



Criminal Division

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BY ECF

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

**Re. *William Baskerville v. United States*,
Civil Number 13-5881 (PGS)**

Dear Judge Sheridan:

The Government does not oppose Movant William Baskerville's second motion (ECF No. 43) to expand the record to include pleadings (and exhibits) filed in *Bergrin v. United States*, Civil No. 16-3040—a section § 2255 motion pending before Chief Judge Jose L. Linares. However, for the reasons set forth in the Government's Opposition Brief, ECF No. 16, and Supplemental Letter, ECF No. 34, the additional information Baskerville provides does not support the claims advanced in his § 2255 motion. Ultimately, Baskerville has sought to bootstrap filings made by his coconspirator, Paul Bergrin, in Bergrin's § 2255 and Rule 33(b)(1) motions. If those motions are denied (and the Government is confident they will be), then Baskerville's motion must suffer the same fate. And given that Baskerville insists on tying his fate to Bergrin's, this Court may wish to review the Government's opposition to Bergrin's § 2255 motion, *see* D.N.J. Civil No. 16-3040, ECF Nos. 27 & 36, and to his Rule 33(b)(1) motion, D.N.J. Crim. No. 09-369 ECF No. 659.

The Government does wish to correct an incorrect factual assertion made in its Opposition brief. As Baskerville notes, ECF No. 43 at 2-5, the Government there asserted that the chart of phone activity, which Bergrin used to cross-examine FBI Special Agent Shawn Brokos and Anthony Young, was created by Agent Brokos in advance of Bergrin's 2011 trial. *See* ECF No. 16 at 71. In fact, the chart was created in or around January 2005.¹ Baskerville sees this as the case-cracker, but correcting

¹ Only by way of explanation and not excuse, the erroneous assertion about the date of that chart's creation was the result of a last-minute edit to the Opposition

the mistaken assertion does not affect the substance of the argument the Government advanced. That is perfectly demonstrated by restating below the entire paragraph from pages 71 to 72 of the Government's Opposition Brief, but modified to correct the assertion regarding the chart of phone activity:

Nor did the Government "know" until long after Baskerville's trial that Young had wrongly identified Rakeem Baskerville as the other passenger in Curry's truck. Although the Government possessed phone records showing that Rakeem Baskerville likely was not in the truck at time of Bergrin's 4:00 p.m. call to Curry, the trial AUSAs did not check those records to verify non-material aspects of Young's account. The AUSAs were relying upon the recording of 4:00 p.m. call in which Bergrin audibly mispronounced "Kemo's" name as "K-Mo." That mispronunciation showed that Young's account of the substance of the call and the person who received it was accurate, and reduced the importance of verifying collateral facts, such as who else was in the truck at the time of the call. Further, ~~it was not until after the Baskerville trial that Agent Brokos used the phone records to create a~~ the chart of the phone activity on November 25th. ~~That chart~~ was produced to Bergrin as Jencks material in advance of Bergrin I, and Bergrin was the one who realized that Young had inaccurately identified Rakeem Baskerville as the other passenger in Curry's truck and confronted Brokos with that inaccuracy during cross-examination. Although AUSAs wish they had on their own come to the same realization in 2007 that Bergrin did years later, that oversight does not a *Napue* violation make.

To put it as simply as possible, even if the trial AUSAs constructively knew in 2007 that Young was mistaken about who was sitting in Curry's truck at 4:00 p.m. on November 25, 2003, the recording of the phone call alone proved that Young was credible, and it was the substance of the call that mattered to the jury. Indeed, the guilty verdict in Bergrin's 2013 trial provides the clearest proof that Young's mistake about who was in Curry's vehicle was immaterial: After all, Bergrin confronted Young about this inaccuracy, and yet the jury still found Young credible.

The Government does not oppose expanding the record to include Exhibit 2 to Baskerville's motion. According to Baskerville, "information in the report in Exhibit 2 is consistent with her [Agent Brokos's] testimony in Petitioner's case." ECF No. 43 at 5. The Government submits that a report *consistent* with Agent Brokos's trial testimony offers nothing to support Petitioner's claim. Petitioner once again asks the Court to find inconsistency where none exists. The Government

Brief by a supervisory AUSA who genuinely—but erroneously—believed the assertion was accurate. Unfortunately, neither trial AUSA spotted and corrected that assertion before the Opposition was filed. The Government regrets that error.

previously addressed Petitioner's underlying argument (Claim B, Ex. A, 20(B) (1) and (2) - ECF No. 1 at 10) in the Government's Opposition Brief, ECF No. 16 at 61, and its letter dated September 18, 2015, ECF No. 34 at 7-8.

Additionally, the Government previously addressed Petitioner's Ground One, Claims D and G, Ex. A 6-7(A)-(D) arguments referenced in paragraph 11 of Petitioner's latest filing, *see* ECF No. 43 at 5-6, in the Government's Opposition Brief, *see* ECF NO. 16 at 22. Referencing the report contained in Exhibit 2 does not offer any support to Baskerville's baseless arguments.

We thank the Court for its consideration.

Respectfully submitted,

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s/ Joseph N. Minish

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(by U.S. Mail)