MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

UNITED STATES DISTRICT COURT FOR THE _____ **DISTRICT OF** NEW JERSEY

NAME OF MOVANT / PRISONER NO.	CASE NO.
WILLIAM BASKERVILLE, Reg. No. 25946-050	CR-03-836

PLACE OF CONFINEMENT
FCC COLEMAN--USP 1; COLEMAN, FL 33521

UNITED STATES OF AMERICA -vs- WILLIAM BASKERVILLE
(Name under which convicted)

MOTION

1. *Name and location of court which entered the judgment of conviction under attack:* (Pisano, J.); U.S. District Court; District of New Jersey; 402 East State Street; Trenton, NJ 08608

2. *Date of judgment of conviction:* June 19, 2007

3. *Length of Sentence:* Life imprisonment as to Counts 1-9, all concurrent.

4. *Nature of offense involved (all counts):* Count One: Conspiracy to murder a witness (18 U.S.C. § 1512(k)). Count Two: Conspiracy to retaliate against informant with death resulting (18 U.S.C. § 1513(e)); Count Three: Conspiracy to distribute cocaine base (21 U.S.C. § 846). Counts Four through Nine: Distribution of cocaine base (21 U.S.C. § 841(b)(1)(B).

5. *What was your plea? (Check one)*
   (a) Not guilty xx
   (b) Guilty ___
   (c) Nolo contendere ___

   If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

   N/A

6. *If you pleaded guilty, what kind of trial did you have? (Check one)*
   (a) Jury xx
   (b) Judge only ___

7. *Did you testify at the trial?*
   Yes _____ *No* xx

8. *Did you appeal from the judgment of conviction?*
   Yes xx *No* _____

9. *If you did appeal, answer the following:*

(a) Name of Court U.S. Court of Appeals for the Third Circuit

(b) Result Affirmed.

(c) Date of result October 13, 2011

10. *Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?*
Yes xx No ____

11. *If your answer to 10 was "yes," give the following information:*

(a) (1) Name of court Supreme Court of the United States

(2) Nature of proceeding Writ of certiorari

(3) Grounds raised (1) Batson issue; (2) Forfeiture-by-wrongdoing issue; (3) Sufficiency of the evidence issue; (4) Brady issue.

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ____ No xx

(5) Result Petition denied.

(6) Date of result October 1, 2012

(b) As to any second petition, application or motion give the same information: N/A

(1) Name of court

(2) Nature of proceeding

(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes _____ No _____

(5) Result _____

(6) Date of result _____

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?
(1) First petition, etc. Yes _____ No _____
(2) Second petition, etc. Yes _____ No _____

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

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12. *State **concisely** every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.*

Caution: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise I this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief in these proceedings, you must allege ***facts.***

The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequence of the plea.

(b) Conviction obtained by use of coerced confession.

(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
(e) Conviction obtained by a violation of the privileged against self-incrimination.
(f) Conviction obtained by unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
(g) Conviction obtained by a violation of the protection against double jeopardy.
(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
(i) Denial of effective assistance of counsel.
(j) Denial of right to appeal.

A. *Ground one:* **DEFENDANT-MOVANT'S CONVICTIONS ON ALL COUNTS WERE OBTAINED (AND UPHELD ON APPEAL) IN VIOLATION OF THE CONSTITUTION AND LAWS OF THE UNITED STATES BECAUSE DEFENDANT-MOVANT WAS DEPRIVED OF HIS SIXTH AMENDMENT RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL AT THE TRIAL AND APPEAL STAGES OF THE CRIMINAL CASE AGAINST HIM**

Supporting FACTS (state briefly without citing cases or law): Defendant-movant has annexed hereto as "Exhibit A" his declaration executed under penalty of perjury in support of some of the components of his claims of ineffective assistance of trial/appellate counsel. Cites to paragraphs of relevant information in defendant-movant's declaration will be made as "Exhibit A., ¶ ___" and should be deemed adopted as part of this motion.

I. TRIAL STAGE INEFFECTIVE ASSISTANCE

A. Failure To Investigate--Audio of 3/21/03 Surveillance Video

Prior to trial defendant-movant provided his trial counsel with a copy of a video recording that captured the voice of the case agent in this matter (FBI Agent Manson) and demonstrates that she was not certain of highly material matters such as the identity of the subject in the video, specifics of a vehicle (make, model, color, number of doors), the license plate number, and whether or not a transaction took place. The video was presented at trial without audio and Agent Manson testified in a manner that filled in gaps of information the audio not played shows she did not have and/or which she was uncertain of at the time of the events in question on March 21, 2003. Trial counsel failed to investigate the missing information evident from the audio and exploit that highly material information to demonstrate that Agent Manson gave a narration at trial that was entirely inconsistent with her contemporaneous and unintentionally recorded understanding of the relevant events even though defendant-movant provided the recording and there was no strategic reason not to use the same to cast doubt on the narration of events provided by Agent Manson at trial. Moreover, the fact that the government made a conscious decision to not play the audio that is clearly favorable to the defense on the material issues of identity and whether a crime actually took place, should have and could have been effectively exploited to cast doubt on the drug charge the video pertained to. The failure of trial counsel to investigate this highly material audio recording and use the same to establish the reasonable doubt the recording clearly does give rise to (Exhibit A, ¶¶ 3-4), was not within the bounds of reasonably competent advocacy. That is especially so since the sole excuse counsel gave defendant-movant for failing to investigate and use the audio recording in question was that a federal agent cannot be impeached, as if attempting to do so was violative of some sort of rule or law. (Exhibit A, ¶ 5).

B. Failure To Investigate--Phone System At Hudson County Jail

Defendant-movant asked his trial counsel to investigate the issue of telephone monitoring/recording capabilities at the Hudson County jail during the period when defendant-movant was there. The reason that issue was very important was because it was the government's position that defendant-movant made incriminating calls with regard to the alleged plot/conspiracy to kill Kemo Deshawn McCray ("McCray"), a government informant/witness, at issue in Counts 1 and 2 of this case, but that the reason the government could not present any recordings to establish that premise was because the Hudson County jail did not have the capability of recording calls during the time period when defendant-movant was there. The government supported its claim relative to lack of recording capabilities via the testimony of U.S. Marshal Bill Cannon. Had trial counsel conducted the investigation defendant-movant requested in this regard, it would have been learned that the Hudson County jail did in fact have the recording capabilities the government claimed it did not have, which information would have amply established that the reason the government did not have recordings to support its position on why there was no recordings of the claimed incriminating calls was because calls of the nature claimed by the government actually do not exist. They never in fact happened. That important fact could have been established had counsel conducted the investigation defendant-movant requested. (Exhibit A, ¶ 14).

Establishing that the lack of recordings was not due to the lack of recording capabilities as claimed by the government would have created a basis for the jury to have a reasonable doubt relative to the charges in Counts 1 and 2 given that it would have been exposed that the government attempted to mislead the jury by presenting the testimony of Marshal Cannon on the issue of recording capabilities, which would have also been a very legitimate basis to have doubt with repsect to the government's position that incriminating calls were made. Moreover, counsel was aware of the need to fully investigate any information that Marshal Cannon was the source of since trial counsel told defendant-movant that Marshal Cannon was a known liar after they were given notice that he would be a witness in this case. (Exhibit A, ¶ 16).

C. Failure To Investigate--Anthony Young

Trial counsel had copies of audio recordings which demonstrate that the most important government witness in this case (upon whose testimony the charges in Counts 1 and 2 hinge), Anthony Young ("Young"), gave false testimony on the material issue of who was present in a certain vehicle at the time of a phone call that was given a high value as to the charges in Counts 1 and 2. Despite their knowledge of the recordings and the clear and obvious implications of the recordings (i.e., that they demonstrate that the most important witness in this case perjured himself on a material matter and that the government was aware of the same), trial counsel did not in any way conduct an investigation of the facts the recordings bring into question on the material issue of who was present in a certain vehicle at the time of a certain phone call. (Exhibit A, ¶ 8(A)-(E).

D. Failure To Investigate--Chain-Of-Custody (Drug Evidence)

Prior to trial defendant-movant alerted trial counsel to several material errors in several of the DEA Form-7 Reports relative to certain drug evidence the government intended to use (and did use) at trial. The actual reports were not admitted into evidence and the witness that testified about the evidence those documents pertained to, was not the author of the documents. There was no basis for trial counsel to not challenge the clear break in the chain-of-custody with regard to certain drug evidence the government used against defendant-movant. That issue should have been fully explored via a meaningful investigation to determine the nature and extent of the clearly compromised integrity with regard to the chain-of-custody of certain drug evidence, especially since all alleged drug evidence was handled by a government informant with a criminal past who could have tampered with the evidence in question. (Exhibit A, ¶ 6).

E. Failure To Investigate--Witnesses On Material Facts

Prior to, and during trial, defendant-movant unequivocally expressed to trial counsel that he fully intended to present an actual defense in this case to challenge all material aspects of Young's specific testimony as to the facts, and to meaningfully challenge his general credibility. Because there could have been no conviction as to Counts 1 and 2 absent Young's testimony, the need to attack all of his factual testimony (and his general credibility) in the most meaningful manner possible was clear and obvious. Defendant-movant thus provided trial counsel with the names of witnesses who could have and would have given the jury a fair basis to find that there was in fact a reasonable doubt as to the charges in Counts 1 and 2. (Exhibit A, ¶ 9(A)-(H)).

F. Failure To Challenge Jailhouse Informant Testimony

After learning that the government would be relying on testimony from jailhouse informants defendant-movant made it clear to trial counsel that because he had no involvement in any plot to kill McCray as charged in Counts 1 and 2, and information presented from any jailhouse informant had to have been an alteration of information derived from privileged defense work-product material and was wrongfully obtained. Defendant-movant instructed trial counsel to challenge the admissibility of the jailhouse informant testimony on that basis by, inter alia, calling defendant-movant's former attorney as a witness at the Massiah hearing the court held, whose testimony would have established that the information at issue was altered, out-of-context, defense work-product information that was in motion drafts defendant-movant and former counsel were collaborating on relative to a defense of vindictive and/or malicious prosecution that was being considered prior to the charges in Counts 1 and 2 being added into the case. Nevertheless, trial counsel failed to raise any such challenge to the admissibility of the jailhouse informant information. (Exhibit A, ¶ 21).

Moreover, during the Massiah hearing that was held relative to the question of the admissibility of jailhouse informant Eric Dock's testimony, counsel missed the fact that Dock entered an open-ended agreement with the government through at least two FBI agents who told Dock to keep his eyes and ears open for any information on crimes of others in the jails where Dock was housed. (TR., at 3033, 3035--cites preceded by "TR." are to the

trial record in this case). Also, the agents who had the relevant dealings with Dock did not testify at the hearing and, consequently, the agent who tried to testify about matters relevant to the question of admissibility did not have all of the answers needed to enable the court to decide the issue with all relevant information before it. (TR., at 3056, 3058, 3060, 3068). Trial counsel did not address these important issues that are relevant to the legal standard applied by the court in holding that the information of the jailhouse informants was admissible. (TR., at 3124).

G. Failure To Challenge Drug Evidence Based On Faulty Chain-Of-Custody

As already noted, there is documentary evidence that demonstrates a faulty chain-of-custody regarding certain drug evidence. (Exhibit A, ¶ 6). In addition, Agent Manson, who was not the author of the documents which demonstrate a faulty chain-of-custody, yet she did acknowledge the evident mistakes in the DEA Form-7 documents. (Exhibit A, ¶ 7(A)-(C)). Despite all of the information trial counsel was made aware of relative to the faulty chain-of-custody as to the drug evidence, trial counsel still did not seek to make any sort of challenge to the admissibility of the evidence that was subject to the faulty chain-of-custody, nor did counsel seek to call the author of the documents in question to enable the jury (assuming that the court would not have suppressed the evidence) to make an informed assessment as to what weight, if any, to attribute to the evidence that was subject to a faulty chain-of-custody. (Exhibit A, ¶ 7(D)).

H. Failure To Object/Challenge Speculative/Otherwise Improper Testimony

Trial counsel allowed speculative and otherwise improper testimony of Young to go before the jury, unchecked, even though there was no independant basis in fact established for such testimony, when Young testified as to the significance of McCray's name being passed along as the person that was cooperating against defendant-movant as meaning that "if you cross the Baskerville's and somebody give you the name who did it, get rid of 'em." And his testimony that defendant-movant providing information about McCray being an informant as a "demand" that McCray be killed, even though it was undisputed that defendant-movant and Young never had a conversation after defendant-movant was arrested on November 25, 2003. (Exhibit A, ¶ 10).

I. Failure To Object To Hearsay Testimony By Young

Young testified that another person told him that defendant-movant said to tell everyone to "hurry up and get rid of the CI." Trial counsel did not raise any objection to that testimony which was relied on as the link between defendant-movant and the alleged conspiracy to murder McCray. It was thus extremely important to challenge that hearsay testimony. (Exhibit A, ¶ 11).

J. Failure To Object To Hearsay Testimony By Agent Manson

Agent Manson testified about statements McCray allegedly made to her prior to his death. Trial counsel failed to object to that hearsay testimony and also failed to object to certain audio recordings as well. (Exhibit A, ¶ 12).

K. Failure To Object To Hearsay Testimony By Marshal Cannon

Marshal Cannon testified that he learned from a source at the Hudson County, whose identity was in question, that the jail lacked capabilities of recording prisoner telephone calls at the time when defendant-movant was there. (Exhibit A, ¶¶ 14-15). Trial counsel did not object to that textbook hearsay testimony which was material to an important issue of fact as to Counts 1 and 2.

L. Failure To Meaningfully Cross-Examine Important Witnesses

Trial counsel failed to use known and available documentary evidence to meaningfully cross-examine important fact witnesses on material matters relevant to all counts. Those witnesses include Agent Manson, Young, and Dock, and the documentary evidence that was known and available is certain grand jury transcripts, audio recordings, video recordings, and reports. Had counsel used the information that was known and available the jury would have had a fair basis to find a reasonable doubt with respect to Counts 1 and 2, and the drug charges as well.

M. Failure To Properly Preserve Batson Issue

Trial counsel raised a Batson challenge with regard to the prosecution's use of peremptory challenges to strike black jurors, but they did not make an effective challenge to the pretextual nature of the prosecution's strikes by making a comparison of the stricken black jurors vs. white jurors with similar backgrounds and traits who were not stricken. (Exhibit A, ¶ 13). The lapse in that regard resulted in the adverse rulings on the issue by the trial court and the appellate court.

N. Failure To Challenge Grand Jury Irregularities

There was information of a false/misrepresented manner put before the grand jury via Dock's testimony. That irregularity was not cured by the verdicts at trial since the irregularity in the grand jury process was not aired at trial. Trial counsel failed to seek any redress with regard to the compromised integrity of the grand jury process based on Dock's false testimony before that body.

O. Failure To Challenge Ex Parte Application And Order Re: Discovery

Trial counsel was aware that discovery was being delayed and that other restrictions were placed on defendant-movant's access to information relevant to this case. The delays and restrictions with respect to discovery made it impossible for defendant-movant to defend himself in a fair and meaningful manner as he was entitled. Nevertheless, trial counsel failed to make any challenge with regard to the obstructive nature of the delays and restrictions relative to discovery. No attorney, regardless of their skill level, can meaningfully subject the prosecution's case to the crucible of adversarial testing envisioned by the Sixth Amendment right to counsel, without some input from the defendant directly. Here, defendant-movant was stripped of any ability to offer timely insight on relevant matters. Thus, trial counsel's failure to challenge the discovery delays/restrictions was plainly unreasonable.

P. **Failure To Object/Preserve Issue Re: The Court's Jury Instruction That Relieved The Government Of Its Burden Of Proof As To Counts 1 And 2**

With respect to Counts 1 and 2, the trial court instructed the jury that defendant-movant was charged with conspiracy to murder a witness with premeditation. However, the language in the Fourth Superseding Indictment returned by the grand jury charges that defendant-movant conspired and agreed with others to kill McCray with malice aforethough. The error in this regard was exacerbated by the trial court's decision to not allow the indictment to go into the jury room. Trial counsel did not object to the instruction even though it clearly relieved the government of its burden to prove the offense elements of the specific charge in the indictment (i.e., malice aforethought) beyond a reasonable doubt. Defendant-movant was thus denied his right to due process.

Q. **Failure To Object/Preserve Issue Re: Constructive Amendment Of Indictment**

With respect to Count 1, the trial court constructively amended the indictment by instructing the jury in a manner that permitted it to convict defendant-movant on offenses not applicable under 18 U.S.C. § 1512(a) and (k). Trial counsel did not object or otherwise challenge the constitutionally infirm instruction as to Count 1. Defendant-movant was thus denied his right to be tried only on the charges in the indictment returned by the grand jury.

R. **Failure To Object/Preserve Issue Re: Insufficient Definition Of Conspiracy**

The trial court's instruction with regard to the definition of conspiracy generally, and specifically as to Counts 1 and 2, did not sufficiently define what was required to be proven beyond a reasonable doubt in order to convict as to Counts 1 and 2. Trial counsel did not object or seek other corrective measures. Defendant-movant was thus convicted in violation of due process.

S. **Failure To Seek Bifurcated Trial**

Defendant-movant was originally charged with only drug charges. The murder-related counts (Counts 1 and 2) were added after the confidential informant who aided in obtaining the drug charges was murdered. Trial counsel should have sought a bifurcated trial to ensure that the jury's decision on each set of charges was not influenced by its decision as to the other set of charges.

T. **Failure To Object To Illegal Sentence**

The government sought enhanced penalties as to the drug counts via the filing of an Information under 21 U.S.C. § 851. At defendant-movant's sentencing the court did not address him personally to determine whether or not he affirmed or denied that he had previously been convicted as claimed in the government's section 851 filing. Defendant-movant was also not informed by the court or counsel that any challenges to any conviction alleged in the government's section 851 Information had to be made prior to the sentencing hearing. Furthermore, the court imposed mandatory life sentences as to Counts 4-9 without any justification stated for that action. Counsel failed to challenge these clear errors by the sentencing court. (Exhibit A, ¶ 18(A)-(B)).

U. Reservation Of Additional Claims Yet Unknown

Defendant-movant reserves the right to raise any additional claims of ineffective assistance of trial counsel under the relation back doctrine if, during the proceedings relative to this motion he learns of further facts that will give rise to the need to put forth additional components of his main claim of trial stage ineffective assistance of counsel.

II. APPEAL STAGE INEFFECTIVE ASSISTANCE

Appellate counsel rendered constitutionally deficient assistance by failing to advance the following issues on appeal:

(A) The confrontation/hearsay issues stemming from the testimony of Marshal Cannon. (Exhibit A, ¶ 17).

(B) The insufficient evidence with respect to the agreement element required to sustain the conspiracy convictions in Counts 1 and 2.

(C) The government's failure to correct known perjured testimony by Anthony Young and Agent Manson.

(D) The several prejudicial errors with regard to the trial court's jury instructions.

(E) The sentencing errors.

(F) The additional plain errors within the trial record.

(G) The lack of subject-matter jurisdiction as to all charges.

(H) Any of the issues identified in the preceding pages, to the extent that any of those issues could have been raised on appeal.

Defendant-movant reserves the right to raise any additional claims of ineffective assistance of appellate counsel under the relation back doctrine if, during the proceedings relative to this motion, he learns of facts not now known which will give rise to the need to put forth additional components of his main claim of appeal stage ineffective assistance of counsel.

III. CUMULATIVE EFFECT OF COUNSELS' ERRORS

Defendant-movant submits that he is entitled to relief with respect to each and every claim of ineffective assistance raised in this motion. However, if the court is of the view that the issues in isolation do not give rise to a Sixth Amendment violation then defendant-movant submits that the cumulative effect of all errors by counsel at each stage clearly does establish that defendant-movant has been deprived of his constitutional right to the effective assistance of counsel in this case warranting that the convictions as to each count be vacated.

B. *Ground two:* **THERE IS NEWLY DISCOVERED EVIDENCE WHICH ESTABLISHES THAT DEFENDANT-MOVANT'S CONVICTIONS IN THIS CASE ARE CONSTITUTIONALLY INFIRM AND SHOULD THUS BE VACATED**

*Supporting **FACTS** (state briefly without citing cases or law);*

Via an exercise of due diligence, defendant-movant has obtained information from, inter alia, the 2011 and 2013 trials in the matter of United States v. Paul Bergrin, District of New Jersey, Criminal No. 09-369. Defendant-movant's previously noted declaration annexed hereto as "Exhibit A" contains information relevant to this issue. Cites will be made as previously indicated and the information cited to should be deemed adopted as part of this motion. The newly discovered evidence establishes the following:

(A) Inconsistencies relative to the government's theory as to the motive of the McCray murder. (Exhibit A, ¶ 20(A)).

(B) Inconsistent testimony by Agent Manson/Brokos on the issues of how, when, and from whom, she learned information relative to the McCray murder. (Exhibit A, ¶ 20(B)-(C)).

(C) Numerous material inconsistencies/conflicts in the testimony of crucial government witness Anthony Young. (Exhibit A, ¶ 20(D)(1)-(22)).

(D) Additional inconsistencies/conflicts as to highly material matters. (Exhibit A, ¶ 20(E)(1)-(9)).

(E) Eyewitness information that casts doubt on the foundation of the government's case relative to Counts 1 and 2. (Exhibit A, ¶ 20(F)(1)-(5)).

The foregoing newly discovered information (which is fully discussed in the paragraphs of Exhibit A that are cited), standing alone, and/or cumulatively, clearly warrants a new trial in this case at a minimum if the convictions are not fully reversed with the charges dismissed with prejudice. Because of the extensive nature of the newly discovered evidence and its relation to the extensive record in this case; hearings may be necessary to ensure that all relevant facts are put into proper perspective to enable a decision based on a full and fair presentation.

Because further information not yet known may be discovered at a later date since defendant-movant's due diligence is ongoing; defendant-movant reserves the right to add further components to this newly discovered evidence issue under the relation back doctrine.

C. *Ground three*: **DEFENDANT-MOVANT'S CONVICTIONS SHOULD BE VACATED ON THE BASIS OF THE SUBSTANTIAL AND PERVASIVE PROSECUTORIAL MISCONDUCT IN THIS CASE**

*Supporting **FACTS** (state briefly without citing cases or law):* The newly discovered evidence noted in Ground Two also supports a claim of prosecutorial misconduct. To avoid redundancy all of the information discussed and cited in Ground Two of this motion will not be re-stated but is adopted for purposes of this prosecutorial misconduct issue. The newly discovered evidence discussed in Ground Two is derived mostly from audio recordings the government knew of and withheld from defendant-movant in this case. In doing so: the government deprived defendant-movant of his right to present a full and meaningful defense; (b) the government allowed known perjury on material matters to go uncorrected; (c) the government presented different theories with respect to the motive for the McCray murder at the trial in this case and the trials in the Bergrin case, which demonstrates (inter alia) that the prosecutors in this case were seeking to obtain convictions without regard to its duty to seek the truth; and (d) the government gained an unfair advantage and was able to obtain favorable evidentiary rulings due to its lack of disclosure of the newly discovered evidence that it had at the time of the trial in this case. All of the foregoing (in conjunction with the information cited in Ground Two of this motion) clearly establishes a fundamental due process violation of the most serious nature since it arises via the misconduct of government prosecutors who have abused their office and acted in willful disregard of their sworn duty to uphold and defend the Constitution.

Regardless of anyone's personal views of defendant-movant, he is entitled to a fair proceeding free from the taint of government misconduct and the due process violation inherent in such a proceeding. The convictions in this case should be vacated and the indictment should be dismissed with prejudice based on the prosecutorial misconduct established by the new revelation of information the government knew of and withheld at the time of the trial in this case that would have established a full and fair basis for the jury in this case to find a reasonable doubt.

Because further information not yet known may be discovered at a later date since defendant-movant's due diligence is ongoing; defendant-movant reserves the right to add further components of this prosecutorial misconduct issue under the relation back doctrine.

D. *Ground **four:***

*Supporting **FACTS** (state briefly without citing cases or law):*

13. *If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reason(s) for not presenting them:* To the extent that any of the claims raised in this motion could have been raised at an earlier juncture, ineffective assistance of counsel is the cause for any lapse in that regard. Otherwise, the claims are based on newly discovered and/or out-of-record evidence, which is properly raised for the first time in this collateral proceeding.

14. *Do you have any petition or appeal now pending in any court as to the judgment under attack?*
Yes _____ No xx

15. *Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein.*

(a) At the preliminary hearing N/A

(b) At the arraignment and plea Paul Bergrin; 60 Park Place, 10th Fl., Newark, NJ 07105

(c) At trial Carl J. Herman; 443 Northfield Ave.; West Orange, NJ 07052
Kenneth W. Kayser; POB 2087; Livingston, NJ 07039

(d) At sentencing Same as (c)

(e) On appeal Mark A. Berman; 65 Route 4 East; River Edge, NJ 07661

(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. *Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?*
Yes xx No _____

17. *Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?*
Yes _____ No xx

(a) If so, give name and location of court which imposed sentence to be served in the future: N/A

(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? N/A
Yes _____ No _____

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

This motion is timely filed.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

(1) the date on which the judgment of conviction became final;
(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

PRAYER/CONCLUSION

WHEREFORE, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Respectfully submitted,

William Bashell

Signature of Attorney/Movant

DECLARATION

I, declare under penalty of perjury, ***pursuant to 28 U.S.C. 1746***, that the foregoing is true and correct.

Executed on 9/24, 2013

William Bashell

Signature of Petitioner/Declarant

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E X H I B I T A

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DECLARATION OF WILLIAM BASKERVILLE

DECLARATION OF WILLIAM BASKERVILLE

I, William Baskerville, declare the following under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am submitting this declaration in connection with United States v. William Baskerville, District of New Jersey, Criminal No. 03-836, in which, I was/am the defendant. The information that follows is based on my first-hand knowledge and, where noted, my review of documents and communications with other individuals.

2. The charges brought against me relate to the murder of a government informant/witness named Kemo Deshawn McCray ("McCray"), a conspiracy to distribute cocaine base, and six substantive counts of distribution of cocaine base.

3. On April 26, 2007, during the summations phase of my trial, I wrote a letter to the trial judge expressing my concern and frustration with regard to several lapses by my trial lawyers that were of a material nature. Specifically, I noted that my lawyers failed to use a surveillance video recording that I provided them with, to use in cross-examining FBI Agent Manson, and I noted chain-of-custody issues evident from clear errors in some DEA Form-7 Reports. The reason I wrote the letter was because the trial judge had previously stated that I could only speak through counsel, who had ignored my requests and flat out refused to honor any of my instructions as to issues that I wanted them to raise. So, to avoid being disrespectful to the trial judge by speaking when I was told not to, and since my attorneys refused to bring my concerns to the trial judge's attention since my concerns were about them; I wrote the letter to air some of my concerns as indicated above.

4. The video recording (noted in ¶ 3) that I provided to trial counsel (Mr. Carl Herman and Mr. Ken Kayser) related to surveillance of the March 21, 2003 drug transaction at issue in government trial exhibits 51 and 51A. The video recorder's audio function picked up Agent Manson communicating with her

surveillance team telling them she wasn't sure if the person in the video was me, she gave the wrong make, model, and color of the vehicle shown in the video, and she had also given the incorrect number of doors the vehicle had. She also could not make out the license plate number, and was not sure on whether a transaction had taken place. Agent Manson's statements on the video were completely inconsistent with her testimony during trial. (TR., at 3571--cites preceded by "TR" are to the trial record in my case).

5. My trial counsel told me that they would not use the video because "you can not impeach a federal agent." That is how it was said to me and my counsel, more than once, was trying to lead me to believe that it was somehow against the rules to even attempt to impeach a federal agent even if there was documentary evidence that conflicted with the agent's testimony.

6. Prior to trial I told my counsel that several of the DEA Form-7 Reports were in error. Specifically, those relevant to the 3/18/03 (exhibits 1 and 1A), 3/21/03 (exhibits 2 and 2A), and 6/19/03 (exhibits 4 and 4A) transactions. Based on the errors in those reports I asked counsel to move to suppress the exhibits those documents pertained to since there was a clear break in the chain-of-custody, but counsel inexplicably refused to raise the issue. (TR., at 3546, 3559, 3581-82, 3661-80).

7. Also relative to the DEA Form-7 Reports:

(A) The government never submitted any of the DEA Form-7 Reports into evidence at trial (see, cites in ¶ 6), knowing that the information in them would have led the jury to have questions about the integrity of the evidence those documents pertained to.

(B) Agent Manson under cross-examination admitted that certain reports contained errors and mistakes in them. (TR., at 3999-4002).

(C) Agent Manson was not the author of any of the DEA Form-7 Reports in my case. (TR., at 3999-4002).

(D) Counsel never attempted to put the reports in evidence so the jury could see the discrepancy, nor did counsel seek to call the author of the reports, even though counsel learned via the testimony of Agent Manson that the reports contained errors and that Agent Manson was not the author of any of the reports. (TR., at 3999-4002).

8. With regard to the testimony of government witness Anthony Young at my trial in 2007:

(A) My counsel was provided with audio recordings from the matter of United States v. Hakim Curry, Criminal No. 04-280. (TR., at 3803, 4777-4784).

(B) In those recordings were two calls between Paul Bergrin and Hakim Curry, and a call between Hakim Curry and Rakeem Baskerville which took place within two minutes of the second Bergrin/Curry call. (Doc. 22--cites preceded by "Doc." are to entries in the docket of my case).

(C) Had counsel investigated the facts and circumstances of the recordings they would have learned that Rakeem Baskerville was not in the vehicle with Hakim Curry and Anthony Young on November 25, 2003. That important fact could have been used to attack the credibility and truthfulness of Young on a material matter. (TR., at 4350-52).

(D) The government knew as early as November 9, 2004 that Rakeem Baskerville was not in the car with Hakim Curry on November 25, 2003 when it filed its motion seeking disqualification of Paul Bergrin from representing me. That was two months before Anthony Young made a claim to the contrary.

(E) The government knew or should have known (via its own documentary evidence) that Anthony Young committed perjury on the material fact of who was present in Hakim Curry's vehicle on the date and time in question, but it failed to correct it. (TR., at 4350-52).

9. Had counsel conducted the investigation I requested they would have learned that the following witnesses could have been called to establish that Anthony Young's testimony on other material matters was false:

(A) **Diedra Baskerville.** Counsel put the Court on notice that she was a potential witness. She would have given testimony to the effect that she did not attend any meeting with any of my brothers, Hakim Curry, and/or Anthony Young on November 25, 2003 (the date of my arrest); that she did not even have transportation that day because the FBI had taken her vehicle; and that she has never met Anthony Young. That testimony would have squarely refuted Anthony Young's testimony to the contrary. (TR., at 4341-4344).

(B) **Rasheeda Tarver.** Counsel put the Court on notice that she was a potential witness. She is Anthony Young's ex-girlfriend and would have given testimony to the effect that on March 2, 2004 she did not drive Young and/or Rakeem Baskerville to a body shop on South 12th Street, nor did she ever drive Young and/or Rakeem Baskerville anywhere, ever. That testimony would have squarely refuted Young's testimony to the contrary. (TR., at 4413-4421). She would have also testified that Young never told her anything about a girl getting killed in Irvington that Jamal Baskerville and Jamal McNeil were allegedly involved with, and that she did not ever talk to Jamal Baskerville about any such events which would have squarely refuted Young's testimony to the contrary. (TR., at 4567-4571).

(C) **Attorney Paul Feinberg.** I asked counsel to contact Mr. Feinberg to investigate: (1) whether he represented Anthony Young when he contacted the FBI on January 14, 2005, as he claimed (TR., at 4571-4573); (2) whether he ever advised Young to not implicate himself and lie to the FBI while meeting with them, (TR., at 4572);

and (3) whether he ever gave Agent Manson consent for the FBI to speak with Young outside of his presence while he was Young's attorney, (TR., at 3891-3892).

(D) **Paul Bergrin.** He notified my trial counsel that he was willing to testify at my trial. Bergrin was not charged, or convicted of anything, at the time of my trial and he was at the center of the charges relative to the murder of McCray. His testimony would have squarely refuted Anthony Young's on the most material matters in this case.

(E) **Jamal Baskerville.** He was never charged. Counsel told him to stop attending my trial because his name had been mentioned. Had counsel called Jamal as a witness he would have given testimony that squarely refuted Anthony Young's on highly material matters. Specifically: (1) he would have testified that there was no meeting in front of his house on November 25, 2003 (the date of my arrest) between Diedra Baskerville, Rakeem Baskerville, Jamal McNeil, Hamid Baskerville, Hakim Curry, and Anthony Young; (2) he would have testified that there was no second meeting 4-10 days after my arrest between Paul Bergrin, Hakim Curry, Rakeem Baskerville, Jamal McNeil, and Anthony Young where Bergrin said, "No Kemo, no case."; (3) he would have testified that he never told Young where he could find McCray so Young could kill him; and (4) he would have testified that I never in any way communicated to him that I wanted him or anyone else to harm McCray in any way.

(F) **Jamal McNeil.** He was never charged. Anthony Young claimed that McNeil visited me at the Hudson County jail and passed messages from me to the effect that that they (Young and others) should hurry and find McCray or I would spend the rest of my life in prison. (TR., at 4376-4377). McNeil's testimony would have

squarely refuted Young's testimony on material matters. Specifically: (1) he would have testified that he did not attend any meeting on November 25, 2003 at Jamal Baskerville's house among Diedra Baskerville, Rakeem Baskerville, Hamid Baskerville, Jamal Baskerville, Hakim Curry, and Young; (2) he would have testified that I never at any time implied to him directly or indirectly that I wanted anyone to kill McCray; (3) he would have testified that at no time did he ever communicate to anyone any sort of information to in any way imply that I wanted anyone to kill McCray; and (4) he would have testified that he had no knowledge of, or involvement in, any plot, scheme, or conspiracy to kill McCray.

(G) **Rakeem Baskerville.** Had counsel called Rakeem as a witness his testimony would have squarely refuted the testimony of Young on material matters. Specifically: (1) he would have testified that he had no involvement in, or knowledge of, any plot, scheme, or conspiracy to kill McCray; (2) he would have testified that he did not attend any meeting at Jamal Baskerville's home on November 25, 2003 among Deidra Baskerville, Jamal Baskerville, Hamid Baskerville, Jamal McNeil, Hakim Curry, and Young; (3) he would have testified that he was not in Hakim Curry's vehicle on November 25, 2003 with Young and Curry when Paul Bergrin called and gave Curry the name "K-Mo"; (4) he would have testified that he did not attend any meeting 4-10 days after my arrest among Bergrin, Curry, Young, McNeil, and Jamal, where Bergrin allegedly said "No Kemo, no case"; he would have testified that any testimony that implicated him in any aspect of the McCray murder was false; and (6) he would have testified that I never in any way communicated to him that I wanted any sort of violence to be carried out against McCray.

(H) **Hakim Curry.** Had he been called as a witness he would have given testimony that would have refuted Young's testimony on material matters. Specifically: (1) he would have testified that on November 25, 2003 he did not attend any meeting among Diedra Baskerville, Jamal Baskerville, Hamid Baskerville, Rakeem Baskerville, Jamal McNeil, and Young; (2) he would have testified that Rakeem Baskerville was not present when he received a call from Paul Bergrin; (3) he would have testified that he did not attend a meeting 4-10 days after my arrest among Young, Rakeem, McNeil, Jamal, and Bergrin, where Bergrin allegedly said, "No Kemo, no case"; (4) he would have testified that he had no knowledge of, or involvement in, any plot, scheme, or conspiracy to kill McCray' (5) he would have testified that I never in any way communicated to him that I wanted any sort of violence to be carried out against McCray; and (6) he would have testified that he never in any way suggested or implied to anyone that they should kill or otherwise physically harm McCray.

10. My trial counsel did not object to Anthony Young's speculative and otherwise baseless testimony relative to the name (McCray's) being passed along and what it meant when he said, "that mean if you cross the Baskerville's and somebody give you the name who did it, get rid of 'em." (TR., at 4354). And counsel did not object relative to the information coming from me about McCray being a "request" or "demand" which Young said was a "demand" (TR., at 4354-55), even though counsel was aware that Young never spoke with me. (TR., at 4354, 4642-4644).

11. Trial counsel failed to object to hearsay testimony by Anthony Young regarding what he alleged that Jamal McNeil told him I allegedly said to tell everyone "that we got to hurry up and get rid of the CI." (TR., at 4376-77).

12. Trial counsel failed to object to hearsay testimony based on statements McCray allegedly made to Agent Manson prior to his death and counsel also failed to object to certain audio recordings being admitted. (TR., at 3446-4041).

13. Trial counsel failed to effectively preserve the Batson objections. Specifically, counsel failed to satisfy the second step of a Batson challenge when they failed to challenge the pretextual nature of the government's race neutral explanations by making a comparison of the challenged black jurors vs. white jurors with similar traits as those claimed by the prosecutor as the basis for the striking of the black jurors. (TR., at 3179-3213).

14. I had asked counsel to conduct an investigation of the telephone monitoring capabilities at the Hudson County jail prior to November of 2006 to determine if the testimony of U.S. Marshal Bill Cannon was accurate or not. If that facility had the capabilities of recording calls prior to that date then that information would have: (a) established that Marshal Cannon was called by the government to give inaccurate testimony on a material matter; and (b) established that the calls claimed to have taken place from the Hudson County jail relative to the alleged plot to kill McCray never happened. Marshal Cannon was the only witness called on the question of whether there was recording capabilities at the Hudson County jail at the time relevant in this case. (TR., at 5466).

15. Trial counsel failed to object to the hearsay-within-hearsay testimony of Marshal Cannon when they learned during cross-examination that the information that formed the basis of his testimony at issue in ¶ 14 came from an unknown and un-identified source. (TR., at 5471-72).

16. Trial counsel told me that Marshal Cannon was a known liar when they were given notice that he would be a witness in this case. Counsel was thus aware of the need to conduct a full investigation on the subject-matter of Marshal Cannon's testimony.

17. On March 10, 2009 I wrote a letter to my appellate counsel, Mark Berman, in which I informed him that we needed to raise a confrontation claim based on the hearsay-within-hearsay testimony of Marshal Cannon even though trial counsel did not preserve the issue. Appellate counsel ignored my letter and did not raise the confrontation issue or any other issue as to Marshal Cannon.

18. With regard to the enhanced sentences imposed on me as to Counts 3-9 per 21 U.S.C. § 851:

(A) The sentencing court did not address me personally to determine whether or not I affirmed or denied that I had previously been convicted as claimed in the section 851 Information. I also was not informed by the Court or counsel that any challenges to any conviction alleged in the Information had to be made prior to sentencing. (Sent. Tr., at 5-6).

(B) The sentencing court imposed life sentences as to Counts 3-9 without any justification expressed for the same. The applicable sentencing range under 21 U.S.C. § 841(b)(1)(B) with the prior conviction enhancement was 10 years to life under the statute. There was no basis for any upward departure/variance stated. In fact, the Court imposed the life sentences on those counts as if it believed the life sentences were mandatory. (Sent. TR., at 16-17).

19. I have been provided with information that is newly discovered since it was not available to me at the time of my trial which consists of parts of the trial record in the 2011 trial in the matter of United States v. Paul Bergrin, District of New Jersey, Criminal No. 09-369.

20. The newly discovered evidence consists of the following:

(A) Inconsistencies in the government's theory on motive with regard to the McCray murder. (Compare, TR., 3265, 3275-76, 3291; with, Bergrin 10/17/11 TR., at 4-7, 16-17, 19, 29-30).

(B) Inconsistent testimony by Special Agent Manson/Brokos: (1) At my trial in 2007 she claimed to have had no leads regarding the McCray murder until Anthony Young came forward, (TR, at 3887), but at the Bergrin trial in 2011 she said informants provided information to the effect that a "Fat Ant" or "Anthony Rogers" was the person who killed McCray, (Bergrin 10/18/11 TR., at 160-63); (2) those informants were identified as Shelton Leveret and Curtis Jordon and based on their information she began an investigation of "Fat Ant" and "Anthony Young" before Young came forward in 2005 and she eventually learned that "Fat Ant" and Anthony Young are the same person, (Bergrin 10/18/11 TR., at 160-63); and (3) a jailhouse informant, Roderick Boyd, who was housed at the Passaic County jail with William (Malik) Lattimore, provided her with information to the effect that Lattimore told him that he was responsible for McCray's murder, which information was put in an FBI 302 Report and provided to Bergrin in a Jencks disclosure, (Bergrin 10/19/11 TR., at 215-221).

(C) None of the above referenced information presented through Agent Manson/Brokos at the Bergrin trial was provided to me in any form prior to or during my trial in 2007.

(D) Inconsistent/conflicting testimony by Anthony Young: **(1)** At my trial in 2007 Young said Diedra Baskerville was present at the alleged meeting on November 25, 2003, (TR., at 4343), but he excluded her from being present at the Bergrin trial in 2011, (Bergrin 10/27/11 TR., at 122-29).

(2) At my trial Young said he learned of my federal arrest through Diedra Baskerville and my brother, (TR., at 4341), but at Bergrin's trial he excluded Diedra and said he learned of my federal arrest "through Rakeem." (Bergrin 10/27/11 TR., at 122).

(3) At my trial Young said that those present in Hakim Curry's vehicle when Curry received a call from Bergrin on November 25, 2003 were Curry, Rakeem Baskerville, and Young, (TR., at 3450-55), but at Bergrin's 2011 trial Young said those present were Curry, Young, and Jamal Baskerville, (Bergrin 10/27/11 TR., at 129-36).

(4) At my trial Young said he learned from Curry on November 25, 2003 that I was facing life in prison, (TR., at 4358-59), but at Bergrin's trial in 2011 Young said he learned I was facing life 4-5 days after my arrest on November 25, 2003 when Bergrin informed a group of people to that effect at a meeting, (Bergrin 10/28/11 TR., at 138-41).

(5) At my trial Young said it had not been determined who would kill McCray if he was located, (TR., at 4362-63), but at the Bergrin 2011 trial he said he decided on the day of the meeting with Bergrin 4-5 days after my arrest that if the opportunity arose that he would kill McCray for the alleged $15,000 payment offered by Curry and Rakeem Baskerville, (Bergrin 10/27/11 TR., at 147).

(6) For the first time, at Bergrin's 2011 trial, Young said that he put on gloves to retrieve the gun and that he removed the bullets and wiped or cleaned them off. (Bergrin 10/27/11 TR., at 165-68).

(7) For the first time, at Bergrin's 2011 trial, Young said that the gun he used to kill McCray was fully automatic. (Bergrin 10/27/11 TR., at 168-69).

(8) There was a stipulation between the parties noted by AUSA Minish at the Bergrin 2011 trial that in Young's 2007 testimony (at my trial) he never said the gun was "fully automatic." (Bergrin 11/2/11 TR., at 225-28).

(9) At my trial Young said that Curry drove past the body of McCray after he was shot and did not get out of his vehicle, (TR., at 4408-09), but at the 2011

Bergrin trial Young said that Curry stopped his vehicle at the scene of the murder, got out of his vehicle, and checked to see if McCray was in fact dead, (Bergrin 10/27/11 TR., at 174-75).

(10) For the first time, at the 2011 Bergrin trial, Young said there was blood on his jacket and gloves and that when Curry arrived at a garage to pick up Young and Rakeem Baskerville that he took his fleece jacket off and balled up the gloves inside of it. (Bergrin 10/27/11 TR., at 205-07).

(11) Also on the matter of the use of a fully automatic gun, at my trial Young said he fired the gun 3-4 times, (TR., at 4399-4400), but at the 2011 Bergrin trial Young said he pulled the triger once letting out 3-4 shots really fast. (Bergrin 10/27/11 TR., at 192).

(12) At my trial Young said when McCray's body fell after he shot him that he jumped over McCray's body and then jumped into the passenger seat of the getaway car, (TR., at 4400-01), but at Bergrin's 2011 trial he said that he jumped over McCray's body, ran around the rear of the car, then got in the passenger seat. (Bergrin 10/27/11 TR., at 199).

(13) At my trial Young said that he only went to Ben's Auto Body shop the night of the McCray murder, (TR., at 4413-18), but at Bergrin's 2011 trial Young said that he and Rakeem made two trips to the auto body shop to get rid of the gun. (Bergrin 10/27/11 TR., at 212-13, 215-18).

(14) At my trial Young said Rakeem laid the gun on the ground and took the bullets out of it before it was melted, (TR., at 4416-17), but at Bergrin's 2011 trial Young said that he took the bullets out of the gun. (Bergrin 10/27/11 TR., at 216-17).

(15) At my trial Young said Ben's nephew started to melt the gun then some other guy (not Ben) took the torch and continued melting the gun, (TR., 4416-19), but at Bergrin's 2011 trial Young said that Ben started melting the gun and that his nephew continued to melt it. (Bergrin 10/27/11 TR., at 217-18).

(16) For the first time, at Bergrin's 2011 trial, Young said he had a bag of clothes (including the fleece jacket and gloves that he claimed had blood on them) and threw it in the dumpster near the IYO center when he got out of the car before going to Ben's Auto Body shop, which is the same dumpster where Young claimed he threw the melted gun in. (Bergrin 10/27/11 TR., at 216-18).

(17) For the first time, at Bergrin's 2011 trial, Young admitted that I never demanded that he kill McCray and that he had no contact with me from November 25, 2003 (the date of my arrest) through March 2, 2004 (the date McCray was murdered). (Bergrin 11/2/11 TR., at 107-116).

(18) At my trial Young said that Bergrin told a group of people at a meeting that "if Kemo was dead, that will Baskerville would definitely come home from jail[,]" (TR., at 4361), but at Bergrin's 2011 trial Young admitted that Bergrin never said "if Kemo was dead." In fact Young emphasized that Bergrin "didn't say 'dead'" at all. (Bergrin 11/2/11 TR., at 175-79)

(19) Bergrin was provided, via discovery in his case, with a call chronology prepared by Agent Manson/Brokos relative to calls made on the day (11/23/03) I was arrested between Bergrin and Diedra Baskerville, Bergrin and Hakim Curry, and Curry and Rakeem. Bergrin used those call records to establish that Young's testimony at my trial was false on the matters of the presence of Diedra at the meeting on the day of my arrest, and

the presence of Rakeem in Curry's vehicle on that same day when Curry received a call from Bergrin because the information Bergrin was provided with in discovery showed that Bergrin called Diedra at home (and she thus could not have been at the meeting Young said she was at) and showed that Curry called Rakeem within two minutes of the call with Bergrin (showing that Rakeem was not present in the vehicle with Curry when he got the call from Bergrin). (Compare, TR., at 4342-48, 4350-53; with, Bergrin 10/19/11 TR., at 154-68; 10/28/11 TR., at 149-61).

(20) It was established at the Bergrin trial that there was a material conflict between what Young testified to ay my trial and what he claimed at Bergrin's 2011 trial on the subject of when Young found out how much time I was facing and why that was significant to the need to start searching for McCray. (Bergrin 11/2/11 TR., at 137-57).

(21) At his 2011 trial Bergrin called Attorney Paul Feinberg as a defense witness who testified that he represented Anthony Young at the end of 2004 into the beginning of 2005 relative to a weapons possession charge. Mr. Feinberg had a bench warrant removed and the his fee for representing Young was to be $8,500. Young only paid $1,000 of that and failed to make agreed upon further payments. Young called Mr. Feinberg in early January of 2005 and Young told him that the FBI wanted to talk to him (Young). After Mr. Feinberg learned that Young could not pay him to attend a meeting with the FBI Mr. Feinberg told Young he would need to request counsel from the Federal Public Defender's Office if he intended to meet with the FBI, and that he advised Young to tell the FBI the truth because it would be a federal crime if he did not tell the

FBI the truth and he (Feinberg) made that very clear to Young. Mr. Feinberg further advised Young that if he was going to implicate himself then he should "take the fifth." Mr. Feinberg also advised Young to ask for an attorney. Mr. Feinberg made it claer that Young's false implication of someone else was not consistent with his advice to Young. (Bergrin 11/9/11 TR., at 24-37).

(22) At his 2011 trial Bergrin called Rasheeda Tarver as a defense witness. She testified that she was the girlfriend of Anthony Young for a-year-and-a-half (May of 2003 through January of 2005) and that Young had threatened her and burned her house down. Young called her in late January of 2005 and told her he was standing in a crowd when he witnessed someone named Malsey kill McCray. In a subsequent version of the same event Young told her Hak killed McCray, and in a third version Young said he killed McCray. Young told her that he could not say that someone else did it and that he had to tell "them" that he did it. Ms. Tarver believed that Young was just throwing out stories so that she would be on the same page as him. Young would call Ms. Tarver 10 times a day but she would only accept about 6 and that each time Young would tell her a new version of the events and try to convince her to go with him into witness protection. Young told her that he was not going back to jail for anything and that he was going to tell the FBI whatever they wanted to know. (Bergrin 11/9/11 TR., at 37-51). Ms. Tarver also testified (contrary to what Young said at my trial) that she has never taken Young and Rakeem to an auto body shop on 12th Street in Newark or anywhere else, and that she has never seen Rakeem with a gun. Ms. Tarver told that same information to Agent Manson/Brokos. Ms. Tarver also said that Young had never dicussed with her

anything about a murder of a young girl in Irvington, nor did she discuss that topic with Jamal Baskerville or her best friend whom is Jamal's wife. (Bergrin 11/9/11 TR., at 51-53).

(E) Additional material inconsistencies/conflicts:

(1) Via a supplemental filing by Bergrin in his case dated July 15, 2013, Bergrin notes that he was provided with some audio recordings from United States v. Hakim Curry, that were inadmissible due to improper sealing. In footnote 1 Bergrin wrote the following about those recordings: "Despite the inadmissibility of the recordings, the government was fully cognizant of their substance; yet they knowingly and intentionally admitted evidence diametrically opposed and inconsistent with their contents. Furthermore, they permited false testimony to be presented to the jury and argued that wrongful and improper inferences be adduced and drawn from this inadmissible evidence . . . ."

(2) On page 2 of that same supplemental filing Bergrin explained that the government knew and had evidence that Young was being deceptive when he alleged and swore that on the date of November 25, 2003 Rakeem was in Curry's vehicle at 10:30 a.m. when Curry spoke with Bergrin about my case and that Rakeem and Curry, while together in Curry's vehicle, determined that the name mentioned by Begrin was "Kemo" not "Kamo", and that Curry, Young, Hamid, and Rakeem met during the morning hours of November 25, 2003 and discussed my being arrested and that based on the charges, they had no knowledge that I was facing life in prison. The Curry intercepts clearly and unequivocally prove the false nature of Young's testimony at my trial on these material matters.

(3) On page 3 of the supplemental filing Bergrin explained that the government wrongfully misrepresented to the court and the trial jury in the Bergrin case

that December 4, 2003 was the date of the meeting that Young claimed Bergrin had with a group of people about my case. The recordings conclusively demonstrate that Young committed perjury, and that the government knew of and failed to correct the same, on that matter.

(4) On pages 3-4 Bergrin wrote that AUSA Minish, during his summation, informed the jury that the event of significance that happened after Thanksgiving is my detention hearing on December 4, 2003 because that was the first time Bergrin and I were told I was facing life. However, three of the inadmissible recordings show chronologically: (a) that Bergrin informed Curry that the evidence independent of McCray was no less than overwhelming, and that I would likely get a bail; (b) that Bergrin had to end a call and told him he would call back later because he was too busy to talk; and (c) that Bergrin could get me a 13 year plea deal and will call Curry tomorrow. That all clearly shows that Bergrin did not himself believe (much less convey to anyone) that I was truly going to receive a life sentence on the non-violent drug charges I was facing and that the evidence against me was very strong even without McCray as a witness (so there was thus no reason to harm him or try to procure his absence). But, and most importantly, it all conclusively proves that no meeting between Bergrin and a group of people that included Curry, Young, and others, ever happened, and especially not on December 4, 2003.

(5) On page 4 Bergrin wrote that AUSA Minish relied on the December 4, 2003 date in his argument to the jury.

(6) Also on page 4 Bergrin wrote that the recorded calls from December 4, 2003 and an intercepted call between Curry and Jarvis Webb on **November** 26, 2003, of which the government was fully and indisputably aware of,

establish that Bergrin made it abundantly clear to Curry that the evidence against me on the drug charges was overwhelming totally independent of any testimony by McCray.

(7) In footnote 3 Bergrin wrote that in a November 26, 2003 intercept Curry and Webb have a discussion just after Curry left Bergrin's law office and that Bergrin informed Curry that I was only facing 12 years and would only serve about 10 years (cited as call 995, 926, 5:38 p.m., dated 26 November 2003). Further, on December 4, 2003 at approximately 5:30 p.m. (cited as recording number 135, 475), proves the government knew Curry was heading into New York City for dinner and was thus unavailable for any meetings.

(8) On page 5 Bergrin wrote that the irony is that AUSA Minish told the jury during summations: "No one is going to kill Kemo McCray if Will Baskerville was doing ten years. It wasn't going to happen." But, the November 26 and December 4 recordings that the government was indisputably aware of prove that Bergrin made it abundantly clear to Curry that is what I was realistically and practically facing for the non-violent sales of relatively small amounts of crack cocaine I was charged with. Those same recordings also prove that the government knew or should have known that Young's testimony on the question of how much time evryone thought I was facing was false.

(9) I was not provided with any of these calls Bergrin discusses in his supplemental filing in his case dated July 15, 2013.

(F) Eyewitness information to the effect that Anthony Young was not the person who shot and killed McCray:

(1) Johnnie Davis was McCray's stepfather and he was with McCray when he was murdered. Davis testified at my trial in 2007 and at Bergrin's trials in 2011 and

2013. There was new information aired at both of the Bergrin trials relative to this eyewitness that was not aired at my trial.

(2) At my trial Davis testified that he and McCray were walking from a store on 20th Street and South Orange Avenue in Newark, and that when they reached 19th Street "shots rung out" and he "felt powder burns on [his] neck." (TR., at 4468-69). When he turned around McCray "was laying on the ground and a young man was tucking his gun back in his side." (TR., at 4469). The man "then turned to the car, got in the car and they sped off." (TR., at 4470-71). On the same day of McCray's murder the description Davis gave police of the shooter was that "he was dark skinned and he had dreadlocks in his hair [that were] about neck high. He was stocky build." (TR., at 4470-75). Over four months later, on July 23, 2004, Davis was called back down to the police department and was shown six photographs. He said "that the young man in the picture five matched the description of the shooter who shot [his] son." (TR., at 4475-79). It was not a positive identification but "that individual was stocky built, he matched the weight and matched the dreads that was on him." (TR., at 4477, 4479). On cross my counsel kept it minimal and did not ask the three most crucial questions left open by Davis' direct testimony, i.e.: (a) whether the shooter had a Yankee baseball cap on (Young said he had one on when he shot McCray); (b) whether he was shown a picture of Young (who was bald at the time of the McCray murder); and (3) whether he believed that Young was the person he saw shoot and kill McCray.

(3) At Bergrin's 2011 trial Mr. Davis' testimony was consistent with his testimony at my trial on the issues of the shooter tucking his gun in the side of his

pants before walking to the car, and that the man had dreads and brown skin. (Bergrin 10/25/11 TR., at 23-24). However, for the first time, at Bergrin's trial, Davis added that the reason he was able to pick out the picture of the man he said fit the description of the shooter, on July 23, 2004, was because he saw the man on the day of McCray's murder in East Orange on Oakwood Avenue where the man asked Davis, "do you remember me?" (Bergrin 10/25/11 TR., at 32-33, 45, 55-57). On March 7, 2011 Mr. Davis met with two of Bergrin's investigators and was shown two pictures. One of the pictures closely fit the description of who he saw shoot McCray. The other picture was of Young and Davis was "sure that this man is not the shooter of Kemo." (Bergrin 10/25/11 TR., at 44-45). Davis added that Young "don't even fit the description." (Bergrin 10/25/11 TR., at 46). Davis also again said that the shooter had dreadlocks and that he did not see anyone wearing a Yankee hat. (Bergrin 10/25/11 TR., at 50, 56). Davis also verified that he signed the picture of Young twice and wrote that Young was not the shooter. (Bergrin 10/25/11 TR., at 69-70).

(4) At Bergrin's 2013 trial Davis testified consistent with his prior testimony on the issues of the shooter of McCray not having a Yankees hat on and that the shooter had "shoulder-length dreadlocks." (Bergrin 2013 TR., at 1469-71). Davis made it abundantly clear that Young was not the shooter of McCray and in doing so noted that Young was "light-skinned." (Bergrin 2013 TR., at 1477). The man Davis identified, on July 23, 2004, as the shooter of McCray was Malik Lattimore and he believed Lattimore was the person who killed McCray because when he saw Lattimore after McCray was murdered when Lattimore asked Davis if he remembered him, he was "dark-skinned,

broad shoulders, had dreadlocks, shoulder-length[,]" (Bergrin 2013 TR., at 1477-81), which was the very same description Davis gave at my trial and to the police on the day of the McCray murder. (TR., at 4470-75). **(5)** Mr. Davis did not testify at my trial that he was face-to-face with Malik Lattimore (whom Davis believed was the shooter) just days after the McCray murder. He also was not shown a photo of Young and asked if he was the shooter (which he would have said Young was not as demonstrated via his testimony at the Bergrin trials), and he was not asked whether the shooter had on a Yankees hat (which he would have answered no to as demonstrated via his answer in the Bergrin trials). All of this information squarely undermines Young's claim at my trial that he was the person that killed McCray. Ms. Tarver's testimony is corroborative of that point as well in conjunction with the testimony of Davis at the Bergrin trials.

21. The government relied on the testimony of a jailhouse informant who wrote out what he claimed was a log of discussions he had with me. However, he did not have any discussions with me of the nature he documented in his "log." The information in his "log" was out-of-context, altered information that another jailhouse informant extracted out of a draft of a motion to dismiss my original drug charges based on malicious/vindictive prosecution that the jailhouse informant helped me to research. I explained this point in detail to my trial counsel and I told them to present testimony from Paul Bergrin about the motion and the information therein to challenge the admissibility of the testimony of the jailhouse informant on the basis: (a) that the information at issue was protected by work-product and/or attorney-client privilege; (b) that the information was otherwise wrongfully obtained; and (c) that the information was being misrepresented from its true form and intent. My counsel did not raise any of these issues at the Massiah hearing or at any other juncture.

Executed under penalty of perjury purusuant to 28 U.S.C. § 1746 on this 24 day of September, 2013 at FCC Coleman--USP 1; Coleman, FL 33521.

By: William Baskerville
William Baskerville
Reg. No. 25946-050