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October 31, 2011

BY ECF & ELECTRONIC MAIL

Hon. William J. Martini, U.S.D.J.
U.S. District Court, District of New Jersey
King Federal Building & U.S. Courthouse
50 Walnut Street, Room 5076
Newark, New Jersey 07101

Re: United States v. Bergrin, Crim. No. 09-369 (WJM)

Dear Judge Martini:

We write to address more fully the objection the Government first raised during Mr. Bergrin's cross-examination of Anthony Young and re-raised at the conclusion of the October 28, 2011 proceedings.

The Government argued that Mr. Bergrin had mischaracterized the questions asked of Mr. Young on direct examination, and then pointedly accused Mr. Young of having omitted information that he should have disclosed in response to those questions:

Q. Now, you never mentioned Dedre Baskerville when the Prosecutor questioned you yesterday. Correct?

A. He didn't ask me about her.

Q. He asked you: "What happened when you went to Jamal Baskerville's house?"

MR. MINISH: Judge, again, if he's going to quote from a transcript, he has daily transcript, he can't just --

MR. BERGRIN: Nobody is quoting from a transcript, your Honor. I'm asking him a question.

THE COURT: Overruled.

MR. BERGRIN: Thank you.

* * *

BY MR. BERGRIN:

Q. Mr. Young, you had no difficulty understanding the words of the Prosecutor yesterday. Correct?

A. Not at all.

Q. You had no difficulty understanding his questions. Correct?

A. He asked me who was there when I got there. Dedre wasn't there.

Q. And he asked you -- as a matter of fact, he asked you: What happened when you got to Jamal Baskerville's house on November the 25th, of 2003 after you received the call from Rakeem Baskerville. And you told him. Correct?

A. And I answered the question truthfully.

Oct. 28, 2011, Tr. at 136-37 (excerpt attached as Exhibit A). This Court agreed that "unless it's grossly mischaracterized it's up to the jury to recall, did he or did he not say that yesterday." Id. at 170.

But Mr. Bergrin did in fact grossly mischaracterize the testimony from the previous day, unfairly making it appear that Mr. Young failed to mention that Dedre Baskerville was present at Jamal Baskerville's house. In fact, the transcript of Mr. Young's direct examination reveals that **he was never asked that question:**

Q. And a "chirp," meaning?

A. We got phones that's walkie-talkies, and Rakeem Baskerville chirped me and said I need to come down the hill.

Q. What did that mean to you, sir?

A. Come down the hill.

Q. I'm sorry, to where? Where was "down the hill"?

A. Oh, to 17th Street and Avon, where we from.

Q. And did you, in fact, do that?

A. Yes.

Q. Was it any specific location?

A. Yes, he said come in front of Jamal house.

Q. And Jamal Baskerville?

A. Yes.

Q. And did you do that?

A. Yes.

Q. Now, when you arrived there, what did you learn.

A. I learned that Will Baskerville was arrested by the feds.

* * *

Q. That morning did there come a time when Mr. Curry showed up to Jamal Baskerville's home?

A. Yes.

Q. Would you describe that to the jury?

A. Well, Mr. Curry first got there maybe an hour after we did, and -- or less, I don't know. I would say 45 minutes to an hour maybe, and he pulled up. We was all standing in front of the house already, me and the Baskervilles and Ray-Ray. And Hakeem pulled up in a Range Rover, got out, we all start talking about what happened. And he said he had to get in touch with Paul Bergrin to get Paul on the job.

* * *

Q. Let's just go to what you do know. Did there come a time when Mr. Curry was able to get in contact with Mr. Bergrin?

A. Yes.

Q. Could you please explain that to the jury.

A. Well, somebody was on the phone, and he said, "I need to speak with Paul." I don't know who it was. Like I say, he hung up and he told us he was waiting for Paul to get back at him, meaning call him back.

Q. Okay. Did he get back at him?

A. Yes.

Q. Could you explain that to the jury?

A. Well, we was all standing on the sidewalk, and –

Q. Who is "we all"?

A. Me, Jamal, Hakeem, Hamid, Ray-Ray and Malsey.

Q. And what if anything happened?

A. Hakeem phone running, and he answered it and said it was Paul, and proceeded to get in his truck that was parked right there maybe five steps from us.

Oct. 27, 2011 Tr. 121-22, 126-27, 129-30 (excerpts attached as Exhibit B).

As the foregoing shows, Mr. Young was never asked who was at Jamal Baskerville's house when Mr. Young arrived there. Nonetheless, despite claiming that he was not quoting the October 27th transcript, Mr. Bergrin asked a question that *the court reporter* understood as a direct quotation:

[The prosecutor] asked you: "What happened when you went to Jamal Baskerville's house?"

Oct. 28, 2011 Tr. at 136; accord id. at 137 ("And he asked you -- as a matter of fact, he asked you: What happened when you got to Jamal Baskerville's house on November the 25th, of 2003 after you received the call from Rakeem Baskerville. And you told him. Correct?").

Through these questions, Mr. Bergrin falsely accused Mr. Young of having failed to mention Dedre Baskerville, even though Mr. Young was never asked about her. There is no excuse for such tactics. The parties receive daily copies of the trial transcript, and Mr. Bergrin has the assistance of Mr. Lustberg and Ms. Protes to assist his proper cross-

examination of witnesses. This is particularly true now, given that Mr. Bergrin has had four days to prepare for continued cross-examination of Mr. Young. Thus, rather than (mis)characterize the witness's prior testimony, Mr. Bergrin should be required to cite a transcript page and line number, so that this Court may exercise its Fed. R. Evid. 611(a) discretion to "exercise control over the mode . . . of interrogating witnesses." And to cure the misleading impression created by Mr. Bergrin's questioning of Mr. Young, we ask this Court (1) to instruct the jury that Mr. Young was not asked about Dedre Baskerville on direct examination, and (2) to remind the jury that assertions of fact in a lawyer's questions are not evidence.

The episode with Mr. Young was not an innocent, mistaken recollection of the prior day's proceedings. Mr. Bergrin is a well-prepared litigator who has, on previous occasions, accused a witness of having changed or forgotten testimony given on direct or "just a short time ago," when the transcript at issue shows that it was Mr. Bergrin who misstated the witness's testimony. Compare, e.g., Oct. 20, 2011, Tr. at 116 (Mr. Jimenez testifies that he believes that Mr. Begrin "probably met Changa through the family members"), with id. at 189 ("Didn't you testify that you don't know whether Paul Bergrin ever met Changa? "Wasn't that your testimony a couple of hours ago, a short time ago?" . . . You don't remember that? You don't remember those words coming out of your mouth: 'I do not know whether Paul Bergrin ever met Changa before.'").

In sum, we ask this Court to prevent Mr. Bergrin from misleading witnesses and the jury in this fashion. See Fed. R. Evid. 611(a); see also United States v. Lane, 883 F.2d 1484, 1502 (10th Cir. 1989) ("Lane's counsel was not prohibited from asking a question, merely from mischaracterizing Rader's prior testimony. We think it was within the sound discretion of the trial judge to limit Lane's counsel's cross-examination of Rader to this extent."); cf. Goetz v. Farm Credit Servs., 27 F.2d 398, 404 (8th Cir. 1991) ("We agree with FCS that the alleged inconsistency was actually caused by Appellant's counsel's mischaracterization of Mr. Oldvader's prior testimony.").

Respectfully submitted,

PAUL J. FISHMAN
United States Attorney

By: /s STEVEN G. SANDERS
Assistant U.S. Attorney

cc: Lawrence S. Lustberg, Esq.
(by ECF and by e-mail)

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

3 UNITED STATES OF AMERICA, :
4 v. : TRANSCRIPT OF PROCEEDINGS
5 PAUL W. BERGRIN, : - Trial -
6 Defendant :
- - - - -x

7 Newark, New Jersey
8 October 28, 2011

9 B E F O R E:

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

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

13 UNITED STATES ATTORNEY'S OFFICE
14 BY: JOHN GAY
15 JOSEPH N. MINISH
16 STEVEN G. SANDERS
Assistant U.S. Attorneys
For the Government

17 PAUL W. BERGRIN, Defendant, Pro Se
- and -
18 GIBBONS PC
BY: LAWRENCE S. LUSTBERG, ESQ., Standby Counsel
19 AMANDA B. PROTESS, ESQ.
For Defendant Paul W. Bergrin

20
21 Pursuant to Section 753 Title 28 United States Code, the
22 following transcript is certified to be an accurate record as
taken stenographically in the above entitled proceedings.

23 S/WALTER J. PERELLI

24 WALTER J. PERELLI, CCR, CRR
25 OFFICIAL COURT REPORTER

EXHIBIT A

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

1 A Not at all. Like I said, I'm answering the question,
2 that's it.

3 Q You had no problem remembering that day and understanding
4 their questions when you testified for the prosecution
5 yesterday. Right?

6 A Well, I didn't have a problem. But like you said, I didn't
7 mention Dedre yesterday.

8 Q Because you were prepared and they prepared you for what
9 they were going to ask you and what answer that they want to
10 receive. Right?

11 A No, sir.

12 Q Now, you never mentioned Dedre Baskerville when the
13 Prosecutor questioned you yesterday. Correct?

14 A He didn't ask me about her.

15 Q He asked you: "What happened when you went to Jamal
16 Baskerville's house?"

17 MR. MINISH: Judge, again, if he's going to quote from
18 a transcript, he has daily transcript, he can't just --

19 MR. BERGRIN: Nobody is quoting from a transcript,
20 your Honor. I'm asking him a question.

21 THE COURT: Overruled.

22 MR. BERGRIN: Thank you.

23 THE COURT: It's the jury's recollection. It's just
24 yesterday, so it's the jury's recollection if that was about
25 what was asked by you, Mr. Minish, and I think it was. If not

1 those exact words, I believe he was asked would was there when
2 he got there, or something along that line.

3 MR. MINISH: That's fine. If he's referring in the
4 general sense then --

5 THE COURT: You don't have to characterize what he's
6 referring to. He's asked a question.

7 BY MR. BERGRIN:

8 Q Mr. Young, you had no difficulty understanding the words of
9 the Prosecutor yesterday. Correct?

10 A Not at all.

11 Q You had no difficulty understanding his questions.
12 Correct?

13 A He asked me who was there when I got there. Dedre wasn't
14 there.

15 Q And he asked you -- as a matter of fact, he asked you:
16 What happened when you got to Jamal Baskerville's house on
17 November the 25th, of 2003 after you received the call from
18 Rakeem Baskerville.

19 And you told him. Correct?

20 A And I answered the question truthfully.

21 Q And you made no mention whatsoever of Dedre Baskerville
22 showing up. Right?

23 A I don't know if I made mention of her showing up. But you
24 just said he asked me who was there when I got there.

25 She wasn't there when I got there.

1 All right. All right. We'll begin 9 o'clock
2 Wednesday morning. I know, Mr. Sanders, you submitted an
3 application. I'll address it next week.

4 MR. SANDERS: Okay.

5 THE COURT: Okay.

6 MR. SANDERS: Can I just make one observation, your
7 Honor, just from the cross-examination that's going on.

8 I happen to have a transcript of yesterday's
9 proceedings, and I understand that Mr. Bergrin hasn't been able
10 to read it, but several of the questions he asked where he made
11 it seem as if he was quoting questions --

12 MR. LUSTBERG: One moment, one moment. I think Mr.
13 Young should be excused.

14 (The Witness, Anthony Young, is temporarily excused
15 and escorted out of the courtroom by the Marshals.)

16 MR. SANDERS: Several of the questions that have been
17 asked sounded like they were placed in quotes: "Weren't you
18 asked this particular question about the series of events on
19 the morning of November 25th" don't appear anywhere in the
20 version that I've been looking at. Okay? I'm just making that
21 observation because --

22 THE COURT: No, that's why I asked if there's a
23 transcript, and now I'll have a chance over the weekend to get
24 to the transcripts and we'll confine his questions to things in
25 the transcript.

1 Mr. Sanders, as you know, when you don't have a
2 transcript, when we don't have a transcript it's very
3 appropriate for a lawyer to stand up and say: "Didn't you say
4 the following yesterday?"

5 And unless it's grossly mischaracterized it's up to
6 the jury to recall, did he or did he not say that yesterday.

7 And a number of times I've said to the jury, if they
8 don't recall a question being asked that way, it's their
9 recollection that counts, not the question. And, of course, in
10 the charge at the end I will tell them again that the questions
11 that are asked are not the evidence.

12 But that's one of the reasons why I decided to recess
13 now. Because I'm sure there will be a line of questions with
14 respect to the transcript, and in fairness to everyone we'll
15 confine his questions, the question and answer to the
16 transcripts, okay, if he's going to go into those areas.

17 MR. SANDERS: I appreciate that, your Honor.

18 THE COURT: And I am mindful of your letter that I
19 just received, but I'll address it on Wednesday.

20 MR. SANDERS: Thank you, your Honor.

21 THE COURT: All right. Have a good weekend, everyone.
22 We'll see you on Wednesday.

23 (At 12:54 p.m., a recess is taken to Wednesday,
24 November 2, 2011, at 9:00 a.m.)

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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 27, 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
BY: JOHN GAY
JOSEPH N. MINISH
STEVEN G. SANDERS
Assistant U.S. Attorneys
For the Government

PAUL W. BERGRIN, Defendant, Pro Se
- and -
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BY: LAWRENCE S. LUSTBERG, ESQ., Standby Counsel
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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.

1 A Which is Terence, yes.

2 Q The same person?

3 A Yes.

4 Q Were you selling drugs yourself during the summer of 2003?

5 A Yes.

6 Q And into the fall of 2003?

7 A Yes.

8 Q I'm going to direct your attention to November 25th, 2003.

9 Did anything happen on that day that was unusual?

10 A Yes. Will Baskerville got arrested.

11 Q Okay. Could you tell the jury how you found out and what
12 happened?

13 A Well, I was on Alexander Street in the morning, early in
14 the morning.

15 Q And what were you doing there early in the morning?

16 A I was setting up my block to distribute heroin during the
17 day, getting my workers out there, and I got a chirp from
18 Rakeem Baskerville.

19 Q And a "chirp," meaning?

20 A We got phones that's walkie-talkies, and Rakeem Baskerville
21 chirped me and said I need to come down the hill.

22 Q What did that mean to you, sir?

23 A Come down the hill.

24 Q I'm sorry, to where? Where was "down the hill"?

25 A Oh, to 17th Street and Avon, where we from.

1 Q And did you, in fact, do that?

2 A Yes.

3 Q Was it any specific location?

4 A Yes, he said come in front of Jamal house.

5 Q And Jamal Baskerville?

6 A Yes.

7 Q And did you do that?

8 A Yes.

9 Q Now, when you arrived there, what did you learn.

10 A I learned that Will Baskerville was arrested by the feds.

11 Q And how did you find that out?

12 A Through Rakeem.

13 Q Did the fact that William Baskerville had been arrested by
14 the feds mean anything to you?

15 A Yes, it meant a lot to everybody.

16 Q Explain that to the jury, please.

17 A Well, everybody was nervous, scared because there's a
18 difference when you get arrested by, you know, Newark Police or
19 State Police than somebody -- than somebody in your
20 organization being arrested by the feds. The first thing you
21 think is all 20 of you, all or 15 of you all are under
22 investigation, you really don't know.

23 Q And that's different from local police?

24 A A lot different.

25 Q Why is it different?

1 have created for Mr. Baskerville?

2 A It would have created a lot of issues because if, like I
3 said, if he telling, Mr. Baskerville will face some time.

4 Q Then if someone who was working for you, you said out on
5 Alexander was arrested, what concerns would you have?

6 A I would have plenty of concerns.

7 Q Which are?

8 A Are they going to give me up?

9 Q And how is it they would be able to give you up?

10 A Well, you could tell the feds that they hustled for me,
11 where our drug house is at, you know, where we keep the drugs
12 and the guns at.

13 Q Now, would those individuals be able to give up, say,
14 Hakeem Curry?

15 A No, not people from my block, no.

16 Q Why not?

17 A Because they know nothing about him, all they know is he's
18 my connect, that's it. But they don't know where nothing ever
19 his is at.

20 Q That morning did there come a time when Mr. Curry showed up
21 to Jamal Baskerville's home?

22 A Yes.

23 Q Would you describe that to the jury?

24 A Well, Mr. Curry first got there maybe an hour after we did,
25 and -- or less, I don't know. I would say 45 minutes to an

1 hour maybe, and he pulled up. We was all standing in front of
2 the house already, me and the Baskervilles and Ray-Ray.

3 And Hakeem pulled up in a Range Rover, got out, we all
4 start talking about what happened. And he said he had to get
5 in touch with Paul Bergrin to get Paul on the job.

6 Q And who at that time, to you, was Paul Bergrin?

7 A Paul Bergrin was a lawyer, a prominent lawyer we know of
8 that represented a lot of people that we be around.

9 Q And when you say "be around," you mean just as neighbors,
10 or people involved in the organization?

11 A People involved in my organization, and a good friend of
12 Hakeem's.

13 Q And why do you say he's a good friend of Hakeem's?

14 A If you pay attention and you be around us, you can see he
15 cared about Hakeem more than he cared about others.

16 Q Can you give anybody an example of that?

17 A Well, if anything happening, Hakeem is the one that got to
18 go to Paul to make sure everybody's all right.

19 Q I'm sorry, sir, if you could just explain that.

20 A Like when Will went to -- the day Will got arrested, it
21 wouldn't have been Rakeem or Hamid or Jamal calling Paul, it
22 would be Hakeem getting in touch with Paul for Paul to make
23 sure everything's all right, and his main concern is to make
24 sure he's all right.

25 Q Hakeem Curry?

1 came home, and then I think -- I'm not for sure -- he went to
2 Northern State for like another year. I'm not positive though.

3 Q To the best of your memory?

4 A Yes.

5 Q Did there come a time when Mr. Curry was able, in fact, to
6 get in contact with Mr. Bergrin?

7 A Well, that morning -- he called somebody that he contacted,
8 but I don't know if it was Paul on the phone. We was standing
9 on the sidewalk --

10 Q Let's just go to what you do know.

11 Did there come a time when Mr. Curry was able to get
12 in contact with Mr. Bergrin?

13 A Yes.

14 Q Could you please explain that to the jury.

15 A Well, somebody was on the phone, and he said, "I need to
16 speak with Paul."

17 I don't know who it was. Like I say, he hung up and
18 he told us he was waiting for Paul to get back at him, meaning
19 call him back.

20 Q Okay. Did he get back at him?

21 A Yes.

22 Q Could you explain that to the jury?

23 A Well, we was all standing on the sidewalk, and --

24 Q Who is "we all"?

25 A Me, Jamal, Hakeem, Hamid, Ray-Ray and Malsey.

1 Q And what if anything happened?

2 A Hakeem phone running, and he answered it and said it was
3 Paul, and proceeded to get in his truck that was parked right
4 there maybe five steps from us.

5 Q Okay. Now in the truck; front seat, back seat?

6 A He got in the driver's seat.

7 Q Anybody else get in the truck?

8 A Yes, me, myself, I got in the back seat, and I think it was
9 Jamal who got in the front. Jamal, yeah, Jamal got in the
10 front seat, passenger's seat.

11 Q Okay. Now, were you able to hear anything with respect to
12 that conversation?

13 A Well, I could hear Paul's voice but I couldn't hear nothing
14 he was saying. It was just -- it was quiet in the truck. You
15 could hear a voice on the other line but --

16 Q Could you hear what Mr. Curry was saying?

17 A Yes.

18 Q What was Mr. Curry saying?

19 A He's asking Paul, do he know anything about Will, this, and
20 that, telling him that Will was locked up by the feds and did
21 he hear about it.

22 And told him he need to find out what really happened.

23 Q Now, were there any comments about the charges Mr.
24 Baskerville was facing?

25 A Yes.