact?

5 A. That if he -- that if he was there himself physically
6 at the scene, he could tell me those things? Are you trying
7 to differentiate --

8 Q. If he was a spectator. If he was a spectator or if he
9 drove by or he came up to the body afterwards, he could have
10 seen what he told you; correct?

11 A. If he had come up to the body, I think somebody just
12 driving by or being a spectator, I think the fact he gave me
13 would have to be somebody that was actually standing over
14 the body and looking at the body.

15 Q. Well, I ask you to look at your testimony of October
16 the 20th.

17 A. Okay.

18 Q. Line 17.

19 THE COURT: What page?

20 MR. BERGRIN: Page 17, Your Honor.

21 THE COURT: Line 17?

22 MR. BERGRIN: No, page 17, line 4 to 12.

23 Q. Isn't it a fact that you admitted on October 20th of
24 2011 that everything Anthony Young told you could be seen by
25 a spectator -- and you know what a spectator is, right?

1 A. Yes, I do, Mr. Bergrin.

2 Q. Somebody standing in the crowd --

3 A. Sure.

4 Q. -- or on the sidewalk?

5 A. Right.

6 MR. MINISH: Objection.

7 Q. Or somebody that drove by or came to the scene
8 afterwards?

9 MR. MINISH: He doesn't have a good faith basis to
10 ask the question. I don't want to make a speaking
11 objection, but it's not an accurate portrayal of what's in
12 evidence.

13 THE COURT: She's got the transcript in front of
14 her. If it's an inaccurate portrayal, she'll read it and
15 resolve it. I don't understand.

16 MR. MINISH: I would ask that she be allowed to
17 read it.

18 THE COURT: Well, of course she can read it.
19 She's got it in front of her. He's asking her a question.

20 Go ahead, answer.

21 A. To your question, I said that's a fact, and then I
22 clarified and said if he had come up to the body as he
23 initially said he did to look at the body to confirm that he
24 was dead, yes, he would have seen the ski mask, which I am
25 sure I meant to say dusk mask. So if you're asking me would

1 a spectator have seen it, I'm just trying to be more
2 specific that I think it had to be somebody actually
3 standing over the body or right by the body to give us the
4 detail that he gave us.

5 Q. But you did admit to a jury that everything that
6 Anthony Young told you could be seen be a spectator or
7 somebody that drove by or came to the scene afterwards.
8 That was the question that I asked you, isn't that a fact,
9 and you answered yes.

10 A. I clarified it, though, Mr. Bergrin.

11 Q. Yes.

12 A. I didn't say a spectator or somebody driving by. I
13 said if somebody had come up to the body, and that's a big
14 distinction, because the things that he saw at the scene,
15 such as the cigarette butt between the hands, a spectator
16 several feet away or somebody driving by is not going to be
17 able to see the cigarette butt that's between his hands.
18 That's somebody looking over the body.

19 Q. But somebody on South Orange Avenue who watched
20 Mr. McCray come by or walk by could have seen the cigarette
21 in his hand; correct?

22 A. They could have seen it in his hand as he was walking,
23 but what Anthony Young specifically said is he looked at the
24 body on the ground and saw that he had a half-lit cigarette
25 in his hand. That is something that I just don't believe a

1 spectator, first of all, while shots are being fired would
2 be able to tell us, or somebody driving by the scene.

3 Q. Well, you had Stacey Williams, who you interviewed,
4 confirm the fact that there were several individuals outside
5 before the shooting and after the shooting, correct, close
6 to the shooting? Isn't that a fact, ma'am?

7 A. Well, I'm just trying to go through Stacey Webb's
8 statements. I know he -- he does put people out there, and
9 I believe Johnny Davis does as well. So, yeah, I mean,
10 there are people out there, but I just --

11 Q. And you also interviewed Ms. Nixon, who was the owner
12 of the bar called the Sand Pit, which it occurred in front
13 of; correct?

14 A. I think Detective Sabur interviewed her.

15 Q. You didn't interview her in January?

16 A. I -- I don't know if I -- I don't recall interviewing
17 her.

18 Q. I ask you to look at your 302 dated March the 5th of
19 2004, J-02707.

20 THE COURT: Do you have that in front of you?

21 THE WITNESS: I don't. I'm sorry.

22 THE COURT: She needs that. Mr. Bergrin, you can
23 approach her.

24 MR. BERGRIN: May I approach?

25 THE COURT: Yes.

1 MR. MINISH: Will you give us the number again,
2 please?

3 MR. BERGRIN: 02707.

4 THE COURT: And, I'm sorry, the question is?

5 Q. You interviewed Ms. Bertha Nixon; correct?

6 A. I did not.

7 Q. What does your 302 reflect? That she was interviewed;
8 correct?

9 A. No. This is a source who told me that he or she had
10 spoken to the bartender.

11 Q. Who is that source?

12 A. That source is -- let me just go through it to make
13 sure I know.

14 Oh, this is Christopher Spruel who told me this.
15 So he is providing me with information that he spoke to the
16 bartender at the Sand Pit.

17 Q. And there were individuals outside; correct?

18 A. She is telling him that there were two unusual black
19 males in her bar during the day.

20 Q. And then the barber across the street, according to
21 your source, saw four individuals out there; correct?

22 A. That, again, is according to what my source is telling
23 me. And just to be clear, my source wasn't out there this
24 day. He is relying -- he is conveying to me what he's heard
25 now on the street.

1 Q. What he heard; correct?

2 A. Yes.

3 Q. After speaking to these individuals, correct, in the
4 course of your investigation.

5 A. I don't know who Mr. Spruel spoke to to get this
6 information. He is repeating to me what he's hearing out on
7 the street.

8 Q. Didn't he say specifically that he spoke to Bertha
9 Nixon, the owner of the bar, and the barber across the
10 street on South 19th Street and South Orange Avenue?

11 A. What he's saying, just to be clear, is that he did
12 speak to the bartender at the Sand Pit, and she advised that
13 there were two unusual black males at the bar during the
14 day. He does then say that he heard -- this is him -- he
15 didn't speak to the barber, but he had heard that the barber
16 witnessed four males across the street who appeared to be
17 involved in the shooting.

18 Q. Thank you.

19 Now, you testified and you volunteered information
20 about Anthony Young and why he came to the F.B.I. in January
21 14th; correct?

22 A. Yes.

23 Q. And you said that he feared for his life, correct,
24 from Jamal Baskerville and Jamal McNeil. That's what you
25 said to this jury about an hour ago, approximately.

1 A. Yes, he was definitely in fear.

2 Q. Now, of course, you noted that in your 302 when you
3 spoke to Mr. Young on January 14th that he was in fear of
4 Jamal Baskerville and Jamal McNeil, in fear of his life;
5 correct?

6 A. I -- I protected his identity by conforming him -- by
7 making him an informant. That was in response to him being
8 afraid of these individuals, so I'm protecting his identity.
9 But just to be clear, it is not in my report.

10 Q. You make no mention of it whatsoever in your report of
11 January 14th, in your interview of Mr. Young, and you make
12 absolutely no mention of it on January the 18th again when
13 you saw him face-to-face; correct?

14 A. I did not, but if you notice, in my 302s, they are not
15 in true name. He is referred to as an individual. My 302s
16 do not refer to him as Anthony Young. And the reason I did
17 that is to protect his identity because he had expressed to
18 me that he was definitely in fear for his life, and he had
19 done that from the first phone call.

20 Q. And you make no mention -- and my question to you is,
21 there's nothing noted in your report that Anthony Young was
22 in fear of his life from Jamal Baskerville or Jamal McNeil;
23 correct?

24 A. That is not noted in my report, but I can tell you
25 that is what he expressed to me and that is --

1 Q. That was my question to you: It's noted anywhere in
2 any of your reports; correct?

3 A. It is not noted, but by the fact that I converted him
4 to a source to protect his identity -- so it's somewhat
5 noted. He has a concealed identity in that report. I did
6 not specify the reasons I concealed his identity.

7 Q. Now, you say that Anthony Young was in fear of Jamal
8 McNeil and Jamal Baskerville, and you volunteered
9 information because they were involved in a murder; correct?

10 A. Yes.

11 Q. And Anthony Young told you that was the murder of a
12 female, a girl, on South 20th Street on Springfield Avenue
13 in Irvington; correct?

14 A. Yes, that is correct.

15 Q. And it was a girl who was allegedly -- an individual
16 by the name of Nut, right, his girlfriend.

17 A. Yes. I believe his name is Rashawn Nichols or
18 McNichols, yes, also known as Nut.

19 Q. Did you ever confirm that information?

20 A. I did.

21 Q. Did you speak to Nut?

22 A. I did not speak to Nut. I spoke to the homicide
23 detective who had the -- the job, the case.

24 Q. And isn't it a fact that Jamal Baskerville and Jamal
25 McNeil were never arrested and never changed with any kind

1 of homicide?

2 A. It's still an open investigation, but I provided them
3 with the information I had.

4 Q. And that allegedly occurred back in 2004, 2003;
5 correct?

6 A. I believe it was 2003 that it occurred.

7 Q. 2003, over 10 years ago; correct?

8 A. At the time I received the information, I provided it
9 to them, and --

10 Q. And it's still an open investigation; correct?

11 A. Because they did not have any eyewitnesses or any
12 other independent evidence to corroborate what Anthony Young
13 was telling me.

14 Q. None whatsoever; right?

15 A. No, the only way you would be able to secure an arrest
16 warrant is if they are able to corroborate what Anthony
17 Young is saying. You can't just go by his word only. You
18 have to corroborate what he says. And they were not able to
19 do that.

20 Q. Now, you said that Anthony Young informed his
21 girlfriend, Rashidah Tarver, correct, in the course of your
22 investigation, you said that Anthony Young informed his
23 girlfriend, Rashidah Tarver, about the shooting of the girl,
24 correct, and the homicide?

25 A. Yes, he did.

1 Q. And you said that Rashidah Tarver informed Jamal
2 Baskerville; correct?

3 A. I believe she informed Jamal Baskerville's wife, who
4 she is best friends with, and I believe the wife then went
5 back and told Jamal Baskerville.

6 Q. Well, you spoke to Rashidah Tarver on multiple
7 occasions; correct?

8 A. I -- I spoke to her on several occasions, yes.

9 Q. And isn't it a fact that you never asked Rashidah
10 Tarver that question, an important fact of why Anthony Young
11 came to the F.B.I., according to Anthony Young, what his
12 motivation was? Isn't that a fact? You never asked
13 Rashidah Tarver to confirm that fact.

14 A. I did not have the opportunity to confirm that fact
15 with her.

16 Q. Well, you interviewed her on multiple occasions, as
17 you just swore to this jury; right?

18 A. I -- I believe what I said is I spoke to her several
19 times. I was not able to interview her because at the time,
20 there was a domestic violence investigation going on between
21 Anthony Young and Rashidah Tarver, and I was asked by the AP
22 handling the domestic at that time not to speak to Rashidah
23 Tarver until the domestic had come to fruition, until
24 something had happened with it.

25 Q. The domestic came to fruition in 2005, eight years

1 ago; correct?

2 A. I don't believe it was 2005. I think it was -- I
3 think it was later than that.

4 Q. Okay. Let's say hypothetically 2006, seven years ago.

5 A. Yes.

6 Q. Isn't it a fact that you never interviewed Rashidah
7 Tarver to confirm that fact, what Anthony Young allegedly
8 said to her that was the motivation and the reason for him
9 coming to the F.B.I., a very important fact.

10 A. I was unable to get to that question because as I was
11 talking to her, she became very upset, and we were in a
12 covert vehicle and I remember she got out of the car and
13 left us and walked home or took a bus home.

14 Q. For seven years, you have never tried to interview her
15 to confirm that fact; isn't that a fact, Agent Brokos? For
16 the last seven years, you have never attempted to confirm.

17 A. I attempted. I absolutely attempted to confirm that
18 fact. I sat with her in a covert vehicle. I had asked her
19 several times to meet with me. She did not want to meet
20 with me. She did not want to be involved. She's very close
21 to the Baskerville family.

22 I finally was able to make contact with her and
23 asked her to meet with me. She agreed to do so in a covert
24 vehicle. I picked her up from her job very discreetly. She
25 sat in a car with me. She became very emotional,

1 hysterical. I recall very vividly she was wearing sandals
2 that day, and they broke as she was getting in the van. And
3 I said, don't worry, I'll be able to drive you home. She
4 got upset, she left the van, and I remember she had a broken
5 shoe, and I thought, she's going to walk home with a broken
6 shoe. The girl -- Ms. Tarver was very upset.

7 Q. Giving her a chance to calm down after she became
8 upset, my last question to you in that is that you had
9 confirmed, according to Anthony Young, that his sole
10 motivation, his sole reason was because he was concerned
11 that Ms. Rashidah Tarver informed the Baskervilles about the
12 murder of this girl, and that was his sole motivation,
13 correct, for coming to the F.B.I.?

14 A. I was not --

15 Q. You can answer my question.

16 A. Well it's a two-part question. I want to make sure
17 I'm very clear.

18 I was not able to confirm that. I would have
19 liked -- my goal was to try and confirm that. I was not
20 able to. But his sole motivation, I don't think that's
21 accurate. He also had additional motivation outside of
22 being in fear for his life from Mal -- Jamal McNeil and
23 Jamal Baskerville, and that was because he also had a
24 pending gun charge. So I don't want to say, it's just not
25 accurate to say that that's his sole motivation.

1 Q. Well, Judge Martini asked you questions about Anthony
2 Young's reason for coming to the F.B.I., correct, when you
3 took the witness stand in 2011. Isn't that a fact, that
4 Judge Martini asked you questions?

5 A. I recall him asking me questions, yes.

6 Q. I ask you to look at the transcript at page 135, line
7 25.

8 A. What date are you referring to?

9 Q. The date that we've been talking about, October the
10 20th, ma'am.

11 MR. MINISH: 135?

12 A. Page what?

13 Q. Excuse me. I'm sorry. I'm very sorry. November the
14 9th of 2011.

15 A. Okay.

16 Q. You have that in front of you?

17 A. Yes, I do, Mr. Bergrin.

18 Q. I ask you to look at 135, line 25 and 136, line one
19 through four.

20 A. Just a second.

21 All right. Line -- I'm sorry?

22 Q. Page 135 --

23 A. Right.

24 Q. -- line 25, and 136, lines one through four.

25 Isn't it a fact that you were asked --

1 A. Yes.

2 Q. -- specifically --

3 A. Can I read this, because I think I answered the
4 question.

5 So this is Judge Martini.

6 "Okay. So when you interviewed her on June 14th,
7 that was the whole motivation -- " --

8 Q. The sole motivation, correct? Sole.

9 MR. MINISH: No it doesn't say "sole."

10 A. No. "The whole motivation -- " --

11 Q. Whole motivation. Go ahead. I'm sorry.

12 A. Do you want me to read?

13 Q. Yes, please.

14 A. -- " -- for Anthony Young to come to the Government
15 according to Anthony Young, correct?

16 "That and -- " -- so I'm cut off.

17 "He was afraid of that.

18 "Yes, right."

19 And then Judge Martini goes on to say:

20 "Because when you interviewed her, isn't that an
21 important fact that you would want to know from Ms. Tarver
22 when you interviewed her, whether or not she had ever shared
23 that information with her?"

24 So I'm getting cut off by the judge because I'm
25 trying to explain that and -- and I'm cut off. But I'm not

1 disagreeing with you that it was definitely a -- a big
2 motivation for him.

3 Q. Was she ever subpoenaed before a grand jury?

4 A. The grand jury had concluded at that time. We had
5 already had an indictment. We had no grand jury authority
6 at that stage.

7 Q. Now, you never subpoenaed her to come to court and
8 testify; correct?

9 A. We did not because she was -- she was not cooperative.
10 I -- we could have subpoenaed her and she would have then
11 been a hostile witness. But I want to make sure this was
12 clear. She was --

13 Q. Excuse me. And you could have asked her that question
14 on the witness stand or you could have come back -- how many
15 witnesses are uncooperative or hostile when you initially
16 see them and speak to them?

17 A. There are a --

18 Q. Isn't it a fact that many witnesses --

19 MR. MINISH: Judge, I'd ask that she be allowed to
20 answer the question.

21 A. Many witnesses, but this incident was so singular in
22 nature because she was terrified for her life because this
23 is her family. She is best friends with Jamal Baskerville's
24 wife. She did not want to talk to us. I remember her
25 saying, you guys get to go home at night, I have to go back

1 to these people, meaning the Baskervilles.

2 So could we as the Government made her a hostile
3 witness? I suppose we could have. But then we're also
4 exposing her to the retribution that we well know that the
5 Baskervilles are capable of, and it was a decision that we
6 made not to do that.

7 Q. And even Judge Martini was concerned that it was an
8 important point --

9 MR. MINISH: Objection, Judge. It's an improper
10 question about what Judge Martini was concerned or not
11 concerned about.

12 THE COURT: Well, again, though, how many times do
13 we have to -- the point has been made.

14 MR. BERGRIN: All right, Judge.

15 THE COURT: The fact that you can make it in five
16 different directions --

17 MR. BERGRIN: I understand.

18 I'm moving to another area, Judge.

19 THE COURT: Good.

20 Q. Now, you testified that Anthony Young informed you
21 about this murder involving the girl when you spoke to him;
22 correct?

23 A. That he informed me about the murder of Nut's
24 girlfriend.

25 Q. Girlfriend.

1 A. Yes.

2 Q. When did he inform you of that?

3 A. I believe on January 18th, 2005.

4 Q. Isn't it a fact that Anthony Young did not bring it up
5 until February 28th of 2007, when he spoke to Agents Grassi
6 of the F.B.I. and Task Force Officer Santiago?

7 A. That is absolutely incorrect. It may have been
8 documented in a follow-up conversation to obtain more
9 information, but the first time he brought it up was the
10 first time I sat across the table from him.

11 Q. Isn't it a fact that the only 302, the only report
12 prepared by the F.B.I. in relation to this particular issue
13 and Nut's girlfriend was on February 28th of 2007?

14 A. I did not -- it is not in my initial interview with
15 him. I don't know if it's documented in other 302s, but I
16 can take a look at that one if it's documented.

17 Q. Isn't it a fact that it's in none of your memos,
18 notes, or 302s, that information?

19 A. If I can just explain, there are 302s where I
20 interview him, and then we have what we call proffer
21 meetings with him. During those proffer meetings, I do not
22 prepare a 302, so there are things that he could have told
23 me that you are not going to see a 302 for.

24 Q. Isn't it a fact that the first 302 is February 28 of
25 2007?

1 A. That, in fact, could be the first 302, but that is not
2 the first time he provided that information. The first time
3 he provided that information was when he walked through the
4 door at the F.B.I. office. The first time you may be seeing
5 it on paper is that 302 you're referring to, but he had told
6 us day one and he had also told us in several proffer
7 sessions.

8 Q. I show you what is 0304A.

9 THE COURT: And what is this, Mr. Bergrin?

10 MR. BERGRIN: That's the first 302, the first
11 documentation of Anthony Young mentioning this particular
12 issue, Judge.

13 THE COURT: Okay. And what about it?

14 MR. BERGRIN: I just want to confirm with this
15 officer --

16 THE COURT: I think she's already basically
17 confirmed it, and she explained in her view why. I don't
18 get it. I don't think she's disagreeing with you.

19 MR. BERGRIN: Okay, Judge.

20 A. I can tell you at this time we were trying to help
21 Newark police department in -- in solving this job, so I was
22 on maternity leave at the time of this, but I believe they
23 went back because the individual who was on this 302 was a
24 Newark police officer, so I think they were probably just
25 trying to get more -- as many facts as possible to relay

1 them to Newark P.D. to try to solve that job -- I'm sorry,
2 solve that murder.

3 Q. But that's not what the report says; correct?

4 A. I didn't write the report. I can tell you what it
5 says, that --

6 Q. That's not what the report says. You don't have to
7 read the entire report. I'm trying to save time.

8 But the bottom line is, the first time it's ever
9 documented is in that 302 of 2007; that's the point that I
10 want to make, and I'll move on. Correct?

11 A. I believe that is accurate --

12 Q. Thank you.

13 A. -- but that is not the first time he told me.

14 Q. Now, Anthony Young informed you that the gun that was
15 used on March the 2nd of 2004 was an altered weapon;
16 correct?

17 A. Yes, he did. It was --

18 Q. And it was altered from semiautomatic to automatic;
19 correct?

20 A. To fully automatic, yes.

21 Q. And he also told you that the gun that he was arrested
22 with in July of 2004 was an automatic; correct?

23 A. I don't know if he told me it was a semi or fully
24 automatic. I don't -- I don't know.

25 Q. And isn't it a fact that he told you that all the guns

1 used by him and members of the organization were automatics
2 and altered, bought altered from semiautomatic to automatic;
3 correct?

4 A. What he -- my memory of what he told me is that what
5 they would do is get the semiautomatic guns and alter them
6 to make them automatic. I can't say that he said that they
7 do that with every gun, but I know that they did -- that was
8 something that the Baskerville and the Curry organization
9 did. I don't want to say they did that with every gun, but
10 Kemo's gun, that is exactly what he told me that he had
11 done.

12 Q. Now, you have no evidence at all to reflect the fact
13 in this particular case you said any gun, you have never
14 recovered an altered gun, nor any other Federal agents in
15 this particular case; correct?

16 A. Let me just think about that.

17 I don't believe that we have. I mean, the murder
18 weapon was melted down, so we did not recover that. But if
19 you're talking about some of the guns in the Curry
20 organization, I do not believe they were --

21 Q. Any of them were ever altered; correct?

22 A. I -- I don't want to be definitive because I just -- I
23 don't know, but it's my understanding that they had not been
24 altered. They were semiautomatic. They had not been
25 converted to fully automatic.

1 Q. And the gun that Anthony Young was arrested with on
2 July of 2005 was also a semiautomatic non-altered weapon;
3 correct?

4 A. I don't know if it was altered or not. I'd have to
5 look at the police report or go to the ballistics folks to
6 be able to say that definitively. I do -- my understanding
7 is it's a semi that hadn't been converted to fully, but
8 without getting a ballistics report, I just don't want to
9 state that I know that for certain.

10 Q. Well, you were present when Anthony Young pled guilty;
11 correct?

12 A. I -- you know, I honestly -- if you can give me the
13 date. I honestly can't remember. I may have been on
14 maternity leave.

15 Q. June of 2007.

16 A. I believe I had just come from maternity leave and did
17 go. I do believe I had gone.

18 Q. And isn't it a fact that he pled guilty to the
19 possession of a non-altered semiautomatic weapon?

20 A. Okay.

21 Q. Yes, right?

22 MR. MINISH: Judge, it's the wrong -- Mr. Bergrin
23 must be mixed up. That's the wrong date. Anthony Young did
24 not plead guilty in June of 2007.

25 MR. BERGRIN: 2006. I'm sorry.

1 A. June of 2006?

2 MR. MINISH: No, not in June of --

3 THE COURT: Well, irrespective of the date, is it
4 a fact that he pled guilty to using a semiautomatic weapon
5 as opposed to an automatic?

6 THE WITNESS: I believe he pled guilty to using a
7 semiautomatic weapon.

8 THE COURT: All right.

9 THE WITNESS: Yeah.

10 Q. Thank you.

11 Now, you were present with, and you mentioned this
12 yesterday in direct examination, in proffer sessions with
13 Anthony Young with one Melissa Hawkins; correct?

14 A. I believe it's Melinda Hawkins.

15 Q. Melinda. I'm sorry. You're right. I'm wrong.
16 Melinda Hawkins, an attorney for Anthony Young; correct?

17 A. Yes.

18 Q. And you were present when Anthony Young was instructed
19 to tell the truth right in front of you; correct?

20 A. I believe she had told him, just tell them the truth,
21 just tell them the truth.

22 Q. Well, you were asked a particular question, not
23 believe. She told him to tell the truth; correct?

24 A. That is my memory of what happened, yes.

25 Q. And he continued to lie; correct?

1 A. He continued to tell us the first version of the story
2 where he was a witness --

3 Q. Which was a lie, according to you; correct?

4 A. It is a lie because he was not -- he was explaining to
5 us that he went to the body to make sure it was dead and he
6 stood over it, instead of being the shooter, which he later
7 said. So, yes.

8 Q. So he lied in the presence of his attorney and lied in
9 the presence of you even though he was informed to tell the
10 truth; correct?

11 A. Yes, she had told him to tell the truth, and he kept
12 on with the initial story that he had told us.

13 Q. Did you ever promise Anthony Young that he's going
14 home?

15 A. I did not.

16 Q. Now, you took a -- you interviewed Anthony Young
17 extensively. You interviewed him on January 14th of 2005
18 when he initially called you; correct?

19 A. I would not use the word extensively at all during
20 that --

21 Q. But you interviewed him on January the 14th of 2005;
22 correct?

23 A. I had a five-minute telephone conversation with him
24 that day.

25 Q. And when you had this five-minute telephone

1 conversation, Anthony Young gave you information; correct?

2 A. Yes, he did.

3 Q. And you were able to determine that a lot of the
4 information that Anthony Young gave you he denied that he
5 ever said to you; correct?

6 A. I'm not clear on your question. I'm sorry, Mr.
7 Bergrin.

8 Q. Isn't it a fact that Anthony Young denied a lot of the
9 information that's contained in your January 14th, 2005
10 interview of Anthony Young, your 302 report of your
11 interview of Anthony Young?

12 A. I -- I apologize. I'm not trying to be difficult. He
13 couldn't have -- I'm writing what he's telling me, so I
14 don't know -- to say he's denying it I don't think would be
15 accurate. During this -- this phone call, I'm writing down
16 what he's telling me.

17 Q. Well, you wrote down in your 302 that -- you wrote
18 down in your 302 the words that came out of the mouth of
19 Anthony Young on January 14th, correct, of 2005?

20 A. Yes, I -- yes. Yes.

21 Q. And you wrote them down as they were coming out of
22 your mouth -- out of the mouth of Anthony Young. You were
23 taking notes; correct?

24 A. Yes.

25 Q. And one thing you want to do is make sure your notes

1 were accurate, right, and what you were getting down was an
2 accurate version; right?

3 A. Yes. Yes.

4 Q. Did Anthony Young ever tell you that Malsey, an
5 individual named Malsey, killed Kemo for the benefit of
6 William Baskerville?

7 A. In this first phone call?

8 Q. Yes.

9 A. Okay. Let me just -- if I can just take a second to
10 go through it.

11 I don't believe it says it in this first 302. And
12 I've gone through it. I don't believe he says Malsey. He
13 says -- I mean, he puts members of the group out there. I
14 don't believe he specifically says Malsey. I think it's in
15 the subsequent meeting when he comes in in person and tells
16 us that.

17 Q. Let's go through the 302 of January 14th.

18 A. Okay.

19 THE COURT: Do I have a copy of that?

20 MR. MINISH: Can you state the J number?

21 THE COURT: I don't care about the J number.

22 What's the exhibit number?

23 What's the number?

24 THE WITNESS: 02933.

25 MR. GAY: It would be on the bottom right-hand

1 page.

2 THE COURT: I know where the number is. I'm
3 trying to find it.

4 MR. GAY: It should be in the binder, Judge.

5 THE COURT: It's in the binder?

6 MR. GAY: Yes.

7 THE COURT: Those big binders?

8 MR. GAY: Yes.

9 (Laughter)

10 THE COURT: Go ahead, Mr. Bergrin.

11 MR. BERGRIN: I'm just pulling out the report now,
12 Your Honor.

13 MR. MINISH: Judge, are we just going to go
14 through the reports now, or is there going to be a question?

15 THE COURT: I'm waiting for the question.

16 MR. BERGRIN: Just pulling out both reports,
17 Judge. Just give me one second, please?

18 Q. Now, you interviewed Anthony Young twice in January of
19 2005; correct?

20 A. Yes, I did.

21 Q. And did your report reflect that Anthony Young was
22 eager to meet with you?

23 MR. MINISH: Which -- Judge, could we just have
24 which report?

25 MR. BERGRIN: January 14th of 2005, Judge, second

1 paragraph.

2 A. Yes, it does.

3 Q. Did Anthony Young tell you that the reason he's
4 interviewed and meeting with you because he asked for
5 assistance in a gun case that he has and the gun case that
6 he's facing?

7 A. Yes. Yes, he did say that.

8 Q. Did Anthony Young tell you that he was present in a
9 car with Hakeem Curry and Rakim Baskerville on the day of
10 William Baskerville's arrest?

11 A. Yes, he did.

12 Q. Did he tell you that Paul Bergrin contacted Hakeem
13 Curry on a cellular phone and that I was put on a
14 speakerphone?

15 A. Yes. And then --

16 Q. Did Anthony Young tell you that I listed --
17 essentially read the complaints, I listed the dates and
18 amounts of the drugs?

19 A. Yes, you listed the dates and the amounts.

20 Q. And the amounts of the drugs.

21 A. And went on to say that the informant's name was Kemo.

22 Q. Was Kemo, and that individual corrected me -- that he
23 corrected me and said Kemo; correct?

24 A. Corrected him...

25 So -- I don't know if he corrected you or Curry,

1 but he corrected either you or Curry, saying that it's Kemo,
2 not Kamo.

3 Q. Did Anthony Young say that on that date of January --
4 on that date, excuse me, of November 25th that Hakeem Curry
5 asked if there were audios or videos, recordings of the
6 deals?

7 A. Yes, and that he would find out and call back.

8 Q. Correct.

9 Did Anthony Young say that I had a meeting on that
10 night of November 25th, after the call?

11 A. At approximately 9 p.m.

12 Q. At 9 p.m. that night, November 25th. That's what he
13 said; correct?

14 A. Yes, you came by in your black Mercedes.

15 Q. And that I spoke to Hakeem Curry; correct?

16 A. Well, it's Curry, Rakim Baskerville, Jamal
17 Baskerville, and Anthony Young.

18 Q. Isn't it a fact that Anthony Young said I spoke to
19 Curry? Isn't that exactly what your words say, "and spoke
20 to Curry"? This is your report of January 14th of 2005.
21 "Bergrin stopped by in his black Mercedes, exited his
22 vehicle and spoke to Curry"; correct?

23 A. Yeah, but the sentence prior to that says that Curry,
24 Rakim Baskerville and -- I'm sorry, Anthony Young met on
25 16th and Avon.

1 Q. "To strategize about getting William out of jail. At
2 approximately nine o'clock p.m. Bergrin stopped by, exited
3 his vehicle and spoke to Curry."

4 Isn't that exactly the words that is stated in the
5 report word for word?

6 A. It is, but my understanding when he told me this,
7 and I --

8 Q. My question to you is, isn't that what you wrote in
9 your report?

10 MR. MINISH: Judge, objection.

11 THE COURT: Let her answer.

12 Is that what it says in the report?

13 THE WITNESS: It says that, but I'm referring to
14 the fact that those folks were already out there, so --

15 THE COURT: Okay. You've made that point.

16 MR. BERGRIN: Thank you.

17 THE COURT: Go ahead.

18 A. And that you then said to them, "no Kamo, no case, and
19 gave a thumbs up sign."

20 Q. The words in your report is clear that says that
21 Bergrin spoke -- stopped and spoke to Curry; correct?

22 A. That is how my report is written. I apologize it's
23 not clear. I am referring to Curry, but also the
24 individuals I had referenced in the previous statement.

25 Q. You spoke to him on January the 18th, correct?

1 A. Yes, I did.

2 Q. And in that report, he told you that the vehicle that
3 was used was a Grand Prix on that date, January 18th;
4 correct?

5 A. A rental vehicle.

6 Q. Paragraph -- one, two, three, four -- five.

7 A. Right. A rental vehicle, a new model silver-colored
8 Grand Prix to use as a getaway car.

9 Q. And he said that he sat in a vehicle with Curry two
10 blocks west of South 19th Street, right, on South Orange
11 Avenue in a burgundy minivan?

12 A. Yes, that is accurate, he and Curry sat approximately
13 two blocks away --

14 THE COURT: All right. You don't have to --

15 THE WITNESS: Okay. I just want to make sure it's
16 accurate.

17 THE COURT: All right.

18 Q. And he said and he told you that Jamal Baskerville sat
19 in the area of South 19th Street during the homicide,
20 correct, in an old Tahoe?

21 A. I think he's talking about the surveillance, I don't
22 believe he's talking about the homicide. "Jamal Baskerville
23 sat in the area of South 19th Street -- " --

24 Q. In a gray Chevrolet Tahoe; right?

25 A. Right, and this is when they're surveilling Kemo for

1 several hours before the homicide.

2 Q. He never said surveilling during the homicide. He
3 said that -- he told you that individual Curry sat two
4 blocks west of South 19th and South Orange Avenue in a
5 burgundy minivan, and he said Jamal Baskerville sat in the
6 area of South 19th Street south of South Orange Avenue;
7 correct?

8 A. Yes, this is as they surveilled Kemo for several
9 hours.

10 Q. Well, you also wrote a memorandum to your superiors,
11 isn't that a fact, and isn't it a fact that you said in that
12 memorandum that Jamal Baskerville remained on the scene
13 until after the shooting and sat on South Orange Avenue and
14 19th Street? Isn't that a fact, ma'am?

15 A. I -- I don't know if I said he remained on the scene.
16 He was clearly part of the conspiracy. I just am not
17 certain that I knew he remained on the scene.

18 Q. Then why would you say that to your superiors in a
19 report dated January 20th?

20 A. Let me just -- January 20th of what year?

21 Q. 2005.

22 A. If you can -- I don't think I have that report. If
23 you can show that to me.

24 Yes, I don't have that.

25 Q. I'm going to show you what has been marked J-12744 and

1 ask you to look at the first paragraph on the second page.

2 Isn't it a fact that you said "Jamal Baskerville,
3 who was also in a separate car, took off as well." And this
4 was after the shooting.

5 A. Okay. Do you mind if I just take a look at this?

6 Q. No, absolutely not.

7 A. Yes, so "Jamal Baskerville, who was also in a separate
8 car, took off as well," which is, according to this, after
9 the murders --

10 Q. After the shooting; correct?

11 A. -- occurred.

12 Q. So he wasn't there for the surveillance hours before
13 as you just testified; correct?

14 A. Oh, he absolutely was there, and I --

15 Q. According to your testimony, isn't it a fact that you
16 told your superiors that Jamal Baskerville was there during
17 the shooting? Correct?

18 A. Well, it's two separate reports. I'm reporting what
19 Anthony's telling me, that Jamal Baskerville was part of the
20 group who was surveilling Kemo, where he was, and then also
21 what I stated here is that he was in a separate car and he
22 took off after the murder.

23 So I don't -- I don't know that there's really a
24 disparity. I'm reporting that he was there during
25 surveillance, and then here, I say that he took off after

1 the murder.

2 Q. You just testified a few minutes ago that when you
3 spoke to Anthony Young on January the 18th of 2005 that what
4 you meant in your report was that Jamal Baskerville sat in
5 the area of 19th Street and South Orange Avenue in a gray
6 Chevrolet Tahoe, you said during the surveillance. Isn't
7 that the words that just came out of your mouth?

8 A. That's exactly where you referred me to. "He sat in
9 the area and using two-way radios attached to their wrists
10 they surveilled Kemo for several hours."

11 Q. Now, you have no evidence whatsoever that any kind of
12 two-way radios attached to anybody's wrists were used;
13 correct?

14 A. I believe they were using some sort of Nextel device,
15 but I don't --

16 Q. Not two-way -- not two-way radios attached to their
17 wrist like Anthony Young told you; correct?

18 A. I don't know if they were attached to -- how these
19 devices were attached.

20 Q. But that's what Anthony Young told you?

21 A. Yes.

22 Q. Two-way radios attached to their wrists; correct?

23 A. Right. Right.

24 Q. Now, Anthony Young also told you that he saw Malsey.
25 That's Jamal McNeil; correct?

1 A. I -- if I can clarify something, though, Anthony Young
2 did tell us that Jamal Baskerville was told by this group to
3 leave the scene if they feared that Kemo may have recognized
4 him, so --

5 Q. That's not my question.

6 A. All right.

7 Q. There's no question pending.

8 A. I'm sorry.

9 Q. Anthony Young told you on January 18th that Jamal
10 Baskerville remained on the scene during the shooting;
11 correct?

12 A. I just don't know that that's accurate. I'm trying to
13 read through this --

14 Q. Well, that's what it says exactly in your report;
15 correct?

16 A. Are you referring to my report of January 18th?

17 Q. Yes.

18 A. Okay. So, again, what I say is, Anthony Young is
19 telling me exactly where Jamal Baskerville was parked, and
20 what they're doing is, for hours, they have set up
21 surveillance. So using two way radios, they surveilled him
22 for several hours.

23 And let me just continue through this because I
24 don't know if there was anything more about what Jamal -- I
25 don't know that I see him mentioned.

- 1 Q. Well, that was January the 18th when he told you this,
2 correct, about Jamal Baskerville.
- 3 A. Yes. He did not --
- 4 Q. Excuse me. Just answer my questions.
- 5 A. I'm sorry.
- 6 Q. Then on January 20th, two days later, you write a
7 memorandum to your superiors based upon your interview of
8 Anthony Young; correct? Isn't that a fact?
- 9 A. I -- I -- yes. Well, this is --
- 10 Q. You could answer my question. Is that a fact? You
11 wrote a memo to your superiors based upon your interview of
12 Anthony Young; correct?
- 13 A. Yes, this is a request to have an individual
14 relocated.
- 15 Q. And when you wrote your --
- 16 A. Yes.
- 17 Q. And when you wrote your memorandum to your superiors,
18 you said that Jamal Baskerville remained on the scene,
19 correct, during the shooting of Mr. McCray.
- 20 A. No, that he was in a separate car and he took off. So
21 I'm not --
- 22 Q. He took off after the shooting of Mr. McCray. Isn't
23 that what it reflects?
- 24 A. That's -- you know, that's how it appears, but my
25 understanding is that Jamal Baskerville was asked to leave

1 the scene because they feared that Kemo would recognize him.

2 Q. But you didn't put that in your report, and that's not
3 what your January 18th 302 reflects, and that's not what
4 your memorandum to your superiors reflects; correct?

5 A. Respectfully, I just disagree, because what I'm saying
6 is, Jamal Baskerville was out here, identified as being on a
7 surveillance, which was my January 18th report, and then in
8 my subsequent report, it says that he was in a separate car,
9 he took off as well. I'm just not clear on, did he take off
10 before the murder or after murder -- the murder. But my
11 understanding is that he took off before the murder occurred
12 because they were afraid that they would recognize one
13 another, Kemo would recognize him.

14 Q. In the paragraph before, though, in your report of
15 January 20th of 2005, it clearly reflects who took off after
16 the shooting; correct? And one of them is Jamal
17 Baskerville --

18 A. Yes.

19 Q. -- after the shooting.

20 A. It does appear to look that way, yes.

21 Q. Thank you.

22 In your January 18th interview of Anthony Young,
23 he tells you that Kemo was grabbed by his shirt on the back
24 of the neck and spun around by Malsey, correct, so he's
25 facing west on South Orange Avenue; correct?

1 A. That is correct, yes.

2 Q. And he says that no payments were received by anybody;
3 correct?

4 A. Yes.

5 Q. And he also told you that Malsey, meaning Jamal
6 McNeil, visited Mr. Baskerville several times at the Hudson
7 County Jail; correct?

8 A. Yes, that is correct.

9 THE COURT: Mr. Bergrin, let me know when it would
10 be a good time to break.

11 MR. BERGRIN: Excuse me, sir?

12 THE COURT: Let me know when it would be a good
13 time to break.

14 MR. BERGRIN: We can break now, Judge.

15 THE COURT: All right. Ladies and gentlemen, your
16 lunch is here, so we'll break.

17 Please don't discuss the matter.

18 45 minutes.

19 (The jury exits)

20 (Luncheon recess taken)

21

22

23

24

25

A F T E R N O O N S E S S I O N

(Defendant present)

(The witness resumed the stand.)

MR. BERGRIN: Good afternoon, Judge.

THE COURT CLERK: All rise.

(The jury enters)

THE COURT: Be seated.

Okay. Looking well fed and ready. We're ready to go.

Mr. Bergrin?

MR. BERGRIN: Thank you very much, Judge, ladies
and gentlemen.

CROSS-EXAMINATION (CONTINUED)

BY MR. BERGRIN:

Q. Now, Mr. Young informed you that he was wearing a hoodie, correct, a blue hoodie. That's the words that you wrote in the report in your interview notes of Mr. Young, correct, at the time of March the 2nd of 2004?

A. Which -- which report are you talking about?

Q. I'm talking about your interview notes of Mr. Young that you provided.

A. On which dates?

Q. There's no actually no date on it.

MR. MINISH: There's a J number there. She should be able to find it.

1 MR. BERGRIN: Yes, sir.

2 Q. It's J-05127.

3 A. I don't know. Let me just see if it have that. I'm
4 not sure if I -- they're my handwritten notes?

5 Q. Yes.

6 A. I don't think I have them.

7 Q. You know what? I'm going to move on, and then I'll
8 come back to that area.

9 A. Okay.

10 Q. I'm sorry.

11 I want to move into Stacey Webb Williams that you
12 talked about during direct examination.

13 Now, you took a statement from Mr. Williams;
14 correct?

15 A. Yes, I did.

16 Q. And in that statement, you essentially said that
17 Mr. Williams confirmed what he had said in his statement to
18 Detective Sabur, essentially, correct, and he provided no
19 new information.

20 A. Yes, that is correct.

21 Q. And, ma'am, when you spoke to Mr. Williams, isn't it a
22 fact -- and the statement of Sabur reflects it also -- that
23 he may be able to identify the shooter of Mr. McCray?
24 That's the exact words he used, correct, he may be able to
25 identify the shooter?

1 A. Yes, and that's one of the reasons why we went out to
2 see him.

3 Q. Correct, of course. And of course, you showed him
4 photographs once you had suspects; correct?

5 A. We did not show him photographs because at that time,
6 he said that he does not think that he would be able to
7 identify anybody.

8 Q. Well, that's not what your -- that's not what his
9 statement said to Detective Sabur; isn't that a fact, ma'am?
10 He said he may be able to identify the shooter. That's the
11 only words he says. He never said that he can't identify
12 the shooter.

13 A. Right.

14 Q. He said he may be able to identify the shooter;
15 correct?

16 A. Yes, and when I went out and spoke with him, he said
17 that he was not comfortable looking at photographs because
18 he did not think -- so much time had elapsed that he didn't
19 think he'd be able to identify the shooter.

20 Q. Now, does your report reflect that fact, that Stacey
21 Williams could not identify the shooter? Isn't it a fact
22 that your report specifically states that Mr. Williams told
23 you essentially what he told Detective Sabur? Isn't that a
24 fact? Isn't that what your report reflects?

25 A. Yes, it does.

1 Q. And isn't it a fact that your report does not reflect
2 in any way whatsoever that Mr. Williams told you that he
3 can't make an identification or he does not want to see
4 pictures at that time? Isn't the fact that that's what your
5 report reflects of your interview with Stacey Williams?

6 A. My report -- I don't put in my report that he did not
7 look at photographs. We asked him if he was comfortable
8 looking at photographs, and he did not. So you're not going
9 to see anywhere in my report that he looked at photographs.
10 He did not feel comfortable ID'ing somebody, so we did not
11 show him photographs.

12 Q. My question is -- and you can answer it yes or no --

13 A. Okay.

14 Q. -- isn't it a fact that your report merely states that
15 Stacey Williams was interviewed, and he told you what he had
16 told to Detective Sabur in reference to this case?

17 A. That his statements --

18 Q. His statement is factual and consistent with what he
19 told Detective Sabur.

20 A. Yes. Thank you. Yes, that is accurate.

21 Q. Thank you.

22 At the time that you spoke to Mr. Williams, there
23 were no suspects in this case; correct?

24 A. Do you have the date of when I spoke to Mr. Williams?

25 Q. In 2005, ma'am.

1 A. Specifically when, though?

2 Q. March of 2005.

3 A. Yes, Jamal McNeil was a suspect at that date.

4 Q. And Jamal McNeil's photograph was never shown to
5 anybody but Johnny Davis; correct?

6 A. The only other witness was Mr. Williams, who we had
7 hoped to be able to provide or show him a photo array, but
8 when I spoke to him, he said he's not even comfortable
9 looking at a photo array because it has been so long. The
10 murder was in March of 2004. This is now -- I'm sorry,
11 March of --

12 Q. Yes.

13 A. -- '05? That he's not comfortable trying to identify
14 somebody. It's been a year since the murder. So --

15 Q. But, again, without beating a dead horse --

16 A. Okay.

17 Q. -- your report reflects absolutely nothing to that
18 effect other than the fact that he --

19 MR. BERGRIN: I'll move on, Judge. I've made the
20 point.

21 Q. Now, of course, when you spoke to Mr. Davis and when
22 you spoke to Mr. Williams, you were concerned with
23 identifying a shooter in this case; correct?

24 A. I did not speak to Mr. Davis.

25 Q. At any time; correct?

1 A. Not until I believe after the initial Baskerville
2 trial. Detective Sabur handled everything pertaining to
3 Mr. Davis. I did talk to Mr. Williams, and, yes, I was very
4 much interested in having him identify a photograph.

5 Q. Now, I ask you to look at your testimony of October
6 the 20th of 2011, specifically, page 181 and line 8.

7 A. What page? I'm sorry.

8 Q. 181, please, line eight.

9 A. October 20th?

10 Q. Yes, ma'am.

11 A. I only go up to page 73 on that day.

12 MR. BERGRIN: Excuse me one second.

13 Q. I'm sorry, it's October 18th. I'm sorry.

14 MR. MINISH: Which page again, please?

15 MR. BERGRIN: 181.

16 Let me make sure that's exactly what I want.

17 Excuse me one second, Your Honor. The Court's
18 indulgence. I'm sorry.

19 Yes.

20 Q. I'm sorry, it's the date, it's the 18th, ma'am. I'm
21 so sorry.

22 A. And what page, again, Mr. Bergrin?

23 Q. It's 181, please.

24 A. Okay.

25 Q. I'm asking you to look at lines one through 10,

1 please.

2 Were you asked a question starting on line one,
3 page 181, transcript of your sworn testimony of October
4 18th, and you testified that you didn't --

5 A. I'm sorry, I don't mean to interrupt, but I don't have
6 that. I don't know if that's the right date or I'm on the
7 wrong page.

8 My page 181 on October 18th is -- I'm being asked
9 by the Court a question.

10 Q. You're right. I'm wrong again. I'm sorry.

11 Try -- it's October 19th. I'm so sorry. It's
12 October 19th. Please excuse me.

13 A. Page 181?

14 Q. Yes. Tell me when you're ready.

15 A. Okay.

16 Q. You were asked a question: "And you testified that
17 you didn't show Mr. Williams any photographs; correct?"

18 And your answer was: "I don't believe I testified
19 to that. I may have shown him photographs. I don't recall,
20 again, without seeing my reports."

21 Did you also say: "I recall speaking to him, and
22 he felt that he might be able to identify the individual.
23 He wasn't certain that he could."

24 Isn't that what you said, ma'am?

25 A. Yes.

1 Q. "At that stage, I cannot recall if I went back and
2 showed him photographs."

3 Is that what you said, the words came out of your
4 mouth, ma'am?

5 A. Yes.

6 Q. And then you said: "I was more concerned with the
7 vehicle that he identified because he had a very clear
8 memory of a silver Grand Am leaving the crime scene."

9 A. Yes, that is correct. So I did go back with the
10 intent of showing him photographs.

11 Q. No, there's no question pending.

12 A. Oh, I apologize.

13 Q. During the course -- you just testified that you
14 didn't speak to Johnny Davis until the first Baskerville
15 trial, the preparation of it; correct?

16 A. I don't believe I spoke to Mr. Davis --

17 Q. Well, isn't that what --

18 A. -- until -- I'm sorry. Go ahead.

19 Q. Isn't that what you just testified, you didn't speak
20 to Mr. Davis until the Baskerville trial? Correct?

21 A. It was during the trial. You had said prep.

22 Q. During the trial. I'm sorry.

23 A. It was not prep. It was during the trial.

24 Q. From March of 2004 when you started to assist in this
25 investigation until he testified in the Baskerville trial,

1 did you ever ask any detectives or any agents or did you
2 ever show a photograph of Anthony Young to John Davis --
3 Johnny Davis?

4 A. I can tell you I absolutely did not.

5 Q. Thank you. That was my question.

6 A. Okay. I thought you had asked if I'd asked other
7 people to do that.

8 Q. Now, the New York Yankee hat.

9 A. Yes.

10 Q. Isn't it a fact when you first interviewed Mr. Young,
11 he denied that he was wearing any hat, correct?

12 A. He did not deny it. That's not accurate. He did not
13 provide us with that information on the first time.
14 Subsequent to that first meeting -- again, because he's not
15 saying he's the shooter on that first meeting. He's
16 saying --

17 Q. No, my question was -- and please be responsive.

18 A. Yes.

19 Q. My question was, did Mr. Young tell you that he was
20 wearing a New York Yankee hat?

21 THE COURT: Well, that wasn't the question. You
22 said "denied."

23 THE WITNESS: Right.

24 MR. BERGRIN: Okay. I'm sorry, Judge. You're
25 right and she's right.

1 Q. Did Mr. Young ever tell you that he was wearing a
2 New York Yankee hat when you met with him?

3 A. Yes, he did.

4 Q. Isn't it a fact he didn't tell you until subsequent
5 meetings? He didn't tell you the first time you talked to
6 him on the telephone, correct?

7 A. That is correct, yes.

8 Q. He didn't tell you when you met with him on January
9 the 18th of 2005; correct?

10 A. That is correct.

11 Q. How much time passed before he told you he was wearing
12 a New York Yankee hat?

13 A. It's not until we -- he came in and told us that he
14 was the shooter, which is in March of 2006, that we got a
15 full description of what he was wearing. Prior to that,
16 with him being a -- a co-conspirator, a bystander, we
17 weren't concerned with what he was wearing.

18 Q. So approximately 15 months after the first meeting
19 with Anthony Young.

20 A. Yes.

21 Q. Now, the prosecution asked you about Mr. Davis and
22 about his photographic identification; correct? Remember
23 that, and you saying that he didn't make a positive
24 identification? That was your testimony; right?

25 A. Yes, that is true, yes.

1 Q. Did you ever instruct Newark police officers or
2 anybody to ask Mr. Young what he meant by the word
3 "resemble"?

4 A. I believe you mean Mr. Davis.

5 Q. Mr. Davis. I'm sorry, you're right and I'm wrong.
6 Did you ever ask anybody --

7 A. I did. Yes, I absolutely did.

8 Q. Who did you ask?

9 A. I believe I -- it was either Detective Sabur or
10 Investigator Bzik, because I had a very clear memory of
11 this, if you'd like me to explain.

12 Q. And were there any reports generated in reference to
13 what Johnny Davis responded to Detective Sabur? In
14 reference to the resemble, how he explained it.

15 A. I don't know if Detective Sabur did a report, but I
16 believe --

17 Q. Well, before you testified today, you haven't had a
18 chance to review Detective Sabur's report. I'm sure you've
19 read it in preparation for your testimony; correct?

20 A. No, I certainly did, but I think there's two different
21 things. Detective Sabur could have done a report but then
22 Mr. Davis also filled out on the photo array or a statement
23 attached to the photo array in his handwriting what he meant
24 by resembles.

25 Q. That wasn't my question.

1 A. Oh, I'm sorry.

2 Q. You said that you asked either Detective Sabur or Bzik
3 to go back and ask Johnny Davis what he meant by resembled.
4 Isn't that what you just said a couple of minutes ago?

5 A. Oh, I completely misunderstood your question. I'm
6 sorry.

7 I asked them -- I didn't ask them to go back and
8 clarify it.

9 Q. Thank you. That was my question.

10 A. I asked them -- okay. Sorry. I did ask them what he
11 meant when he said resembles, what does he mean, resembles.
12 I didn't send them back in to ask again. He identified
13 somebody who resembles the shooter.

14 Q. And isn't it a fact that there's no evidence
15 whatsoever that you could offer that any of them asked
16 Mr. Davis what he meant by the word "resemble"?

17 A. Mr. Bergrin, I'm not comfortable answering that.
18 There's somebody who took a -- some sort of written
19 statement from him which I believe has been shown in this
20 Court where he writes what he meant by "resembles." So I
21 would think somebody asked him and therefore he's clarifying
22 it by stating, you know, how does he resemble him, and
23 Mr. Davis has been writing, by hair and complexion.

24 Q. By hair, face, and complexion; correct?

25 A. I believe it's by hair and complexion, but I -- if you

1 can show it to me, I'll -- I just don't know. My memory is
2 hair and complexion and that's what we were going by at the
3 time, the hair and the complexion, but I don't know. I know
4 we have the document. I believe Detective Sabur referred to
5 it.

6 Q. You read Johnny Davis's statement of July 23rd;
7 correct?

8 A. Yes, I -- I don't believe that was Detective Sabur's
9 statement, though. I mean -- yes, I did see the statement.
10 I don't think it was -- I apologize. I have seen that
11 statement.

12 Q. And one of the questions he was asked is whether he's
13 sure --

14 MR. MINISH: Judge, objection.

15 A. I --

16 THE COURT: Wait. Hold it.

17 What's the objection?

18 MR. MINISH: The objection is, number one, he was
19 asking the agent about a different report. We've now
20 changed to another report --

21 MR. BERGRIN: That's the same report, Judge.

22 MR. MINISH: -- and we're going to testify about
23 what was said in the statement to Detective Sabur? We've
24 already gone over all this. She was asked questions
25 specifically about the resemble and what his interpretation

1 was. She's talking about her handwritten note. Mr. Bergrin
2 is now trying to go back to a Q and A statement.

3 THE COURT: Which statement are you talking about?

4 MR. BERGRIN: There's only one statement, Judge.

5 There's a statement of July the 23rd.

6 THE COURT: Okay. July 23rd.

7 MR. BERGRIN: July 23rd.

8 THE COURT: Okay. Why don't we talk about that?

9 BY MR. BERGRIN:

10 Q. You read the July 23rd sworn statement of Johnny

11 Davis; correct?

12 A. Yes, I did.

13 Q. And isn't it a fact that he was asked the question:

14 "Are you sure that the black male you chose in photo number

15 five, Malik Lattimore, resembles the same black male that

16 you observed shoot and kill Kemo Shawn McCray?" Correct?

17 A. Yes, that is correct.

18 Q. And he answered "Yes"; correct?

19 A. Yes, because he is sure that that individual

20 resembles --

21 Q. The question that I asked you -- you can answer the

22 question. The answer is yes; correct?

23 A. Yes, but I would like to clarify it.

24 MR. MINISH: Judge, Mr. Bergrin is interrupting

25 the witness.

1 THE COURT: We don't have to really -- not every
2 response needs to be clarified. Sometimes, an explanation
3 is necessary; sometimes, it's not. That's a straightforward
4 question.

5 In the event there's something that the witness
6 wants to add to something, make a note, Mr. Minish, and
7 you'll have your opportunity on redirect and you can ask
8 her.

9 MR. MINISH: Okay.

10 THE COURT: I must admit, though, Mr. Bergrin, I'm
11 having a little difficulty with asking her to just respond
12 to what somebody else said in their statement and ask her if
13 he said that. It's in the statement. He said it. I don't
14 know why --

15 MR. BERGRIN: Right. No, I understand, Judge.

16 THE COURT: Go ahead.

17 BY MR. BERGRIN:

18 Q. Now, I'm going to ask you to look at page 214 of the
19 transcript.

20 A. That same date?

21 Q. Of October the 19th.

22 A. Okay.

23 THE COURT: The 19th.

24 MR. BERGRIN: Yes.

25 THE COURT: Okay.

1 Q. Line six.

2 A. Okay.

3 Q. Do you have that answer, your response, in front of
4 you?

5 A. Yes.

6 Q. You were asked a question about why you didn't follow
7 up with Johnny Davis in reference to his use of the word
8 "resemble." Correct?

9 A. I'm not sure I'm on the -- page 214, line six?

10 Q. Yes.

11 A. My response is "I did not. He would not speak to me."

12 Q. That was your response before the jury, that he
13 wouldn't speak to you; correct?

14 A. Well, I just don't know what your question is because
15 I think it goes on to the previous page, and I just don't
16 know what the line of questioning is.

17 Q. That response was an answer to the question I asked
18 you about why you didn't follow up with Johnny Davis in
19 reference to his identification. Isn't that a fact? And
20 you said because he was not speaking to me. That was your
21 response; correct?

22 A. Just a minute, Mr. Bergrin.

23 That's partially accurate. You're asking me a
24 series of questions about what I did regarding Mr. Davis,
25 and I'm explaining that I did not question him at a

1 particular time because he was not speaking to me.

2 Q. Correct.

3 A. Oh, your question to me was:

4 "in January of 2005, did you ever contact him when
5 Anthony Young came in?"

6 And my response was, "During that time I did not,
7 because he was not speaking to me. He refused to speak to
8 me."

9 Q. Thank you.

10 Now, as the lead agent in this case, have you had
11 an opportunity to review the ballistics reports in this
12 case?

13 A. I believe I have. Yes, I have.

14 Q. And did you note the manufacture and the makes of the
15 shell casings that were located at the scene?

16 A. Winchester?

17 Q. Yes, Winchester nine millimeter Luger?

18 A. Yes.

19 Q. Were you ever informed by any other Federal agencies
20 about the seizure of those exact shell casings and bullets
21 from any other location?

22 A. I was informed by the D.E.A. that they had seized
23 three weapons in the course of their investigations. I
24 don't know about shell casings, though.

25 Q. Were you ever informed by the D.E.A. or did you have

1 any contact with the D.E.A. in reference to their search and
2 seizure of a place called the dungeon on Center Street in
3 Orange?

4 A. Yes, I did.

5 Q. And were you informed, did you get to review the
6 reports of the D.E.A. in reference to ballistics that they
7 seized, specifically, nine millimeter Luger shells and
8 bullets from that location?

9 A. I am not aware that they seized shells from that
10 location.

11 Q. Bullets, excuse me. Seized bullets.

12 A. Oh, okay. I did not see the report, but I do believe
13 they had seized ammunition. I just can't tell you
14 specifically what kind of was.

15 Q. Have you ever heard of the CABL that the F.B.I. uses,
16 called compositional analysis of a bullet?

17 A. No, I haven't. I'm not familiar with that.

18 Q. Now, in this particular case --

19 MR. BERGRIN: Excuse me one second, Judge. I'm
20 trying to skip through a lot of stuff for expediency
21 purposes.

22 Q. You testified in direct examination in reference to
23 the criminal complaint in this case; correct? The criminal
24 complaint in, excuse me, United States v. Baskerville, I'm
25 sorry.

1 A. Yes.

2 Q. I'll make it clearer.

3 A. Yes.

4 Q. And one of the things that you said is that as an
5 agent, you're going to do as much as possible to cover up
6 the identity of the person in the complaint; correct?

7 A. Yes. We are factual in the complaint, but we are also
8 -- we try and be somewhat -- ambiguous is not the right
9 word, but we don't like to telegraph everything we have
10 because that can lead you to the identity of the informant.

11 Q. And you tried to disguise the fact that Deshawn
12 McCray, Kemo, was the informant in this case to William
13 Baskerville and anybody else, correct, such as Richard
14 Hosten, who was also arrested base upon Mr. McCray; correct?

15 A. If your question to me is do we try and disguise --

16 Q. Yes.

17 A. Yes, we -- we chose every other buy just to space it
18 out so it would not -- so it would not appear --

19 Q. Well, you said you chose every other buy. You listed
20 four out of six buys --

21 A. Right.

22 Q. -- to Mr. Baskerville, correct, in the complaint.

23 A. Yes.

24 Q. So you didn't choose every other one; you left out two
25 transactions; correct?

1 A. Right, I believe we left out the two 50-gram
2 transactions.

3 Q. The two 50-gram.

4 A. They were in between the 28 grams. So, you know, in
5 my memory, it was kind of every other one that we used.

6 Q. And in the complaint, you listed four sales, two of 26
7 grams and two of 28 grams; correct?

8 A. Yes. That is correct.

9 Q. And at the time that you listed those buys or sales in
10 the complaint, you knew that William Baskerville did not
11 sell small amounts of weights; correct?

12 A. That's absolutely incorrect. He was delivering
13 bottles to Terrell Thomas.

14 Q. Okay. Do you remember testifying in a prior
15 proceeding, October 19th, page 89, lines 20 to 22, that you
16 knew that William Baskerville did not deal in small gram
17 weights?

18 A. Page 89?

19 Q. Yes.

20 A. Okay, and where at?

21 Q. Line 20 to 22.

22 A. Well, the question to me is, he made it clear to Kemo
23 that he does not deal in small gram weights.

24 Q. And Kemo was your informant, and you were his handler;
25 correct?

1 A. Yes, but I had independent information that he was
2 dealing in smaller grams or -- I apologize, smaller
3 quantities. So you were asking me what did he make clear to
4 Kemo, and I believed you were talking about the recording
5 that we have played where he was talking about, If you want
6 over 50 grams, I can get that for you every -- you know, any
7 time.

8 Q. Mr. Baskerville made it crystal clear to Kemo, was my
9 question, that he does not deal with small weights or small
10 quantities or grams; correct?

11 A. I disagree with that, Mr. Bergrin.

12 THE COURT: Wait, that was the question --

13 MR. BERGRIN: That I pose now, Judge. I'm posing
14 that question now.

15 THE COURT: That wasn't the question posed a few
16 minutes ago. That might have been the question you posed at
17 the transcript. That's what's confusing me.

18 MR. BERGRIN: Yes, Your Honor.

19 THE COURT: Are you --

20 MR. BERGRIN: I'm going to make it clear now,
21 Judge. I'll clear it up.

22 Q. As a matter of fact, Mr. Baskerville made it crystal
23 clear to Mr. McCray that he does not deal in small amounts,
24 small quantities, and that he's doing it as a favor for
25 Kemo; correct?

1 A. No.

2 Q. I ask you to turn to the transcript on page 89, lines
3 15 to 19.

4 Didn't you testify that Mr. Baskerville informed
5 Kemo, made it clear to him that he does not deal in small
6 weights, small grams or quantities?

7 A. What -- your question to me, I believe, what we're
8 referring to is the conversation where he tells Kemo that if
9 you want anything over 50 grams, I can get that for you. So
10 it's not that he doesn't deal in small weights. It's better
11 if he deals in higher weights, and that's what he told Kemo,
12 because he makes more money that way.

13 Q. Ma'am, isn't it a fact that you were aware that
14 Mr. Baskerville usually does not sell quantities below
15 50 grams?

16 A. Can you repeat that? Was I aware of that?

17 Q. Yes. Isn't the fact that you were aware of it?

18 A. I was aware that he represented to Kemo that he
19 preferred to deal in weights over 50 grams. It's not that
20 he didn't sell any weights under 50 grams. We had him
21 selling in bottle form, which is a much smaller form, to
22 Terrell Thomas.

23 Q. Do you remember testifying at a proceeding back in
24 2007 in reference to this particular issue? And I would ask
25 you to look at page 3484 of your 2007 testimony.

1 A. I don't have it. I'm sorry.

2 THE COURT: What date in 2007?

3 MR. BERGRIN: It's April the 4th, Your Honor,
4 2007.

5 THE COURT: Here you go.

6 THE WITNESS: Oh.

7 MR. MINISH: I'm sorry, what page?

8 MR. BERGRIN: 3484, line 15.

9 THE COURT: I think she's got it now, but let's
10 see.

11 A. What is the date, Mr. Bergrin? April 7th?

12 Q. Yes.

13 THE COURT: April 4th?

14 THE WITNESS: Oh, yes. Okay. I have April 4th.

15 THE COURT: April 4th, Mr. Bergrin?

16 MR. BERGRIN: Yes, Your Honor.

17 THE WITNESS: And what page?

18 MR. BERGRIN: 3484 and starting on line 13.

19 MR. MINISH: That's April 5th.

20 MR. BERGRIN: April 5th, I'm sorry.

21 A. Just give me one second. 34 --

22 Q. -- 84.

23 A. Okay.

24 Q. Isn't it a fact that you testified that "Baskerville
25 was explaining that he sells quantities. He's not talking

1 about the street level, 20, \$10 per vial, he's talking about
2 an ounce, and an ounce is 28 grams. To give you an idea,
3 it's the size of a rock of cocaine that I could probably
4 hold in the palm of my hand."

5 And then you said "He was selling more than that.
6 He was selling 50 grams, which is almost two ounces, and he
7 was saying he typically doesn't sell below that quantity,
8 meaning 50 gram.

9 Isn't that what you said?

10 A. Yes, this is what he's telling Kemo.

11 Q. Yes. That's exactly what he told Kemo; correct?

12 A. But that's different from what I knew to be true.
13 You're asking me did I know him to sell smaller quantities,
14 and, yes, I did, but --

15 Q. My question to you is, that is what he told Kemo;
16 correct?

17 A. He told Kemo --

18 Q. Exactly what you said there; correct?

19 A. He -- well, because he didn't like to because he
20 didn't make as much money, but he typically sold in higher
21 quantities because he could make more money. And I think he
22 even says that on the tape: You and I could make mad money.
23 But that's not to say he wasn't dealing in smaller
24 quantities, because Kemo knew he was. Kemo was buying from
25 Terrell Thomas, who was getting it from William Baskerville.

1 Q. I'm talking about William Baskerville's hand-to-hand
2 sales to Mr. McCray. Isn't it a fact that Mr. Baskerville
3 made it clear to Mr. McCray as you testified to, that he
4 does not sell gram quantities or ounce quantities, that he
5 wants to deal in 50 grams or more, and that he's doing this
6 as a favor to Mr. McCray? Isn't that what you testified to
7 under oath?

8 A. I -- how I am taking this is that he told Kemo that he
9 would rather, it's not that he didn't, but he would rather
10 sell in larger quantities, because, again, he can make more
11 money that way. He's not a -- he's more of a -- he's not
12 the street corner guy selling vials. I think that's what
13 he's trying to say. But that's not accurate. That's not
14 true.

15 Q. Now, you also had arrested, as you testified,
16 Mr. Hosten; correct?

17 A. Yes.

18 Q. When you were dealing with Mr. Hosten and Mr. McCray,
19 isn't it a fact that Mr. Hosten lived down the block from
20 Mr. McCray on Wainwright Street?

21 A. During part of the Baskerville case, that is true.
22 Kemo had moved, but initially he was living a couple houses
23 -- a couple apartments down from Hosten.

24 Q. And isn't it a fact, ma'am, that during the course of
25 the transactions with Mr. Hosten as well as Mr. Baskerville,

1 starting with Mr. Baskerville, that Kemo McCray had the cell
2 phone of Michael Brokos?

3 A. That is not true.

4 Q. Did Kemo ever use Michael Brokos's cell phone?

5 A. Yes, on one occasion.

6 Q. And isn't it a fact on that one occasion, he called
7 William Baskerville, and William Baskerville called him back
8 on that particular cell phone?

9 A. Yes, because we met Kemo and he forgot to bring his --

10 Q. If you could answer my question yes or no.

11 A. No, that is -- that is accurate, yes.

12 Q. And Michael Brokos's voice mail came out on that cell
13 phone; is that correct?

14 A. It says, This is Mike, leave a message.

15 Q. And as a matter of fact, William Baskerville
16 questioned Mr. McCray in reference to who was that white guy
17 on the cell that I called; correct?

18 A. I believe he said, What do you have, a cracker phone?
19 And Kemo played it off very well and said yes, I just got it
20 from a fiend. Meaning I sold something to a fiend, and
21 instead of payment, I got a phone, I got a cracker phone.

22 Q. Well, let's move on to Richard Hosten.

23 A. Okay.

24 Q. Mr. Hosten also called Mr. McCray, who had Michael
25 Brokos's cell phone; correct?

1 A. I do not recall that.

2 Q. Isn't it a fact that Mr. Hosten called Mr. McCray and
3 on the -- what happened was, isn't it a fact that
4 Mr. Hosten, Richard Hosten, a drug dealer, called Mr. McCray
5 back, and he got the cell phone of Michael Brokos, who
6 identified himself from the F.B.I.?

7 A. Michael -- I can tell you he has never identified
8 himself from the F.B.I. The message was, This is Mike,
9 leave a message. I do not have a memory of Hosten calling
10 that number while we were in a covert capacity. I don't
11 have a memory of that.

12 Q. Now, you had Mr. Baskerville and you had Mr. Hosten on
13 for the same day for their initial appearances; right?

14 A. They had their initial appearance the same day, yes.
15 I did not intentionally have it that way. That is how it
16 happened.

17 Q. That was how it happened. But you didn't have any
18 kind of separation -- you didn't ask for any kind of
19 separation orders of Mr. Hosten and Mr. Baskerville;
20 correct?

21 A. I can't recall if I asked -- I did -- I do think I
22 asked for them to be placed in separate holding facilities.
23 I do think I did ask for that.

24 Q. And you're about as sure about that as all your
25 testimony in this Court today; right?

1 A. Yes.

2 Q. Just about the -- and also about the cell phone, that
3 Michael Brokos never identified himself as an F.B.I. agent
4 on the cell phone during a -- during a drug transaction with
5 Kemo McCray and Richard Hosten; as you sit there today under
6 sworn testimony, are you telling us you didn't know about
7 that?

8 A. I don't know about that.

9 Q. Were you present during Mr. Hosten's testimony in
10 2007?

11 A. I was not.

12 Q. Were you present during Mr. Hosten's testimony in
13 2011?

14 A. I -- you know, I may have been. I -- I don't recall.

15 Q. Did you ever assist in preparing Mr. Hosten for his
16 testimony at any trial?

17 A. I did not for the Baskerville trial. For the -- I
18 don't believe I sat in for the proceeding last year.

19 Q. Now, you obtained evidence that both Mr. Hosten as
20 well as Mr. Baskerville on November 25th, the day of the
21 initial appearances, the first appearance in court of both
22 Mr. Hosten and Mr. Baskerville, that they identified
23 together that Mr. McCray was the informant; correct?

24 A. Yes, that is correct.

25 Q. Based upon their reading of the complaint and talking

1 to one another; correct?

2 A. Yes.

3 Q. And you knew that because Mr. Hosten was a cooperating
4 witness; right?

5 A. Yes.

6 Q. And isn't it a fact that you've debriefed Mr. Hosten
7 as a cooperating witness?

8 A. Yes.

9 Q. And are you telling us as you sit there that you --
10 Mr. Hosten never informed you any time that he was able to
11 tell that it was -- that Mr. McCray was the informant based
12 upon the telephone call, him returning the telephone call to
13 Mr. McCray wherein Michael Brokos's telephone identified him
14 as a Special Agent of the F.B.I.?

15 A. I -- you know, I don't have a memory of that. I know
16 when we were trying to locate Hosten, we had I think
17 provided -- Agent Michael Brokos had provided his attorney
18 with a phone number for his cell phone, and I have a vague
19 memory of Hosten saying, I knew that number looked familiar.
20 But I -- that's all I can tell you right now. I apologize.
21 I don't -- that's my memory.

22 Q. You don't have to apologize. Thank you.

23 Now, the initial appearance of Mr. Baskerville,
24 you testified to it with Mr. Minish, correct, on direct
25 examination?

1 A. What did I testify to?

2 Q. The initial appearance of William Baskerville.
3 Correct?

4 A. Yes.

5 Q. And you had a vivid memory of that; right?

6 A. Of the initial appearance?

7 Q. Yes.

8 A. Yes, I did.

9 Q. And you had a memory of Mr. Gay informing the judge
10 about the fact that there were audios, correct, recorded
11 conversations; right?

12 A. Yes.

13 Q. Videos; correct?

14 A. Yes.

15 Q. This particular case was essentially a simple and
16 typical drug transaction case; correct?

17 A. I don't know what you mean by that.

18 Q. Okay.

19 A. I mean, it was a clear-cut case, if that's what you
20 mean.

21 Q. Excuse me?

22 A. Clear-cut. I mean, the evidence was very compelling,
23 if that's what you mean.

24 Q. A clear-cut case. It involved an informant who would
25 call up the drug dealer; correct?

1 A. Yes.

2 Q. And setting up that meeting would be recorded;
3 correct?

4 A. Yes.

5 Q. And then he would be searched; right?

6 A. Yes.

7 Q. And after he was searched, he would be given money,
8 that is, marked money or recorded money; correct?

9 A. Yes.

10 Q. And then he would go up to the person that he's buying
11 the drugs from --

12 A. Yes.

13 Q. -- and he'd be surveilled from the time that he leaves
14 your position --

15 A. Yes.

16 Q. -- or the agent and law enforcement position --
17 correct?

18 A. Yes.

19 Q. -- until he walks up and meets with the person; right?

20 A. Yes.

21 Q. And then when he leaves the person, he'd be surveilled
22 from leaving that particular person; correct?

23 A. Yes.

24 Q. Until he gives the drugs to the law enforcement
25 officer; correct?

1 A. Yes.

2 Q. And out of six transactions here, six of them -- four
3 of them, excuse me, were videotaped; correct?

4 A. Yes.

5 Q. Now, you also had a recorder on Mr. McCray where you
6 actually record the conversation that he had with the drug
7 dealer as he's handing him the money and the drug dealer's
8 handing him, correct, the drugs?

9 A. Yes. Yes.

10 Q. Now, you testified about the fact that in this
11 particular case that the initial appearance occurred on
12 November 25th; correct?

13 A. Yes.

14 Q. And as a matter of fact, the detention hearing as to
15 whether to detain Mr. Baskerville or not was scheduled not
16 until December the 4th; correct?

17 A. Yes.

18 Q. Now, based upon your experience and your training,
19 correct, one of the things that can be argued -- and you've
20 been present during detention hearings; right?

21 A. Yes, I have.

22 Q. -- is the credibility of the informant, of the person
23 that's being dealt with; correct?

24 A. I have never been present for an argument about the
25 credibility of the informant.

1 Q. Well, you were present during the detention hearing in
2 this case; right?

3 A. Yes.

4 Q. And isn't it a fact that one of the arguments that I
5 made at that detention hearing was the credibility of the
6 confidential witness in this case, and I raised the fact
7 that he had a significant criminal history; right?

8 A. That the informant did?

9 Q. Yes.

10 A. I don't recall that.

11 MR. BERGRIN: May I approach the witness very
12 quickly, Judge?

13 THE COURT: Yes.

14 Q. I show you what's been marked Government Exhibit 2218,
15 dated December 4th of 2003. I ask you to look at lines one
16 through four, please.

17 MR. MINISH: What page is it on?

18 THE WITNESS: Page seven.

19 MR. BERGRIN: Page seven.

20 A. The alleged sales in this case were made to a
21 confidential --

22 THE COURT: Wait.

23 THE WITNESS: Oh, I'm sorry.

24 THE COURT: Is there a question pending?

25 MR. BERGRIN: Yes.

1 Q. Isn't the fact that I raised and argued at the
2 detention hearing the fact that the informant in this case
3 had a significant criminal history?

4 A. Yes.

5 Q. That was my question to you.

6 A. Yes, that is true.

7 Q. Thank you.

8 A. Okay.

9 Q. Now, you've testified in reference to William
10 Baskerville wanting to cooperate, or words to that effect,
11 you used; correct?

12 A. Yes, that is correct.

13 Q. And you said that William Baskerville told you in
14 order for him to cooperate, he would have to give up his
15 family; is that the words that you used? Or words to that
16 effect?

17 A. Not in order to cooperate, but if he does cooperate,
18 he's going to be cooperating against family members, yes.

19 Q. He said that he would be cooperating against family
20 members, his own flesh and blood; right?

21 A. Yes, that is correct.

22 Q. Now, William Baskerville didn't cooperate; correct?

23 A. He did not cooperate, that is correct.

24 Q. Now, I represented William Baskerville at the initial
25 appearance and the detention hearing; correct?

1 A. Yes, you did.

2 Q. And then I was out of the case in 2004; correct?

3 A. I believe November of 2004.

4 Q. November 2004. So from November 2004 until today's
5 date, February of 2013, William Baskerville has not
6 cooperated; correct?

7 A. We never sought his cooperation after that.

8 Q. And William Baskerville -- my question to you was,
9 William Baskerville never even attempted to cooperate from
10 November of 2004 until this time of 2013; correct?

11 A. I am not aware of him saying that he wanted to
12 cooperate, but at that stage, we were no longer interested
13 in his cooperation.

14 Q. My question to you is a simple question.

15 A. Yes.

16 Q. He never attempted to even cooperate from 2004 on,
17 correct, of November?

18 A. I am not aware of him attempting to cooperate.

19 Q. And Mr. Baskerville had two separate lawyers, correct,
20 besides myself, from November of 2004; correct?

21 A. He had the death penalty lawyer and the other lawyer,
22 Carl Herman and I think Kenneth Kayser. Yes. Two
23 attorneys.

24 Q. Two separate attorneys.

25 A. Yes.

1 Q. And in November of 2004, you did seek his cooperation
2 and you would have welcomed his cooperation; correct?

3 A. Absolutely not. I had gone back to Hudson County Jail
4 specifically a third time to ask if he would cooperate, and
5 he refused to see me. At that stage, it was clear to me
6 that he was not interested in cooperating.

7 Q. He was not interested in cooperating; correct? That's
8 what you just testified to; right?

9 A. I can't say because he refused to see me. My
10 interpretation is, he's not cooperating.

11 Q. All right. I'll move on.

12 MR. BERGRIN: Trying to speed it up, Judge. I'm
13 sorry.

14 THE COURT: That would be appreciated.

15 Q. Now, from the time of Mr. Baskerville's initial
16 appearance on November the 25th of 2003 until the time that
17 he had his detention hearing in 2003, December the 4th, the
18 evidence in this case, in the drug case, was still the same,
19 correct, the fact that Mr. Baskerville had made six
20 hand-to-hand transactions; correct?

21 A. The evidence was the same, but the way it was charged
22 changed during that time.

23 Q. Mr. Baskerville -- the evidence in Mr. Baskerville's
24 case remained the exact same; correct?

25 A. The evidence remained the same, yes.

1 Q. And the Guidelines that you talked about with
2 Mr. Minish and that you heard Mr. Gay speak about in court
3 are only Advisory Guidelines, they're not mandatory,
4 correct?

5 A. I believe at that time they were mandatory in drug
6 cases. I know they then changed to be advisory, but at that
7 time, I think they were mandatory.

8 Q. Now, you knew based upon your experience and training
9 as an agent, and the judge let you testify based upon your
10 experience and training, that anything over 50 grams and
11 you're facing a particular statutory sentence; correct?

12 A. If it's a conspiracy -- yes. I apologize. Yes.

13 Q. In the charging of Mr. Baskerville, he was charged
14 with four sales of approximately 26 to 28 grams apiece,
15 correct, in the complaint?

16 A. Yes, that complaint.

17 Q. Over 50 grams; right?

18 A. No, you can't aggregate it. It's a distribution
19 charge, so it has to be -- it's a standalone. So it's 28
20 grams. You can't add 28 plus 28 plus 28. We did not have
21 over 50 grams in them. Even the 50-gram buys were coming
22 back from the lab as, you know, 48.5, for example. So we
23 did not have over 50 grams.

24 Q. Are you telling us that your experience is that you
25 can't add up to have somebody charged with over 50 grams,

1 the four sales? Is that what you're telling us based upon
2 your experience?

3 A. Yes, Mr. Bergrin. Only in a conspiracy can you do
4 that. This was -- Mr. Baskerville was not charged in a
5 conspiracy. He was charged with distribution.

6 We then went back and charged him -- indicted him
7 in a conspiracy where he was charged with all of the drug
8 weight.

9 Q. Now, you talked about the standard operating
10 procedures for a drug case; correct? There were agents on
11 the street; correct?

12 A. Our protocol?

13 Q. Yes.

14 A. Yes.

15 Q. And there were agents that set up the recorder;
16 correct? Well, you set up the recorder; right?

17 A. Yes, I did, as it pertains to the Baskerville case,
18 yes.

19 Q. And one thing that you made sure is that Mr. McCray
20 did not operate the recorder, correct, turn it on, turn it
21 off. He didn't even know how to operate it; right?

22 A. Yes, that is correct.

23 Q. Because that's one thing that you would never allow is
24 to have one of your informants to be able to control the
25 recorder; correct?

1 A. That's not correct. In this case, I was operating it.

2 But that is not correct overall.

3 Q. Now, you talked about the protection, and you went
4 into pretty much -- you went through a lot of detail about
5 protecting Mr. McCray; correct?

6 A. I believe I explained how we talked to him about what
7 protection was afforded to him, yes.

8 Q. Right. At the time that this transaction went down,
9 multiple transactions were conducted, hand-to-hand sales, to
10 Mr. Hosten, a few houses away from where Mr. McCray lived;
11 correct?

12 A. At that time, during those transactions --

13 Q. You could answer my question. Transactions,
14 hand-to-hand transactions -- God bless you -- hand-to-hand
15 transactions occurred with Mr. McCray and Mr. Hosten a few
16 houses down from where Mr. McCray actually lived. Isn't
17 that a fact?

18 A. Where he once lived.

19 Q. Where he once lived on Wainwright Street; correct?

20 A. That is correct.

21 Q. With his family; correct?

22 A. Who? Kemo's family?

23 Q. Yes.

24 A. I believe he lived there with his girlfriend.

25 Q. His girlfriend.

1 And also, with Mr. Baskerville, you conducted
2 multiple transactions at Mr. McCray's house or in front of
3 his house, correct, in his driveway or in front of his house
4 on Wainwright Street.

5 A. On Wainwright, it was in front of the apartment
6 building where he lived, and on the second Wainwright
7 address, that was not where he was living. That was a house
8 where he spent time, but he's not living in that house, the
9 17 Wainwright address.

10 Q. Now you talked about a Terrell Thomas, right?

11 A. Yes.

12 Q. And you talked about the fact that Terrell Thomas was
13 Mr. Baskerville's partner. Isn't that what you stated?

14 A. I believe he -- I don't think I would have said
15 partner. I believe he --

16 Q. They had a working relationship; correct?

17 A. Mr. Baskerville supplied Terrell Thomas, yes.

18 Q. Correct. They had a working relationship; right?

19 A. Yes.

20 Q. You knew at the time of this investigation that
21 Terrell Thomas's girlfriend was -- excuse me, Terrell
22 Thomas's first cousin was Mr. McCray's girlfriend; correct?

23 A. Yes.

24 Q. And you knew that Terrell Thomas was close and had a
25 good relationship with William Baskerville; correct?

1 A. I can't say that. I can say that William Baskerville
2 supplied Terrell Thomas, but I can't say that they had a
3 close personal relationship.

4 Q. Well, they worked together; right? Will you admit
5 that, that they worked together?

6 A. They're business associates, yes.

7 Q. Business associates.

8 Now, you also talked about the fact that Kemo had
9 another girlfriend that lived on Bradley Courts; correct?

10 A. Yes.

11 Q. And you knew that Bradley Courts was a high narcotic
12 area, correct, for distribution, for drug dealers to be
13 hanging out; correct?

14 A. Yes, that is correct.

15 Q. And Mr. McCray was also going there to see his
16 girlfriend, correct, and living with her part time; right?

17 A. There were times where he would stay with her at
18 Bradley Court, yes.

19 Q. And you also knew that Abdul Williams's crew, who was
20 associated with Hakeem Curry, Rakim Baskerville, William
21 Baskerville, controlled Bradley Courts for narcotic
22 distribution; correct?

23 A. Yes.

24 Q. Now, Bradley Court is an area that's patrolled heavily
25 by law enforcement officers; right?

1 A. Yes.

2 Q. Did you ever ask any law enforcement officers to look
3 out for Mr. McCray?

4 A. I did not because at the time we were aware of the
5 threats, he told me that he would no longer stay there, he
6 told me that he would live with his stepfather in East
7 Orange.

8 Q. But you had information, isn't it a fact, from
9 Lakeisha Wilson especially, his girlfriend, Mr. McCray's
10 girlfriend --

11 Q. Yes.

12 A. -- that he was visiting her at Bradley Court and
13 staying with her; isn't that a fact, ma'am?

14 A. Yes, that is true.

15 Q. Thank you.

16 And you knew that he was frequenting that area on
17 a regular basis; correct?

18 A. I did not learn that until after the murder.

19 Q. Now, you also knew the fact that Mr. McCray was being
20 watched as he went to Bradley Court and as he was in the
21 area of Bradley Court; correct?

22 A. I learned that after the murder. I knew it.

23 Q. Isn't the fact that Lakeisha Wilson called you and
24 told you and Mr. McCray also called you and told you that he
25 was being watched and he had altercations before the murder,

1 Ms. Manson -- Brokos?

2 A. Yeah, there's two separate things. I thought you were
3 referring to what Anthony Young told me after the murder,
4 but Lakeisha --

5 Q. No, we're not talking about Anthony Young, so you
6 could not have misunderstood that.

7 Isn't it a fact that you had knowledge, specific
8 knowledge of actionable threats against Mr. McCray before he
9 was murdered?

10 A. Oh, absolutely. I had spoken to Kemo's mother in
11 February, middle of February, before the March murder,
12 telling me she spoke to Keisha, Lakeisha Wilson, who said
13 that individuals had come into Bradley Court looking to kill
14 Kemo because he was a snitch. So, yes, I knew they were
15 looking for him. I don't -- I can't say they were watching
16 him, but I knew they were certainly looking for him with the
17 intent to kill him because he was a snitch.

18 Q. And you also knew that Mr. McCray was being watched as
19 of February 24th from Mr. McCray's mouth; correct?

20 A. I know he had an encounter with Rakim Baskerville.

21 Q. Correct.

22 A. Yes. I can't say he was being watched. I'm just not
23 comfortable with that. But they had an encounter on the
24 street where Rakim stared down Kemo.

25 Q. Stared down Kemo; correct?

1 A. Yes.

2 Q. And that was weeks before the homicide in this case;
3 correct? February the 24th of two thousand- --

4 A. Right, some two weeks before the homicide.

5 Q. Two weeks before the homicide.

6 A. Yes.

7 Q. So you had multiple individuals informing you that
8 Mr. McCray is being sought after, watched, and looked at,
9 from December -- during December, during January and during
10 February; correct?

11 A. That is correct.

12 Q. Now, you also obtained information that Mr. McCray was
13 out on the streets in high narcotic areas distributing
14 narcotics; correct?

15 A. At what -- what time are you talking about?

16 Q. About this same time, at the end of February of 2004,
17 before his murder.

18 A. I did not have information that he was selling out on
19 the streets.

20 Q. Are you telling us that you didn't have information
21 that Mr. McCray was dealing heroin, crack, and cocaine since
22 January of 2004? Is that sworn testimony by you?

23 A. You had asked me during the time frame of I believe
24 December --

25 Q. I'm asking you --

1 A. I'm just trying to make sure I get this correct. We
2 had taken a statement from Kemo in February where he
3 admitted to us that prior to this time period we're talking
4 about that he had been dealing narcotics behind our back.

5 Q. In the areas of high narcotic distribution and the
6 areas of high danger, January and February, he was dealing
7 narcotics in those particular areas, correct, heroin, crack
8 and cocaine.

9 A. I don't believe it was in January or February. I
10 believe in the statement, he says -- back when he was living
11 at 14th and Madison. But I can look at his statements, I
12 mean. I have it.

13 Q. You have his statement; correct?

14 A. I believe I do. If you just give me a second, I think
15 I can find it.

16 Yes, I have -- I do have his statements.

17 Q. When was Mr. McCray terminated as an informant from
18 the F.B.I.?

19 A. I believe -- you know, I -- end of January, early
20 February is when we discovered --

21 THE COURT: All right. All we need --

22 THE WITNESS: Sorry.

23 THE COURT: It calls for a date.

24 A. I don't have an exact date, but it's end of January,
25 early February 2004.

1 Q. And you terminated him based upon the fact that he was
2 not only distributing narcotics, correct, but he had stole
3 money from the F.B.I.; correct?

4 A. Yes.

5 Q. He had stolen money from the F.B.I. It's a simple
6 question.

7 A. I just want to -- I'm trying to be accurate,
8 Mr. Bergrin, that he had stolen the courier fee and had
9 misrepresented to us that there was a conspiracy when there
10 wasn't a conspiracy.

11 Q. So he was -- as your reliable informant, as you
12 testified, he was trying to frame two individuals for a
13 conspiracy that they didn't commit; correct?

14 A. He -- they were both selling drugs --

15 Q. No, my question to you is, he was framing two
16 individuals for a conspiracy that they were not involved in,
17 a conspiracy to distribute narcotics; correct?

18 A. Yes, he was trying to portray that there was
19 conspiracy when, in fact, there was not a conspiracy.

20 Q. There was not a conspiracy.

21 And also the distribution of narcotics and also
22 the theft of the money; correct?

23 A. What's the question, did I terminate him based on
24 that?

25 Q. Yes.

1 A. Yes, I terminated him based on all of those factors,
2 yes.

3 Q. Now, you said that Mr. McCray -- you tried to make
4 Mr. McCray safe. That was your testimony with Mr. Minish in
5 direct examination yesterday; correct?

6 A. Yes. Absolutely, yes.

7 Q. Now, you told us that he went to move to the border of
8 Newark and East Orange; right? That's how safe you tried to
9 make, that he moved to the border of Newark and East Orange.

10 A. Mr. Bergrin, I tried at great lengths to keep Kemo
11 safe and relocate him. I talked to him several times. I
12 brought him to the U.S. Attorney's Office to plead with him
13 to either go into Wit Sec or to relocate. It was his choice
14 to move to what he considered a far away enough place in
15 East Orange. I did not agree with that. I did not support
16 it. But that was Kemo's choice.

17 Q. You didn't put Mr. McCray under surveillance; correct?

18 A simple yes or no answer: Did you put Mr. McCray
19 under surveillance ?

20 A. I did not.

21 Q. You didn't arrest Mr. McCray to take him off the
22 streets for his drug distribution, his theft, or for his
23 conspiracy -- for his false allegation of a conspiracy;
24 correct?

25 A. We were in the process -- when I say "we," myself

1 along with the A.U.S.A.s were in the process of figuring out
2 how to charge Kemo.

3 Q. It takes about 15 minutes to figure out how to charge
4 somebody. You were in the process since the end of January?
5 Is that what you're telling us? Since the end of January,
6 to the time of his death? You were in the process for
7 almost two months?

8 A. I disagree with your assertion that it takes 15
9 minutes. I'd like to think we have a lot more evidence than
10 that, than something that can be done in 15 minutes. But
11 what I am saying is, I was talking with the A.U.S.A.s. This
12 is their decision on how to charge. I presented them with
13 Kemo's three-or four-page statement on all the things that
14 he had done, and the lies. It was up to them to figure out
15 how to charge him. I did not know. I was relying on them
16 to tell me that we have decided we are going to charge him
17 either with false statements. I don't know. And then as
18 soon as there is a decision, I would have arrested
19 Mr. McCray. It never got to that point.

20 Q. The bottom line was that Mr. McCray wasn't charged
21 from the end of January, ever, correct, when you had found
22 out that he committed all these offenses --

23 A. That is correct.

24 Q. -- while under your watch as your handler; right?

25 A. He was not charged. Yes.

1 Q. Now, do you consider Johnny Davis a distant relative
2 of Mr. McCray?

3 A. No. He's his -- he's his stepfather.

4 Q. Do you know, then, why you submitted a report to your
5 superiors that the agents had Mr. McCray moved to a distant
6 relative's house?

7 A. That is how he explained Mr. Davis to me. Kemo used
8 those words. I would not use those. I would have not
9 chosen those words.

10 Q. So you put the words of Kemo -- is what you're telling
11 us under sworn testimony that you put the words of Kemo into
12 your report that Mr. McCray was relocated to a distant
13 relative's house? Is that what you're telling us?

14 A. Yes, that's what Kemo told us, that he's going to live
15 with a distant relative in East Orange, and we asked who it
16 was and he said his stepfather. At that time, I didn't know
17 how close he was or not with Mr. Davis. He also had another
18 stepfather.

19 Q. But you did know that Mr. Davis was his stepfather.

20 A. Yes, I did know that.

21 Q. Now, prior to the homicide and the death of
22 Mr. McCray, ma'am, you knew that he had been located,
23 correct, by individuals that were looking and seeking to
24 find him. Isn't that a fact?

25 A. I know he had been spotted, if you're talking about

1 that.

2 Q. Yes.

3 A. By -- yes. That doesn't mean located at a place where
4 he was staying, but he had been spotted.

5 Q. Well, he had been staying at that time at least four
6 to five days a week in Bradley Court; correct? Many days a
7 week. And you don't have to lock yourself in. He was
8 staying multiple days a week with his girlfriend in Bradley
9 Court; right?

10 A. I know he was staying with her. I don't know how
11 frequently.

12 Q. Now, you testified yesterday that you were paying Kemo
13 approximately a thousand dollars a month; right?

14 A. Initially, it was a thousand dollars a month, and then
15 I believe it went up to \$1,500 a month.

16 Q. And you base that upon his living expenses that you
17 went through for him; correct?

18 A. Yes, we sat down together and went through what his
19 living expenses were at that time.

20 Q. And he told you how much he's paying for rent, which
21 was approximately \$800; right?

22 A. I believe it was maybe seven-fifty. I don't recall.

23 Q. And then you add utilities, gas, electric, telephone,
24 cable, groceries, and child support; right?

25 A. I believe everything was included in the rent, and

1 then --

2 Q. And the money that was being paid by the F.B.I. met
3 his expenses per month; correct?

4 A. According to him. This is what he's telling me what
5 he can live on, what is feasible for him to live on, and
6 that's what we provided to him.

7 Q. Now, when you testified previously, you said that he
8 was only being paid a thousand dollars a month and that was
9 just enough for him to survive; correct?

10 A. That was enough to cover his living expenses. I don't
11 -- I mean, that is what he represented to me that he needs
12 on a monthly basis to make ends meet.

13 Q. Now, you also knew that he had, once he covered his
14 living expenses, that he had absolutely no extra money such
15 as for any other additional expenses; correct? Isn't that a
16 fact?

17 A. Mr. Bergrin, I was relying on him to give me this
18 information. I don't come up with that figure. I rely on
19 him to provide me what is accurate. If he would have told
20 me it was \$1,500, I would have paid him \$1,500, and, in
21 fact, he did come to me and said, I need more. So we made
22 it \$1,500. But I'm only paying him based on what he
23 represents to me that he needs.

24 Q. You also knew that Mr. McCray was using cocaine;
25 correct?

1 A. I did not know that.

2 Q. You were with him as his handler almost on a daily
3 basis according to you; correct?

4 A. Yes, and I had no -- there was no indication to me
5 that he was using cocaine. Absolutely none.

6 Q. But you later found out that he was using cocaine;
7 right?

8 A. I learned for the first time that in the autopsy
9 report, there was a mention that traces -- I don't know the
10 drug, but it's a drug associated with cocaine, had been
11 found in either his blood or his urine.

12 Q. So you had no idea that Mr. McCray was dealing three
13 different type of drugs, heroin, crack, and cocaine, is that
14 right, because you had no idea whatsoever during the time
15 that you were handling him, right?

16 A. No, that's not true. We had heard at one point that
17 he was dealing when he was living at 14th and Madison, and I
18 had information, sources telling me that he was dealing in
19 that area.

20 Q. And you did nothing to confirm that, correct?

21 A. I attempted to confirm it. I was not able to confirm
22 it until I took his statement, at which time he admitted it
23 to me.

24 Q. Several months later, right, after you found out that
25 he was stealing money and that he had lied about two

1 individuals. Not till that time; right?

2 A. When he was living in -- yes, it was around the time,
3 it kind of all -- it came together around the same time.

4 Q. At least two months after he had been involved with
5 the narcotic distribution trade.

6 A. Yes. Yes.

7 Q. Now, I just want to talk to you about a reference to
8 how Kemo became an informant with you.

9 You talked about the fact that you received
10 information yesterday in your direct testimony from a
11 Christopher Spruel, from an informant, right, by the name of
12 Christopher Spruel that Kemo had a gun at the house, a
13 shotgun; right?

14 A. Yeah.

15 Q. A sawed-off shotgun; right?

16 A. Yes.

17 Q. And you knew that Mr. McCray was not entitled to have
18 a sawed-off shotgun or any weapon based upon the fact he had
19 a robbery conviction; correct?

20 A. Yes.

21 Q. Drug conviction; correct?

22 A. No, no drug conviction. He had --

23 Q. Armed robbery?

24 A. He had an armed robbery conviction, and he had an
25 escape conviction. He had a drug arrest, but it was

1 dismissed.

2 Q. Now, you went to the house with the purpose of turning
3 Mr. McCray into an informant; isn't that a fact?

4 A. I was hoping to be able to cultivate him into an
5 informant, but I also went with the purpose to get that gun
6 off the street. So it's twofold.

7 Q. Your twofold objective was to make Mr. McCray into an
8 informant; correct?

9 A. I was hoping to -- yes, I was hoping that he would
10 agree to become an informant, but I was also getting a gun
11 off the street.

12 Q. You went to where Mr. McCray lived, and he lived at
13 the time with one Delphine Smith; correct?

14 A. I don't believe he was living there. He was --

15 Q. Staying there.

16 A. He may have been staying there. I don't think --
17 actually, I don't even know if that's accurate. I knew he
18 would be there the time I went, but I don't know if he was
19 staying with his girlfriend in Irvington. But I knew the
20 home was Delphine's home and his sister's home.

21 Q. And when you went to the house, Delphine Smith was an
22 informant of yours at the time; correct?

23 A. Let me just think of the dates.

24 She was never officially an informant, you know,
25 on the books, but yes, she was an informant.

1 Q. She was an informant of yours. Whether she's on the
2 books or she's off the books, she was an informant of yours;
3 correct?

4 A. I'm sorry, there's a big distinction, in my mind, at
5 least. She provided us with information --

6 Q. And she got paid for providing you with that
7 information; right?

8 A. It wasn't until after that she helped us in a
9 kidnapping case for which she got paid. She helped us
10 recover a two-week-old infant who had been kidnapped. So
11 she got paid for that. But that was in -- that was after
12 approaching -- that was in '03, that was in December of '03,
13 I believe.

14 Q. But she had been providing information to the F.B.I.
15 before that, right, relating to Kemo.

16 A. I don't believe she had been providing information. I
17 know Christopher Spruel had, and that was her boyfriend at
18 the time. Delphine had not really provided us with
19 information. My memory is -- I remember the kidnapping
20 clearly, but --

21 Q. When you went to the house, you spoke to Ms. Smith,
22 Delphine Smith; right?

23 A. Yes, I did.

24 Q. And isn't the fact that you knew that the gun was not
25 Ms. Smith's, Delphine Smith's?

1 A. Yes. Yes.

2 Q. But isn't it the fact that you told Delphine Smith
3 that you're going to arrest her and charge her, even knowing
4 that the gun is not hers and she's innocent, you were ready
5 to arrest her and charge her in order to get Mr. McCray to
6 cooperate with you; isn't that a fact?

7 A. If she was going to tell me that --

8 Q. Well, you can answer the question yes or no.

9 A. If she was -- yes, if she was going to make an
10 official statement to me that that gun was hers, then I
11 explained to her that I would have to charge her because she
12 did not have legal authority to own that gun.

13 Q. When you went to the house, you seized the gun;
14 correct?

15 A. Yes, I did.

16 Q. And the gun was in the location that Mr. Spruel told
17 you where the gun was; right?

18 A. Yes, it was.

19 Q. And you asked Delphine who the gun belonged to;
20 correct?

21 A. Yes.

22 Q. And she told you that the gun was hers; right?

23 A. Yes. Yes, she did. She claimed that the gun was
24 hers, yes.

25 Q. You knew that was a lie, that the gun wasn't hers;

1 right?

2 A. Yes.

3 Q. You tried to talk to Mr. McCray, right, Kemo; right?

4 A. Yes, I did.

5 Q. And Mr. McCray ran out the back door; right?

6 A. Yes, he did.

7 Q. And when Mr. McCray ran out the back door, you then
8 told Delphine that you're going to arrest her and charge her
9 unless Mr. McCray comes in and speaks to you, correct, and
10 admits that the gun is his. Isn't that a fact? You told
11 her that -- let me finish the question -- you told her that
12 you would charge her unless her son comes in. Isn't that
13 what you told her?

14 A. I explained to her that if she was going to maintain
15 that this gun was hers that I would have to charge her for
16 that.

17 Q. Even knowing that she's an innocent woman?

18 A. I did not believe the gun to be hers, absolutely, and
19 that's why I was asking her, just come clean, tell us whose
20 gun this is. And that's what she did. They came down to my
21 office, she brought Kemo down to my office, and he said yes,
22 this is my gun.

23 Q. Now, Kemo at the time that he came down to your office
24 was what they call a career criminal, right? He had the
25 multiple convictions, the escape, and he had the armed

1 robbery with the gun.

2 A. Are you referring to a career offender?

3 Q. Career offender.

4 A. I don't know if I can say that. I think you have to
5 have two prior crimes of violence, and I just don't know if
6 the escape counts. Obviously the armed robbery would count.
7 I don't know about the escape.

8 Q. But Mr. McCray came down to you and he confessed, he
9 completely confessed that the gun was his; right?

10 A. Yes, he did.

11 Q. Now, you proposed that -- you brought it to the U. S.
12 Attorney's Office, as you testified yesterday; right?

13 A. Yes, I did.

14 Q. And the decision was made not to prosecute Mr. McCray;
15 right?

16 A. Yes, it was.

17 Q. Now, you never informed Mr. McCray that he was not
18 being charged with any criminal offense; isn't that a fact?

19 A. I explained to him --

20 Q. No, my question to you is a very simple one. Okay?

21 You never informed Mr. McCray that a decision had
22 been made that he's not being charged with any criminal
23 offense. You let him believe that he may be charged with
24 the crime of being a felon in possession of a sawed-off
25 shotgun gun. Isn't that a fact? Isn't that a fact, Agent?

1 A. I can answer that in two parts. One, I did not inform
2 him of the prosecutor's decision, but I did not lead him to
3 believe, I told him, I explained to him that the likelihood
4 of him being charged with that was not good, but I did not
5 ever tell him with certainty that he would not be charged,
6 because that's just not the case.

7 Q. So he had the charges over his head; correct?

8 A. He --

9 Q. He had the charges --

10 A. Yes.

11 Q. You made him believe --

12 A. Yes.

13 Q. -- that he had the charges over his head.

14 A. I explained to him that it was not likely that he
15 would be charged, but if he had gone south on us or decided
16 not to cooperate or --

17 Q. Not cooperate, right?

18 A. -- or get involved in another crime, then that
19 evidence was out there, and that we could go back and
20 revisit charging him.

21 Q. So you used the criminal offense, knowing that he's
22 not going to be charged, to get Mr. McCray to cooperate;
23 correct?

24 A. He voluntarily cooperated, Mr. Bergrin. I explained
25 to him that there's a chance that he could be charged with

1 this. It was his decision to voluntarily cooperate. He
2 could have gone to trial against us.

3 Q. You knew that -- you knew that he wasn't going to be
4 charged because a decision had been made not to charge
5 Mr. McCray; right? Even though he confessed?

6 A. Yes.

7 Q. Even though he ran out; correct?

8 A. Yes. No, that is correct, yes.

9 Q. Thank you.

10 And before he confessed, you made him believe that
11 his mother was going to be arrested and charged with a
12 criminal offense.

13 A. I didn't want to believe. I explained to him that his
14 mother had given me a statement that was her gun.

15 Q. And that his mother is going to be charged for a crime
16 that you knew his mother had absolutely nothing to do with.

17 A. I explained to him that his mother was taking the
18 weight for him.

19 Q. You could answer my question. You told him that his
20 mother's going to be charged with a crime that you knew that
21 she was innocent of unless he confesses; correct?

22 A. I couldn't have told him that because I didn't even
23 know if she was going to be charged. I could tell him that
24 she had made a statement that the gun was hers and she was
25 taking the weight for him, but I had no indication that she

1 was going to be charged. A charging decision is something
2 different.

3 Q. Did you ever tell a jury that the possession of the
4 shotgun of Mr. McCray was not a Federal crime?

5 A. I did not -- no -- I don't believe I said that, no.

6 Q. I ask you to turn to your April 4th, 2007 testimony,
7 you have a copy of it in front of you, and turn to page
8 3094.

9 A. Oh, Baskerville?

10 Q. Yes, ma'am.

11 A. April 7th?

12 Q. April 4th, ma'am.

13 A. And the page?

14 Q. At 3394, please.

15 A. Okay.

16 Q. Did you ever -- my question again to you, you just
17 said you just denied that you ever said that to a jury, that
18 the possession of the gun by Mr. McCray was not a Federal
19 crime. Did you ever tell that to a jury?

20 MR. MINISH: What line?

21 MR. BERGRIN: It's page 3394.

22 A. Okay. I think I know what you're referring to.

23 "We weren't certain whether or not we would charge
24 this because it wasn't a Federal crime"?

25 Q. Yes.

1 A. Okay. What I was --

2 Q. It's actually line six.

3 A. Right.

4 What I'm referring to there was, I can't simply
5 charge Kemo without knowing he's in possession of this
6 weapon, so simply having a weapon in the house is not enough
7 evidence for me to charge Kemo. I have to show that he is
8 in possession of that weapon.

9 Q. You told the jury that you did not know whether it was
10 a Federal crime. You had a confession, a signed confession
11 by Mr. McCray saying that he was in possession of the gun,
12 isn't that a fact, a fact that you can't deny, a confession
13 dated March 29th of 2002?

14 A. I -- that is a fact, but the issue --

15 Q. Thank you. That was my question.

16 You also told the jury that the reason that
17 Mr. McCray was not being charged is because there was not
18 enough evidence to charge him. Do you remember saying that?

19 A. Yes, I do. And there's a reason for that, if I can
20 explain.

21 Q. You had a confession; correct?

22 A. I had a confession from a mother.

23 Q. And a confession from a son, dated March 29th of 2002;
24 right?

25 A. I had a -- yes, and from his sister.

1 Q. And from his sister.

2 A. Yes.

3 Q. Let me go on. Let me ask my question, please.

4 A. Okay.

5 Q. You had him fleeing and running out the back door
6 before he confessed; right?

7 A. That is not evidence of a crime.

8 Q. That is evidence of a state of mind, though, isn't it
9 a fact, ma'am, based upon your experience of being an agent
10 for 18 years? You know that flight is evidence of state of
11 mind of guilt.

12 A. I'm not aware of that in the Federal system. That
13 might be in the state system, but in the Federal system, I'm
14 not aware of that.

15 Q. You had the fact that you seized the weapon in the
16 exact location that Mr. Spruel told you it was in; correct?

17 A. Yes.

18 Q. And you had Mr. Spruel as a witness to the fact that
19 Mr. McCray was in possession of the weapon; correct?

20 A. Yes.

21 Q. But you didn't have enough evidence.

22 I'll move on, ma'am.

23 A. Mr. Bergrin, if I can explain, I am being told this by
24 the United States Attorney's Office. I do not make the
25 charging decisions. They do. I have been told that it is a

1 weak case, and the reason it was a weak case is because you
2 had the statement of a mother and a sister against their son
3 or brother, and the U.S. Attorney's office felt that it was
4 a weak case.

5 THE COURT: How much longer are we going to be,
6 Mr. Bergrin?

7 MR. BERGRIN: A little while, Judge, please.

8 THE COURT: All right. First of all, I'd like to
9 see counsel at sidebar.

10 (The following takes place at sidebar)

11 THE COURT: I've got to tell you, I'm not positive
12 where all of this last hour's testimony, where it's going or
13 what it's for.

14 What were we doing here for this last hour?

15 MR. BERGRIN: Establishing credibility issues,
16 Judge, that I'm going to tie up toward the end.

17 THE COURT: Except the credibility issues -- the
18 problem that I'm having here is, you accuse her of things
19 that you think are incredible, and she has logical,
20 reasonable answers.

21 I mean, this is why we're taking so much time. I
22 don't know where this last hour got us in moving this case
23 forward, or whether we gained anything.

24 We can't keep doing this.

25 MR. BERGRIN: Judge, can I explain?

1 THE COURT: I will acknowledge, Mr. Levy, that's a
2 good point. This witness is doing a lot of explanation, and
3 I would ask that the prosecutor maybe talk to her and try to
4 confine her answers to the questions.

5 I recognize, and on some of the ways that these
6 questions were asked, they needed some explanation, but
7 there have been a number of occasions when a simple yes or
8 no or a date would have done and an explanation followed. I
9 don't want that to continue.

10 So, Mr. Gay, why don't you talk to her real
11 quickly, then get her in here, and let's get moving.

12 Get the jury.

13 We're going to go to 4:15, gentlemen.

14 THE COURT CLERK: All rise.

15 (The jury enters)

16 THE COURT: Okay. You can be seated.

17 (The witness resumed the stand.)

18 THE COURT: Okay. Mr. Bergrin, continue.

19 MR. BERGRIN: Thank you, sir.

20 BY MR. BERGRIN:

21 Q. Now, you testified, from November the 25th of 2003
22 until the death of Mr. McCray, isn't it a fact that the
23 threats against him never subsided?

24 A. Yes, that is a fact.

25 Q. Now, on March the 3rd of 2004, the day after

1 Mr. McCray was killed, you testified you went to see

2 Mr. Baskerville at the Hudson County Jail; correct?

3 A. Yes, I did.

4 Q. And you informed him that he's facing a murder charge
5 and potentially the death penalty; correct?

6 A. I -- yes.

7 Q. And you said that the blood drained out of his face;
8 was that your testimony?

9 A. Yes, it was.

10 Q. As a matter of fact, you once testified that he turned
11 to you as white as a ghost; isn't that the words that came
12 out of your mouth? He turned completely white, went from
13 brown-skinned to white. Is that what you said?

14 A. My testimony was that he turned white. I said not
15 white as a ghost, I recognize that's an expression, but he
16 did turn white, meaning the blood drained from his face.

17 Q. As a matter of fact, your exact words were, he turned
18 white as a ghost; correct?

19 A. I -- you know, I don't know. I can look at my prior
20 testimony. I think I meant -- I think I was using that as a
21 reference to not literally white as a ghost, but that he
22 turned white. I can look at my testimony if you want. But
23 regardless, he turned white. All the blood drained from his
24 face.

25 MR. BERGRIN: Trying to shoot through just to get

1 to material objects, Judge.

2 Q. Now, on March the 2nd, you went to the home of
3 Mr. John Davis; correct?

4 A. Yes, I did.

5 Q. And Mr. John Davis asked you to leave; correct?

6 A. Yes, he did.

7 Q. And isn't it a fact that -- why did you go to his
8 home?

9 A. To speak to him to see what he knew about what had
10 happened.

11 Q. Isn't it a fact that you testified previously that you
12 went to Mr. Davis's home to inform the family of the death
13 of Kemo McCray? Isn't that the words that came out of your
14 mouth?

15 A. That may be. I went to talk to them to make sure that
16 they knew and to see if they had any information. So some
17 family could have been informed. Mr. Davis was obviously
18 with Kemo when he was killed. But I went to talk to him
19 about the fact that he had been killed.

20 Q. You knew that Mr. Davis had been taken to the homicide
21 squad; correct?

22 A. Yes.

23 Q. And you knew that Ms. Smith, Delphine Smith, the
24 mother of Mr. McCray, had called you to tell you that her
25 son had been shot and killed; correct?

1 A. Yes.

2 Q. So when you testified previously, you weren't telling
3 us the truth, that you went there to inform them that their
4 son had been killed. Isn't that a fact, ma'am?

5 A. I would disagree with that, Mr. Bergrin. I didn't
6 know if the entire family had been informed, namely, his
7 three-year-old son.

8 Q. You went there to search the house; right?

9 A. That is absolutely incorrect, Mr. Bergrin.

10 Q. Now, in your investigation of this case, you knew that
11 William Baskerville was supplied drugs from a lot of people;
12 correct?

13 A. Yes.

14 Q. And as a matter of fact, you tried to make him this
15 big member of the Hakeem Curry organization. Isn't that
16 essentially how you tried to portray William Baskerville?

17 A. Mr. Baskerville made himself a big member of the Curry
18 organization.

19 Q. But isn't it a fact that William Baskerville had very
20 little to do with Hakeem Curry and Hakeem Curry's drug
21 distribution? Isn't that a fact?

22 A. That is not a fact.

23 Q. Isn't it a fact you testified that William Baskerville
24 only bought drugs from Hakeem Curry from time to time, that
25 his main suppliers were Bo Quaadir (ph), Rassoul's

1 brother-in-law, and Jerome Hardy? Isn't that words that
2 came out of your mouth? Isn't that words that came out of
3 your mouth?

4 A. I believe that I said that Jerome Hardy was a
5 supplier, and I do agree with you that I said Curry supplied
6 him from time to time. He had many different suppliers, but
7 that did not take away from the fact that he was part of the
8 Curry organization.

9 Q. Based upon your investigation and your knowledge in
10 this case, isn't it a fact that William Baskerville and
11 Hakeem Curry interacted very minimally in the drug
12 distribution?

13 A. I can't say that.

14 Q. You can't say that, and isn't it a fact that the
15 D.E.A. did the investigation on the Curry case as compared
16 to you?

17 A. Yes, they did.

18 Q. Now, on November the 25th of 2003, there was an
19 allegation that I met with Anthony Young, Hakeem Curry, and
20 Rakim Baskerville; correct?

21 A. Yes.

22 Q. And then Anthony Young changed that allegation to say
23 that the meeting was four to five days after, correct --

24 A. Yes.

25 Q. -- William Baskerville had been arrested; correct?

1 A. Yes.

2 Q. And then he gave a third version in saying that the
3 meeting occurred up to nine days later; correct?

4 A. I believe that is correct.

5 Q. Now, you're familiar with the area of 17th Street and
6 Avon Avenue; correct?

7 A. Yes, I am.

8 Q. And that's a high-narcotic, high-crime area?

9 A. Yes, it is.

10 Q. And it's patrolled extensively by Newark police, task
11 force, State Police, Bureau of Narcotics, Sheriff's
12 Department, all different law enforcement agencies; correct?

13 A. I can't speak to what they control, but it certainly
14 -- law enforcement certainly recognized it as a high drug
15 area. I can't tell you what they do, you know, how they
16 patrol it, but yes, there is a presence out there.

17 Q. And you had no evidence independent of Anthony Young
18 that I met with any of these individuals on November 25th at
19 night; correct?

20 A. I do not have any other witnesses out there who can
21 corroborate that.

22 Q. Now, you also -- Mr. Young also told you different
23 locations as to the meeting with me; correct? First he said
24 it was 16th Street and Avon Avenue to you; correct?

25 A. Yes.

1 Q. Then he told you it was on 17th Street and Avon
2 Avenue; correct?

3 A. Yes, he did.

4 Q. And Mr. Young changed five times who was present at
5 the meeting; correct?

6 A. I don't know if he changed them. I know at different
7 times, it seemed that --

8 Q. He added people and took people away?

9 A. Yes, I was going to say he added people. I don't know
10 that he took them away, but I think as his memory came back,
11 he added people.

12 Q. He added people; correct?

13 A. That is my memory, yes.

14 Q. And his memory changed almost every time he talked
15 about what occurred at that meeting; correct?

16 A. His memory never changed. The words from that meeting
17 never changed from day one.

18 Q. The words never changed from day one. You're about as
19 sure about as that as everything that you've said; correct?

20 A. Yes, I am. No Kemo, no case.

21 Q. And you heard him testify in this particular case, and
22 you've read all the transcripts, right?

23 A. I have not read all the transcripts. I have heard him
24 testify. I did not hear him testify in Baskerville. I
25 heard him testify in last year's proceeding.

1 Q. And as you sit here today, you're about as sure about
2 that as everything in your case, correct, in this case?

3 A. That I heard him testify?

4 Q. No. That his words never changed.

5 A. I am sorry, Mr. Bergrin. I meant your words, his
6 words to me regarding your words.

7 Q. You're talking about my words to him.

8 A. He initially said No Kamo -- I apologize. He said
9 that you said No Kamo, no case, and then gave a thumbs up.

10 Q. Then he changed it to No Kemo, no case?

11 A. No Kemo, no case, yes.

12 Q. And then he changed it to where there was no thumbs
13 up; correct?

14 A. Well, I think there was some discussion whether it was
15 a thumbs up or just pointing like this. I think that's just
16 the expression. You describe it as a thumbs up or a (the
17 witness makes a clicking sound) -- type thing.

18 Q. And then he changed it from who I talked to, correct,
19 from one time to the other; right?

20 A. I believe it was always clear that you were saying
21 that to Curry, to Mr. -- to Anthony Young, and to the others
22 that he named that were out there.

23 Q. Well, we went through your -- we went through your
24 302 --

25 A. Yes.

1 Q. -- in reference to the fact that I spoke to Curry,
2 according to Mr. Young; correct?

3 A. Yes, but I think we disagreed based on how that 302
4 was written, that the other individuals were certainly out
5 there at that meeting location.

6 Q. They were out there, but the 302 says clearly that I
7 spoke to Hakeem Curry; correct? And as I'm walking back to
8 the car I allegedly said, supposedly, No Kamo, no case;
9 correct? That's exactly the way the 302 reads; correct?

10 A. That is how it reads.

11 Q. Thank you.

12 You had my cell phone records from November 25th
13 of 2003; correct?

14 A. Yes.

15 Q. And you have my cell phone records during the four to
16 five days after Mr. Baskerville's record -- arrest, from the
17 25th to approximately let's call it the 30th of November;
18 correct?

19 A. Yes, I do.

20 Q. And isn't it a fact that there's not one call between
21 me, Mr. Curry, Mr. Baskerville, or anybody that was
22 allegedly out there at that time?

23 A. That's not true. There are several calls on the 25th.

24 Q. During that particular time period, you're telling us
25 that there's several calls?

1 A. On November 25th?

2 Q. No, excuse me, on the 26th, 27th, 28th and 29th, when
3 Mr. Young said this meeting took place.

4 A. There are no phone calls. There are phone calls on
5 the 25th. There are no phone calls on the 26th, 27th, 28,
6 29, 30th to your cell phone.

7 Q. And to my office either; isn't that a fact?

8 A. That, I can't say as a fact.

9 Q. The 25th was the calls. There's two calls on the
10 25th. That's Mr. Curry calling me, correct, to find out
11 what happened or to find out what's going on with William
12 Baskerville to see if he can get a bail and get released and
13 represent him; correct?

14 MR. GAY: Judge.

15 THE COURT: What's the objection?

16 MR. GAY: We need a sidebar on this. I'm sorry,
17 but we need a sidebar on this.

18 THE COURT: Okay.

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1 (The following takes place at sidebar)

2 MR. GAY: Judge, Mr. Bergrin knows full well that
3 the calls he's now discussing are the ones that were
4 intercepted by law enforcement and that are not being used
5 at this trial because he wants them suppressed. He is now
6 discussing not phone records, he's talking about calls and
7 content of the call. That is improper, or he's opening the
8 door, and I'm going to put these tapes in. I'll put these
9 calls in.

10 MR. BERGRIN: I'll move on, Judge.

11 THE COURT: Okay. Let's go.

12 MR. LEVY: Do you want to withdraw the question?

13 MR. GAY: It better be withdrawn or the door's
14 open as far as I'm concerned.

15 THE COURT: Okay. Okay, gentlemen.

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1 (The following takes place in open court)

2 THE COURT: Okay. Mr. Bergrin, next question.

3 MR. BERGRIN: Trying to move it along, Judge, to
4 save a lot of time.

5 THE COURT: Go ahead. That's okay.

6 MR. MINISH: Judge, just so it's clear, is
7 Mr. Bergrin withdrawing that other question?

8 THE COURT: Yes. He just said that. We're moving
9 on.

10 MR. MINISH: Just to be clear, Your Honor.

11 BY MR. BERGRIN:

12 Q. Now, you testified that there was a period of time
13 when the F.B.I. took over the investigation; correct?

14 A. Yes.

15 Q. And when was that?

16 A. That was after we had learned that Anthony Young was
17 the shooter.

18 Q. And when you took over the investigation, did you go
19 back to the area of South Orange Avenue and 19th Street?

20 A. This would be -- no, that's March of 2006. No.

21 Well, I apologize. We did at some point, we went
22 back and took photographs.

23 Q. Well, when Anthony Young had informed you or come in
24 on January the 18th of 2005, correct --

25 A. Yes. Yes.

1 Q. -- isn't it a fact that you testified that you began
2 to assist the Newark police department and the Essex County
3 Prosecutor's Office in this investigation?

4 A. Yes, that is accurate.

5 Q. Did you at any time ever show any photographs of Jamal
6 McNeil to anybody in the area, whether at the Sand Pit Bar
7 or anybody on South Orange Avenue?

8 A. I did not, because we received information about Jamal
9 McNeil.

10 Q. You can answer the question yes or no. Did you ever
11 show Jamal McNeil's photographs to anybody in that area?

12 A. The answer is no. And there is a reason for that, if
13 I am permitted to explain.

14 THE COURT: Okay. The answer is no.

15 Go ahead.

16 Q. At any time, did you ever show Anthony Young's
17 photograph to anybody in the area?

18 A. I did not.

19 Q. Anthony Young had informed you that he grew up in that
20 area and has spent over 20 years of his life there; correct?

21 A. He -- he grew up not in that particular area, but
22 close to that area.

23 Q. Did you ever go into the barber shop and show his
24 photograph?

25 A. I did not.

1 Q. What about the Big Bites sandwich shop, where he said
2 he was standing in the doorway?

3 A. I did not show any photographs, Mr. Bergrin.

4 Q. Thank you.

5 You had received information from an informant
6 about the bartender at the Sand Pit and the fact that there
7 were two strange individuals --

8 MR. MINISH: Objection, Judge. I believe we've
9 been over this.

10 THE COURT: I don't know what his question is.

11 MR. BERGRIN: May I finish the question? Thank
12 you, Your Honor.

13 Q. -- that there were strange individuals at the bar,
14 correct, on the day of the homicide?

15 A. I received information from a source --

16 Q. A source?

17 A. -- telling me that the bartender had told this source
18 that she had noticed two unknown or strange individuals in
19 the bar that day who were not her regulars.

20 Q. Did you ever go back and interview the bar owner or
21 anybody that worked there to get a description of these
22 individuals?

23 A. I did not. I know Rashid -- Detective Sabur had done
24 that.

25 Q. And isn't the fact that you knew also that Detective

1 Sabur never asked the bartender or anybody that worked there
2 for a description of these individuals?

3 A. That is not true. I know Detective Sabur interviewed
4 the -- or spoke to the bartender, the woman who owned the
5 Sand Pit.

6 Q. And you've read Detective Sabur's report, correct --

7 A. Yes.

8 Q. -- in reference to what he wrote?

9 A. Yes.

10 Q. And isn't it a fact that Detective Sabur never asked
11 for a description of these individuals because he didn't
12 have the benefit of what the informant had told you? That
13 occurred after Detective Sabur had interviewed them. Isn't
14 that a fact, ma'am?

15 A. That is not a fact. Detective Sabur interviewed the
16 bartender relating to what she saw that day. If she saw
17 something of note, then I imagine she would have told
18 Detective Sabur.

19 Q. Isn't it a fact that you received the information
20 pertaining to these two strange individuals that were not
21 known or not recognized --

22 A. Yes.

23 Q. Okay -- after Detective Sabur had interviewed? You
24 received it in January of 2005; correct?

25 A. That is not correct. I received that information two

1 or three days after the murder from an informant.

2 Q. And isn't the fact that Detective Sabur interviewed
3 the bartender the day of the murder?

4 A. Yes, that is a fact.

5 Q. Thank you.

6 Jamal Baskerville has never been charged with
7 anything, correct, or arrested in this case?

8 A. No, he was not.

9 Q. And Jamal McNeil has never been charged and arrested;
10 correct?

11 A. Yes, he is doing 15 years in state prison.

12 Q. Not in reference to this homicide; correct? Or as a
13 conspirator to this homicide; correct?

14 A. Not in reference to this homicide, correct.

15 Q. And Horatio Joines, Ray-Ray, has never been charged in
16 reference to this homicide; correct?

17 A. That is correct.

18 Q. Now, isn't it a fact that on March the 7th of 2005,
19 Horatio Joines was arrested and interviewed by you and
20 Michael Brokos?

21 A. Yes, he was arrested, yes. I can't recall.

22 Q. And he was interviewed also; correct?

23 A. Yes.

24 Q. And isn't the fact that you received information from
25 Horatio Joines that he was with his wife at the hospital at

1 the time of the homicide?

2 A. Yes, that is accurate.

3 Q. Did you go to the hospital and confirm that? Since he
4 was being accused of being a conspirator to murder, did you
5 go to the hospital at any time to pull those medical
6 records?

7 A. Yes, I did.

8 Q. And what did the medical records reveal?

9 A. They revealed that his girlfriend at the time was in
10 the hospital due to complications of -- during a pregnancy,
11 but they did not reveal that he was at the hospital.

12 Q. Well, no hospital records would reveal that he's at
13 the hospital with her; correct? He knew that she was at the
14 hospital, she was having complications and losing a child,
15 and he told you about that and told you that he was there;
16 correct?

17 A. I don't believe she was losing a child. I believe --

18 Q. She was having bad complications, bleeding heavily;
19 correct?

20 A. All I can say is that she was having complications in
21 her pregnancy and he told us he went to see her. We could
22 not confirm that he in fact had gone to see her.

23 Q. Well, you confirmed the fact -- what was his
24 girlfriend's name, by the way?

25 A. I cannot recall.

1 Q. Do you have those medical records? Did you subpoena
2 them?

3 A. We did.

4 Q. And you confirmed the fact that she was in the
5 hospital; correct?

6 A. Yes, I did.

7 Q. And you confirmed the fact she was in the hospital
8 during the time of this alleged incident, correct, that
9 entire date.

10 A. Well, of the murder, yes.

11 Q. Yes.

12 A. Yes.

13 Q. Now, you also had sent an informant in to speak to
14 Mr. Joines; correct?

15 A. Yes, I did.

16 Q. And that was on December the 1st of 2003; correct?

17 A. Yes.

18 Q. Before Mr. Young came in; right? And you had a
19 recording made of Mr. Horatio Joines; right?

20 A. Yes, I did.

21 Q. And who was the informant that you sent in?

22 A. Curtis Jordan.

23 Q. And when you sent Mr. Jordan in, it was in reference
24 to a newspaper article that came out on November the 30th of
25 2003; correct?

1 A. Yes.

2 Q. About the case; correct?

3 A. Yes, that is correct.

4 Q. And isn't it a fact that Mr. Joines was close with
5 Curtis Jordan, and he let him into his house? They had a
6 close relationship?

7 A. He let him into the house, yes. I don't know how
8 close the relationship was, but he let him into the house.

9 Q. Well, you believed he was close enough that he'd be
10 able to talk to --

11 MR. GAY: Objection, Your Honor. I don't
12 understand what the relevance of this is.

13 THE COURT: Mr. Bergrin?

14 MR. BERGRIN: I don't want to state it in front of
15 the jury and in front of the witness, Judge. If you want me
16 to be heard, I'll come and talk about it.

17 THE COURT: Come over.

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1 (The following takes place in open court)

2 THE COURT: I'll sustain the objection. Let's go
3 to the next question.

4 MR. BERGRIN: Trying to move it along, Judge. I'm
5 trying to skip as much as I can.

6 THE COURT: Thank you.

7 BY MR. BERGRIN:

8 Q. You had received information that Anthony Young was
9 involved in the arson and burning down the house of Rashidah
10 Tarver; correct?

11 A. Yes, I did.

12 Q. And you confirmed that fact by contacting the
13 Prosecutor's Office; correct?

14 A. Yes, I did.

15 Q. And you received information that Anthony Young had
16 committed a domestic violence aggravated assault against
17 Ms. Tarver; correct?

18 A. Yes, I did.

19 Q. And you confirmed that fact with the prosecutors also;
20 correct?

21 A. Yes, I did.

22 Q. Thank you.

23 Now, after you confirmed the fact that Anthony
24 Young had committed an arson and burned down Rashidah
25 Tarver's house and committed an aggravated assault, Anthony

1 Young was let out of jail, correct, for a period of time.

2 A. He -- he was not in jail. He had been charged with a
3 domestic, I believe it was terroristic threats, and he had
4 been charged based on a complaint by Rashidah Tarver, but he
5 was not incarcerated for it.

6 Q. Isn't it a fact that he was arrested by the Sheriff's
7 Department of Essex County and placed into jail after he had
8 gone in to speak to you on January the 18th of 2005? He was
9 arrested for a domestic violence, violation of a restraining
10 order, and was placed in custody; correct?

11 A. I believe he was arrested for violation of a
12 restraining order --

13 Q. Restraining order.

14 A. -- and placed in custody at Essex County Jail, yes.

15 Q. Based upon the fact that he burned down his
16 girlfriend's house and committed the assault against her
17 with a gun; correct?

18 A. I believe the violation was based on him hitting her
19 car. That's my memory of it. An assault.

20 Q. And what happened was, they called you up; correct?

21 A. I don't know if I called them or they called me, but
22 yes, there was a call.

23 Q. And even knowing the allegations against Anthony
24 Young, isn't it a fact that you got him released from jail?

25 A. I asked for him to be released --

1 Q. Ma'am, you can answer the question. Isn't the fact
2 that you got him released from jail?

3 A. For his safety, I did, yes.

4 Q. For his safety? Is that what you're telling us?

5 A. That is what I'm telling you.

6 Q. He could have been put into protective custody;
7 correct?

8 A. He --

9 Q. Isn't that a fact? He could have been put into
10 protective custody for his safety?

11 A. He was in Essex County Jail, which is a place where
12 there are people who are very familiar with you. We did not
13 trust his safety at Essex County Jail. That is what I'm
14 telling you.

15 Q. He could have been -- you could have contacted the
16 internal affair division of the Essex County Jail; correct?

17 A. Mr. Bergrin, you had run --

18 Q. You can answer my question yes or no. Easy question.
19 You could have contacted their internal affairs and asked
20 that he be put into protective custody; correct?

21 A. If you're asking me could I have, yes.

22 Q. You could have had him moved for his safety to another
23 facility, correct, but kept incarcerated; correct?

24 A. I don't know if that is correct. I can't dictate
25 where he gets housed.

1 Q. You could have asked that he be housed in another
2 location if you were so afraid of his safety; correct?

3 A. My actions were as a result of keeping him safe.

4 Q. You got him released to the streets, correct? After
5 he had done what he did to Ms. Tarver, you got him released
6 and freed. Isn't that a fact, ma'am?

7 A. That is a fact, with the -- that is a fact.

8 Q. Anthony Young alleged that on March the 2nd of 2004,
9 he was out on Alexander Street and hanging out with his drug
10 crew, correct, after the homicide of Mr. McCray.

11 A. Anthony Young told us he returned to his Alexander --
12 to his block, Alexander Street, to check on his crew, yes.

13 Q. Do you know who was in his crew?

14 A. I -- I do not know who was in his crew.

15 Q. Did you ever verify that fact? Did you ever interview
16 any members of his crew?

17 A. I did not.

18 MR. BERGRIN: With the Court and the jury's
19 indulgence. I'm trying to skip through a lot of stuff,
20 Judge.

21 Q. Did Anthony Young ever inform you that Jamal McNeil's
22 name was Jamal McBride?

23 A. I think initially he did tell us that it was Jamal
24 McBride and not Jamal McNeil.

25 Q. And did you ever document that in any reports?

1 A. I -- I don't know. I don't know. It's not in the
2 January 18th report.

3 Q. And it was not in the January 14th report either, the
4 conversation you had with Anthony Young; correct?

5 A. No, that is correct.

6 Q. As a matter of fact, Anthony Young couldn't even give
7 you Jamal's name as even Jamal on January the 14th of 2005
8 when he called. He called him Malsey. That's the only name
9 he knew him by; correct?

10 A. That's not the only name he knew him by. That's the
11 name he gave me.

12 Q. Didn't he tell you that that's how he knew the
13 individual that killed Kemo, as Malsey?

14 A. Yes.

15 Q. And isn't it a fact that on January 18th when you
16 spoke to him, he said the same thing, he only knows him as
17 Malsey, correct, according to your January 18th statement?

18 A. I believe he said it was Jamal, but he knows him as
19 Malsey.

20 Q. He couldn't give you the last name of the individual;
21 correct?

22 A. That is correct.

23 Q. And isn't it a fact that he never called him McBride
24 according to your statement?

25 A. I believe he had said the name was McBride initially .

1 Q. If he had given you a name of an individual that
2 committed a murder of a witness, wouldn't you have
3 documented it in your report, if you have a name of an
4 individual that committed a murder?

5 A. If he is aware what the name was. He was guessing at
6 McBride.

7 Q. But you never documented anything pertaining to that;
8 correct?

9 A. I documented he gave us the name Jamal, also known as
10 Malsey.

11 Q. Now, at the time that Mr. Young testified -- excuse
12 me, contacted the F.B.I. on January 14th of 2005, he was out
13 on the streets dealing heroin; correct?

14 A. Yes, he was.

15 Q. And he was also dealing cocaine and crack cocaine;
16 correct?

17 A. I believe he was dealing mainly heroin. It could be
18 cocaine. I don't know about crack cocaine, but I definitely
19 know it was heroin.

20 Q. And he also said that he had been -- he had been
21 running his own drug crews, correct, that worked for him,
22 right?

23 A. He had his own block, but he worked for the
24 Baskerville-Curry crew. But he was responsible for his own
25 block on Alexander Street.

1 Q. And he was telling you about all of the money that he
2 was making; right?

3 A. Yes.

4 Q. And did you ever ask him or seize any of that money
5 that he was making?

6 A. We did not.

7 Q. Did you ever take any of the automobiles that he
8 owned?

9 A. I would not have the authority to take those
10 automobiles.

11 Q. Did you ever move for seizure of any of the
12 automobiles? He told you that he owned a Cadillac Escalade;
13 correct?

14 A. Yes, but I can only move for seizure if I can -- if I
15 have evidence that it's been used in a drug transaction. I
16 can't just take somebody's word for it. I need the
17 supporting evidence, like we did in the Baskerville case.

18 Q. You had Mr. Young telling you that he bought the
19 automobiles with drug proceeds; correct? Multiple
20 automobiles; right?

21 A. Yes.

22 Q. And you had Anthony Young telling you that he used
23 those automobiles to deliver drugs to his crew, correct, on
24 Alexander Street?

25 A. Yes.

1 Q. Isn't that a fact?

2 A. Yes, that is correct.

3 Q. You never moved for the seizure of any of his
4 property; correct?

5 A. That is correct.

6 Q. And you never moved for the seizure of any of the
7 money that he had, correct, earned.

8 A. Mr. Bergrin, he was not under investigation for a drug
9 case, so it is -- it would not be appropriate for me to move
10 to seize his assets or his vehicles. That would be done in
11 conjunction with a drug or a gang investigation.

12 Q. Well, you had him involved in a drug and gang
13 investigation; isn't that a fact?

14 A. He told me that he sold drugs. At that time, on
15 January 18th, I did not have any independent evidence. I
16 can't charge somebody based on what they tell me. I have to
17 have independent evidence to corroborate that.

18 Q. Are you telling us that you had no independent
19 evidence whatsoever that Anthony Young was involved in drug
20 distribution and drug trafficking? Is that what you're
21 telling us?

22 A. I'm telling you that --

23 Q. That's what you just testified. Is that what you're
24 telling us?

25 MR. MINISH: Judge, I believe she's testified to

1 that she does not have enough independent evidence to seize
2 the vehicles.

3 THE COURT: What she's testified to was heard by
4 the jury.

5 Can you answer the question?

6 THE WITNESS: Yes, I believe I can.

7 THE COURT: Go ahead.

8 THE WITNESS: If you can ask it again. Maybe I'm
9 getting confused.

10 THE COURT: Answer the question.

11 THE WITNESS: If you could just ask it again. I
12 apologize.

13 THE COURT: Chuck, read the question back.

14 (Record read)

15 A. I did have independent evidence. I apologize.

16 MR. BERGRIN: I'll move on, Judge. The jury's
17 heard it.

18 A. But he was not under investigation. I think that is
19 the distinction I'm trying to make, Mr. Bergrin.

20 Q. But you had the independent evidence that he was
21 involved in drug distribution and he was using his
22 automobiles and he had bought his property with drug
23 proceeds; correct?

24 A. He had told us that, yes.

25 Q. Now, did you prepare a phone chart of toll records for

1 November the 25th of 2003?

2 A. Yes, I did.

3 Q. And --

4 MR. BERGRIN: If the Court gives me one second.

5 Q. Did that phone chart outline calls that were made on
6 November 25th of 2003?

7 A. Yes, it did.

8 Q. Do you have that with you?

9 A. I am not sure, but I can look. Just a minute.

10 THE COURT: Who is this call about? A phone chart
11 about whom?

12 MR. BERGRIN: Of calls that were made on November
13 25th, Your Honor, 2003.

14 THE COURT: Calls by whom?

15 MR. BERGRIN: Calls to Mr. Curry, myself, and
16 several other -- Diedre Baskerville is another one. It's
17 very important.

18 THE COURT: No, I just didn't know what you were
19 talking about.

20 MR. BERGRIN: Yes, Your Honor.

21 A. I don't believe I have that chart. I know I did
22 prepare one. I don't know -- I don't have it up here. But
23 I do recall preparing the chart, Mr. Bergrin.

24 Q. And isn't the fact that the calls reflected the fact
25 that Mr. Curry called Rakim Baskerville twice at the times

1 that Mr. Young said that Rakim Baskerville was with Hakeem
2 Curry in his car? Isn't that a fact, ma'am?

3 A. That's a difficult question to answer, because
4 Mr. Young testified in the prior proceeding to something
5 different from what your question is.

6 Q. You had evidence that Hakeem Curry called Rakim
7 Baskerville, correct, twice.

8 A. Yes. Yes, that is true.

9 Q. You also had testimony and evidence that I had called
10 Diedre Baskerville in the early morning hours of November
11 25th of 2003; correct?

12 A. Yes.

13 Q. And the call occurred at Diedre Baskerville's home;
14 correct, in Roselle, New Jersey, her home telephone number.

15 A. I believe that is true.

16 Q. And isn't the fact that Mr. Young had informed you
17 that Diedre Baskerville was out on 17th Street and Avon
18 Avenue in the morning, early morning hours of November 25th
19 of 2003?

20 A. Yes, that is true.

21 Q. Who is Agent Gale?

22 A. Agent William Gale is an agent who works out of the
23 Newark Division. He's an F.B.I. agent.

24 Q. And isn't the fact that Anthony Young called him first
25 on November -- excuse me, January 14th of 2005?

1 A. Yes, William Gale was the duty agent that day, and so
2 Anthony Young called in to our main number, and Agent Gale
3 answered the phone.

4 Q. Is that call recorded?

5 A. It is not.

6 Q. Does Agent Gale -- did Agent Gale make a report of
7 that call?

8 A. Yes, he did.

9 Q. Thank you.

10 MR. BERGRIN: I might be finished, Judge. I'll
11 just go through a few things.

12 THE COURT: Okay.

13 Q. When you arrested Horatio Joines for narcotics
14 violations on March the 5th of 2005, did he have any kind of
15 wrist radio with him?

16 A. He did not have it on him, but we did not have a
17 search warrant for his home.

18 Q. Did you ask -- you spoke to Horatio Joines; correct?

19 A. Yes, I did.

20 Q. And you interviewed him extensively; correct?

21 A. I would not say extensively.

22 Q. But you interviewed him; correct?

23 A. Yes, that is correct.

24 Q. Did you ever ask him if he had a wrist radio?

25 A. I did not.

1 Q. Anthony Young; he was a cooperating witness. Did he
2 ever turn over to you or did you ever ask him if he had any
3 wrist radios?

4 A. I did not.

5 Q. Now, isn't the fact that Anthony Young told you that
6 Hakeem Curry was involved in a sexual relationship with my
7 daughter?

8 A. Yes, he did.

9 Q. Isn't the fact that Anthony Young told you that Hakeem
10 Curry bought my daughter a car?

11 A. Let me just look at the report.

12 Q. Yes, please do that.

13 A. I don't know if that's -- do you have the date of the
14 report, Mr. Bergrin?

15 Oh, I do. I have it right here.

16 That he -- would you like me to say what's in it
17 or --

18 Q. No, I'm asking a question. Did he say that Hakeem
19 Curry paid for my daughter's college?

20 A. Yes.

21 Q. Bought her a car?

22 A. Yes.

23 Q. Was involved in a sexual relationship with her?

24 A. Yes.

25 Q. Isn't the fact that you have no evidence whatsoever

1 that Hakeem Curry has ever met my daughter in his life?

2 A. I don't know, Mr. Bergrin.

3 Q. Now, you testified previously in reference to Rakim
4 Baskerville's relationship with Mr. McCray; correct?

5 A. Yes.

6 Q. And isn't it a fact that you testified that Rakim
7 Baskerville served time, state prison time, was in jail at
8 Leesburg State Prison with Mr. McCray?

9 A. Yes, that is accurate.

10 Q. Did you ever verify that with any kind of records?

11 A. I -- I don't know that I did verify that. I had other
12 sources tell me that, but I don't know if I actually pulled
13 the Department of Corrections incarceration records.

14 Q. Did you ever ask Mr. Young that, Anthony Young that?

15 A. Anthony Young is the one who told me that.

16 Q. And you're about sure about that as all your testimony
17 you've given in the last two days?

18 A. That is my memory, yes.

19 Q. Now, when you interviewed Anthony Young, did he ever
20 tell you about Abdul Williams, Mutalib?

21 A. Yes.

22 Q. Did he tell you that Mutalib is a major heroin dealer
23 that runs Bradley Courts?

24 A. Yes.

25 Q. Did he tell you that Mutalib was involved in a murder?

1 A. I don't believe that. I think he had told me that
2 there was an assault, maybe, with a police officer. I don't
3 know about -- he did not tell me about a murder.

4 Q. Did he say who that police officer was?

5 A. He did not.

6 Q. Did he tell you that Mutalib shot a police officer?
7 Is that what he told you?

8 A. No.

9 MR. MINISH: Objection, Judge. I don't understand
10 the relevance of this either.

11 THE COURT: Mr. Bergrin?

12 MR. BERGRIN: I'm going to move on, Judge. I
13 think I'm just about finished.

14 THE COURT: Sustained.

15 MR. BERGRIN: Based upon the Court's ruling, I'm
16 going to stop my questioning, Judge.

17 THE COURT: What court's ruling? I didn't make
18 any ruling. I don't want this record to look as if I
19 stopped you. I'm not stopping you. If you're done --

20 MR. BERGRIN: I understand, Judge. I'm finished.

21 THE COURT: Okay.

22 Any redirect?

23 MR. MINISH: I do, Judge, briefly.

24

25

1 REDIRECT EXAMINATION

2 BY MR. MINISH:

3 Q. You were asked some questions about Rashidah Tarver's
4 house burning down. Are you aware of whether it actually
5 burned down?

6 A. No, it did not burn down.

7 Q. Now, that would have been an Essex County charge?

8 A. Yes, it would have been.

9 Q. And where are Essex County prisoners housed?

10 A. In Essex County Jail.

11 Q. During the course of your investigation, did you come
12 across a person by the name of Keith Ali?

13 A. Yes, I did.

14 Q. Could you tell the jury what you found out about Keith
15 Ali?

16 A. Mr. Keith Ali was arrested in conjunction with
17 patronizing Mr. Bergrin's prostitution house.

18 Q. And what position did Mr. Ali have at the Essex County
19 Jail?

20 A. He was the warden of the jail at that time.

21 Q. Now, you showed -- you were asked whether or not you
22 showed Anthony Young's photos or Mr. McNeil's photos in the
23 area around the murder scene.

24 A. Yes.

25 Q. You didn't get the opportunity to state why you did

1 not. Please tell the jury why you didn't.

2 A. Because this is now a cold scene. By the time we
3 learned of Jamal McNeil, it was in January of 2005, a year,
4 nearly a year after the murder, and when we learned that it
5 was now Anthony Young as the shooter, that was in March of
6 '06, two years now after the murder.

7 Q. Now, did you provide information to Detective Sabur
8 when you got it, or did you keep stuff from him?

9 A. I constantly provided Detective Sabur with
10 information. Everything I received, I passed on to either
11 Detective Sabur or Investigator Susan Bzik.

12 Q. And why did you pass the information along?

13 A. To solve this murder, to assist them in solving this
14 murder.

15 Q. With respect to the identification of who you
16 eventually figured out was Jamal McNeil --

17 A. Yes.

18 Q. -- could you please explain to the jury, did Anthony
19 Young provide any information beyond the nickname?

20 A. Yes.

21 Q. Okay. What did he tell the jury -- or, excuse me,
22 what did he tell you?

23 A. He told us the area where Jamal McNeil sold drugs in
24 Irvington, 18th and 22nd Street. He described his physical
25 appearance to us.

1 Q. So he wasn't able to give you his name, but he
2 provided other information; correct?

3 A. Yes, he did.

4 Q. And based on the information he gave you, were you
5 able to identify who Jamal McNeil was?

6 A. Yes, we were.

7 Q. Mr. Bergrin asked you some questions about Horatio
8 Joines and your interview. Did Mr. Joines ever agree to
9 cooperate with the Government?

10 A. No, he did not.

11 Q. Now, you were asked a number of questions about your
12 reports. Are those reports supposed to be verbatim, be they
13 302s or other forms?

14 A. They are not verbatim. They are my notes based on
15 what somebody tells me that I can then convert into a
16 report. But they are not verbatim.

17 Q. Now, Mr. Bergrin asked you specifically about a report
18 J number J-12743 and 44. I'm going to show you this report.

19 Now, he characterized it as a report to your
20 superiors.

21 What is that report?

22 A. This is a request to relocate a source who's a witness
23 in this investigation.

24 Q. And who was that?

25 A. This is Anthony Young.

1 Q. And why was he relocated, or why were you attempting
2 to have him relocated?

3 A. For safety reasons.

4 Q. Based on something you made up, or something that he
5 told you?

6 A. He told me he was in fear of his life, so we were
7 trying to --

8 MR. LEVY: Objection, Your Honor.

9 THE COURT: What's the objection?

10 MR. LEVY: Hearsay.

11 THE COURT: But she's been telling what people
12 have been telling her all afternoon.

13 MR. LEVY: And you sustained a prior objection
14 from the Government on the same --

15 MR. MINISH: No, Judge.

16 THE COURT: No, I didn't. No, I didn't. No, I'm
17 going to allow the question.

18 MR. GAY: This is to explain, Judge, why she took
19 the steps she took after this. It's clearly not hearsay.

20 THE COURT: I'll allow it.

21 BY MR. MINISH:

22 Q. So why did you fill out that report?

23 A. I am requesting approval to relocate Anthony Young,
24 who's a witness in this case, to protect his safety.

25 Q. And why did you believe his safety was in jeopardy?

1 A. Because he was telling on the Baskerville crew, and
2 they had already killed two informants. Now he's coming in
3 and telling us the inside information on this crew. There
4 is not a doubt in my mind that they would seek to kill him.

5 Q. Now, Mr. Bergrin also asked you some questions about
6 Kemo and dealing with Mr. Cox and Mr. Hosten.

7 A. Yes, he did.

8 Q. Now, putting aside what Kemo did wrong in lying, was
9 Mr. Cox ever convicted of drug dealing?

10 A. Yes, he was.

11 Q. And did he plead guilty, or was it a trial?

12 A. He pled guilty.

13 Q. How about Mr. Hosten?

14 A. Also convicted and pled guilty.

15 Q. And did he eventually cooperate with the Government?

16 A. Yes, he did.

17 Q. Now, with respect to Mr. McCray's safety, as an F.B.I.
18 agent, do you have the authority to force somebody to move?

19 A. No, I do not.

20 Q. What if you really thought the guy needed to move for
21 safety; can you just pick him up and move him somewhere?

22 A. Not against his will, I cannot.

23 Q. Mr. Bergrin asked you some questions about William
24 Baskerville and whether he would cooperate .

25 After he refused to see you in March 2004, did you

1 ever make another attempt to speak with Mr. Baskerville?

2 A. No, I did not.

3 Q. All right. Now, Mr. Bergrin asked you some questions
4 about Eric Dock and information you received from him and --
5 excuse me, who was the other individual?

6 A. Troy Bell.

7 Q. Troy Bell.

8 Now, I'll direct your attention to -- well, let me
9 ask you this. Did he ever provide -- Mr. Bergrin asked you
10 information -- excuse me, whether he provided information
11 about Malik Lattimore. Is that correct?

12 A. Yes.

13 Q. Did Mr. Bergrin ask you that question?

14 A. Yes.

15 Q. Did he provide any additional information about Malik
16 Lattimore?

17 A. Did Eric Dock?

18 Q. Yes.

19 A. Yes.

20 Q. And did that include whether or not that Will's
21 "brother was the one looking for your informant and Hak sent
22 out Malik to get the other informant. You know how that
23 look yo. Will said they don't have shit no physical
24 evidence witness or proof are who did what and can't nobody
25 connect me but my brother and Hak..."

1 A. Yes.

2 Q. Okay. Now, is there a second murder discussed in
3 this?

4 A. There is. It's the murder that occurred the day
5 before, also another witness against a member of the
6 Curry-Baskerville organization.

7 Q. And who was involved in that murder?

8 A. Malik Lattimore was the shooter, and Rakim Baskerville
9 was the getaway driver.

10 Q. Who represented the individual who was charged in the
11 case?

12 MR. BERGRIN: I'm going to object, Judge. I'm
13 going to object profusely.

14 THE COURT: What's the objection?

15 MR. BERGRIN: The objection is, first of all,
16 nobody was ever charged with that murder at all. Nobody was
17 ever arrested in that murder. And the prosecution when they
18 were going through the incidents clearly told the jury that,
19 you know, that I was never involved and I had nothing to do
20 with that, which is the truth. To now go and try to elicit
21 that from this witness is totally unfair and unjust and has
22 no relevance to this proceeding at all.

23 THE COURT: What does it have to do with this?

24 MR. MINISH: I'm not talking about the murders of
25 the witness, Judge, I'm talking about the pending case that

1 the witness was a -- the witness that was killed, what the
2 pending case was that that individual is a witness in.

3 MR. BERGRIN: That has no relevancy to this
4 whatsoever, Judge.

5 THE COURT: What's the relevance to this case?

6 MR. MINISH: Because that's what they're talking
7 about, not what Mr. Bergrin was discussing with her. Malik
8 Lattimore killed the witness in that case the day before
9 Mr. McCray was killed.

10 MR. BERGRIN: The transcript speaks for itself,
11 Your Honor.

12 We'll stipulate to the admission of that
13 transcript.

14 MR. GAY: Which transcript is that?

15 MR. MINISH: Eric Dock's log? That's fine with
16 me.

17 MR. BERGRIN: No, not that. We'll stipulate to
18 the statement made by Eric Dock, the lying misstatement that
19 I went in to the judge in Eric Dock's report.

20 THE COURT: I still don't understand the relevancy
21 of the question that you're asking about to this case.

22 MR. BERGRIN: It has no relevancy, Judge.

23 MR. GAY: I think maybe this should be a sidebar
24 conversation. I apologize, I know you don't want to do
25 another sidebar, but --

1 (The following takes place in open court)

2 THE COURT: Next question, Mr. Minish.

3 MR. MINISH: Thank you.

4 BY MR. MINISH:

5 Q. Have you read a diary done by Eric Dock?

6 A. Yes, I have.

7 Q. And in that diary, is there any reference to an
8 individual named Malik?

9 A. Yes.

10 Q. And in that diary, is there a reference to whom Malik
11 may have killed?

12 A. Yes, there is.

13 Q. And is it an informant?

14 A. It's -- I believe it's a snitch. I think that's the
15 word that's used.

16 Q. And is that snitch Mr. McCray, or somebody different?

17 A. Somebody different.

18 Q. And who is that individual?

19 A. An individual by the name of Derek Berrian.

20 Q. And in relation to Mr. McCray's murder, when did that
21 occur?

22 A. That occurred the day before.

23 Q. Now, Mr. Bergrin also asked you questions about Hassan
24 Miller and a recording he made with Mr. Young?

25 A. Yes, he did.

1 Q. Now, did Mr. Young say anything with respect to
2 Mr. Bergrin on that recording?

3 A. Yes, he did.

4 Q. And did he say, quote, "Paul going to jail too if it
5 come down to it," and Mr. Miller said "Yeah." "Paul told us
6 names, the names, Paul told us if he die."

7 A. Yes.

8 Q. And that's the recording that Mr. Bergrin was talking
9 about before; right?

10 A. Yes, it is.

11 Q. All right. And then finally, just one small area
12 here.

13 Mr. Bergrin asked you a lot of questions about
14 what Anthony Young told you, what Anthony Young didn't tell
15 you.

16 A. Yes.

17 Q. Can you tell the jury in a very concise fashion what
18 information Anthony Young gave you about Mr. Bergrin?

19 A. That Mr. Bergrin provided the name of the informant to
20 the group with the instruction that if there is no
21 informant, this case will go away, no witness, no case, and
22 that if they don't get the informant killed, then William
23 Baskerville will be doing a substantial amount of time.
24 He'll never see the streets again, I believe the words was,
25 Will will never see the streets again.

1 MR. LEVY: Objection Your Honor; hearsay.

2 THE COURT: What's the objection?

3 MR. LEVY: Hearsay.

4 THE COURT: I'll allow it. Go ahead.

5 Q. Agent -- excuse me. Mr. Bergrin also asked you
6 questions about whether or not -- who Anthony Young said was
7 at this meeting.

8 A. Yes.

9 Q. And that people may have changed.

10 At any point, was Mr. Bergrin said to be at the
11 meeting?

12 A. He was always said to be at the meeting.

13 Q. Was that ever changed?

14 A. That was never changed.

15 Q. Mr. Bergrin asked you some very specific questions
16 about dates with phone calls.

17 A. Yes.

18 Q. On the day of the initial appearance of William
19 Baskerville, were there any calls between Mr. Bergrin and
20 Hakeem Curry?

21 A. Yes, there were.

22 Q. How many?

23 A. I believe there were three.

24 Q. And did Mr. Young ever -- when he came in to you, did
25 he tell you about any calls between Mr. Bergrin and Mr.

1 Curry?

2 A. Yes, he told me what's contained in those phone calls,
3 those discussions.

4 MR. LEVY: Objection.

5 THE COURT: Overruled.

6 Q. Mr. Bergrin gave you a limited time about phone
7 connections with -- excuse me -- phone connections between
8 Mr. Bergrin and Mr. Curry --

9 A. Yes.

10 Q. -- in that three, four day window?

11 A. Yes.

12 Q. Let's move forward to the detention hearing, the day
13 William Baskerville is told he is not getting out of jail
14 pending his trial.

15 A. Yes.

16 Q. Were there any phone calls between Mr. Bergrin and
17 Mr. Curry?

18 A. Yes, there were.

19 MR. MINISH: Thank you.

20 I have nothing further, Judge.

21 THE COURT: Mr. Bergrin, any recross?

22 MR. BERGRIN: Yes, Your Honor.

23 RECROSS EXAMINATION

24 BY MR. BERGRIN:

25 Q. Now, there's no corroboration whatsoever to anything

1 that Anthony Young said in reference to me in that meeting
2 and what I allegedly said; correct?

3 A. There is not.

4 Q. Eric Dock; isn't it a fact that Eric Dock specifically
5 said, specifically said that Malik Lattimore and Rakim
6 Baskerville are looking for Kemo to take care of him, or
7 words to that effect, put a hole in his melon, meaning Kemo.
8 Isn't that a fact?

9 A. Yes, that is accurate.

10 Q. Thank you.

11 A. They were looking for Kemo to put a hole in his melon.

12 Q. Now, despite the fact that Anthony Young had domestic
13 violence, had threatened to kill his girlfriend, you never
14 attempted to keep him in any custody whatsoever, to even
15 move him to another facility?

16 THE COURT: Wait a minute. We went over all of
17 this on cross-examination.

18 A. That's not accurate.

19 MR. BERGRIN: I'll move to another area.

20 THE COURT: We're not going over that again.

21 Q. Now, you talked about the fact that your reports are
22 written, correct, or memorandums are written by you;
23 correct?

24 A. That I write my reports? Yes.

25 Q. And isn't it a fact that all important and material

1 facts are supposed to be put into those reports?

2 A. Yes.

3 Q. Now, you talked about Mr. Cox and Mr. Hosten. Isn't
4 the fact that they were falsely accused of a conspiracy?

5 A. I believe that is accurate. They were initially
6 charged in --

7 Q. No, my question is, they were falsely accused by
8 Mr. McCray of a conspiracy; correct?

9 A. That is correct, yes.

10 Q. And isn't the fact that Mr. McCray -- excuse me --
11 Mr. Young, the first time he called the F.B.I., he spoke to
12 an Agent by the name of Gale and said that the meeting
13 occurred in a car? Isn't that a fact? And I made the
14 statement, the statement that I made was, No Kemo, no case,
15 in a car? Isn't that what Agent Gale said and Agent Gale's
16 report reflects?

17 A. No.

18 Q. Do you have Agent Gale's report of January 14th?

19 A. I do not.

20 Q. Did you hear Agent Gale testify --

21 MR. MINISH: Agent Gale will testify, Your Honor.

22 MR. BERGRIN: Thank you. We hope so.

23 I have no further questions, Your Honor.

24 THE COURT: Thank you.

25 Anything further?

1 MR. MINISH: Nothing, Judge.

2 THE COURT: Thank you, ma'am. You may step down.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Well, I think what we're going to do
5 is call it a day. We would have gone to 4:15, but we ended
6 a little quick. Thank you. We had a long day today, and I
7 know you've been paying a lot of attention.

8 Please enjoy the evening. Don't read about the
9 case, don't discuss the case with anybody, and certainly
10 don't do any of your own research.

11 We'll see you at quarter to nine tomorrow morning.

12 THE COURT CLERK: All rise.

13 Notebooks on your chairs, please.

14 (The jury exits)

15 MR. GAY: Judge, after the jury leaves, I want to
16 put something on the record.

17 THE COURT: You may be seated.

18 You may step down.

19 THE WITNESS: Thank you.

20 (Witness excused)

21 THE COURT: Mr. Gay.

22 MR. GAY: Judge, I just want to put some discovery
23 things on the record briefly.

24 THE COURT: Go ahead.

25 MR. GAY: Judge, there was some discussion earlier

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No.
09-cr-369-DMC
v. :
TRANSCRIPT OF
PAUL W. BERGRIN, : TRIAL PROCEEDINGS
Defendant. : VOLUME 12
-----x

Newark, New Jersey
February 12, 2013

BEFORE:

THE HON. DENNIS M. CAVANAUGH, U.S.D.J.,
AND A JURY

Reported by:
CHARLES P. McGUIRE, C.C.R.
Official Court Reporter

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

s/CHARLES P. McGUIRE, C.C.R.

1 Q. And that would -- the date being November 25th, 2003;
2 is that correct?

3 A. Yes.

4 Q. Does it indicate what time that third call took place?

5 A. 4:19 p.m.

6 Q. And does it indicate who called whom in that call?

7 A. Mr. Bergrin again called Mr. Curry from Mr. Bergrin's
8 cell phone.

9 Q. And does it indicate the duration of the call?

10 A. It does: 27 seconds.

11 MR. GAY: I have no further questions of this
12 witness at this time.

13 THE COURT: Mr. Bergrin?

14 You're going to recall this witness at a later
15 time.

16 MR. GAY: Yes, Judge, we will.

17 THE COURT: Mr. Bergrin?

18 MR. BERGRIN: Brief, Judge.

19 CROSS-EXAMINATION

20 BY MR. BERGRIN:

21 Q. Now, Agent, you have the call, the first call is at
22 2:26 in the afternoon; right?

23 A. Yes, sir.

24 Q. And it's from my law office; right?

25 A. That's correct, sir.

1 Q. Well, you've read the transcript, and you know that I
2 was in court at an initial appearance that started at two
3 o'clock in the afternoon in Federal Court, so you can't
4 testify that that was me on the phone when my law office
5 calls Hakeem Curry; all you have is a call from my law
6 office to Mr. Curry, correct, at 2:26 in the afternoon.

7 A. That is not correct.

8 Q. The call is from what number?

9 A. 973-589-7537.

10 Q. Now, the second call that you have, as you said; what
11 time was that?

12 A. Four o'clock.

13 Q. And it was one minute and 21 seconds?

14 A. Yes, sir.

15 Q. And that was from me to Mr. Curry?

16 A. From your cell phone to Mr. Curry, that's correct.

17 Q. And then the third call, I'm sorry, the third call is
18 at 4:19?

19 A. 4:19, yes, sir.

20 Q. And that was from my office to Mr. Curry?

21 A. No, sir, that's from your cell phone to Mr. Curry.

22 Q. I thought you said it was from my office. I'm sorry.

23 And that was 27 seconds.

24 A. That's correct.

25 Q. Does it show whether any connection was made on that

1 third phone call?

2 A. It does not.

3 Q. Did you prepare a phone chart, you or any other agents
4 in reference to this case, of all calls on November 25th of
5 2003?

6 A. I personally did not prepare this chart, but one was
7 prepared.

8 Q. And did you review it and read it?

9 A. Yes.

10 Q. I show you what's been marked J-0293A.

11 Oh, you have it? I'm sorry. Okay. Great.

12 Is that essentially a chart of all the calls of
13 November 25th?

14 A. It is not a call -- a chart of all the calls. Your
15 law office number is not part of this chart.

16 Q. Okay. But does it show there at 10:33 in the morning
17 a call from Bergrin to Diedre Baskerville's home phone?

18 A. Yes, sir.

19 Q. And then another call from Bergrin at 10:45 to Diedre
20 Baskerville's cell phone; correct?

21 A. Yes.

22 Q. And there's no calls between me and Mr. Curry before
23 those calls that the records that you have or any other
24 information in your investigation, correct, on that date of
25 November --

1 A. Before the 10:30 calls you're referring to?

2 Q. Yes.

3 A. Before that. No.

4 Q. Then there's another call, you said, at 2:26. That's
5 from the law office. That's not reflected on this chart;
6 correct?

7 A. That's correct.

8 Q. Now, the call at 3:59 that's listed on the chart; did
9 you say that the call was at four o'clock, or 3:59?

10 A. It depends on whose phone records you're looking at.

11 Q. Correct.

12 A. Oh it's -- no, excuse me. No, that one is at 3:59.
13 The line sheet says 1,600 hours, so it's four o'clock.

14 Q. Which is four o'clock.

15 A. Correct.

16 Q. And right after that call, the next call between me
17 and Mr. Curry is at -- you said 4:19, but the chart shows
18 4:17; right?

19 A. 4:17, 4:18. Again, I think it's going to depend upon
20 what record you're looking at.

21 Q. Okay, and that was the 27-second call?

22 A. The -- yes, the call at 4:20 -- 4:19 is the 27-second
23 call, that's correct.

24 Q. And then there's a call at 4:19, the same time, to
25 Diedre Baskerville, correct, her home phone from me; right?

1 A. Correct.

2 Q. And who is Diedre Baskerville?

3 A. It's my understanding that is Mr. Baskerville's wife.

4 THE COURT: Which Baskerville?

5 THE WITNESS: Oh. William.

6 Q. So the first calls that you have records of to me --
7 for me and my involvement in this case is me to Diedre
8 Baskerville, two calls in the morning at 10:30; correct?

9 A. One call at 10:33.

10 Q. And one call at 10:45; right?

11 A. That's correct.

12 Q. And the first time you have me making any contact with
13 Mr. Curry is at 2:26 in the afternoon; right?

14 A. Correct.

15 Q. And the last call I make that day, according to your
16 records, is to Diedre Baskerville's home phone; correct?

17 A. I don't know if that's the last call you make during
18 that day.

19 Q. The last call that you have on the pen register, my
20 cell phone, and my office phone; correct?

21 A. To whom are you referring? I do not -- you can
22 have --

23 Q. I'm talking about to Mr. Curry.

24 A. Oh. To Mr. Curry?

25 Q. Yes, sir.

1 A. The last call that I see from you to Mr. Curry from
2 your cell phone is at 6:18 -- excuse me -- 4:18.

3 Q. 4:18. And again, that's a call that you don't even
4 know if it went through, it's a 27-second call.

5 A. Twenty-seven seconds. That's correct.

6 MR. BERGRIN: Thank you.

7 I have no further questions, Judge.

8 THE COURT: Do you have anything further?

9 MR. GAY: I do, Judge, but we're going to have to
10 go to the sidebar. I apologize, but --

11 THE COURT: Okay. Are we finished with this
12 witness?

13 MR. GAY: No. It's for this witness, Judge.

14 THE COURT: Okay. Come on.

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1 (The following takes place at sidebar)

2 THE COURT: Go ahead.

3 MR. GAY: Judge, I've warned Mr. Bergrin I don't
4 know how many times that if he's going to get into the
5 content of these calls -- he knows these are intercepted
6 calls. He's asking how this agent knew that was Mr. Bergrin
7 on the other line. The agent knows it because it's an
8 intercepted call. He also asked him about the content of
9 the particular calls: Isn't it true that you knew I
10 couldn't be in -- couldn't have been making this call
11 because I was in court at the time? He's now asking about
12 the content of these calls. He's now opened the door.

13 THE COURT: Now, are you saying to me on that
14 question about when Mr. Bergrin said he was in court, which
15 -- leading to the inference to the jury that it wasn't him
16 on the call --

17 MR. GAY: Yes.

18 THE COURT: -- are you saying that's a recorded
19 call?

20 MR. GAY: Absolutely.

21 THE COURT: And you have Mr. Bergrin on the call?

22 MR. GAY: Absolutely. And we also have him
23 discussing that he's not in court, he's about to go to
24 the --

25 THE COURT: Mr. Bergrin?

1 MR. BERGRIN: Judge, it wasn't on the -- the
2 reason I asked him that question is because it wasn't on the
3 chart that we --

4 THE COURT: Yes, but that's not the --

5 MR. BERGRIN: And he answered to the fact that it
6 was me on the phone.

7 THE COURT: I don't know if he said that.

8 MR. BERGRIN: He did. Of course he did.

9 MR. GAY: Judge, this is now -- he's now created
10 an issue. This is absolutely a false impression of what's
11 on these calls.

12 MR. BERGRIN: Judge, the witness answered exactly,
13 if you ask the Court Reporter to read it back, it was me on
14 the phone.

15 THE COURT: But why should the Government not be
16 able to come back and rehabilitate that or demonstrate,
17 especially if you knew that going in? Why would you open
18 that door?

19 MR. BERGRIN: I didn't know it, Judge. I thought
20 the initial appearance was at two o'clock in the afternoon.

21 THE COURT: But wait, wait, wait, wait, wait. You
22 didn't know that they have you on these tapes?

23 MR. BERGRIN: We weren't provided with the sealed
24 tapes.

25 MR. GAY: Oh, baloney.

1 MR. BERGRIN: Did you provide me with the
2 sealed --

3 MR. GAY: Judge, listen, this is something -- he
4 has had --

5 THE COURT: You're representing to me that he had
6 it?

7 MR. GAY: Absolutely.

8 THE COURT: I'm going to let you go into it.

9 MR. GAY: Okay.

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1 (The following takes place in open court)

2 REDIRECT EXAMINATION

3 BY MR. GAY:

4 Q. Agent Cline, you were asked some questions on
5 cross-examination about whether or not you knew it was
6 Paul Bergrin on the phone for the November 25th conversation
7 between Mr. Curry and Mr. Bergrin that took place over
8 Mr. Bergrin's law office phone at 2:26 p.m. You recall
9 being asked those questions?

10 A. Yes.

11 Q. Okay. Do you know whether or not there was a wiretap
12 of Mr. Curry's phone at that time?

13 A. Yes, there was.

14 Q. So is there a recording of that conversation between
15 Mr. Bergrin and Mr. Curry?

16 A. Yes, there is.

17 Q. And have you been able to review either a transcript
18 or the audio of that prior to coming here today?

19 A. Yes, I have.

20 Q. Okay. And I'm going to now refer you to -- I believe
21 you have the document in front of you --

22 MR. GAY: It's not marked, Judge, but I believe we
23 can put some -- I don't know what the next exhibit would be.

24 THE COURT: Well, what's the Government's last
25 marking?

1 MR. GAY: Well, we have a bunch that may come in
2 later, Judge.

3 THE COURT: For identification. What's the last
4 one that you have? Can you tell?

5 MR. GAY: 7600 we're going to mark it, Judge.

6 THE COURT: Okay.

7 (Government Exhibit 7600 marked for identification)

8 Q. Now, is this 7600 a transcript of the audio recording?

9 A. It is.

10 THE COURT: Well, does he have a copy?

11 MR. GAY: He has a copy of it up in front of him,
12 Judge, yes.

13 Q. And can you tell the jury, first of all, who is this
14 call between?

15 A. Mr. Bergrin and Mr. Curry, Mr. Hakeem Curry.

16 Q. And can you read -- first of all, what does -- Mr.
17 Curry answers the phone first; is that correct?

18 A. Yes.

19 Q. And he says what?

20 A. "Hello."

21 Q. And what does Mr. Bergrin say after that?

22 A. "ET."

23 Q. And what does Mr. Bergrin -- what does ET -- what does
24 Hak say at that point, Mr. Curry?

25 A. "Yeah."

- 1 Q. And what about, what does Mr. Bergrin say after that?
- 2 A. "Hey your boy got arrested."
- 3 Q. And what is Mr. Curry's response?
- 4 A. "For what?"
- 5 Q. What does Mr. Bergrin say after that?
- 6 A. "I got the complaint right in front of me, it's
- 7 possession with the intent to distribute and distribution
- 8 more than five grams of crack cocaine and essentially what
- 9 they are alleging is that he sold crack cocaine on one, two,
- 10 three, four times to an undercover confidential witness.
- 11 March 18th, 2003, sold 26 grams."
- 12 Q. And what does Mr. Curry say after that?
- 13 A. "March 18th, 26 grams, what else?"
- 14 Q. What does Mr. Bergrin say in response?
- 15 A. "March 18th, 2003, May 22nd, 26 grams."
- 16 Q. What does Mr. Curry say after that?
- 17 A. "May 22nd."
- 18 Q. And what does Mr. Bergrin reply to that?
- 19 A. March "9th, 28 grams."
- 20 Q. Mr. Curry's response was?
- 21 A. Excuse me. If I said March, I'm corrected. It's
- 22 September.
- 23 "September 9th, 28 grams."
- 24 Q. And what does Mr. Curry say after that?
- 25 A. "September 9th, 28 grams."

1 Q. What does Mr. Bergrin say after that?

2 A. "And October 23rd, 28 grams."

3 Q. And what does Mr. Curry say after that? What's
4 Mr. Curry's question?

5 A. "To an informant or to an agent?"

6 Q. And what does Mr. Bergrin reply?

7 A. "Handed the...it's all CWs, confidential witness,
8 confidential witness, four times confidential witness."

9 Q. And what does Mr. Curry say?

10 A. "How bad is that?"

11 Q. What's Mr. Bergrin's reply?

12 A. "I don't know. I don't know if they had him under
13 surveillance. I don't know where it was done. The actual
14 complaint was signed by Shawn Manson, a Special Agent from
15 the F.B.I. I don't know if they had him under surveillance,
16 I don't know if this guy was wired for sound. I don't know.
17 I'm going to try to find that out today. The U.S. Attorney
18 is asking for detention without bail. No bail."

19 Q. What does Mr. Curry say?

20 A. Is he going -- "Is you going in with the hearing with
21 him?"

22 Q. And what does Mr. Bergrin say?

23 A. "Yeah, it's before Judge Falk, Mark Falk, I don't know
24 him real well. So what's going to happen today is they're
25 probably gonna ask...they're allowed three days to ask for a

1 detention hearing."

2 Q. What does Mr. Curry say?

3 A. "Yeah."

4 Q. Mr. Bergrin's response to that is?

5 A. "And that's what they'll probably do. And they'll
6 probably indict within the next three days because that
7 gives them probable cause."

8 Q. What does Mr. Curry say after that?

9 A. "All right. So what time is he going to court?"

10 Q. What does Mr. Bergrin say?

11 A. "3:30."

12 Q. What does Mr. Curry say after that?

13 A. "You're going with him, right? All right, so call me
14 after court and I'll meet up with you in the office."

15 Q. What is Mr. Bergrin's response?

16 A. "Okay, bro."

17 Q. What does Mr. Curry say after that?

18 A. "But you're going with him, definitely, right?"

19 Q. Mr. Bergrin replies?

20 A. "Yeah, I have to, definitely. I already entered my
21 appearance."

22 Q. Mr. Curry says?

23 A. "Okay."

24 Q. And Mr. Bergrin's reply?

25 A. "Okay, brother."

1 Q. Mr. Curry then says?

2 A. "All right."

3 Q. And Mr. Bergrin replies?

4 A. "All right, buddy."

5 Q. Okay. So, now, based on this, Mr. Bergrin asked you
6 questions before saying he couldn't have made this call
7 because he was in court at the time? Do you recall those
8 questions?

9 A. Yes.

10 Q. What time does it say the court appearance is
11 scheduled for in this call?

12 A. 3:30.

13 Q. And what time did this call take place?

14 A. 2:26.

15 Q. So this was prior to Mr. Bergrin appearing in Federal
16 Court before the Magistrate on William Baskerville's matter;
17 is that correct?

18 A. Correct.

19 MR. GAY: Now -- just one second, Judge. I'm
20 sorry.

21 Nothing further, Judge, at this time.

22 THE COURT: Anything further, Mr. Bergrin?

23 MR. BERGRIN: Yes, Judge, something very
24 important.

25

RECROSS EXAMINATION

BY MR. BERGRIN:

Q. Mr. Curry says to me on November 25th, he's asking me what he got arrested for; correct? He's saying he didn't know that Mr. Baskerville was arrested, he's asking me what he got arrested for; correct?

A. You're referring to what I just read?

Q. Yes.

A. You're telling him that he got arrested, and he says "For what?"

Q. Correct. I'm telling him that his -- that he got arrested, his first cousin, Will Baskerville got arrested, and he's saying "For what"; correct?

A. That's -- that's what the trans -- yes.

Q. So much I guess for meetings in November 25th early in the morning with Anthony Young, right?

THE COURT: Is that a question?

MR. BERGRIN: No, no questions.

THE COURT: Mr. Bergrin, we're going to walk on thin ice if we start testifying.

MR. BERGRIN: All right, Judge.

MR. GAY: Judge, I need another sidebar. I'm
sorry.

THE COURT: Okay.

1 (The following takes place at sidebar)

2 MR. LEVY: Before you say anything, could I just
3 have the last Q and A read back, Your Honor?

4 THE COURT: The what?

5 MR. LEVY: I didn't hear the last --

6 MR. GAY: No, not the Q and A. It's the speeches.

7 THE COURT: No, we're going to have -- what is
8 your objection?

9 MR. GAY: Judge, Mr. Bergrin is now indicating
10 through his speeches and through his cross-examination
11 impugning Anthony Young's statements about what happened
12 during these phone calls, and he knows darn well what
13 happened during the phone calls, including the next one,
14 which I now believe he's opened the door for me to get into,
15 in which he's on the phone with Hakeem Curry telling
16 Mr. Curry that the informant is Kamo.

17 MR. BERGRIN: How does that have anything
18 whatsoever to do with the leading --

19 MR. GAY: Mr. Bergrin --

20 He is now saying there were no meetings, he's now
21 saying there was no anything. He's saying this call now
22 supports that, and he knows darn well the next call
23 indicates the exact opposite.

24 THE COURT: Okay. Hold on.

25 Let me hear Mr. Bergrin's last comments to this

1 witness before -- when he sat down.

2 (Record read)

3 THE COURT: And you're saying what?

4 MR. GAY: Judge, in his speech after that -- what
5 was the question before that, too?

6 THE COURT: Well, no, that was the speech.

7 MR. GAY: Judge, it's the Government's position
8 that he is now saying that these calls do not support what
9 Anthony Young said, the content of the call does not, and it
10 clearly does support what Anthony Young said.

11 THE COURT: That may be so. However, I don't
12 think that the jury got that from that comment. I didn't.
13 I was more talking about the pretrial motions and the fact
14 that Mr. Bergrin now on more than one occasion has made
15 comments that were akin to statements of someone testifying
16 rather than a question from a lawyer, and I was just
17 cautioning him that he'd better be careful here, because he
18 might get to the position, to the point where I determine
19 that he's testified.

20 That was the import of what I said. But I don't
21 think that that lead necessarily to you now going into that
22 which you want to go into. So I'll deny that.

23 MR. GAY: Okay. Okay.

24

25

1 (The following takes place in open court)

2 THE COURT: We're done with this witness?

3 MR. GAY: Yes, Judge.

4 THE COURT: Okay. Thank you, sir. You may step
5 down.

6 (Witness excused)

7 THE COURT: I'm told that the jury's lunch is
8 here, so we will have our 45-minute lunch, and then we will
9 continue with the next witness. Okay?

10 THE COURT CLERK: All rise.

11 Just place your stuff on your chairs.

12 (The jury exits)

13 (Luncheon recess taken)

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

1 her and perhaps attack credibility.

2 Now, let me ask you this. What's happening with
3 these other two witnesses that are in lockup that were
4 brought in, that are in jail?

5 MR. BERGRIN: They're both going to assert their
6 Fifth Amendment right, Judge, and refuse to testify. I
7 mean, that's what Mr. Pedicini told me.

8 THE COURT: Okay. So they're not going to be
9 called.

10 MR. BERGRIN: No, sir.

11 THE COURT: And you're not -- are you pursuing
12 this request for me to order judicial immunity?

13 MR. BERGRIN: Well, based upon the Honorable
14 court's -- I mean, based really upon your opinion that you
15 told Mr. Lustberg and myself, I don't think there's a chance
16 of getting that.

17 THE COURT: Well, you're correct, but let me tell
18 you why.

19 After considering the case law submissions by the
20 parties, this Court declines to extend judicial immunity to
21 Jamal McNeil and Edward Peoples. Parameters for the
22 District Court's ability to immunize a defense witness is
23 governed by Government of Virgin Islands v. Smith,
24 615 F.2d 964 (3rd Circuit 1980). Smith provides for two
25 instances in which the due process clause might compel the

1 granting of immunity to defense witnesses. First, where
2 government action denying use of immunity to defense
3 witnesses were undertaken with the "deliberate intention of
4 distorting the judicial fact finding process," -- that's not
5 here -- the Court can order acquittal unless on retrial the
6 Government grants statutory immunity. Second, a court may
7 confer judicial immunity upon a witness whose testimony is
8 "essential to an effective defense." A strong tradition of
9 deference to prosecutorial discretion exists and grants of
10 judicial immunity are provided only under very narrow
11 circumstances and "must be bounded by special safeguards and
12 must be made subject to special conditions." Again, that's
13 Smith at 615 F.2d at 971.

14 Defense asserts that the testimony of McNeil and
15 Peoples is essential to the defense and may present
16 exculpatory evidence. However, Smith conditions a grant of
17 judicial immunity of this type on five prerequisites: One,
18 immunity must properly sought in the District Court; two,
19 the defense witness must be available to testify; three, the
20 proffered testimony must be clearly exculpatory; four, the
21 testimony must be essential; and, five, there must be no
22 strong governmental interest which countervail against a
23 grant of immunity." Here, Mr. Bergrin has not made a
24 convincing showing sufficient to satisfy the Court that the
25 testimony which will be forthcoming is both clearly

1 exculpatory and essential to his case. It is proper for the
2 Court to deny if the proffered testimony is found to be
3 ambiguous and not clearly exculpatory, cumulative or if it
4 is found to relate only to the credibility of the
5 Government's witnesses. Testimony has been found to be not
6 clearly exculpatory if it is "undercut by...prior
7 inconsistent statement[s] or undercut by other witness in
8 the case. U.S. v. Perez, 280 F.3d 218 (3d Cir. 2002;
9 U.S. v. Thomas, 357 F.3d 357, 366 (3d Cir. 2004). Because
10 Mr. Bergrin has not met his burden to demonstrate that this
11 is so the Court declines to extend judicial immunity to the
12 individual involved.

13 So that takes care of that.

14 MR. LEVY: Your Honor, if I may, I believe you
15 mentioned the application was for Mr. Peoples. It's
16 actually for Jamal McNeil.

17 THE COURT: What did I say?

18 MR. LEVY: I think you said Peoples.

19 MR. GAY: I think you said both, actually.

20 THE COURT: Both. I said both.

21 MR. LEVY: But we would have a similar application
22 for Jamal Baskerville. So if you haven't reviewed that, we
23 don't have to deal with it now because he's not here or
24 anything --

25 THE COURT: Well, I would have to hear what your

1 proffer would be.

2 MR. LEVY: We'll make sure you have it. But it
3 will be the same application. The proffer for Jamal
4 Baskerville is included in the same proffer that we handed
5 up in the packet for Jamal McNeil.

6 THE COURT: Well, I think I know what my decision
7 will be, but I'd like to read that.

8 MR. LEVY: Understood.

9 MR. SANDERS: And I'd just like to remind the
10 Court that Jamal Baskerville was subpoenaed in the first
11 trial and with advice of counsel invoked his Fifth Amendment
12 rights and did not testify. So the assumption is, he would
13 do the same again.

14 THE COURT: Right. That was the one where he was
15 represented by Mr. Cleary, I believe.

16 MR. SANDERS: Yes.

17 MR. LEVY: Yes, Your Honor.

18 THE COURT: So we don't have those witnesses, and
19 on top of everything else, they're invoking their Fifth.

20 And if I put this witness off for tomorrow, what
21 do we have?

22 MR. BERGRIN: Robert Vannoy, Judge, which should
23 be relatively quick, and then Rasheem King, Your Honor.

24 THE COURT: Okay. Well, I think that's what we're
25 going to do.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

1 Jan Ludvick?

2 MS. PROTESS: Also scheduled to be here March 14th
3 pursuant to the habeas writ.

4 THE COURT: My clerk just tells me upon speaking
5 to the Marshals we're told that would be the earliest dates
6 they can get here. So we're going to have to discuss this,
7 because I'm not putting this case off.

8 Lemont Love?

9 MS. PROTESS: Also scheduled by writ of habeas to
10 be here March 12th, Your Honor.

11 THE COURT: Ignacious Ben Hohn, that was the
12 gentleman this morning. He's finished.

13 Marisol Perez?

14 MS. PROTESS: She was -- I don't believe she was
15 subpoenaed. I'll double-check on that. And again, we've
16 been reaching out for her but have been unable to obtain her
17 presence in court.

18 THE COURT: And Jamal Baskerville.

19 MS. PROTESS: Jamal Baskerville, it's our
20 understanding he would be likely to take the Fifth if
21 called. I don't know that we've ever -- yes, this has been
22 confirmed. He will -- he would take the Fifth.

23 THE COURT: So he's out.

24 MR. GAY: And, Judge, so he is the one who took
25 the Fifth at the last trial, so --

1 THE COURT: He's represented by Mr. Cleary.

2 MS. PROTESS: Correct, Your Honor.

3 THE COURT: Okay.

4 MR. BERGRIN: Judge, there's two additional
5 witnesses. There's a Diedre Baskerville that the Marshals
6 are -- I mean, I think they tried to serve her three times,
7 they're in the process of trying to serve her. So we'll try
8 to have her served for Monday, and I'll have my standby
9 counsel contact the Marshals.

10 And the last one is one Jose Rodriguez.

11 I'm going to ask the Marshals also, or my
12 investigators, Judge, to make efforts this weekend to serve
13 Frank Gonzalez also. He's a licensed private investigator.

14 THE COURT: Who's Frank Gonzalez? The detective,
15 retired?

16 MR. BERGRIN: He is the detective that worked on
17 the Jamal Muhammad-Abdul Williams case.

18 MR. GAY: He's a private investigator, Judge.
19 He's not a detective.

20 MR. BERGRIN: Private investigator.

21 MR. LUSTBERG: Judge, just so you know, Robert
22 Vannoy is here, so we can at least get that done.

23 THE COURT: Okay. All right.

24 All right. Let's get the jury, then.

25 MR. MINISH: Judge, I'm sorry, just two things

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No.
09-cr-369-DMC
v. :
TRANSCRIPT OF
PAUL W. BERGRIN, : TRIAL PROCEEDINGS
Defendant. : VOLUME 34
-----x

Newark, New Jersey
March 13, 2013

BEFORE:

THE HON. DENNIS M. CAVANAUGH, U.S.D.J.,
AND A JURY

Reported by:
CHARLES P. McGUIRE, C.C.R.
Official Court Reporter

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

s/CHARLES P. McGUIRE, C.C.R.

1 (Defendant present)

2 THE COURT CLERK: All rise.

3 (The jury enters)

4 THE COURT CLERK: Be seated.

5 THE COURT: Good morning.

6 THE JURY: Good morning.

7 THE COURT: I hope you enjoyed your day yesterday.

8 We are ready now for our closing arguments. I've
9 put limitations on them but they're going to take the better
10 part of the day, maybe until about 4:30, depends, and then I
11 plan to, in the event there is a rebuttal, short rebuttal
12 from the prosecution, that will occur tomorrow, and I will
13 charge you tomorrow. So hopefully by noon tomorrow, you
14 will have the case and be able to begin your deliberations.

15 Before that, we have closing arguments, which
16 obviously are very important. So we will begin those now.

17 Mr. Minish.

18 MR. MINISH: Thank you, Judge.

19 Counsel, Members of the jury, good morning.

20 THE JURY: Good morning.

21 MR. MINISH: Paul Bergrin is guilty of every
22 single charge in the indictment, everything from failing to
23 file the form 8300, that \$20,000 he received from Oscar
24 Cordova, the Federal form, to conspiring to distribute
25 cocaine with Hakeem Curry, with his girlfriend, Yolanda

1 Jauregui, with Alejandro Barraza-Castro, with Rondre Kelly,
2 with Abdul Williams, with Eugene Braswell, to maintaining a
3 drug-involved premises, three separate ones, his restaurant
4 at 710 Summer Avenue, his law firm, Pope, Bergrin & Verdesco
5 at 572 Market Street, his newer law firm at 50 Park Place,
6 the Law Office of Paul Bergrin, to traveling in the aid of
7 prostitution, sending those letters, those phony letters on
8 Jason Itzler's behalf so Jason Itzler could get out of
9 probation requirements -- excuse me, parole requirements, to
10 driving his car into New York for that reorganization
11 meeting, where he took over New York Confidential, to
12 traveling in the aid of a drug trafficking business, that's
13 Vinny Esteves's business, the flights in and out of Chicago,
14 the phone calls with Oscar Cordova, and, finally and most
15 significantly, for conspiring to murder Kemo Deshawn McCray,
16 to aiding and abetting the murder of Kemo Deshawn McCray, an
17 actual man actually killed in this very city as a direct
18 result of the work done by Paul Bergrin, and doing so, all
19 of that while running his business, providing illegal
20 services and legal services.

21 Now, the Judge told you he's going to charge you
22 tomorrow on the law, and one of the things he's going to
23 charge you on is that the Government has to prove its case
24 beyond a reasonable doubt, and that's true.

25 So it's clear, though, that's the same standard

1 that's used in every case in every courthouse throughout
2 this country for anyone who's charged in any criminal
3 matter.

4 In this case, it's a burden that's easily met.
5 The evidence is overwhelming that Paul Bergrin is, in fact,
6 guilty beyond a reasonable doubt of every charge in the
7 indictment.

8 Now, the indictment, as you're aware, contains the
9 charges. It's a fairly substantial document. I want to
10 discuss it with you briefly, all right?

11 So if we can put up that chart.

12 What you're going to see there is that there's 23
13 counts, each one alleging a different crime. Even if it's a
14 similar statute, each crime -- excuse me -- each count is
15 for different criminal conduct.

16 There's a total of 23 counts. Now, you see
17 they're numbered to 26. There are three that are missing.
18 Counts 6, 7 and 11 you'll see don't exist there.

19 So even if it's the same or a similar statute,
20 it's for different conduct.

21 So, for example, there are three different counts
22 pertaining to that drug-involved premises, right, 710 Summer
23 Avenue, 572 Market Street, 50 Park Place, the restaurant,
24 law firm one, law firm two, each of it for different
25 conduct, each of it relates to different times drugs were

1 kept in his premises.

2 Now, Count 1 of the indictment alleges a RICO
3 violation, and within that count is what's called
4 racketeering acts.

5 Now, the Judge is going to explain to you tomorrow
6 that in order to find Mr. Bergrin guilty of that RICO count,
7 you have to find at least two of those acts.

8 Now, Count 1 is broken down, so I'm going to show
9 you --

10 If we can put up the verdict form.

11 And this is a court-approved verdict form. This
12 is what you guys are going to have tomorrow.

13 And what you can see on the screen is Count 1, the
14 Racketeering Act 1, and then underneath Racketeering Act 1
15 there are a series of crimes, A, going down to the next
16 page, B, C, D, and you're asked questions, was this proven
17 or not proven. And the Judge will explain to you that you
18 need to find, although there is evidence of all of them, you
19 need to only find one to then find the racketeering act, and
20 then two of the racketeering acts need to be found to find
21 Count 1. The Judge will explain it to you, but just so you
22 have an idea of what the verdict sheet is going to look like
23 and how you're going to get into it.

24 Now, members of the jury, this, as the Judge told
25 you, is the Government's opportunity to discuss the

1 evidence. And that sounds obvious, but it's an important
2 idea, because, keep in mind as I speak with you, as
3 Mr. Bergrin speaks with you later today, as Mr. Gay speaks
4 with you either I guess later today or in the morning, our
5 jobs as attorneys is to discuss the evidence, to make
6 arguments based on the evidence: This is evidence;
7 therefore, this fact. We're not allowed to make evidence up
8 and then argue baseless theory.

9 So let's talk about -- well, before we talk about
10 what is evidence, let's talk about what's not evidence.

11 What is not evidence is what the lawyers say. No
12 matter how passionately it's said, no matter how
13 emphatically something is said doesn't make it true, and it
14 doesn't make it evidence. If stated by a lawyer in an
15 accusatory tone, it doesn't make it true, and it doesn't
16 make it evidence. No matter how sarcastically a question
17 may be asked, it's not evidence. Even if when asking a
18 question a lawyer turns to the jury and nods his head, that
19 doesn't make it evidence, and, as you saw throughout the
20 trial, likely not true. But, regardless, it's certainly not
21 evidence.

22 What is evidence is the testimony from the witness
23 stand, the documents that were received into evidence by the
24 Court, other items, like recordings, the photos, the
25 stipulations, all of which you will be able to review, and

1 that's what you must base your verdict on.

2 So let's talk about that evidence, all right?

3 Now, of course, you've heard the term "enterprise"
4 used numerous times during the trial, and you'll see in the
5 indictment the -- and as you've heard, the indictment sets
6 forth the enterprise as the Bergrin Law Enterprise. So when
7 "enterprise" is referred to, that's the enterprise we're
8 talking about.

9 Let's talk about that evidence.

10 Paul Bergrin, as you know, is a lawyer. He
11 specialized in representing gang members, handling homicide
12 cases, high-level drug trafficking. And all of that is
13 okay. There's no crime. There's many honorable lawyers
14 that make a living doing that.

15 The issue is how he used his position as part of
16 that enterprise, whether it was to gather information that
17 the public would not have otherwise had, like in Vinny
18 Esteves's case, when he had the discovery that only law
19 enforcement, that Vinny Esteves had through his counsel,
20 whether it was to gain access to locations that could not be
21 recorded, where conversations were beyond the ability of law
22 enforcement to hear, again, like with Vinny Esteves in the
23 Monmouth County Jail in the special attorney rooms.

24 Now, there were others that participated in this
25 enterprise, and you heard from some of them. Thomas Moran,

1 for instance, he worked for the law office. He was involved
2 in the witness tampering with Vinny Esteves. Yolanda
3 Jauregui, you heard a lot of testimony about her,
4 Mr. Bergrin's girlfriend, who owned businesses with Mr.
5 Bergrin and helped with legal cases. She was also a member
6 of the drug conspiracy, supplied kilos of cocaine to the
7 drug customers of the enterprise.

8 Alejandro Barraza Castro. You heard testimony
9 from him -- excuse me, about him. He was a client of the
10 law practice, he rented space at 710 Summer Avenue, you
11 heard, and he would get drug customers for kilograms of
12 cocaine from the enterprise. He was a member of the drug
13 conspiracy, and he supplied kilos to that drug enterprise.

14 Ramon Jimenez, Yolanda Jauregui's brother. You
15 heard testimony he was an employee at the firm also. He was
16 a client to the law practice, and he assisted in the drug
17 distribution.

18 Abdul Williams, also an employee of the law
19 practice, also a client of the law practice, assisted in the
20 drug distribution. He was a customer of the drug traffic,
21 and he was involved in witness tampering.

22 Norberto Velez. He was a client of the law
23 practice and worked at the firm, although he didn't
24 remember, at least according to one of the secretaries who
25 was employed at the firm also. He was involved in witness

1 tampering and involved in the drug distribution.

2 Finally, James Cortopassi, also an employee of the
3 law practice, and was involved in the prostitution business.

4 You also heard evidence that Mr. Bergrin used his
5 companies to assist in the criminal activity of the
6 enterprise, using these businesses as a means to help commit
7 the crimes. At Pope Bergrin & Verdesco, the first law firm
8 that you heard about, he represented clients by tampering
9 with witnesses. That includes William Baskerville, Norberto
10 Velez, and he talked about it with Richard Pozo. He was
11 involved with drugs with clients back then, too, Rondre
12 Kelly, Eugene Braswell, Abdul Williams, and also the
13 beginning of the prostitution business, representing Jason
14 Itzler, that started in the old firm also.

15 Then when he moved to his new firm, the Law Office
16 of Paul Bergrin, there was still witness tampering, the plot
17 to kill Vinny Esteves -- excuse me, Vinny Esteves's
18 witnesses. He had the 8300, the failure to report that
19 money, and again, more drugs, this times, Abdul Williams,
20 Eugene Braswell, Rondre Kelly, Alejandro Barraza-Castro,
21 Norberto Velez, and the balance of the prostitution
22 business.

23 You heard testimony about Premium Realty
24 Investment Corp., Inc. That's the company that the checks
25 were written out, or five of the six checks, Jason Itzler's

1 checks, remember, when he had to prove that he was working
2 for Mr. Bergrin? That's where those checks came from, the
3 checks that were never negotiated, never cashed, never
4 deposited.

5 And the real estate transaction with Rondre Kelly,
6 the one where Rondre Kelly was trying to launder his drug
7 proceeds? That was used -- that was done through Premium
8 Realty.

9 Now, from the group of people that were employed
10 by Mr. Bergrin, you heard testimony from Thomas Moran, Abdul
11 Williams, James Cortopassi. They have taken responsibility
12 for their acts. They took the stand and they explained to
13 you their position within the organization, within the
14 enterprise.

15 But Mr. Bergrin has sort of a theme that he's
16 trying to convince you of. He wants you to believe about
17 these guys and, in fact, about all the Government
18 cooperators that they're really bad guys: They have prior
19 records, so, you know what, you can't believe them.

20 The thing that's left out is that prior to
21 becoming cooperators for the Government, when they were out
22 on the street, when they were actually involved in criminal
23 activity, they were part of Paul Bergrin's organization. He
24 wants this to reflect poorly on the Government, that these
25 guys are involved in crime after crime after crime. But it

1 was his choice, Mr. Bergrin's choice to make them part of
2 his organization.

3 And logically, who else would he put in his
4 organization but people who do commit crimes, if that's the
5 purpose of your enterprise?

6 And the ultimate, I guess the end of that theory
7 of Mr. Bergrin's is that somehow the Government took all
8 these people and made them take the stand and lie to you.
9 Right? Because, clearly, if they told the truth, Mr.
10 Bergrin is guilty of everything he's charged with.

11 But remember, members of the jury, when you're
12 balancing things, because these are decisions you're going
13 to have to make, who do I believe, who do I think is being
14 straight with me, what is the evidence that I find, that the
15 links of these individuals are not to each other. They're
16 either through or from Mr. Bergrin.

17 Now, Paul Bergrin as an attorney had a choice to
18 make. He could have represented individuals accused of a
19 crime, followed the rules, be an honorable attorney.
20 Instead, he chose to commit crimes with his clients, chose
21 to become a criminal himself, chose to sell drugs,
22 intimidate witnesses, conspire to kill the witness, and to
23 plan to kill additional witnesses. He provided legal and
24 illegal services with other -- using other people and his
25 companies. He used his law license to disguise the fact

1 that he was a drug dealer and a murderer.

2 His position as a lawyer was invaluable. He had
3 people believe his declarations just because it was on his
4 letterhead. Again, a simple example is Jason Itzler, those
5 letters: He works for me.

6 The information getting about who the cooperator
7 was in William Baskerville's case when he sat across the
8 table from William Baskerville and was told by
9 Mr. Baskerville the cooperator in this case is Kemo.

10 Paul Bergrin had it all figured out: Be a lawyer,
11 get away with murder, connecting drug dealers to drug
12 buyers, all undercover.

13 And he was successful for a while. But that
14 success was paved with kilograms of cocaine, the emotional
15 scars left on Carolyn Velez, and the body of Kemo Deshawn
16 McCray.

17 Let's talk about Carolyn Velez briefly.

18 Now, in the indictment, this is what's called a
19 manner and means section of the indictment, which basically
20 means it's not a crime unto itself, it just sort of explains
21 in the indictment and through the evidence how the
22 enterprise worked, that this is how they operated, an
23 example, evidence of the type of things that they did.

24 Now, obviously as you heard the testimony both in
25 the beginning and the end, we have two stories that can't be

1 rectified, right? Someone is lying to you. This is not a
2 matter of, I saw it gray, I saw it a different color of
3 gray. This is black and white.

4 So, initially, let's just talk about what
5 Mr. Bergrin offered to you.

6 Mr. Bergrin offered to you Norberto Velez and the
7 neighbor who didn't remember seeing anything as a
8 counterbalance to Carolyn Velez, Marilu Bruno, Dr. Hinfey,
9 Detective McAloon. And ultimately, it will be your
10 determination to see which you believe.

11 But let's talk about Norberto Velez a little bit.

12 Early in the trial, you heard his name, you heard
13 about what he did to his daughter, you heard about what he
14 did to his wife. Then you finally got the opportunity to
15 see him. And what you saw was a man that was completely
16 lacking in credibility, what I submit to you is a man who
17 did not take his oath seriously, who sat before you and told
18 lie after lie, from small ones, whether or not he worked at
19 Mr. Bergrin's law office, to large ones, where he didn't
20 remember anything on that transcript: Paul, I don't know
21 who Paul is, I don't remember people telling me about the
22 cooperators and who they were, to ultimately even changing
23 his answers right in front of you on the stand.

24 Do you remember the question about, Did they call
25 you Jason?

1 Yes, that's what they call me.

2 And then shortly after that, there was an
3 objection from Mr. Bergrin -- oh, I'm sorry. No, it was,
4 they call you Jason, and I said, Why, is it because of the
5 movie, the horror movie, and he said yes. Then there's an
6 objection, and then Mr. Velez's answer becomes, Well, I
7 don't know why they call me that, you'd have to ask her.

8 Now, in and of itself, the fact that they called
9 him Jason isn't a huge point, but it does certainly go to
10 his credibility, the way he was answering questions to you.

11 I submit to you that you knew right then and there
12 this guy was not here to tell you the truth. He had an
13 agenda. He was trying to slide one by you, plain and
14 simple.

15 Although I guess the fact that he is referred to
16 as Jason, either by they or just Ms. Jauregui, Yolanda, is
17 pretty indicative of what actually happened to Marilu Bruno,
18 right? Now, Jason in the movies did not have to take a
19 knife from his victim. Jason in the movies was not acting
20 in self-defense.

21 Mr. Velez didn't even remember telling -- or
22 testified to you, anyway, that he didn't remember telling
23 the F.B.I. that he didn't remember anything about the case.
24 Maybe if Mr. Bergrin had asked the questions he might have
25 remembered better because, again, if you recall, when we

1 went through the transcript the first time, he didn't
2 remember anything, and then suddenly, somehow, Mr. Bergrin
3 asked him the questions, it all came back to him, and then
4 finally, to close the loop, when I went back and asked him
5 again, So Paul is Mr. Bergrin, memory suddenly disappeared
6 again.

7 Now, Mr. Velez, besides talking about his daughter
8 and claiming that there was no manipulation, no
9 brainwashing, he also made some comments about the drug
10 case, and I want to deal with Alejandro Barraza-Castro
11 specifically, his testimony about Mr. Castro. He denied
12 that he was going to plead guilty -- and I'm going to quote
13 here: "I'm going to plead guilty so Alejandro can get out
14 okay. They'll let him get out because if I'm guilty."

15 But when Mr. Bergrin asked him, Did I tell you to
16 do that, did anybody tell you to do that?

17 No.

18 Were you doing it to help Alejandro?

19 No.

20 But the thing I want you to keep in mind about
21 that transcript and those questions is the difference
22 between how the Government presented its case and how
23 Mr. Bergrin did on the cross-examination. When Mr. Velez
24 was asked questions about his transcript -- prior to being
25 asked questions about his transcript, he was provided with

1 the transcript, he read the transcript, it was translated
2 for him, he was shown the dates, he was shown the time, and
3 then he was given the opportunity to ask questions -- excuse
4 me -- answer questions about it.

5 This was not a case of a lawyer standing here like
6 Mr. Bergrin did and saying, Didn't you say on this day this
7 exact quote four years ago, and the witness saying, Well,
8 I'm not sure exactly, can you show me the transcript, and
9 get an answer?

10 We'll get to that. We'll get to that.

11 So if Mr. Bergrin in his argument uses those sort
12 of situations to tell you, members of the jury, oh, this
13 person can't be trusted because, well, he got this word
14 wrong, or he said he didn't remember this exact phrase, bear
15 in mind the difference in the process and what is reality of
16 what you could possibly remember exactly word for word from
17 years prior.

18 Now, I'm sorry, to get back to Mr. Castro, there's
19 two things that he said that are important for you to pay
20 attention to: Paul Bergrin was not involved in drugs, and
21 Alejandro Barraza-Castro is a very dangerous guy. All
22 right?

23 Now, the problem, though, for Mr. Velez's
24 testimony is that reality directly contradicts what he said.

25 Norberto Velez when he is arrested tells the

1 police, I don't know anything about these drugs, I have no
2 involvement with these drugs, I don't know what happened, I
3 just gave the guy a ride.

4 Which is all well and good, except if you want to
5 say, well, Mr. Bergrin had nothing to do with it, you can't
6 know that unless you say, oh, I was involved.

7 So after he was arrested, he comes here and he
8 says, No, no, no, that was wrong, I was really involved, and
9 that's how I can tell you that he wasn't.

10 Then number two: Alejandro Barraza's a very
11 dangerous guy. Remember the talk of, oh, the Mexican
12 cartel, these guys are very dangerous, he gave a, "Thank
13 God," all of these comments.

14 Now, members of the jury, let's walk back to again
15 what happened in reality.

16 He's arrested with Mr. Castro. He voluntarily
17 provides -- signs a search -- excuse me -- a document so
18 that the officers can search for drugs and for money. He
19 even says, anything that's there in those suitcases, not
20 mine, it's Castro's.

21 As it turns out, you heard the testimony.
22 Officers went there, they took in excess of \$450,000 from
23 those suitcases.

24 Now, Norberto Velez and Alejandro Castro lived
25 together for a period of time. Mr. Castro lived where

1 Norberto Velez lives, and again, I'm saying "lives" as in he
2 still lives in the exact same spot today, eight-plus years
3 later, with his new wife and his young child, and yet this
4 Mexican cartel can't find him, can't hurt him, because he
5 told you himself, I've never been threatened, I've never
6 been harmed.

7 But somehow or another, Mr. Castro -- excuse me --
8 Alejandro Barraza-Castro is this super-dangerous guy.

9 Now, again, members of the jury, with this as a
10 backdrop, what sort of credibility does Norberto Velez have
11 when he comes in here and he tells you, with Carolyn Velez,
12 I never did anything, I never -- I never harmed her, it was
13 in self-defense, he told you, that was Marilu's blood on my
14 hands, if I didn't take the knife from her, I wouldn't be
15 sitting here today.

16 Because, again, it is what it is, right?
17 Mr. Velez told you this. Carolyn Velez told you the exact
18 opposite.

19 Someone is lying to you.

20 And it's up to you, members of the jury, to judge
21 their credibility. Those are the sort of decisions you're
22 going to have to make as jurors.

23 So let's discuss who told the truth.

24 Carolyn Velez as a child testified to was
25 manipulated by Mr. Bergrin, by her father, by Mr. Bergrin's

1 girlfriend, that she lied to the jury in the state case,
2 which is certainly not good, although understandable,
3 admitted her mistake the day after the verdict came down,
4 went to the Essex County Prosecutor's Office and told them
5 everything. She lied because of Paul Bergrin, her father,
6 and Paul Bergrin's girlfriend. But on that day, she came
7 clean, at that point about age 11. It was too late to do
8 anything about that in the stabbing case. It was over. But
9 she did what she could and provided the proper information
10 to law enforcement.

11 A few days ago, though, let's compare that to
12 Norberto Velez, who came as a full-grown adult into this
13 courtroom and lied to you again and again, and did so for
14 the man who beat the attempted murder case for him and who
15 got him out of jail when he was caught with 20 kilos of
16 cocaine with Alejandro Barraza-Castro.

17 And if we could, just briefly, about Marilu Bruno,
18 the woman who was stabbed, Mr. Bergrin in his opening said
19 the eyes are the windows to the soul, something like that.

20 Now, you saw Ms. Bruno testify. I know it's a
21 long time ago now, she was the -- second witness?
22 Everything from when she closed those eyes to think back
23 about a memory, actually play it back in her head, to when
24 she was asked questions about her wounds, and looked at her
25 body, and pointed at the locations of the scars and where

1 she was injured, did she seem like someone who was trying to
2 slide one by you, who's being dishonest with you, or who was
3 here simply just to tell you what happened?

4 Mr. Bergrin also predicted in his opening that you
5 would hear about the dark side of justice. And he was
6 right: Sometimes, when a system is manipulated, a guilty
7 man goes free.

8 The stabbing case rose and fell on whether
9 Marilu Bruno brought the knife to her car, right, because
10 everything else sort of falls from that. The other facts,
11 the mother doesn't speak English, this, that and the other,
12 but the reality is that if Norberto Velez -- if Carolyn said
13 no, her mother never went into the house, therefore,
14 Norberto Velez had to bring the knife, if he brings the
15 knife to this meeting in the car, there would probably
16 likely be a different verdict, right?

17 So Carolyn had to say Marilu went into the house.
18 She lied, she told you about the manipulation, and she told
19 you about the statements she gave afterwards to the Essex
20 County Prosecutor's Office.

21 It was through her statements that Norberto Velez
22 was found not guilty, again, because of his lawyer, his
23 lawyer's girlfriend, and himself. They conspired to get
24 Carolyn Velez to lie.

25 Now, what did Mr. Bergrin do specifically?

1 Well, and it's sort of a theme throughout the case
2 and the same thing that's going on again and again. He did
3 the legal analysis of the case, tried to figure out how he
4 could win this case, and when he couldn't win it in any
5 legitimate way, he formulated a plan to do it in another
6 way, an improper way, an illegal way. He made the plan
7 work, he figured out what words to put into Carolyn Velez's
8 mouth and then work with her again and again, week after
9 week, month after month with his girlfriend and her father
10 to make it happen.

11 He was not acting as a legitimate lawyer. He did
12 his part. He was the guy who made this happen, the guy who
13 put the strategy together, the brains of the conspiracy.

14 And Carolyn Velez told you herself, she sat on the
15 stand and she explained the story during this process where
16 she was upset, and Mr. Bergrin knew she was upset, and she
17 said -- he said to her, don't worry, and I'll quote, this is
18 the kind of case you can't tell the truth.

19 Now, I'm going to wrap up with Detective McAloon.

20 Norberto Velez did not receive medical attention.
21 That was a big issue. He didn't receive medical attention
22 because he had no injuries. You saw the pictures, you can
23 look at them, and ultimately, remember, you can look at that
24 print card, and you see exactly underneath that blood, after
25 his hands are cleaned off, what the prints look like,

1 without -- it's not cuts all over his hands.

2 But he attacked -- Mr. Bergrin, that is, through
3 his cross-examination, Detective McAloon, attacked the
4 investigation: You didn't do this, you should have done
5 this, you didn't do that. The same way he attacked Agent
6 Brokos about the William Baskerville investigation, right?
7 Could have, should have, didn't.

8 But the reality is, both, I submit to you, did the
9 good investigation, because the reality is that Detective
10 McAloon, he got the right guy. He arrested Norberto Velez
11 for stabbing his wife, and he did.

12 Agent Brokos got the right guy, too: Anthony
13 Young. Anthony Young shot and killed, as he told you,
14 Kemo Deshawn McCray.

15 So despite all the questions Mr. Bergrin may have
16 asked about how this could have been done different and this
17 could have been done different, the reality is, in real
18 time, in reality, the decisions made by these investigators
19 bore out exactly what they were supposed to: They got the
20 right guy.

21 Now, let's talk a little bit about Mr. McCray's
22 murder.

23 On March 2nd, 2004, at approximately 2 p.m., on
24 South Orange Avenue and 19th Street right here in Newark,
25 Kemo Deshawn McCray was gunned down in a brutal attack. He

1 was grabbed by Anthony Young and shot in the head multiple
2 times. He collapsed on 19th Street and died in a pool of
3 his own blood, with his stepfather mere paces away from him.

4 And you know this was not a random killing, right?
5 This was an execution, plain and simple. And you know why
6 he was executed. Kemo McCray was killed because he
7 cooperated with the Government against William Baskerville.

8 The people who made that happen, it wasn't a
9 one-man operation. It was a lot of people. There was a
10 number of people that were responsible, a number of people
11 involved in this conspiracy. As you've learned, William
12 Baskerville, he wanted it done. He passed along the name.
13 Jamal Baskerville was the guy who finally located
14 Mr. McCray. Hakeem Curry, also known as E. T. Hak, he sat
15 as a lookout up South Orange Avenue with Jamal McNeil.
16 Rakim Baskerville drove the getaway car and Anthony Young's
17 the man who held the gun to Mr. McCray's head and fired.

18 But it was Paul Bergrin, Paul Bergrin's legal
19 advice that wrote Kemo Deshawn McCray's death warrant. The
20 legal analysis from a trusted advisor, from their lawyer,
21 from their gang's house counsel, when Paul Bergrin said, if
22 Kemo testifies against Will, Will was never coming home,
23 when Paul Bergrin said, don't let Mr. Kemo testify against
24 Will, when Paul Bergrin said, if he don't testify, he'll
25 make sure he gets Will out of jail, what their counsel had

1 told the gang was that the only way William Baskerville was
2 ever going to come home was if Kemo Deshawn McCray didn't
3 get on a witness stand. The only option that left the group
4 with was to kill him, to get rid of him. The die was cast.
5 It wasn't a matter of if Kemo Deshawn McCray was going to be
6 killed after that meeting; it was just a matter of when,
7 when they could locate him and when it would happen. The
8 evidence shows that beyond a reasonable doubt that
9 Paul Bergrin was a member of that conspiracy that led
10 directly to Kemo Deshawn McCray's murder.

11 Now, before we talk about the evidence, there's a
12 couple of Mr. Bergrin's theories that he seems to be arguing
13 in his opening and through cross-examination I want to
14 address, starting with number one, that Mr. Bergrin passed
15 along the name Kemo Deshawn McCray to Hakeem Curry because
16 that's what a lawyer is supposed to do, because he had an
17 obligation to check on the strength of the Government's case
18 so he could argue bail for William Baskerville. Right?
19 That's what he said.

20 Now, so it's clear, though, out of the other side
21 of his mouth, what he's telling you is that it's illogical
22 to kill Kemo; I would never be involved in that because Kemo
23 meant nothing to the case.

24 So within his own theories, there's direct
25 contradictions: He was so important I had to look into him;

1 he's so unimportant, why would I bother to kill him ?

2 But beyond that, let's just sort of tease this
3 theory out a little bit. What he wants you to believe is
4 that he was going to determine Kemo's credibility so he
5 could argue in a Federal Court to a Federal Judge that the
6 Government's case is lousy, right? And that would lead to
7 William Baskerville getting out of jail.

8 So how does he do this?

9 He goes to the biggest drug dealer in Essex County
10 to get info on Mr. McCray. Not to his own licensed
11 investigator. He doesn't ask the Government for his
12 criminal history, Kemo's criminal history like he did in the
13 Peoples case. I mean, was Hakeem Curry going to come into
14 court and testify and say -- before, again, before a Federal
15 Judge, hey, I'm a drug dealer, I know bad guys, so that when
16 I tell you you can't believe the Government's case and
17 Kemo's a bad guy, you got to believe me. I know these
18 things. So you should let my drug-dealing cousin William
19 Baskerville, out of jail, Judge.

20 The other and even more fantastic theory that
21 Mr. Bergrin has offered is that Anthony Young is not a
22 member of Curry's gang, asking questions that implied that
23 somehow, he was faking this.

24 Let's eliminate that issue right now.

25 You heard him testify. This is an individual who

1 has been out of jail since approximately the age of 14 a
2 grand total of four years, right? Total. You heard how he
3 spoke about the Baskerville's family, the intimate knowledge
4 of the family members, even the family members not involved
5 in drugs. Remember Mr. Bergrin asked him a question and he
6 said, oh, no, he's the preacher, he's not involved in any of
7 this stuff.

8 Now, that should have been more than enough just
9 to show the relationship. But we have pictures from his
10 cell, that Anthony Young to this day still has in his cell,
11 right, from Mr. Curry's wedding. He knew which Curry -- who
12 was Curry's mother when we went through the photos, his son,
13 his brother. We have the photograph that he still has of
14 his -- with the Baskervilles' brother-in-law. And the best
15 is that the All-Star game, remember when he said he went to
16 the All-Star game and Hakeem Curry got that all organized
17 and he got everybody together? There is an actual document
18 that you guys are going to have back there, 2276E, and it's
19 up on the screen now. Anthony Young's name on the top, and
20 literally, literally, in the -- one, two, three, four, five
21 or so lines down, it says "Currie Group."

22 What Anthony Young told you was that when he got
23 out of jail in 2003 after having been away for a number of
24 years, the gang had gotten much larger and he did not know
25 everybody. He told you who he knew, he told you who he

1 didn't know. It doesn't mean he's not a member of the
2 group.

3 Now, beyond that absurdity, let's talk about logic
4 here. What is the scenario that would cause Anthony Young
5 to come and lie to you about being a member of Hakeem
6 Curry's organization? Work through this with me, all right?

7 Anthony Young is a poser. He's not a real member
8 of the inside circle. He's not a part of the murder. So
9 this lifelong criminal who's not involved with the people or
10 the murder, who never told on anyone in his life, who did
11 his time each and every time and comes home for each of his
12 many, many convictions, decides one day he's going to go to
13 the F.B.I. to tell them about a murder, and not just any
14 murder, the murder of a Federal witness, the murder that no
15 one has been charged with yet. And, again, in Mr. Bergrin's
16 theory, not for his own safety, as Mr. Young told you it
17 was. For apparently no reason at all, he goes in and then
18 decides to point the finger at the wrong guy, again,
19 apparently with no motive. First he claims he's a lookout,
20 and although he's not, he finally admits to a murder, again,
21 that he did not commit.

22 He signs a plea agreement. The plea agreement,
23 which you will also have in evidence, the very last
24 paragraph says, requires mandatory life. The only exception
25 is if he cooperates, the Government writes him a letter if

1 he testifies truthfully, and then the Judge says, yes, I
2 approve this letter, or I approve this motion and I will
3 grant his -- a lower sentence.

4 So that requires him to testify truthfully. But,
5 again, in Mr. Bergrin's scenario, that would be impossible
6 if he didn't kill Mr. McCray.

7 So, hoping to fool both the Government and the
8 Federal Judge so that the Government decides to write a
9 letter on his behalf, then the Federal Judge finds his
10 testimony worthy of a reduction in sentence, he eventually
11 goes and testifies at William Baskerville's trial for the
12 Government against William Baskerville, the family who he
13 apparently worships from afar, for the grand benefit of
14 getting 30 years in jail for a murder he did not commit,
15 just so he could come back in court again here before you to
16 testify against Mr. Bergrin, a guy Mr. Bergrin has argued he
17 has had very little contact with in his life, just so he
18 could see it -- so he could maybe get the Judge to see his
19 way clear to lowering his sentence a little bit more for a
20 murder he did not commit.

21 Now, how about we try a little reality instead?
22 And let's talk about what Anthony Young told you.

23 William Baskerville's a lifelong friend. He gets
24 arrested for selling drugs. What Mr. Young told you was
25 that if he was only going to do a few years, the reality is,

1 nobody likes it, but that's the cost of doing business.

2 But Paul Bergrin tells him, No, no, no, this is
3 not the state, this is not a few years, he's facing life.
4 But if you kill Kemo Deshawn McCray, I'll get him out.

5 So Anthony Young decides to kill him, because he's
6 a member of the gang. He's one of the two possible
7 shooters. He accepts cash up front from the boss, Hakeem
8 Curry, and on the day Kemo McCray is located, Anthony Young
9 shoots him. He lays in wait, sneaks up on Kemo, shoots him
10 in the back of the head, and drives in the getaway car with
11 Rakim Baskerville.

12 As you learned, days after the murder, a number of
13 the Curry gang was arrested, right? That was the D.E.A.
14 case that you heard about? But Anthony Young wasn't one of
15 them. So he's out there, still selling drugs, doing his
16 thing. But about eight months later he gets into an
17 argument, he has an issue with two other guys who are out
18 there, Jamal Baskerville and Jamal McNeil. He feels
19 outnumbered and in danger. He as much as anybody knows the
20 danger of being on the wrong side of the Baskervilles.

21 So what does he do? He goes to the F.B.I. and
22 tries to outsmart the law enforcement officers.

23 Doesn't work out for him.

24 So then he finally admits to law enforcement that
25 he personally killed the witness, he pleads guilty -- excuse

1 me, guilty to life in prison, where he will die in prison
2 based on his plea agreement unless both the Government and
3 the Court believe he is telling the truth and the Court
4 thinks that less than life in jail is appropriate.

5 Which do you think is reality?

6 Now, to move away from Anthony Young for just a
7 second, the final theory that Mr. Bergrin has floated that I
8 would like to deal with is that for some reason, he wants
9 you to believe, or he wants you to believe for some reason,
10 I should say, that Newark police and the F.B.I. both had the
11 right guy, Malik Lattimore, and for whatever reason just
12 decided not to charge him, despite, presumably, wanting to
13 close the murder case, so they just let him go.

14 And taking that theory to the logical conclusion,
15 I guess the only way that would work out is if somehow in
16 their crystal ball they could see that nine months later, a
17 random guy was going to randomly show up voluntarily at the
18 F.B.I. and claim responsibility for a murder that he did not
19 commit.

20 Try that God-given common sense that Mr. Bergrin
21 asked you to use in his opening statement on those.

22 Now, why those ridiculous theories, members of the
23 jury? I'll tell you: Because it's important to Mr. Bergrin
24 to attack the credibility of Anthony Young. He's desperate
25 to make Anthony Young look like a liar, because Paul Bergrin

1 knows that if you believe Anthony Young, then he's guilty,
2 period.

3 That all being said, let's talk about what the
4 evidence actually is, and, while we do, bear this in mind:
5 That Paul Bergrin has admitted and it has been produced in
6 black and white in two separate newspapers that he got the
7 name Kemo the cooperator from William Baskerville. And what
8 did he do with that name, he said? He gave it to Mr. Curry,
9 passed it along, from inside of the jail information to guys
10 on the outside.

11 Now, notwithstanding the excuse and the reason,
12 the bail, the investigation that Mr. Bergrin offered, if you
13 believe that Paul Bergrin gave the name to Mr. Curry knowing
14 and intending that the information will be used to track
15 down and kill Kemo Deshawn McCray so he couldn't testify
16 against William Baskerville, then Mr. Bergrin is guilty of
17 all the charges contained in the indictment related to the
18 murder. You need not go any further in your analysis,
19 because, as the Judge told you -- or will tell you, excuse
20 me, the conspiracy charge for the Kemo murder simply
21 requires the Government to prove the agreement. The
22 agreement, it was a legal agreement to commit this murder by
23 two or more people. And the fact that the murder was
24 actually committed is not what the Government has to prove,
25 not for a conspiracy.

1 Now, putting even that aside, what did the
2 investigation into Mr. McCray's murder tell you?

3 Well, you first heard from Detective Sabur, right?
4 He's a very experienced homicide detective here in Newark,
5 and he told you that at the scene, the actual identification
6 of the shooter, he had no leads, just a description, a black
7 male, braids, about five-nine. The getaway car was a gray
8 or silver Grand Am. He told you about the IBIS system, that
9 he sent the projectiles over to see if they would be
10 matched, and he did not hear anything about a match, so he
11 worked on the assumption there was no match.

12 Now, ultimately, again, you saw Sergeant Laterza
13 come in and say, yeah, they were run and they were in there
14 since 2004. There was no match. I ran it again, there's no
15 match. But obviously the detective didn't know at the time.
16 All he knew was, nobody told me. Sergeant Laterza said,
17 well, there was, and we have a whole list of people that
18 we've got to tell when there are matches. So while he
19 couldn't say there was no match, the detective was honest
20 and told you, nobody told me about a match.

21 He also told you that he did a canvass. Now, a
22 canvass is going around, asking various people questions,
23 right, did you see anything, what did you see, what
24 happened, and that he got provided no useful information
25 from the people in the area.

1 He also told you about Johnny Davis, that he was
2 provided information from Agent Brokos to put together a
3 photo array of Malik Lattimore, and it was shown to Johnny
4 Davis, and there was not a positive ID. He couldn't make
5 the arrest.

6 Now, Mr. Bergrin made a big deal of the word
7 "resemble": Sabur didn't ask him what it means; he didn't
8 clarify it.

9 Members of the jury, it's a common English word
10 with a pretty clear meaning: Looks like. Resembles: Looks
11 like.

12 To attack Detective Sabur on his unwillingness to
13 go back and have Johnny Davis explain what the word
14 "resembles" means to him and then to somehow attack his
15 investigation based on that I submit to you is an argument
16 without any merit at all.

17 And so it's clear, because there was a lot of
18 back-and-forth on what Mr. Davis said, what did Detective
19 Sabur tell you he said?

20 Quote: "His hair resemble and his face complexion
21 resemble the same that I saw shoot and kill Kemo."

22 Also: "I believe shot ex-son Kemo, hair and
23 complexion as the person how shot Kemo," and when he said
24 "how," he told us he probably meant who shot him. But
25 that's what it was, right?

1 Now, granted, if you stop at, "I believe shot
2 ex-son Kemo," that's probably a pretty good ID if you don't
3 read the whole thing. But as you know, he never saw his
4 face. The best he could do was what he did: He gave the
5 information as best he could under difficult situations.

6 Now, Mr. Bergrin was trying to tell you something
7 about the word "sure." Again, so it's clear, he was not
8 sure Malik Lattimore was the shooter. He was sure in his
9 mind the complexion and the hair was the same.

10 But Detective Sabur told you something that was
11 interesting: You don't push to get the answer you want in
12 law enforcement. As a police officer, you don't try to push
13 them into any specific information. It's good, fair police
14 work.

15 The police don't do that. But you know who does?
16 Mr. Bergrin's investigators.

17 Can we put up their pictures?

18 Do you have a copy of these?

19 Now, they interviewed Johnny Davis seven years
20 after the incident. They lied to Mr. Davis about who they
21 were, they lied to Mr. Davis about why they were talking to
22 him, and during that conversation seven years later, he is
23 suddenly more sure about this ID.

24 Do you think maybe he was manipulated a little
25 bit?

1 But here's my favorite thing that they did. They
2 tried to make it look like he read this statement, 7500 --
3 remember Government Exhibit 7500 -- read it so thoroughly
4 that he made corrections, right?

5 Now, that's just simply not true, and I'm going to
6 show you how you know that.

7 Remember when Mr. Bergrin made that big issue:
8 You read it carefully, sir, you're a Muslim, you try to do
9 the right thing and all those things, right? And you even
10 made corrections, and that shows how accurate you were,
11 right?

12 Now, can you put it up on the screen?

13 Thank you.

14 I didn't get it right away, right, because the
15 argument seems reasonable on its face.

16 Can you zoom in on the top of the second
17 paragraph?

18 Now, that's the correction he was talking about,
19 right, where he said the date, on -- underneath, it says
20 August 2nd, then it became March 2nd, 2004, right?

21 Now, that's what Mr. Bergrin would have you
22 believe indicates Johnny Davis read this so carefully that
23 he made this correction.

24 And then it dawned on me as I was looking at it:
25 It's impossible for it to have happened that way because

1 this is not a typewriter. If this was written out
2 completely prior to the mistake being found, the real date,
3 the March 6th, would have been off in the side somewhere.
4 There would not be space for it.

5 This correction was made as they were going along
6 -- August 2nd, March 2nd -- not crossed out later and moved
7 to the side. Right there. There is no other way that could
8 have happened. You don't randomly leave spaces for
9 potential mistakes as you're writing stuff and then
10 hopefully fill it in. That correction was made as the
11 woman, right, Mr. Davis told you the woman was writing it
12 out, that's how that was made, and then Mr. Davis was asked
13 to initial it afterwards.

14 He didn't catch that mistake when he was reading
15 it. It's impossible.

16 So, now, let's talk about Johnny Davis.

17 Now, putting aside what I submit to you under 7500
18 was clearly trying to slide one by you, all right, to make
19 you believe something that wasn't true.

20 Talk about Mr. Davis specifically. He was clearly
21 -- seems like a very nice man who went through a horrific
22 event, about as horrible as can be imagined. I mean, if you
23 think about it, he's walking down the street, he's talking
24 to his son, who's just trying to turn his life around,
25 they're having a conversation, it's the middle of the day,

1 and right there, in an instant, out of nowhere, he is shot
2 in the back of the head and collapses on the ground in the
3 middle of the street.

4 Now, what I submit to you, members of the jury,
5 and this will be for your determination, is that his memory
6 of that event, of that horrible event may not be perfect, he
7 might get mixed up a bit at times, and I leave it to you to
8 access his memory with respect to what happened at the
9 actual shooting. And which, again, in Mr. Davis's defense,
10 could not have lasted, what, 10 seconds? Bang, bang, bang,
11 bang. Mr. Davis said then he took three steps, one, two,
12 three turned around. At that time, Anthony Young, you know,
13 moving at a pretty good clip, he wasn't walking, back to the
14 car. And you can look at the photos. You see where the car
15 was. It was right by the mailbox. You can see where it was
16 in relation to where Mr. McCray's body was and the car.

17 What could he possibly have really seen of
18 Mr. Young? In the best case scenario, remember when I stood
19 over here, he saw, did I turn like this? No. Like this?
20 No. About like this. Right?

21 But so it's clear, listen, again, these are
22 situations that you're going to have to make determinations
23 as jurors, it does contradict what Anthony Young told you.
24 Anthony Young told you, no, I did not have braids. He did
25 tell you that he had his collar up, he had a fleece collar

1 up and he had his dark Yankee hat pulled down. Maybe it
2 looked like braids from that view. But one way or the
3 other, you have to make a determination on who's being
4 accurate.

5 And I submit to you, members of the jury, for
6 whatever reason it was, Mr. Davis is simply mistaken about
7 that fact.

8 And, you know, maybe sort of a side thing puts a
9 little light on it. The tape measure that we asked him
10 about? You're going to see --

11 Can you put the sketch up?

12 There was a tape measure, and I showed him the
13 tape measure that was recovered that day, and I said, Do you
14 recognize this?

15 He said, Yes, that is Kemo's.

16 I said, Are you sure?

17 He said, Absolutely, I'm sure. That is Kemo's.
18 He had it with him that day.

19 Now, if you look, and it's pretty hard -- you see
20 like a box, a little X toward the bottom middle there?
21 That's the -- and it's contains in the pathway, right, the
22 walkway there? That's about where Johnny Davis was when he
23 told you where he went. Right? He was walking down the
24 path, he kept moving in that direction, kept moving in that
25 direction, takes three steps and then turned around.

1 Now, is it possible that that tape measure was
2 Kemo's? It's possible. I mean, maybe from the force of the
3 impact, it bounced and went down there. I know that it was
4 a windy day, but I don't think -- you can see that tape
5 measure. It seems unlikely that it was blown anywhere. It
6 seems unlikely it was a random tape measure that happened to
7 be on South Orange Avenue.

8 What's likely, again, from what the evidence tells
9 you is that whether it was Mr. Kemo McCray's or Johnny
10 Davis's, Johnny Davis had it on him that day and it fell
11 about the area where he was. But members of the jury,
12 again, he was very sure: No, it was Kemo's.

13 I submit to you, members of the jury, he went
14 through a very traumatic event, and simply, there were a few
15 things he got inaccurate. I'm by no means saying he
16 intentionally lied to you. I submit to you that he made
17 exactly every possible effort to be as honest and as
18 forthright as he possibly could with you.

19 Now, what did he tell us besides the day of the
20 murder?

21 Now, Mr. Bergrin tried to get him to speak badly
22 to the F.B.I. and the actions at his house. Mr. Davis said,
23 No. I was upset, but they didn't do anything wrong.

24 He was shown pictures of Malik Lattimore, and to
25 sort of put that thing to rest, he was asked, What is your

1 -- what was -- how do you define your quality, the quality
2 of your ID on that day? Right? And what he did he tell
3 you.

4 And I quote. It's on page 1449.

5 Line 11 starts: "No, I did not. I didn't,
6 because I couldn't. I could barely remember the man's face,
7 so when they showed me the pictures, all I could do was pick
8 out the man closest that I thought was the man that shot
9 him."

10 And then down to line 19: "That was sure that I
11 know he shot him, but if you're asking me could I pick him
12 out on a scale of one to 10, that's like picking him out of
13 the clear blue sky."

14 Now, "clear blue sky" is clearly not one out of
15 10, but I think Mr. Davis was making his point pretty clear
16 that he did not know even at the time. That's Mr. Davis's
17 own assessment of the individual who the officer said, Look
18 here, maybe one of these guys is the shooter. Do you think
19 he took that seriously, the shooter of his own son? Of
20 course. And that's his own assessment.

21 So whatever Mr. Bergrin tells you, just keep that
22 in the back of your mind. Johnny Davis himself told you,
23 it's like picking a man out of the clear blue sky.

24 And I guess this is as good a time as any to
25 discuss the accusations, another series of accusations made

1 by Mr. Bergrin without any evidence. Sometimes he implied
2 it, sometimes he came right out and said it, that the
3 Government is making people say things. All right? He
4 wants you to believe that I told the witnesses what to say,
5 Mr. Gay told them what to say, Agent Brokos, Agent Cline,
6 some combination of us, that we got these guys all in a room
7 and said this is what you're going to say, this is what you
8 got to do, make sure you say this, make sure you don't say
9 that.

10 We apparently worked with these people from all
11 over about all different crimes just to get Mr. Bergrin, to
12 get them to lie. Although apparently we didn't do a great
13 job at it, because we would have them testify one thing and
14 it wasn't a mistake if they remembered something a little
15 differently, it was us telling them, say this and then say
16 that; we couldn't get our own story straight.

17 Now, everyone who took the stand that was asked
18 denied it, they said it wasn't true. So there is literally
19 zero evidence to the contrary. The only thing you have is
20 Mr. Bergrin's baseless accusations.

21 And again, since we're on Johnny Davis,
22 specifically Mr. Davis, who very clearly said something
23 different, the hair, than Anthony Young said. He was not
24 made to say, oh, I made a mistake; oh, it could have been
25 the collar of the fleece zipped up; it could have been the

1 hat pulled down. He testified to his best memory. And when
2 he was asked, Did anybody tell you anything, anybody make
3 you say anything, what did he say? No. And I commend you
4 for that.

5 But in case you still have some concerns, one of
6 the things the Judge is going to tell you about in the
7 series of charges is called under the topic of witness
8 meetings with the Government. And specifically, there's a
9 couple of lines I'm going to read to you, "that no adverse
10 inference should be drawn from that conduct," meaning the
11 meetings; that, quote, "they might have been derelict in the
12 performance of their duties if they had not questioned the
13 witnesses as the investigation progressed and during their
14 preparation for this trial. Indeed, it would be negligent
15 on the part of any lawyer not to interview or attempt to
16 interview a witness whom he or she called to testify."

17 That's not coming from me. That's not coming from
18 the witnesses. That's the law.

19 Now, let's get back to the evidence for a second.

20 Shawn Brokos, Agent Brokos was the F.B.I. agent
21 who was leading the William Baskerville investigation,
22 right? She, with Kemo, as long as he was able to testify
23 and the recordings, she believed she had a strong case,
24 submitted the complaint, had it signed. She explained to
25 you the enterprise theory of the investigation, right? She

1 said you keep working up the chain. She started with these
2 gang members, again, so the record is clear, were unrelated
3 to Mr. Bergrin, the Crips, who was supplying them, got to
4 this guy, got to that guy, and eventually to William
5 Baskerville. And then when she went beyond William
6 Baskerville, or tried to go beyond William Baskerville, she
7 ran into the D.E.A. investigation that was coming from the
8 other side, right? George Snowden came in and he told you
9 about Hakeem Curry. So they were working at it from that
10 side, and the F.B.I. was coming from the other side.

11 So what did Agent Brokos do? She packed up the
12 investigation, William Baskerville is where it's going to
13 end, and he was charged.

14 Now, again, so we're being -- we're covering
15 everything that needs to be covered here, sometime after
16 William Baskerville's arrest, Kemo Deshawn McCray -- or the
17 F.B.I. determined that he had lied to them, right, and
18 therefore he was taken out and no more -- not used any
19 longer operationally.

20 But during the drug investigation, when it was
21 completed on November 25th, 2003, William Baskerville was
22 arrested. Remember he went through the story. He was
23 arrested at home, brought back to the F.B.I., and he had a
24 discussion with Agent Brokos and was considering -- it was
25 an open issue whether he would cooperate. He spoke to

1 Mr. Bergrin on the phone. Agent Brokos left the room. Now,
2 so it's clear, we have no evidence of what was said during
3 that conversation. But what we do know is after that
4 conversation, Mr. Baskerville made it clear, there will be
5 no cooperation.

6 Now, again, we spoke about Kemo McCray no longer
7 being used operationally, but they still had to protect him.
8 Because you make that mistake, Agent Brokos said, doesn't
9 mean they get cut loose and killed. So he didn't want to go
10 into the witness security program, move his life. What did
11 he do? He moved around from location to location to
12 location. And it worked for a while. He would not leave
13 the area. To him, being far away was East Orange, out of
14 the Newark area.

15 Unfortunately and tragically, a few months after
16 Will Baskerville's arrest, on March 2nd, Mr. McCray was
17 murdered. The F.B.I. tried to assist Newark police as best
18 they could, providing them information as they went along,
19 and you heard where the investigation went, and I'm not
20 going to go into the details. I'm confident that you
21 remember.

22 But the next thing we're going to talk about is
23 when Anthony Young walks in the door.

24 Now, during the course of the investigations,
25 eight, nine months after he shot Kemo McCray, Anthony Young

1 is having problems on the streets himself. He has a gun
2 possession case that's pending in Essex County, he's got the
3 problems brewing with Jamal and Jamal, Baskerville and
4 McNeil. He gets a lawyer, Paul Feinberg, to resolve that
5 bench warrant. He contemplates going to the F.B.I. He
6 broaches that with Mr. Feinberg. And --

7 Let's put that clip up.

8 Now, so it's clear, we're going to talk about
9 this. Anthony Young never says Paul Feinberg told me to
10 lie. Right?

11 There's the question:

12 "Did he tell you to lie?

13 "No, he didn't tell me to lie, he just said don't
14 implicate myself or nothing."

15 So a lot of this is much ado about nothing, but
16 just very briefly, if we could talk about Mr. Feinberg for a
17 second, by no means am I saying he lied to you, but I do
18 think he exaggerated. I submit to you he did exaggerate a
19 bit for his knowledge in this case, all right? He
20 exaggerated first the amount of time Anthony Young was
21 facing. Remember we went through that? Five years for
22 this, 10 years for this, 18 months for this, then the double
23 term. He was up to 20 years, something like that. And at
24 the end when I asked him questions, what was he really going
25 to get, I said to him, five years? And he said, Well, with

1 his record, about three. So I guess take that for what it's
2 worth, why we had to go through that.

3 And what did Anthony Young tell you? He was a
4 little more optimistic. When asked the exact same question,
5 he said, no, in the state, I'd probably get two, three
6 years.

7 So they're really not that off.

8 But, I guess more importantly, I submit to you he
9 exaggerated his memory of the discussions he had with
10 Anthony Young.

11 I asked him, did you have a specific memory of
12 this conversation, or is this a situation where you said,
13 listen, I'm a lawyer, I give the same advice in this
14 situation to everybody and I know I must have said that to
15 him?

16 He said, no, no, no, I have a specific memory of
17 telling Anthony Young. The guy he represented for like a
18 month, two months, who didn't pay him enough money for him
19 to continue to represent him.

20 Now, let's compare that to what else he said he
21 did not remember.

22 He didn't remember that specific conversation he
23 had such detail about whether it was in person or on the
24 phone, and he didn't remember much about the case, despite
25 having read the file, previously testified about it, and

1 taken notes prior to coming in here. He didn't remember the
2 date he stopped being the lawyer, the facts of the case,
3 where Anthony Young was stopped, whether he was walking or
4 driving, whether anybody was in the car with him, he didn't
5 even remember the appropriate charge. Remember when I
6 showed him the indictment, I was like, well, that one you're
7 talking about, it's not there.

8 He said Oh, yeah, it's not.

9 But ultimately what matters here is that Paul
10 Feinberg told you he didn't explain the nuances of the Fifth
11 Amendment to Anthony Young. He used the word "implicate."

12 And what did Anthony Young tell you? Exactly what
13 you saw on the screen. Anthony Young followed his advice,
14 actually, pretty closely. Told the truth about Paul
15 Bergrin, told the truth about Hakeem Curry, told the truth
16 about Rakim Baskerville. He told us the name, he gave us
17 the advice, he told us we had to kill him or Will wasn't
18 coming home. Hakeem Curry, right from the beginning, he was
19 the lookout, he paid the money. Rakim Baskerville, yeah,
20 right from the beginning, he was the driver, he was the
21 getaway driver. What he did was he switched his parts with
22 Jamal McNeil. He made himself a lookout, and McNeil, he was
23 the shooter. Everything else that's going on is consistent.

24 Now, he did so by lying, and there's no getting
25 around that. But for Paul Bergrin to argue to you that

1 Anthony Young must be lying because of something that
2 Mr. Feinberg said is, again, just simply without any merit
3 whatsoever.

4 And to sort of wrap this up, let's talk about
5 Mr. Bergrin's other witness with respect to the Kemo murder,
6 Rashidah Tarver.

7 Now, she knew Anthony Young was a drug dealer,
8 and, in fact, most of her testimony really wasn't in any
9 significant conflict with what Anthony Young told you, all
10 right? He carried guns, he put cars in her name, the
11 relationship had deteriorated, they fought a lot. He asked
12 her to go into witsec. She said no. The burning down the
13 house, now, Anthony Young said it was his other girlfriend
14 who did it. She said, not that I know of, it was the other
15 girlfriend; she thinks it was Anthony Young. He gave me
16 multiple versions of the shooting. That's what Anthony
17 Young told you, too.

18 The only real significant difference between her
19 testimony and Anthony Young's testimony is when it relates
20 to the Baskervilles. The family, she said she is best
21 friends with Jamal Baskerville's wife and grew up in the --
22 I forget what she said -- in the neighborhood, not across
23 the street, however she described it.

24 So the differences relating to the Baskervilles.
25 She has no idea what Rakim Baskerville does for a living.

1 No. Doing life in jail for drugs. No idea. She had no
2 idea what Will Baskerville did for a living. Again, doing
3 life in prison for drugs. For Hakeem Curry, quote, I knew
4 nothing of him but his name, although he is the
5 Baskervilles' cousin and she went to the wedding.

6 That murder, remember? The girlfriend getting
7 shot accidentally? You know anything about Jamal
8 Baskerville being involved with that?

9 No.

10 Rakim Baskerville being involved when the gun was
11 melted, know anything about Rakim?

12 Nope. I know Anthony Young went. I took him
13 there multiple times.

14 But nothing involving the Baskervilles.

15 And as Agent Brokos told you, that's
16 understandable. She told Agent Brokos that she did not want
17 to testify against the Baskervilles because of her
18 relationship with them.

19 Now, with respect to the melting of the gun, now,
20 despite what Ms. Tarver told you, we should note that
21 besides Anthony Young telling you that they went there to
22 melt the gun. If you go back and think about Devon Jones's
23 testimony and the stipulation regarding Ben Hohn, they both
24 say it was Anthony Young and another guy, who through the
25 evidence you could see is Rakim Baskerville, that they

1 melted the gun, that both of them came in together, and even
2 though, as you heard, Ben Hohn thinks he is Jesus Christ,
3 that, he remembers. Now, he believes it to be a number of
4 months after, but what happened is described pretty much the
5 same by all people.

6 So whether or not Ms. Tarver wants to say so, we
7 know Anthony Young and Rakim Baskerville came to Ben's shop
8 together and melted the gun.

9 Now, whether you want to believe that she was
10 protecting the Baskervilles or not, what you do know is
11 she's not protecting Paul Bergrin.

12 Want to put that clip up?

13 And this is Mr. Bergrin, remember:

14 "Did he ever under any circumstance mention my
15 name in reference to being involved in the Kemo case at all?

16 "Yes.

17 "Did he mention my name, Paul Bergrin?

18 "He said Paul. He didn't give me a last name."

19 Now, from his witness' own mouth, Ms. Tarver made
20 two things very clear: Anthony Young said Paul was
21 involved, and she knew when Anthony Young said Paul, he
22 meant Paul Bergrin. So...

23 Now, so it's clear, again, this is before Anthony
24 Young goes to the F.B.I. He's not looking for a deal on a
25 gun case from Ms. Tarver; he's just telling her what

1 happened. He's not looking to use Paul Bergrin's name to
2 get the attention of Ms. Tarver, like Mr. Bergrin would have
3 you believe he did with law enforcement -- which I have to
4 address just for a second.

5 I mean, Mr. Bergrin wants you to believe that
6 Anthony Young has information on the murder of a Federal
7 witness, but when he calls the F.B.I. in order to get their
8 attention, as if somehow or another, hey, I got information
9 about the Federal witness of yours that was murdered is
10 insufficient, I'm going to sweeten the pot, is with a local
11 attorney that Agent Gale, remember when he testified, told
12 you before he mentioned his name had meant nothing to him,
13 that somehow or another, that's why Anthony Young mentioned
14 Paul Bergrin.

15 Well, now we know again through Mr. Bergrin's own
16 witness that Anthony Young was telling people Paul Bergrin
17 was involved before he even met with someone in law
18 enforcement.

19 And from that very first call, members of the
20 jury, so it's clear, Anthony Young always said Paul Bergrin
21 was involved, never changes. His, Anthony Young's, what he
22 did changes, but never with Paul Bergrin, from the
23 conversations with Ms. Tarver through the very first call,
24 the one that even Agent Gale characterized as a pretty short
25 call, through his time with Agent Brokos, through his

1 testimony in William Baskerville, through his testimony
2 here, never changes. Paul Bergrin is involved right from
3 the beginning.

4 Now, again, at this point, it's probably important
5 to note that Anthony Young goes to the F.B.I., no one is
6 charged. The F.B.I. didn't come to him. The lifelong
7 criminal approaches them, not just local police, remember,
8 the Federal Government, he approaches, and he told you how
9 the drug dealers in the world view the Feds differently from
10 the local police, and literally goes right into their midst.
11 Why? A man who has a pending charge that a
12 super-experienced defense lawyer says he's going to get five
13 years, the guy who since he was 14 has been out of jail a
14 grand total of four years and never once cooperated against
15 anyone? Or is it more likely it's just simply exactly what
16 he told you: I feared for my life. I thought I was going
17 to end up like Kemo. I thought I was going to end up dead
18 on the streets because I had crossed the Baskervilles.

19 Now, we all know what Anthony Young said, right?
20 There's three versions. He lied at first and switched roles
21 with Mr. McNeil, said I was the lookout, Mr. McNeil was the
22 shooter. Then when he realized he was involved in the
23 conspiracy, remember when he got the new lawyer we'll get
24 to, he said, oh, then, in that case, I don't know anything.
25 And then the third version, he came in and said, okay,

1 listen, I'll level with you guys, I'm the one who did it,
2 McNeil was just a lookout.

3 Now, Mr. Bergrin wants you to believe that this is
4 a one-witness case. That's what he's been harping on. But
5 the corroboration of Anthony Young -- of the information
6 provided by Anthony Young is independent corroboration, and
7 we're going to go through this, independent facts that show
8 Anthony Young was being straight with you.

9 And the corroboration of these facts, members of
10 the jury, keep in mind, some of them are important just
11 because only an insider would know this information, that it
12 wasn't in the newspaper, unless you were a member of law
13 enforcement, only someone who was there, only someone who
14 pulled the trigger would actually know these facts.

15 Okay. So let's go through what Anthony Young said
16 and how we know it's true, all right?

17 Anthony Young tells you that the first day when
18 Will Baskerville's arrested, they think it's Ray-Ray. If
19 they can't find Ray-Ray, Horatio Joines, if he's out there,
20 why wasn't he arrested? He deals with William Baskerville
21 every day. He should be arrested. If not, he might be the
22 cooperator. He might be ratting out Ray -- excuse me --
23 ratting out Will. All right?

24 What do you know?

25 Well, from those recordings in the drug

1 investigation, Anthony Young is telling the truth. Horatio
2 Joines is identified during the course of the William
3 Baskerville drug investigation as Will Baskerville's
4 right-hand man dealing the drugs.

5 So Anthony Young corroborated there.

6 Anthony Young tells us that there is contact
7 between Paul Bergrin and Hakeem Curry the day of the arrest,
8 that he provided information about the complaint that was
9 lodged against William Baskerville, multiple dates, multiple
10 amounts, a number of different transactions.

11 Well, what do we know?

12 There's the complaint. Anthony Young was right:
13 Multiple sales, multiple dates, various amounts.

14 Now, do you remember Mr. Bergrin tried to slide
15 one by Agent Cline when he took the stand? He was just a
16 witness to put in the phone records to back up that there
17 was actually phone calls that day, right, we were going to
18 put in the phone records? What did he say? Oh, that
19 couldn't be me, I was in court, right, at the time?

20 Turns out, as you learned, it wasn't. It was
21 Mr. Bergrin on the phone. He had not been to court yet.

22 Now, do you think Mr. Bergrin knew that was him on
23 the phone? Do you think he tried to slide one by you there?
24 Or do you think he genuinely believed, no, that's probably
25 not me on the phone?

1 Why, members of the jury? Why would he go to such
2 lengths?

3 Well, because, again, when Anthony Young is
4 telling the truth, Paul Bergrin's guilty.

5 Now, Anthony Young wants to tell us about a second
6 phone call where Paul Bergrin mispronounces the name Kamo
7 for Kemo. He passes that along, that information along to
8 law enforcement. What does law enforcement confirm? Well,
9 obviously they know Kemo is the cooperator. So when Anthony
10 Young tells them that, that's also corroborated. He's
11 right.

12 And beyond that, Thomas Moran also corroborates
13 Anthony Young through his testimony. Now, although
14 certainly Agent Brokos didn't know it at the time or anybody
15 involved in the investigation because it was only much later
16 that we learned this information, but think about what
17 Mr. Moran told you. Paul Bergrin told him that he passed
18 the name of the witness to William Baskerville's people, and
19 Mr. Moran told you what "people" meant in the parlance of
20 Mr. Bergrin. And then you also know in his own words,
21 again, going back to those newspaper articles, two separate
22 articles, that Mr. Bergrin himself said, yes, I passed that
23 along.

24 So was Anthony Young telling the truth when he
25 said I was in the car and he passed along the name to Hakeem

1 Curry?

2 Yes.

3 And what do we also know about these calls?

4 They match -- we matched the phone records to the
5 day of the arrest and what Anthony Young says. Let's look
6 at these calls.

7 Two calls, right -- there's a total of three
8 calls, one of them before the court appearance, two of them
9 after the court appearance, just as Anthony Young told you.
10 One of them we got the information before he went to court,
11 one, he wasn't sure, I think he said a couple hours later.

12 Anthony Young says that there was contact between
13 Paul Bergrin and Hakeem Curry the day of the detention
14 hearing, that there was a meeting, all right, days later
15 between Paul and the Curry group, with the gang.

16 Now, originally, Agent Brokos told you that she
17 believed what Mr. Young was saying was, no, it was that same
18 night. But what Mr. Young told you was that he didn't know
19 the exact date, and he didn't even know the exact date of
20 the actual arrest. I mean, the calendar in his line of
21 business isn't that important. What he did remember,
22 though, was after Thanksgiving. And it wasn't on the
23 weekend.

24 Now, what event of significance happens after
25 Thanksgiving, after the weekend, in the world of William

1 Baskerville? A detention hearing on December 4th, 2003, the
2 first time that Mr. Bergrin and William Baskerville are told
3 he's facing life. You will have the transcripts to review
4 in the back. And you will see where Mr. Gay says on the
5 record that's what he's facing.

6 What does Anthony Young tell you? Well, that Paul
7 Bergrin came to us one night, again, after the weekend,
8 after Thanksgiving, and told us, Will Baskerville is facing
9 life. That's the first time we heard about it. But you
10 know what else? It's the first time he heard about it, too.
11 Read the transcripts.

12 And on that day, were there phone calls between
13 Mr. Bergrin and Hakeem Curry?

14 Yeah.

15 Three calls.

16 Can you put that up?

17 We don't have this one in as nice a chart, but if
18 you look at the records there. You can see on December 4th
19 three calls, three connections from -- or between, I should
20 say, two phones, Hakeem Curry's and Paul Bergrin's phone the
21 day of the detention hearing, when Mr. Baskerville was told,
22 you are not getting out of jail, no bail for you, and you
23 are facing life.

24 You can look at the dates. You can match the date
25 on there with the front page of the transcript. Same date.

1 What else does Anthony Young tell you?

2 Well, at the meeting, he shows up in a
3 dark-colored Mercedes-Benz.

4 Well, we don't have photographs of that day, but
5 we do have a photograph of Paul Bergrin's Mercedes-Benz that
6 was grabbed by or captured by an E-ZPass I think it was two
7 months prior to the meeting, maybe even three months prior
8 to the meeting.

9 Now, at that meeting, the impact of Paul Bergrin's
10 words is what's critical. Anthony Young tells you before he
11 arrived they didn't know much about the Federal system.
12 They knew you do 85 percent of your time, they knew the
13 Federal Government doesn't usually arrest individuals, it's
14 larger groups, but he didn't know the exact laws. He knew
15 they faced more time, but how much, he did not know.

16 And he also told you that that made a big
17 difference. Again, no one was going to kill Kemo McCray if
18 Will Baskerville was doing five years, 10 years. It wasn't
19 going to happen.

20 He's not sure what will happen with Feds, but they
21 know who the informant is. They haven't decided yet what to
22 do about it. You know why? Because they have not heard
23 from their counsel yet, from their trusted advisor. So when
24 he tells them, again, if Kemo testify against Will, Will was
25 never coming home. Don't let Mr. Kemo testify against Will.

1 And then making the promises of success: If he don't
2 testify, he will make sure he gets Will out of jail. If no
3 Kemo, no case.

4 And then after the short conversation between just
5 Mr. Bergrin and Curry off to the side, he looked back at the
6 group and said, Don't forget what I told you, remember what
7 I told you, made his hand motion: No Kemo, no case.

8 And with that legal analysis, with that advice
9 from Curry's confidant, from the group's house counsel,
10 again, the die was cast: Kemo was to be killed.

11 Now, again, if you believe Mr. Bergrin said those
12 things at the meeting, he is guilty of all the charges
13 relating to the Kemo murder.

14 Let's talk about some things after the meeting.
15 Right?

16 They discussed how they were going to find Kemo.
17 He explained why he already hadn't done so, the group hadn't
18 done so, because they were waiting to sort of figure out
19 what the plan of attack was and how they were going to go
20 about it. And what efforts, how far they were willing to go
21 to get William Baskerville out of jail.

22 It was decided Rakim Baskerville will be the
23 getaway driver because he's apparently a great driver, and
24 that the shooter would be Anthony Young and Jamal -- or
25 Jamal McNeil, not Curry, and not Jamal Baskerville.

1 There was a long search for Kemo. I'm not going
2 to go into the details of the search. But suffice to say
3 that they got frustrated, they thought the Feds had him in
4 the Witness Protection Program. He said the group kept
5 looking for him.

6 Now, how was that corroborated? Agent Brokos told
7 you that she was getting information from three separate
8 sources that people -- that the Baskerville people were
9 looking for Kemo because he's a snitch. During that period
10 of time from November 25th through March 2nd, when Kemo was
11 killed, including one source that said they were looking for
12 him at Bradley Court. As Anthony Young told you, that's one
13 of the places he was looking, or the group was looking.

14 Now, the day of the shooting, what does he tell
15 you?

16 Well, he tells you that he sees Mr. McCray at the
17 construction site, also corroborated by Johnny Davis.
18 That's where he was. And that he had a mask on, right?
19 Corroborated by Johnny Davis, the photographs, the medical
20 examiner's words, all of that stuff. Kemo had the mask.
21 Remember the mask was broken and laying by his body?

22 That he watched him walk down 18th Street, up
23 South Orange Avenue, just as Johnny Davis told you. That he
24 walked back, and when they reached 19th Avenue, he jumped
25 out and he struck. Again, as Johnny Davis told you.

1 He told you there were three cars involved, that
2 two of them bookended the middle car, the rental car with no
3 plates, right? He told you there were no plates. How would
4 he know there were no plates unless he was there? And how
5 was it corroborated? Well, because all the witnesses who
6 were there said, yeah, there was no license plate, we
7 couldn't see a license plate.

8 So we know that's true.

9 We have the lookouts -- excuse me. The other
10 thing about Kemo bringing stuff out to the dumpster.
11 Mr. Davis says the same thing, that he saw him a couple of
12 times.

13 With respect to the actual shooting, he said he
14 shot him with a nine millimeter. What did you learn from
15 law enforcement? Yes, nine millimeter.

16 Said it was one gun. One guy, one gun. What did
17 you learn from law enforcement? Also, one guy, one gun.
18 Detective Alarcon told you that, and Mr. Gozsa, the
19 investigator, right, from the crime scene, they told you,
20 three or four shots, just as Anthony Young said.

21 The dust mask, just as Anthony Young said.

22 The car, silver Grand Am, although, again, Grand
23 Prix became Grand Am, he wasn't sure initially, or he says
24 he was. Agent Brokos says no, I believe he said Grand Prix.
25 Grand Prix, Grand Am, silver car, right from the beginning,

1 exactly how it was said at the crime scene.

2 And how about this one? How many people know
3 this? Walking down the street with a cigarette in his hand.

4 You saw those photographs: Cigarette in his hand
5 while he's laying there on the ground.

6 Where are you getting that information from?

7 Anthony Young said Kemo's body was face down.
8 Ms. Barbito came in here, the investigator from the crime
9 scene people, the Medical Examiner's Office. She told you
10 that he was prone. Different terminology, but you'll be
11 able to see the photos. Is he looking like this, or is he
12 on his back?

13 And then he told you something that only the
14 shooter would know: That he shot him on his way down, like
15 this. Right?

16 Now, how do you know that's actually true? It's
17 very simple. What did they tell you they found when they
18 rolled the body over?

19 You don't have to put this up.

20 You guys -- you will have the photos in the back
21 to review. But what is found by Ms. Barbito and later
22 confirmed by the crime scene guys is that there are
23 projectiles under the body.

24 Now, how do the bullet fragments get under the
25 body unless it is falling -- I'm going to hurt myself --

1 falling, and shot as he is going down, with his body
2 covering the projectiles?

3 Who could possibly know that but the actual
4 shooter?

5 You will be able to look at the pictures. You can
6 look at also the pictures of Anthony Young when he says
7 partial braids. He was right. The photos don't lie.

8 Anthony Young says it was cold and he had on a
9 fleece. Mr. Bergrin offered an exhibit saying what the
10 actual temperature was.

11 Members of the jury, whatever the temperature was,
12 the temperature was. People were wearing jackets that day,
13 all right?

14 Here's the photo. Look at the guys in the front.
15 Are they wearing jackets, are they not wearing jackets?
16 There's one guy in the back who's not, the other guys are.

17 He didn't say he was wearing a parka. Mr. Bergrin
18 offers this evidence that somehow, Anthony Young was lying.
19 He was wearing a fleece.

20 What are these guys wearing?

21 He said I wore a fleece, the temperature was cold
22 enough that it didn't look weird that I was wearing a fleece
23 so I was able to blend in. Then I just zipped it up, pulled
24 down my hat and went after him.

25 You don't have to look at any temperature. Look

1 at these guys. Does it look like they're out of place? Is
2 anybody staring at them, like what in the world are you
3 putting your jacket on for? Why do you have a jacket?

4 Anthony Young wasn't gauging what the temperature
5 was. All he was saying to you was, he didn't stand out. I
6 had a fleece on. It didn't look weird that I was standing
7 there with a fleece.

8 Mr. Bergrin can make whatever argument he wants
9 about the temperature, but that photograph ends what the
10 reality was that day.

11 Now, if you do want to look at the photos, again,
12 we're not going to put them up, but the ones I would direct
13 you to are 2319H, 2319K, and 2319F, and what that's going to
14 show is how the body was laying, when he rolled over where
15 the two fragments were underneath, and when the sheets were
16 taken off, again, with the fragments under the body.

17 He also told you -- Anthony Young told you there
18 was a gun in the trap, right, that's where he had it. In
19 Rakim's van, we had this hidden trap, and that's where we
20 had the gun with Curry brought it over.

21 Now, in a completely unrelated investigation, the
22 D.E.A. investigation of Hakeem Curry, they recovered that
23 van. Did you see those pictures of the trap, exactly where
24 Anthony Young told you? Of course they had to pull it apart
25 because they didn't know the code, but the exact location in

1 the exact vehicle, that's where the trap was.

2 Again, Anthony Young being corroborated by things
3 of significance: Where the gun is; how he was shot; what
4 Kemo was wearing, where his body was. Not a, Oh, you said
5 this word a little differently five years ago than you said
6 it today. These were things that directly impact on the
7 shooting.

8 The dumpster that he threw the melted gun, the
9 remnants of the melted gun in the dumpster. Well, what did
10 you hear? Turns out across the street at the IYO at that
11 time there was construction, and there was a dumpster, and
12 you saw those photos, right, Ben's shop over here, IYO
13 across the street, and that's where the dumpster was. So,
14 again, literally as Anthony Young told you, independently
15 corroborated.

16 It was a left-handed shooter. Anthony Young says
17 that's how he shoots. Grabbed him with this hand, shot him
18 like this. What did the medical examiner do when he acted
19 it out, right, when Mr. Sanders stood up here and acted it
20 out? Yes, I can't tell you with the degree of medical
21 certainty because you never know how people's heads are and
22 how their hands are, but yes, that is consistent with what
23 you are seeing, these facts as Mr. Gay laid them out.

24 All of that corroborates Anthony Young, the same
25 thing -- some of the things are things that no one else but

1 the shooter could have known. Some of the things are only
2 thing that law enforcement could have known.

3 Now, if we just hop back for a second to what
4 Agent Brokos told you, the investigative steps she was
5 taking prior to Anthony Young admitting that he was the
6 shooter, right, and he told you that -- or she told you,
7 excuse me, that based on information she was receiving, she
8 wasn't sure if Anthony Young was being straight with her
9 that he was just a lookout, so she asked Hassan Miller,
10 another cooperator, to record Anthony Young, to have a
11 conversation with him. Now, you can listen to the
12 recordings. It's in evidence. Mr. Bergrin made a big deal
13 out of the, keep them in amazement, and all that sort of
14 stuff. Agent Brokos told you it was really inconclusive
15 whether or not he was the shooter.

16 But one of the clips Mr. Bergrin didn't play for
17 you, if we can put up, is something Anthony Young said.

18 "Paul going to jail too if it come down to it."

19 Miller says "Yeah."

20 "Young: Paul told us the names, Paul told us if
21 he die."

22 That's in the recording. You're welcome to listen
23 to that.

24 Again, consistent with respect to Mr. Bergrin's
25 involvement in the homicide right from the beginning,

1 throughout, when he's even lying about his own involvement,
2 that's what he's telling about Mr. Bergrin -- not he's
3 telling -- that's what he's telling the guy that's recording
4 it.

5 Now, just so sort of wrap up the Anthony Young and
6 ultimately how he came clean and took responsibility for
7 being a shooter, what he tells you is that he didn't -- he
8 got his new lawyer, Gerry Fusella, on March 1st, 2006 or
9 there around, right, you saw the proffer agreement with the
10 lawyer's name and the date, and Mr. Fusella explained to him
11 that the lookout is part of the conspiracy. If you're
12 contributing to this conspiracy in any way, making it go,
13 making it happen, you're responsible, you're in.

14 So imagine, picture this for a moment. Anthony
15 Young thinks he's got this whole scheme going, that he's
16 been lying to law enforcement, how he's going to get around
17 this whole thing, and then suddenly his lawyer says, even
18 your lie makes you responsible.

19 So what does he do?

20 That when he comes in and says, Oh, then in that
21 case, I don't know anything. I just heard it, I wasn't
22 there, I don't know any of it.

23 He told you then he was sent back and then
24 eventually had his conversation with the -- with his new
25 lawyer, who told him, Listen, you're either in or you're out

1 and you've got to be truthful. And then when he came back,
2 he has told the version consistent with the other stuff
3 about his responsibility since that date.

4 Now, Mr. Bergrin questioned Anthony Young about,
5 Oh, you knew about the conspiracy, you didn't use the word
6 "conspiracy" here.

7 I mean, again, just to sort of put that argument
8 to rest, if Mr. Young really understood the laws of
9 conspiracy as Mr. Bergrin would have you believe, would he
10 seriously have made himself a lookout? I mean, by
11 definition, he is making himself part of the conspiracy.
12 So, I mean, the evidence, independent of Anthony Young
13 telling you I don't remember it, the logic of it is
14 unassailable. If he knew about it, he would not have said,
15 I'm part of it. He didn't think the conspiracy laws would
16 have covered a lookout. The lawyer told him he was wrong.

17 Mr. Bergrin went after Anthony Young in a lot of
18 ways, with the accusatory tone, the moral indignation. You
19 know, none of it, I submit to you, means anything. Saw it
20 again and again. Anthony Young was consistent through
21 hundreds and hundreds of pages of transcript.

22 Remember when that huge binder came out, he put it
23 right there, a huge binder. And you must have thought to
24 yourself, well, here it comes, there are going to be big
25 points.

1 What were those points? Right out of the box.

2 The degree of your friendship with Hassan Miller in the
3 jail, the guy who was recording him, right? You said this,
4 I said this.

5 Well, no, that's not what I said.

6 And as it turned out, if you remember, Anthony
7 Young was right, it was exactly consistent with what he had
8 said the whole time. You can go back and check.

9 That's when Mr. Bergrin was trying to read only
10 part of the transcript, right, and referring to certain
11 parts without referring to the whole thing in context, to
12 try to make you believe Anthony Young was not being straight
13 with you.

14 That's the only reason. It's not as if
15 Mr. Bergrin can't read.

16 Now, -- well, and I mean, again, listen, that was
17 not an uncommon occurrence. There was a good amount of
18 witnesses that went through that exact process, and what I
19 submit to you is that you should keep that in mind when
20 Mr. Bergrin stands up and makes his argument about why this
21 witness should be believed or this witness should not be
22 believed because of some contradiction in their testimony
23 that I'm going to tell you about. Give that argument the
24 value it deserves.

25 THE COURT: Mr. Minish, let me know when it would

1 be a good time to take the morning break.

2 MR. MINISH: This is fine, Judge.

3 THE COURT: Are you sure?

4 MR. MINISH: Yes.

5 THE COURT: Okay. Ladies and gentlemen, we'll
6 take a short recess.

7 THE COURT CLERK: All rise.

8 (The jury exits)

9 (Recess taken)

10 THE COURT CLERK: All rise.

11 (The jury enters)

12 THE COURT CLERK: You can be seated.

13 Remain seated.

14 THE COURT: Okay. Mr. Minish, continue.

15 MR. MINISH: Thank you, Judge.

16 When we left, we were talking about the various
17 points Mr. Bergrin was trying to make on his
18 cross-examination, and the other point was, he said Anthony
19 Young said he was there when Rakim Baskerville paid Paul
20 Bergrin the money.

21 He said no, I was there, I was in the parking lot.

22 Aha, big aha moment.

23 You know, when it comes down to it, it's this,
24 members of the jury. When Mr. Young made a mistake, he told
25 you he made a mistake. When he said which brother was in

1 the car with me during those phone calls, he said, I was
2 wrong, it was this one. I thought about it and it was
3 wrong. It doesn't mean the phone calls don't exist. We
4 know the phone calls exist, and we know that the substance
5 that Mr. Young heard is correct by independent, irrefutable
6 evidence.

7 Now, so like most of Mr. Bergrin's points on
8 cross-examination, after you scratch the surface of them,
9 they're either wrong or misleading or ultimately don't
10 amount to anything.

11 Mr. Young changed his version of how this happened
12 three times: Lookout; wasn't there; I was the shooter.

13 The key question for you, though, members of the
14 jury is, was he truthful when he came in here and testified?

15 And that is why Mr. Bergrin was so desperate to
16 make him, albeit unsuccessfully, look like a liar, because
17 he knows Anthony Young is believable, I submit to you,
18 credible, and supported by unassailable corroboration, and
19 therefore, Mr. Bergrin is guilty of each of the crimes
20 related to the Kemo Deshawn McCray murder.

21 Now, to wrap up this area, when you go to -- do
22 you remember Eric Dock, when he testified?

23 I'm going to put up a clip here. It's page 2124,
24 lines 10 to 23, where it says -- Mr. Gay asking him
25 questions, and the question was:

1 "In other words, it's Mr. Baskerville telling Paul
2 to tell Hak and everybody else to dump their phones, to get
3 rid of them.

4 "Yes.

5 "So he's communicating that message through his
6 lawyer, Paul Bergrin, according to what he told you?

7 "Yes."

8 This is, again, an example of what you're going to
9 see and what you did see in the Vinny Esteves case:
10 Mr. Bergrin acting as a conduit from someone in jail to
11 someone outside the jail, passing messages throughout those
12 meetings where he cannot be recorded.

13 And let's be clear, members of the jury: This is
14 not a case of just passing along good wishes. This is
15 dumping phones. And you have learned throughout this trial
16 there is one reason why you dump phones, and that's to avoid
17 law enforcement detection, so your phones don't get tapped,
18 so they don't get recorded, so you can't get phone records
19 because nobody knows who they are. Unnamed phones, no
20 longer being used.

21 Mr. Bergrin was not acting like a legitimate
22 lawyer representing a charged person. He is actively
23 involved in the conspiracy and actively involved in
24 assisting the gang in avoiding prosecution.

25 Again, the murder conspiracy, everybody played

1 their part: Hakeem Curry, Rakim Baskerville, Jamal
2 Baskerville, William Baskerville, Anthony Young, and,
3 ultimately, Paul Bergrin. He's guilty of conspiring to
4 murder Kemo because of providing the name of the witness to
5 the gang and by providing the legal advice that the only way
6 William Baskerville was going to come home was if Kemo was
7 killed. His analysis of winning the case took into account
8 William Baskerville's chances at trial, how much time he was
9 facing, and he gave his professional opinion, the opinion of
10 what needed to be done to win that case, and that was to
11 kill Kemo. His advice drew a straight line to Kemo's
12 murder, to stop him from testifying, to get William
13 Baskerville out of jail. Not because I'm telling you so,
14 members of the jury, but because the evidence tells you so.

15 Now, the Judge is going to charge you on another
16 type of evidence, it's called 404(b) evidence. And he's
17 going to tell you how to use it. But beyond all that we've
18 already discussed, there is 404(b) evidence relating to the
19 Kemo Deshawn murder that you can take into account relating
20 to your decision on this murder.

21 Now, you remember during the trial the Judge gave
22 you the instruction a couple of times how you consider
23 certain evidence. That was Richard Pozo's and Vinny
24 Esteves's and Oscar Cordova's testimony, right? The Judge
25 said during the trial and again will in his final

1 instructions, is, pertaining to Kemo Deshawn McCray's
2 murder, you can consider the evidence in deciding whether
3 Paul Bergrin acted with the specific intent to tamper with
4 or kill Kemo Deshawn McCray.

5 Now, why is this important?

6 Well, as the Judge said in his instructions, you
7 can't read somebody's mind; you have to judge them what they
8 do, by what they say. And the fact that he acted in a
9 particular way or made a particular statement is something
10 you can use to determine intent, and in this case, things
11 that he said.

12 Rely on his statements Paul Bergrin made to
13 Mr. Pozo, on his statements that he told Vinny Esteves, if
14 there is no witnesses, there is no case.

15 Does that sound familiar?

16 In deciding whether or not he had the intent to
17 kill Kemo Deshawn McCray when he relayed the name Kemo to
18 his -- excuse me -- Hakeem Curry on November 25th, and when
19 he said those words, No Kemo, no case a week or so later, I
20 submit to you that when Mr. Pozo -- excuse me -- when
21 Mr. Bergrin urged Mr. Pozo to get to, to take out Pedro
22 Ramos, when he told Vinny Esteves he needed to kill Junior
23 the Panamanian, when he told Oscar Cordova that they had to
24 make it look like a home invasion robbery, not a hit, that
25 that is something in accordance with the Judge's

1 instructions you can use when trying to determine what was
2 in Mr. Bergrin's head, not just the evidence of the William
3 Baskerville case.

4 Now, and ultimately, the final confession he made
5 to Vinny Esteves. They had identified the witnesses they
6 wanted to kill, right? Mr. Esteves and Mr. Bergrin had a
7 kill list. They discussed how they were going to make the
8 murder happen. He said he would take care of the murdering
9 the witnesses. Vinny Esteves expressed doubt that he'd be
10 able to do it. Mr. Bergrin replied. What did he say? It
11 was not the first time I have done this, meaning killing a
12 witness. He did not use Kemo's name but obviously was
13 referring to a prior time he was involved in killing a
14 witness, the Kemo murder.

15 It totally destroys Mr. Bergrin's claim that he
16 was acting as a legitimate lawyer when he relayed the
17 identity of Kemo to Hakeem Curry, when he told the gang that
18 was assembled on Avon Avenue not to let that kid testify.
19 Anthony Young knew what Paul Bergrin meant when he said we
20 have to get rid of him.

21 And now you do, too.

22 All right. Now, members of the jury, as the Judge
23 told you, we have a bit of a time constraint, so I'm going
24 to try to be -- been a little wordier than I should have
25 been in the last one, so I'm going to try to zip by a few

1 other things, all right?

2 With respect to New York Confidential, ladies and
3 gentlemen, that's the prostitution house, here's what we
4 know. Paul Bergrin pled guilty to conspiracy to promote
5 prostitution, right? You will see that stipulation, both
6 before Jason Itzler is arrested and after Jason Itzler was
7 arrested. He -- through stipulation, it has been agreed
8 that he knew that this was not an escort service, right from
9 the beginning, all the way through, all right? So that's
10 also not disputed.

11 So when you look at what James Cortopassi told you
12 and Natalie McLennan told you about the scheme to get Jason
13 Itzler out, about the scheme to take over New York
14 Confidential, with that backdrop, members of the jury, I am
15 confident that you will find their testimony to be credible.

16 And again, it's a couple of things, right? It's a
17 conspiracy to travel to promote prostitution and then two
18 separate travels, okay? So just again, very briefly, one of
19 the letters was chosen and charged. That's the letter that
20 Mr. Bergrin sent to try to get Jason Itzler's time -- or,
21 excuse me -- parole moved to New York, even after he had
22 gotten him -- excuse me -- even after he had gotten the he
23 works for me from five to one thing done. Now he wanted him
24 to go to New York. And that's one of the -- and the other
25 travel that's specifically charged is when they went and met

1 -- James Cortopassi, Hiram Ortiz, Paul Bergrin, and the
2 other individuals who were employed at New York Confidential
3 went there after Mr. Itzler was arrested, when they did the
4 reorganization meeting: I'm in charge; Hiram's going to be
5 the day-to-day guy; the woman, Erica, is going to be
6 handling the phones. And as you heard from Mr. Cortopassi,
7 it worked for a little while. Mr. Bergrin complained about
8 them shorting him money, that he wasn't getting dropped off
9 enough money.

10 And, members of the jury, I'm going to leave that
11 to you to do your analysis with respect to whether or not
12 Mr. Bergrin did, in fact, conspire to travel and traveled
13 with respect to New York Confidential.

14 Although I guess there are, I apologize, I guess
15 there are two things I should mention.

16 The two most damning parts, the physical, putting
17 their testimony aside, okay, are the checks with respect to
18 this first travel, where he's trying to scheme Mr. Itzler
19 into saying, oh, he works for me, so please let him out for
20 these hours, it's the checks from his own company that are
21 never negotiated, as provided by proof, right? That's
22 independent evidence, inarguable evidence. The checks are
23 written; you have them, they have the bank account. They
24 were never negotiated, period. This is part of the scam,
25 exactly how James Cortopassi told you, exactly how Natalie

1 McLennan told you. He never did any work, no work anywhere.
2 And logically, even if Mr. Bergrin tries to, well, he was
3 doing work in the loft, he was doing work in the house,
4 forget it. Here's why: Because the letter itself doesn't
5 say, let him do work in his house. It doesn't say, let him
6 do work in the loft. The letter, the request, the lie that
7 Mr. Bergrin, the fraud that Mr. Bergrin sent to New Jersey
8 parole says, let him out so he can come to my firm. It
9 doesn't say, let him out so he can do work at home. It
10 doesn't say, let him out so he can go to the loft to do
11 work.

12 So even under Mr. Bergrin's own theory, it's a
13 fraud.

14 And as far as the meeting in January after
15 Mr. Itzler's arrested, the reorganization meeting, again,
16 putting aside any of their testimony, Mr. Cortopassi,
17 Ms. McLennan's, you have a final certificate of
18 incorporation, a new corporation, variation on a name,
19 right? It was one word different: It was New York
20 Confidential Escorts now, instead of New York Confidential.
21 Put yourself in this scene. Mr. Itzler, who's running it,
22 has been arrested. That's Mr. Bergrin's client. For what
23 possible reason, legitimate reason, would he file a
24 certificate of incorporation for New York Confidential
25 Escorts if not to take over the business and to move

1 forward? The company already existed. It existed, New York
2 Confidential. He had a client who was running it. There is
3 no - no - legitimate reason why a lawyer would file that
4 document. Except to create a new company with Mr. Bergrin
5 as the registered agent -- you can look in the document,
6 who's the registered agent -- at a New York address, which,
7 by the way, is not the address he claimed Jason Itzler was
8 working at. His firm address, remember that issue with the
9 firm? That's the address, James Cortopassi said, I never
10 heard of that address? Match it up. It's a whole different
11 address again in New York.

12 So I'm going to move on to the Abdul Williams
13 witness tampering.

14 Now, this involves also a conspiracy to travel in
15 the aid of drug trafficking a business -- a trafficking --
16 drug trafficking business and bribery.

17 Abdul Williams was employed, as you know, at the
18 Law Office of Paul Bergrin from 2006 through 2008. There is
19 an Exhibit, 8015. You'll be able to take a look at it. He
20 was employed there.

21 At Mr. Bergrin's direction, he got involved in the
22 drug-trafficking end of the operation. He acted as a
23 short-range courier. Remember he told you the taxi service,
24 he'd pick up, deliver, drop off, and get paid a few thousand
25 dollars for doing it.

1 As you heard, he was eventually introduced to
2 Yolanda Jauregui, someone he could deal with pertaining to
3 his own drug trafficking, to get his own drugs. He got
4 Mr. Bergrin's approval, and he began to get kilos from
5 Yolanda and Alejandro Barraza-Castro, and he had to deal
6 with them after Mr. Bergrin had put them together, right?

7 Now, the problem was is that on June 8th, 2007, he
8 had a gun, and he got caught. So he gets arrested, and he's
9 charged in -- up the street in Essex County. He told
10 Paul Bergrin that he had the gun, that it was his gun, so
11 what was he going to do about it, because now he also had a
12 second problem. His parole was violated. So he's sitting
13 in jail. What are we going to do? Because now he can't
14 follow through and continue to be the drug courier.

15 So they agreed to have another individual,
16 Jamal Muhammad -- excuse me -- Jamal Muhammad say, no, it
17 was my gun, not Abdul Williams's. And he gave the
18 statements, and you heard about those two statements, right,
19 one to Newark P.D., one to Mr. Bergrin's investigator, Jamal
20 Muhammad claiming that it was his gun, even though Abdul
21 Williams told you, no, no, not his gun, my gun.

22 On August 3rd, 2007, Mr. Bergrin as Abdul
23 Williams' lawyer goes to the New Jersey Parole Office and he
24 tells them, I have this confession, Abdul Williams cannot be
25 guilty because we have this other guy who's saying it's his

1 gun, knowing that that confession was false. And obviously
2 this was done with the intent to get Mr. Williams out of
3 jail so he can continue with the drug trafficking.

4 And as you heard from the hearing officer, it
5 worked. Charges were dismissed, he was released from jail,
6 and since one part of the plan worked, he was able to go
7 back out and continue with his drug trafficking.

8 And from September 2007 through about May of 2009,
9 on multiple occasions, Abdul Williams delivered kilograms of
10 cocaine on behalf of Paul Bergrin and the enterprise. And
11 again, during this period of time, Mr. Williams was able to
12 purchase his own kilograms and distribute them on his own.

13 Now, with respect to the bribery, there's really
14 not much debate whether or not Abdul Williams paid him
15 money. It is clear that he paid him the \$1,500. He told
16 him that he did so to falsely claim, and it's not, I submit
17 to you, much of an issue that Paul Bergrin was involved in
18 this conduct. He had multiple conversations with Abdul
19 Williams about getting a statement from Jamal Muhammad, he
20 spoke to Jamal Muhammad in his office, he had Jamal Muhammad
21 generate a written statement, and he sent those false
22 statements to both the Essex County Prosecutor's Office as
23 well as the Parole Board.

24 The only issue really is what was in
25 Mr. Bergrin's head, right? The circumstantial evidence

1 that's used to prove.

2 First, Mr. Bergrin knew the statements were false.
3 Abdul Williams told you they were false, and Mr. Bergrin
4 knew that.

5 But not just because of what Abdul Williams told
6 you. You know how you know? You know because of the own
7 words of Paul Bergrin. All right? In his opening
8 statement --

9 Can you put that clip up, please?

10 Mr. Bergrin says: "You'll hear Paul," referring
11 to him said, "just like Mr. Gay said, telling Abdul Williams
12 on the phone, make sure this guy -- blah-blah-blah, "is a
13 stand-up guy," goes through all this stuff.

14 Now I want to direct you to the line that says,
15 "Sure," it starts with "Sure."

16 "He's willing to take the weight for you." Right?

17 I'm sorry, above that: "Not that he's willing to
18 lie, he's saying he's a stand-up guy, because I would have
19 said make sure he's willing to take the weight for you or
20 lie for you."

21 And then he explains, no, when I said stand-up
22 guy, that's not what I meant, right, and goes through that
23 whole colloquy, explains that whole thing, even that he
24 would have had a New Jersey State Police licensed
25 investigator scrutinize this stand-up guy.

1 Now, putting aside that we all know by the end of
2 this trial what Mr. Bergrin means when he says stand-up guy,
3 all right, as someone who in the criminal world will not be
4 a rat, will not be a cooperator, putting that completely
5 aside and using just Mr. Bergrin's own words, "not that he's
6 willing to lie for you, because I would have said make sure
7 he's willing to take the weight for you or lie for you."

8 Let's turn to June 21st, 2007, Exhibit 4136B2.

9 Now, most of this conversation is about getting
10 statements from various people, including Jamal Muhammad,
11 the guy who ultimately takes the gun, right?

12 Now, this is the recorded conversation of Mr.
13 Bergrin.

14 It turns out on page four he does use the words
15 stand-up when referring to Jamal Muhammad.

16 But when you turn to page five, lines six through
17 eight, what's up there? What does it say?

18 "Yeah. I mean, as soon as they can get here I'll
19 talk to them," the other witnesses, "and have the one guy
20 that's taking the weight for the gun, have me talk to him."

21 Members of the jury, you have to go no further.
22 You don't even need Abdul Williams's testimony, which I
23 submit to you was credible on its face, but out of
24 Mr. Bergrin's own mouth, he told you when someone says take
25 the weight, that means lie. And I wouldn't say that, I

1 would have said stand-up guy.

2 Well, turns out he was wrong. There it is, Mr.
3 Bergrin said.

4 Now, I don't know how many minutes this was into
5 his opening statement that he made this comment, but there
6 is evidence right before you that Mr. Bergrin was not being
7 straight with you, right from the beginning, arguing to you
8 things that are simply not true.

9 Now, it's not always this easy to prove someone is
10 trying to slide one by you, but consider this point where
11 Mr. Bergrin makes his arguments to you when he has his turn
12 up here and give them the value they deserve. In his
13 opening, I wouldn't, that would have meant this. And then
14 you have it in black and white.

15 Now, with respect to his knowledge of the benefit,
16 the \$1,500 that was paid, that's the bribery aspect of it,
17 he knew that Mr. Muhammad was doing this for his friend
18 Abdul Williams, he knew that Jamal Muhammad was making his
19 false statement, and he was going to be arrested and charged
20 with the gun possession. Based on those circumstances, I
21 think it could be understood or I submit to you it could be
22 understood that Abdul Williams was offering him a benefit of
23 some kind even if Mr. Bergrin was unaware of the specific
24 thing he was getting.

25 I'm just going to skip through the element by

1 element, except to say that, members of the jury, the third
2 element that the Judge is going to tell you we have to prove
3 is an overt act, and an overt act is something that is done
4 in furtherance of the conspiracy. So you have the
5 conspiracy, you have the agreement, and then you take an
6 actual step to kind of push it along, to do something. All
7 right?

8 What you'll hear or what you'll see in the
9 evidence when you review it from Mr. Williams is that after
10 the phone calls, they are spelled out in the indictment that
11 you'll have also back with you, what he actually did, and
12 then you can refer to the evidence that supports those
13 allegations.

14 Now, Mr. Bergrin in his cross of Abdul Williams
15 argued that the witnesses had the story down pat before they
16 met Mr. Bergrin.

17 And they did. The thing was, though, that
18 Mr. Williams told you, they had discussed it, he and
19 Paul Bergrin had discussed it beforehand what needed to be
20 done, Abdul Williams went out and got this stuff done and
21 then came back. Mr. Bergrin's not -- or he's not not
22 involved because of that. He's doing his job. He is
23 advising, he is counseling how to go about, how to do things
24 that a legitimate lawyer would not be doing.

25 And then once he gets all the statements, all the

1 information, he is furthering this conspiracy, furthering
2 these travel acts by actually making the arguments to the
3 Parole Board, to the Essex County Prosecutor's Office and
4 their court that these charges should be dismissed against
5 Abdul Williams.

6 Now, members of the jury, let's move into drugs.
7 All right?

8 Throughout this trial, you've had witnesses,
9 recorded conversations, and documents that all show the same
10 thing, all that evidence, that Paul Bergrin has clients in
11 the law practice that are large retail drug distributors;
12 that Paul Bergrin knows a wholesaler cocaine supplier,
13 Alejandro Barraza-Castro; that Paul Bergrin hooks up these
14 retail distributors with the wholesaler, Mr. Barraza-Castro;
15 that Paul Bergrin is a broker for drug deals, that
16 Paul Bergrin uses workers from his law practice to assist
17 in selling these drugs. That's Ramon, Abdul Williams, and
18 Norberto Velez.

19 During the course of the trial, you've heard a lot
20 about drugs generally - the fake IDs, the rental cars,
21 disposable cells, the lookouts, the trapped-out cars, that
22 wiretaps are always a worry, that you don't speak openly on
23 the phone, you speak in code; that in person, you can speak
24 more openly. Speaking in person is safer.

25 Although as Mr. Bergrin found out, that's not

1 always the case.

2 A significant portion of the criminal activity set
3 forth in the indictment relates to drug trafficking.
4 Literally from the very first witness, Lachoy Walker, the
5 very first witness in the case, you've heard about Paul
6 Bergrin's criminal acts regarding drugs. Even the stabbing
7 case, where you didn't think drugs would be involved at all,
8 turns out Norberto Velez eventually made his way into the
9 drug trafficking enterprise, or part of the enterprise, and
10 was represented by Paul Bergrin during that charge.

11 Specifically, remember, Paul Bergrin informs
12 Norberto Velez, and you heard the recording, or saw, excuse
13 me, saw the transcript, Norberto Velez was informed by
14 Paul Bergrin who the snitches are in his drug case.

15 He was also being told to take the weight for
16 Alejandro Barraza-Castro even though Paul Bergrin represents
17 Norberto Velez, not Mr. Castro.

18 From there, right through the Kemo murder to
19 Rondre Kelly, to Abdul Williams, to Eugene Braswell, then
20 through the Monmouth County witness-tampering plot, the
21 recorded conversations are riddled with talk of drug
22 trafficking.

23 Let's start with the involvement with Mr. Curry,
24 okay, what Lachoy Walker told us. He told you that
25 Mr. Curry said I got the connect from Paul, that he brokered

1 the deal, and you're now well aware of what a connect is,
2 right? He's the guy who gives you the drugs. That was
3 Mr. Lachoy Walker's testimony, again, a man who has no
4 requirement, no agreement, no benefit that he is seeking
5 from the Government to come in and testify. He said he's
6 just testifying to tell the truth.

7 Now, with that in mind, let's discuss a couple of
8 things that you know now about Paul Bergrin's relationship
9 with Hakeem Curry that you didn't know when Mr. Walker
10 testified. All right?

11 And keeping in mind that Anthony Young told you
12 everyone thought Hakeem Curry was soft and that if he was
13 arrested, he would cooperate.

14 Let's talk about phone calls between Mr. Bergrin
15 and Mr. Curry.

16 Now, there is going to be a stipulation that
17 you're going to see that since December 12th, 2002,
18 Mr. Bergrin has not represented Mr. Curry in any criminal
19 case. So that's the start date, December 12th, 2002.

20 Still, there are many phone calls, you will see
21 the records, between Paul Bergrin and Mr. Curry. Why? The
22 calls between Mr. Curry and Mr. Bergrin, in just over a
23 two-month period, okay, now I'm going to get these dates
24 right, from October 15th, 2003 to December 12th, 2003,
25 approximately 160 connections between the two.

1 Now, what is going on at this period of time?

2 William Baskerville has not been arrested yet, six weeks
3 before he's arrested, and December 12th, eight days after
4 the detention hearing at which Mr. Bergrin has told the
5 Curry's gang that you've got to kill Kemo.

6 In just that period of time, 160 connections, one
7 phone to the other.

8 Now, visitations, that you learned about
9 visitations between Mr. Bergrin and Mr. Curry. Paul Bergrin
10 visited him in jail, even though, again, not his lawyer,
11 hadn't represented him in the criminal stuff since December
12 12th, 2002. Hakeem is arrested, Hakeem Curry you heard is
13 arrested on March 5th, 2004, so now it's three days after
14 Mr. McCray has been killed, March 5, 2004. He's in the
15 Monmouth County Jail.

16 And who is visiting him? The lawyer who's not
17 representing him. From May 4th, 2004 through October 19th,
18 2004, at least one and a half years after he last
19 represented him in a criminal matter, he visited him at
20 least 10 times: May 4th, May 17th, June 7th, July 6th, July
21 28th, August 10th, September 1st, September 3rd, September
22 13th, October 14th -- not sure, October 14th may or may not
23 because it's just his name without Curry next to it, you can
24 look at the records -- and October 19th.

25 Now, again, this is not because I'm telling you

1 so. You're going to have these records, the Monmouth County
2 Jail visitation records, Exhibits 920 and 921, and you can
3 look at them.

4 Why is he visiting him if he's not representing
5 Curry?

6 Putting aside whether or not the Government would
7 even consider Hakeem Curry as a cooperator, what Mr. Bergrin
8 knows full well is that the dominoes start falling and
9 William Baskerville points at Hakeem Curry, and Hakeem
10 Curry, who does he turn and point at?

11 Mr. Bergrin.

12 Let's talk about the tracking device. Remember
13 the testimony about the tracking device that was on Hakeem
14 Curry's car that stopped working shortly prior to the
15 recorded call you heard?

16 The same day, that day, when it stopped working,
17 he goes to speak with Mr. Bergrin. Why? Mr. Bergrin is
18 heard commenting about the tracker: That's bad, bad.

19 Who does Hakeem Curry go to for counsel before he
20 even calls his wife, right, because that's the call, you
21 hear him calling his wife. He's already with Mr. Bergrin.

22 Because he is house counsel, as Lachoy Walker told
23 you.

24 Now, remember all those guys in the photos we put
25 up at the very beginning of trial? He represented this guy,

1 he represented this guy. Those are the various people in
2 the Curry organization, and Mr. Walker was talking about
3 people at the management level.

4 MR. Bergrin then argued about the percentage:
5 Well, it wasn't that high a percentage, it was this guy, it
6 was that guy, and said, well, it wasn't everybody, so how
7 could I be house counsel, right, was basically his argument.

8 You know what? The percentage almost is
9 irrelevant. I mean not that it was an insignificant
10 percentage; it was quite a few people. But the reality is
11 and the inarguable point is, when he finds a tracker device
12 on his car, who does he run to? One of those other lawyers?
13 Or to his counsel? When he thinks the Feds are looking at
14 him, when he's in trouble, where does he go?

15 Now, the next client that Paul Bergrin sold drugs
16 to was Rondre Kelly. He told you about Paul Bergrin
17 providing him with the means to clean his money, right?
18 Remember the house, he was going to clean his drug money?
19 The kilograms right out of the law office, he was assisted
20 by an employee of the firm, Ramon Jimenez. That's the guy
21 who James Cortopassi said, yeah, he was there, but he never
22 did any work. Well, never did any legitimate work, perhaps,
23 but clearly he was doing work assisting in drug trafficking.
24 And that went on until the robbery at 710 Summer Avenue or
25 thereabouts, and that's something you'll see in the

1 stipulation, the date of March of 2007.

2 Most importantly, putting aside what Rondre Kelly
3 told you, the wiretaps, four months, between November 5th
4 through February 6th, right, and that came in through
5 Detective Mendez, the retired officer who came in? By that
6 time, as Rondre Kelly had told you, Mr. Bergrin had passed
7 him off to dealing mostly day-to-day with Yolanda Jauregui,
8 Alejandro Barraza-Castro and the other people in that
9 organization, Mr. Castro's organization.

10 So what would you expect those wiretaps to show at
11 this point? The day-to-day operations, lots of phone calls
12 between he and Yolanda, and the occasional call with
13 Mr. Bergrin, exactly what you heard.

14 But the fact is that Mr. Kelly thinks Paul
15 Bergrin's the boss. Now, putting aside whether he's right
16 or he's not, from his point of view, look at it this way:
17 He sets the price, he negotiates the price for him, he makes
18 the introductions to these other people who are actually
19 doing the dirty work. From Mr. Kelly's point of view, he's
20 the boss.

21 And compare that to what a drug broker does. As
22 you learned, he introduces customers, Rondre Kelly, to
23 Alejandro Barraza-Castro, sets the price for his customers
24 because the price is always going to include his brokerage
25 fee, right, his money in the link in the chain.

1 So now although Mr. Kelly may be right, may not be
2 right about where Mr. Bergrin fits, whether he's Alejandro's
3 boss or whether he's the guy making it happen, he's most
4 certainly not mistaken about what Mr. Bergrin actually did
5 in the truck-trafficking process. You heard the wiretaps
6 calls. You remember when they were talking about cars and
7 that was drugs, right, that was the code, five cars,
8 bringing back cars, picking up cars, need more cars. The
9 most important call in that entire wiretap happened on
10 December 31st, 2005 at 12:23 p.m. In that call, Rondre
11 Kelly -- excuse me -- talking about it's Yolanda Jauregui
12 talking to Jesse, and they're talking about Rondre Kelly and
13 Paul Bergrin, right, how Paul Bergrin had bad-mouthed Rondre
14 Kelly to Jesse's people during that strip mall meeting.
15 Remember the one where Mr. Bergrin said Oh, I didn't shake
16 anybody's hands, but as it turns out in the video, shaking
17 hands? That's the meeting they're talking about.

18 So let's put this clip up, okay?

19 This is Jauregui, Yolanda:

20 "Huh. So he called him, listen to me! He called
21 him. He called to tell him --

22 And Jesse: "Uh-huh."

23 And we move on to the next: "That, that if you,
24 that if you, that if you told him, that if I -- because I
25 told him -- " -- and he gets to now the meat -- " -- why

1 would you tell him that you don't trust him if you were the
2 one who introduced him to this other guy? And, and that's
3 why he was buying the cars and he has the cars with him, why
4 are you saying --? Why are you saying that?"

5 What is Yolanda Jauregui talking about there?

6 She can't believe that Paul Bergrin went to this
7 meeting and badmouthed Rondre Kelly. He is the guy who
8 introduced him. He is the guy who put this together. Now
9 he's out there badmouthing him. What is he doing?

10 This is pretty clear, members of the jury, on its
11 face that the only thing you have to know is that "cars" is
12 code for drugs and that the "him" is Paul Bergrin. Other
13 than that, there's no interpretation needed.

14 We know from Task Force Officer Mendez that this
15 is consistent, his actions, Mr. Bergrin's actions is
16 consistent with that of a drug -- excuse me, a drug broker.

17 And if you recall, though we're not going to put
18 it up, there was one call we played with Rondre Kelly and
19 Mr. Bergrin talking, and what is Mr. Bergrin saying on the
20 phone?

21 I didn't say anything bad about you guys. I don't
22 know what -- they're lying. I didn't say anything.

23 Why? Because he does not want to lose the one
24 side that the connection is making. He's trying to make up
25 with Rondre Kelly. You can look at the sequence of the

1 calls yourself.

2 Now, while we're on Rondre Kelly, I want to cover
3 one thing about sort of cooperators generally, and since
4 Rondre Kelly actually has already been sentenced, he's
5 probably the best person to go through this.

6 Now, remember, he told you he was sentenced and he
7 was given no cooperation credit, no credit from the Judge,
8 right, no motion, no letter, no 5K, whatever you want to
9 call it. He was just sentenced on his charges. He had
10 charges that gave him potentially up to life, right? He
11 said on the stand, up to life, up to life, Mr. Bergrin asked
12 him.

13 So it's clear, you know, every cooperator hopes to
14 get time off. I mean, that goes without saying. And Paul
15 Bergrin is right when he says the maximum sentence is this,
16 the maximum sentence is that. You know, by and large, when
17 he asked those questions, it was technically accurate.

18 But what did you learn through Rondre Kelly? That
19 he is facing two life terms, two different jurisdictions,
20 one out in Pittsburgh and one in New York, right, together.

21 And what did he get for his sentence?

22 Fourteen years.

23 Now, I'm not saying 14 years is an insignificant
24 amount of time. It's certainly more than the average person
25 would want to do in jail. But bear this in mind when you're

1 thinking about these deals that Mr. Bergrin is talking
2 about. Whether you like the system or don't like the
3 system, that's what a judge in Pittsburgh thought was fair
4 for Rondre Kelly, without any assistance from the
5 Government: 14 years. Two life terms, all this heroin, all
6 this -- all the stuff that Mr. Bergrin went through with
7 him. Is he expecting to get less time than that? He
8 certainly is hoping to, and that is what he told you. But
9 the reality is, members of the jury, that he is not
10 literally going to be working off of life as Mr. Bergrin
11 would like you to believe.

12 And the other guy who has already been sentenced
13 is Anthony Young, right? He pled to life originally. That
14 was the mandatory thing. He cooperated. He testified in
15 William Baskerville's trial. The Government made the motion
16 that has been described to you many times.

17 He didn't just walk out the door. He didn't get
18 time served. The Judge reduced his sentence to 30 years.

19 Now, so it's clear, he again also hopes for a
20 further reduction in his sentence. But the reality is, that
21 is the evidence before you as far as what actually happens
22 with the sentences for these cooperators. Everything else
23 is possible, as Mr. Bergrin said correctly, but that's what
24 you've actually seen.

25 Now, let's move to the next client that

1 Mr. Bergrin sold drugs to. That was Eugene Braswell.

2 He went to Paul Bergrin as a client for a criminal
3 case. Paul Bergrin beats -- I'm sorry. He gave -- he gives
4 the -- remember he gave -- he sent one of his drug friends
5 to Mr. Bergrin to represent him, and then Mr. Bergrin
6 doesn't do anything, he beats that drug connect for money,
7 so then Eugene Braswell is out of luck, the connect says, no
8 more for you.

9 He complains. Paul Bergrin sets him up with Ramon
10 Jimenez to start giving him drugs. He does a couple of
11 deals with Ramon Jimenez, but Ramon gets arrested, so he
12 needs to get a new supplier. This time he moves away and he
13 gets a different supplier. He continues to get them, the
14 drugs are now from Miami and Texas, as he told you.

15 And in 2008, now, a couple of years later, he's
16 using the money exchanger, remember, Muhammadu Tunkarad, the
17 guy in the Bronx. He needs this because he has all these
18 small bills, and to send down a half a million dollars in
19 small bills takes up a lot of room, and the capacity of
20 these traps in the cars is only so much. The more money you
21 can send down, the more drugs you can get back.

22 So he goes to -- whether it was advisable or not,
23 goes to this Muhammadu Tunkarad and gives him this money,
24 almost a half a million dollars, to convert it to smaller
25 bills -- or larger bills so it can be a smaller pot. And he

1 gets beat for the money.

2 Who does he go to when he's got problems with his
3 drug business? To the police? Or to Mr. Bergrin? Now,
4 he's turning to his one-stop-shopping criminal enterprise
5 guy. And how do we know what happened? You don't even have
6 to hear it from Eugene Braswell's mouth. When Paul Bergrin
7 hears this, he starts recruiting Oscar Cordova to make it
8 happen, to help out Eugene Braswell. Eugene Braswell
9 testified about it, but he doesn't even know he's being
10 corroborated, because on the back end, in Mr. Bergrin's
11 office, what's going on is, he's taking that information and
12 then going to Oscar Cordova.

13 What does Eugene Braswell tell you?

14 He told me he was a Chicago Latin King would look
15 into it, he would take care of it for me.

16 He doesn't care how it gets done, he just wants
17 his money back.

18 He tells Mr. Braswell that. What is recorded,
19 what is the result? What does Mr. Bergrin do with that
20 information?

21 Can you put up that, please?

22 "This guy right here, the Muhammadi Tunkarad," all
23 right, gives him the address.

24 "Black dude?

25 "Yeah, black dude.

1 "He wants a favor.

2 "I need the Kings to do this.

3 "Oscar Cordova: I don't really know. OK Paul.

4 "He took \$500,000 cash.

5 "From you?

6 "No, from a very close -- a guy, Eugene Braswell,
7 who I represent."

8 So do you think when Eugene Braswell told you this
9 is what he went to Paul Bergrin for, it was true?

10 Mr. Bergrin tells you this. The most damning part
11 of this comes out of his own mouth.

12 Exactly what Eugene Braswell told you is exactly
13 what Mr. Bergrin turned around and did.

14 So what impact does that have on the rest of what
15 Eugene Braswell told you? When he is talking to you, do you
16 think the rest of his statements -- does that lend
17 credibility to everything else he says when he tells you Mr.
18 Bergrin got me kilos, Mr. Bergrin hooked me up with this
19 guy, Mr. Bergrin hooked me up with that guy?

20 It's the same Mr. Bergrin who's helping him get
21 his half a million dollars in drug money back.

22 The reality is that collecting stolen drug money
23 was just one more service that Mr. Bergrin's enterprise
24 tried to provide.

25 And because he wanted to keep his drug dealer

1 client happy -- this was not just a one thing. He brings it
2 up with Oscar again.

3 Want to put that up?

4 Mr. Bergrin: Did you hear anything about that
5 money, you know, that, the guy in The Bronx?

6 And what does Mr. Cordova say?

7 "Weal, I need some more information," because, as
8 you know he's a cooperator; he can't really go over and beat
9 up some guy in the Bronx and take his money. But
10 Mr. Bergrin doesn't know that, and he is pressing him to
11 make it happen for his client that he is selling drugs to,
12 Eugene Braswell.

13 Now, Mr. Braswell was ultimately arrested, right?
14 You heard. Then the enterprise provided a new drug connect
15 for him, Alejandro Barazza-Castro. When that connect wasn't
16 to his liking, he said he wasn't comfortable dealing with
17 him directly, what did Mr. Bergrin do? He stepped up and he
18 did it himself out of his own law office. He sold kilos to
19 Eugene Braswell on four separate occasions. I'm sorry,
20 twice out of his law office, twice out of the hotel room.
21 Mr. Braswell was arrested on that charge, first Federal
22 arrest, and you heard that he cooperated, he violated the
23 agreement, the cooperation agreement was ripped up, he pled
24 guilty to the second charge, he went through all of that on
25 how that impacts his cooperation is never going to help him

1 on that first charge because of what he did.

2 Move to the next guy, Abdul Williams, another
3 client Paul Bergrin sold drugs to. In 2005, Paul Bergrin
4 introduced Abdul Williams to, again, Ramon Jimenez, the same
5 Ramon Jimenez that helped Rondre Kelly, the same Ramon
6 Jimenez that helped Eugene Braswell. He sold cocaine to
7 Abdul Williams two times. Then he gets -- Abdul Williams
8 gets arrested and starts dealing with Ramon, right?

9 Now, you know, again, beyond even just what Abdul
10 Williams tells you, that what he is saying is the truth
11 because of the recorded conversation with Shelton Leverett.
12 All right? Mr. Leverett came in here and he testified that
13 he -- and you heard the recordings, you saw the transcripts,
14 that he asks Mr. Bergrin for a connection, a drug supplier.

15 What does Mr. Bergrin do? Sends him to Abdul
16 Williams. He doesn't say, Oh, no, no, no, we don't do that
17 here, that's not one of the services we provided. In fact,
18 that is a service we provide quite often, and we have
19 connections out there.

20 You heard that he talked to him about the
21 possibility. Abdul Williams -- excuse me, Shelton Leverett
22 and Abdul Williams, they get the phone number, they make the
23 meeting happen. Abdul Williams doesn't really know what's
24 going on he told you, but you know what's going on because
25 you have the recorded calls of Mr. Bergrin, and then you

1 have the recorded call -- excuse me, the recorded meeting
2 between Shelton Leverett and Abdul Williams. Again, a very
3 straight line: I need a connect, I need drugs; here's a
4 guy, oh, I didn't give you his number? I thought I gave you
5 his number. Here's his number. Tell him I sent you. Go
6 talk to him.

7 So, again, from Mr. Bergrin's own mouth.

8 And while he tried to say, well, Shelton, we had
9 all these -- Mr. Leverett, we had all these deep
10 conversations about very emotional things and a lot of
11 different things, and when I said connect to you, that meant
12 connect you with people, connect you with someone to help
13 you.

14 And if you recall, Mr. Leverett agreed with
15 Mr. Bergrin on most of his points: Yes, you did talk to me,
16 yes, you treated me with respect, yes, yes, yes. But then
17 when he said that? What did he say? Oh, no, no, no. No.
18 Yes on the other stuff, but no. When you say "connect," we
19 were talking about drugs, we were not talking about a
20 psychiatrist or some sort of assistance for my mental state,
21 my mental well-being. No. And you know it's true, again,
22 because of the recorded conversations.

23 Now, with specifics to, again, Abdul Williams, who
24 is introduced to, ultimately, Alejandro Barraza-Castro that
25 we talked about, he was provided multiple career

1 opportunities at the enterprise. He was both an employee at
2 the firm, right, when he was trying to get out of the
3 halfway house, and in his position as a short-range courier.
4 He's employed by both the firm and the enterprise. And when
5 he's represented, he's provided with full coverage from the
6 -- full legal representation from the enterprise. He gets
7 the -- he gets the witness-tampering package that we've
8 already talked about.

9 Now, along the way, he's also provided with the
10 drug connect to get the kilograms himself, which we've
11 discussed, so he can make money selling drugs on his own.

12 This is Paul Bergrin, Alejandro Barraza-Castro,
13 Yolanda Jauregui, all dealing with Abdul Williams. It stops
14 for a short period of time when he's arrested with Jamal
15 Muhammad, but then he gets out and continues. Once out, he
16 continues to sell the drugs with these people, hundreds of
17 kilos, beginning in the fall of 2006 through May of 2009.
18 Each of the three are consistent with that, Rakim -- excuse
19 me -- Rondre Kelly, Eugene Braswell, Abdul Williams, that
20 Paul Bergrin is involved in the drug business, that Yolanda,
21 Mr. Castro, and Ramon are involved in the drug business,
22 that they used Isabela's Restaurant to store and sell drugs,
23 that they used Mr. Bergrin's law offices, both the Pope,
24 Bergrin & Verdesco as well as the Law Office of Paul
25 Bergrin, to sell drugs.

1 Now, Mr. Bergrin would like you to believe that
2 all of this is going on behind his back, his girlfriend, his
3 clients, his restaurant, at his firms: I had no idea.

4 The evidence, which goes well beyond reasonable
5 doubt, says otherwise.

6 Let's talk about Isabela's for a minute.

7 In addition to Rondre Kelly, Abdul Williams, and
8 Eugene Braswell detailing how Paul Bergrin used his
9 restaurant, Isabela's, right, you also have Thomas Moran.
10 Remember he told you about the black eye that he got, that
11 he walked in a day and he said, Oh, I got into a fight --
12 Mr. Bergrin, that is, said, I got into a fight with
13 Alejandro Barraza-Castro and I think he's having an affair
14 with Yolanda. And then a few weeks later he sees him in the
15 office in a closed-door meeting, Yolanda, Alejandro
16 Barraza-Castro, and Mr. Bergrin.

17 And he said, what's going on? You just got into a
18 fight with this guy, you think he's fooling around with your
19 girlfriend, and why is he here?

20 A legitimate question.

21 And what does Mr. Bergrin tell him?

22 Well, he's paying \$2,500 a month to store
23 kilograms at the restaurant, 710 Summer Avenue. Paul
24 Bergrin -- and as it turns out, you know it's true, right?
25 And we'll get to that.

1 What else do you know about Isabela's? Paul
2 Bergrin and Yolanda Jauregui, 50-50 owners of Isabela's.
3 Paul Bergrin bought 710 Summer Avenue. The mortgage on
4 710 Summer is in Paul Bergrin's name. It was deeded to
5 Yolanda Jauregui for one dollar after the New York
6 Confidential case, right, after he was arrested, but he
7 maintained ownership of it. Bills in his name are recovered
8 inside of Isabela's on May 21st, 2009 in Mr. Bergrin's name,
9 not only Yolanda's name, right?

10 And if there was any doubt to what these guys said
11 to you about drugs being used, drugs being seized, Mr. Moran
12 telling you about the deal that Mr. Bergrin had with
13 Alejandro Barraza-Castro, we turn to May 21st, 2009, and the
14 testimony of Agent Koppinger from the D.E.A.

15 AND what did he tell you? He has information that
16 Alejandro Barraza-Castro is going to Dente's truck yard,
17 right? Remember Dente? That's the mutual friend that
18 introduced Mr. Pozo and Mr. Bergrin and put them together.
19 So they watch the area. They see Alejandro Barraza-Castro's
20 brother Alonso return to 710 Summer Avenue, unloading big
21 bags from the Jeep into the basement of Isabela's. Alonso
22 sells a kilogram to the customer, the D.E.A. arrests that
23 customer, they go back, they get a search warrant, and what
24 do they find in Isabela's? Fifty-three kilos and \$26,000.

25 Again, not surprising, if that's what you're

1 renting it out for.

2 Alejandro Barraza-Castro is arrested, Alonso's
3 arrested, and Jose Jimenez, Yolanda's father, are all
4 arrested.

5 They recover multiple phones, all right, and one
6 of them is on Alejandro. Now, bear in mind this is the guy
7 that Paul Bergrin has witnesses saying he had no contact
8 with, right: Oh, never, I never saw Mr. Castro with
9 Mr. Bergrin.

10 For some reason, that phone that was on Alejandro
11 Barraza-Castro called Mr. Bergrin three times, according to
12 the phone records.

13 And how do you know that? Because Detective
14 Koppinger told you the phone number of the phone that was
15 called, all right, 631-484-5242. That phone connected with
16 a cell phone in Paul Bergrin's name three times.

17 And how do you know that? Because Agent Cline
18 told you that the number on -- he reviewed Paul Bergrin's
19 cell phone, he showed you the records, his cell phone
20 records for 973-985-0994 on April 3rd and April 4th, two
21 calls and one calls respectively.

22 That is a month and a half before the arrest of
23 Mr. Castro and Mr. Bergrin. Three calls to the guy he has
24 no dealings with, the guy who he -- Norberto Velez swore up
25 and down I've never seen him with, to the young man who came

1 in here to testify, I've never seen any of that. Less than
2 two months before they're arrested.

3 So what are you left with here?

4 We have multiple witnesses and recordings that
5 show Paul Bergrin is involved in drug dealing, witnesses,
6 documents that show he's associated with 710 Summer Avenue,
7 witnesses and kilos that show 710 Summer Avenue is a stash
8 house for the enterprise.

9 Now, we also have the Oscar Cordova recordings,
10 but fortunately you don't have to weigh that issue because
11 out of Paul Bergrin's own mouth, you know he's involved in
12 drug trafficking. We haven't even touched upon the numerous
13 recorded conversations that he had with Oscar Cordova
14 talking about drug conversations, but for right now, I want
15 to put up two clips for you, okay? The first one, which
16 shows Paul Bergrin's involvement with drug trafficking and
17 the efforts made to broker the deals between wholesalers and
18 local distributors.

19 This is 4129B4, pages three and four, lines 21
20 through 12. Remember this? They're talking about selling
21 the drugs, brokering another deal, a drug deal, this time to
22 the Bloods, and not just any Blood, the five-star general
23 that Paul Bergrin trusts a million percent because he's a
24 hundred percent stand-up. And we all know what that means.
25 And a bit later, still discussing the same five-star

1 general, Mr. Bergrin again saying, "he's stand-up."

2 Now, this is, again, after the meeting with the
3 Bloods five-star general. What is Mr. Bergrin saying in
4 that clip?

5 He knows that he's paying \$40,000 for a kilo. He
6 knows it's that dry. Trust me.

7 This is obviously significant evidence of
8 Paul Bergrin's intimate knowledge of the drug trafficking
9 operation: The prices, how much cocaine, the actual volume
10 of cocaine on the streets.

11 This conversation along with the others is
12 overwhelming evidence that Paul Bergrin is involved in drug
13 trafficking. So it's important. But since we're going to
14 move into the other section now with the Monmouth County
15 witness conspiracy, it serves a secondary purpose, okay?

16 Now, when does this call take place? This is
17 December 9th. Okay? This is the last of the series of
18 recorded phone calls with Oscar Cordova. Very last
19 recording.

20 Paul Bergrin has alleged in his opening that he
21 was play-acting with Oscar Cordova, and had actual witnesses
22 show up and say, Oh, they were doing research on the Latin
23 Kings, and we told Paul Bergrin he's a cooperator.

24 So before we start this section about the
25 conspiracy to murder the witnesses, bear this in mind.

1 On the very last day of the recording,
2 Paul Bergrin and Oscar Cordova are talking about Jason.
3 This time Jason is the five-star Bloods general. He refers
4 to him as a hundred percent stand-up, million-percent
5 stand-up, won't cooperate with law enforcement. He's
6 looking for product, which you know is cocaine.

7 If Mr. Bergrin thought for a second that Oscar
8 Cordova was a cooperator or a fraud, why would he introduce
9 Oscar Cordova to the five-star general of the Bloods? How
10 could that possibly have been a good move for Mr. Bergrin,
11 To bring a cooperator, a man he knows to be a cooperator to
12 introduce him to this guy who's running a Bloods set and
13 say, Hey, here's your new drug connect, I got this guy for
14 you; I know he's a cooperator, but why don't you meet and
15 talk to him about dealing drugs?

16 Members of the jury, the answer is clear: It just
17 would not be a good idea. No one would do something
18 intentionally that dumb, that dangerous.

19 But you'd certainly take Oscar Cordova to the
20 five-star general, to the leader of the Bloods to broker a
21 cocaine deal if you didn't know Oscar Cordova was a
22 cooperator, if you believed he was a Latin King, if you
23 thought he was the son of Lord Gino. A million percent,
24 maybe even a billion, but certainly beyond a reasonable
25 doubt if you believe that Oscar Cordova, the guy who we got

1 to try to collect Eugene Braswell's stolen money, to take
2 over drug distribution in The Bronx and to kill Vinny
3 Esteves's witnesses in the case.

4 With that in context at the very end, let's go
5 back to the beginning of this case.

6 Now, this is Racketeering Act 7 and Counts of the
7 indictment 20 through 25. Racketeering act 7 is broken
8 down, as I told you at the beginning, it's six separate
9 crimes. First you have the conspiracy, and that's to murder
10 Junior, who was Danilo Chen-Pui, as you later found out.
11 And the truck driver, Carlos Noyola, those two guys. The
12 next five involve Travel Act violations relating to that
13 conspiracy. So then you have the agreement and the specific
14 things that happened afterwards.

15 Now, it's clear in order to prove Racketeering Act
16 7, we only have to prove one of those six things. The Judge
17 will explain all of that law to you tomorrow. But the
18 charge -- let's talk about the conspiracy, okay?

19 The charge is a conspiracy to kill witnesses
20 against Vinny Esteves and his Monmouth County case,
21 specifically, Junior and the truck driver.

22 Now, there's three elements: That a conspiracy
23 exists, did one exist, did this agreement exist to try to
24 kill them; did Mr. Bergrin join a conspiracy, was he part of
25 it, and did he know the purpose when he joined it?

1 That's what we have to prove.

2 Now, the conspiracy, as you've learned, is an
3 agreement between two or more people to commit an illegal
4 act, a specific crime, in this case, murder. The agreement
5 doesn't have to be written down. It doesn't have to be
6 formal. The Judge will tell you all of those things. It's
7 secret, so the way you prove it is by circumstantial
8 evidence, what people say, what people do, to figure out
9 what the intent, Mr. Bergrin's intent was with respect to
10 this case.

11 And just so it's clear, it doesn't have to be
12 successful. The fact that no witnesses were actually
13 murdered does not mean that there wasn't a conspiracy. This
14 charge is just the agreement, that they agreed to try.

15 With respect to the first element, did a
16 conspiracy exist to kill Junior and the truck driver.

17 Now, I submit to you, members of the jury, that
18 cannot be seriously contested. Vinny Esteves and Thomas
19 Moran, both participants in the conspiracy, admitted it
20 existed, admitted its purpose, and took full responsibility
21 for it in front of you.

22 As an insider, Vinny Esteves tells you that he and
23 Paul Bergrin formed a plan to kill the witnesses, to use the
24 discovery -- remember that, the reports they were getting
25 from the Prosecutor -- to identify which witnesses needed to

1 be killed, to enlist Oscar to kill those witnesses, and Paul
2 Bergrin and Thomas Moran acted as they did in numerous other
3 cases -- or, excuse me -- Mr. Bergrin did in numerous other
4 cases, as a conduit, a conduit of information from the guy
5 in jail to the guy outside, Vinny Esteves to Oscar Cordova,
6 about killing both the truck driver and Junior.

7 The other insider, Thomas Moran, tells you the
8 same thing, what Vinny Esteves said: Oscar was going to
9 kill the witnesses, he and Mr. Bergrin were the conduits of
10 information, Mr. Moran even tells you he smuggled a phone
11 call in, remember that, and that he offered to help Oscar
12 Cordova to get a gun to help kill the witnesses. And that's
13 all recorded.

14 But the other insiders you hear from are Oscar
15 Cordova and Paul Bergrin himself. They told you all about
16 the conspiracy through the tape recordings, the recordings
17 that show the conspiracy to kill Junior and the truck
18 driver.

19 The first recording, July 10th, 2008, all right,
20 so I'll try and go in sequence here.

21 Paul Bergrin tells Oscar Cordova that Vinny
22 Esteves wants to make sure the witnesses are not cooperating
23 and tells Oscar Cordova to kill the witnesses, right from
24 the beginning through the second to last meeting, December
25 8th, when Paul Bergrin instructs Oscar Cordova to make the

1 murder of Junior look like a home invasion robbery.

2 The second element is that Paul Bergrin joined
3 this conspiracy. In other words, did he do things to
4 further the conspiracy? Did he help out?

5 Well, again, I submit to you, members of the jury,
6 that really can't be seriously contested either. Look at
7 what he did, and we'll go through the list. He made a list
8 of the persons to be killed with Vinny Esteves. He obtained
9 and analyzed the discovery to assemble those. He provided
10 information to help Oscar Cordova find Junior. He recruited
11 Thomas Moran to smuggle cell phones into the jail. He was a
12 conduit of information, in to out, between Vinny Esteves and
13 Oscar Cordova. And then Paul Bergrin finally instructed
14 Oscar Cordova on how to kill him and how to get away with
15 it. All right? "Make it look like a home invasion robbery.
16 It cannot under any circumstances look like a hit."

17 So let's run through this list.

18 As far as making the list of people to be killed,
19 Vinny Esteves tells you it's true, that they made a list.
20 Danilo Chen-Pui, Jr., and a truck driver, Carlos Noyola,
21 were on the list from the beginning and never came out of
22 the list.

23 Now, Mr. Bergrin went through a lot of, well, what
24 about this guy, what about this guy? There's two guys that
25 are actually involved in this conspiracy, two guys that he's

1 charged with: It's Junior, the truck driver, Carlos Noyola.
2 That's it. All these other guys hopping on and off have no
3 effect on the conspiracy that's charged.

4 Why are they on this list?

5 They actually cooperated with the Government.
6 Agent Afanasewicz told you that. They seized money from
7 Junior. He cooperated to let him go. They seized kilos
8 from Carlos Noyola, the truck driver. They did a controlled
9 delivery, they let him go. The limited discovery that
10 Mr. Bergrin had indicated that they had cooperated.

11 There's two Government Exhibits, 5211 and 4206.

12 Vinny Esteves also thought they were cooperating.

13 Now, you heard a little bit about a guy called
14 Tineo, right? Tineo is potentially on the list. You found
15 out about him later. He actually cooperated, the discovery
16 says.

17 Arsenio and Tapia are not on the kill list. They
18 were not cooperating. They could not hurt Vinny Esteves.

19 Paul Bergrin wanted to put Dennis the accountant
20 on the kill list. Vinny Esteves said no. He overruled him.

21 The recordings corroborate what Vinny Esteves said
22 about the list.

23 Again, July 10th, Junior and Carlos are on the
24 kill list.

25 Paul Bergrin says, "That one motherfucker blows

1 the whole investigation for us."

2 We know from the recordings, from the context that
3 what they're talking about is Junior.

4 Mr. Bergrin, quote: "He's the genesis of the
5 case, the key to the case, the rat that started the whole
6 fucking investigation is the guy Junior from Panama."

7 As to the truck driver, Paul Bergrin says: "The
8 truck driver, and the guy who opens the door."

9 Vinny said, quote: "Make sure they're not
10 cooperating."

11 but Oscar asks Mr. Bergrin: "What do you suggest
12 I do, kill 'em?"

13 Paul Bergrin's response: "Yeah."

14 By itself, that proves the conspiracy. You could
15 stop there. But there's so much more.

16 The second thing: Paul Bergrin and Vinny Esteves
17 used discovery to identify the cooperators.

18 We have two separate exhibits, right, that you're
19 going to hear a lot about. This is what was being
20 discussed.

21 Paul Bergrin on August 19th is saying he used
22 discovery to identify who Junior was. He's referring to
23 Exhibit 5201. You will have this in evidence, information
24 that he was provided by the Office of the Monmouth County
25 prosecutor.

1 And here are his quotes, and you can read it right
2 in the -- "Show us what he fucking said, how he ratted."

3 Quote: "Danilo Turbo Chen-Pui, that's Junior from
4 Panama."

5 Quote: "He fuckin', he gave a statement giving up
6 Vinny."

7 Quote: He -- " -- again referring to Junior
8 -- " -- the fucking key to the case."

9 How about the August 5th, 2008 conversation with
10 Paul Bergrin, referring to the truck driver:

11 "Get a name for the truck driver when I get some
12 more discovery."

13 Quote: "They let him go and there's a reason they
14 let him go. Must have gave a statement."

15 Obviously meaning implicating Vinny Esteves,
16 cooperating with law enforcement, right?

17 "We do have to worry about -- " -- Mr. Bergrin's
18 saying -- " -- the two in the truck and the guy Junior."

19 November 17th, Paul Bergrin tells Oscar Cordova
20 about a memo he received from the prosecutor, 426. This is
21 the sole information he has.

22 Mr. Bergrin tells Oscar: "I studied it for like
23 six hours and," quote, "made small notes on the thin side."

24 You'll see the notes on the thin side of the page.
25 This is the document he's talking about.

1 "I have clear evidence that these guys are
2 cooperators."

3 He reads from this document. "Brigilio Carlos
4 Noyola is a," quote, "major fucking rat."

5 Paul Bergrin says: "Ivan Tineo is a," quote,
6 "fucking cooperator, he's a fucking rat," referring again
7 now to this, the information he received.

8 If there's any doubt about what he says in there
9 and what's in here. You will have both things in back. And
10 you can match it up word for word.

11 Now, what else did Mr. Bergrin do?

12 He tried to help Oscar Cordova find Junior, right?

13 July 30th, 2008, he tells Oscar that Vinny said
14 Junior's in Panama, again, providing information, inside to
15 out, and that Pepe would know how Oscar Cordova could find
16 Junior.

17 Quote from Mr. Bergrin: "He," meaning Vinny,
18 "said if you could reach Pepe, Pepe get Junior."

19 Quote: "Pepe knows how to reach him."

20 Quote: "Definitely send him back to Panama."

21 That's July.

22 Now, in August 19th, after identifying Junior as
23 the rat, Paul Bergrin says that Danilo Chen-Pui, he says,
24 comes from Oscar's people. All right? Now, this is
25 information, again, Vinny Esteves being taken to people on

1 the outside through those not recorded lawyer meetings.

2 And what does he say?

3 When Oscar says he doesn't know Junior, he tells
4 him Vinny says that Senior el Primo knows this guy, he knows
5 how to reach him.

6 Again, Mr. Bergrin trying to encourage, trying to
7 help Oscar locate this guy.

8 On September 4th, he tells -- Paul Bergrin tells
9 Oscar that Junior has been spotted in New Jersey and sends
10 him to one of Vinny Esteves's drug associates: Talk to Mike
11 Lopez. All right?

12 Then what does Oscar Cordova come back and say?

13 He was no help.

14 What is Mr. Bergrin's responsibilities?

15 "I'm sorry to hear that. That was a dead end."

16 Along the way, he is -- Oscar Cordova is making
17 clear to Mr. Bergrin what is going on. Right? His quote on
18 that day: "So I want to take care of both of them if it's
19 possible but I'll start with the Panamanian. So he's here."

20 And what does Mr. Bergrin say?

21 "Positively."

22 Now, Mr. Bergrin wants to make a big deal out of
23 the fact that these attempts to assist Oscar did not produce
24 actual results. But just because they weren't successful,
25 it doesn't mean that he wasn't trying his best, that he

1 wasn't making every effort. He was getting information that
2 Mr. -- excuse me -- that Mr. Esteves got from his people and
3 putting it out to Oscar. Oscar did not -- wasn't able to do
4 anything with this information because he didn't actually
5 know these people, he wasn't actually involved with this
6 organization. But that doesn't mean Mr. Bergrin wasn't
7 holding up his end of the bargain, wasn't doing his job,
8 providing the information, directing him, telling him what
9 Vinny wants: Here's where they are, here where you can get
10 them; talk to this guy, talk to that guy.

11 THE COURT: Mr. Minutes, you have about 30 minutes
12 left.

13 MR. MINISH: Well, let me just go through one
14 thing here.

15 I'm going to stop for a bit of a logic break here,
16 all right?

17 Paul Bergrin wants you to believe that he only
18 wanted to talk to Junior to get a statement. Now, let's
19 think about that for a second. If Paul Bergrin spoke to
20 Mike Lopez and all he wanted to do was get a statement. Why
21 not just get it himself? Why not send an investigator down?
22 What possible legitimate purpose is Oscar Cordova serving in
23 this process to get a statement? He's not the one locating
24 him. Mr. Bergrin's the one telling him where he could find
25 him. He's not telling his legitimate investigator. He's

1 telling Oscar Cordova, Here's how you can locate this guy.

2 Here's how you can find this guy.

3 Now -- well, unfortunately -- maybe not for you,
4 but unfortunately, I'll skip by a few things here.

5 We're going to go by the smuggling of the phones,
6 you guys are very familiar with that, and the reasons why.
7 Mr. Bergrin has more than demonstrated his understanding of
8 why you don't talk on jail phones, why you try to avoid
9 having your calls recorded, and why you want to avoid his
10 association -- or, excuse me -- Oscar's associated with
11 Mr. Esteves. Right? He didn't want him ever to go down, he
12 doesn't want that ever to be linked.

13 And if I can step out just for a second, that was
14 really the importance of the 8300 form. Remember that Form
15 8300? All right? Now, that wasn't the most, say,
16 significant charge in the case, but remember what that
17 document had on it, the type of information it had on it.
18 It had the name of the guy who gave the money, the name of
19 the guy who received the money, the date he received the
20 money, the amount he received the money, and the reason why.
21 And that record is kept in the Federal Government for all.

22 Why do you think Mr. Bergrin when he received
23 \$20,000 in cash from Oscar Cordova in that heat-sealed
24 drug-dealer sort of wrapping did not report that money to
25 the Government? It's the exact same reason why he did not

1 want Oscar Cordova to go to the Monmouth County Prosecutor's
2 Office to create a link, a sign-in sheet where he would have
3 said, Oscar Cordova on this day met with Vinny Esteves.
4 There would be no record of it. Do you think Mr. Bergrin
5 wanted a record in the Federal database that's going to show
6 Oscar Cordova paid Paul Bergrin \$20,000 towards Vinny
7 Esteves's defense fund that will be searchable by all law
8 enforcement?

9 This wasn't his secretary's fault, members of the
10 jury. There was no secretary who said, Oh, yeah, I know
11 Paul told me to do it, but I'm not going to do it. This was
12 a decision he made to avoid links, to avoid detection to
13 Oscar Cordova, plain and simple.

14 Let's skip to Paul Bergrin knowing about the
15 conspiracy when he joined, what the purpose of the
16 conspiracy was.

17 Now, at the heart of his defense is that he had no
18 knowledge, right? I didn't know. The knowledge in your
19 head, again, is circumstantial, as the Judge will tell you
20 about what you've done and what you've said. And what the
21 evidence in this case shows throughout, unwavering, is that
22 Paul Bergrin knew the purpose of the conspiracy when he
23 joined it and assisted in the furthering of it.

24 Vinny Esteves made that clear to Paul Bergrin that
25 he wanted Junior killed and the truck driver killed.

1 Paul Bergrin made the same thing clear to Vinny Esteves.
2 Oscar Cordova made it clear and you heard it in the
3 recordings to Mr. Bergrin that he was going to kill them.
4 Paul Bergrin made it clear to Oscar that he knew Oscar was
5 going to kill them. Recording after recording after
6 recording.

7 Now, what Mr. Bergrin has done throughout these
8 recordings is to try as best he can not to be overly
9 blatant, right?

10 Let's put up this October 2nd, 2008 clip.

11 Oscar Cordova says to him, "I want to, uh'm, take
12 care of this motherfucker, just kill him, take care of him,
13 get rid of him Pauly."

14 What does Mr. Bergrin say?

15 "Don't talk like that."

16 Now, if it had just been left like that, you'd say
17 to yourself, well, here's a guy that's saying, hey, that's
18 not right.

19 What does the next line said?

20 "I don't trust anything now."

21 "Fucking Feds. Yeah, yeah, Osc, so you gotta take
22 care of that. Come on outside, I don't -- I don't trust
23 anything around here. You gotta be really careful
24 whatever."

25 Again, if you edit around, I guess Don't talk like

1 that could have whatever meaning you want it to. But when
2 you see it in the context, it is one very clear meaning:
3 Hey, Oscar, why are you talking so explicitly? I don't
4 trust anything. What's wrong with you?

5 So what do they do? After reprimanding him for
6 being sloppy, they move the recording to another location
7 where he feels more safe, more safe from law enforcement.
8 Right?

9 What Mr. Bergrin didn't realize, when he thought
10 he was moving away from a possible recording device, he was
11 actually taking the recording device with him - the human
12 recording device, Oscar Cordova.

13 And although I hope this goes without saying, just
14 in case, the only time you're worried about being recorded
15 is if you're doing something that you should not be doing.
16 Saying, hey, don't kill someone, not wrong. Good. Saying,
17 hey, don't talk like that because we may get recorded - very
18 different.

19 Let's have one more example on the August 19th.

20 Now, in this conversation, there is no doubt that
21 Oscar Cordova intends to use the information that Paul
22 Bergrin's giving him to locate and kill Danilo Chen-Pui,
23 right, Junior the Panamanian, DCP.

24 Cordova says, "So if we get rid of him, is that
25 gonna take care of our problem?"

1 "Bergrin: That's a separate fuckin' issue.

2 "Cordova: Right, if we give it to him, they can't
3 bring him back, whoever the fuck this -- whoever the fuck --
4 they can't bring somebody back from the dead.

5 What does Mr. Bergrin say?

6 "Vinny said he thinks he's in Panama."

7 Not, oh, no, no, no, no, no, no, don't -- no.

8 Nothing along the lines of, I just want to make it
9 clear, Oscar, I want to take a statement from this guy.

10 Oscar Cordova could not be more clear what is
11 going on.

12 And what is Mr. Bergrin saying?

13 Vinny thinks he's in Panama. Go get him.

14 And again, what possible quality could Oscar
15 Cordova offer to be the guy whose taking these statements?

16 In an August 5th conversation, Mr. Bergrin slips,
17 and you can see the transcript, hear the recording. He
18 says, "I say we hit the Pam -- " -- then catches
19 himself -- " -- I say we go see the Panamanian first."

20 Now, putting all of that aside, members of the
21 jury, when he got the discovery, because, again, Mr. Bergrin
22 was trying to say, well, ultimately, I found out that these
23 other people were cooperating and I didn't do anything with
24 them.

25 This is in real time. This is not three and a

1 half years after having these recordings and analyzing them
2 and spinning things. This is a realtime decision that
3 Paul Bergrin made with Vinny Esteves and Oscar Cordova.

4 This is what he had. There is no evidence that he
5 had any other information whatsoever. So whatever he
6 eventually got cannot be used to recreate history -- excuse
7 me, I was holding up the wrong thing -- the two documents,
8 the two discovery documents. Whatever, cannot be used to
9 recreate history about, since I learned that afterwards, and
10 then impute knowledge backwards. The only evidence you have
11 for you is that Mr. Bergrin had those two documents, period.

12 So that is the world of his information, that is
13 what he is analyzing, that's what he's trying to figure out
14 when he's making decisions with respect to Vinny Esteves.

15 Now, and again, now, putting all of that aside,
16 putting everything that happened aside, the Oscar Cordova
17 saying things, Mr. Bergrin not saying, No, no, no, him
18 saying, I'm afraid of being recorded, let's come out here,
19 don't be as explicit, saying Vinny wants this, Vinny wants
20 that, saying that, here's how you can find this guy, try
21 this guy, try this guy, try this guy, putting all that
22 aside, you can turn to December 8th, his birthday dinner,
23 and there is nothing more clear that shows you what
24 Mr. Bergrin's intent was from day one.

25 I'm going to put up this clip, but just before we

1 do, just remember what's going on here. Oscar Cordova has
2 been invited to the birthday dinner like he's the big
3 client. There's three people that come to Mr. Bergrin's
4 birthday dinner: One client, Oscar Cordova, or one person
5 related to a client; one employee, Thomas Moran, although
6 Mr. Bergrin was telling you, oh, I was going to fire him any
7 day, every day; one social person, Yolanda Jauregui. That's
8 it. That's the birthday party. Nobody else. Four people
9 at the table. Those are his four people, or those are his
10 three people.

11 And at that dinner, for the very first time,
12 through all the, I think he's here, Oscar, Junior may be
13 here, Oscar. He's back in Panama, you should know this guy,
14 you should talk to this guy, Vinny says this, Vinny says
15 that, for the very first time, Oscar Cordova tells Paul
16 Bergrin, We got him, we know where he is, we have located
17 Junior the Panamanian.

18 And what is Paul Bergrin's reaction? What does he
19 say? Great. We can get that statement. Excellent. What's
20 his address, Oscar? I'm going to send my guys over there
21 right now.

22 No.

23 Pulls his chair a little closer: I want to talk
24 to you.

25 Can we put the clip up?

1 "I got everything lined up. I talked with Tommy.
2 Gonna come to you. Is it gonna help our case? Is it gonna
3 help our case or is it gonna hurt it?

4 "Mr. Bergrin: It's gonna help it. They'll never
5 figure it out.

6 "Cordova: Because they'll never bring --

7 Bergrin, now not just approving of it, now
8 directing and explaining how to do it: "Put on a ski mask,
9 and we'll fuckin' rob him 'cause there's got to be a lot of
10 money in the house."

11 Mr. Cordova doesn't understand, he doesn't get it:
12 The money, why the money? I don't need money.

13 Then we skip to Mr. Bergrin. "No, no, no."
14 Because Oscar's not getting it.

15 "We gotta make it look like a robbery. It cannot
16 under any circumstances look like a hit."

17 Now Mr. Cordova got it: "Smart, I was saying fuck
18 his money. We, I got the money."

19 And Mr. Bergrin: "No, I'm not worried about the
20 money but we have to make it look like a home invasion
21 robbery. We have to hit 'em when his girlfriend's at work.
22 We don't want...we don't want her around. Just want to --
23 she's nothing.

24 And Oscar again doesn't understand. Well, that's
25 exactly my point.

1 "She's nothing in the case. Double, double the
2 pressure. You understand?

3 "Double what?

4 "It doubles the pressure. With him, they'll
5 fuckin' say 'Fuck him, he's a drug dealer.' You understand?
6 With her, it makes it, it puts double the pressure on him
7 there alone."

8 And now Mr. Cordova got it: "I got it Paul."

9 When Paul Bergrin had his chance to discuss this
10 matter again, the next day, all right, the whole, Oh, I had
11 a drink, I didn't have a drink, how many drinks did I have,
12 December 9th, in the clear light of day, this discussion is
13 brought up again. Oscar Cordova, Paul Bergrin.

14 Can you put up the next clip?

15 "So uh'm, you can go ahead and take care of that.
16 The other thing is, remember what I was telling about
17 yesterday --

18 "Um-hum.

19 "About the Panamanian, I found him and the broad,
20 so we're gonna, I'll take care of that Pauly, OK? There's
21 no need for you to do anything.

22 "Yeah .

23 "That's going to help us, though, isn't it?

24 Yeah. A lot."

25 The literally, the very last recording.

1 So from beginning to end, Paul Bergrin had this
2 list with Vinny Esteves, two people, Carlos Noyola, Junior
3 the Panamanian, and the very first time he's located, that's
4 what Mr. Bergrin's reaction was on December 8th. And when
5 he had the night to think about it, to wake up the next day,
6 to change his mind, driving in that car to Monmouth County
7 Jail, what did he do? You know, I don't know, I was
8 drinking, I was crazy, I shouldn't do that, that's wrong?

9 No.

10 Yeah, it's gonna help a lot.

11 So you're left with this. Paul Bergrin can try to
12 spin the facts however he wants, but the reality is this.
13 The only possible legitimate role for Oscar Cordova was to
14 take a statement, and even that's sort of absurd. But the
15 first time he's located, you heard what he said. All right?

16 I'm going to leave you with one last clip.

17 Can we put up the December 9th, the last one?

18 "He's like my right-hand man, Tommy, you know?

19 "Big T. He does good, isn't it, Paul?

20 "Mr. Bergrin: He's a good guy. He's a loyal
21 fuckin' guy, man."

22 And "Cordova: That's right. Anna loves him.

23 "Mr. Bergrin: You need loyalty, man.

24 "Yup. You can't get that no more, huh?

25 "Fuck no, man. Everybody's a piece of shit out

1 there right now. I don't trust, I don't trust nobody, man.

2 "I know you don't, isn't it. None of us do. It's
3 hard."

4 And Mr. Bergrin: "Yeah, man. You gotta fuckin'
5 live by a code.

6 "Mr. Cordova: Yup.

7 "Bergrin: Of fucking not trusting anybody. It's
8 a hard way to live.

9 "Cordova: But it is what it is...

10 "Mr. Bergrin: It's a terrible way to live, man.

11 "But it is what it is Paul.

12 Mr. Bergrin says "Yeah."

13 I don't trust nobody.

14 Mr. Bergrin was right. He shouldn't have trusted
15 anybody. But he did. Oscar Cordova. And that's why we
16 have the recordings that you've heard.

17 He said you gotta live by a code, it's a terrible
18 way to live. He's also right. What they did was a terrible
19 code.

20 The problem is is that Paul Bergrin's code was a
21 criminal code, not a code of honor. It's a terrible way to
22 live. Especially when you get caught.

23 Now, -- 10 minutes, Judge?

24 THE COURT: Ten minutes. Not 11.

25 (Laughter)

1 MR. MINISH: To wrap that up, members of the jury,
2 Mr. Bergrin tried through his questions to hop back and
3 forth, this date to this date, this recording to this
4 recording, this little clip to this little clip.

5 When you look at things in context, nothing could
6 be more clear that these two guys, Junior and the truck
7 driver, were on the list from the very beginning, that Paul
8 Bergrin made every effort he could to assist this
9 conspiracy, both by pulling out information, taking out
10 information from Vinny Esteves in jail and providing it to
11 who he thought was a cooperator -- or, excuse me, who he
12 thought was a hitman so they could find him, they could find
13 the cooperators. Every single step along the way, from
14 beginning to the very end, and then even the day after the
15 end, when he had the chance to change his mind.

16 The evidence against Mr. Bergrin with respect to
17 each count and each act that relates to the Monmouth County
18 witnesses is overwhelming, and that is not even including
19 anything that was said on the stand. Literally just from
20 the recordings, you can easily draw the line from the
21 meeting of Oscar and Vinny Esteves all the way through to
22 December 8th and December 9th. And what Mr. Bergrin wanted,
23 what he knew was going on with the conspiracy, the efforts
24 he made to help the conspiracy, the steps he took, and what
25 he wanted done, and why he wanted it done, because,

1 remember, members of the jury, the whole reason to do this
2 is to get his firm back on the map, making that money again,
3 right, he said his money was going down, and, number two, so
4 they can get Vinny Esteves out because that's how they were
5 going to make the money, right? Once he got that, there's
6 all the testimony, he can get his kilos for this, he can get
7 this, he's got connections, and he's going to get us, once
8 we, Oscar and Mr. Bergrin, once Vinny gets out.

9 That was the motivation.

10 Now, members of the jury -- well, Mr. Bergrin made
11 reference in his opening to the Sixth Amendment of the
12 United States Constitution, all right?

13 Now, the Sixth Amendment provides a series of
14 rights to individuals who are accused of a crime. They have
15 certain rights, and among those rights are to have the
16 assistance of counsel for his defense. That's how it ends,
17 the Sixth Amendment ends.

18 What Paul Bergrin said in his opening is exactly
19 what this case is about, the Sixth Amendment.

20 He's wrong. What it's about is the twisting of
21 the Sixth Amendment.

22 Assistance of counsel does not mean sending false
23 letters and fraudulent checks to probation to get Jason
24 Itzler out so he can run his prostitution business.
25 Assistance for a defense does not equal assisting in selling

1 or buying drugs. It does not mean you get to hook up your
2 clients with the source of kilograms of cocaine. Nowhere in
3 there is it provided for the right to brainwash a
4 nine-year-old girl to testify falsely. Putting on false
5 testimony is not a right covered by the United States
6 Constitution. There's no looking for the location of a
7 prosecution witness so you can make the headache go away,
8 like with Mr. Pozo. Assistance of counsel does not cover
9 devising a scheme to kill witnesses, then advising the
10 hitman the best way to get away with murdering a prosecution
11 witness. And it definitely does not cover while being house
12 counsel for a drug organization, after a member of that drug
13 gang is arrested, finding out the name of the confidential
14 witness from the client in a secure, unrecorded lawyer's
15 room, passing the name along to his fellow gang members,
16 then analyzing the Government's case, determining the only
17 way you can win it is by killing that witness, providing
18 that legal analysis to those gang members, and then leaving
19 with the promise of No Kemo, no case.

20 I offer you this instead, members of the jury: No
21 more of Paul Bergrin not being held responsible for what he
22 has done.

23 Members of the jury, you've heard testimony,
24 listened to recordings, read transcripts, heard
25 stipulations, and reviewed the other exhibits admitted into

1 evidence. You're going to take all those back to the jury
2 room, and you're going to apply the law the Judge gives you
3 when you do.

4 And I'm confident that you will come to the only
5 verdict that makes sense. And to quote Paul Bergrin, using
6 your God-given common sense, you know what is true: That
7 Paul Bergrin is, in fact, guilty of the RICO charge, the
8 RICO conspiracy charge, the violent crimes in aid of
9 racketeering both in the Kemo plot and the Vinny Esteves
10 plot, conspiring to distribute cocaine, failing to file the
11 8300 form, maintaining a drug-involved premises three times
12 over, conspiracy to travel in aid of prostitution, travel in
13 the aid of the prostitution business, conspiracy to travel
14 in aid of a drug trafficking business, traveling in aid of a
15 drug trafficking business, and, most significantly, again,
16 conspiring to murder Kemo Deshawn McCray, an actual man
17 actually killed in this very city because of the work of
18 Paul Bergrin, and doing all that while running his law
19 practice, providing legal and illegal services, while
20 getting his criminal associates to commit crimes along with
21 him, while running his enterprise, the Bergrin Law
22 Enterprise.

23 Paul Bergrin in his opening statement asked for
24 justice. Justice is not letting off a man who committed all
25 these crimes. Justice is holding him responsible for his

1 acts.

2 Give Paul Bergrin exactly what he asked for. Give
3 him justice. Find him guilty of each and every count in
4 this indictment, again, members of the jury, not because a
5 lawyer said so, but because the evidence says so.

6 Thank you.

7 THE COURT: Thank you very much.

8 Ladies and gentlemen, we're going to take a one
9 half hour lunch. We will then come back, and Mr. Bergrin
10 will do his summation.

11 THE COURT CLERK: All rise.

12 Just place your notebooks on your chairs.

13 (The jury exits)

14 (Luncheon recess taken)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No.
09-cr-369-DMC
v. :
TRANSCRIPT OF
PAUL W. BERGRIN, : TRIAL PROCEEDINGS
Defendant. : VOLUME 34
-----x

Newark, New Jersey
March 13, 2013

BEFORE:

THE HON. DENNIS M. CAVANAUGH, U.S.D.J.,
AND A JURY

Reported by:
CHARLES P. McGUIRE, C.C.R.
Official Court Reporter

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

s/CHARLES P. McGUIRE, C.C.R.

1 statement is not evidence.

2 THE COURT: No. What I'll do is, I'll give my
3 charge to the jury which specifically says that in the
4 charge.

5 Okay. Let's get the jury.

6 THE COURT CLERK: All rise.

7 (The jury enters)

8 THE COURT: You may be seated.

9 Ladies and gentlemen, as you can see, I'm trying
10 to move this along because I don't want to interrupt the
11 lawyers in the middle of summation. I don't want to have to
12 stop. So we're going to go today a little bit longer so
13 that Mr. Bergrin can get his total closing in.

14 Both attorneys from both sides recognize that I've
15 put a limit on the time, and they understand that and they
16 will be bound by it. Just as Mr. Minish was, Mr. Bergrin
17 will be, but we will probably wind up going a little later
18 than we usually do. Not a lot, a little bit.

19 Mr. Bergrin, go ahead.

20 MR. BERGRIN: Thank you.

21 Counsel, ladies and gentlemen.

22 Ladies and gentlemen of the jury:

23 I stand before you a very humbled individual. We
24 are all driven by -- we are all human beings and we are all
25 driven by emotions. We're individuals who react at times

1 from the heart, say things that we don't mean, say things
2 that humiliate us, shame us. We speak from the heart. We
3 speak from the soul. We try to do what's right in life.

4 As I stand before you today, I tell you that as an
5 attorney -- and you have heard it on the recordings, you've
6 seen it in this case from individuals that have testified --
7 I'm an individual that gets emotional, is emotionally
8 charged, puts their heart and puts their soul in their
9 representation to make sure that individuals know that I
10 care about them, that they have somebody to rely upon in
11 life, someone that they can turn to during their darkest
12 times.

13 Although I'm a grown man, a lot older than I wish
14 I was, I've gotten a lot grayer since this incident has
15 begun, but I know at times I have felt the pain and heard
16 the cries of my clients.

17 And as Tommy Moran said, You know, Paul just
18 didn't sleep. He was at the jails at 7:30 in the morning on
19 Saturdays and Sundays. I can't keep up with him.

20 I tried to let the client know that when they
21 call, I will be there, when they need me, they could turn to
22 me.

23 And you get caught up in their emotions, you get
24 caught up in their cases, you get caught up in their
25 families, you get caught up in the pain, discomfort, and

1 anguish that they feel and suffer. You try to work
2 tirelessly and endlessly as if they're your own children,
3 and if they're your own family. You try to treat them as
4 you would want any other lawyer, anybody that you turn to in
5 a time of need would treat them also, like they're your own
6 children, like they're your own brothers, sisters, fathers,
7 and mothers.

8 I tried to hold the prosecution to their burden of
9 proof as an attorney, tried to represent the Constitution of
10 the United States as both a major in the United States Army
11 and a soldier as well as an attorney, tried to be there for
12 the downtrodden, tried to be there for the underdog, the
13 destitute, tried to have somebody and show the client and
14 the people that they have somebody that will stand up for
15 them, somebody that's willing to fight for them and take on,
16 take on that big fight, that massive fight, try to hold the
17 Constitution and the prosecution to their constitutional
18 burden of proof.

19 As I stand here today as an attorney and as a
20 defendant, as the accused in this case, as I stand here
21 before you as an individual with very serious charges and
22 allegations against them, an individual not only who served
23 in the military for over 25 years, retired as a major, but
24 as a homicide prosecutor, as a Federal prosecutor, as a
25 defense attorney who represented law enforcement officers

1 accused of crimes, I ask you to do for me what I asked so
2 many juries in the past to do for my clients: To hold the
3 prosecution to their burden of proof, beyond and to the
4 exclusion of -- beyond and to the exclusion of a reasonable
5 doubt, to make them prove their case by logical, credible,
6 believable evidence beyond a reasonable doubt, or to meet
7 your burden as jurors, as the arbiters of the facts in this
8 case.

9 Rasheem King testified before you, and he said
10 that when he cried out from a jail cell, lonely, with no
11 money for a representative, Paul came to him, and, though he
12 had no funds, He's the first person in my life who showed me
13 someone cared and treated me like a human being.

14 When Shelton Leverett, the prosecution's own
15 witness, a cooperating witness, came to me and told me how
16 lonely and depressed and what pain he's in, over 20 times,
17 as he admitted, he came to me, conversations that were
18 recorded and even not recorded, not even played for you, not
19 even part of this case, he needed my help and needed a
20 shoulder to cry on, and I tried to be there for him. And he
21 admitted to you that Paul Bergrin showed me that he cared,
22 and Paul Bergrin talked about him and convinced him, not
23 knowing he's a cooperating witness, to give up the streets,
24 to give up drug dealing, to work hard and to earn an honest
25 living.

1 You have to take everything in totality when you
2 look at this case. You can't take one or two conversations
3 out of context. You have to see what developed, the pattern
4 that was set, what was meant, what was in my mind. You have
5 to ask yourself, if Paul Bergrin was a drug dealer, then
6 Shelton Leverett would have been supplied drugs. If
7 Paul Bergrin ever under any circumstances intended Shelton
8 Leverett to meet Abdul Williams, then Paul Bergrin would
9 have called Abdul Williams and said, Shelton Leverett is
10 calling you, talk to this guy, set up a meeting. If Paul
11 Bergrin ever wanted Abdul Williams and Shelton Leverett to
12 have any interaction whatsoever, he would have called
13 Shelton Leverett when Abdul Williams was released and
14 working in my office. If Paul Bergrin ever wanted Shelton
15 Leverett to deal one gram of drugs, in which Paul Bergrin is
16 supposedly a big drug dealer, could have made thousands and
17 thousands and thousands of dollars, then Paul Bergrin would
18 have set up a meeting.

19 It's because of Paul Bergrin's intent, his heart,
20 and his lack of action that Abdul Williams never, ever
21 called Shelton Leverett back when he had his number locked
22 into his phone, that Shelton Leverett gave up the idea of
23 ever meeting Abdul Williams and conducting a drug
24 transaction to which Paul Bergrin would have profited.

25 These are the things that you have to consider and

1 take into consideration. This proves intent. This proves
2 my state of mind.

3 If I was a drug dealer who wanted to consummate an
4 action instead of building up the confidence of Shelton
5 Leverett to trust me -- like he said: I'm glad you talked
6 to me so I had somebody to confide in. I had to get inside
7 Shelton Leverett's mind and convince him that the streets
8 aren't for him. So you build up their confidence and then
9 you convince them.

10 If Paul Bergrin was a drug dealer, Paul Bergrin
11 wanted drug transactions to occur, start with Shelton
12 Leverett. Start with individuals offered a telephone count,
13 six years, six years after dealing crack on the streets of
14 Newark, six years after being a career criminal facing life
15 in prison, he's facing life as a career criminal for all the
16 crack that he dealt, he comes to me. He doesn't plead
17 guilty, he has no guilty plea by the Government, so he has
18 nothing to lose so now he could tell the truth because he's
19 getting time served, he's getting no time. He has what they
20 call a telephone count, which is a very minimal offense, a
21 reduced sentence, a reduced time. Now he could take the
22 stand and tell the truth. Not like the other witnesses in
23 this case, who are facing a plethora of time, who have to in
24 the sole discretion of the prosecution appease them, and,
25 like the words of Anthony Young, tell them what they want to

1 hear when they want to hear it; keep them in amazement; make
2 sure that they're happy, that they listen to you, that they
3 care what you're saying, because that's the only way you
4 will ever keep from going to jail.

5 Listen to the words of Lemont Love. I can't do
6 anything for that man. I haven't spoke to him in six, five
7 and a half to six years, no contact, no seeing. He comes
8 here, he has no motive to fabricate, he has nothing that I
9 could do for the man. And he tells you, They came to me and
10 they would have walked me; instead of me getting a 12-year
11 sentence, all I had to do is lie against Paul Bergrin, but I
12 refused to do it.

13 When you have witness after witness, cooperator
14 after cooperator who are facing this kind of anguish and
15 time and misery, their freedom taken away from them, unless
16 they're accepted as a cooperating witness, unless they get
17 that 5K1.1 letter, what do you think they're going to do?
18 What do you think they're going to say?

19 In the words, the exact words of Abdul Williams:
20 It's your life, Paul, versus mine, and I made the decision
21 that my life is worth more than yours.

22 In this case, I have lost everything, except my
23 pride and my dignity. I have lost everything I've worked
24 for, except the fact that now I get to come before you as
25 ladies and gentlemen of the jury, as the real triers of

1 fact, to re-establish myself, to lift that black cloud off
2 the ceiling, off the sky, that's been laying over my head,
3 and to show and prove to everyone that this system of
4 justice works.

5 And as the prosecution asked for justice, that's
6 what I ask for. I asked at the beginning, and I'll ask at
7 the end. You are the finders of fact. You are the triers
8 of the facts in this case. It's only when you determine
9 where the truth lies will justice ever be done.

10 In the Abu Ghraib case, the time going overseas,
11 like James Cortopassi said, You were flying back and forth,
12 overseas when these military police officers, my fellow
13 soldiers cried out for help.

14 There are a lot of things I was blinded by, like
15 Yolanda and Alejandro, a lot of things I was blinded by and
16 turned a blind eye because I couldn't see, I didn't believe
17 it. I wouldn't believe it.

18 But I never intended under any circumstances for
19 anybody to be hurt. I never intended under any
20 circumstances for anybody to ever be killed. I never
21 intended under any circumstances for one gram of drugs ever
22 to exchange hands with anyone under my guise, under my
23 leadership.

24 They talk about distorting the facts and spinning
25 the facts. The prosecution spent half his summation into

1 what Paul Bergrin's going to argue, what Paul Bergrin has
2 said.

3 Well, what about the Hassan Miller recording?
4 They played one excerpt about Anthony Young saying
5 Paul Bergrin's going to go to jail, knowing that occurred,
6 on page 48 of the transcript, when Anthony Young told you
7 and swore that without a doubt and to an absolute certainty,
8 based upon what Hassan Miller had said to me, I knew that he
9 was recording me halfway through.

10 Talk about distorting the facts.

11 They talk about a stipulation of me not
12 representing Hakeem Curry since 2002 and me going to the
13 jail on 10 occasions over a nine-month, eight-, nine-month
14 period of time.

15 What does that mean to you: That I just give up
16 persons that I'm representing, I just don't care about them
17 and about their families and about their lives? What does
18 that mean to you?

19 They tell you about conversations, three phone
20 calls with Alejandro Castro to my phone. They don't even
21 know if the phone's in my hand or Yolanda, my supposed wife
22 and girlfriend, has it. No intercepted calls, no content,
23 no substance. Three calls over years and years of
24 investigation for someone that I'm supposed to be dealing
25 with, paying me \$2,500 a month to store drugs, when he's

1 supposed to be my partner and I'm going to him and his
2 family for connections and contacts.

3 Talk about distorting the facts and taking facts
4 out of context.

5 They talk about a December the 9th meeting that
6 they showed you with Jason, a five-star member of the
7 Bloods.

8 You know, ladies and gentlemen of the jury, based
9 upon this investigation if Jason was really a five-star
10 general in the Bloods, he would have been identified,
11 photographed, and there would have been evidence about him.
12 If Oscar was ever privy to any conversations with me and
13 Jason but for idle chatter and bullshit in the car of me and
14 him, then it would have been recorded. Oscar would not have
15 said that, I didn't hear the conversation, I couldn't record
16 it because I was too far away.

17 If I ever intended to deal drugs with Oscar
18 Cordova or Vincent Esteves under any circumstances,
19 Vincent Esteves -- Oscar offered me cocaine for \$4,000 a
20 kilo that he said he was getting from the Ochoas and the
21 Herrerias, and I turned him down. I could have been a
22 zillionaire, not even a billionaire. Oscar offered me
23 cocaine for \$15,000 a kilo from his friends in Mexico. I
24 turned it down. I said, just pay me the legal fees that you
25 owe me.

1 Vinny Esteves asked me for contacts -- gave me
2 contacts, David in Colombia, Wilfredo, but he had to admit
3 Paul never contacted them.

4 That's this big drug dealer, Paul Bergrin. Not
5 one number exchanged with Oscar. Not one person ever
6 introduced. Not one person ever met. Never met anybody,
7 never saw anybody, never any numbers exchanged, never any
8 deals even attempted to be consummated.

9 That's how you know intent. That's how you know,
10 words without meaning, words without substance.

11 Nobody is trying to hide facts from you. Nobody
12 is trying to conceal facts from you. I tried to defend
13 myself to the best I could.

14 And, ladies and gentlemen of the jury, sometimes I
15 know I got aggressive, sometimes I got obnoxious. But
16 you're talking about human emotions by an individual whose
17 life is at stake, so sometimes, you act based upon your
18 emotions and your feelings.

19 They talk about the fact in this case of
20 Paul Bergrin not knowing about the Vincent Esteves
21 investigation.

22 We had an investigative summary, and not one
23 witness - and they have the burden of proof beyond a
24 reasonable doubt - not one witness could come by and ever
25 state when Paul Bergrin had that investigative summary. Not

1 one witness. Remember that.

2 Remember, we made at least three bail motions.
3 Chantal made bail motions. Hector Rodriguez made bail
4 motions. That investigative summary was given out from the
5 beginning. I had my client's statement. As soon as your
6 client makes a statement in State Courts, you get it. I
7 knew he had confessed right away to everything.

8 MR. GAY: Objection, Judge. That's just not true.
9 There's no evidence of it, and he knows that's false. The
10 discovery -- there's been no testimony about that. That's
11 false.

12 THE COURT: I don't recall it. I will caution
13 Mr. Bergrin that he knows to stay within the facts that came
14 out during trial.

15 And I'll remind the jury that it's going to be
16 their recollection of the facts that count.

17 Go ahead, Mr. Bergrin.

18 MR. BERGRIN: Thank you, sir.

19 You know, ladies and gentlemen of the jury, that
20 if there was a scintilla of evidence, if they had one
21 witness that they could bring forth to say that Paul Bergrin
22 didn't have that investigative summary that laid out the
23 entire case that you'll have with you, then it would have
24 been brought forth to you.

25 They would have brought forth the prosecutor from

1 the Monmouth County Prosecutor's Office, Jim Jones, to show
2 you that I didn't have that investigative summary from the
3 beginning of the Esteves case.

4 They could empty every cell, they could bring
5 forth witness after witness. But when you have witnesses
6 with no integrity, no moral fiber, with the agendas that
7 they have, with the backgrounds that they have, individuals,
8 15, 16, 17 felony convictions, individuals who are not
9 charged with thousands of kilograms of heroin, the most
10 potent drug, and putting it on the streets of Newark, their
11 families aren't charged with assisting them in major
12 narcotic transactions, individuals facing thousands and
13 thousands of kilograms of cocaine, they're not charged, how
14 can you ever believe a word that comes out of their mouth?
15 How can you do that?

16 You can't.

17 I pray with all my heart and soul that you find it
18 impossible to separate facts from fiction in this case. You
19 see that based upon inconsistencies, when people are
20 inconsistent, when people are lying -- and Anthony Young
21 admitted in 2007 that he's a good liar, under sworn
22 testimony -- it creates inconsistencies. When you have
23 fabrications, when people can't tell and separate the lies
24 from the truth, that's reasonable doubt in and of itself.
25 When you have inconsistencies, that's reasonable doubt.

1 When you have lies, that's reasonable doubt. When you have
2 individuals with a motive to fabricate, that's reasonable
3 doubt. When you have an investigation and a lack of a
4 quality investigation, that's reasonable doubt.

5 You heard all these names, Yolanda Jauregui, Ramon
6 Jimenez, Maria Correia; the warnings given to Steven
7 Cortopassi and James Cortopassi. But not one word from
8 these witnesses. When you hear the names of Edward Peoples
9 and the fact that he used my name in a letter, and his
10 girlfriend, Anyea Williams; Jamal Muhammad, the individual
11 supposedly coached into making a statement and falsify the
12 statement for Abdul Williams; when you hear about Pedro
13 Ramos in the Pozo case; Tito getting the gun from on
14 December 8, Justo Cepeda; Nelson Esteves; Michael Lopez;
15 Jason Nieves; Diedre Baskerville; Jamal McNeil; Jamal
16 Baskerville; Horatio Joines; Mira in the prostitution case,
17 according to Tommy Moran that I was going to pay her to
18 testify falsely against James Cortopassi; Jason Itzler. You
19 have to ask yourself, you have to ask yourself, some of
20 these people are not charged. None of them are charged.
21 Where are they? Where are they? Where are they? Where's
22 their credible evidence? Why weren't they called if the
23 prosecution's witnesses are telling the truth? Why weren't
24 they called to substantiate and corroborate the witnesses?
25 Ask yourself that question. You have to ask yourself that

1 question, I beg you, because all I want you to do is
2 determine the truth, the whole truth, and nothing but the
3 truth. That's all I've asked from the beginning, and that's
4 all I've asked in the end.

5 When you talk about individuals, on May the 20th
6 of 2009, the evidence shows that I was arrested. When I was
7 arrested, I cried out with the words "not guilty." On that
8 date, I saw my daughter cuffed behind her back, nine years
9 old, in a Catholic school uniform, plaid skirt, plaid vest.
10 I knew that this case was personal, and I knew, ladies and
11 gentlemen of the jury, that I would have to fight with all
12 my heart and soul to vindicate myself. And that's what I'm
13 coming before you and trying to do. That's what I'm trying
14 to do.

15 Look at the facts of the Kemo McCray case. Please
16 look at them. You have an individual, the agent in this
17 case, the lead agent who put this case together for the
18 prosecution, Shawn Brokos. She gets a call from Chris
19 Spruel, an informant of hers, that there's a shotgun at the
20 home of Delphine Smith, where Kemo McCray is living. She
21 wants Kemo McKay to be a cooperating witness. She is
22 desperate for Kemo McCray to be her informant.

23 She goes to the house knowing - knowing - that the
24 shotgun is Kemo McCray's, knowing that it's not Delphine
25 Smith's. She goes to the house. Kemo McCray runs out the

1 back door.

2 She tells Delphine Smith, Get Kemo into this --
3 into the F.B.I. or we're going to arrest you. Knowing that
4 she's innocent of these charges.

5 Kemo McCray comes in to the F.B.I. the next day.
6 She tells Kemo McCray that, Unless you admit to the
7 shotgun -- knowing he's a career criminal, knowing he's got
8 an robbery conviction, armed robbery, knowing he's got a
9 drug conviction, knowing he's got escape convictions --
10 unless you come forward and admit the gun is yours and agree
11 to cooperate, then we are going to lock up your mother,
12 knowing she's innocent.

13 So it starts with that premise. Kemo McCray
14 decides to cooperate. She knows that he's not going to be
15 prosecuted because the U. S. Attorney's Office has told her
16 that. Knowing that he's not going to be prosecuted, she
17 never tells him that, never tells that to Kemo McCray.

18 She uses him as an informant. She has Kemo McCray
19 buy on six separate occasions very small amount of drugs
20 from William Baskerville, who's convinced to sell Kemo
21 McCray by his brother Rakim Baskerville drugs, knowing,
22 knowing that William Baskerville tells Kemo McCray, I don't
23 sell these small amounts. Six separate times, 26 grams
24 twice, 28 grams twice, 50 grams twice, signature crimes,
25 close to Kemo's house. She has William Baskerville selling

1 this to Kemo knowing, knowing that he's going to identify
2 the person because he doesn't deal these kind of drugs,
3 doesn't deal in these small quantities.

4 In the middle of the transaction, she's using Kemo
5 McCray on Richard Hosten. She gives Kemo McCray her
6 boyfriend's cell phone number -- the boyfriend's cell phone,
7 and what happens? Richard Hosten calls the cell phone, and
8 it says, this is Michael Brokos of the Federal Bureau of
9 Investigation. You heard Mr. Hosten. Not what Brokos said
10 or what was said, that, This is Mike. You heard Richard
11 Hosten testify: This is Michael Brokos of the F.B.I.

12 She pays Kemo McCray a small amount of money, not
13 enough to even pay his expenses, knowing that he has to
14 live, knowing that he has to pay expenses, and knowing that
15 he has only one way to make a living, and that's by dealing
16 drugs.

17 Kemo McCray is using drugs, as we know from the
18 toxicology report when he came up positive for cocaine.
19 He's dealing crack cocaine. He's dealing heroin. He's
20 dealing cocaine.

21 She gets a complete report about the fact that his
22 life is in jeopardy from Lakeisha Wilson. People are coming
23 up to her and saying they're looking for Kemo, they're
24 looking to hurt him.

25 Instead of arresting him, instead of protecting

1 him, she allows him to deal drugs, saying that she has no
2 idea that he's doing it, in the 'hood, in the community,
3 where his life is in danger.

4 She arrests William Baskerville. When William
5 Baskerville's arrested, instead of keeping him separate from
6 Richard Hosten, they're put in the same cell together, where
7 they could corroborate with each other.

8 And William Baskerville knows, knows that the
9 informant is Kemo McCray based upon the small amount of
10 drugs that were sold and the fact that he only sold that to
11 one person, and based upon speaking to Hosten and the facts
12 learned about the cell phone and their discussions with each
13 other.

14 My job when I received the call on November 25th
15 of 2003 was to represent William Baskerville the best way I
16 can. We were going for a bail hearing, but please, please
17 understand this, please understand this: The facts of the
18 case that were known in a very quick period of time is that
19 there was six hand-to-hand sales to an undercover -- to a
20 confidential informant working undercover with the F.B.I.

21 Recall the transactions were observed by law
22 enforcement officers before Mr. McCray met with William
23 Baskerville, who recorded conversations that I was informed
24 about, that Mr. William Baskerville was informed about. We
25 knew that there were recordings before he met William

1 Baskerville. We knew that there was surveillance, there was
2 videos, there were hand-to-hand deals.

3 What attorney under any circumstances could ever
4 represent to anybody who's a career criminal or their
5 families or their loved ones or strangers that they're going
6 to get bail, that they could beat the case if there's no
7 informant. They've got recordings before. They have
8 observed hand-to-hand transactions. They have videos. They
9 have the drugs.

10 The underlying premise of their case is absurd.
11 No attorney, especially an experienced one, could ever make
12 that representation to people that he's going to be held
13 accountable to.

14 That's why you know that Anthony Young is not
15 telling the truth. That's why you know it. No attorney
16 could have or would have ever made that representation, that
17 if Kemo was not there, then William Baskerville is getting
18 bail and he's going free. No one could ever make that
19 representation.

20 In this particular case, they rely upon
21 individuals, individuals with the backgrounds that they
22 have.

23 I stand here before you today clothed in a sacred
24 shroud that I told you in my opening statement called the
25 presumption of innocence. Even as you hear my closing

1 statement, even as you hear the judge's charge, even as you
2 go upstairs to deliberate, unless you find that each element
3 of the offense is proven to you beyond a reasonable doubt,
4 that sacred shroud called the presumption of innocence
5 protects me as it would protect you and every one of your
6 loved ones who sat in that seat; that unless the prosecution
7 proves their case beyond a reasonable doubt, you must, you
8 must find me not guilty.

9 When they bring forth career criminals -- and I
10 just want to go through very quickly, generally, the
11 individuals that they have here.

12 They have individuals like Lachoy Walker. Lachoy
13 Walker hears a statement in 2002, allegedly in 2002. He
14 begins to cooperate in 2004. As he told you, he never
15 tells, proffer session after proffer session, meeting after
16 meeting, testimony in court, plea of guilty, never, ever
17 mentions Paul Bergrin and Paul Bergrin saying that Hakeem
18 Curry is bagging money to meet Paul Bergrin's connect.
19 Never, never. Is asked in a sworn plea before a Federal
20 judge who Hakeem Curry's connects are. Never mentions
21 Paul Bergrin or Paul Bergrin's connect, or Paul Bergrin
22 introduced him to a connect. Proffer after proffer, trial
23 preparation after trial preparation in multiple trials,
24 never mentions it.

25 Nine years later, in 2011, for the first time, in

1 my first trial, he mentions it.

2 And you're supposed to believe the integrity of
3 someone like that.

4 I ask you to not allow the spillover from one
5 incident to the other to pollute the integrity of the
6 charges, to influence you. Each case is separate. Each
7 witness is separate. Don't allow them to allow that
8 spillover of one witness, one testimony into the other.
9 Don't allow that to happen, ladies and gentlemen of the
10 jury.

11 Please realize, as Mr. Cline said, Agent Cline:
12 You've handled a lot of cases, Paul, you've represented a
13 lot of people. You had a successful practice.

14 And I wouldn't jeopardize it, and I didn't
15 jeopardize it. I may have said stupid things that I'm
16 totally demoralized and embarrassed and humiliated about,
17 and at times I wanted to crawl as deep as I can underneath
18 that table. So help me God, I would have if I could have.
19 But under no circumstances can anybody ever say when you
20 look at the totality of everything, what happened, and what
21 I knew, and what any experienced attorney would know, that I
22 ever intended or attempted to make anything happen or intend
23 anything to happen.

24 It makes no sense, and I didn't do it.

25 Look at the motives of the individuals.

1 Look at Abdul Williams, for instance. Talk about
2 opportunists. While a cooperating witness, he's asked a
3 question about the seven-kilogram transaction he conducts
4 with his father, his cousin, Yolanda Jauregui, Alejandro
5 Castro, from the jail, while Paul Bergrin's incarcerated.

6 Denies it. Denies it.

7 And they know that he did it. And they do nothing
8 to investigate it.

9 Look at the fact that he's got 17 convictions, is
10 dealing thousands and thousands of kilograms, running
11 Bradley Courts, dealt hundreds and hundreds of kilograms of
12 cocaine on his own.

13 They've charged him with less than five kilograms
14 of cocaine. He's facing 17 years. Do you know why?
15 Because they don't charge him with the cocaine that he's
16 dealt because he's pleading guilty and cooperating with
17 them. They don't charge him with the thousands and
18 thousands of kilograms of heroin, giving him automatic life,
19 because he's cooperating.

20 Look at Oscar Cordova. How could you ever believe
21 a word that he says, his interpretations? How can you
22 believe that he didn't manipulate the tapes, the amount of
23 unintelligibles, a individual who, when first he's debriefed
24 by the U.S. Attorneys on the case, by the Federal agents,
25 says he committed 15 murders.

1 And then the next question out of his mouth is, Am
2 I going to get in trouble?

3 Well, we think you should see a lawyer.

4 What about my rapes?

5 Comes back after a lawyer represents him a few
6 days later and says, You know what? I didn't commit 15
7 murders. I have information on 15 murders. Says he has
8 information on five murders related to Lord Gino.

9 He's not even related to Lord Gino, can't give any
10 information at all.

11 Accuses Vinny Esteves of committing four murders.
12 This is when he's cooperating. Says Vinny Esteves solicited
13 him for three murders. All complete lies.

14 Says he deals with the Ochoas, the Herreras, Funny
15 Face, William Martinez, who is on the 10 Most Wanted List
16 which came out. Says he provided protection for Vinny
17 Esteves.

18 Called in a death threat on himself, saying the
19 Latin Kings put out a \$250,000 hit on his life. Swears to
20 you, commits blatant perjury. They give him immunity so
21 he's not even going to have be prosecuted for it. Not even
22 revealed by them. The United States Marshals, after he
23 testifies, when he gets off the stand, says give me your
24 phone. They look up the fact that he committed perjury, not
25 Brokos, not Gay, not Minish. It would have gone undetected.

1 You would have never heard about it. The man committed
2 perjury and lied before you.

3 Uses cocaine, uses marijuana. Sees Tommy Moran --
4 not like Tommy Moran says, unbeknownst to him and
5 unsuspecting to him, Anna Camacho laced a marijuana
6 cigarette with PCP. You heard Oscar's testimony. That's
7 enough for you to completely discredit everything Moran
8 said. On every time he was with Moran, he was using PCP and
9 marijuana, smoking it in front of him.

10 How would Oscar know this to be able to testify
11 before you if Moran didn't do it and it was unbeknownst to
12 Moran that Anna Camacho laced the marijuana cigarette with
13 PCP on the last day that he ever met with Oscar? How would
14 Oscar know that if it wasn't done repeatedly?

15 How can you accept a word out of Tommy Moran's
16 mouth that he used cocaine on occasion when he repeatedly
17 used it in the presence of Oscar and smoked marijuana and
18 did what he did?

19 Oscar came before you and said, Oh, I never called
20 for prostitutes for my room.

21 When we played the recording, you knew he
22 committed perjury and lied to you.

23 Oscar told you that he never sent a prostitute to
24 my room on August the 5th and told her to tell Paul Bergrin
25 his father's Lord Gino, that he's Lord Gino's son, to tell

1 Paul Bergrin that she works for the Latin Kings.

2 How would I, Paul Bergrin, ever believe a word out
3 of the mouth of Oscar when there when this prostitute told
4 me that?

5 Tom Moran. You had a chance during my
6 cross-examination to listen to what he told his
7 psychologist. It wasn't an occasional drink, like he said.
8 He was drinking every day. He was using cocaine during the
9 week. You heard Vinny Esteves about how he was coming to
10 court coked up, how he was meeting his wife all coked up,
11 how he supplied Oscar with drugs they smoked together. It
12 wasn't a one-time thing about PCP.

13 You have individuals like Anthony Young, who says
14 that if his attorneys had told him to tell the truth, then
15 he would have never falsely incriminated and accused Jamal
16 McNeil of the murders.

17 Well, you know that he lied about that. You know
18 he committed perjury before you because Shawn Brokos said it
19 in the presence of his attorney, Melissa Hawkins told him to
20 tell the truth.

21 You heard Paul Feinberg. Paul Feinberg's not
22 going to lie for me. He told him to tell the truth.

23 You heard Anthony Young say how Brokos promised
24 him he's going to be released. You heard Brokos say she
25 never made that promise.

1 One time after another, and these are only small
2 examples.

3 You heard Anthony Young say that every weapon of
4 the Curry organization was bought altered to automatic. You
5 know that every weapon seized in this case, five of them,
6 including the weapon of Anthony Young that was seized in
7 July of 2004, not one of them was an automatic.

8 You have the fact of Ben's, Ben Hohn. Maybe
9 Ben Hohn believes he's Jesus Christ, but if he believes he's
10 Jesus Christ, then there's no way he's going to lie.
11 There's no way he's going to lie and put his hand on the
12 bible and affirm a lie if he's Jesus Christ. He's never
13 even met me in his life. He's not going to lie for Paul
14 Bergrin.

15 You know one thing: Anthony Young never took any
16 murder weapons to Ben Hohn's the day of the homicide. The
17 first time he ever went to Ben Hohn's was just like Ben Hohn
18 said: In either October or November of 2004, not March,
19 which is consistent with Devon Jones telling you about the
20 fact that it was cold outside, not 70 degrees, people were
21 bundled up, and it was toward the end of the year.

22 And I'm only using these as examples.

23 You heard Anthony Young deny that he committed the
24 arson of Rashidah Tarver's house that was burned to the
25 ground. You heard Anthony Young deny that he pointed a

1 weapon at Rashidah Tarver or her sister.

2 These are just small examples of one lie after
3 another, and every single lie, in and of itself, whether it
4 be Tommy Moran, Oscar Cordova, Anthony Young,
5 Abdul Williams, what it does is it creates reasonable doubt,
6 to doubt their testimony and what they're saying.

7 You have the recording with Hassan Miller where
8 Anthony Young is coaching another individual to lie on his
9 behalf, to tell an intentional lie so the person gets
10 witness protection and doesn't do any time. Talks about
11 getting a house and getting money.

12 Anthony Young never expected to do a day in this
13 case. Ask yourselves, ladies and gentlemen of the jury, he
14 goes to the F.B.I. for the purpose of dealing his gun
15 charges, dealing his gun, his state gun charges, which are
16 now Federal, Trigger Lock, when he goes to the F.B.I. What
17 human being knowing he's not under investigation, knowing
18 that there's no evidence against him, would admit to a
19 murder knowing the penalties of murder when he goes there so
20 to avoid jail time in a state gun case, believing for one
21 second, one millimeter of a second that he's ever going to
22 get jail time?

23 Just like Rashidah Tarver swore: He believed no
24 matter what he said, just like when he was telling Hassan
25 Miller to lie to the U.S. Attorneys and the F.B.I.: It

1 doesn't matter whether you've committed the murder, you're
2 going to get witness protection, just like he told Rashidah
3 Tarver, you're not doing any jail time. I'm not doing jail
4 time. Just like he told Rashidah Tarver, it doesn't matter
5 whether I was the shooter, I'm not doing jail time. It
6 doesn't matter what he told Hassan Miller, it doesn't
7 matter, I'm not doing jail time. Never expected it in a
8 thousand years.

9 And these are just examples. These are just
10 examples.

11 Why would anybody ever say, Keep them in
12 amazement, tell them what they want to hear and about who
13 they want to hear it, unless they really meant that?

14 Think of it, ladies and gentlemen of the jury.
15 When you have a witness who's facing 20 years, 30 years, 40
16 years, life without ever being paroled, versus liberty and
17 freedom, and all you've got to do is make up something that
18 you've heard, read, talked to other people about, done
19 Internet research through your family, read discovery, read
20 the indictment, heard recordings before you came in: Paul
21 Bergrin, Paul Bergrin, and you walk out a free man.

22 Life of misery, life of incarceration, away from
23 your loved ones, pain and anguish and sorrow every day in a
24 cell, locked up like an animal, versus Paul Bergrin, and you
25 get the quote, like Abdul Williams said: It's my life

1 versus yours, Paul. It was an easy decision.

2 Using as examples, look at Rondre Kelly. Look at
3 Rondre Kelly, dealing thousands of kilograms of heroin, the
4 heroin originating in New Jersey to Pennsylvania. He's
5 facing life in New York, life in Pennsylvania. He never
6 gets charged by the U.S. Attorney for all the drugs he's
7 dealt in Pennsylvania, heroin or cocaine. Never gets
8 charged. That's why he's only facing 14 years. Doesn't
9 come forward for three years later, three years later, after
10 he's sentenced and got 14 years, knowing, not knowing
11 whether he's going to get charged in New Jersey or not.

12 Is that motivation to lie about Paul Bergrin?

13 Again, going back to Abdul Williams: 7,500 bags
14 of heroin a week, in school zones, in public housing
15 projects - totally overlooked. Shootings overlooked.
16 Suspect in a murder case, overlooked.

17 Is that enough bias for you, ladies and gentlemen
18 of the jury?

19 Vinny Esteves gets convicted, pleads guilty to 25
20 years. A year and a half after this case, he gets a
21 sentence of 25 years. Two prior convictions, leader of a
22 narcotic organization. He's doing at least 20 years on
23 that, with an infant at home. For the first time after he
24 gets sentenced does he come in and talk about Paul Bergrin:
25 He has a discovery in his hand, he has an indictment in his

1 hand. The benefit of talking to Albert Castro, another
2 cooperator who he's locked up with.

3 it's like Abdul Williams and Eugene Braswell:
4 They put them together in the same jail, the Hudson County
5 Jail. It's like Rondre Kelly and Albert Castro, locked up,
6 with the same lawyer coming to see both of them.

7 That's what this case is all about.

8 Look at Eugene Braswell, a correction officer, law
9 enforcement officer, a law enforcement officer. He gets
10 locked up by the State of New Jersey, charged with leader of
11 a narcotic organization, facing the minimum 25 years in
12 State Prison. They allow him out on bail. He doesn't say a
13 word about Paul Bergrin. Gets arrested federally, is
14 charged with a lifetime offense. They release him on bail.
15 For the first time, he mentions my name.

16 Think of it. A correction officer, police
17 officer, locked up. Think of it. Facing life, state, life,
18 Federal, and he gets a concurrent deal in the state, he's
19 not going to do any time, they're going to run it together.
20 And they talk about the fact that, oh, you committed a third
21 offense while out on Federal bail, so we're not going to
22 give you credit for the middle indictment.

23 So what? So what? He has the other two offenses,
24 the state and the third indictment all running together, all
25 running together with each other.

1 And he's not going to lie about Paul Bergrin?

2 He's not going to tell them what they want to hear about
3 Paul Bergrin?

4 Tommy Moran, going back to him. He's in the
5 Hudson County Jail, locked in a cell 33 hours straight. You
6 heard my cross-examination of him. Thirty-three hours
7 without coming out. Five steps forward and three steps to
8 the side. Thirty-three hours straight in a small cell,
9 never locked up before, facing four counts of aggravated
10 assault - while he's drunk, he smashes into a van in
11 Monmouth County, facing a second-degree eluding charge in
12 Hudson County. And you heard Lemont Love. He got six years
13 on his first time.

14 Freddie Massimi, who came before you, went to see
15 him at Hudson County, went to see him at Bergen County Jail.
16 That's his friend. He's not going to lie for me. He's not
17 going to do anything to hurt Tom Moran. And you heard him,
18 how Tom Moran was going crazy, couldn't take being locked
19 up.

20 He broke and lied. He knew the way out was
21 through Paul Bergrin. You have an individual that for eight
22 to 10 proffer sessions, eight to 10 meetings with the
23 prosecutors, when he's dying to be a cooperating witness,
24 begging to be a cooperating witness because he can't take
25 being locked up the way he is, a year and a half later, he

1 mentions the fact that he -- oh, I had this conversation
2 with Paul Bergrin at the Essex County Jail about the Kemo
3 case.

4 But he doesn't tell the prosecutor, doesn't tell
5 you, ladies and gentlemen of the jury, about all the
6 Internet research, about his father, his friends sending him
7 newspaper articles. He has all the discovery in his hand,
8 all the recordings in his hand.

9 That's what this case is about: Moral fiber and
10 moral integrity.

11 Richard Pozo, running a \$150 million cocaine
12 distribution network in New Jersey, \$150 million over 20
13 years, leader of a narcotic organization, gets indicted in
14 Union County. The man gets time served - time served.

15 And all these witnesses come forward and say, Oh,
16 it's up to the judge; we don't know what time we're going to
17 get.

18 But look at Lachoy Walker, look at Pozo, look at
19 Richard Hosten, look at Eric Dock, all their witnesses, all
20 cooperators, every single one of them got time served.
21 Every single one of them were career criminals facing 20
22 years, 25 years, life in prison. They know they're walking
23 out of here after their testimony against Paul Bergrin.
24 They know that. Anthony Young knows that his sentence is
25 getting reduced to probably nothing once he testifies

1 against me. He knows that. They all know that.

2 To have them believe and have them say, Oh, we
3 have no idea, it's up to the judge: It's not fair to you.
4 It's not fair to you.

5 Look at the examples of the witnesses that
6 testified: Walker, Hosten, Dock, Choy Walker, every one of
7 them career criminals with similar records.

8 That's enough to create reasonable doubt, ladies
9 and gentlemen of the jury.

10 I want to go through the Kemo murder case as I
11 started before, but let me go through it in sequence now.

12 I get the call, the call came to me, ladies and
13 gentlemen of the jury, as the call records show, from
14 Diedre Baskerville, not Hakeem Curry. Diedre Baskerville
15 called me twice in the morning on November 25th from her
16 home phone at about 10:30 and from her cell phone a little
17 after that to represent her husband, William Baskerville.

18 And I represented him as I would anybody else,
19 anybody else. Let's dispel one thing right away. If
20 William Baskerville had any inclination to be a cooperating
21 witness, Paul Bergrin and a slew of horses could not have
22 ever held him back from cooperating. Nothing would have
23 held him back. He could have called the prosecutors, his
24 wife could have called them.

25 In 2005, I wasn't even representing him. From

1 2005 to 2013, he has two different attorneys. Years before
2 his trial, from 2005 to 2007, two different attorneys.
3 Never once did he even attempt to think about cooperating.

4 So let's dispel that, that Paul Bergrin had
5 anything to do with convincing William Baskerville not to
6 cooperate, because Paul Bergrin didn't have that power.
7 Paul Bergrin couldn't have done it. William Baskerville is
8 an experienced criminal. If he wants to call the
9 Prosecutor's Office, or when the F.B.I. came to see him on
10 two occasions at the jail, if he wanted to cooperate, by the
11 grace of God, he would have cooperated, and there's nothing
12 that Paul Bergrin ever could have done.

13 So Diedre Baskerville calls me at 10:25 in the
14 morning. The first call I get from Hakeem Curry is after
15 2:30, ladies and gentlemen of the jury, and they talk about
16 the phone calls on November 25th. Look at the times. One
17 is for one minute, and one is for two minutes. One is for
18 one minute, and one is for two minutes.

19 And they forget to tell you during their
20 summations that Hakeem Curry is the first cousin of
21 William Baskerville, and as I brought out, they grew up
22 being raised by the same grandmother, who was like their
23 mother, in the same house. What they failed to tell you is,
24 like Lachoy Walker and like Shelton Leverett said: Hakeem
25 Curry and William Baskerville, there's no organization that

1 both of them are part of. William Baskerville once in a
2 blue moon gets his drugs from Hakeem Curry. They're not
3 interrelated. Nobody's worried about William Baskerville
4 cooperating. Nobody's worried about any hierarchy falling.
5 They're family. They love each other.

6 I go to court on that day, and before going to
7 court, Anthony Young tells you there's a meeting, there's a
8 meeting on 17th Street and Avon Avenue, and he says that
9 Diedre Baskerville showed up at that meeting.

10 Well, you know he's lying again. You know he's
11 lying because Diedre Baskerville is at her house when she
12 says so. We have the phone records. That's why he changes
13 his testimony from one trial to the other, because we
14 confront him with the phone records showing that Diedre
15 Baskerville couldn't have been there.

16 He originally said that Hakeem Curry was at the
17 meeting and then changes it. He says Horatio Joines was at
18 the meeting. And ask yourself, in your God-given common
19 sense, a term that I love to use, if Horatio Joines is being
20 looked at as an informant, who's going to ever talk to him
21 about the William Baskerville case in front of Horatio
22 Joines?

23 So I go to court in this particular case, and the
24 prosecution again lays out the case, the magnitude of the
25 case, the magnitude of the investigation, the avalanche of

1 evidence against him. And I call Hakeem Curry, and I admit
2 that to you, and I admitted it to the newspapers because I
3 have nothing to hide. I didn't do anything wrong. I didn't
4 do anything that any defense counsel would not have done. I
5 called his family - his family. I spoke to Diedre
6 Baskerville, as the phone records show, in the afternoon,
7 and I spoke to Hakeem Curry. And as Anthony Young even had
8 to admit when I spoke to Hakeem Curry in the car, when I
9 spoke to him in the car, all I did was read the complaint:
10 William Baskerville is charged with selling 26 grams to --
11 and instead of saying confidential informant, I said the
12 name Kemo. That's all I did. I didn't say, Oh, yeah, and
13 the informant is Kemo. As Anthony Young testified, I read
14 the complaint and then substituted the name Kemo for
15 confidential informant. That's what was done. All the
16 transactions -- this is his first cousin, like his brother,
17 just like I did to Diedre Baskerville.

18 And how else is any attorney, whether it be me or
19 anybody else, how can we ever argue pursuant to the bail
20 statute at the next scheduled event, the detention hearing,
21 how could we argue any facts at all about the case, about
22 the Judge setting a bail, which is a pro forma argument,
23 like Paul Feinberg said, like sending in a motion to
24 suppress when you have an issue when evidence is seized.
25 You're going through the motions, but you know it's not

1 going to be granted because he's a career criminal. But how
2 are you going to argue it unless you speak to the people
3 that you know, the people that he knows is family, his
4 friends, his acquaintances about the individual who he has
5 allegedly sold the cocaine to?

6 And what's the difference if I tell him or William
7 Baskerville tells him? William Baskerville is on the phone,
8 like Richard Hosten said. He was on the phone immediately,
9 telling his family who the informant was. Immediately,
10 before even I made the phone call.

11 There was never any intent for anybody, anybody,
12 to harm a hair of the head of Kemo because it did not matter
13 whether Kemo was there or whether he didn't show up. It did
14 not matter.

15 But the important thing is -- please hear me on
16 this: Anthony Young in prior testimony, I brought it out in
17 sworn testimony in this trial, just like I brought it out in
18 2011, in 2007, he said and swore to the fact that on
19 November 25th, not with any meeting with Paul Bergrin, not
20 with any meeting of waiting for Paul Bergrin to tell him
21 about the case, he made the decision that if you cross the
22 Baskervilles, the exact words that came out of his mouth, if
23 you cross a Baskerville -- cross him, not be a witness
24 against him; he got stabbed in the back, he got used,
25 William Baskerville, by Kemo McCray -- if you cross a

1 Baskerville, you kill them. That's why Anthony Young made
2 the decision on November the 25th. That's why the decision
3 was made.

4 And he told you that when he came before you and
5 testified, Oh, we didn't know, we didn't know that William
6 Baskerville was facing life until Paul Bergrin came to this
7 meeting, first and foremost, multiple times, multiple times
8 in sworn testimony, hand on the bible, before another jury,
9 four to five days after William Baskerville's arrest.

10 But he told the F.B.I. on January 14th the meeting
11 occurred that night of November the 25th.

12 He changes every single time the amount of people
13 that were there, who was there, when the meeting occurred,
14 what was said during the meeting.

15 The bottom line is, he swore in 2007 that it was
16 Hakeem Curry on November 25th, the day of William
17 Baskerville's arrest, who told him that William Baskerville
18 is facing life. He swore in prior testimony he made the
19 decision on November 25th to kill Kemo McCray. If that's
20 the case, then it didn't happen during any meetings with
21 Paul Bergrin that never occurred.

22 Why do you think, ladies and gentlemen of the
23 jury, why do you think that there's no chatter setting up
24 this meeting, any meeting at all with Paul Bergrin? Why do
25 you think, ladies and gentlemen of the jury, there's no

1 chatter about anything having occurred at the meeting, after
2 the meeting, during the meeting? Why do you think that
3 nobody, nobody, except for Anthony Young, says that there
4 was a meeting? That's not observed by anybody. But they
5 don't have one witness, even witnesses that aren't charged,
6 to ever come forth and say that there was a meeting, that
7 Paul Bergrin came up and Paul Bergrin made these nonsensical
8 statements.

9 Because it never occurred. It never occurred.
10 And you have to rely upon the word and the mouth of Anthony
11 Young to convict me of the Kemo McCray murder.

12 Just think of it. They say, Oh, we have
13 corroboration, we have 404(b) evidence.

14 Moran doesn't come forward, for 10 proffer
15 sessions, two years later, begging to be a cooperating
16 witness. And what does he do anyway? He spits out exactly
17 what's contained in the newspaper article that Paul Bergrin
18 has admitted to. I'm not denying it. If I wanted to hide
19 it and cover it, I would have made no statements to the
20 press. But I knew that I didn't do anything wrong. I was
21 doing my job, putting my heart and soul into the
22 representation of William Baskerville.

23 It hurts, it devastates you when you listen to
24 people testify when you know that they're lying, you know
25 that they're lying. There's reasonable doubt based upon

1 Anthony Young's record alone.

2 But consider this, ladies and gentlemen of the
3 jury. You have the fact that there was a GPS device located
4 and found on Hakeem Curry's vehicle a week before the
5 murder. He comes into my office, and I tell his wife, it's
6 bad, it's bad, he's in deep trouble, Federal investigation.
7 You know if there's a GPS device that he's going to be
8 arrested soon.

9 What attorney, what human being, what man, what
10 anybody would participate, be part of a murder of a Federal
11 witness knowing, knowing that there's a Federal
12 investigation and a GPS device found on his client's
13 vehicle?

14 This is so wrong. It's so wrong. It's impossible
15 for Anthony Young to be telling the truth when you have over
16 100 inconsistencies between his F.B.I. statements, between
17 his testimony in 2007 and his testimony in 2011.

18 That's why you have so many different versions, so
19 many different incidents and events.

20 There's no way William Baskerville's getting bail.
21 There's no way, even with God representing William
22 Baskerville, he's beating the case, and no way any attorney
23 with any kind of experience who's being held accountable and
24 responsible for these individuals would ever give that kind
25 of nonsensical advice.

1 But, what's more important, you heard Eric Dock's
2 testimony that William Baskerville was looking for a
3 sentencing expert. Remember that? William Baskerville
4 never intended to go to trial and Paul Bergrin never
5 intended to take him to trial. He was looking for a
6 sentencing expert to help him on sentencing to get the least
7 sentence possible.

8 And in the words of William Baskerville, Don't
9 fuckin' tell Paul anything about the sentencing expert, let
10 him do his job, let him work for the best plea, let him work
11 on my best sentence.

12 You heard William Baskerville tell Eric Dock,
13 according to Eric Dock, that he was going to fire
14 Paul Bergrin and he's waiting for his brother
15 Rakim Baskerville and his cousin Hakeem Curry to get him
16 funds.

17 If I'm involved in a murder, a conspiracy, in a
18 plot, the last thing he's going to do is distance me from
19 the case and look to hire another attorney.

20 Those words, No Kemo, no case never came out of my
21 mouth, and there's no evidence to depict that, other than
22 the words of Anthony Young.

23 You heard me cross-examine, you heard me
24 cross-examine Agent Brokos as to what she put into her
25 report, her 302 report of January the 14th, and in that

1 report, she says -- which is the second version that Anthony
2 Young gave. The first version is when he called
3 Special Agent Gale on January 14th and he said that he was
4 in a car with Rakim Baskerville. He told Agent Brokos two
5 times that he was in the car with Rakim Baskerville. He
6 testified in 2007 five separate times, five separate times
7 he said he's in the car with Rakim Baskerville when Paul
8 Bergrin called.

9 Why would he change it? Why would he change it?
10 How do you know he's lying? How do you know he's committing
11 perjury and changing and altering what he says?

12 Because he was confronted with the fact that Rakim
13 Baskerville could not have been there because of phone
14 records. So he changes his testimony and lies. He's like
15 the weather: He changes it. As the wind blows, he changes
16 it.

17 But he told her that on November 25th, he told
18 Agent Brokos on January 14th of 2005, when he wants to be a
19 cooperator, when he admits that he uses Paul Bergrin's name
20 to open the door -- and he admitted it, the words came out
21 of his mouth before you that Paul Bergrin came to 16th
22 Street. And remember when I -- remember when I
23 interviewed -- excuse me, when I cross-examined Agent
24 Brokos, I had her read this from her 302? But Anthony Young
25 denied, he took the witness stand and completely denied that

1 he said any of this. He told her that Paul Bergrin came to
2 16th Street, had a meeting on November 25th, which he now
3 denies, with Hakeem Curry, Anthony Young, Rakim Baskerville,
4 and Jamal Baskerville, that I spoke only to Curry, that I
5 spoke to Curry, nobody else, and as I was walking back to my
6 car, I said the words, no Kamo, no case, and put my thumb
7 up.

8 He tells Agent Gale when he wants to cooperate on
9 January 14th that while he was in the car, that's when
10 Paul Bergrin said the words. That's all he said, the words,
11 No Kemo, no case.

12 He swore before a jury in 2007 that Paul Bergrin
13 said he showed up at a meeting and for the first time they
14 found out, for the first time, they found out about William
15 Baskerville and the fact that he could get released and go
16 free. But he says Paul Bergrin wanted -- said that he
17 wanted Kemo dead.

18 He lied. He committed perjury. That's reasonable
19 doubt of itself, because, when I questioned him, he admitted
20 that he never said that. I questioned him in 2011, I
21 questioned him in 2013, now, and he says no, you know what,
22 I never said that.

23 Then why did you swear those words to a jury? If
24 I never said those -- those are powerful words, I want a man
25 dead.

1 He says, All you said was get rid of or take care
2 of.

3 Those words didn't even come out of my mouth.
4 Just like the fact of the fact that he said and swore that
5 he knew on November 25th about life for William Baskerville
6 -- excuse me, from Hakeem Curry, not from Paul Bergrin.
7 Just like he made the decision on November 25th from Hakeem
8 Curry and him, not Paul Bergrin, to do anything to Mr.
9 McCray.

10 Anthony Young is real desperate to get out of
11 jail, as you saw by the way he contacted the F.B.I.

12 And again, ladies and gentlemen of the jury, he
13 expected freedom, as he's caught on the recording saying,
14 and as Miss Tarver swore to you, a schoolteacher -- no
15 motive to fabricate. She doesn't even know me. Why is she
16 going to say these words? Why is she going to testify
17 favorably for Paul Bergrin? She's not testifying against
18 Anthony Young. Anthony Young's not on trial. There's no
19 way she's going to lie. There's no way she's going to
20 commit perjury for Paul Bergrin. She has nothing to gain,
21 no motive to fabricate whatsoever.

22 Anthony Young, even when he said in his third
23 version, third version, three different times, three
24 different statements to her that he's getting witness
25 protection, the house, money, and not doing any jail time.

1 That's when he said he mentioned the name Paul.

2 Anthony Young tells you that the reason he went to
3 the F.B.I. is because he wants protection. He wants
4 protection.

5 If you want protection, then why do you tell --
6 why don't you give Agent Gale when you first called the
7 F.B.I., the first person that you talked to, on January
8 14th, why don't you give him the name of the people you need
9 protection from, Jamal Baskerville and Jamal McNeil? Why
10 don't you ever tell Agent Brokos on January 14th or January
11 18th, when you have a face-to-face with her, that you need
12 protection?

13 He says he went to the F.B.I. because he wanted to
14 take Jamal Baskerville and Jamal McNeil off the street.

15 Well, Anthony Young, you know what? If you don't
16 know the law of conspiracy, like he swore to you, if you
17 don't know the law of conspiracy, why are you making Jamal
18 Baskerville a lookout, a lookout, so that he gets arrested
19 and taken off the street?

20 He never knows when to stop lying. Why are you
21 caught on a recording on August the 3rd of 2005 with
22 Hassan Miller, your confidant and friend at the jail, at
23 the beginning of the recording, teaching him about the law
24 of conspiracy if you don't know the law of conspiracy?

25 He is constantly scheming, constantly scamming,

1 constantly lying. That's why he had to admit in 2007 that
2 he's a good liar. Inconsistency after inconsistency. You
3 don't have that many inconsistencies. You don't change your
4 story every time it comes out of your mouth unless you're
5 not telling the truth, the whole truth, and nothing but the
6 truth.

7 He changed the times of the meetings. First it's
8 on November 25th. Then it's four to five days, multiple
9 times, he said, after William Baskerville's arrested. Then
10 it's after Thanksgiving.

11 you just don't know when to believe him. You
12 don't know what to believe. He can't separate fact from
13 fiction, so how can you believe him?

14 That's reasonable doubt enough, ladies and
15 gentlemen of the jury. That's reasonable doubt enough.

16 But when you read the detention hearing of
17 December 4th, you'll see, you'll see that pursuant to the
18 Bail Reform Act, which I'm obligated to follow when trying
19 to seek a bail for someone, I argue about the credibility of
20 Mr. McCray, about the fact that he's an individual with
21 prior convictions.

22 How can I know that? How can I argue that without
23 finding out about him? And that's all I ever did was my
24 job.

25 You heard Richard Hosten, the prosecution's own

1 witness, talk about how angry he was, William Baskerville,
2 that he was tricked by Kemo McCray. He used the words on
3 the telephone, I'm in jail because of this fuckin' bum, I'm
4 in jail, as soon as he got back to Hudson County, talking to
5 his family, his wife.

6 That's reasonable doubt itself.

7 But look at March 2nd. Bring yourself to March
8 2nd. Before that, they're searching for Mr. McCray.
9 Anthony Young comes before you and he swears that, We were
10 looking for Mr. McCray. We went to Bradley Courts. We're
11 not going to speak to just anybody about Kemo because we
12 don't want to be identified.

13 But then in the same breath, he tells you that he
14 goes into the buildings at Bradley Court asking a stranger,
15 with his gun out, where Kemo lives.

16 I mean, the words that come out of his mouth,
17 they're just small examples that you've got to put it all
18 and piece it all together because they're small examples of
19 lie after lie after inconsistency after inconsistency.

20 He says that one of the reasons he went to the
21 F.B.I. on January the 14th and contacted them was because
22 Rashidah Tarver told Jamal Baskerville and Jamal
23 Baskerville's wife that they killed Nut's girlfriend.

24 Rashidah Tarver would admit that. Why would she
25 deny that? Why would she deny that? That's his impetus,

1 his reason, his motivation for going to the F.B.I. Rashidah
2 Tarver tells you that never happened. That never happened.

3 That's reasonable doubt itself, ladies and
4 gentlemen of the jury. One lie, one inconsistency after
5 another.

6 You have Anthony Young telling you that they don't
7 lock up Jamal McNeil and Jamal Baskerville for this alleged
8 murder in Irvington of an innocent woman because all they
9 have is my word, Anthony Young.

10 They don't charge Jamal Baskerville, Jamal McNeil,
11 Horatio Joines, anybody except William Baskerville and me
12 with the murder of Kemo McCray because all they have is the
13 word of Anthony Young.

14 Then how can you accept his word now and convict
15 me of anything?

16 Look at March the 2nd, the day of the homicide
17 itself. He says there's a meeting on 17th Street. He
18 changes everything. When he speaks to the F.B.I., he says
19 that the getaway car two times he says is a Grand Prix.
20 When he takes the witness stand before you, he says he never
21 told the F.B.I. was a Grand Prix, they made that up, the
22 F.B.I. You heard him.

23 He tells the F.B.I. that Rakim Baskerville changed
24 the license plate -- took the license plates off the getaway
25 car. He testifies before you: Oh, no, it was me and Rakim

1 Baskerville. I never told that to the F.B.I.

2 He gives three separate versions about who asked
3 him to do the murder. First he swears, and you heard me on
4 cross-examination, he says that William Baskerville demanded
5 and ordered that Kemo be killed because William Baskerville
6 was tricked and fooled.

7 Then he changes his testimony and says, no, it was
8 ordered by Rakim Baskerville.

9 Then he changes his testimony and says nobody
10 orders Anthony Young what to do, nobody demanded Anthony
11 Young what to do.

12 Then he finally says, Oh, yeah, it was Hakeem
13 Curry and Rakim Baskerville.

14 He comes before you and tells you that he's got
15 \$60,000 at the time of the homicide, March the 2nd, sitting
16 in his house. \$60,000. He told you that. He swore to
17 that.

18 In November, when he's arrested for a gun case and
19 fighting for his life, he can't pay more than a thousand
20 dollar retainer to Paul Feinberg, and, and, he needs the
21 \$7,500 that's allegedly offered to him in this case to do
22 the murder, with \$60,000 sitting in his house.

23 It's just one lie and one incredulous statement
24 after another, after another. It just never stops.

25 He says and he tells you that the murder was

1 committed with orders, with demands, but then when he
2 testifies, he says that nobody could demand him, nobody
3 orders Anthony Young what to do, I did it 'cause I wanted to
4 do it.

5 You just can't separate it, you never could
6 separate any kind of fact from fiction.

7 He says that the cars, motorcycles are put into
8 the name of a Newark police officer that lives next door to
9 Jamal Baskerville on 17th Street, on 17th Avenue.

10 You know they would have called the police officer
11 to testify to that if there was truth to that at all. You
12 know they would have questioned him to say that these people
13 gather on this date, did you see them there at any time, if
14 it was true.

15 You just don't know what to believe. You can't
16 separate fact from fiction with this man.

17 He says that all the weapons, like I said before,
18 were altered to automatic. The ballistics expert told you
19 that that's not true. It was a semiautomatic weapon.

20 But, most importantly, he says and swore to you
21 and swore in testimony that the .45 caliber gun that he was
22 arrested with in July was an automatic weapon when you know
23 that it wasn't, based upon proof that I presented.

24 They make all these efforts, all these efforts to
25 conceal the car that's going to the murder scene, hide the

1 fact that it's got license plates. Yet when the murder
2 occurs, instead of getting rid of it in Newark and getting
3 rid of it right away, he drives by himself with
4 Rakim Baskerville through Newark all the way to West Orange.

5 He talks about the fact that Jamal Baskerville
6 took them to the house where Mr. McCray was working on 18th
7 Street and South Orange Avenue, but then left the scene.

8 Then why, why did you tell the F.B.I. that Jamal
9 Baskerville stayed on the scene, that Jamal Baskerville
10 remained there as a lookout?

11 You just don't know when to separate fact and
12 fiction.

13 He says that and told the F.B.I. that Horatio
14 Joines -- here's a individual who knows Mr. McCray, Anthony
15 Young since they're 12 years old. They did time together
16 every single day of their life for two years they served
17 together in a juvenile center. He knows McCray since he's
18 12 years old. And then he says and tells the F.B.I. and
19 swears to it again before Judge -- well, before the Federal
20 Judge when he pleads guilty, Judge Pisano, that Horatio
21 Joines was on 19th Street, 19th Street, not even the street
22 where Kemo McCray was working, 18th Street and South Orange
23 Avenue, and that Horatio Joines with a two-way radio on his
24 wrist called Rakim Baskerville to identify Mr. McCray.

25 Well, you know that's a lie. You know that's

1 blatant perjury, because Horatio Joines cooperated when he
2 was questioned and said, I was with my girlfriend, who was
3 experiencing problems with her pregnancy at Beth Israel
4 Hospital, and Brokos checked it out and found that his
5 girlfriend was in Beth Israel Hospital.

6 But think to yourself, using your God-given common
7 sense and logic and reason: Why would Horatio Joines first
8 of all be standing on 19th Street, and, second of all, to
9 identify someone who's working on a house on 18th Street
10 that you can't see, but, most importantly, why would Horatio
11 Joines be out there to make any identifications when
12 according to Anthony Young he could clearly see the house
13 that they're working on?

14 Anthony Young talks to you about the fact that him
15 and Rakim Baskerville are sitting in the car, and they make
16 the decision to shoot Mr. McCray left-handed.

17 You know based upon Dr. Shaikh's testimony, you
18 know based upon logic and reasoning that someone's not going
19 to do a murder with a non-dominant hand, the murder of an
20 F.B.I. informant, a Government informant with his
21 non-dominant hand.

22 But you also know, most importantly, that in May,
23 in May, he had called up, May of that year, 2004, he had
24 called up the F.B.I. and left a message for Brokos that the
25 shooter shot left-handed.

1 Why? Why? Why do you know that's a lie? Because
2 he found out and admitted on the stand that Jamal McNeil was
3 left-handed. Jamal McNeil was left-handed. That's why he
4 said that. That's why he testified to that, to be
5 consistent with the telephone call that he left when he had
6 found out and he was trying to point the finger at
7 Jamal McNeil for almost a year and a half.

8 But think about that in and of itself, ladies and
9 gentlemen of the jury. Here's his friend. He has no
10 conversation with him. He's not threatened by Jamal McNeil.
11 He says that according to Jamal Baskerville, they said that
12 they're going to get him.

13 Here's an individual with 15 prior multiple
14 convictions, multiple shootings, gun arrest, is dealing out
15 in the street every single day, every single day up until
16 he's arrested in February 2005, running crews on Alexander
17 Street. He's going to worry about Jamal McNeil or Jamal
18 Baskerville?

19 But, most importantly, think about this. How can
20 you accept one word? How can't you find reasonable doubt in
21 and of itself on this?

22 For almost a year and a half, proffer session
23 after proffer session, he goes in to the F.B.I. and he
24 swears and he tells them with his attorney present, looking
25 them right in the eyes, willing to take the witness stand,

1 that witness stand, swear on the bible that he saw Jamal
2 McNeil shoot and execute Kemo McCray, shoot him in the head,
3 shoot him dead. He swore to that fact to the F.B.I. over
4 and over and over again.

5 There's no justification, there's no defense to
6 that. And you're going to believe one word that comes out
7 of his mouth, when he's willing to see another human being
8 arrested, charged, indicted, taken away from his children
9 and his family, like the lies about Horatio Joines, like the
10 lies about Rakim Baskerville being in the car when he knows
11 he wasn't, like the lies about Horatio Joines being at the
12 scene when he wasn't?

13 His own friend. His own friend, he's willing to
14 take the witness stand, put his hand on the bible and swear
15 that he committed an execution murder.

16 But for the fact that Johnny Davis did not
17 identify Jamal McNeil, you might have been jurors in
18 United States v. Jamal McNeil, who would have been sitting
19 there.

20 Think about that. Think about that. Think about
21 the fact if Jamal McNeil was convicted and got the death
22 penalty based upon Anthony Young.

23 If that isn't reasonable doubt enough to -- to
24 completely disavow every word that came out of his mouth,
25 then nothing ever will be.

1 The life of another human being, the liberty of
2 another human being, the freedom of another human being, the
3 misery and sorrow and pain of another human being means
4 nothing to Anthony Young, like the rest of their witnesses.
5 It's all about them. It's all about getting out of jail,
6 saving time, sacrificing somebody else's life and liberty
7 for theirs. That's what this case comes down to. That's
8 what it's all about.

9 Think about the logic, the logic, the reasonable
10 --

11 Bruce, can I use you one second? I'm sorry.

12 (Mr. Levy approaches the podium)

13 MR. BERGRIN: Ladies and gentlemen of the jury,
14 just look. It is physically, forensically, and
15 scientifically completely impossible for the homicide, the
16 shooting to have occurred as Anthony Young described.

17 He says that everything that he told the F.B.I.
18 was the truth, except he switched Malsey. Well, we know
19 that's not true. We know that's a lie in and of itself
20 because of the cars, i.e., that being a Grand Prix, the
21 license plate being changed by Rakim Baskerville, he told
22 the F.B.I., and a whole host of other different things,
23 Jamal Baskerville being at the scene, we know all those were
24 complete lies to the F.B.I.

25 BUT think about this. He's holding -- he says

1 he's holding the gun in his left hand. He walks up to the
2 individual from the back, an individual who knows him since
3 he's 12 years old, he's going to sneak him behind him, grabs
4 him by the right shoulder, spins him around. If he's spun
5 around, ladies and gentlemen of the jury, he has the gun in
6 his left hand, okay, if he's spun around the way anybody
7 would be spun if you grabbed them, okay, he's going to be
8 shot on the right side.

9 All the shots --

10 (to Mr. Levy) Thank you, thank you very much.

11 All the shots -- I'm sorry -- all the shots to
12 Mr. McCray was on his left side.

13 And anything that he testified to -- remember,
14 Stacey Williams, Detective Sabur admitted Stacey Williams
15 said there was two people standing outside of the Sand Pit
16 before the murder and after the murder and during the
17 murder. Remember what Rashidah Tarver said. He told her he
18 was a spectator. Anybody could have seen and testified what
19 he testified to.

20 But the most important thing is, it could not have
21 physically, forensically, and scientifically happened as
22 Anthony Young said.

23 Think about this also. In order for the homicide
24 to have occurred, remember what Dr. Shaikh said? It's not
25 credible, it's not consistent with the credible evidence; he

1 would have to hold the gun like this and move his arm in
2 this position for the gun to have shot and the bullets come
3 out where Mr. McCray was shot if he went up behind him.
4 Just think, Mr. McCray is in front of him. He'd have to
5 take his arm in a non-dominant shooting hand, twist the gun,
6 twist his arm and shoot Mr. McCray.

7 Why doesn't that make sense? Think about it. He
8 says he shot Mr. McCray three to four times on the sidewalk
9 and Mr. McCray fell face down. Medical testimony proves
10 that's nonsense, it couldn't have happened like that.
11 There's no abrasions. Scientific evidence proves and
12 forensic evidence that it couldn't have happened like that
13 because Mr. McCray was never shot on the sidewalk like
14 Anthony Young said, and if he was the shooter, he would have
15 known that.

16 Think about it. Anybody that does a shooting like
17 Anthony Young says would know that the person's wearing a
18 bandanna, a do-rag on his head. When he testified and swore
19 in 2007, he didn't know whether Mr. McCray wore a bandanna
20 on his head. Only did he admit it before you, ladies and
21 gentlemen of the jury. I cross-examined him. In 2007, he
22 said that he didn't remember Mr. McCray wearing a do-rag on
23 his head.

24 Anybody who did the shooting would remember that.
25 Anybody that saw Mr. McCray that day would know what he

1 looks like and know exactly what Anthony Young is saying.

2 But think about it. If you shoot somebody three
3 to four times and as they're falling continue to shoot at
4 them, isn't there going to be more shell casings on the
5 floor than four? Isn't there going to be more shell casings
6 on the floor than four?

7 THE COURT: Mr. Bergrin, let me know when it would
8 be a good opportunity to take a short break.

9 MR. BERGRIN: We can take it now, Judge.

10 THE COURT: Now is okay? You don't have to. It's
11 all right?

12 MR. BERGRIN: I could go longer, Judge.

13 THE COURT: I just want -- the next few minutes be
14 okay?

15 MR. BERGRIN: Yes, sir.

16 THE COURT: Whatever is a better place. Go ahead.

17 MR. BERGRIN: He said that he was standing in the
18 Big Bites doorway. This is an active restaurant, with
19 video. He's known in the area. He's been there for 25
20 years, just like being -- just like him being in the car and
21 sitting out there, there are people walking back and forth.
22 Nobody sees him. Nobody identifies him. An individual that
23 grew up in the area, that's lived there for 25 years.

24 Bring forth one independent, objective, and
25 neutral witness. Bring forth another witness involved in

1 this case that saw Anthony Young in that car or do the
2 shooting.

3 He says that he snuck up to Mr. McCray and he says
4 -- and he said that the reason he was able not to be seen
5 and noticed is because it was cold outside.

6 And they insult your intelligence and say, Oh,
7 look, they're wearing jackets.

8 Those are the windbreakers and the jackets that
9 identify them as law enforcement officers. If it was 117
10 degrees outside, they'd be wearing those jackets.

11 He says he snuck up to him, pulled his hat down
12 low, wearing gloves, pulled his fleece up, and he wouldn't
13 be noticed because of the cold outside.

14 It was 70 degrees outside.

15 Everything that he says, every word out of his
16 mouth is ludicrous. It's absurd. It's preposterous.

17 Detective Gozsa testified in a prior hearing in
18 2007 in sworn testimony that the victim was shot in what
19 appeared to be a linear pattern, which means the person was
20 running.

21 ANTHONY Young says that the vehicle pulled up and
22 he had to jump over the body.

23 Not one witness identifies anybody jumping over
24 the body. As a matter of fact, Johnny Davis, Stacey
25 Williams, every witness out there said that the person ran

1 to a parked car that was on the corner of 19th Street and
2 South Orange Avenue.

3 He lies about everything. It's just not minor
4 lies. It's something that an individual who's involved
5 would know and say and do.

6 He says to you that he was out there and that he
7 did the shooting.

8 Look at the fact of Johnny Davis, ladies and
9 gentlemen of the jury. You as the triers of fact know that
10 one of the ways to determine if an individual is lying is by
11 their eyes, the mirror of the soul, and the way they came
12 across.

13 Johnny Davis was so close to Mr. McCray that he
14 felt the powder burn against the neck of Johnny Davis.
15 Johnny Davis was so close to Mr. McCray that he was able to
16 see the person that did the shooting taking the gun with his
17 right hand, not his left hand, and putting it into his
18 waistband.

19 Every witness at the scene, including Johnny
20 Davis, within seconds and minutes of the shooting said that
21 the shooter had braids, shoulder length. None of them ever
22 saw anybody with a Yankee hat or bald head as Anthony Young
23 was.

24 But one thing you will never, ever forget is when
25 Johnny Davis looked each and every one of you in the eyes

1 and said, I will never forget that face as long as I live.

2 And Johnny Davis tried a little bit to help the
3 prosecution in reference to an identification, but one thing
4 he could never deny is that on March the 2nd, within an
5 hour, he gave a detailed description of the person, a sworn
6 statement to Detective Vitiello at the homicide squad, 22
7 Franklin in the new police department, and he said the man
8 that shot and killed my son on March the 2nd at two o'clock
9 in the afternoon had shoulder-length braids, dreadlocks.

10 And don't ever forget, don't ever minimize,
11 because this man forgot to bring it up, that on March the
12 3rd, the next day after the shooting, Johnny Davis was in a
13 store when who walked in? Malik Lattimore. Malik Lattimore
14 walked into the store and says, You remember me? Don't
15 forget my face.

16 And you know what? Johnny Davis will never forget
17 that face. No human being ever will. Because you'll see it
18 every single day as long as you live, as you try to recount
19 those dates and those details.

20 That's why you know there's a problem with this
21 case.

22 When they searched the dungeon, you know that the
23 shell casings found on the floor there were Winchester nine
24 millimeter Luger shell casings. When they searched the
25 dungeon, where Malik Lattimore lived, what kind of shell

1 casings did they find, ladies and gentlemen of the jury?
2 You heard Detective Snowden. Over a hundred manufacturers
3 of nine millimeter shells and casings, according to the
4 ballistics expert from the Newark police department.

5 Winchester nine millimeter Luger shell casings.

6 Think about this. Think about this. A drug
7 kingpin like Hakeem Curry is going to drive up, known, known
8 by everybody, under Federal investigation, he's going to
9 place himself on the scene, but, more stupidly, he's going
10 to drive up to the body, the drug kingpin, known in the
11 area, drive up to the body with a police officer being
12 there. And you heard my cross-examination. There was a
13 police officer out there. Think about this: A drug kingpin
14 is going to meet the shooter, who has DNA and blood on him,
15 and the murder weapon, at a location in West Orange, put him
16 in his car and drive all the way from West Orange to Newark.

17 Think about this. The person that does a murder
18 is going to take the bloodstained clothing, put it in the
19 back of his vehicle, not even in the trunk, but he has the
20 audacity to tell you he puts it on the floor in the
21 backseat, where police officers could see him, and he admits
22 that he's hassled by the police and stopped by the police,
23 him and Rakim Baskerville constantly stopped. And he's
24 going to drive to Alexander Street, through the 'hood, with
25 the bloodstained clothing on his back. And not only leave

1 it there - park his car and go sit outside while these drug
2 crews are dealing drugs in front of him in a high-drug area.

3 It makes no sense because it didn't happen.

4 Think about this. He tells the F.B.I. that he
5 left -- that he left the bag of clothing in the car while he
6 showered. For hours and hours and hours. He's going to
7 leave bloodstained clothing with the DNA of a victim of a
8 homicide, not knowing if he's identified, known in the area
9 for 25 years, but then tells you he took the clothing into
10 the house.

11 Why would there be those grave inconsistencies?

12 Think about the three versions that he gave in
13 going to Ben Hohn, Malsey, Rakim and him. Think about how
14 many times he changed. But the most important thing is, he
15 told you, and it's an insult to your intelligence, that,
16 one, Rashidah Tarver was told now, but in 2007, she knew
17 nothing about it, and, B, most importantly, that Rakim
18 Baskerville drove from his house in Rashidah Tarver's
19 vehicle with the gun on his lap, the murder weapon used to
20 kill an informant.

21 He told the F.B.I. in the 302 that he took the
22 murder weapon the next day to Ben's.

23 You saw the stipulation. You heard Devon Jones.
24 No weapon was taken there until the end of the year.

25 Anthony Young never had that murder weapon.

1 Anthony Young never melted that murder weapon. There is no
2 way anybody's going to keep a murder weapon that was used to
3 kill an informant in their possession until the end of the
4 year.

5 and there's no testimony to controvert that.
6 Nothing.

7 THE COURT: We're going to take our short break
8 now.

9 MR. BERGRIN: Yes, Your Honor.

10 THE COURT: Short break.

11 THE COURT CLERK: All rise.

12 Just place your notebooks on your chairs.

13 (The jury exits)

14 (Recess taken)

15 (Defendant present)

16 THE COURT: I'll reduce the 15 minutes of your
17 time that we -- you get an extra 15.

18 MR. BERGRIN: You'll reduce the 15 minutes?

19 THE COURT: I'll take away -- yes, you get an
20 extra 15 minutes.

21 MR. BERGRIN: Oh, thank you, sir.

22 THE COURT: Just as I did with Mr. --

23 MR. BERGRIN: Thank you. Thank you, sir. God
24 bless you.

25 THE COURT CLERK: All rise.

1 (The jury enters)

2 THE COURT: You may be seated.

3 Okay. Mr. Bergrin, continue.

4 MR. BERGRIN: Thank you.

5 Thank you, ladies and gentlemen.

6 Ladies and gentlemen, on March the 6th,
7 Christopher Spruel was coming back from a makeshift memorial
8 on 19th Street and South Orange Avenue when an individual
9 with dreadlocks down to his shoulders approached him and
10 threatened him.

11 MR. GAY: Judge, where -- there's no evidence of
12 any of this.

13 MR. BERGRIN: This is Detective Sabur.

14 MR. GAY: No, no.

15 THE COURT: What, Mr. Bergrin? I didn't hear what
16 you said.

17 MR. GAY: Your Honor, you know what? It's not
18 even important. I'm going to move into other things.

19 THE COURT: Okay.

20 MR. BERGRIN: What we have here is suggestibility,
21 but no accountability.

22 look at Norberto Velez, Norberto Velez, who I
23 haven't talked to in over five years. They went to him
24 because we put him on the witness list, and they went to him
25 and said, over and over and over again, the same question,

1 the same question. How do you think a cooperator knows what
2 they're looking for? How do you think a cooperator knows
3 what they want to hear?

4 When you repeatedly ask the same question about
5 the same person over and over again against different
6 topics, you kind of figure it out after a while.

7 How do you think a cooperator knows who they want
8 you to talk about? How do you think a cooperator knows what
9 to say to make yourself a cooperator so you walk out those
10 doors? Because, like Lemont Love says, tell us about Paul
11 Bergrin. We don't care if it's the truth or not. You want
12 immunity? You don't want to go to prison?

13 Like Norberto Velez. Over and over and over, the
14 same thing over and over again.

15 They talk about Hakeem Curry, and they talk about
16 the fact that, oh, Paul Bergrin's house counsel, who does he
17 go to?

18 You heard the recordings and Hakeem Curry
19 recommending other attorneys. You heard the recordings of
20 Hakeem Curry saying, We don't trust Paul Bergrin, go to this
21 other attorney.

22 I read you the transcript as I had Snowden on the
23 witness stand. You heard about how many people Hakeem Curry
24 associated with that was arrested. How many people did Paul
25 Bergrin represent? Look at those Promis Gavel records that

1 they presented and put into evidence. Maybe seven people,
2 eight people out of 50? Maybe two or three times that
3 they're arrested out of 10 to 15 arrests?

4 That's house counsel. I know, that's house
5 counsel. That's how you associate Paul Bergrin with Hakeem
6 Curry.

7 When you have an individual -- worry about the
8 individual, the only witness against Paul Bergrin. Three
9 different versions over 18 months. Why didn't he give the
10 third and the last version? Because he was -- why didn't he
11 give the third and last version? Because he's sitting in
12 jail, and he's not getting his way, and he knows that. It
13 doesn't matter what you say. It doesn't matter if you make
14 yourself the shooter. Just give them that version. You'll
15 get the same benefits.

16 Ladies and gentlemen of the jury, this man,
17 Anthony Young, went out of his way not only to hurt me, but
18 to hurt my children and my family. You heard what he told
19 Brokos. I asked her on the witness stand. He tells
20 Agent Brokos that my daughter Beth is having a sexual,
21 intimate relationship with Hakeem Curry.

22 How doesn't that create reasonable doubt in itself
23 when he goes out of his way to hurt, he goes out of his way
24 to destroy, he goes out of his way for his own benefits?

25 I questioned Anthony Young about my relationship

1 with him. I questioned him. He came to me like he said,
2 and I refused to represent him, I told him I didn't have the
3 time. What did he call me? A cracker motherfucker. He
4 admitted that he called me a cracker.

5 Goes out of his way to hurt people's families.
6 How can you ever, ever accept one word out of his mouth, a
7 human being like that?

8 He says his mother and father have been to my
9 office. Call his mother and father. Their people are the
10 cooperators. Never met them in my life.

11 But based upon John Davis's testimony and based
12 upon the lack of motivation of John Davis in any way to
13 assist Paul Bergrin, based upon John Davis putting his
14 signature on two photographs, one photograph of Anthony
15 Young and saying, I swear I am 1,000-percent certain to an
16 absolute certainty that that man did not shoot and kill my
17 son on March 2nd, and putting his signature on a photograph,
18 saying that this man Malik Lattimore I am more than
19 1,000-percent certain shot and killed my son on March 2nd,
20 that's enough for you to disavow, disbelieve and discredit
21 everything that Anthony Young says.

22 And they try to say to you, with the audacity and
23 a straight face, well, they put the photographs of the
24 investigators who took the stand, well, the investigators
25 lied to Johnny Davis.

1 What's important? What's important? John Davis
2 said that he told the investigators the truth, the whole
3 truth, and nothing but the truth. John Davis says that the
4 people that I identified in the photographs, I meant exactly
5 what I said.

6 July 23rd, John Davis makes a photographic
7 identification of Malik Lattimore. Is that just
8 coincidence? Is that just coincidence? They never asked
9 the man, they never asked him what he means by "resembles."
10 He says, I am sure that that's the man that resembles the
11 person that shot and killed my son. They never asked him
12 what it means.

13 Do you think they want to get to the truth, the
14 whole truth, and nothing but the truth? If they did, then
15 they would have shown photographs of Anthony Young and Malik
16 Lattimore to Stacey Williams, who was out there on March the
17 2nd and said I may be able to identify, I may be able to
18 identify the shooter. She never did that.

19 And you call this a competent, fair, neutral,
20 objective investigation?

21 A man who's breaking into kitchens while a
22 cooperating witness, to steal food while he's a cooperating
23 witness; a man who's breaking the law, rules and
24 regulations, using other people's telephone privileges while
25 in prison as a cooperating witness.

1 God bless you, ma'am.

2 A JUROR: Thank you.

3 MR. BERGRIN: Never stops.

4 But you know what? I don't have to prove my
5 innocence. If there's a reasonable doubt, then you must
6 find me not guilty of Counts 12 and 13 and the violent
7 crimes in aid of racketeering.

8 But listen, please, hear me on this. I could
9 prove my innocence in reference to the Anthony Young case
10 and the Kemo murder, because you heard the words of
11 Eric Dock, their own witness. They tried to convince
12 Eric Dock: Oh, when William Baskerville was talking to you
13 at the Hudson County Jail about the murder, when William
14 Baskerville was talking to you, did William Baskerville mean
15 that they're looking for the witness in another case?

16 Remember he said Yes on the direct examination?
17 But then I pressed him and said, you didn't mean yes. You
18 wrote a diary. You testified before the grand jury that
19 William Baskerville said Malik Lattimore and Rakim
20 Baskerville were looking for Kemo.

21 But here's the most important aspect. He says
22 that he had conversations with William Baskerville in
23 January of 2005, and when he had the conversations with
24 William Baskerville in January 2005, William Baskerville was
25 asking him about conspiracy, about what would happen if Kemo

1 McCray was not a witness.

2 Please hear me. Please. If William Baskerville's
3 family is visiting him at the jail, and he's speaking to
4 them on the phone, and Paul Bergrin had any meeting and told
5 them, without Kemo, there's no case, or if Paul Bergrin was
6 involved in the murder of Kemo, then William Baskerville
7 would know the law of conspiracy, he would know that without
8 Kemo, there's no case. He wouldn't be asking for the advice
9 of Eric Dock and Troy Bell.

10 And what's more important, William Baskerville
11 told Eric Dock, and he diariied it, Paul Bergrin asked
12 William Baskerville if I -- if William Baskerville thinks
13 Hakeem Curry had anything to do with the murder of Kemo
14 McCray.

15 How doesn't that create reasonable doubt in and of
16 itself? Eric Dock has never met me in his life. He's never
17 seen me. And it's in his diary. In his diary.

18 And he told him that the reason why Malik
19 Lattimore and Rakim Baskerville was looking for Mr. McCray
20 is not because he's a witness on the case, but because he
21 crossed him, did him wrong.

22 Remember how Rakim Baskerville told Anthony Young
23 after the murder, allegedly, Fuck Paul, don't tell him
24 anything. Remember that? Remember how now William
25 Baskerville tells Eric Dock, Fuck Paul, I'm getting rid of

1 him as my attorney.

2 I had nothing to do with Kemo McCray, nothing
3 whatsoever, because William Baskerville would never have
4 said those words. I would have never said those words to
5 William Baskerville.

6 And, most importantly, William Baskerville sued me
7 in 2008, you have the fee arbitration award, for the
8 attorney fees that he paid me. So if I had anything to do
9 with the Kemo McCray, would be antagonizing me and trying to
10 hurt me?

11 He would be the first one on that witness stand
12 against me.

13 Look at the visitation records of William
14 Baskerville, and you'll see how Anthony Young is lying about
15 Jamal McNeil visiting him eight to nine times. Look at
16 those records. They're in evidence.

17 They tried to bolster the testimony of Anthony
18 Young with Richard Pozo. Richard Pozo. You have an
19 individual -- and I stated before -- who gets indicted in
20 New Jersey, 25 years to life, \$150 million cocaine
21 organization, polluting your streets, your communities,
22 thousands upon thousands upon thousands of kilograms, making
23 \$150 million a year, and they don't charge him. They don't
24 charge him. They let him walk out the door. He's walking
25 out the door.

1 And he's still committing crimes, they don't
2 charge him. He's still involved in narcotics.

3 I asked him, aren't you still going to go-go bars?

4 Yeah.

5 How are you paying for it?

6 Oh, I'm living in the negative.

7 You get arrested for DWI, you don't go back to
8 Federal prison. You're on supervised release, which is like
9 parole. No. Why? Because they, them. You get arrested
10 for threatening the life of your girlfriend. He doesn't go
11 back to Federal prison while on parole, supervised release.
12 Why?

13 You have Peter Willis. They tried to question --
14 they tried to question Mr. Willis, Peter Willis. No way, no
15 way in God's creation, 40 years of practice, a trustee of
16 the defense association, ethics, no way he's going to
17 testify falsely for Paul Bergrin or anybody.

18 He tells you that he was present during the
19 interview at the Passaic County Jail. Paul Bergrin might
20 have got there first, but when they -- by the time they
21 brought Richard Pozo down, he was there. Never any mention
22 about informant. And even if I started the conversation
23 with Richard Pozo, he's representing him for 15 years. You
24 know Pozo would have said something to him. You know you
25 would have seen a change in his attitude if I asked Pozo to

1 kill a witness. You know he would have seen some -- he
2 would have felt it, he would have seen it. You get that
3 sixth sense. There would have been some change in Pozo,
4 some disposition, some attitude. He hears nothing, Pozo
5 says nothing to him.

6 But what's the most important thing? You heard
7 Pozo testify that Paul Bergrin said the words to him, let's
8 get rid of that headache, Pedro Ramos, while in the Passaic
9 County Jail, in the same day, the same day that Peter Willis
10 came to see him.

11 They knew that. Talk about deception and pulling
12 wool over people's eyes. Why would you even ask Mr. Willis:
13 Well, did you know Paul Bergrin was there on another date
14 when you know Pozo said that it happened the same day that
15 you were there?

16 But let's get to the bottom. Let's get to the
17 bottom of this. Okay?

18 Talk about motives to fabricate. That was a
19 massive investigation, over a year, thousands of intercepted
20 telephone conversations, like Peter Willis said, a massive,
21 giant investigation. Nobody, nobody had any conception
22 whatsoever that Pedro Ramos or who the cooperating witness
23 was or whether even cooperating witnesses were used in the
24 case, were used in the case. No idea. He's talking to
25 Pedro Ramos on the telephone up until the day of his arrest,

1 as Pozo said, talking to him from my office, though they
2 suspect him to be an informant. He told you that he
3 suspected somebody else to be an informant, and he named
4 that person to you. No threats to that person, who might be
5 the informant. We have no clue. Peter Willis would have
6 testified to that, who the informants were.

7 Why in God's creation would any defense counsel,
8 especially one like myself, who is experienced, go up to
9 Pozo and say, let's get rid of the headache? What is that
10 going to do in a massive investigation like this?

11 We get to Texas. We're in this holding cell in
12 Waco. We're in another cell in another jail. Pozo makes no
13 mention whatsoever of informants. Neither does
14 Paul Bergrin. We still don't know who the informants are.
15 We don't even have the discovery yet.

16 How can they say that?

17 The power of suggestion. The power of Richard
18 Pozo getting out and not being prosecuted in New Jersey.

19 Richard Pozo and I and Mr. Willis had a big
20 falling out because we let him sit for two weeks in jail.
21 He was disgusted. You heard him say how many times he
22 called my office, how his family called my office because we
23 couldn't get his passport straightened out in Washington,
24 D. C.

25 No way anybody, no way anybody would ever tell

1 him, oh, let's get rid of the headache, because getting rid
2 of Pedro Ramos would do nothing for Richard Pozo.

3 you heard me cross-examine. You heard how many
4 times he used my name and lied: I told him to title cars in
5 other people's names.

6 The cars were titled years before he even met me.

7 Oh, I had something to do with the titling of the
8 speedboat into John's name.

9 I had nothing to do with that. It was done way
10 before he even met me.

11 I introduced him to a person to get a birth
12 certificate. \$200, \$200 he's going to pay for a birth
13 certificate, okay? He's going to meet a strange woman --
14 just think about it, you know, you've got to close your eyes
15 and almost think about what these people say. He's going to
16 meet a strange woman who he can't describe, doesn't know who
17 she is, can't give us even any way to reach her, doesn't
18 know what kind of car she's driving, on Halsey Street in
19 Newark, and buy a \$200 birth certificate from her because
20 Paul Bergrin arranged that.

21 It almost -- it gets -- it almost gets to be
22 almost ludicrous after a while.

23 Out of the clear blue sky, clear blue sky, Paul
24 talks to him about Pedro Ramos and doing anything to Pedro
25 Ramos when he's not even a suspect about being a cooperating

1 witness and informant. It's his confidant, it's his
2 partner. Nobody knows that.

3 And all they have is the words, the words of
4 Richard Pozo, his \$150 million cocaine business for over 10
5 years, family owns a tire and auto body shop, jewelry store,
6 cigar store. And he's going to come to Paul Bergrin, whose
7 corporation, Premium, makes, what, \$10,000 a year, and
8 Paul Bergrin's going to launder millions of dollars for him,
9 put a Rolls Royce in his name, and Paul Bergrin's going to
10 want to buy drugs from him, or Paul Bergrin's going to want
11 to fix him up with people to sell drugs.

12 Then why would he use me? Why would he hire me to
13 go to Texas if that happened?

14 It doesn't make sense because it didn't happen.
15 And all you have is the word of Richard Pozo, who's proven,
16 proved that he lied under oath, proved that he wasn't
17 telling you the truth, proved through Peter Willis that he's
18 not telling the truth.

19 They try to bolster the testimony under 404(b),
20 the mighty 404(b), of Anthony Young with Vincent Esteves.

21 You have an individual, again, who doesn't come
22 forth until he has discovery in his hand, doesn't come forth
23 until he's read all the newspaper articles and until he's
24 sentenced to 25 years in prison, with a newborn infant.
25 When Vincent Esteves came to me for him to hire me, it's

1 time that you feel the pain in your heart. He had an
2 infant. His wife was locked up. They had no water, even,
3 to turn on in the house, no food, nowhere to live, nowhere
4 for his baby to live, no one to take care of his baby. You
5 heard him on the witness stand. Losing everything that he
6 owned.

7 I take a minimal amount of money, I think it was
8 \$60,000, for four attorneys. And then, think of it, think
9 of it, ladies and gentlemen of the jury. Here he takes the
10 witness stand and completely lies to you, like Tommy Moran:
11 Oh, Paul Bergrin got all the attorneys in the case involved
12 so nobody would cooperate against Vincent Esteves.

13 You know that's a strike to his integrity even of
14 itself. That's reasonable doubt in and of itself. There's
15 four people that had attorneys as a result of Paul Bergrin:
16 Vincent Esteves; his wife; his brother-in-law, who he gave
17 up in a confession, and his cousin, Michael Lopez. All the
18 other 11 Defendants, including the people that could hurt
19 him the most, Hector Rodriguez, Mark Andrews, the person
20 that was the air booker, all the other important people are
21 on their own.

22 They just used these people to spit out what they
23 think a jury wants to hear. But you know what? You have
24 the last word. They determine in their sole discretion
25 who's telling the truth. But now you determine who's

1 telling the truth.

2 You're going to hear and you heard in court a
3 telephone -- excuse me, a conference with Vincent Esteves
4 when he called my office on November the 18th during a
5 conference. And what did he say? Paul, you keep saying the
6 same shit over and over again, affidavits and statements,
7 the same shit over and over again, Paul. 4127B2B. You keep
8 saying the same shit over and over again.

9 Let's move into the vein sent Esteves case, ladies
10 and gentlemen of the jury.

11 You have Oscar, the alleged hitman. I went
12 through the fact and I won't do it ad nauseam because I
13 don't want to bore you to death and I really don't have the
14 time, but he lies consistently over and over again to the
15 F.B.I., to D.E.A., to the U. S. Attorney's Office, commits
16 perjury. You know what he says. He turns the recorder on
17 and off, he admits to one time, you heard him, he admitted
18 to one time on December the 9th. But there's a lot more
19 times, a lot more conversations that weren't recorded, a lot
20 of unintelligibles. And you heard our expert, Mr. Reames,
21 about how to manipulate and change conversations.

22 He's drinking, doing drugs, violating every piece
23 of the law. He gets arrested in Chicago by the Chicago
24 police and tells them that he's working as an undercover and
25 that he has permission to engage in illegality. They call

1 and contact the F.B.I. and they say, it's a complete lie,
2 arrest him. But they allow him to continue cooperation. He
3 calls in this the threat on himself. They do no
4 investigation. Costs them thousands and thousands of
5 dollars. He's constantly lying.

6 But here's what you have to consider. This is the
7 most important thing, and let me get right to it.

8 You have to decide my intent, my knowledge, what I
9 know and how I reacted and why I said certain things. And
10 I'm telling you, I am humiliated, ashamed, and embarrassed
11 at some of the words that came out of my mouth. And if I
12 could crawl right in front of you and beg forgiveness,
13 that's what I'd do.

14 But I have to deal with what was said, and you
15 have to believe that there was never any intent to do
16 anything - anything - to any witness at all, never any
17 intent and never any capacity. And why was that? Just like
18 in Shelton Leverett: Because Paul Bergrin controlled the
19 inability for Oscar Cordova to ever get a physical
20 description, to ascertain whereabouts of anyone, to ever
21 have actionable intelligence, to ever do anything.
22 Paul Bergrin controlled that, and Oscar Cordova controlled
23 that, because he knew nothing, and Paul Bergrin wasn't going
24 to allow him to know anything.

25 I never trusted or never believed a word of Oscar.

1 And you know what's proven to you? They attacked Ana Aviles
2 DeStefano personally with those e-mails, the obnoxious
3 e-mails between her and I. But you know what? And you have
4 to understand this. She was confronted because of her
5 contacts. And she testified and swore to you as a woman who
6 really believes in Christianity, a woman who believes in the
7 oath, and she told you that, that Lord Gino was disavowed
8 and denounced his renunciation of the Latin Kings in 2007.
9 We knew that based upon her research. We knew that Oscar
10 Cordova was not the son of Lord Gino. He came here.

11 But you know what's more important? They
12 confirmed that. Remember the last one, the last witness to
13 testify, Agent Brokos was on the stand on the day that I
14 tried to -- with a shortened day, where I couldn't get most
15 of my stuff in through her? One thing that she said to you
16 is that she received an e-mail on August the 18th, August
17 the 18th of 2008 from Maria Correia, a cooperating witness,
18 a Latin Queen, that Paul Bergrin, Yolanda Jauregui know that
19 Oscar Cordova's an informant. And I know you remember that.
20 Which corroborates and substantiates completely Ana Aviles,
21 who also told me that he's an informant.

22 This case was a bunch of immature, ludicrous,
23 stupid gamesmanship, utter stupidity, and role-playing.
24 That's all it is, despite Moran's sworn testimony, despite
25 Esteves's testimony.

1 Moran testifies that Paul Bergrin's law practice
2 was decimated. My income from ADP never changed. I
3 received the same salary. Expenses might have gone up.
4 What I took in might have been less. But my salary, as I
5 showed you, never changed a bit. The amount of employees I
6 employed never changed. Their salaries never changed. My
7 expenses and what I received as benefits never changed at
8 all, even with the prostitution charge.

9 But what's most important, Thomas Moran completely
10 lied and fabricated this when he said that Paul Bergrin's
11 practice was decimated. But, more importantly, he said that
12 Paul Bergrin had to win the Esteves case - no pleas at all.
13 They're not even thinking about plea. Paul Bergrin's not
14 going to plea. He has to win the Esteves case to put
15 himself back on the map for a decimated practice.

16 What did Vincent Esteves tell you?

17 From day one when I met Vincent Esteves, all we
18 talked about, all we planned for was the best plea agreement
19 that saves Vincent Esteves years and saves his wife from
20 going to prison.

21 Tommy Moran testifies it was a financial case, it
22 was a case based upon witnesses and a financial case.

23 It never was. Tom Moran didn't read the
24 discovery. Tom Moran didn't know about the discovery.
25 Tom Moran was very minimally involved because of his amount

1 of coke usage, and, as Vincent Esteves said, every time he
2 saw his wife, he was coked up. That's why he thought that
3 Oscar only came to New Jersey four times when Oscar was here
4 over 10 times.

5 Vinny Esteves swore to you that we never, ever
6 intended to go to trial in this case, it was always thought
7 about as a plea.

8 You heard that on July the 7th of 2008 is when I
9 was contacted by Oscar Cordova. He also told you that it's
10 forbidden, forbidden for the Latin King -- Latin King 101 --
11 for any Latin King to discuss nation business.

12 Oscar Cordova comes to me -- you have to almost
13 close your eyes and picture this. He comes to me on July
14 the 7th. I am Oscar Cordova. I am the son of Lord Gino,
15 the head of the Latin Kings. I'm sent here to meet Vincent
16 Esteves's connect and to help Vincent Esteves out. I'm sent
17 here by the Ochoas and the Herreras, the leaders of the
18 largest cartels, Mexican and Colombian, in the free world.

19 Anybody, anybody hearing that that has any
20 criminal background at all representing individuals, who was
21 ever a prosecutor, knows that one never discussed Nation
22 King business to a stranger he's never met in his life, but,
23 two, if he's here to meet Vincent Esteves's connects, why
24 would he be sent here to meet Vincent Esteves's connects
25 when he's directed connected to the Ochoas and the Herreras,

1 the number-one people? Vincent Esteves is down here.

2 They're up here. Not even on the same stratosphere.

3 He said and he admitted that he told me he was
4 sent by the Ochoas and the Herreras to meet Esteves's
5 connect, that Lord Gino's his father. He tells me that Lord
6 Gino is in the Supermax facility, the ADX in Florence,
7 Colorado, underground, the most strict, restrictive, as he
8 testified, facility on the earth. Everything is monitored,
9 your sounds, your words, your breathing, telephone calls.
10 Everything's completely monitored. They know how many
11 pieces of toilet paper you use. There's no contact with
12 humans, it's all by robots. He tells me that his father's
13 communicating by cell phone with him, his father makes
14 three-way calls. His father put him on -- it's all on
15 recording, his father put A & E on his visitors list and
16 then -- remember he said -- he denied saying that, then I
17 showed him it in the transcript?

18 I'm getting all this from Oscar Cordova. He's
19 telling me that -- you know, who he's sent by. This is the
20 first day I meet him.

21 The second day I meet him, the second -- and
22 that's for five or 10 minutes. The second day I meet him,
23 on July the 10th, he's telling me he's going to commit a
24 murder and asking me if I want to be involved in a murder
25 with him.

1 I know him for five minutes. I know Vinny Esteves
2 for two weeks.

3 Tell me that's not role-playing, gamesmanship,
4 just stupidity, immaturity. But no intent.

5 I knew, I knew and any defense lawyer would know
6 that Vincent Esteves has no connections left. One of the
7 first things that you're given is the confession or the
8 statement by your client. Vincent Esteves completely
9 confessed on the day of his arrest on May 29 --

10 MR. GAY: I'm going to object to this. There's
11 absolutely no evidence of this, and Mr. Bergrin knows full
12 well this is absolutely false.

13 THE COURT: Mr. Bergrin?

14 MR. BERGRIN: Your Honor, Vicente Esteves
15 testified to this.

16 MR. GAY: No, Paul -- listen. No, no.

17 MR. BERGRIN: Vincent Esteves testified to this,
18 Your Honor.

19 MR. GAY: That's absolutely false. Mr. Bergrin
20 knows this is false. There's no testimony of this. This is
21 absolutely false. He knows darn well he didn't get
22 discovery until January 26th of 2009. That's the testimony.

23 MR. BERGRIN: You have Vincent Esteves --

24 THE COURT: Well, wait a minute.

25 Again, gentlemen, I just can't recall that. I'll

1 leave it to the jury. They have their notes, their
2 recollection.

3 MR. BERGRIN: Thank you, Your Honor.

4 THE COURT: But I will again caution that we must
5 stay within --

6 MR. BERGRIN: Absolutely.

7 THE COURT: -- facts that have been presented to
8 the jury.

9 Go ahead.

10 MR. BERGRIN: Vincent Esteves testified that we
11 had to prepare for motions and Vincent Esteves testified
12 that he told me that he had confessed. The confession
13 completely, completely obliterated Vinny Esteves's ability,
14 any ability whatsoever for Vincent Esteves to ever under any
15 circumstances operate as a drug dealer or have any
16 connections.

17 Vincent Esteves gave up Pepe. He gave up Patty.
18 He gave up his own brother-in-law, his flesh and blood. He
19 gave up how he was getting drugs, how he transported them,
20 where he transported them. He gave up his Netherlands
21 connection. He gave up Dave in Colombia. He gave up Ed.
22 He gave up his Dominican contacts. He gave up every single
23 thing that he knows.

24 But here's -- this is more important. Vincent
25 Esteves is remaining in jail. He remains in jail. His wife

1 remains in jail. Nobody helped him. Nobody. If he had
2 contacts, if he had contacts, just, please, use your
3 God-given common sense, it doesn't take rocket science like
4 -- like they expect. Anybody, any defense lawyer would
5 know. He remains in jail. His wife remains in jail.
6 Nobody to help with bail, food for his baby, get him out,
7 defense of his case. If any connect wanted to continue
8 doing business with him and didn't hide, if any connect
9 wanted to be reached, they know who the defense counsel is.
10 If any connect wanted to continue business or wasn't running
11 from Vinny Esteves -- and one thing he admitted is that
12 Patty completely changed his telephone number. Remember
13 Vinny Esteves said and swore under my cross-examination that
14 Patty wouldn't do business with him or wouldn't talk to him
15 because Vinny Esteves had been arrested and Patty had his
16 money? So how can he say that we didn't know about his
17 background?

18 He had no more connects. He was out of business.
19 He was never doing business again. Impossible. He gave up
20 everybody, the leaders of the cartels. He even gave up the
21 airport carts, the way he got his drugs into the country.

22 If any connect's going to make millions of dollars
23 and do business in the future with Esteves, they would have
24 helped him. Nobody came forth. They all ran for the hills.

25 We find out based upon the telephone -- based upon

1 the conversations with Oscar, he says that he is sent and
2 Vinny says he's sent by the Mexicans. He's sent by the
3 Mexicans, the same people that Vinny deals with, same people
4 that sent the 75 kilograms of cocaine. He says Oscar's sent
5 by Pepe and Patty, the same people that Junior works for,
6 Chen-Pui, the same people that Brigilio Noyola, the truck
7 driver, works for. That's who sends Oscar.

8 But you'll hear right away during the recordings
9 Oscar says -- first he says that he spoke to the truck
10 driver. Remember Oscar said that on July 10th: I spoke to
11 that truck driver, I don't know what he said? But then in
12 the next breath, I'm questioning Oscar and testing him, and
13 he's saying he didn't know the truck driver was arrested.
14 He didn't know the 75 kilograms of cocaine was seized. He
15 didn't know that the truck driver called Vinny Esteves.
16 It's all on the recordings the first time I meet with Oscar,
17 July 10th.

18 He says that he knows Pepe, but then he says he
19 doesn't know Pepe. He says that he knows Junior, but only a
20 little bit, he only met him a couple times, but then
21 admitted that he didn't know Junior. He says that he knows
22 Patty, but then admits that he doesn't know Patty.

23 So now we have the fact that he's not Lord Gino's
24 son, he's not connected to the Latin Kings, Lord Gino is no
25 longer running the Latin Kings, he's lying about his father

1 at the Supermax and how he communicates with him, he's lying
2 about his father ordering murders, ordering payments to
3 attorneys, when they're going to be paid, ordering him to do
4 murders from the Supermax facility, ordering him about
5 taking over territories, running the Latin Kings from the
6 Supermax facility, so we know he's lying about all of that.

7 We know Vinny is lying about him having
8 connections. We know Vinny has confessed to the point that
9 he's given up his own flesh and blood. We know that
10 nobody's coming forth to bail Vinny out, help them.

11 So what attorney under any circumstances -- ask
12 yourselves: What attorney under any circumstances is going
13 to truly and sincerely ever believe that, A, Oscar's a
14 hitman, B, that Oscar's going to do any murder? What
15 attorney, what any human being would agree to do a murder
16 with Oscar or Vinny Esteves knowing these facts, that
17 Oscar's an informant, he's not sent by the people that
18 allegedly Vinny Esteves said sent him, the Mexicans, because
19 he knows no one, and that Vinny Esteves is an informant
20 himself and a cooperating witness himself, and so is Hector
21 Rodriguez. What human being is going to deal with these
22 individuals? What individual is going to not string them
23 along like I did? What individual is not going to know that
24 under no circumstances is anybody to be hurt?

25 You have complete, blatant and absolute lies. Go

1 through -- I mean, think of even what Tom Moran says, how it
2 makes no sense.

3 Vinny Esteves never truly trusted Tom Moran.
4 Tom Moran says that the telephones were brought in for two
5 purposes: One, so Vinny Esteves could speak to Oscar about
6 getting us money on the case, because that's all we're
7 interested in. Every conversation starts, do you have the
8 money that, you know, you promised. Over 20 times he
9 promised money, all different amounts, 20, 30, 40, 50, a
10 hundred thousand dollars. I have it with me; I could reach
11 it; I could get it very quickly. And the second reason was,
12 so Vinny Esteves -- you heard the words come out of Tom
13 Moran -- so Vinny Esteves could find out who Oscar truly is.
14 So Vinny Esteves could find out who Oscar truly is. That's
15 why on the September the 6th -- and listen to that
16 conversation, September 6th, where Vinny Esteves tells
17 Oscar, Hold off on doing anything until I get out, hold off
18 on doing anything until I get out. This is after the
19 conversation in August, where Vincent Esteves gives his
20 alleged blessing for Oscar to do anything.

21 You have Tom Moran, who's a severe, severe
22 alcoholic. You have Tom Moran, who's using drugs almost on
23 a daily basis, who has no clue about the extent of the
24 investigation, who's what, what the discovery says, as
25 clearly evidenced by the November 17th meeting with me and

1 Oscar and Tom Moran where Tom Moran says, we have to get on
2 the same page; there's no communication; I don't know, I
3 have no clue who the informants are, speak to Paul.

4 Who in their right mind is going to ever speak to
5 me on the first meeting about killing somebody? I know the
6 man, again, for five minutes, 10 minutes.

7 Think to yourselves, ladies and gentlemen. If I
8 wanted to locate Junior the Panamanian, I would have done
9 some investigation. I did none. They could prove -- they
10 could point to not one thing that I ever did to investigate
11 Junior.

12 He kept asking me, Oscar, for a photograph. I
13 provide him nothing. And then I'm thinking: He said he
14 knew him -- before he denied knowing everybody, he says he
15 knows Junior, he says his people know Junior. Then why does
16 he need a photograph Mr. Me? His people will tell him what
17 Junior looks like. Why does he need a description?

18 Never a description. Never a photograph. Never a
19 location.

20 He tells me, Paul, the only way I could identify
21 Junior, because my people, my people have no clue who he is
22 or where he is, is through you and Michael Lopez. He meets
23 Michael Lopez through me, and what does Michael Lopez tell
24 him? He knows nothing. He gave him misinformation, like
25 military intelligence, when you tell the enemy false

1 information. Oh, a friend of a friend's sister saw him at a
2 car wash with Florida plates, but I believe that's
3 misinformation, we have no idea where he is.

4 That's after having the conversation with me and
5 me telling Michael Lopez that.

6 He talks about meeting Fu. Tom Moran comes in and
7 says oh, it's Fuquan Mange. Tom Moran had no idea. Oscar
8 never met Fu. Why didn't Oscar meet Fu? Because Paul
9 Bergrin wouldn't allow it.

10 I had him believing and Tom Moran believing that
11 Fu, an African-American young male, was a Chinese fireman
12 somewhere in Newark. That's exactly what the conversations
13 show, the recordings show on November the 17th.

14 He says I got to go through the locals, I got to
15 go through -- and he admitted, Oscar, he admitted to you,
16 they can't now go and say that they don't believe Oscar,
17 they admitted that -- he admit that the only chance he had
18 to locate Junior was through Michael Lopez, and he got
19 nothing from Lopez, nothing from him.

20 They talk about the December 9th conversation, and
21 I'll get into December the 8th, but let's talk about the
22 December 9th conversation.

23 On December 9th, ladies and gentlemen of the jury,
24 after Oscar says to me, after the small clip that they
25 showed you, after Oscar says to me, Will it help, Paul, will

1 it help? You know, I say to him, Oscar where is the truck
2 driver? Where is the truck driver?

3 Knowing that the truck driver's Noyola and not
4 Junior.

5 And what does Oscar say to me?

6 He falls to me and he says the truck driver's in
7 New Jersey, Paul. He's the one -- he's the one living with
8 his girlfriend who's a stripper. That's right in the
9 recording. I know he's lying. I know he has absolutely no
10 way to locate anybody, no way to know, have any clue where
11 anybody is, ladies and gentlemen of the jury.

12 How many hitmen do you know that every time they
13 see you, they're promising to pay you money? Pay you money.

14 And I'm not supposed to know that there's
15 something wrong with him, that he's lying.

16 As I used to ask juries: Just give me the benefit
17 of the doubt. Give me the benefit of the doubt. That's all
18 what I've told you is reasonable doubt, every single
19 episode, every single significance: Getting Oscar no
20 information, going nowhere, leading to dead ends, prolonging
21 -- and you hear Oscar say over and over again, oh, my father
22 is angry because it's taking so long.

23 Father angry from the Supermax? Just like he's
24 directing you to do the murder yourself. Just like you've
25 killed hundreds of times.

1 If you heard anybody say that in your presence,
2 you, as lay individuals, not involved with criminals, not
3 involved in defense, not former prosecutors, if you heard
4 anybody say, Oh, yeah, I've killed hundreds of times, you're
5 going to laugh at them. You're going to know that they're
6 full of it. You're going to know not to believe one word
7 out of their mouth.

8 He threatened to kill everybody, Oscar: Junior
9 the Panamanian, Tapia, Jose Tapia, Arsenio Alejo, the
10 accountant, the architect, a judge's son, which he denied
11 but then we pointed out and he admitted it, Pepe, El Senor,
12 the senior member of the Mexican cartel. And you're not
13 supposed to know that he's not -- that you can't believe a
14 word that he says.

15 Eugene Braswell, they talk about him and Muhammady
16 Tunkarad. If I was serious with Oscar, I give him -- and
17 you saw the piece of paper -- East 166th Street. Eugene
18 Braswell testified that I told him the guy's locked up, he's
19 in Rikers Island. He's on an immigration detainer in
20 Warren.

21 You heard their expert, Afanasewicz, testify that
22 166th Street runs for miles. There's a lot of buildings. I
23 know the guy's locked up. Oscar keeps telling me he's got
24 connections in The Bronx, you hear it on the recordings,
25 that he's got Kings in The Bronx. Oh yeah, Oscar? Find

1 this guy and tell me about him, knowing the guy's in jail,
2 knowing he can never find him, knowing it's an impossibility
3 because the guy's in jail.

4 How can anybody say I wasn't testing and playing
5 with him and prolonging this?

6 After three months, and after promising to help
7 Chantal with the bail, help Vinny Esteves with the bail --
8 remember Tommy Moran told you that the bail was \$5 million?
9 No, the bail was \$2 million.

10 Anybody with connections could have made that
11 bail. Chantal's locked up. Nobody helps them, nobody at
12 all. After Oscar promising to bring properties, get people
13 to sign for them, help with their bail, help with the
14 forensic accountant, help with the architect. Nobody. He
15 helps with nobody. He brings \$20,000 after three months,
16 and that's after painfully begging for him. And he says,
17 Paul, work with me, things are bad. You heard that. Paul,
18 work with me.

19 He asks me to go see a friend of his father's. If
20 I believed that his father was Lord Gino, if I believed that
21 Lord Gino had any power, if I believed Oscar, for one
22 second, I would have ran to the jail to see his father's
23 friend that he said Oscar is charged with murder and some
24 other drug offenses. But I knew the guy can't be believed
25 and I said, Yeah, I'll go see him, Oscar, give me \$300 for

1 an interpreter.

2 Who would say that to him? Who would say that to
3 him?

4 It's absolute role-playing at the worst with the
5 most obnoxious thing you could have.

6 Tom Moran says that I have properties transferred
7 to me from Vinny Esteves, but I never intended to use them
8 as collateral. You heard Vinny Esteves testify that's all
9 we talked about. He signed the properties over to me so
10 that we could use them for collateral and Chantal Esteves.
11 Nothing was hidden. My home address was used. My Social
12 Security number.

13 I'm a drug dealer? I'm a big drug dealer?
14 Oscar offers me kilograms of cocaine for \$4,000, \$4,000,
15 from Martha Ochoa. They get it all day long. If you
16 believe Eugene Braswell, he's paying 20,- to \$21,000.

17 Nobody gets kilograms that cheap. Paul Bergrin
18 does nothing, never asks, never even asks for a number, for
19 a setup. Never even mentions it again. The next day, he
20 comes back. This is in July of 2008. He says, oh, Paul, my
21 friend went to Mexico, he got really cheap kilograms,
22 15,500. I took 80. I got 20 for you. And I tell him, what
23 do I tell him? Get rid of it and give me the \$30,000 that
24 you promised up front.

25 Big drug dealer Paul Bergrin can make millions and

1 millions of dollars, 4,000 a kilo, unheard of. Vinny was
2 paying, a big drug dealer like Vinny was paying \$6,000 a
3 kilo. I could supply Pozo. I could supply the
4 United States of America at that price.

5 Nothing. Nothing.

6 If that doesn't show intent and create reasonable
7 doubt, then nothing ever will.

8 Talk about individuals, drug dealing. You heard
9 little Robert Vannoy, 16 years old. He's not going to lie.
10 That's Yolanda's nephew. He never saw me with Yolanda and
11 Alejandro. He knows that they were dealing behind my back.
12 He said it. He swore to it on the witness stand. He's
13 nothing to me. Norberto Velez is nothing to me. You heard
14 him swear about the fact that I wasn't involved in drug
15 dealing.

16 The woman that I fell in love with, unfortunately,
17 is having a relationship with Alejandro Castro behind my
18 back. I suspect it. I'm going to do business with this
19 man? I'm going to do anything with this man?

20 He talks about -- Oscar talks about the fact, oh,
21 Paul Bergrin's going to introduce him to connections in
22 Chicago.

23 Chicago, where he lives.

24 Never a telephone number. Never a name, never a
25 connection, never a meeting, never, Paul Bergrin ever

1 requests a meeting, never Paul Bergrin ever asks him to
2 bring him drugs, set up a meeting, give me a sample, meet
3 this person, talk to this person.

4 Nothing.

5 If that doesn't show intent and lack of intent on
6 my part, if that doesn't create reasonable doubt in and of
7 itself.

8 Oscar's involved in rival wars that he talks about
9 on the tape with all kinds of -- the gang Disciples and the
10 Latin Kings are fighting with them in Chicago.

11 Every time I meet the man, he's alone. He's going
12 to do a murder alone, no lookout, no car, no gun, the leader
13 of the Latin Kings. But oh, yeah, Paul Bergrin's going to
14 believe him.

15 Every single time that he comes in to meet me, he
16 asks for a woman. The leader of the Latin Kings is asking
17 me to provide him a woman. Every single time. He should
18 have thousands and thousands and thousands of Latin Queens
19 at his disposal if you're the leader.

20 But I'm not supposed to know that he's a liar and
21 a fake, someone not to be trusted and someone not to be
22 believed.

23 I fly out on August the 5th, a Wednesday. I know
24 my daughter was mistaken, believing it was a Friday or
25 Saturday. I flew out on a Wednesday, August the 5th of

1 2008, to see my new grandchild. That was the purpose of me
2 going to Chicago. I stopped, I met with Oscar. Talk about
3 role-playing. I tell the limousine driver to make circles
4 in case anybody's following us. I talk about the forensic
5 accountant, Dennis Krousos, when Vinnie Esteves told you
6 from day one we knew that we had to hire a forensic
7 accountant, and Krousos was not a forensic accountant. If
8 anything I said about Krousos, if he was ever threatened, if
9 I ever intimidated him, if I ever coerced him, you know they
10 would have put him on the witness stand. You know it.

11 Moran lied because he read the discovery when I
12 told Oscar, I told Oscar that we're going to use Dennis
13 Krousos as a forensic accountant so that he creates a
14 privilege so they can't talk to him. That's a complete lie.
15 He wasn't a forensic accountant. We needed money for an
16 accountant. I kept begging Oscar, we needed money for an
17 investigator. I kept begging Oscar for that.

18 Tom Moran read the discovery and tried to spin it
19 out and lie to create himself having credibility.

20 I go to Chicago, again, on August the 5th. Oscar
21 promises me -- you heard him on the recording -- come out,
22 Paul, I'll pay for everything, room, car, dinner.

23 D.E.A. gives him money for me for a hotel room.
24 Oscar steals it. I pay for my own hotel room, then meet my
25 daughter the morning.

1 This is the person that I'm supposedly trusting.
2 Doesn't pay for anything, talks crazy, lies, is caught in
3 lies, inconsistency after inconsistency, over a hundred of
4 them. You can count them.

5 Then they have this big smoking-gun conversation
6 on December the 8th, after a man tells me he's got money for
7 me and comes up with nothing, after a man tells me he's
8 killed a hundred times. There was never any plans to meet
9 with Oscar on December 8th, and the recordings clearly show
10 that, clearly show that. I was working and I was going out
11 to dinner with Yolanda and our daughter Ashley. That's it.

12 There was drinking going on, but there's no excuse
13 for what was said. The excuse and the defense is that
14 nobody, nobody in their right mind, nobody, and especially
15 Paul Bergrin did not under any circumstance ever believe
16 that Oscar and his people had located Junior the Panamanian.
17 Impossible. Can't happen. Didn't happen. It was words
18 with no meaning, idle banter.

19 Latin King leader, taking over the organization,
20 running it for his father, is going to do a murder himself
21 of an individual who didn't even start the investigation.
22 The investigation was started when Tineo was arrested a year
23 before. There were thousands and thousands of wiretaps by
24 the time Junior was arrested. Tapia and Alejo was arrested
25 second.

1 He's going to go -- he talks about with Tom Moran
2 about going to meet Tito, who we know his real name is Justo
3 Cepeda, that night of September 8th. Just listen to the
4 chronology. He's going to meet Tito that night, December
5 the 8th, okay. Tom Moran says at least four times, Let's
6 ask Paul, let's ask Paul about the gun.

7 Something had to block, something had to stop
8 Tom Moran and Oscar Cordova from talking to Tito. Something
9 and someone had to block that and stop that, because Tito
10 was never talked about or talked to about a weapon as Oscar
11 admitted on the witness stand, as Tom Moran admitted after
12 struggling with cross-examination. Someone had to stop
13 that.

14 It was Paul Bergrin.

15 The telephone conversation I talked about on
16 December the 9th, December the 9th. He says to me on
17 December the 9th -- I say to him, excuse me, it's
18 conversation 4129B3, page two, lines 21 and 22: "Oh, Oscar,
19 where's the fucking truck driver," line 22.

20 "Oh, the truck driver, he's here in New Jersey."
21 He's brought a stripper.

22 And then what do I say to him, on page three, line
23 one: "Really?"

24 "Really?"

25 But not only does he say that to me. He then says

1 that I have to write Vinny Esteves a letter to make sure
2 that this is what he wants me to do.

3 There was never any intent. No one ever expected
4 anything to happen.

5 He tells me he paid Vinny's debts, millions of
6 dollars in Vinny's debts to the drug dealers on the
7 recording. Vinny owes all this money. He went to his
8 people, the Herreras, to find Junior.

9 You know that's a lie. We knew that it was a lie.
10 He lied over and over and over again. He couldn't be
11 believed. One word out of his mouth was never believed.

12 Again, ladies and gentlemen of the jury, you have
13 Oscar, who's suspected to be an informant, trapped in lie
14 and inconsistency after another, impossible to know where
15 any of the witnesses are. The witnesses aren't even
16 important to the case with a confession in thousands of
17 intercepted conversations and multiple cooperating
18 witnesses. And you have Vinny Esteves, who's a cooperating
19 witness in and of itself left in jail by his connections.

20 Nobody ever under any circumstances ever intended
21 anything to happen to any witness. And it's an insult to
22 your intelligence to ever believe that that's what Paul
23 Bergrin wanted.

24 I just want to shoot through real fast the
25 credibility of Tom Moran.

1 Look at his words in his bail motion, ladies and
2 gentlemen of the jury. "No one ever believed Oscar was a
3 hitman."

4 "No one ever believed Oscar was a hitman."

5 And that's true.

6 "Tom Moran did not believe Oscar was a hitman. To
7 think so is preposterous and is a term deployed by the
8 Government in a calculated manner to create hysteria
9 surrounding the case."

10 The words of Tom Moran through his counsel.

11 "If Mr. Moran truly believed in the plan and was
12 complicit in trying to provide a weapon to the informant
13 Oscar, he had access to weapons. Moran is confident once
14 all facts are brought to light there will be no doubt he
15 ever truly contemplated or ever participated in a scheme of
16 violence. It was wild talk. To believe otherwise is
17 preposterous."

18 I agree. I agree. I agree.

19 Scrutinize Tom Moran, ladies and gentlemen of the
20 jury. Scrutinize him, please. Scrutinize the
21 inconsistencies, ladies and gentlemen of the jury, about how
22 many times Tom Moran fabricated a lie, from the lock in the
23 storage area of 710 Summer Avenue to Alejandro coming down
24 with the keys.

25 I was arrested on May the 20th of 2009.

1 Everything that I owned was searched. Not one -- God bless
2 you, ma'am -- not one key to anywhere. Not one key to
3 anywhere.

4 Tom Moran said we were in the process of building
5 a Subway's at Isabela's Restaurant. Not one contract, not
6 one individual from any corporation to testify we even spoke
7 or dealt with any kind of people from Subway's.

8 Tom Moran says that he knew about Oscar and knew
9 about the case and that he stayed with me, despite all my
10 criminality, he stayed with me because I promised him a part
11 in a hotel-casino in Florida. You heard and you listened to
12 the tape about Paul Bergrin buying a hotel-casino in
13 Florida.

14 You know how preposterous that is. You know how
15 absurd that is. The casinos in Miami and Fort Lauderdale,
16 Florida, South Florida are owned by the Indians on Indian
17 reservations. So it was just idle chatter, bullshit to
18 Oscar, and Tom Moran bought it because he listened to the
19 conversations.

20 It's like the forensic accountant, Tom Moran
21 reading it and buying it and biting on it and using it
22 against Paul Bergrin and to his advantage to try to bolster
23 his credibility, and his -- and his really wanting to be a
24 cooperation and to have the Government accept him as a
25 cooperator with information that they could use on him

1 against me.

2 You know that, again, Oscar -- excuse me --
3 Tom Moran was locked into solitary confinement 33 hours
4 straight. He broke. He went crazy, like Freddie Massimi
5 said.

6 You know, ladies and gentlemen of the jury,
7 Tom Moran testified about the bail amount.

8 Incorrect.

9 He testified that he never saw that Vinny Esteves
10 summary that was prepared by the Monmouth County
11 Prosecutor's. Of course he never saw it, because he didn't
12 read all the discovery.

13 Tom Moran told you that Vinny deeded over
14 beachfront, waterfront properties to Paul Bergrin.

15 It was three lots on Tennent Road in the middle of
16 Manalapan, not even close to the Jersey shore.

17 It's just one embellishment, one lie, one false
18 representation after another how Paul Bergrin was in control
19 of the case so that nobody cooperates.

20 Oh, yeah, Vinny Esteves's wife, his
21 brother-in-law, and his cousin: That's how Paul Bergrin
22 represented all the cooperators against Vinny Esteves.

23 Tom Moran was being groomed to take over Paul
24 Bergrin's practice because Paul Bergrin was afraid of going
25 to prison? The man had two major open felony cases, four

1 counts of aggravated assault in Monmouth, a second-degree
2 eluding in Hudson County. He was an alcoholic and a drug
3 addict. Freddie Massimi testified I was on the verge of
4 terminating him multiple times. I'm grooming him to take
5 over my practice? He doesn't even show up to court for me
6 when I'm on vacation. Burns me. I'm grooming him to take
7 over my practice, an individual that has no will have no
8 license in the future.

9 I mean, when does it stop? When does it stop? He
10 waits between 10 and 20 proffer sessions over a two-year
11 period of time, after reading and not until he received
12 Internet articles, newspaper articles from his father and
13 friends that he never tells the Government about in any of
14 the proffer sessions to come forth with allegedly what I say
15 to him at the Essex County Jail.

16 He kept volunteering information to try to hurt
17 me. That's how desperate he is for that big 5K1 letter so
18 he walks out, like Lachoy Walker, Eric Dock, Richard Hosten,
19 and Richard Pozo.

20 Thank God for Vito Rappa. Thank God for him,
21 because if Vito is telling a lie and if Vito had threatened
22 or had anybody threatened like Tom Moran said he looks at
23 you, oh, Paul Bergrin was sending a strong message, strong
24 message, remember, the dramatics in Tom Moran to
25 Cortopassis, about Cortopassi testifying against him.

1 James Cortopassi would have sworn to that on the
2 witness stand if anybody threatened him. Steve Cortopassi
3 was out in the hallway. They would have called him and
4 subpoenaed him if anybody threatened him, if they had any
5 evidence by Vito Rappa that he was not telling the truth.

6 Just a reasonable doubt alone in his lies, talking
7 to Oscar behind my back about methamphetamines, about
8 pornography: Don't tell Paul, don't tell Paul, repeatedly,
9 don't tell Paul we're going out, don't tell Paul we talked
10 about this.

11 Why? If Paul is such a criminal, if Paul is such
12 a drug dealer, if Paul is out there and really believed and
13 he really believed that I wanted to kill witnesses, you're
14 going to hide the fact that you're talking to Oscar about
15 methamphetamines and pornography and whatever else you talk
16 about with Oscar, or that you go out with Oscar?

17 It doesn't make sense because it's ludicrous and
18 it didn't happen.

19 That's reasonable doubt alone.

20 Vinny Esteves talked about in his letter Avianca
21 Airlines, contact my friend at Avianca Airlines to get drugs
22 in.

23 If Paul Bergrin's a drug dealer, if Paul Bergrin
24 wants to succeed in drugs, if Paul Bergrin wants Oscar
25 Cordova to be successful in drugs, Paul Bergrin's going to

1 contact his contact and his friends at Avianca Airlines. If
2 Paul Bergrin wanted to do drugs and be involved in drugs, he
3 would have contacted Dave, the contact that Vinny Esteves
4 said he gave me. If Paul Bergrin wanted to do a drug
5 transaction and he could have made absolute money, then he
6 would have contacted Wilfredo, the drug connection that
7 Vinny Esteves allegedly gave me.

8 Never any contact, any never reaching out, nothing
9 - nothing.

10 If that doesn't show intent, if that doesn't show
11 my lack of intent, if that doesn't show where I was headed,
12 then you know.

13 They try to bolster the drug case. They had a
14 pole camera up for 60 days at 710 Summer Avenue. Nothing.
15 Nothing at all. Never Paul Bergrin going to 710 Summer
16 Avenue. Never Paul Bergrin meeting there with anybody. No
17 forensic evidence on Paul Bergrin ever going to 710 Summer
18 Avenue. Nothing. There would have been something. There
19 would have been some connection, some nexus.

20 They try to bolster the drug case with Rakim
21 Kelly. If you listen to the conversations with Rakim Kelly
22 and Yolanda, you'll hear, and you're with me, you'll hear me
23 telling Yolanda, I don't want you involved with these
24 people, and Yolanda saying to Paul, I'm not, Paul, I'm not.
25 I'm yelling at her, I'm heartbroken when I hear what these

1 people have come to me for, for the legal fees, saying that
2 they gave it to Rondre Kelly and Yolanda was involved. I
3 tell Yolanda, you shouldn't be introducing Rondre Kelly to
4 these people. She says, I didn't, Paul, they just wanted
5 the number to help this kid get out of jail, because this
6 kid, meaning Alejandro Castro, is doing business with them.

7 Why would she be explaining that to me if I'm
8 involved at all?

9 They show you one conversation between her and
10 Jesse, but you've got to realize, you have to realize that
11 she's lying to everybody. She's trying to convince Jesse
12 what to say. When you hear the words come out of my mouth,
13 out of Rondre Kelly's mouth, at a conversation between us,
14 you can make out and you understand.

15 I tell these Mexicans, don't trust Rondre Kelly, don't
16 do business with him. If I'm involved and I'm making
17 commissions, and that's my connections, I'm not going to say
18 that.

19 If that doesn't prove and establish reasonable
20 doubt, I don't know what is.

21 I keep Alejandro Castro in jail for 11 months. If
22 he's my partner, if I'm doing business with him, I'd get him
23 out, just like I got Norberto Velez out.

24 They talk about three phone calls to me. They
25 can't even say that I received those phone calls and Yolanda

1 has my phone, but you know that Alejandro Castro was calling
2 my office for an immigration case that we had taken.

3 THE COURT: You've got about 30 minutes.

4 MR. GAY: I'm not familiar with any evidence of
5 that, Judge.

6 THE COURT: Wait. What was that?

7 MR. GAY: The last thing that Mr. Bergrin said,
8 there's absolutely no evidence of any of that.

9 MR. BERGRIN: I'm going to move on, Judge.

10 THE COURT: All right. You have 30 minutes.

11 MR. BERGRIN: You have Rondre's Kelly's word, and
12 only his word. No corroboration, no substantiation. You
13 have me on the telephone telling Rondre Kelly, I'm not
14 involved in your business, I don't care what you do. I'm
15 going to talk openly with Yolanda, allow Yolanda to talk
16 openly with me, but I'm going to say that to Rondre Kelly on
17 a recorded line. Not one surveillance ever of me and Kelly
18 when they have him under investigation with Yolanda.
19 Yolanda is speaking to these people, these Mexicans, Pelo
20 and Jesse, setting up the deals, the times, the
21 transactions. Any complaints that Rondre Kelly has is going
22 through Yolanda.

23 The house. You have Rondre Kelly swearing to his
24 attorney, signing an affidavit, willing to cooperate with
25 the prosecutors that he bought the house from Sulaimun

1 Jenkins, paid \$30,000 because of its condition, not from
2 Paul Bergrin.

3 I bought the house from Sulaimun Jenkins, but it
4 was in such dilapidated condition. Sulaimun dealt with
5 Rondre Kelly and sold him the house.

6 You have the fact that Rondre Kelly made a profit
7 on the house. You're saying that he's doing cocaine
8 business with me because of the fact that I screwed him out
9 of the house and the repairs that he made. The man made a
10 \$40,000 profit. He made \$150,000 on the house.

11 It doesn't make sense. It doesn't make sense
12 because it didn't happen.

13 You have my meeting at the strip mall, but the
14 meeting at the strip mall is because of the fact that
15 they're arguing about fees and the fact that Alejandro
16 Castro is still in jail. That's it. That's it. Nothing
17 else.

18 Abdul Williams. He sure could remember things on
19 direct examination, but during cross-examination, he
20 remembers nothing. In reference to his bribery case, we had
21 a parole hearing. At the parole hearing, the police officer
22 said, I didn't see you. Why would Abdul Williams -- if I'm
23 involved in the bribery with Abdul Williams, if Abdul
24 Williams knows that I'm involved in the bribery, why would
25 he be preparing his witnesses so meticulously before they

1 meet me, before they meet me, going over the phone, over and
2 over again, make sure you tell Paul this, make sure you tell
3 Paul this, being prepared and prepped and coached, suggested
4 to.

5 I would be the one preparing them and coaching
6 them.

7 It didn't happen. It didn't happen.

8 You have Abdul Williams saying that in reference
9 to the gun case that he called me from the back of the
10 police car and I told him not to admit that the gun was his.
11 You heard him say that under sworn testimony because he
12 tried to explain away the fact that he let his baby sister
13 get arrested, charged, indicted.

14 That's the kind of man you're dealing with. That
15 creates reasonable doubt itself, not counting his 17 felony
16 convictions, the fact that he was never charged with all the
17 heroin and the cocaine distribution, which would give him a
18 life sentence.

19 Police officer, Detective Adkins testified that
20 that never happened. It was on speakerphone. He heard it.
21 The person on the other line never told him that.

22 So you have Abdul Williams trapped in lies. That
23 creates reasonable doubt of itself.

24 You have Paul talking to him about the facts of
25 the case, the discovery, telling what the police reports

1 say, telling him how to defend the case, a police union
2 attorney telling him, Abdul Williams, on the telephone to
3 make an internal affairs complaint.

4 Nobody would ever do that that represents a police
5 union unless you believe in your client and believe what he
6 said.

7 Eugene Braswell talks about \$50,000 and Chavis, a
8 drug dealer, I stole \$50,000, I didn't do any work to get
9 him out of jail, people on the street complaining.

10 Paul Bergrin wouldn't be here today if that was
11 true. Completely makes up facts. The only thing you have
12 is the word of Eugene Braswell, an individual with
13 connections all over the place, Texas, Florida, bringing
14 cocaine up, distributing cocaine.

15 He's not going to deal with Alejandro Castro
16 because of the language barrier? He brings his
17 sister-in-law, her name was Linda Ramos, with him for the
18 narcotic transaction.

19 Where's Linda Ramos?

20 He says he met Alejandro Castro in the hall --
21 excuse me -- in the lobby of the hotel with his girlfriend,
22 and they talked cocaine business.

23 Where's this girlfriend?

24 No corroboration.

25 He said that I took cocaine out of the ceiling

1 tiles in my office during the day, during business hours.

2 Nobody sees him.

3 He says I conducted transactions in the hallway of
4 a hotel. They have surveillance tapes. They have all kinds
5 of security there.

6 Bring forth corroboration.

7 He says that nobody knows, nobody knows these
8 dealings with Paul Bergrin, not his brother, nobody he's
9 dealing with, not his girlfriend, not Linda Ramos.

10 Coincidence? The man's facing double life in
11 prison, 25 years in the state.

12 Let's talk about the Norberto Velez case, Norberto
13 Velez case and -- ladies and gentlemen of the jury, you have
14 Julio Izquierdo. I didn't realize how important the
15 neighbor's testimony was, but, you know what? Here's a
16 C.P.A., chief financial officer. He sees Marilu Velez pull
17 into the driveway and get out of the car. She testified
18 that she parked across the street because she was afraid of
19 Norberto Velez. She testified that she never got out of the
20 car.

21 That's enough to create reasonable doubt. But
22 what you need to do is you need to listen to these facts.
23 You need to listen to these facts.

24 Carolyn Velez the day after the verdict in her
25 mother's custody, okay, the day of the verdict, she's in the

1 house with her whole mother's family, her aunt, her uncle,
2 cousins. Nobody discusses the verdict with her. Nobody
3 discusses the verdict. She comes and gives a recorded
4 statement to the Essex County Prosecutor's Office, and in
5 that recorded statement, she says that Paul Bergrin never
6 told me to lie for almost an hour and a half into the
7 conversation, Paul Bergrin never coached me. She says that
8 Paul Bergrin lied to me, but never told me to lie, and Paul
9 Bergrin lied to me because he believed -- and you heard her
10 say that, you heard her say that on cross-examination --
11 because he believed what my mother -- what my grandmother
12 and my father told me.

13 Three's minimal contact between Norberto Velez,
14 me, and Carolyn from November 19th of 2001, the day Norberto
15 Velez is charged with the stabbing, but they talk about the
16 fact that her mother didn't have the knife.

17 Just think about this, ladies and gentlemen of the
18 jury. Think about this, because it's very, very important,
19 very important.

20 Here's a lady who's scared to death of Norberto
21 Velez. She stops by his house in the morning. She pulls
22 down Little Street, makes a left toward the Adelaide Street
23 school. She sees Norberto Velez following her in the car.
24 You've got to close your eyes and almost imagine this.
25 Instead of -- and she's afraid Norberto is going to kidnap

1 her daughter Carolyn. She parks across the street from the
2 school, across the street, instead of allowing her daughter
3 to get out on the same side of the street and run into the
4 school. Her daughter gets out, and by happenstance, if
5 Norberto Velez is following her there, how is he waiting for
6 her at the school if he follows her there, by the way? He's
7 crying, his eyes are purple, okay, he's been crying for
8 days, because it's a bad, bitter custody dispute, and
9 Carolyn Velez is nothing but a pawn in that custody dispute.
10 It's horrible, no children should ever live through this or
11 experience it, but it was between her and her husband.

12 She gets to the school, Carolyn Velez, and she
13 goes in the school. Marilu Velez doesn't take off. She
14 doesn't take off. Why? Because she has to have the knife.
15 She doesn't take off. Please listen, please, I beg you.

16 She sees Norberto Velez coming from the school,
17 crossing Adelaide Street and going toward his car, walking
18 across the street where she's parked. She doesn't take off.
19 She sees Norberto Velez getting in his car. She doesn't
20 take off. She sees Norberto Velez pulling behind her car
21 from three cars away. She doesn't take off. She sees
22 Norberto Velez coming out of his car and approaching her
23 car, the driver's side. She doesn't take off. He tries to
24 open the door. She has her cell phone. She doesn't dial
25 9/11, she doesn't do anything.

1 Norberto Velez walks around the back of the car.
2 She doesn't take off. Norberto Velez touches the passenger
3 door. She doesn't take off.

4 Norberto Velez tells her to open the door. She's
5 scared to death. She's scared to death of him. What does
6 she do? She rolls down the window enough that he's able to
7 put both hands in, both hands in.

8 Norberto Velez opens the door. She doesn't dial
9 911, she says she doesn't hit "send." Why? Why? It's
10 almost insulting to believe, because she has the knife with
11 her.

12 Norberto Velez gets in the car. She says that
13 Norberto Velez stabbed her four to five times in the chest,
14 and she says Norberto Velez stabbed her in the heart. You
15 heard her say that. She says that she grabbed the knife,
16 and Norberto Velez -- the blade of the knife, Norberto Velez
17 pulled it.

18 She has one penetrating knife wound. She has one
19 stab wound. All the other injuries are superficial. No
20 injuries to her hand to depict that she ever had a knife
21 pulled out of her hand.

22 That's reasonable doubt.

23 Carolyn Velez's statement to the investigator
24 during almost the whole recording, the day after the
25 verdict, that's reasonable doubt. Carolyn Velez testified

1 about Paul Bergrin cursing at her on the telephone, but when
2 she recounted that incident, when she recounted that
3 incident to the Prosecutor's Office, when she was
4 cooperating with them, she says that Norberto Velez grabbed
5 her by her neck, he punched the cabinet, and that she went
6 to sleep after that. Nothing about Paul Bergrin.

7 The power of suggestion. The investigator
8 questions her at the end of the tape: And Paul Bergrin
9 didn't do this, I mean, Paul Bergrin didn't coach you on
10 that?

11 For almost the whole tape she says Paul Bergrin
12 never told her to lie. In reference to the certification,
13 she says that she was in Paul Bergrin's office, that
14 Paul Bergrin had boxing gloves there, I wasn't going to tell
15 him that I -- I lied.

16 On April 24th and 25th, when she went to the
17 Prosecutor's Office, she would have told them that Paul
18 Bergrin coached me and told her to lie. It was right before
19 the trial.

20 That's reasonable doubt. That creates reasonable
21 doubt.

22 Every injury to her was minor or superficial
23 except to one hemothorax, and even that injury, if you think
24 about it, was two and a half centimeters, less than a half
25 an inch. One stab wound. It shouldn't have happened, and I

1 wish it didn't happen.

2 But that's reasonable doubt in and of itself, what
3 she said to the Prosecutor's Office, Carolyn Velez, what she
4 said to the Prosecutor's Office on April 24th and 25th and
5 the day after the verdict. Reasonable doubt is what Julio
6 Izquierdo said. Reasonable doubt is the facts of the case
7 and that it couldn't have happened the way Marilu Velez
8 describes.

9 Ladies and gentlemen of the jury, you had Jason
10 LeBoeuf, an attorney, present who took the certification of
11 Carolyn Velez.

12 Call him. Call him. If there is controversy, if
13 she was coached in front of Jason LeBoeuf like she said,
14 call him. You have corroboration. Why not do that?

15 And the Edward Peoples case, ladies and gentlemen
16 of the jury. Where's Edward Peoples? Where's Anyea
17 Williams, his girlfriend? Call them.

18 Paul Bergrin got people to lie? Marvin McCloud,
19 got him to lie on the witness stand? Call Marvin McCloud.
20 Bring him forth before this jury. You have the right to see
21 that.

22 You have one witness, Gregory Smith, with seven
23 felony convictions, and you had a chance to observe him.
24 You had a chance to determine where the truth lies. You had
25 a chance to look at him.

1 A judge found Edward Peoples's letter to Anyea
2 Williams and my participation to be incredulous.

3 He saw me for five minutes one time in his life,
4 and when I questioned him on the witness stand, Gregory
5 Smith, under sworn testimony, hand on the bible, what did he
6 say? Paul came to see me. Paul was taking notes. I told
7 Paul -- I told Paul what happened. Paul was taking notes.

8 I mean, essentially, that's it. His exact words
9 were, Paul asked him questions, Paul Bergrin writing things
10 down.

11 Not one time did Paul Bergrin ever tell him to
12 lie, and not one time did Paul Bergrin coach him. Nine days
13 after I give him as a potential witness in the case, he goes
14 to the Prosecutor's Office, he gives a videotaped statement
15 to Detective DeMaio of the Prosecutor's Office, and he tells
16 them he hasn't spoke to Paul Bergrin. From that day until
17 2011, he never made any kind of representations that Paul
18 Bergrin did anything wrong.

19 How can you ever, ever believe this man?

20 I was doing my job and representing Peoples to the
21 best of my ability.

22 Roger Imhof comes before you and says, Oh, Paul
23 Bergrin was trembling, was nervous when we told him that we
24 arrested Anyea.

25 Then I showed him the fax. I found out by fax

1 machine. Unless he can look through a fax machine and see
2 me trembling and nervous?

3 it's just not true. It's not true. And you have
4 the affirmative evidence for that.

5 Gregory Smith just lied one time after another,
6 one time after another. That's reasonable doubt alone.

7 He says that a correction officer was present when
8 Edward Peoples confessed to a murder. He said a correction
9 officer was present.

10 I questioned him on the witness stand. The Judge
11 ordered him, under oath, ordered him to answer me. What did
12 he say? He doesn't know whether the CO, the correction
13 officer, is black or white, man or woman, what he looks
14 like, what she looks like. Can't describe her.

15 He gets into this Court, he says, Oh, I wasn't
16 going to admit that, but then I asked him questions about
17 the CO so we can get that CO here to corroborate what he
18 said, and he can't do anything now, can't identify, can't
19 tell you anything about the correction officer.

20 He lied to the prosecution one time after another,
21 said he wasn't expecting any benefit by the result of his
22 cooperation. But then I show him the video statement, he
23 says that he was expecting to receive help on his charge,
24 and he did. He did. With a second-degree eluding,
25 second-degree endangering the welfare of a child, using a

1 motor vehicle as a deadly weapon, he walked out of court.

2 He walked out the day he was sentenced. Time served.

3 He's blackmailing Edward Peoples. This is the
4 person that you're going to believe to convict me, the one
5 witness? He's blackmailing Edward Peoples, telling him he
6 wants \$10,000 to testify falsely, to commit perjury. First
7 he asked for his \$75,000 bail to be paid. He's an
8 opportunist. He gets before you and he testifies, well, I
9 wasn't going to take that money, I wasn't going to testify
10 falsely. But in the video, he admitted that he was going to
11 testify and take Edward Peoples's money.

12 When do you believe him? When do you say where
13 does the truth lie? When do you say to yourself, I need to
14 determine the truth, the whole truth, and nothing but the
15 truth?

16 You're going to convict me of Edward Peoples based
17 upon Gregory Smith and Gregory Smith alone? Because that's
18 all they have. That's all they had.

19 They had an expert, Detective William Davis, a
20 perfect expert in handwriting analysis. Take my
21 handwriting. See if I signed any of those checks that went
22 to Jason Itzler. Take my handwriting, analyze the letters
23 to the Parole Board. Analyze it. You show me and you prove
24 to this jury that I signed any of those checks or those
25 letters.

1 They know why they didn't take my handwriting:

2 Because it would show them that I didn't.

3 A man who's willing to perjure himself, Gregory
4 Smith, over and over and over again, tells you about Edward
5 Peoples, tells you about the fact that he studies the law,
6 that he's intelligent.

7 Edward Peoples wrote that letter to Anyea to try
8 to convince her not to testify, tried to use me to establish
9 credibility.

10 Call Anyea Williams.

11 How can you do that? How can you ever convict me
12 based upon the word of Gregory Smith?

13 You observed him. You heard him. You heard his
14 inconsistencies. You heard his sworn testimony from the
15 trial of Edward Peoples, about what I did and what I didn't
16 do. You heard what he said in the video. How could you
17 ever, ever, under any circumstances not find reasonable
18 doubt with Gregory Smith?

19 They call, they talk about a prostitution case.
20 Paul Bergrin pled guilty to a misdemeanor, misdemeanor in
21 the prostitution case. Paul Bergrin pled guilty.

22 This is different. These are charges of
23 interstate travel to promote it.

24 Ladies and gentlemen of the jury, what witness
25 have they called with any credibility to establish that?

1 None.

2 As Natalie McLennan had testified, she was never
3 around. She had to use cocaine to stay awake. She had to
4 use cocaine as a daily existence. She OD'ed six times. She
5 was on heroin, ketamine, cocaine, all kinds of other drugs
6 when she was working as an escort.

7 James Cortopassi.

8 Bring one witness without an agenda. Bring one
9 witness who's neutral and objective.

10 The only chance that kid has, the only chance that
11 kid has of ever becoming a licensed lawyer is if they write
12 a letter for him to the licensing board and get his license
13 for him. Otherwise, no chance.

14 Bring forth one witness.

15 Of course, I sent in incorporation papers, but
16 look, I'm the registered agent. That's what a lawyer does.
17 That's what a lawyer does. James Cortopassi comes before
18 you and tells you that he doesn't know -- he doesn't know
19 the name of the girl. He says it's Victoria running the
20 corporation.

21 Why? Because he's having a relationship with the
22 person who's running the escort service, Erica. I had to
23 remind him of that. He didn't bring it forth to you. He
24 didn't bring it forth to you.

25 There's a video system. As James Cortopassi and

1 Natalie McLennan told you, they know ever person that comes
2 into New York Confidential. They know every person that
3 leaves.

4 Show me when I'm there.

5 I'm involved in the midst of Iraq. I'm in the
6 middle of the Abu Ghraib case.

7 Show me one time that you see me on that video,
8 objective evidence, not an individual who's trying to come
9 back to this country and see her father, who's heavily
10 involved in drugs and was an addict at the time that this
11 occurs. Not James Cortopassi, who admitted that he started
12 a business behind my back to profit. Show me, show me an
13 objective witness.

14 Bring in Jason Itzler. Bring in Jason Itzler.
15 You say he didn't do any work? You say I'm lying about all
16 this stuff? Bring in Jason Itzler.

17 In five weeks, that corporation was dissolved. If
18 I'm making profits and benefiting by New York Confidential,
19 is Paul Bergrin going to be the one that dissolves the
20 corporation in five weeks?

21 THE COURT: We're going to wrap up in 10 minutes,
22 Mr. Bergrin.

23 MR. BERGRIN: Yes, sir.

24 They talk about the \$20,000 that was paid by
25 Oscar. You heard Nancy Araujo say when she testified that

1 Paul Bergrin didn't fill out forms. Paul Bergrin delegated
2 that kind of material. Paul Bergrin didn't send any faxes.

3 Let me them prove beyond a reasonable doubt that I
4 ever had any intent to not file any forms with the I.R.S. I
5 sent in the form on Dente Brothers for \$20,000 cash. Why
6 would I not send it on this? If I'm going to lie, I'll just
7 put it under a fictitious name, if their theory, you know,
8 has any kind of validity to it.

9 They charge me with racketeering enterprise,
10 running my law office, running it as a racketeering
11 exercise.

12 All I ever did, all I ever intended to do, all I
13 ever wanted to do was pour my heart and soul into the
14 representation of every single person that walked through
15 that office and anybody that needed my help, whether they be
16 a soldier, whether they be a criminal, whether they be an
17 individual who has millions of dollars or an individual
18 who's penniless. Give them my heart, give them my soul, be
19 willing to work night and day to them to make sure that they
20 have the proper legal representation, to take that shroud of
21 reasonable doubt and to wrap it around them, to challenge
22 the United States Government, to challenge the State of
23 New Jersey, to make sure that they're treated the same way,
24 the exact same way I want my son, my daughter, my mother, my
25 father, my sister, my brother, the same way you would.

1 This case is full of reasonable doubt. Take each
2 and every incident. Look at the witnesses, their
3 background, their baggage, their motive to fabricate, what
4 they have to lose if they didn't cooperate. Who determines
5 where the truth lies in is in the sole discretion of the
6 prosecution. How many times they hid things from you that
7 had to be brought out in cross-examination? How many
8 inconsistencies, how many lies?

9 Look at their reasons to lie: Lifetimes in
10 prison, family members charged, not being charged with
11 thousands and thousands and thousands of kilograms of
12 heroin, the most lethal drug, that kills our kids in the
13 community. Tons of cocaine. Properties they bought with
14 drugs not even seized. Money they made from drugs not even
15 taken. Look and scrutinize their weaknesses.

16 All I ever asked from day one is for you to
17 determine where the truth lies and to treat me the exact
18 same way you would want the most precious person in your
19 love life treated.

20 All I ever asked from day one when we began this
21 trial is for you to seek justice, and only when you
22 determine where the truth lies will justice be done.

23 You're going to think about this case a long time
24 after it's over. You're going to think about it whether
25 you're lying in bed, when you're driving to work, when

1 you're with your loved one, a quiet moment in your life even
2 at your work desk. You're going to think about this case.
3 You're going to probably dream about this case.

4 And I ask you to think about it long and hard,
5 because when you go into that jury room to deliberate, there
6 is no tomorrow nor me. There is no tomorrow. I'll be
7 waiting for your verdict. And I know, I know that if you
8 scrutinize each and every witness who's come forth here and
9 you say to yourself, where were these other witnesses, why
10 didn't they call them, they have the burden of proof, did
11 they prove their case against Paul Bergrin beyond and to the
12 exclusion of -- beyond and to the exclusion of a reasonable
13 doubt, did they meet their burden of proof, I know and I'm
14 confident that each and every one of you individually and
15 then as a group will find me not guilty.

16 Thank you for your time.

17 THE COURT: Thank you.

18 All right. Mr. Gay, I assume you'll have a short
19 rebuttal tomorrow morning.

20 MR. GAY: I will have a rebuttal tomorrow morning,
21 Judge.

22 THE COURT: No, no, you missed the operative word
23 there, Mr. Gay.

24 (Laughter)

25 THE COURT: Okay. Rebuttal tomorrow morning.

3/18
1:40 pm

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

v.

PAUL W. BERGRIN

Hon. Dennis M. Cavanaugh

Crim. No. 09-369 (DMC)

VERDICT FORM

WE, THE JURY, UNANIMOUSLY FIND:

COUNT 1
(RICO)

NOT GUILTY _____

GUILTY X

In reaching our verdict on Count 1, if the verdict is guilty, we unanimously found that the Defendant committed, caused, or aided and abetted the commission of at least two of the following Racketeering Acts:

Racketeering Act 1

- a. Conspiracy to distribute a controlled substance, as charged in Count 5:

Not Proven _____

Proven X

If you find this act proven, please answer the following additional questions:

Did the United States prove beyond a reasonable doubt that the defendant conspired to distribute five or more kilograms of cocaine?

No _____

Yes X

If you answered "no," did United States prove beyond a reasonable doubt that the defendant conspired to distribute more than 500 grams of cocaine?

No _____

Yes _____

- b. Maintaining drug-involved premises (710 Summer Avenue), as charged in Count 8:

Not Proven _____

Proven X

- c. Maintaining drug-involved premises (572 Market Street), as charged in Count 9:

Not Proven _____

Proven X

- d. Maintaining drug-involved premises (50 Park Place), as charged in Count 10:

Not Proven _____

Proven X

Racketeering Act 4

- a. Conspiracy to murder a federal witness, as charged in Count 12:

Not Proven _____

Proven X

- b. Aiding and abetting the murder of a federal witness, as charged in Count 13:

Not Proven _____

Proven X

- c. Conspiracy to murder in violation of New Jersey law:

Not Proven _____

Proven X

- d. Intentional Murder in violation of New Jersey law:

Not Proven _____

Proven X

Racketeering Act 5

- a. Interstate travel to promote prostitution in violation of New York law (December 10, 2004 letter), as charged in Count 15:

Not Proven _____

Proven X

- b. Interstate travel to promote prostitution in violation of New York law (January 12, 2005 travel), as charged in Count 16:

Not Proven _____

Proven X

Racketeering Act 6

- a. Aiding a witness to accept a bribe in a criminal case against client criminal Abdul Williams, in violation of New Jersey law:

Not Proven _____

Proven X

- b. Interstate travel in aid of bribery and drug trafficking business (June 21, 2007 telephone call), as charged in Count 18:

Not Proven _____

Proven X

- c. Interstate travel in aid of bribery and drug trafficking business (July 1, 2007 telephone call), as charged in Count 19:

Not Proven _____

Proven X

Racketeering Act 7

- a. Conspiracy to murder witnesses against client criminal Vicente Esteves in violation of New Jersey law:

Not Proven _____

Proven X

- b. Interstate travel in aid of drug trafficking business (July 7, 2008 travel from Illinois to New Jersey), as charged in Count 21:

Not Proven _____

Proven X

- c. Interstate travel in aid of drug trafficking business (August 5, 2008 travel from New Jersey to Illinois), as charged in Count 22:

Not Proven _____ Proven X

- d. Interstate Travel in aid of drug trafficking business (August 21, 2008 telephone call), as charged in Count 23:

Not Proven _____ Proven X

- e. Interstate travel in aid of drug trafficking business (September 5, 2008 telephone call), as charged in Count 24:

Not Proven _____ Proven X

- f. Interstate travel in aid of drug trafficking business (December 8, 2008 travel from Illinois to New Jersey), as charged in Count 25:

Not Proven _____ Proven X

Racketeering Act 8

8. Failing to File an IRS Form 8300, as charged in Count 26:

Not Proven _____ Proven X

COUNT 2
(RICO Conspiracy)

NOT GUILTY _____ GUILTY X

COUNT 3
(Violent Crimes In Aid of Racketeering - Kemo McCray)

NOT GUILTY _____ GUILTY X

COUNT 4

(Violent Crimes In Aid of Racketeering - Esteves Case)

NOT GUILTY _____

GUILTY X

COUNT 5

(Conspiracy to Distribute a Controlled Substance)

NOT GUILTY _____

GUILTY X

COUNT 8

(Maintaining Drug-Involved Premises - 710 Summer Avenue)

NOT GUILTY _____

GUILTY X

COUNT 9

(Maintaining Drug-Involved Premises - 572 Market Street)

NOT GUILTY _____

GUILTY X

COUNT 10

(Maintaining Drug-Involved Premises - 50 Park Place)

NOT GUILTY _____

GUILTY X

COUNT 12

(Conspiracy to Murder a Federal Witness)

NOT GUILTY _____

GUILTY X

COUNT 13

(Aiding and Abetting the Murder of a Federal Witness)

NOT GUILTY _____

GUILTY X

COUNT 14

(Conspiracy to Travel in Aid of Prostitution Business)

NOT GUILTY _____

GUILTY X

COUNT 15

**(Travel in Aid of Prostitution Business:
December 10, 2004 Mailing)**

NOT GUILTY _____

GUILTY X

COUNT 16

**(Travel in Aid of Prostitution Business:
January 12, 2005 Travel)**

NOT GUILTY _____

GUILTY X

COUNT 17

(Conspiracy to Travel in Aid of Drug Trafficking Business and Bribery)

NOT GUILTY _____

GUILTY X

COUNT 18

**(Travel in Aid of Drug Trafficking Business and Bribery:
June 21, 2007 telephone call)**

NOT GUILTY _____

GUILTY X

COUNT 19

**(Travel in Aid of Drug Trafficking Business and Bribery:
July 1, 2007 telephone call)**

NOT GUILTY _____

GUILTY X

COUNT 20

(Conspiracy to Travel in Aid of Drug Trafficking Business)

NOT GUILTY _____

GUILTY X

COUNT 21

**(Travel in Aid of Drug Trafficking Business:
July 7, 2008 Travel)**

NOT GUILTY _____

GUILTY X

COUNT 22

**(Travel in Aid of Drug Trafficking Business:
August 5, 2008 Travel)**

NOT GUILTY _____

GUILTY X

COUNT 23

**(Travel in Aid of Drug Trafficking Business:
August 21, 2008 Telephone Call)**

NOT GUILTY _____

GUILTY X

COUNT 24

**(Travel in Aid of Drug Trafficking Business:
September 5, 2008 Telephone Call)**

NOT GUILTY _____

GUILTY X

COUNT 25

**(Travel in Aid of Drug Trafficking Business:
December 8, 2008 Travel)**

NOT GUILTY _____

GUILTY X

COUNT 26

(Failure to File An IRS Form 8300)

NOT GUILTY _____

GUILTY X

FOREPERSON:

DATE: 3-18-2013

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

v.

PAUL BERGRIN,

Defendant.

Honorable Jose L. Linares

Criminal No.: 09-369

**DECLARATION OF
LAWRENCE S. LUSTBERG**

I, **LAWRENCE S. LUSTBERG**, of full age, hereby declare as follows:

1. I am a member in good standing of the bar of this Court, among others, and have been appointed as counsel for Defendant Paul Bergrin with respect to Defendant's Motion for a New Trial Pursuant to Federal Rule of Criminal Procedure 33 in the above-captioned matter. I respectfully submit this declaration in support of Mr. Bergrin's post-trial motion for a new trial based upon newly discovered evidence.

2. As part of its discovery obligations in this matter, the government turned over to the defense, among other materials, tens of thousands of physical pages of discovery material and hundreds of compact discs containing tens of thousands of individual recordings, including of conversations recorded by the Drug Enforcement Administration pursuant to a wiretap as part of its investigation of Hakeem Curry. This material was not indexed and often appeared out of order or, as sometimes occurred in the case of the recordings, suffered from technical problems that prevented one from opening a particular file.

3. The government informed counsel for Mr. Bergrin that it would not be seeking to admit the recordings because they were not timely sealed, and therefore, inadmissible.

4. Throughout the course of the trial in the above-captioned matter, the government gave no indication that the DEA recordings of Hakeem Curry contained significant exculpatory information that discredited the account of Anthony Young. Indeed, it was the government's stated position throughout that if these recordings were admitted, they would inculcate Mr. Bergrin.

5. Mr. Bergrin, who represented himself at trial, did not anticipate and really could not have anticipated that these recordings would be exculpatory given his reliance on the government's good faith and its compliance with its obligations pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963). As a result, prior to or during trial, Mr. Bergrin was effectively unaware of the existence of such evidence.


6. Mr. Bergrin attempted to call Hakeem Curry, Diedra Baskerville, and Rakeem Baskerville at trial to testify, but none of these witnesses were willing to take the stand at the time of Mr. Bergrin's trial. Curry specifically expressed to me his intention to invoke his Fifth Amendment right against self-incrimination if called. Mr. Bergrin's investigators specifically attempted to serve Diedra Baskerville with a subpoena at the time of trial, but were unable to do so.

7. During Mr. Bergrin's trial, I spoke briefly with DEA Agent Gregory Hilton to see whether he recalled conversations between himself and Mr. Bergrin regarding Alejandro Barraza-Castro, in anticipation of him testifying to those conversations. He told me that he did not recall any such conversations and did not know what I was talking about.

8. As far as I am aware, all of the evidence raised as newly discovered in this Declaration and the brief submitted in support of Mr. Bergrin's post-trial motion for a new trial was not brought to the attention of the defense until after the trial, as is described more fully in the brief filed herewith. I have no reason to believe, in light of the thorough and extensive efforts exercised before and during trial, that such evidence could have been discovered sooner.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 27, 2016

By: 
Lawrence S. Lustberg

Sanders, Steven (USANJ) 1

From: Darrin Howard <d3howard@bop.gov>
Sent: Friday, July 26, 2019 8:54 AM
To: Sanders, Steven (USANJ) 1
Subject: Inmate Location Information
Attachments: Baskerville - institution history.pdf; Curry - institution history.pdf; VCard.vcf

Steven,

Per our conversation, I have attached pdfs showing where Hakeem Curry and Rakeem Baskerville were housed in April 2007. As we discussed Mr. Curry was housed at the Federal Transfer Center in Oklahoma City (OKL) from March 30, 2007, to April 6, 2007, and at the United States Penitentiary-Administrative Maximum in Florence, Colorado (FLM) from April 6, 2007, to June 27, 2011. Mr. Baskerville was housed at the United States Penitentiary in Big Sandy, Kentucky (BSY) from March 21, 2007, to September 9, 2008.

Please let me know if you have any questions.

Darrin

Darrin Howard | Regional Counsel
United States Department of Justice | Federal Bureau of Prisons Northeast Regional Office Second and Chestnut Streets
7th Floor Philadelphia, PA 19106

Work: (215) 521-7375
Mobile: (215) 776-4745
Facsimile: (215) 521-7483

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NERAI 531.01 * INMATE HISTORY * 07-26-2019
 PAGE 001 * ADM-REL * 08:29:31

REG NO.: 26188-050 NAME: CURRY, HAKEEM
 CATEGORY: ARS FUNCTION: PRT FORMAT:

FCL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
YAM	A-DES	DESIGNATED, AT ASSIGNED FACIL	04-27-2018 1459	CURRENT
A01	RELEASE	RELEASED FROM IN-TRANSIT FACIL	04-27-2018 1559	04-27-2018 1559
A01	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	04-27-2018 1007	04-27-2018 1559
ATL	TRANSFER	TRANSFER	04-27-2018 1007	04-27-2018 1007
ATL	A-DES	DESIGNATED, AT ASSIGNED FACIL	03-28-2017 1615	04-27-2018 1007
B02	RELEASE	RELEASED FROM IN-TRANSIT FACIL	03-28-2017 1615	03-28-2017 1615
B02	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	03-28-2017 1137	03-28-2017 1615
ATL	ADMIN REL	ADMINISTRATIVE RELEASE	03-28-2017 1137	03-28-2017 1137
ATL	A-ADMIN	ADMINISTRATIVE ADMISSION	03-28-2017 1114	03-28-2017 1137
B02	RELEASE	RELEASED FROM IN-TRANSIT FACIL	03-28-2017 1114	03-28-2017 1114
B02	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	03-28-2017 1000	03-28-2017 1114
LEE	TRANSFER	TRANSFER	03-28-2017 1000	03-28-2017 1000
LEE	A-DES	DESIGNATED, AT ASSIGNED FACIL	02-19-2014 1140	03-28-2017 1000
B02	RELEASE	RELEASED FROM IN-TRANSIT FACIL	02-19-2014 1140	02-19-2014 1140
B02	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	02-19-2014 0550	02-19-2014 1140
ATL	HLD REMOVE	HOLDOVER REMOVED	02-19-2014 0550	02-19-2014 0550
ATL	A-BOP HLD	HOLDOVER FOR INST TO INST TRF	02-04-2014 1436	02-19-2014 0550
A01	RELEASE	RELEASED FROM IN-TRANSIT FACIL	02-04-2014 1436	02-04-2014 1436
A01	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	02-04-2014 1015	02-04-2014 1436
OKL	HLD REMOVE	HOLDOVER REMOVED	02-04-2014 0915	02-04-2014 0915
OKL	A-BOP HLD	HOLDOVER FOR INST TO INST TRF	02-03-2014 1830	02-04-2014 0915
A01	RELEASE	RELEASED FROM IN-TRANSIT FACIL	02-03-2014 1930	02-03-2014 1930
A01	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	02-03-2014 0700	02-03-2014 1930
ALP	TRANSFER	TRANSFER	02-03-2014 0700	02-03-2014 0700
ALP	A-DES	DESIGNATED, AT ASSIGNED FACIL	01-21-2014 1023	02-03-2014 0700
B01	RELEASE	RELEASED FROM IN-TRANSIT FACIL	01-21-2014 1023	01-21-2014 1023
B01	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	01-21-2014 0715	01-21-2014 1023
ALP	TRANSFER	TRANSFER	01-21-2014 0715	01-21-2014 0715
ALP	A-DES	DESIGNATED, AT ASSIGNED FACIL	10-01-2012 1917	01-21-2014 0715
A02	RELEASE	RELEASED FROM IN-TRANSIT FACIL	10-01-2012 1917	10-01-2012 1917
A02	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	10-01-2012 1010	10-01-2012 1917
OKL	HLD REMOVE	HOLDOVER REMOVED	10-01-2012 0910	10-01-2012 0910
OKL	A-BOP HLD	HOLDOVER FOR INST TO INST TRF	09-27-2012 1800	10-01-2012 0910
A02	RELEASE	RELEASED FROM IN-TRANSIT FACIL	09-27-2012 1900	09-27-2012 1900
A02	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	09-27-2012 1437	09-27-2012 1900
FLP	TRANSFER	TRANSFER	09-27-2012 1237	09-27-2012 1237
FLP	A-DES	DESIGNATED, AT ASSIGNED FACIL	06-27-2011 1016	09-27-2012 1237
5-Z	RELEASE	RELEASED FROM IN-TRANSIT FACIL	06-27-2011 1216	06-27-2011 1216
5-Z	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	06-27-2011 1136	06-27-2011 1216
FLM	TRANSFER	TRANSFER	06-27-2011 0936	06-27-2011 0936
FLM	A-DES	DESIGNATED, AT ASSIGNED FACIL	04-06-2007 1441	06-27-2011 0936

G0002 MORE PAGES TO FOLLOW . . .

NERAI 531.01 * INMATE HISTORY * 07-26-2019
 PAGE 002 OF 002 * ADM-REL * 08:29:31

REG NO.: 26188-050 NAME.: CURRY, HAKEEM
 CATEGORY: ARS FUNCTION: PRT FORMAT:

FCL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
A02	RELEASE	RELEASED FROM IN-TRANSIT FACL	04-06-2007 1641	04-06-2007 1641
A02	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	04-06-2007 1215	04-06-2007 1641
OKL	HLD REMOVE	HOLDOVER REMOVED	04-06-2007 1115	04-06-2007 1115
OKL	A-HLD	HOLDOVER, TEMPORARILY HOUSED	03-30-2007 1735	04-06-2007 1115
9-L	RELEASE	RELEASED FROM IN-TRANSIT FACL	03-30-2007 1835	03-30-2007 1835
9-L	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	02-27-2007 0917	03-30-2007 1835
DSC	ADMIN REL	ADMINISTRATIVE RELEASE	02-27-2007 0817	02-27-2007 0817
DSC	A-ADMIN	ADMINISTRATIVE ADMISSION	02-27-2007 0812	02-27-2007 0817
9-L	RELEASE	RELEASED FROM IN-TRANSIT FACL	02-27-2007 0912	02-27-2007 0912
9-L	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	02-27-2007 0905	02-27-2007 0912
DSC	ADMIN REL	ADMINISTRATIVE RELEASE	02-27-2007 0805	02-27-2007 0805
DSC	A-ADMIN	ADMINISTRATIVE ADMISSION	02-27-2007 0755	02-27-2007 0805
9-L	RELEASE	RELEASED FROM IN-TRANSIT FACL	02-27-2007 0855	02-27-2007 0855
9-L	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	02-27-2007 0853	02-27-2007 0855
NER	ADMIN REL	ADMINISTRATIVE RELEASE	02-27-2007 0853	02-27-2007 0853
NER	A-UNCOMMIT	UNCOMMITTED PERSON	04-09-2004 0823	02-27-2007 0853

G0000 TRANSACTION SUCCESSFULLY COMPLETED

NERAI 531.01 * INMATE HISTORY * 07-26-2019
 PAGE 001 * ADM-REL * 08:30:44

REG NO.: 42112-037 NAME.: BASKERVILLE, RAKEEM
 CATEGORY: ARS FUNCTION: PRT FORMAT:

FCL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
BEN	A-DES	DESIGNATED, AT ASSIGNED FACIL	04-29-2019 1205	CURRENT
BEN	LOCAL HOSP	ESC TRIP TO LOCAL HOSP W/RETN	04-29-2019 0851	04-29-2019 1205
BEN	A-DES	DESIGNATED, AT ASSIGNED FACIL	08-24-2017 0930	04-29-2019 0851
B03	RELEASE	RELEASED FROM IN-TRANSIT FACL	08-24-2017 0930	08-24-2017 0930
B03	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	08-24-2017 0345	08-24-2017 0930
ATL	HLD REMOVE	HOLDOVER REMOVED	08-24-2017 0345	08-24-2017 0345
ATL	A-BOP HLD	HOLDOVER FOR INST TO INST TRF	08-14-2017 1224	08-24-2017 0345
A01	RELEASE	RELEASED FROM IN-TRANSIT FACL	08-14-2017 1224	08-14-2017 1224
A01	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	08-14-2017 1206	08-14-2017 1224
ATL	ADMIN REL	ADMINISTRATIVE RELEASE	08-14-2017 1206	08-14-2017 1206
ATL	A-ADMIN	ADMINISTRATIVE ADMISSION	08-14-2017 1104	08-14-2017 1206
A01	RELEASE	RELEASED FROM IN-TRANSIT FACL	08-14-2017 1104	08-14-2017 1104
A01	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	08-14-2017 0830	08-14-2017 1104
OKL	HLD REMOVE	HOLDOVER REMOVED	08-14-2017 0730	08-14-2017 0730
OKL	A-BOP HLD	HOLDOVER FOR INST TO INST TRF	08-08-2017 1335	08-14-2017 0730
7-V	RELEASE	RELEASED FROM IN-TRANSIT FACL	08-08-2017 1435	08-08-2017 1435
7-V	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	08-08-2017 0542	08-08-2017 1435
YAP	TRANSFER	TRANSFER	08-08-2017 0442	08-08-2017 0442
YAP	A-DES	DESIGNATED, AT ASSIGNED FACIL	10-27-2015 1426	08-08-2017 0442
B18	RELEASE	RELEASED FROM IN-TRANSIT FACL	10-27-2015 1526	10-27-2015 1526
B18	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	10-27-2015 0520	10-27-2015 1526
OKL	HLD REMOVE	HOLDOVER REMOVED	10-27-2015 0420	10-27-2015 0420
OKL	A-BOP HLD	HOLDOVER FOR INST TO INST TRF	10-01-2015 1730	10-27-2015 0420
A02	RELEASE	RELEASED FROM IN-TRANSIT FACL	10-01-2015 1830	10-01-2015 1830
A02	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	10-01-2015 1223	10-01-2015 1830
VIP	TRANSFER	TRANSFER	10-01-2015 0923	10-01-2015 0923
VIP	A-DES	DESIGNATED, AT ASSIGNED FACIL	01-10-2013 1536	10-01-2015 0923
5-X	RELEASE	RELEASED FROM IN-TRANSIT FACL	01-10-2013 1836	01-10-2013 1836
5-X	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	01-10-2013 0915	01-10-2013 1836
FLP	TRANSFER	TRANSFER	01-10-2013 0715	01-10-2013 0715
FLP	A-DES	DESIGNATED, AT ASSIGNED FACIL	05-10-2012 1357	01-10-2013 0715
A02	RELEASE	RELEASED FROM IN-TRANSIT FACL	05-10-2012 1557	05-10-2012 1557
A02	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	05-10-2012 1115	05-10-2012 1557
OKL	HLD REMOVE	HOLDOVER REMOVED	05-10-2012 1015	05-10-2012 1015
OKL	A-BOP HLD	HOLDOVER FOR INST TO INST TRF	05-07-2012 1825	05-10-2012 1015
A01	RELEASE	RELEASED FROM IN-TRANSIT FACL	05-07-2012 1925	05-07-2012 1925
A01	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	05-07-2012 0904	05-07-2012 1925
LEW	TRANSFER	TRANSFER	05-07-2012 0904	05-07-2012 0904
LEW	A-DES	DESIGNATED, AT ASSIGNED FACIL	06-16-2011 1246	05-07-2012 0904
8-C	RELEASE	RELEASED FROM IN-TRANSIT FACL	06-16-2011 1246	06-16-2011 1246
8-C	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	06-16-2011 1030	06-16-2011 1246

G0002 MORE PAGES TO FOLLOW . . .

NERAL 531.01 * INMATE HISTORY * 07-26-2019
 PAGE 002 OF 002 * ADM-REL * 08:30:44

REG NO.: 42112-037 NAME: BASKERVILLE, RAKEEM
 CATEGORY: ARS FUNCTION: PRT FORMAT:

FCL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
CAA	TRANSFER	TRANSFER	06-16-2011 1030	06-16-2011 1030
CAA	A-DES	DESIGNATED, AT ASSIGNED FACIL	09-09-2008 1245	06-16-2011 1030
7-N	RELEASE	RELEASED FROM IN-TRANSIT FACL	09-09-2008 1245	09-09-2008 1245
7-N	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	09-09-2008 0130	09-09-2008 1245
BSY	TRANS SEG	TRANSFER-SEGREGATION	09-09-2008 0130	09-09-2008 0133
BSY	A-DES	DESIGNATED, AT ASSIGNED FACIL	03-21-2007 1503	09-09-2008 0130
B02	RELEASE	RELEASED FROM IN-TRANSIT FACL	03-21-2007 1503	03-21-2007 1503
B02	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	03-21-2007 0608	03-21-2007 1503
ATL	HLD REMOVE	HOLDOVER REMOVED	03-21-2007 0608	03-21-2007 0608
ATL	A-HLD	HOLDOVER, TEMPORARILY HOUSED	03-07-2007 1805	03-21-2007 0608
9-L	RELEASE	RELEASED FROM IN-TRANSIT FACL	03-07-2007 1805	03-07-2007 1805
9-L	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	02-26-2007 1251	03-07-2007 1805
DSC	ADMIN REL	ADMINISTRATIVE RELEASE	02-26-2007 1151	02-26-2007 1151
DSC	A-ADMIN	ADMINISTRATIVE ADMISSION	02-26-2007 1039	02-26-2007 1151
ATL	PRE REMOVE	PRE SENT DETAINEE REMOVED	11-09-2005 0710	02-26-2007 1039
ATL	A-PRE	PRE-SENT ADMIT, ADULT	11-07-2005 1823	11-09-2005 0710

G0000 TRANSACTION SUCCESSFULLY COMPLETED



U.S. Department of Justice

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January 29, 2013

BY ECF & E-MAIL

Hon. Dennis M. Cavanaugh, U.S.D.J.
U.S. District Court, District of New Jersey
Post Office Building & Federal Courthouse, Room 451
Newark, New Jersey 07101-0999

Re: United States v. Bergrin, Crim. No. 09-369 (DMC)

Dear Judge Cavanaugh:

In an effort to avoid disrupting the trial to resolve evidentiary objections, we write to address an issue that is likely to arise during the trial testimony of FBI Special Agent Shawn Brokos, the lead agent on the Bergrin matter. As set forth below, information learned from others, when offered to explain what investigative steps Agent Brokos took, would not violate the hearsay prohibition. But even if it would, Bergrin's frontal assault on the integrity of Agent Brokos' investigation has rendered numerous out-of-court statements specially relevant for a non-hearsay purpose.

I. Rule 802 Does Not Exclude Out Of Court Statements Offered To Explain Why The Witness Took Specific Actions.

Federal Rule of Evidence 802 provides that "[h]earsay is not admissible unless any of the following provides otherwise." Fed. R. Evid. 802. If a statement does not qualify as hearsay, Rule 802 cannot bar its admission. Rule 801 defines hearsay as statement that "(1) the declarant does not make at while testifying at the current trial, and (2) a party offers in evidence *to prove the truth of the matter asserted in the statement.*" Fed. R. Evid. 801(c) (emphasis added).

As the emphasized language shows, "[n]ot every extrajudicial statement constitutes hearsay." United States v. Saad, 212 F.3d 210, 218 (3d Cir. 2000). "The hearsay rule does not prevent a witness from testifying as to what he has heard; it is rather

a restriction on the proof of fact through extrajudicial statements.” Dutton v. Evans, 400 U.S. 74, 87 (1970). Accordingly, “[i]f the significance of an offered statement lies solely in the fact that it was made, no issue is raised as to the truth of anything asserted, and the statement is not hearsay.” Fed. R. Evid. 801(c), Advisory Committee Note.

Courts have routinely allowed a party to elicit a statement by an out-of-court declarant where the statement was being offered to show its effect on the testifying witness. See United States v. Bailey, 270 F.3d 83, 87 (1st Cir. 2001) (noting a statement “offered to show the effect of the words spoken on the listener (*e.g.*, to supply a motive for the listener’s action)” is not hearsay) (citation omitted); Robinzine, 80 F.3d at 252 (“the significance of the words was that they were said (*i.e.*, that a ‘verbal act’ occurred) and how they affected McCoy, not the truth-value of what was said.); United States v. Castro-Lara, 970 F.2d 976, 981 (1st Cir. 1992); see also 4 Stephen A. Saltzburg *et al.*, Federal Rules of Evidence Manual § 801.02[1][f] (9th ed. 2006) (“If a statement is offered for its effect on the listener, in order to explain the listener’s conduct, it does not matter whether the declarant is telling the truth.”).

The Third Circuit has endorsed this construction of Rule 801(c). See United States v. Price, 458 F.3d 202, 205 (3d Cir. 2006) (holding that police officers are permitted “to explain the background context for their arrival at a scene” and that such background statements are admissible nonhearsay “[w]hen the explanation cannot be effected without relating some contents of the information received”); accord United States v. LaBoy, No. 11-4506, 2012 WL 5937448, at *2 (3d Cir. Nov. 28, 2012) (not precedential) (where “LaBoy objected at trial to testimony given by Detective Fey on direct examination as to what he heard transmitted through a listening device placed on a confidential informant regarding a suspected drug transaction,” the “District Court correctly ruled that the testimony was admissible as background testimony showing Detective Fey’s motivation for his subsequent course of conduct”).

Here, Agent Brokos took a number of investigative steps based on information she learned from various sources. The Government respectfully submits that Agent Brokos should be permitted to disclose what she learned to explain why she took certain actions.

II. Bergrin Opened the Door To Testimony By Agent Brokos Regarding The Information Available To Her.

Even putting to one side the decisional law described in Part I above, Bergrin’s trial conduct has made various out-of-court statements specially relevant for a non-hearsay purpose. To explain why, we briefly recite some relevant procedural history.

Prior to trial, we asked this Court preclude Bergrin from testifying in his opening statement and to warn him that doing so could open the door to otherwise inadmissible

testimony. See Dkt. No. 381 at pp. 43-51 (referring to page numbers in the legend at the top of the filed pleading). This Court ruled (albeit in the context of references to Bergrin's military service) that "if Bergrin chooses to open on such information, it would be done knowing that there may be evidential issues later," and that "I'll allow it, but with the warning that he could open up doors for other problems." 9/12/2012 Tr. at 49. Thus, this Court recognized that Bergrin's opening statement could qualify as a door-opening event.

During his opening statement, Bergrin directly attacked the integrity of the Government's investigation. He argued that "[t]his case started with a very aggressive FBI agent" who needed to make someone pay for the FBI's negligence in failing to protect informant Kemo McCray. 1/22/13 Tr. at 168 ("And Kemo was [killed] -- they failed to protect him. And now somebody has to pay the costs for their negligence.").¹ Bergrin also claimed that Anthony Young, who walked in off the street and eventually confessed to having murdered McCray, allegedly read an article about Bergrin's supposed efforts to subpoena President Bush, Vice-President Cheney, Secretary of Defense Donald Rumsfeld, and used Bergrin's name to get in the door of the FBI. 1/22/13 Tr. at 112-13. Bergrin thus argued that Young falsely confessed to the Kemo Murder and that the Government nonetheless allowed him to cooperate in its zeal to convict Bergrin.

With Bergrin having clearly attacked the motives of the FBI and the Government in investigating and prosecuting him, the Government now has a right to rebut that attack by (among other things) eliciting the information Agent Brokos acquired as her investigation progressed. That information will be elicited *not* for its truth, but merely for the fact that the information existed. Several cases support the Government's position.

First, opening statement assertions can open the door to otherwise inadmissible evidence. See United States v. Milan, 304 F.3d 273, 290 & n.22 (3d Cir. 2002) ("The defense opened the door by intimating during opening statements that the government was willing to engage in improprieties-had made 'a pact with devils,' in order to convict Milan."); see also United States v. Green, 617 F.3d 233, 250 (3d Cir. 2010) (defendant's opening-statement attack on cooperating witness's motive for testifying opened door to otherwise inadmissible "other acts" testimony). See generally United States v. Chavez, 229 F.3d 946, 952 (10th Cir. 2000) ("a party who raises a subject in an opening statement 'opens the door' to admission of evidence on that same subject by the opposing party").

Second, out-of-court assertions admitted to rebut the suggestion that the lead agent intentionally or negligently conducted a flawed investigation do not fall within Rule 801(c)'s definition of hearsay. See United States v. Christie, 624 F.3d 558, 568 (3d Cir.

¹ Accord 11/15/11 Tr. at 89 (Bergrin summation) ("Because she lost her informant and she's responsible for handling him. And somebody has got to be made the scapegoat and somebody has to pay for this.").

2010) (“MacFarlane’s testimony is not hearsay because it was offered for the purpose of rebutting Christie’s charge of misguided law enforcement efforts and not offered for the truth of whatever the other investigative targets may have said. . . . Having put both MacFarlane’s and Lochmiller’s credibility at issue, the defense invited MacFarlane to say why he viewed the investigation as resting on reliable information.”) (citing Milan, 304 F.3d at 290 & n. 22); id. at 569 (“the testimony can be seen as relevant to a proper, non-hearsay purpose because it illustrated the reliability of the investigation, a fact of considerable consequence since challenging the nature of the investigation was at the crux of Christie’s defense.”); accord United States v. Malik, 345 F.3d 999, 1001 (8th Cir. 2003) (statement not hearsay where used to show propriety of investigation); United States v. Khalil, 279 F.3d 358, 363-64 (6th Cir. 2002) (defendant opened door to testimony about why Government “proceeded with the investigation in the manner that it did”); United States v. Hunt, 749 F.2d 1078, 1084 (4th Cir. 1984) (when faced with criticism about the propriety and conduct of its investigation, the Government may “introduce rebuttal evidence, even though it would amount to hearsay if it were intended to prove the truth of matters asserted, for the limited purpose of demonstrating that the investigation was reasonable and free of improper motive”).

Here, Bergrin claims that the Government in general (and Agent Brokos in particular) conducted a flawed investigation. As the foregoing cases show, the Government may rebut that assertion by eliciting the information that was made known to Agent Brokos. As Judge Jordan explained in Christie, such out-of-court statements “can be seen as relevant to a proper, non-hearsay purpose because [they] illustrate[] the reliability of the investigation, a fact of considerable consequence since challenging the nature of the investigation [is] at the crux of [Bergrin’s] defense.” Christie, 624 F.3d at 569. In other words, the Government may offer out-of-court statements made known to Agent Brokos “for the limited purpose of demonstrating that the investigation was reasonable and free of improper motive.” Hunt, 749 F.2d at 1084.

We thank Your Honor for his continued indulgence.

Respectfully submitted,

PAUL J. FISHMAN
United States Attorney

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Assistant U.S. Attorney

cc: Lawrence S. Lustberg, Esq.
Bruce A. Levy, Esq.
Amanda B. Protess, Esq.
(all by ECF and e-mail)

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW JERSEY

3
4 UNITED STATES OF AMERICA : Criminal No.
5 v. : 09-cr-369-DMC
6 PAUL W. BERGRIN, : TRANSCRIPT OF
7 Defendant. : TRIAL PROCEEDINGS
-----x : VOLUME 7

8
9 Newark, New Jersey
10 January 30, 2013
11
12

13 BEFORE:

14 THE HON. DENNIS M. CAVANAUGH, U.S.D.J.,
15 AND A JURY
16
17
18

19 Reported by:
20 CHARLES P. McGUIRE, C.C.R.
Official Court Reporter
21

22 Pursuant to Section 753, Title 28, United States
23 Code, the following transcript is certified to be
the above entitled proceedings.
24

25 s/CHARLES P. McGUIRE, C.C.R.

1 Please, let's be careful.

2 I also want to place into the record my ruling on
3 the application by the Government this morning.

4 Are you finished?

5 MR. MINISH: I was.

6 And the other thing, Judge, is that when he --
7 Mr. Bergrin's responding to the witnesses is improper:
8 I agree a hundred percent is one of the things he said with
9 Mr. Davis. And it went on again and again, and we'd ask
10 that that also stop.

11 THE COURT: I would ask that that also stop. I
12 think Mr. Bergrin was confronting a somewhat difficult
13 witness to deal with, and I think he was trying to settle
14 him down, and that's it.

15 But there should be no gratuitous comments like
16 that made when the witness is on the stand.

17 MR. BERGRIN: Yes, sir, I understand.

18 MR. MINISH: And, Your Honor, I don't know about
19 -- your application; you're talking about the hearsay for
20 this witness?

21 THE COURT: Yes.

22 MR. MINISH: Because I did have a comment, but
23 I'll reserve for now.

24 THE COURT: All right. I'm going to rule on this
25 right now.

1 This matter comes before the Court upon a written
2 request by the Government, dated today, urging the Court to
3 address an issue likely to arise during the trial testimony
4 of Agent Brokos. During the previous trial, Mr. Bergrin
5 elicited testimony during his cross-examination of Agent
6 Brokos which he reiterated in his summation, where he
7 asserted or cast doubt on the integrity of the F.B.I.'s
8 investigation into the murder of Kemo McCray.

9 The Government anticipates that Mr. Bergrin will
10 again employ that case theory and asks that Agent Brokos be
11 permitted to testify as to tips and information that she
12 received that support the validity of her investigation.
13 Mr. Bergrin has expressed his concern that if the Court were
14 to allow the Government to elicit such testimony from the
15 agent during direct, it would amount to carte blanche for
16 hearsay statements. The Court will allow the Government to
17 elicit testimony from Agent Brokos that provides content in
18 the background of her investigation, the validity of which
19 Mr. Bergrin has already called into question. However, a
20 limiting instruction will be given to the jury that the
21 testimony given by Agent Brokos about the reports and
22 information she received from her sources are not to be
23 considered for the purpose of determining whether those
24 reports are true.

25 Federal Rule of Evidence 801 defines hearsay as a

1 statement that "(1) the declarant does not make while
2 testifying at the current trial, and, (2), a party offers in
3 evidence to prove the truth of the matter asserted in the
4 statement." That's 801(c). However, "[n]ot every
5 extrajudicial statement constitutes hearsay. Rather, "[i]f
6 the significance of an offered statement lies solely in the
7 fact that it was made, no issue is raised as to the truth of
8 the matter asserted, and the statement is not hearsay."
9 These "verbal acts" give rise to legal consequences
10 independent of their assertive quality. U.S. v. Saada,
11 212 F.3d 210 (3d Cir. 2000). Out of court statements
12 offered not for their truth but "offered only for context"
13 do not constitute hearsay. United States v. Bailey,
14 277 F.3d 83 (1st Cir. 2001). For example, an out-of-court
15 statement "might be offered to show that the declarant had
16 certain information, or entertained a specific belief...or
17 it might be offered to show the effect of the words spoken
18 on the listener (e.g., to supply a motive for the listener's
19 action)." See 5 Weinstein's Federal Evidence section
20 801.303(4) at 801-14.1 to 801-15 (2d edition 1999).

21 3rd Circuit precedent supports the Government's
22 assertion that it should be able to elicit testimony from
23 Agent Brokos regarding information she received that spurred
24 her investigation. The 3rd Circuit makes clear that
25 information obtained by law enforcement is permissible if it

1 is offered to show legitimate background context of the
2 investigation tactics. U.S. v. Price, 458 F.3d 202, 237
3 (3d Cir. 2006) (finding officer testimony necessary for an
4 adequate explanation of the officer's action terminating a
5 surveillance operation). When an explanation cannot be
6 effected without relating some contents of the information
7 received, admission of such details is not prohibited. The
8 3rd Circuit found testimony of a lead F.B.I. agent as
9 "relevant to a proper, non-hearsay purpose because it
10 illustrated the reliability of the investigation, a fact of
11 considerable consequence since challenging the nature of the
12 investigation was the crux of the defendant's defense."
13 U.S. v. Christie, 624 F.3d 558 (3rd Circuit 2010).
14 ("[lead F.B.I. agent's] testimony is not hearsay because it
15 was offered for the purpose of rebutting [defendant's]
16 charge of misguided law enforcement efforts and not offered
17 for the truth of whatever the other investigative targets
18 may have said...having put [the F.B.I. agent's] credibility
19 at issue, the defense invited [F.B.I. agent] to say why he
20 viewed the investigation as resting on reliable
21 information.") Here, we are presented with a scenario in
22 which disclosures and information that Agent Brokos received
23 are necessary for an adequate explanation of the initiation
24 of an investigation against Mr. Bergrin.

25 Furthermore, Mr. Bergrin was previously warned by

1 this Court that if he chose to bring up information during
2 his opening, specifically regarding his military service, he
3 would be exposing himself to opposing evidence presented by
4 the Government. Opening statements may open the door to
5 otherwise inadmissible evidence. See U.S. v. Milan,
6 304 F.3d 273, 290 (3d Cir. 2002). In that case, the
7 Defendant opened the door to testimony concerning judicial
8 approval of wiretaps obtained during investigation by
9 suggesting "the government was willing to engage in
10 improprieties...in order to convict [defendant]";
11 United States v. Green, 617 F.3d 233, 250 (3d Cir. 2010)
12 (finding that defendant's attacks on witness's motive during
13 opening statement opened the door for otherwise inadmissible
14 testimony of "other crimes." In his opening statement,
15 Mr. Bergrin directly called into question the integrity of
16 the Government's investigation, asserting it again with a
17 "very aggressive F.B.I. agent" -- I quote -- who wanted to
18 make up for the F.B.I.'s failure to protect informant
19 Kemo McCray. Mr. Bergrin also asserted that Anthony Young
20 used Mr. Bergrin's name to get the F.B.I.'s attention after
21 reading an article about Mr. Bergrin's efforts to subpoena
22 top officials in the Bush administration. Here, as
23 Mr. Bergrin claims that the Government in general and
24 Agent Brokos in particular conducted a flawed investigation,
25 the Government should be permitted, with limiting

1 instructions, to rebut that assertion by eliciting testimony
2 as to why Agent Brokos believed the investigation to be
3 valid. The Government is permitted to offer out-of-court
4 statements "for the limited purpose of demonstrating the
5 investigation was reasonable and free of improper motive."
6 See United States v. Hunt, 749 F.2d 1078, 1084 (4th Cir.
7 1984).

8 The Court will allow the Government to elicit
9 testimony from Agent Brokos that sheds light on the
10 background content of the investigation, the validity of
11 which Mr. Bergrin has already called into question.
12 However, such testimony will be allowed only with a limiting
13 instruction to the jury that the testimony given by
14 Agent Brokos about the content of the reports and
15 information she received from her sources is not to be
16 considered for the purposes of determining whether those
17 reports are true.

18 I will leave it to you, counsel, to put together
19 an appropriate limiting instruction.

20 We'll see you after lunch.

21 MR. LEVY: Your Honor, if I may, one additional
22 thing.

23 The objection that Mr. Bergrin made in reference
24 to the Grape Street Crips, that was something that came up
25 in the prior trial before Judge Martini, and Judge Martini

1 sustained the objection in regard to the reference to the
2 Crips and asked the Government to use the term "gangs"
3 instead.

4 THE COURT: Well, but Mr. Minish made it clear
5 that he wasn't suggesting that there was any relation, he
6 just used the word. I'll leave it as it is.

7 MR. LEVY: Judge, could we at least get a limiting
8 instruction that Mr. Bergrin is not accused of being a
9 member of the Crips?

10 THE COURT: I'll be happy to do that. I don't
11 think anybody is suggesting that. Of course.

12 MR. LEVY: We'll discuss it, Your Honor. Thank
13 you.

14 (Luncheon recess taken)

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

v.

PAUL BERGRIN

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:
:
:
:

Crim. No. 09-369 (JLL)

**OPPOSITION TO DEFENDANT’S RULE 33 MOTION FOR A NEW TRIAL
ON THE BASIS OF SUPPOSEDLY “NEWLY DISCOVERED” EVIDENCE**

WILLIAM E. FITZPATRICK
ACTING UNITED STATES ATTORNEY

Mark E. Coyne
Assistant U.S. Attorney
Chief, Appeals Division

John Gay
Assistant U.S. Attorney
Deputy Chief, Criminal Division

- Young testified that when he shot Kemo, Kemo fell forward face-first and Young continued to fire shots into Kemo as Kemo fell forward. A3372-74. Crime scene evidence showed that two bullet fragments were found on the street under Kemo's body amongst the coagulated blood and brain matter. A2275-76, A2294-95, A2296.
- Young testified that he shot Kemo as Kemo was crossing the street two or three steps off the curb of the north west corner of South Orange Avenue and 19th Street and that Kemo was heading from 20th street to 19th street (east bound) when Young shot him. A3369-73. The crime scene sketch showed Kemo's body was in the cross walk area of 19th street off of the north west corner of South Orange Avenue and 19th Street, and that his head was facing east. A2300-02; SA1880.
- Young testified that Kemo was smoking a cigarette and wearing a dust mask and a bandana when Young shot him. A3367. Evidence gathered at the crime scene showed that Kemo had a cigarette in his hand, A2274; SA1905-06, and a bandana on his head, and that a dust mask was in close proximity to the body, A2284, A2290.

In sum, the evidence of Bergrin's guilt on the Kemo murder counts was strong, and Bergrin's defense was both illogical and contrary to the established evidence. The alleged "newly discovered evidence" provides no grounds for relief. As set forth below, the Relevant Curry Calls actually strengthen the Government's case. Further, Bergrin sets forth no basis to conclude that witnesses who previously refused to testify on his behalf have changed their minds, and their supposed testimony would have been unpersuasive in any event. And as already shown, Hassan Miller's and Charles Madison's statements are demonstrably false and therefore would have had no impact on the verdict.

2. The Curry Calls.

During its investigation of Hakeem Curry and his organization, the Government wiretapped various phones used by Curry and his drug coconspirators. Unfortunately, the Government mistakenly delayed sealing some of the recordings of those wiretaps. Although the recordings from these cellphones contained inculpatory evidence against Curry and his coconspirators, including Bergrin, the Government decided to self-suppress the recordings

rather than litigate the sealing issue — first in its prosecution of Hakeem Curry *et. al.*; then in its prosecution of William Baskerville; and finally in its prosecution of Paul Bergrin.²⁴

That inculpatory but self-suppressed evidence included two calls between Bergrin and Curry on November 25, 2003, the date of William Baskerville’s arrest. During a call that occurred at approximately 2:26 p.m. (the “First Call”), Bergrin, among other things, recited the facts from Baskerville’s criminal complaint and told Curry he was going to go to federal court at 3:30 p.m. that day to represent Baskerville at his initial appearance.

SA2228–30. During a call that occurred at approximately 4:01 p.m., after Baskerville’s initial appearance in Federal Court (the “Second Call”), Bergrin told Curry that he had met with Baskerville, who said “the informant is a guy by the name of Kamo.” SA2231–33. Although the Government did not introduce either of these recordings at trial, Young testified that he was present with Curry when the calls occurred and described the substance of those calls. (Young gave that testimony in both *Bergrin* trials and in the *Baskerville* trial.)

The Government provided all of the wiretapped calls, including the self-suppressed ones (collectively, the “Curry Calls”), to Bergrin as part of its Rule 16 discovery on June 15, 2009 — nearly 3½ years prior to Trial Two. And years earlier, the Government provided Bergrin draft transcripts of his two November 25, 2003 calls with Curry in connection with the Government’s ultimately successful motion to disqualify Bergrin from representing William Baskerville. *United States v. Baskerville*, 03cr836 (JAP) at ECF Nos. 22. 30 & 32. Bergrin now claims that a subset of the Curry Calls impeaches Young’s testimony: calls intercepted on during November 25–26, 2003 and on December 4, 2003; and a call allegedly intercepted on February 20, 2004. In fact, those calls corroborate Young in every material respect.

²⁴ To use intercepted calls at trial, the Government must demonstrate the recordings were timely sealed or provide “a satisfactory explanation for the absence” of such a seal. 18 U.S.C. § 2518(8)(a). The Government was concerned that its reason for delayed sealing would not constitute a “satisfactory explanation” under the statute and thus decided to self-suppress in the *Curry*, *Baskerville* and *Bergrin* trials.

As detailed below, the Relevant Curry Calls contain powerful evidence of Bergrin's involvement in the Kemo murder. If not for the potential sealing issue, the Government would have introduced those calls in its case-in-chief against Bergrin. While Bergrin's argument in support of this motion completely omits the inculpatory calls, he would not have been able to do so before the Jury. Had Bergrin actually used the recordings he now claims so powerfully impeach Young, the Government would have been able to introduce the recordings that unequivocally support Young's testimony and provide independent proof of Bergrin's guilt. By contrast, the facts that Bergrin's recordings could potentially place in dispute are either collateral, or completely irrelevant to proof of his guilt. Even giving Bergrin the benefit of all doubt, the Curry Calls would have strengthened, not weakened, the Government's case.

Bergrin raised a similar claim when litigating a post-trial motion under Rules 29 and 33 before Judge Cavanaugh. There, Bergrin claimed that some of the Relevant Curry Calls (including ones occurring on November 25 and 26, 2003 and December 4, 2003), proved that the Government sponsored false testimony by Young. DE 564 at 5–7. In denying the motion, Judge Cavanaugh rejected Bergrin's claim:

The Government asserts that, were the content of the aforementioned calls as exculpatory as Bergrin claimed, he would have sought to use them at trial (Gov't July 10 Letter at 2). The Court finds merit in this assertion and is not persuaded by Bergrin's countervailing argument that he opted not to use the recordings during trial because he "was intimidated by the Government attempting to deceive the jury as they did anyway." (Def. Supp. Br. 5). The Court recognizes that, had Bergrin selected a sampling of the 33,000 intercepted calls, he would have exposed himself to admission of others. Bergrin may not now, post-trial, seek the benefits of suppressible calls that he claims may be exculpatory while avoiding the content of many others that may have promoted a countervailing viewpoint.

DE565 at 8, n.3. Bergrin thereafter filed a *pro se* Motion for Reconsideration, arguing, among other things, that in light of the intercepted calls a manifest injustice would result if his conviction were permitted to stand. DE569 at 1–3. Judge Cavanaugh rejected that claim, too. DE571 at 7.

Bergrin nonetheless claims that his “detailed analysis of the wiretap calls from” November 25, 2003 proves that Young testified falsely at trial about two things: (1) being “present for the two calls between Curry and Bergrin on November 25, 2003”; and (2) “a meeting ... at Jamal Baskerville’s house several days later in which Bergrin advised that William Baskerville was facing life in prison and that McCray’s testimony was critical to Baskerville’s release.” BB11.²⁵ But Bergrin ignores calls that conclusively disprove his assertion, intentionally misquotes calls (adding and omitting words to manufacture inconsistencies), claims that calls impeach Young, when in fact they support his testimony, and focuses on calls that at best show inconsistencies on collateral or irrelevant points.

Although Bergrin acknowledges that a critical part of Young’s testimony establishing Bergrin’s guilt was Young’s description of two telephone calls between Bergrin and Curry on the afternoon of William Baskerville’s November 25, 2003 arrest (BB6–7), his “detailed analysis” fails to even mention that those two calls were actually intercepted over the wiretap and that the recordings unequivocally corroborate Young’s testimony. Bergrin’s detailed analysis also omits other calls that indicate Curry went to 17th Street and Avon Avenue prior to the occurrence of those two calls, just as Young testified.

First, intercepted calls between 2:05 p.m. and 2:09 p.m. indicate that Curry went to 17th Street and Avon Avenue to meet with at least Rakim Baskerville regarding William Baskerville’s arrest:

²⁵ Bergrin also claims “Young lied about when and how Curry found out about Baskerville’s arrest.” BB11. But the transcript pages and calls he cites to back up that claim, BB12–13, establish only that Young might have been mistaken about when he went to Jamal Baskerville’s house on November 25th and when Curry arrived there: the morning, as Young testified at trial, or the afternoon, as the calls would suggest. That kind of minor discrepancy cannot justify a new trial. *E.g.*, *Napolitan*, 762 F.3d at 306 (“[T]his discrepancy was most likely due to Rubano’s faulty memory on a point that had little consequence to the trial.”); *United States v. Clark*, 454 F.2d 1056, 1058 (3d Cir. 1972) (“At worst, what we have here is incorrect testimony given erringly but not wilfully upon a matter not material to the guilt of the appellant.”). By the time he arrived at Jamal Baskerville’s house, Curry knew that William had been arrested, which is all that mattered.

- At approximately 2:05 p.m. Curry told drug coconspirator Maurice Lowe that he was going to call Rakim Baskerville to get information about William Baskerville's arrest. SA2221–22.²⁶
- At approximately 2:06 p.m. Curry agreed to get Rakim Baskerville on 17th Street and Avon Avenue. SA2223–24.
- At approximately 2:07 p.m., Curry told an unidentified woman that he had just left his store. SA2225–27.²⁷

Consistent with those calls, Young testified that he was on 17th Street and Avon Avenue, with several Baskervilles, A3261-62, that Curry arrived at that location, and that they discussed William Baskerville's arrest, A3266-67. To be sure, Young's recollection of the time Curry arrived was incorrect, but that error was inconsequential because the intercepted calls are consistent with Young's testimony that Curry arrived on 17th Street and Avon Avenue prior to the first call between Bergrin and Curry, which the wiretap shows occurred at 2:26 p.m. (the "First Call")

In the First Call, Bergrin called Curry and, among other things, recited to Curry some of the allegations in the complaint, including the dates and amounts of drugs for the various sales William Baskerville made to the confidential witness — exactly as Young testified. Young testified that it was Bergrin who called Curry, A3269 — exactly what the call data and recording shows. In addition, Young testified that Curry was listening to what Bergrin told him and repeating dates and gram weights out loud so that the others in the car could hear the information. A3270. In the recording, Bergrin recited the allegations and Curry repeated out loud some of the dates and amounts of drugs. SA2228–30. Young's

²⁶ In this call, Curry asked if Lowe knew "where they grabbed him at," an apparent reference to an arrest. Moreover, this is a follow-up to a call earlier that day, in which Lowe told Curry that Hamid Baskerville called him and said the "three letter boys [FBI] got Wally Cheeb" (William Baskerville's nickname) at his house. SA2217–20.

²⁷ Curry's store was located at 1723 Stuyvesant Avenue, Union, New Jersey. SA1534–35. According to Google Maps, the distance between Curry's Store and 17th Street and Avon Avenue in Newark, New Jersey is approximately 2.8 miles. Google Maps estimates the drive time to be between 10 and 13 minutes depending upon traffic. Thus, Curry would have arrived at 17th Street and Avon Avenue to meet Rakim Baskerville prior to the first call between Bergrin and Curry.

testimony that Curry informed them that Baskerville had not yet gone to court is also corroborated by the First Call as Bergrin told Curry that Baskerville's court appearance was at 3:30 that afternoon. *Id.* After Curry ended his conversation with Bergrin, but before he actually hung up the cellphone, Curry continued to speak, presumably to the other persons with whom Curry was then meeting, *id.*, further supporting Young's testimony that he and another were present with Curry during the First Call.

In the second call between Bergrin and Curry that day, at approximately 4:01 p.m. (the "Second Call"), Bergrin told Curry that the informant was "a guy named Kamo." Once again, the substance of the call, including that Bergrin inaccurately pronounced Kemo's name as "Kamo," is exactly as Young testified. Young also testified that when he heard Curry say the name "Kamo" during the call, he thought that they must have been talking about "Kemo" and that he told Curry that the person Curry and Bergrin had been discussing was named "Kemo," not "Kamo." Corroborating Young's account, minutes later, Curry correctly referred to the informant as "Kemo." SA2234–35. Thus, there are unique aspects of each of these calls that Young accurately described in his testimony which only a percipient witness to those calls would have known.

The calls Bergrin claims impeach Young do not in any material way. Indeed, Bergrin must manufacture conversations that did not occur in order to support his argument. Bergrin claims that a recorded call on November 25, 2003 between Curry and Rakim Baskerville proves Young lied about Rakim Baskerville being mad when he found out that it was Kemo who "set Will up" because Rakim Baskerville had introduced Kemo to William Baskerville. BB13. Bergrin offers what he purports to be a quote from the call in which Rakim Baskerville responded to Curry's question "who is Kemo," by saying, "I don't know him. I think he is from Irvington." BB13.²⁸ Presumably, Bergrin is claiming that the phrase

²⁸ Bergrin cites this as Call No. 3496671, supposedly occurring at 5:05 p.m. BB13. There was no intercepted call at 5:05 p.m. on November 25, 2003 and no call numbered 3496671.

“I don’t know him” demonstrates Rakim Baskerville did not know Kemo, and therefore could not have introduced him to William Baskerville.

But Rakim Baskerville never speaks the quoted words in the call. The actual quote is, “That’s a nigga from Irvington, I think” — which indicates that Rakim Baskerville *did* know Kemo. Moreover, even if Rakim Baskerville had uttered the words “I don’t know him,” the balance of Bergrin’s quote shows that Rakim Baskerville knew Kemo well enough to know that he was from Irvington.²⁹ Further, during that same call, Curry explained to Rakim Baskerville that the FBI had William Baskerville on “[t]ape recording and everything,” and Rakim Baskerville replied, “Word.” Rakim Baskerville then asked, “Kemo?” and Curry replied, “Yeah.” Rakim Baskerville then asked, “Oh so um how bout, bout, how bout me?” and Curry replied, “I don’t know. He [Bergrin] is going to see him [William Baskerville] now.” SA2234–35. Approximately six minutes later, Curry informed Rakim Baskerville that Bergrin was speaking to William Baskerville. SA2236–37. Rakim Baskerville told Curry to “tell Paul to ask him [William Baskerville] about me too, like what’s up with me?” *Id.* That Rakim Baskerville was concerned about his own liability stemming from William Baskerville’s interactions with Kemo corroborates Young’s testimony that Rakim Baskerville had introduced Kemo to William Baskerville so that William Baskerville could sell Kemo crack cocaine.

Thus the actual intercepted conversation not only corroborates Young on that issue, but also rebuts one of Bergrin’s trial defenses. At trial Bergrin claimed that his passing on the name of Kemo from William Baskerville to Curry was of no moment because Baskerville had communicated the same information directly to Rakim Baskerville before Bergrin communicated it to Curry. A9626. These calls demonstrate that Curry (immediately

Based upon the substance of what Bergrin claims was spoken during this call, Bergrin must be referring to call number 09352, which occurred one hour earlier that day.

²⁹ The balance of Bergrin’s quote is also inaccurate, but does not misrepresent the meaning of what was actually said on the recording.

after he received the information from Bergrin), not William Baskerville, first communicated the identity of the informant to Rakim Baskerville. Thus, these calls further support a critical part of Young's testimony — that it was Bergrin who revealed the name of the informant to the gang.

Bergrin appears to have manufactured another call out of whole cloth. According to Bergrin, "Curry stated in a call at 4:34 p.m. on February 20, 2004, just a couple of weeks before Kemo's murder, that he wanted Bergrin off Baskerville's case because 'Paul is about copping out. Taking money and pleading guilty.' Call No. 1203305." BB14–15. Despite its best efforts, the Government cannot find any such call. Although there was a call on February 20, 2004 at 4:34 p.m., that call has no discussion of Bergrin or William Baskerville's case and the quoted words Curry purportedly spoke are not contained in the call.³⁰ There is no intercepted call designated call number 1203305.³¹ Further, a search of calls intercepted on February 20, 2004 and surrounding dates revealed no recording in which Curry spoke the quoted words, discussed removing Bergrin from William Baskerville's case, or otherwise expressed displeasure with Bergrin's handling of that case.³²

³⁰ During that call, which lasted approximately 17 seconds: a woman told Curry she did not feel good, and Curry asked what was wrong; the woman told Curry she did not feel right, and Curry responded that he did not feel good; Curry then told the woman to pull up on him, and to pull up right here. SA2248–49.

³¹ The call reference number bears no resemblance to any actual designated call number. For example, the designated call numbers are all five digits, while this is seven digits. Bergrin cites many calls in his brief, and with one other exception, each properly cites the date, time and the five-digit designated call number. The only other exception is his reference to a call he similarly cites as a seven-digit number, 3496671. As described above, in that instance, Bergrin manufactured a quote that was never spoken on the actual call.

³² The only call with any similarity to what Bergrin describes is call number 00470, which occurred on February 20, 2004 at 3:31 p.m. But that call does not concern William Baskerville's case. Rather, during that call, Curry spoke to a male about the male's state criminal case. The male told Curry that the male and his lawyer (not identified in the call) discussed "copping out" to a sentence of a "three with a nine," a "four with a two," a "five with a three," or a "seven flat." The male told Curry that he did not want to do that. Curry and the male then discussed their belief that the lawyer was charging too much money. Even assuming the male's lawyer was Bergrin, they could not have been referring to

Assuming such a call actually existed, it would do little or nothing to establish Bergrin's assertion that he was not part of the Kemo murder conspiracy. Even if Curry had talked about replacing Bergrin during a call, he never replaced Bergrin. Bergrin remained on the case until at least January 3, 2005 (*United States v William Baskerville*, 03cr836 (JAP) at ECF No. 32) and reluctantly withdrew only after the Government filed a motion to disqualify him for a conflict of interest arising from his and his client's roles in the Kemo murder conspiracy. Using Bergrin's logic, his remaining on William Baskerville's case until approximately ten months after Kemo was murdered proves he was part of the conspiracy.

The remainder of the calls Bergrin cites simply do not support his claims. For example, Bergrin claims that intercepted calls (in which Curry, Curry coconspirators, and/or Bergrin speculate about what William Baskerville might face on a potential plea bargain they hoped Bergrin could negotiate) show that Young was lying when he said "Bergrin told them that Baskerville was facing life in prison for that little bit of cocaine," and that "the calls between Bergrin and Curry demonstrate absolutely no concern that Baskerville would face life imprisonment." BB14. But Baskerville — a Career Offender — was facing life in prison for that "little bit of cocaine" and the calls Bergrin references do not support his conclusions.³³ More importantly, Bergrin ignores the intercepted call in which,

William Baskerville's case because the sentences the male mentioned (three with a nine, etc.) obviously referred to New Jersey State criminal penalties, not federal criminal penalties. SA2244–47.

³³ While the Government can only speculate about why Bergrin might have suggested to Curry that he could obtain a favorable plea deal, this much is clear: (a) on November 25, 2003, Bergrin communicated his belief to Curry that William Baskerville was facing life imprisonment, SA2231–33; (b) on December 4, 2003, the Government told Bergrin in open court that Baskerville had been indicted on a charge for which he faced 360 months' to life imprisonment, SA1872; (c) on December 4, 2003, Bergrin acknowledged in open court that Baskerville was "facing extended period of incarceration," SA1875; (d) the Guidelines were mandatory at that time; (e) this Office, consistent with the Department's policy, rarely engaged in post-indictment charge bargaining; and (f) as a former federal prosecutor and experienced federal criminal defense practitioner in this District, Bergrin necessarily knew the mandatory nature of the Guidelines and this Office's reluctance to charge bargain. Given these facts, Bergrin could not have thought that Baskerville was facing anything other

having reviewed the criminal complaint, he told Curry, “He’s [William Baskerville is] facing life you know.” SA2231–33.

Bergrin’s claim that the December 4th call rendered any subsequent face-to-face meeting unnecessary, BB14, is disproven by the call itself. In that call, Bergrin told Curry, “I’ll speak to you tomorrow.” SA2243. Moreover, contrary to Bergrin’s claims, the other December 4th calls between Curry and Bergrin corroborate Young’s testimony. Bergrin’s statements that it was a “rough case,” or an “impossible case,” echo his statements to the group in the face-to-face meeting. As Young testified, Bergrin told the group that “they got audio and video of Will making these crack sales, that Will was facing life in prison.” A3282. Bergrin’s statements in the call about the strength of the case (and his tone) confirm that he believed they were in a desperate situation — further supporting Young’s testimony that Bergrin advised them to take what the average person would consider the drastic measure of killing the informant.

That Bergrin did not specifically talk about the informant when discussing the strength of the Government’s case during this December 4th call in no way shows that the conspirators were not focused on the informant. Bergrin had already communicated his concern about the informant in the First Call and Second Call to Curry, and there was no reason for Bergrin to reiterate his concern during the December 4th call.³⁴ Similarly, that Curry, a sophisticated drug dealer who told a cohort to change phones after learning of

than 360 months’ to life imprisonment on December 4, 2003 or at any time thereafter. Had Bergrin actually believed that he could obtain a 13-year plea deal, he would have pursued such a deal. But Bergrin never pursued (and the Government never offered) a post-indictment plea deal of any kind.

³⁴ Nothing had changed regarding Bergrin’s knowledge of the nature of the Government’s proofs between November 25, 2003 and December 4, 2003. At William Baskerville’s initial appearance on November 25, 2003, the Government informed him and Bergrin that the case against Baskerville was “extremely strong” and noted that there was significant corroboration, including recorded conversations, video tapes and law enforcement surveillance. SA1866, SA1868. There was no discussion whatsoever of recordings, or surveillance during the December 4, 2003 detention hearing.

William Baskerville's arrest, SA2238–39, did not openly discuss the plot to kill Kemo over the phone in no way disproves the existence of that plot.

Further, Bergrin focuses on wiretap interceptions that occurred on November 25, 2003 “[b]etween 1pm and 2pm” to show Curry's whereabouts, BB12–13, but as he is well aware, the relevant period for the intercepts is between 2:06 p.m. and 4:01 p.m., not between 1 p.m. and 2 p.m. or even earlier that day. Even if the calls Bergrin cites prove Curry was elsewhere between 1 p.m. and 2 p.m., the calls Bergrin omits show that: (a) Curry went to 17th Street and Avon Avenue (where Young testified he and the Baskervilles met with Curry that day) sometime shortly after 2:06 p.m.; (b) the First Call occurred exactly as Young testified; and (c) the Second Call occurred exactly as Young testified.

Finally, as he did during both trials, Bergrin argues that, given the strength of the evidence against William Baskerville, it would not have been reasonable for him to devise, advocate and help execute a strategy to kill the informant. But Bergrin pursued the same strategy for Esteves, against whom the Government had an equally strong (if not stronger) case independent of any cooperating witnesses, including wiretap recordings and Esteves's confession to law enforcement. In an effort to win Esteves's case, Bergrin described how he used discovery to identify cooperating witnesses; told the hitman (Cordova) to kill a witness; and directed the hitman to make the murder look like a home invasion robbery so that law enforcement would not connect it back to Esteves, Bergrin and the hitman. He also advocated the same strategy for Pozo, against whom the Government similarly had, among other things, consensually recorded conversations with the cooperating witness whom Bergrin had advocated killing.

Thus, had Bergrin used the Relevant Curry Calls, he still would have been found guilty. The calls Bergrin focuses on would have shown that Young was incorrect about an inconsequential point — the time Curry arrived at Avon Avenue on November 25, 2003. But the remainder of the calls would have corroborated important aspects of Young's

testimony and provide independent, unimpeachable evidence of Bergrin's guilt. In sum, the Curry Calls would have significantly helped the Government's case.

3. The other supposedly newly discovered evidence.

Although Bergrin makes much of Hakeem Curry's, Deidra Baskerville's and Rakim Baskerville's supposedly exculpatory and impeaching declarations, BB10–11 & n.7, he overlooks one significant detail. Those declarations were offered in support of William Baskerville's § 2255 motion more than a *year* before Bergrin filed his Rule 33 motion. Those declarations purport to say what those three “witnesses” would have said if called to testify at William Baskerville's trial. But Hakeem Curry, Deidra Baskerville and Rakim Baskerville have not provided similar affidavits to Bergrin, and there is no reason to believe that they would testify for him. To the contrary, according to appointed counsel — who represented Curry in his direct appeal — during Trial Two, Curry said he would “invoke his Fifth Amendment right against self-incrimination if called.” BB15. No wonder: Curry and Rakim Baskerville could still be prosecuted on capital charges for the Kemo murder.

But even if Curry and Rakeem and Deidra Baskerville all would testify for Bergrin, this case bears no resemblance to those where new trial have been granted. In *United States v. Martinez-Zayas*, for example, BB10, after interviewing the new witness “regarding the facts and circumstances surrounding the arrest and conviction of the defendant,” the prosecutors “agreed that” the new witness's “statements tend[ed] to exculpate” the defendant as to her more serious conviction, which carried a 10-year mandatory minimum. Crim. No. 86-500, 1988 WL 134667, at *1 (E.D. Pa. Dec. 13, 1988); see *United States v. Martinez-Zayas*, 857 F2d 122, 124 (3d Cir. 1988). Here, in contrast, the Government has never interviewed Curry and Rakeem and Deidra Baskerville, much less found them credible. Beyond that, the new witness's testimony in *Martinez-Zayas*, “while exculpatory of” the defendant, was “likely self-incriminating.” 1988 WL 134667, at *3. Here, in contrast, the certifications from Curry and Rakeem and Deidra Baskerville deny any role in the Kemo murder, making them quintessentially self-serving. And their “familial connection” with William Baskerville

PAUL W. BERGRIN,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 16-3040

(Crim. No. 09-369)

Hon. José L. Linares, Ch. U.S.D.J.

**MEMORANDUM OF LAW IN OPPOSITION TO
PAUL BERGRIN'S MOTION TO VACATE, SET ASIDE,
OR CORRECT HIS SENTENCE UNDER 28 U.S.C. § 2255**

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III. Ground Three Is Procedurally Defaulted And Utterly Meritless, Except For Two Specific Claims, Which Are Frivolous.

Ground Three complains that “[t]he government’s failure to delineate recordings” from the Hakeem Curry wiretap “proving ‘actual innocence’ violated” Bergrin’s rights under *Brady v. Maryland*, 373 U.S. 83 (1963). HDE3 at 9. That claim mirrors Point II.A.4 of Bergrin’s Rule 33(b)(1) motion. CDE630-1 at 11–17. It is procedurally defaulted and utterly meritless. Bergrin also claims the Government suppressed favorable information relayed to it by four cooperating witnesses. BB79–81. For two of the four witnesses, the claim is both procedurally defaulted and meritless because Bergrin had the allegedly suppressed information before trial and used some of it. For the other two, the claims are frivolous.

A. Bergrin Procedurally Defaulted His Claim Regarding The Curry Wiretap Calls. And He Cannot Show Actual Innocence Because None Of The Calls Was Suppressed And Because They Are Neither Favorable Nor Material To Guilt.

Bergrin claims that the Government suppressed the favorable content of nine or ten Curry wiretap recordings, all of which he received in discovery in June 2009. Bergrin further claims that the jury would have acquitted him on the Kemo murder counts had the Government singled out the supposedly favorable calls because they contradicted Anthony Young. BB59–89. Bergrin procedurally defaulted this claim by not raising it on direct appeal. And he cannot show suppression—much less actual innocence—because, as Judge Cavanaugh already concluded, Bergrin deliberately chose not to use the recordings at trial. Further, introducing the calls at trial would have changed nothing.

1. Factual Background.¹⁰

While investigating Curry and his drug-trafficking organization, the DEA wiretapped various cellphones used by Curry and two of his coconspirators. A2413. Unfortunately, the Government mistakenly delayed sealing some of the recordings from those wiretaps. *Id.* Although the recorded calls contained inculpatory evidence against Curry and his coconspirators, including Bergrin, the Government decided not to use the calls rather than litigate the sealing issue. *Id.* The Government did that in its separate prosecutions of Curry, William Baskerville, and Bergrin. *E.g. United States v. Baskerville*, 339 F. App'x 176, 178 (3d Cir. 2009) (the Government “stated that it would not use any of the Unused Calls for any purpose, and was ordered by the District Court not to use any of the Unused Calls” at trial).

The unused Curry calls included two calls between Bergrin and Curry on November 25, 2003, the date of William Baskerville’s arrest. During a call that occurred at approximately 2:26 p.m. (the “First Call”), Bergrin, among other things, recited the facts from Baskerville’s criminal complaint and told Curry he was going to go to federal court at 3:30 p.m. that day to represent Baskerville at his initial appearance. SA2228–30. During a call that occurred at approximately 4:01 p.m., after Baskerville’s initial appearance in Federal Court (the “Second Call”), Bergrin told Curry that he had met with Baskerville, who said “the informant is a guy by the name of Kamo,” SA2231–33, mispronouncing the name “Kemo”—the FBI informant who had purchased crack from Baskerville. The Government provided

¹⁰ The Government assumes this Court’s familiarity with the evidence supporting the Kemo murder counts, which is described at length in the Government’s Rule 33 Opposition. *See* CDE659 at 60–66.

Bergrin draft transcripts of these two calls when it successfully moved to disqualify Bergrin from representing William Baskerville. *United States v. Baskerville*, Crim. No. 03–836, ECF Nos. 22, 30, 32.

As Bergrin now admits, BB59, and as his standby counsel admitted in October 2011, A506, the Government produced all of the wiretapped calls, including the unused ones (collectively, the “Curry Calls”), as part of its Rule 16 discovery on June 15, 2009—nearly 3½ years prior to Trial Two, *see* SA2449–50 (item “i”). The Government produced the Curry Calls on compact disks in a well- organized format that provided easy access to the recordings through a series of icons that opened up successive windows containing data. Each call on a disk had its own icon, and those icons appeared in chronological order with an identified date, time and sequentially designated call number. Indeed, the December 4th calls Bergrin now claims he only discovered after Trial Two are grouped together consecutively and are readily discernible merely by opening the CD-ROM containing them:

862-205-9273 Sprint **2003-12-04** 00-47-25 10460 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 00-50-43 10461 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 00-50-59 10462 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 01-22-29 10463 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 01-25-19 10464 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 02-35-37 10465 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 05-50-05 10466 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 09-27-12 10467 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 11-03-00 10468 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 11-08-27 10469 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 11-41-20 10470 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 11-53-38 10471 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 13-06-31 10472 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 13-12-01 10473 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 13-12-44 10474 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 13-13-45 10475 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 13-14-28 10476 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 13-15-09 10477 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 13-15-46 10478 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 13-16-21 10479 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 13-17-33 10485 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 13-18-21 10486 0 File folder 5/14/2004 1:40 PM
 862-205-9273 Sprint **2003-12-04** 13-19-05 10487 0 File folder 5/14/2004 1:40 PM

862-205-9273 Sprint **2003-12-04** 13-19-43 10488 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 13-52-31 10490 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 14-08-05 10491 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 15-18-28 10492 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 15-45-40 10493 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 15-56-17 10495 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 16-20-50 10496 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 16-25-10 10497 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 16-25-11 10498 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 16-47-29 10499 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 16-57-09 10500 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 16-57-09 10501 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 17-24-56 10502 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 17-24-58 10503 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 17-27-54 10504 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 17-27-58 10505 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 17-29-10 10506 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 17-35-40 10507 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 17-35-42 10508 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 17-48-32 10509 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 17-48-32 10510 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 17-49-15 10511 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 17-49-15 10512 0 File folder 5/14/2004 1:40 PM
862-205-9273 Sprint **2003-12-04** 17-53-47 10513 0 File folder 5/14/2004 1:40 PM
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HA396–98.

Significantly, neither Bergrin nor his counsel ever complained about any inability to open and play certain calls. *Cf.* SA506 (standby counsel in 2011: “Judge, let me be clear. Mr. Gay is correct, we’ve had the tapes. I don’t believe I have the transcripts.”). To the contrary, within four months of the Government’s having produced them to the defense, Bergrin’s counsel, in a letter urging the Government not to seek the death penalty, asserted that “the electronic surveillance never picked up any hint of the meeting” to which Anthony Young had testified at William Baskerville’s 2007 trial. SA2114 n.10. And by September 2011, Bergrin told Judge Martini that he had all of the CD-ROMs, SA117, and that he had virtually unlimited access to the computers needed to review the recordings, SA240–45; *see* HA357–58.

Fast-forwarding to Trial Two, Anthony Young testified in February 2013 (as he had twice before) that he was present with Curry on November 25, 2003 when the First Call and Second Call occurred and described their substance, including

(significantly) Bergrin's having mispronounced Kemo's name. A3269–73. Of course, the Government's decision not to use the improperly sealed calls meant that it could not offer the jury powerful corroboration of Young's testimony—*i.e.*, the actual, intercepted phone calls themselves. Young also testified (as he had before) that sometime after Thanksgiving, A3278, Bergrin came to a meeting at Avon Avenue and effectively instructed Curry, Young, and several others to kill Kemo to prevent him from testifying against Baskerville, A3278–83.

Bergrin understandably chose not to use the inadmissible Curry calls to impeach Young's credibility. At Trial One in October 2011, Bergrin misled the jury by using his *pro se* opening statement to put in issue the content of the inadmissible Curry calls. SA371, SA389–90. That forced the Government to warn Bergrin that such conduct would open the door to the admission of other damaging calls, including the two November 25th calls, to rebut the misleading impression Bergrin had created. *See* SA501–09, SA652–54; *see also* HA413. (That warning fell on deaf ears, however, as Bergrin's summation again put the calls in issue. SA1400.) The Government had to renew this warning at Trial Two, *see* A2413–15; *accord* A2917, when Bergrin's opening statement, A1191, and cross-examination questions, *e.g.* A2916, again misused the Curry calls. (Ultimately, Bergrin opened the door to the First Call by misleadingly questioning a witness. A4034–48.)

Bergrin's choice not to use the inadmissible Curry calls left him numerous alternative avenues to impeach Young's credibility. Bergrin cross-examined Young extensively about numerous perceived prior inconsistent statements across multiple meetings with the FBI and testimony at two separate trials. Many such questions

were aimed at the timing of (and what was said at) the Avon Avenue meeting, including that there was nothing to corroborate Young's testimony that such a meeting had even occurred. A3776–95; *see* A2912 (eliciting same information from lead FBI Agent). Bergrin also hammered that point in summation. A9627–28 (“But they don’t have one witness, even witnesses that aren’t charged, to ever come forth and say that there was a meeting. . . . Because it never occurred”). Indeed, his summation again referred to the substance of the inadmissible Curry calls, even though they were not in evidence: “why do you think that there’s no chatter setting up this meeting, any meeting at all with Paul Bergrin?” A9627–28.¹¹

The jury convicted Bergrin despite his having effectively testified through his jury addresses that the Curry Calls did not corroborate Young's testimony about the Avon Avenue meeting, and despite his having asserted that the Kemo murder counts turned solely on the credibility of a career criminal (Young).

After trial, Bergrin (through stand-by counsel) argued in a post-trial motion that no rational jury could have found that he conspired to murder Kemo or that he aided and abetted Kemo's murder. That motion, of course, assumed the jury had credited Young's testimony about the Avon Avenue meeting. A10236–63.

The Government responded by meticulously describing the evidence showing Bergrin's guilt, including Anthony Young's testimony. A10323–41. In so doing, the Government added that the Avon Avenue meeting, which Young had testified

¹¹ Not once before or during the 2013 trial did Bergrin complain that he had any difficulty opening or playing the CD-ROMs containing the Curry Calls. And if Bergrin or his counsel had difficulties with other CD-ROMs (as they did with two of the six CDs containing recordings made by Shelton Leverett), they spoke up and immediately received new copies. *E.g.*, HA417–18.

occurred sometime after Thanksgiving, likely occurred on the evening of December 4, 2003 (after William Baskerville's bail hearing). In making that assertion, the Government relied in part on the fact that admitted phone records showed three calls between Bergrin and Curry that day and on Young's testimony that Curry, after speaking on his cell phone, said "My man on his way." A10327 & n.2. (To be clear, *Young* never testified that the meeting occurred on December 4th; rather, *the Government* argued after trial that the evidence permitted such an inference.)

Bergrin took issue with that specific assertion. Through standby counsel, he claimed that the substance of a December 4, 2003, 7:13 p.m. call between Curry and Bergrin—which was among the inadmissible Curry calls produced to Bergrin in June 2009—showed that no meeting had occurred on December 4th. A10404–05. Bergrin added that it would be "improper to allow the Government to mischaracterize the content of the tape knowing that Bergrin—at trial—could not use the recordings without risking opening the door to others." A10405 n.2. Significantly, standby counsel never suggested that they (or Bergrin) had only just discovered the content of a wiretap call that had been in their possession since June 2009—and to which Bergrin himself was a party. Nor did standby counsel argue that the December 4th call proved that Young had lied about the post-Thanksgiving meeting.

In response, the Government filed a letter correcting its assertion that the pattern of phone activity confirmed the date of the Avon Avenue meeting. A10431. But the Government maintained that the meeting likely occurred on or after December 4th based on Young's testimony and based on the fact that the bail hearing for Baskerville had occurred on December 4th, at which time Baskerville and

Bergrin learned that Baskerville was facing life imprisonment. A10431–32. Standby counsel responded with yet another letter citing additional Curry calls and claiming (inaccurately) that they undermined the Government’s theory of guilt. A10433.

Bergrin also filed a *pro se* letter containing many of the assertions that now appear in his § 2255 motion. SA2051. That letter accused the Government of having engaged in prosecutorial misconduct by sponsoring Young’s testimony about the Avon Avenue meeting and making arguments in summation and post-trial briefing that supposedly were contradicted by the inadmissible Curry calls. SA2051–55.

Bergrin then offered a variety of excuses for his failure to use these supposedly game-changing recordings at trial: (1) technical issues—and his *pro se* status—prevented him from listening to the recordings before trial; (2) he did not receive operable recordings until trial started; (3) he relied on a report by Curry’s investigator stating that the recordings were unhelpful; and (4) the Government had “intimidated” him into believing that using inadmissible calls helpful to him would open the door for the introduction of inadmissible calls helpful to the Government. SA2055. As Bergrin saw it, Judge Cavanaugh had to “accept the fact that the content of these recordings are exculpatory and delineate the extent of false, misleading and perjured testimony presented to the [j]ury.” *Id.*

Judge Cavanaugh did not see it that way. A2. Initially, he agreed with the Government that a rational jury could have credited Young’s testimony generally and about the Avon Avenue meeting specifically, both of which sufficiently supported the Kemo murder counts. A7–8. Judge Cavanaugh also rejected Bergrin’s effort to rely on inadmissible wiretap calls to undermine the jury’s verdict, implicitly

finding that Bergrin knew (or should have known) the contents of the Curry wiretap calls but deliberately chose not to use (or listen to) them:

The Court . . . is not persuaded by Bergrin's countervailing argument that he opted not to use the recordings during trial because he "was intimidated by the Government attempting to deceive the jury, as they did anyway." The Court recognizes that, had Bergrin selected a sampling of the 33,000 intercepted calls, he would have exposed himself to admission of others. Bergrin may not now, post-trial, seek the benefits of suppressible calls that he claims may be exculpatory while avoiding the content of many others that may have promoted a countervailing viewpoint.

A9 n.3 (citations omitted).

Bergrin then filed a *pro se* motion for reconsideration. Again relying on inadmissible Curry calls, this time he argued that he was actually innocent of the Kemo murder and that the Government had knowingly sponsored false testimony by Young. SA2080. Bergrin repeated his excuses for having not used the recordings at trial, but did not separately allege that the Government had suppressed the recordings in violation of its *Brady* obligations. SA2082.

Judge Cavanaugh denied that motion as well. SA2092. He rejected Bergrin's claim that the Government knowingly sponsored false testimony by Young and that the wiretap recordings proved his innocence:

Bergrin asserts that reconsideration is necessary to prevent a manifest injustice as he asserts the tapes present proof of his own innocence in orchestrating the McCray murder. . . . This Court recognized that a rational jury could have found that Young's testimony was credible and could have rejected Bergrin's claim that he was untruthful. This Court does not agree with Bergrin's contention the Government knew or should have known that Young testified falsely and disagrees with Berg[r]in's contention that a manifest injustice would be result if this Court were not to reconsider its denial of motion for judgment of acquittal.

SA2098 (citations omitted).

On direct appeal, Bergrin alluded to the post-trial dispute over the timing of the Avon Avenue meeting, HA27 n.5, but did not raise a *Brady* claim arguing that the Government had suppressed the favorable content of the Curry wiretap calls.

2. Bergrin Procedurally Defaulted His Claim.

Bergrin concedes that he failed to raise his *Brady* claim on direct appeal, HDE3 at 9, but asserts “[i]t was not ripe,” *id.* To the contrary, he actually possessed the very calls he now claims were suppressed and used them to support his post-trial motions, *see* A10405 & nn.1–2; A10433; *see also* SA2055; SA2080. And on direct appeal he used the Curry calls to attack Judge Cavanaugh’s Rule 29 opinion, HA27 n.5. Given that Bergrin raised other *Brady* claims on direct appeal, *see* HA64 n.23, HA78 n.24, HA74, he has no excuse for waiting until collateral attack to raise a *Brady* claim premised on the Curry calls, *see United States v. Clay*, 720 F.3d 1021, 1025 n.2 (8th Cir. 2013) (“Clay’s opportunity to develop evidence about McCuien’s false testimony at the hearing on his motion for a new trial, premised on a claim of ineffective assistance of counsel for failure to develop impeachment evidence, arguably procedurally defaulted this habeas claim that his conviction was based on the use of perjured testimony in violation of his right to due process.”); *see also United States v. Cisneros*, 456 F. Supp. 2d 826, 855 (S.D. Tex. 2006) (holding that “there was no new information regarding Garza’s inconsistent testimony that would have triggered Cisneros to raise this issue for the first time in a motion to vacate, that could not have been raised on appeal,” and observing that “[a]ll the grounds that Cisneros lists in her motion to vacate which support her due process argument, existed at the time of her appeal”).

In sum, as “[Bergrin] did not present his two *Brady* claims to the Third Circuit on direct appeal,” his “claims are procedurally defaulted.” *Johnson v. United States*, 759 F. Supp. 2d 534, 539 (D. Del. 2011); see *Sullivan v. United States*, 587 F. App’x 935, 944 (6th Cir. 2014) (“Consequently, Sullivan has procedurally defaulted on any *Brady* claims concerning these documents because his appellate counsel, who had these documents, did not raise these claims on direct appeal.”).

3. Bergrin Cannot Show “Actual Innocence” Because The Curry Calls Are Not “Newly Discovered” And Do Not Affect His Guilt.

A “§ 2255 movant may overcome procedural default by showing that a constitutional error ‘has probably resulted in the conviction of one who is actually innocent.’” *United States v. Jordan*, 461 F. App’x 771, 777–78 (10th Cir. 2012) (quoting *Murray v. Carrier*, 477 U.S. 478, 496 (1986)). To do that, the movant must come forward with (1) “*new* reliable evidence . . . not presented at trial” that (2) “persuades the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt.” *Schlup*, 513 U.S. at 324, 329 (emphasis added). Bergrin cannot meet this onerous standard because the record shows beyond any doubt that Bergrin knew the content of the recordings before trial and strategically chose not to introduce them.

a. The Curry Wiretap Recordings Are Not “New.”

As is clear from Point I.A.1 above, the unused Curry calls flunk the first part of *Schlup*’s actual-innocence test because they are the antithesis of “new.”

Justice O’Connor, who provided the crucial fifth vote in *Schlup*, emphasized that the majority’s test requires “newly discovered evidence.” *Id.* at 332 (O’Connor,

J., concurring). Thus, “[e]vidence is not ‘new’ if it was available at trial, but a petitioner ‘merely chose not to present it to the jury.’” *Goldblum v. Klem*, 510 F.3d 204, 226 n.14 (3d Cir. 2007) (quoting *Hubbard v. Pinchak*, 378 F.3d 333, 340 (3d Cir. 2004)). Put another way, “evidence is new only if it was not available at trial and could not have been discovered earlier through the exercise of due diligence.” *Amrine v. Bowersox*, 128 F.3d 1222, 1230 (8th Cir. 1997) (*en banc*).

The Government’s Rule 33 Opposition proves that the Curry calls were “available at trial, but [Bergrin] merely chose not to present [them] to the jury.” That brief marshals a host of facts showing that Bergrin either actually knew the contents of the Curry calls prior to the second trial or made a strategic decision not to listen to them. CDE659 at 25–32. Those facts eviscerate Bergrin’s current claim that he learned of the exculpatory content of the Curry calls only in June 2013.

If this Court holds that the Curry wiretap calls are not “newly discovered evidence” under Rule 33(b)(1), then *a fortiori* Bergrin cannot pass through the actual innocence gateway, which requires the same showing. *See United States v. Lawrence*, Crim. No 11–052, 2016 WL 3212161, at *2 (E.D. Ky. June 9, 2016) (finding that “Lawrence’s actual innocence claim based on his CPA’s affidavit is also procedurally barred” where “[t]his Court has already considered and rejected those claims in its Order denying his Rule 33 motion”); *compare Goldblum*, 510 F.3d at 226 (denying habeas petition and noting that “[e]vidence is not ‘new’ if it was available at trial, but a petitioner ‘merely chose not to present it to the jury’”) (citation omitted), *with United States v. Diaz-Albertini*, 772 F.2d 654, 657 (10th Cir. 1985) (denying Rule 33 motion and adding that “[t]he litigant cannot transform a tactical decision to

withhold the information from the court’s attention into a trump card to be played only if it becomes expedient”).

The Government will not lengthen this brief by rehashing here all of the arguments it advanced in its Rule 33(b)(1) opposition. Rather, it will augment those arguments with several discrete points that reinforce the inescapable conclusion that Bergrin actually or constructively knew the content of the inadmissible Curry recordings long before the start of the 2013 trial.

i. Judge Cavanaugh Already Rejected The Central Premise Of Bergrin’s *Brady* Claim.

First, Judge Cavanaugh found—in July 2013—that Bergrin made a tactical choice not to use the Curry calls in his defense because he knew that doing so would open the door to other, more damaging calls. A9 n.3 (“had Bergrin selected a sampling of the 33,000 intercepted calls, he would have exposed himself to admission of others”). In so holding, Judge Cavanaugh necessarily rejected the litany of other excuses Bergrin offered then (and renews now) for his not having found and used the calls at trial—including those that belatedly tried to blame the Government for his own calculated inaction. *See* SA2055 (claiming that the Government “provided discovery to Stand By Counsel but never to Bergrin directly;” that “a multitude of the CD’s containing recordings were dysfunctional, could not be opened nor played,” and “that Bergrin did not receive operable recordings until trial commenced,” by which time “it was too late to even attempt to listen to them”).¹²

¹² Judge Cavanaugh scoffed at Bergrin’s assertion, during trial, that he had not read a particular transcript from William Baskerville’s 2007 trial. A3786 (“I’ve got to tell you, that surprises me, Mr. Bergrin, that you haven’t read something in any of these cases, because it seems like you have.”).

Judge Cavanaugh’s finding, which Bergrin never appealed and offers no reason to disturb now, itself bars Bergrin from proceeding through the “actual innocence” gateway. *See Hubbard*, 378 F.3d at 340 (“A defendant’s own late-proffered testimony is not ‘new’ because it was available at trial. Hubbard merely chose not to present it to the jury. That choice does not open the gateway.”); *Nooner v. Hobbs*, 689 F.3d 921, 935 (8th Cir. 2012) (rejecting actual innocence claim where “there is nothing to suggest Nooner’s failure to present some form of height evidence at trial is attributable to anything other than trial strategy or a lack of diligence”). *See generally Boumediene v. Bush*, 553 U.S. 723, 782 (2008) (noting that “considerable deference is owed to the court that ordered confinement” in a habeas case).

ii. Standby Counsel Admitted That Bergrin Chose Not To Use The Curry Calls At Trial.

Second, Bergrin’s standby counsel essentially conceded that the Curry calls were known by and fully available to Bergrin at the 2013 trial. In response to the Government’s Rule 29 argument—that the pattern of calling activity helped show that the Avon Avenue meeting likely occurred on December 4, 2003—standby counsel cited the substance of the last December 4th call; but rather than assert that Bergrin only recently had discovered that call, standby counsel added that “Mr. Bergrin appropriately did not introduce that recording at trial” due to the sealing error described above. A10405 n.1. Thus, stand-by counsel essentially admitted that Bergrin knew of and could have used the December 4th call (and all of the other calls he now cites), but consciously chose not to do so. Again, that is fatal. *See Goldblum*, 510 F.3d at 226 (denying habeas petition and noting that “[e]vidence is not ‘new’ if it was available at trial, but a petitioner ‘merely chose not to present it to the jury’”)

(citation omitted); *see also* *Tyson v. Kelly*, Civil No. 09–1754, 2010 WL 743735, at *2 (N.D. Ohio Feb. 25, 2010) (videotapes not “new” where “Tyson admits to having access to these tapes during the trial”).¹³

iii. Bergrin Has Admitted That His Motive to Scrutinize the Recordings Arose, At The Very Latest, By November 2011.

Third, Bergrin more recently has admitted—albeit inadvertently—that his motive to scrutinize the recordings arose, at the very latest, in November 2011.

Bergrin’s Rule 33 motion footnoted that he did not appreciate the exculpatory significance of the inadmissible Curry calls until the Government’s post-trial Rule 29 brief relied on the pattern of telephone calls to assert that the Avon Avenue meeting occurred on December 4, 2003. CDE630-1 at 17 n.10. He thus implied that the Government never before had advanced such an argument. But Bergrin understood the Government’s November 2011 summation, *see* HA502–04, as having argued just that, because Bergrin’s summation responded that “[t]he prosecution comes before

¹³ Even beyond that admission, this Court cannot ignore that a host of attorneys formally represented Bergrin between his May 2009 indictment and his September 2011 decision to waive counsel. Putting aside that Bergrin was a party to some of the very calls he now cites and obviously knew their contents, if any of his attorneys knew the content of the Curry calls—and there is every reason to believe they did, *e.g.*, SA2114 n.10, then Bergrin is chargeable with that knowledge, *see In re Kensington Int’l. Ltd.*, 368 F.3d 289, 315 (3d Cir. 2004) (“A person has notice of a fact if his agent has knowledge of the fact”) (quoting Restatement (Second) of Agency § 9(3) (1958)). Although a hearing is unnecessary to resolve Bergrin’s *Brady* claim, it would be inequitable to permit Bergrin to invoke the attorney-client privilege to bar an inquiry into what he knew and when. *See Conkling v. Turner*, 883 F.2d 431, 435 (5th Cir. 1989) (holding that when plaintiff put in issue when he knew or should have known falsity of defendant’s statements, defendants were authorized to depose plaintiff’s attorneys about information relevant to client’s knowledge and adding that “[t]o the extent that the questions require the attorneys to disclose confidential communications from Conkling, the attorney-client privilege has been waived”).

you, and . . . eight years later, for the first time argues that this alleged meeting, this phantom meeting on Avon Avenue with Paul Bergrin takes place on December the 4th,” SA1400.

Thus, even were this Court to find that Bergrin lacked actual knowledge of the contents of the recordings, the record fatally undermines *the key premise* of Bergrin’s newly discovered evidence claim, *i.e.*, that the Government’s June 2013 assertion about the timing of the Avon Avenue meeting was the game-changing event that first motivated Bergrin to listen to calls he had possessed since June 2009.

**iv. As A Matter Of Law, Calls Involving
Bergrin Himself Cannot Qualify As “Newly
Discovered.”**

Fourth, Bergrin relies on several calls that captured his own conversations with Curry. BB73–75. But settled precedent holds that a defendant cannot premise a claim of “newly discovered evidence”—much less “suppression” in the *Brady* context—on information he himself knew at the time of trial. *See Hubbard*, 378 F.3d at 340 (“A defendant’s own late-proffered testimony is not ‘new’ because it was available at trial.”); *see also Crowder v. McCollum*, Civil No. 17–54, 2017 WL 892734, at *2 (W.D. Okla. Feb. 21, 2017) (evidence not “new” where “[p]etitioner knew of the facts contained in this affidavit prior to his trial”). *See generally United States v. Guibilo*, 336 F. App’x 126, 129 (3d Cir. 2009) (“the manuscript’s belated disclosure did not lead to the discovery of any new evidence; as the manuscript’s author, Guibilo had knowledge of its existence and its contents”).

In sum, the unused Curry calls cannot qualify as “newly discovered evidence” as a matter of Third Circuit law.

b. The Curry Calls Do Not Come Close To Showing That, More Probably Than Not, No Reasonable Juror Would Have Convicted Bergrin.

Beyond the fact that the Curry calls are not “new,” they do not remotely “show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence.”

The actual innocence standard requires “a stronger showing than that needed to establish prejudice” for an ineffectiveness claim. *Schlup*, 513 U.S. at 327. Actual innocence means “factual innocence, not mere legal insufficiency.” *Bousley*, 523 U.S. at 623. The newly discovered evidence must be such that it “thoroughly undermines the evidence supporting the jury’s verdict.” *Rivas v. Fischer*, 687 F.3d 514, 543 (2d Cir. 2012). New evidence that merely impeaches a witness is insufficient. *See Hussmann v. Vaughn*, 67 F. App’x 667, 669 (3d Cir. 2003) (“these unreliable statements do not demonstrate Hussmann’s actual innocence but merely impeach Smith’s credibility”); *Clayton v. Gibson*, 199 F.3d 1162, 1180 (10th Cir. 1999) (“The evidence which he asserts as newly discovered evidence barely aids his case and is merely impeaching evidence that would not cause a rational person to doubt Clayton’s guilt.”).

Further, this Court “is not bound by the rules of admissibility that would govern at trial.” Instead, “the emphasis on ‘actual innocence’ allows the reviewing tribunal also to consider the probative force of relevant evidence that was either excluded or unavailable at trial.” *Schlup*, 513 U.S. at 327–28. That means this Court may consider other unsealed Curry calls along with the supposedly “new” evidence to determine whether, in light of the evidence the Government mustered at trial, “no reasonable juror would have convicted [Bergrin] in the light of the new evidence.” *Id.*

at 327; *accord Bousley*, 523 U.S. at 624 (“The Government should be permitted to present any admissible evidence of petitioner’s guilt”).

Actual innocence cases are extremely rare. *E.g.*, *House*, 547 U.S. at 540 (“in direct contradiction of evidence presented at trial, DNA testing has established that the semen on Mrs. Muncey’s nightgown and panties came from her husband, Mr. Muncey, not from House”). Bergrin offers nothing like the exonerating DNA evidence described in *House*. Instead, his *Brady* claim rehashes *the very same argument* he advanced at trial, *i.e.*, Young must have lied about the Avon Avenue meeting because no evidence corroborates his account of it. *Compare* BB65 (recordings supposedly show that “no street meetings ever occurred with this group and Bergrin”), *with* A9627–28 (March 2013 summation: asking “why . . . there’s no chatter setting up this meeting, any meeting at all with Paul Bergrin?,” why “there’s no chatter about anything having occurred at the meeting, after the meeting, during the meeting?,” and why “nobody, nobody, except for Anthony Young, says that there was a meeting? That’s not observed by anybody.”).

So understood, Bergrin’s primary defense—that Young fabricated the post-Thanksgiving meeting—stands on exactly the same footing now as it did in 2013; the only difference is that Bergrin now claims the Curry calls help impeach Young’s account and, thus, show reasonable doubt. That claim is not true; but even if it were, it would fall woefully short of establishing actual innocence. *See Schwartz*, 925 F. Supp. 2d at 694 (“Schwartz makes no serious effort to allege his factual innocence. He merely attempts to rehash the ‘legal insufficiency’ arguments that he raised . . . to our Court of Appeals—arguments that are inadequate as a matter of law to prevail

on an actual innocence claim.”) (citations omitted); accord *United States v. Storm*, Crim. No. 13–048, 2017 WL 1324131, at *12 (D. Ore. Apr. 6, 2017) (“Storm presents no evidence that affirmatively proves his probable innocence, such as a newly discovered alibi witness or the confession of another person. Instead, Storm merely rehashes the defense theories he presented at trial.”).

Beyond that, the Government’s Rule 33 Opposition shows why the unused Curry calls do not meet the onerous standard for actual innocence. “Newly discovered evidence would only warrant a new trial if it was ‘of such nature’ that it would probably produce an acquittal.” CDE659 at 40 (quoting *United States v. Whiteford*, 676 F.3d 348, 361 (3d Cir. 2012)) (internal quotation marks and other citations omitted). The Government forcefully explained why the Curry wiretap calls on which Bergrin now relies utterly flunk the *Whiteford* standard. See CDE659 at 60–77. The Government incorporates those arguments by reference here to avoid lengthening this brief. See Point I.A.3.b *infra*.

If this Court agrees with the Government that Bergrin’s “newly discovered evidence” is insufficient to justify a new trial under Rule 33, that holding would have preclusive consequences here. After all, *Whiteford*’s “probably produce an acquittal” standard is arguably lower (and certainly no higher) than *Schlup*’s requirement that the prisoner prove by a preponderance of the evidence that “no reasonable juror would have convicted him in the light of the new evidence.” 513 U.S. at 327. If Bergrin cannot show that the supposed newly discovered evidence meets the Rule 33(b)(1) standard, then *a fortiori* he cannot show that it meets the *Schlup* standard. See *Lawrence*, 2016 WL 3212161, at *2.

4. The *Brady* Claim Is Frivolous.

In any event, Bergrin's *Brady* claim is frivolous for the same reasons he cannot meet the actual innocence test. The Curry calls were not suppressed, are not favorable, and are hardly "material."

a. The Government Cannot Suppress Information It Actually Produced Long Before Trial.

The Government did not suppress the content of the Curry wiretap calls for the same reasons that those calls are not "newly discovered."

Under *Brady*, "[t]he government must disclose all favorable evidence." *Dennis v. Sec'y, Pennsylvania Dep't of Corr.*, 834 F.3d 263, 292 (3d Cir. 2016) (*en banc*). But "evidence is not 'suppressed' if the defendant knows about it and has it in her possession." *Lambert v. Blackwell*, 387 F.3d 210, 265 (3d Cir. 2004). Thus, where the Government actually produces the information to the defendant before trial, the defendant cannot credibly claim the Government suppressed it. *See Masten v. United States*, 752 F.3d 1142, 1146 (8th Cir. 2014) (affirming rejection of *Brady* claim where "the record is clear that the government produced trial Exhibit 118, the DVD copy, a week before trial"); *United States v. King*, 577 F. App'x 701, 705 (9th Cir. 2014) ("Because a copy of the detention hearing statement with respect to the co-conspirator's supervised release was made available and Defendant acknowledged that his counsel was in possession of the transcript, there was no suppression that could support a *Brady* violation."); *United States v. Steffen*, 641 F.2d 591, 595 (6th Cir. 1981) ("Further, the reports themselves were not suppressed. Steffen received the reports before trial.").

As explained above, Bergrin's counsel received the Curry wiretap calls in discovery in June 2009. *See* BB59; *see also* SA505–06, SA2449–50. And by September

2011, when Bergrin chose to represent himself, he acknowledged that he physically possessed all the CDs that were produced to him, SA117, and assured the Court that he had unlimited access to the computers necessary to review them, SA240–45; *see* HA357–58. And as also explained above, all Bergrin had to do (assuming that his counsel had not already done it for him) is insert a CD-ROM into the computer, open calls relating to the period of the Kemo murder (November 25, 2003 and after), and listen to them. He had 3½ years to do that.

Thus, Bergrin cannot credibly contend that the Government suppressed the Curry wiretap calls. *See Lambert*, 387 F.3d at 265 (“evidence is not ‘suppressed’ if the defendant knows about it and has it in her possession”); *see also Storm*, 2017 WL 1324131, at *8 (denying § 2255 motion where “Storm’s multiple claims of *Brady* violations are refuted by the record,” because “[n]o evidence was suppressed, and all the evidence Storm now references in his petition was available for use in his defense either before or during trial”); *United States v. Bansal*, Crim. No. 05–193, 2006 WL 2246203, at *9–*13 (E.D. Pa. Aug. 1, 2006) (denying motion for new trial based on newly discovered evidence and *Brady* violations where the Government produced to defendants the very information on which they premised their claims), *aff’d*, 663 F.3d 634, 670 (3d Cir. 2011) (affirming that finding under clear error standard).

Bergrin nonetheless complains that the Government “never provided any content summaries, table of contents, indexes nor delineated that the recordings contained exculpatory evidence which would . . . have proven Bergrin’s ‘actual innocence’ of the Kemo murder.” HDE1–1 at 71. He adds that, “at the same time as providing these CD’s [the Government] turned over 20,000 pages and pieces of

discovery and these extremely exculpatory recordings were buried, concealed and hidden within; which was tantamount to never providing them.” *Id.* at 72. That claim is meritless several times over.

First, as set forth above, Judge Cavanaugh implicitly rejected this argument by finding that Bergrin deliberately chose not to introduce helpful calls at trial to avoid opening the door to harmful ones. A9 n.3. Judge Cavanaugh would not have said that had he agreed that Bergrin was unable to review the Curry wiretap calls prior to trial. And while Bergrin now claims that he complained on the record about problems with the Curry calls, BB77–78, the record shows no such complaint.

Second, Bergrin grossly exaggerates the number of calls relevant to his defense of the Kemo murder charge. *E.g.*, BB82; *id.* at 86 (referring to 40,000 calls that supposedly would take 20,000 hours to review). While 40,000 or more calls were intercepted during the Curry investigation, the only calls of significance to Bergrin were those that occurred on November 25, 2003 (the date of William Baskerville’s arrest) and after. As explained above, Bergrin easily could have zeroed in on those calls and listened to them, *see* CDE659 at 27, 30–31, as his counsel did in 2009, SA2114 n.10, and as Bergrin appears to have done by making broad assertions to the jury in 2011 and again in 2013 that none of the calls supported Young’s account of the Avon Avenue meeting, SA1400, A1191, A9627–28.

Third, “the government is not ‘obliged to sift fastidiously’ through millions of pages (whether paper or electronic).” *United States v. Gray*, 648 F.3d 562, 567 (6th Cir. 2011) (quoting *United States v. Warshak*, 631 F.3d 266, 297 (6th Cir. 2010)). Nor is it under a “duty to direct a defendant to exculpatory evidence within a larger mass

of disclosed evidence.” *United States v. Skilling*, 554 F.3d 529, 576 (5th Cir. 2009), *vacated in part on other grounds*, 561 U.S. 358 (2010). Bergrin “contends that the government should have scoured the open file in search of exculpatory information to provide to him. Yet the government was in no better position to locate any potentially exculpatory evidence than was” Bergrin, *id.* at 577, especially for those calls to which Bergrin himself was a party. And if Bergrin is asking this Court to adopt and give him the benefit of a new constitutional rule of criminal procedure—that the Government must single out potentially favorable information among the discovery the defendant physically possesses—it would be barred by *Teague*’s non-retroactivity doctrine. *See Saffle*, 494 U.S. at 487–88.

Finally, Bergrin now asserts that the Government affirmatively misled him by informing him that the Curry wiretap calls contained no favorable information. *Id.* 99–100 (referring to “vociferous assertions that there is ‘no’ *Brady* evidence and that the recordings are devoid of both impeachment and exculpatory evidence”); *id.* at 101 (alleging that the Government “made specific, articulable assurances, to the Court and Bergrin that the recordings contain no *Brady* or *Giglio* evidence and are unfavorable to Bergrin”). Not surprisingly, Bergrin fails to cite a single document or transcript supporting that assertion. The reason for that is simple: the Government never made a global representation about *the content* of the Curry calls.¹⁴

¹⁴ To the extent Bergrin relies on the Government’s representation that it had complied with its *Brady* obligations, *e.g.*, BB61 (“when demanded, the government denied possession of *any Brady* evidence), that was undoubtedly true. The AUSAs *had* produced to Bergrin all favorable information known to them; they did not have to take the additional step of sifting through the Rule 16 material produced to Bergrin 3½ years earlier to highlight specific items Bergrin might find particularly helpful.

Bergrin may be referring to the Government’s warning that, if Bergrin selectively misused otherwise-inadmissible calls to mislead the jury regarding Young’s credibility, the Government would offer other such calls that corroborated Young to rehabilitate him. A2413–15; *see* A2917; SA501-06; HA413. If so, that hardly qualifies as a blanket assertion that the calls contain no exculpatory information. Rather, it was a candid warning that, even if some calls taken in isolation helped Bergrin, using them would allow the Government to offer others that hurt him. If Bergrin is telling this Court that he chose not to listen to the calls because of a legally accurate warning issued for the first time two years *after* he received the calls in discovery, *see* BB66 (claiming the calls “would not have been listened to” even had Bergrin been able to locate them), he cannot blame the Government for his own calculated inaction, *see Commonwealth v. Hudson*, No. 1565 WDA 2015, 2016 WL 1395335, at *3 (Pa. Super. Ct. Apr. 8, 2016) (“Appellant’s decision not to review the trial court notes and documents until nearly four years after his sentencing does not transform those notes into newly discovered evidence.”); *see also United States v. O’Grady*, 280 F. App’x 124, 131 (3d Cir. 2008) (“To the extent, if at all, O’Grady limited his cross-examination due to concern for [the witness’s] mental health, this decision was self-imposed and not judicial error.”). Besides, “defense knowledge of, or access to, purportedly exculpatory material is potentially fatal to a *Brady* claim, even where there might be some showing of governmental impropriety.” *United States v. Pelullo*, 399 F.3d 197, 215 (3d Cir. 2005).

In sum, the record gives every indication that Bergrin actually listened to the relevant Curry calls prior to Trial Two, if not Trial One. But if Bergrin—an

experienced defense attorney—declined to do so because he knew that offering certain calls would open the door to others (or because he decided it was an unproductive use of his time), he cannot now blame the Government for his choice.

b. The Calls Are Neither Favorable Nor Material.

Even if Bergrin could show that the Government suppressed calls it provided to him 3½ years before trial, he cannot establish that the calls were material.

To establish materiality, Bergrin must prove “a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Kyles v. Whitley*, 514 U.S. 419, 433 (1995) (internal quotation marks and citation omitted). The question is whether, in the absence of the suppressed evidence, the defendant “received a fair trial, understood as a trial resulting in a verdict worthy of confidence.” *Id.* at 434. This standard is not met by the “mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial.” *United States v. Agurs*, 427 U.S. 97, 109-10 (1976). Rather, the item must pertain to a “crucial fact,” *United States v. Pelullo*, 14 F.3d 881, 887 (3d Cir. 1994), or “go to the heart of the defendant’s guilt or innocence” in light of the “totality of the circumstances,” and its absence must “impair the fairness of defendant’s trial,” *United States v. Hill*, 976 F.2d 132, 134-35 (3d Cir. 1992). Bergrin does not even come close to meeting this rigorous standard.

Here, the “totality of the circumstances” includes three things: (1) the evidence supporting the Kemo murder, described at length in the Government’s Rule 33 Opposition, *see* CDE659 at 60–66; (2) the subset of the Curry calls that Bergrin cites (“Bergrin’s Calls”); and (3) other highly inculpatory Curry calls (“Inculpatory Calls”) that would have become admissible to rebut any misleading impression created by

the introduction of Bergrin's Calls at trial. But for the sealing issue discussed above, the Government would have introduced the Inculpatory Calls to prove Bergrin's guilt. And because none of the Curry calls contains independent evidence of innocence, the damage to Bergrin's case from the Inculpatory Calls far outweighs whatever impeachment value Bergrin's Calls may have offered. Indeed, Bergrin made that same determination because he chose not to use the calls at trial.

The Government's theory of guilt for the Kemo murder relied primarily on three actions Bergrin took: (1) on November 25, 2003, Bergrin met with Baskerville and obtained the name of the confidential informant; (2) immediately thereafter, Bergrin called Curry (Baskerville's boss) on the telephone and told Curry that the informant in Baskerville's case was a guy named "Kamo" (mispronouncing the name Kemo); and (3) sometime later, Bergrin met face-to-face with Curry and Curry's associates, including Young, and told them that if Kemo testified Baskerville would spend the rest of his life in jail, but if they killed Kemo, Bergrin would win the case and Baskerville would go free. A1070-73. As detailed below, on balance, the Curry Calls would have substantially helped the Government prove its case.

i. The November 25, 2003 Calls Are Independent Proof Of Bergrin's Guilt And Demonstrate That Young Testified Truthfully And Accurately.

Because the November 25, 2003 calls between Bergrin and Curry were captured on a wiretap, there is direct, incontrovertible proof that Bergrin obtained the identity of the confidential informant from Baskerville and immediately thereafter relayed that information to Curry. SA2231-33 ("I got a chance to speak to William and he said the informant is a guy by the name of Kamo"). Significantly, Young

testified that he was present when that call took place and described its substance, including Bergrin's mispronunciation of Kemo's name. A3269–73. Although Young had never heard the wiretap recording, he was able to describe both the First Call and the Second Call accurately, including details that only a percipient witness would have known. *See* CDE659 at 70–71.

Tacitly conceding that the Inculpatory Calls support Young's account of the First Call and the Second Call, Bergrin is left to claim that other calls contradict Young's account of such things as: who besides Curry was present for the First Call and the Second Call; what vehicle Curry was in when each call took place; and what time Curry arrived on Avon Avenue prior to having the First Call with Bergrin. But even if those calls somehow suggest Young was wrong about those collateral subjects, the Inculpatory Calls conclusively establish that Young was correct about the facts that actually proved Bergrin's guilt. As the Government's Rule 33 Opposition explains, CDE659 at 69–75, the Curry Calls both corroborate Young on every important aspect of his testimony and independently prove Bergrin's guilt.

Not only do the Curry Calls corroborate the essential facts of Young's testimony, they also corroborate many of the supporting facts. For example, as detailed further in the Rule 33 Opposition:

- Young testified that Curry arrived on Avon Avenue to meet with Rakeem, Young and others before the First Call between Bergrin and Curry. Intercepted calls between Curry and Rakeem, and between Curry and an unidentified woman, indicated that Curry agreed to meet Rakeem "on Avon" prior to the First Call. CDE659 at 69–70.
- Young testified that Rakeem felt partially responsible for Baskerville's arrest because he sent Kemo to buy crack from Baskerville. Calls intercepted that day, demonstrating that Rakeem was concerned about his own liability stemming from William's interactions with Kemo, support

Young's testimony that Rakeem introduced Kemo to Baskerville as a supplier of crack cocaine. CDE659 at 71–73.

- Young testified that when he heard Curry say the name “Kamo” during the Second Call, he thought Curry and Bergrin must have been talking about “Kemo” and told Curry just that. A3272. Minutes later, in an intercepted call at approximately 4:05 p.m., Curry correctly referred to the informant as “Kemo.” SA2234-35. CDE659 at 71.

Faced with all of this, Bergrin must exaggerate the impeachment value of the calls he cites. But most of those calls corroborate Young's testimony. CDE659 at 70–75. And Bergrin must fabricate conversations and otherwise misrepresent what the parties said on the calls (or misstate Young's testimony) in order to manufacture even minimal impeachment value.

For example, Bergrin claims that on “November 25, 2003, call 986, 037 at 14:40:21,” he called Curry and informed Curry that he “had just received a call from Will's wife, Deidre Baskerville advising him that her husband had been arrested this morning.” BB67. According to Bergrin, this proves that, contrary to Young's testimony, she could not have attended a meeting earlier that morning on Avon Avenue. BB67–68. But there is no call bearing that number; Bergrin is not a party to either of the two calls at 14:40 on that date; and Bergrin never uttered those or any similar words in any of his intercepted calls with Curry that day. Even were it true that at 2:20 p.m. Bergrin reported he “had just received a telephone call from . . . Deidre Baskerville,” that in no way would contradict Young's testimony that he and others met with Deidre earlier that morning.

Similarly, Bergrin claims a call intercepted on November 25, 2003 at 17:05:00¹⁵ shows that when asked about Kemo, Rakeem told Curry, “I don’t know him; it think he’s from Irvington.” BB69. According to Bergrin, this proves Rakeem did not even know Kemo and, thus, Young alone made a decision to get rid of Kemo. *Id.* But Rakeem did not utter those words. Instead, he indicated he knew Kemo by responding, “that’s a nigga from Irvington I think.” SA2235. At any rate, Bergrin’s assertion that Young alone decided to kill Kemo contradicts his defense at trial (and assertions elsewhere in his Brief) that Young did not murder Kemo but nevertheless falsely confessed and pleaded guilty to get a better deal on a pending gun-possession charge.

ii. Calls Intercepted After November 25, 2003, Neither Impeach Young’s Testimony Nor Disprove Bergrin’s Guilt.

Bergrin claims that calls occurring after November 25, 2003, disprove Young’s testimony about the Avon Avenue meeting between Bergrin, Curry, and certain Curry associates, including Young. To be clear, unlike the direct evidence contained in the First Call and Second Call, none of the intercepted calls confirm the existence of that meeting. As Bergrin (improperly) argued to the jury at Trial Two, the Curry calls contain no “chatter setting up . . . any meeting with Paul Bergrin” or “about anything having occurred at the meeting, after the meeting, [or] during the meeting.”

¹⁵ As noted in the Government’s Rule 33 Opposition, CDE659 at 72–73 n.28, there was no call intercepted at 5:05 p.m. on November 25, 2003 and no call numbered 3496671. Based upon the substance of what Bergrin claims was spoken during this call, Bergrin must be referring to call number 09352, which occurred one hour earlier that day.

A9627–28. Thus, Bergrin must now attack collateral aspects of Young’s testimony and argue far-fetched inferences from insignificant facts.

Specifically, Bergrin advances four baseless arguments: (1) no face-to-face meeting ever occurred because certain calls suggest Young was wrong about its date; (2) calls in which Curry and his associates speculate about theoretical plea deals prove Baskerville was not facing life imprisonment; (3) no murder plot existed because Bergrin and Curry did not explicitly discuss details of the murder plot over the telephone on December 4, 2003; and (4) calls in which Curry and his associates complain about legal services Bergrin rendered to persons unrelated to William’s case prove Bergrin was not a part of the murder conspiracy.

The Calls Are Consistent With Young’s Testimony About the Timing of the Avon Avenue Meeting, And Its Precise Date Had No Independent Relevance.

Bergrin claims that calls suggesting the face-to-face meeting could not have taken place over Thanksgiving weekend or on December 4, 2003 prove Young lied about the meeting taking place at all. **But Young never testified that the meeting occurred on any of those days.** Rather, Young testified that he did not remember the exact date, but recalled that the meeting occurred sometime after Thanksgiving. A3278–79, A3336. Indeed, Young consistently said he did not recall the exact date despite Bergrin’s pressing him to provide one. A3576–68, A3623.¹⁶ These calls are not inconsistent with Young’s testimony about the timing of the meeting, let alone

¹⁶ That was consistent with Young’s Trial One testimony. *See* HA783–84 (direct); *see also* SA1033–34 (cross). The calls Bergrin cites, indicating that Curry traveled over Thanksgiving weekend, corroborate Young’s testimony that the meeting occurred sometime after Thanksgiving weekend.

proof that he intentionally lied about the meeting having occurred at all. And Bergrin's claim in that regard depends on the Curry calls eliminating not just Thanksgiving weekend and December 4, 2003, but every other possible date the meeting could have occurred. They do not.

Further, Bergrin must mischaracterize what the Government argued to the Trial Two jury in summation in order to make the unsealed Curry calls seem material. According to Bergrin, the Government argued that the Avon Avenue meeting occurred on December 4, 2003, despite knowing that the unsealed Curry calls contradicted that assertion. BB63. But the transcript belies that accusation:

Now, what event of significance happens after Thanksgiving, after the weekend, in the world of William Baskerville? A detention hearing on December 4th, 2003, the first time that Mr. Bergrin and William Baskerville are told he's facing life. You will have the transcripts to review in the back. And you will see where Mr. Gay says on the record that's what he's facing. What does Anthony Young tell you? **Well, that Paul Bergrin came to us one night, again, after the weekend, after Thanksgiving,** and told us, Will Baskerville is facing life. That's the first time we heard about it. But you know what else? It's the first time he heard about it, too. Read the transcripts. And on that day, were there phone calls between Mr. Bergrin and Hakeem Curry? Yeah. Three calls. Can you put that up? We don't have this one in as nice a chart, but if you look at the records there. You can see on December 4th three calls, three connections from -- or between, I should say, two phones, Hakeem Curry's and Paul Bergrin's phone the day of the detention hearing, when Mr. Baskerville was told, you are not getting out of jail, no bail for you, and you are facing life. You can look at the dates. You can match the date on there with the front page of the transcript. Same date. What else does Anthony Young tell you? Well, at the meeting, [Bergrin] shows up in a dark-colored Mercedes-Benz. Well, we don't have photographs of that day, but we do have a photograph of Paul Bergrin's Mercedes-Benz that was grabbed by or captured by an E-ZPass I think it was two months prior to the meeting, maybe even three months prior to the meeting.

A9509–10 (emphasis added). Not once did the Government explicitly argue that the Avon Avenue meeting occurred on December 4th—indeed, the date of the meeting simply was not important. Thus, Bergrin has erected a straw man.¹⁷

Finally, the verdict would have been exactly the same even had the Government explicitly argued to the Trial Two jury that the Avon Avenue meeting occurred on December 4th, and even had Bergrin used the December 4th call to rebut that argument. As already explained, the precise date of the meeting was immaterial to Bergrin’s guilt. Whether Bergrin advised Curry and his associates to kill Kemo on December 4, 2003, or some other day before they killed Kemo was of no consequence. What mattered was the other significant evidence corroborating Young’s testimony, which the December 4th calls do not affect.

Curry’s, Bergrin’s, And Other Associates’ Speculation About Hypothetical Plea Bargains Does Not Change The Fact That Bergrin and Curry Knew William Baskerville Faced Life Imprisonment.

Bergrin claims that two calls prove Baskerville was facing only ten years’ imprisonment, not life imprisonment, if convicted: (1) a November 26, 2003 call

¹⁷ To be sure, the Government’s Trial One summation, SA492, and its opposition to Bergrin’s Trial Two Rule 29 motion, A10327 & n.2., relied on records of December 4th calls (not their substance) to suggest that the Avon Avenue meeting occurred on that date. Rather than object at Trial One, Bergrin used that assertion to his advantage in his own summation. SA1400. And when Bergrin brought the substance of the last of the three calls to the Government’s attention after Trial Two, A10404–05 & n.2, the Government responsibly withdrew its assertion about the calls and apologized for making it, A10431–32. Bergrin treats that withdrawal as the tug on the string that unravels all of Young’s testimony; but as set forth in text, Young never testified that the meeting occurred on December 4th. So understood, Bergrin is relying on an otherwise-inadmissible call to impeach an assertion withdrawn from a post-trial brief. BB75. Bergrin cites no case holding that *Brady*’s materiality inquiry turns on a prosecutor’s mistaken characterization of the evidence after trial instead of the evidence actually elicited at trial.

which Curry and an associate speculated that Baskerville was facing either 20, 12 or 10 years' imprisonment; and (2) the December 4th Call in which Bergrin told Curry that, with a "plea bargain he probably get it down to about 13 years." BB72–74 (citing SA2242). But it is beyond dispute that Bergrin knew Baskerville—a Career Offender—was facing life imprisonment if convicted: the statute was clear; the then-mandatory sentencing guidelines were clear; the Government explicitly told Bergrin and Baskerville in open court that Baskerville was facing 360 months to life imprisonment, SA1872; and Bergrin acknowledged in open court that Baskerville was "facing extended period of incarceration," SA1875. Moreover, had Bergrin introduced the December 4th Call, the Government would have been able to introduce an otherwise-inadmissible call in which Bergrin explicitly told Curry that Baskerville was facing life imprisonment if convicted. SA2231-33. As for any potential plea-bargain, Bergrin never sought, and the Government never offered, a plea-bargained disposition of Baskerville's case.

Further, in support of his argument that the December 4th call is exculpatory, Bergrin claims that he "would never make this representation [regarding a 13-year sentence] to the leader of the Curry drug organization unless it was a reliable and valid statement." BB74. Thus, perhaps without realizing it, Bergrin has admitted he understood Curry was acting as a drug organization leader when he spoke to Bergrin about Baskerville's case. That makes the call inculpatory, not exculpatory. After all, at trial, Bergrin conceded, as he had to, that he learned the identity of the confidential informant from Baskerville and soon thereafter called Curry and relayed to him the name of the informant. A9624–25. This concession went a long way

toward proving the Government's theory that Bergrin, as house counsel to the Curry organization, passed the informant's name from an arrested organization underling (Baskerville) to the organization's boss (Curry). A1066, A1070–72. The only contested fact relating to this issue was Bergrin's unsworn, first-person assertion that he spoke to Curry about Baskerville's case because Curry was a concerned family member (not a concerned drug boss). A9623–26. As Bergrin now concedes that he knew Curry was a concerned drug boss, the December 4th Call not only undermines his trial defense but also affirmatively proves his guilt.

That Bergrin And Curry Refrained From Explicitly Discussing Details Of The Murder Plot In A Telephone Call Hardly Proves That The Murder Plot Did Not Exist

Bergrin also argues that no conspiracy existed (and the Avon Avenue meeting never happened) because neither he nor Curry discussed specific details of the murder plot during the December 4, 2003 call. BB74–75. But it is hardly remarkable that coconspirators in a murder plot would refrain from discussing details of the conspiracy over the phone. Moreover, whatever limited exculpatory value this call may have, it is far outweighed by the inculpatory value of the calls the Government would have been able to introduce demonstrating that both Bergrin and Curry were so concerned about law enforcement wiretapping their phones that they arranged to speak in person to avoid being overheard.

Specifically, in a call intercepted on December 10, 2003 at approximately 2:42 p.m., Bergrin told Curry, "I'll talk to you when I see you in person, but be very, very leery of the telephones, okay," and Curry replied "yeah." Bergrin then said, "from what I've been told there are several new wires that went up," and Curry replied,

“okay.” Bergrin continued, “in the city of Newark, you know what I mean?” and Curry replied, “okay.” Bergrin then said, “so I don’t know who they’re targeting, but be very, very fucking careful.” HA890. This call also supports the conclusion that Bergrin preferred to speak to Curry “in person” rather than over the phone about matters relating to Curry’s criminal business. Moreover, in another intercepted call shortly after Curry learned of Baskerville’s arrest, Curry warned a coconspirator to change the phone the coconspirator was using. SA2238-39.

Finally, Bergrin made an even stronger claim to the jury—that none of the calls intercepted during the Curry investigation contained “chatter setting up this meeting, any meeting at all with Paul Bergrin” or “chatter about anything having occurred at the meeting, after the meeting, during the meeting.” A9627-28; *accord* A1191 (similar assertions in Bergrin’s opening statement). Although those assertions likely opened the door to both November 25th calls (and the other inculpatory calls discussed in this section) to corroborate Young, the Government pulled its punches. And even though the Government allowed to stand unrebutted Bergrin’s assertions about the substance of these inadmissible calls, the jury nonetheless convicted him. The December 4th call is, therefore, plainly immaterial.

Calls in which Curry Complains About Bergrin’s Legal Representation in Unrelated Cases Do Not Rebut Proof that The Conspiracy Existed, And Bergrin Must Fabricate Conversations To Support his Point.

Bergrin greatly exaggerates the import of the December 7, 2003 and February 18, 2004 calls. He claims these calls prove he was “not a trusted person in the Curry Organization, wherein they would ever risk him having knowledge of a murder.” BB77. But all these calls show is that Curry and some of his associates complained

about the legal services Bergrin provided to persons unrelated to Baskerville's case. Nothing Bergrin cites in these calls suggests Curry believed Bergrin was an untrustworthy coconspirator, or that Bergrin would alert law enforcement to their criminal activity. Besides, it was not an ongoing legitimate business relationship that ensured trust, it was the mutual understanding that a coconspirator would have to inculcate himself in order to inculcate others. As Bergrin told Abdul Williams when considering whether Baskerville would cooperate against Bergrin on the Kemo murder: "he (referring to Baskerville) would be stupid [to flip on Bergrin], he'd be incriminating himself." A5252. Moreover, at Trial Two the Jury convicted Bergrin even though he introduced similar calls¹⁸ and made the same argument he makes here. A9655.

Further, Bergrin appears to have fabricated from whole cloth the "icing on the cake" call he claims took place between Curry and an unnamed associate on "February 20, 2004, call 1203305 at 14:34:13." BB77. As the Government's Rule 33 Opposition explains: (a) there is no intercepted call designated call number 1203305; (b) in the call that took place at that date and time, there is no discussion of Bergrin or Baskerville's case, and the words Curry purportedly spoke, which Bergrin puts in quotation marks, are not contained in the call; and (c) a search of calls intercepted on February 20, 2004 and surrounding dates revealed no recording in which Curry

¹⁸ Bergrin introduced transcripts of three calls (one occurring on February 18, 2004 and two occurring on February 24, 2004) in which Curry told various coconspirators to hire a lawyer other than Bergrin for representation on criminal charges. A1828–33. It is difficult to square his introduction of those calls at Trial Two with his current claim that he was unaware of calls on the same subject matter that he claims occurred on or around the same date.

spoke those words, discussed removing Bergrin from Baskerville's case, or otherwise expressed displeasure with Bergrin's handling of that case. CDE659 at 73.

Even if there were a call in which Curry had talked about replacing Bergrin, he never did. Bergrin remained on the case until at least January 3, 2005, *see United States v William Baskerville*, D.N.J. Crim. No. 03–836, ECF No. 32, and reluctantly withdrew only after the Government filed a motion to disqualify him for a conflict of interest arising from his and his client's roles in the Kemo murder conspiracy. Using Bergrin's logic, his remaining on Baskerville's case until approximately ten months after Kemo was murdered proves he was part of the conspiracy.

In short, the Curry Calls support every important aspect of Young's testimony and provide independent proof of Bergrin's guilt. They are simply not material under the *Brady* standard, and fall well short of showing the "actual innocence" necessary to overcome Bergrin's procedural default. *See Evenstad v. Carlson*, 470 F.3d 777, 785 (8th Cir. 2006) ("Based on the weak impeachment value of the evidence and the limited impact the evidence could have had on the case against Evenstad, we determine such evidence is not material under *Brady*."); *see also Clayton*, 199 F.3d at 1180 ("The evidence . . . barely aids his case and is merely impeaching evidence that would not cause a rational person to doubt Clayton's guilt.").

B. Bergrin Procedurally Defaulted His *Brady* Claims As To Maria Correia And Ramon Jimenez.

Ground Three of Bergrin's Motion also alleges that the Government suppressed favorable information provided to it by cooperating witnesses Maria Correia and Ramon Jimenez. BB79–81. Bergrin's claim is both procedurally

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

WILLIAM BASKERVILLE,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 13-5881

(Crim. No. 03-836)

Hon. Peter G. Sheridan, U.S.D.J.

CERTIFICATE OF SERVICE

I certify that I today caused to be served on counsel for Movant, Bruce L. Throckmorton, Esq., a true and accurate copy of the United States' Post-Hearing Brief and two-volume Supplemental Appendix through the Notice of Docketing Activity issued by this Court's electronic filing system.

s/ Steven G. Sanders
STEVEN G. SANDERS

Date: August 5, 2019
Newark, New Jersey